



Refugee Review

Special Focus Labour

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Editors' Note: Introduction to the Third Edition

Welcome to the third edition of *Refugee Review*, an open-source, peer-reviewed journal that aims to showcase unique perspectives and emerging voices in refugee studies. In this edition, we are pleased to present 18 academic articles, practitioner reports and multimedia pieces that cover a range of issues impacting refugees and migrants. In a moment in time where the number of forcibly displaced persons is at the highest on record, and the question of accepting refugees has become a central topic in political discourse in many regions of the world, we consider it more important than ever to offer nuanced, critical perspectives on refugees and the challenges they face.

In this edition we have a special focus, comprising eight articles, on the topic of labour and refugees. Given the controversial status of refugees in the labour markets of many countries, we felt this topic is extremely timely. As can be seen in e.g., Gündüz's piece on Turkey, refugees are often viewed or portrayed as a "burden" on the economy and as job competition for the locals, while at the same time have their access to the labour market restricted by regulations and discrimination. In the meantime, many states seem to have lost sight of the original obligations of the 1951 Refugee Convention, which asserts that refugees have a right to work or a "dignified standard of living" in the state offering protection, a disconnect explored by Arapiles & Madziva in their article focussing on the UK. And as Sager & Öberg point out in their article on Sweden, the spectre of "deportability" not only puts refugees in a vulnerable position vis-à-vis employers, it also regulates the worker's rights of regular migrants and can become an opportunity to erode workers' rights more generally. Clearly, the labour rights of refugees (and lack thereof) has the potential to become a topic of increasing importance for economies worldwide as they struggle with integration of newcomers and with challenges to the financial status quo in the wake of the global financial crisis.

The intersection between refugee issues and more general concerns of identity and social justice occupy numerous other of our authors in this edition. For instance, several pieces illuminate the ways in which feminist philosophy can inform our view of refugees. Taha seeks to highlight how post-colonial feminist discourse can take refugee studies to new heights by allowing for a more complex view of victimhood and agency that discards with some of the stereotypical, orientalist assumptions of the past. Burnett & Villegas call for greater consideration of gender development in conflict situations, fruitfully comparing the examples of Colombia and Palestine to consider the failures in security caused by disregarding gender. And in their multimedia piece, Ratkovic & Sethi use poetry and visual arts to explore migration and transnational feminism through the eyes of the displaced.

The authors presented in this volume are also interested in looking beyond the surface to the unseen challenges refugees face. In a piece on the double marginalisation encountered by disabled refugees in the EU, Oyaro considers how governments can better comply with UN guidelines on persons with disability when applying refugee law. Boeynik explores the topic of vulnerability as it pertains to people under suspicion of terror, by looking at the example of Somali refugees in Kenya in the wake of the Garissa attacks, and Forin argues for a closer examination of the divide between "forced" and "voluntary" migration, to see how this paradigm is being used as a containment strategy that often denies individual rights.

Although the subject matter presented in this volume is broad, what the authors above and others presented have in common is a desire to shed light on the aspects of the refugee experience that negate a simplistic approach to the topic. In the face of a political climate where refugees are increasingly cast as a homogenous group that threatens security, economy, and culture, it is more important than ever to emphasise discourse that highlights that refugees, like all people, navigate complex intersections of identity and social life at work and at home, and have different challenges and motivations that define their experiences. We offer these accounts of refugees to problematise the dominant discourse of refugees as scapegoats for society's many problems and offer a glimpse at a kaleidoscopic reality that is necessarily more complex, and closer to the truth.

Managing Editor - Dacia Douhaibi
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Special Theme: Refugees and Labour

Articulations of deportability. Changing migration policies in Sweden 2015/2016

Maja Sager¹
Klara Öberg²

Abstract

The struggles of people who sought to enter and move across Europe became increasingly intense in 2015 with unthinkable numbers of deaths on the sea and other dangerous parts of the various alternative routes. Initially Europe witnessed a popular mobilisation of solidarity and demands for a humane response articulated by government officials as well as in the media. However, the government responses changed rapidly and were replaced by a narrative of crisis and a steering towards harsher regulations and closed borders aiming to limit the numbers of asylum seekers. In Sweden, following the construction of such a narrative of crisis the Social democratic/Green party government and the right wing opposition launched an initial migration political agreement in November 2015 that was followed by several interventions during 2016 that sought to restrict the possibilities to get permanent resident permits and to facilitate the expulsion of irregular migrants. These interventions imply a critical shift in the direction of Swedish migration and asylum regulations. In this paper we argue that this shift visibly and bluntly moves towards enforcing the links between migration politics and labour politics. In other words: to abandon a human rights perspective.

In this paper our analysis focuses on the Swedish migration politics' switching from permanent to temporary residence permits; the racialisation of service and domestic work low pay sectors; and the intensification of irregular migrant vulnerability through work site controls and other measures to increase deportation practices. We conceptualise the effects of these interventions as a racialised *continuum of deportability* and explore how this continuum is constructed, experienced and contested in the context of the government responses to present migrations. The analysis builds on two kinds of material: government documents and press releases regarding the migration political interventions, and ethnographic material from two different studies exploring structures and experiences of irregularity in the Swedish context (Sager 2011, Öberg 2014)

Keywords: Irregularity, Continuum of Deportability, Labour Market Regulation, Segmentation, Migration Policy.

Introduction

In this article we analyse some of the implications of the Swedish government's responses to the so-called "migration crisis" in 2015 and 2016. More specifically, we explore how some of the policy changes included in these responses can be understood as increasing migrants' vulnerability and dependency on the labour market, and how they consolidate

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² Klara Öberg, PhD in anthropology and ethnology, is affiliated with IRIS at EHESS in Paris. Her research interests cover migration, deportability, mobility, the transformation of the nation state, the history of capitalism and neoliberalism, informal economy, labour and class formation, global systemic anthropology, urban social and economic inequality.

problematic links between the field of refugee migration and the field of labour market dynamics. The “migration crisis” became accentuated in the summer of 2015, when the struggles by people trying to enter Europe grew increasingly intense. Unthinkable numbers of them died on their attempts to cross the sea and in other dangerous parts along the alternative routes to and across Europe. These struggles also grew increasingly visible in mainstream media. The media coverage of the hardships of migrants triggered civil society mobilisation of support and solidarity – an attitude to which several governments initially responded. But eventually these initial responses turned into a narrative of “crisis” and to policy responses connected to that narrative.

The starting point for the analysis is the concept of *deportability*, which we have explored in our earlier respective ethnographic studies with refused asylum-seekers and other irregular migrants in Sweden.³ Introduced by anthropologist Nicholas de Genova, deportability refers to the state or position that the looming threat of deportation produces.⁴ In our respective earlier studies we have mapped some of the mechanisms through which deportability is shaping the Swedish labour market and the subjectivities of migrant workers and/or asylum seekers. Here, we build on that knowledge to trace the developments of these same mechanisms in the government’s responses in the area of migration.

In October 2015, the Swedish Social Democrat and Green coalition government presented an agreement with the right wing party alliance, arguing that society was facing a “collapse” and that they needed to create some “breathing space” (“*andrum*”) through a series of migration policy changes.⁵ From January 2016 onwards, passport controls were introduced at Swedish borders, causing asylum applications to plummet. In the spring of 2016 a government proposition for interim legislation to delimit immigration to Sweden was launched.⁶ The proposition was heavily criticised by a range of institutions and civil society organisations involved in the consultation process. Despite this critique, the proposed interim legislation was implemented for a three-year period in June 2016. The interim legislation, presented in more detail below, entails several changes to the processes of migration control in Sweden. The most drastic changes are the introduction of temporary instead of permanent-residence permits, the demand on migrants’ labour market performance for permanent residence permits and for family reunification, the introduction of “lower thresholds” of low-pay sectors such as service work, and the cutting of daily allowances applied by the Swedish Migration Board to persons under expulsion orders.

In our analysis of the government’s responses, we argue that a crucial shift is underway in the Swedish welfare state. Our argument draws on thematic analysis of two strands of material: 1) ethnographic material from our respective earlier studies with asylum seekers and migrant workers and 2) the proposition 2015/16:174 and the interim legislation (2016/752) of the Swedish government. Also, although our main focus lies on the interim legislation, in some parts we include media statements and comments from the government to grasp the broader government responses. Drawing on our ethnographic

³ Maja Sager, *Everyday Clandestinity: Experiences on the Margins of Citizenship and Migration Policies* (Lund University, 2011); Maja Sager, “Precarity at Work. Asylum rights and paradoxes of labour in Sweden”, in *Vulnerability, Exploitation and Migrants. Insecure Work in a Globalised Economy*, ed. Louise Waite et al. (London: Palgrave Macmillan, 2015); Klara Öberg, *Meanings of Social Networks and the Production of Deportability* (École des hautes études en sciences sociales, Paris, 2015).

⁴ Nicholas de Genova, *Working the Boundaries* (Durham and London: Duke University Press, 2005).

⁵ The changes in Swedish migration policies were instigated by an agreement between the Social Democratic/Green Party government and the right-wing opposition in October 2015, “Interventions regarding the refugee crisis” (Swedish Government, 2015), and further developed by measures presented by the government on November 26 (Swedish Government, 2015).

⁶ Swedish Government, ”Regeringens proposition 2015/16:174: Tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige” 2016, <http://www.regeringen.se/rattsdokument/proposition/2016/04/prop.-201516174/> (accessed 12, May, 2017)

material and lived experiences by the informants in those studies we understand the following themes as key markers of deportability: temporality; vulnerability and dependency, and conditionality.

In the next section we develop the conceptualisation of deportability⁷ and, based on our earlier ethnographic studies, argue for the need to analyse the ways in which different forms of migration regulation interact and link with labour market dynamics both with regards to the regulations of these policy fields as well in their impact on migrants' subjective experiences. We argue that the perspective on deportability as a *continuum* allows us to bridge this conceptual gap between understandings of refugee migrations and labour-market dynamics, a gap that has been prevalent in academic approaches to migration in the Swedish context. We contextualise the analysis with a discussion about the dynamics of "crisis production" which led to these new policies. In the analysis, we use the concept of *continuum of deportability* to critically analyse the ways in which regulations of refugee migration and labour-market interests increasingly overlap in and through the new legislation – producing continuities but also radical breaks with earlier dis/connections between these two policy areas in the Swedish welfare state.

Migration, irregularity and deportability

Since the early 1990s, Europe and North-America have gone through a steady turn towards securitisation of migration policies and increasingly militarised and repressive border regimes. Parallel to this development, a critical approach to the issues of migration and border control has been growing. This field is characterised by an understanding of border control as constantly changing rather than the fixed and natural order of things. Within this frame, the concept of irregularity does not simply describe the situation of an individual migrant without legal status, but is understood as a "space of contestation" between (migrant) mobility and (state) control of that mobility.⁸ Migrant irregularity is not an individual concern, but a categorisation that is temporary, changing and, above all, *constructed* by nation-states through their control of human mobility.⁹ One of the key concepts in this context is the notion of deportability. De Genova traces the historical interaction between border control and labour market structures and interests in the US and develops the concept of deportability through his ethnographic work with Mexican workers in Chicago. Most of the participants in his study were staying in the United States irregularly and were thus deportable. Despite the fact that these workers were part of labour structures similar to general labour structures, their work situation was characterised by worse conditions, higher vulnerability, lower pay, longer hours and more dangerous work.¹⁰ This means that deportation does not only shape the lives of those who are actually deported but of *all those who are threatened with deportation*, and the contexts and relations they inhabit. The distinction is key as it points towards deportability as a tool for differentiation and inner border control rather than a mechanism merely connected to actual deportations. Being deportable does not automatically lead to an actual deportation but still has extremely disruptive effects on people's lives and in societal structures.

While de Genova's work initially focused on the ways in which deportability structures individual positions in the labour market, he and other scholars have developed understandings of how deportability shapes further social contexts and parts of life.¹¹

⁷ De Genova, *Working the Boundaries*.

⁸ Vicki Squire, *The contested politics of mobility: Borderzones and irregularity* (London: Routledge, 2010).

⁹ De Genova, *Working the Boundaries*; Squire, *The contested politics of mobility*.

¹⁰ Nicholas de Genova, "The legal production of Mexican/migration illegality", In *Latino Studies*, no 2 (2) (2004), 160-185.

¹¹ Alice Bloch, "The labour market experiences and strategies of young undocumented migrants" in *Work, Employment and Society*, no 27 (2) (2013), 272-287; Holgersson, Helena, *Icke-*

Deportability goes hand in hand with exclusion from social and political rights and from healthcare access, be it due to a formal lack of rights or due to an inability – or fear – on parts of migrants and refugees to actively claim those rights. The state of deportability therefore decisively and widely impacts social relations and strategies. It positions people in insecure and low-paid work in the informal labour market, and limits access to accommodation as entering legal contracts is rendered impossible.

Studying migration across labour and asylum – the Swedish context

Within migration studies, refugee migration and labour migration are often approached as fully separate fields. In Sweden in particular, the imagined difference between refugee migration and other forms of migration is very marked. This separation depends, of course, partly on the actual difference when it comes to the legislative and political contexts: in principle, refugee migration should be framed by human rights concerns while labour migration should be a labour-market concern. However, in practice and in the embodied experience of migration, these frames are not left neatly separated but interlink and blur in many ways. National labour-market and finance-policy concerns often influence and shape wider debates on refugee migration. Also, the categorisation of migrants is less clear-cut when the complexity of reasons and strategies of migration are taken into account and individual migrants' situations are shaped in relation to both human rights and labour-market concerns. The interferences between policy areas are particularly present in the position of irregular migrants. We argue that in order to analytically grasp the overlaps between refugee migration and the dynamics of the labour market in a way that takes the rights of all migrants into account, we need to critically examine the interactions between the dynamics and regulations of different forms of migration, rather than allowing an imagined separation between the two fields to shape our analytical frame.

Critical analyses of border control and its processes of categorisation and assessments of migrants have shown how these processes shape and organise the national labour market through differential inclusion of migrants and through linking irregular and precarious segments of the labour market to regular and core segments.¹² These aspects of border and migration control, with an empirical focus on labour, have been explored and analysed more in those geographical contexts in which labour migration has been at the centre of migration movements and discourses on migration. Prominent examples in this regard are de Genova's work on deportability and the labour situations for Mexican irregular migrants¹³ and Mezzadra and Neilson's work on multiplication of labour in southern Europe.¹⁴

In Sweden, and in contrast to the empirical focus of critical migration studies in other contexts, refugee migration – rather than labour migration – has been understood as core in studies of migration and irregularisation of migrants. Therefore, the links and overlaps between different migrations and labour-market dynamics have been less explored. However, these links and overlaps do take place and need to be studied more closely. We have done this in our earlier ethnographic studies¹⁵ in which we have identified and analysed some of these various and complex links and overlaps between labour-market

medborgarskapets urbana geografi, (Göteborg: Glänta produktion, 2011); Sager, Maja, *Everyday Clandestinity*; Koshravi, Shahram. "An Ethnography of Migrant 'Illegality' in Sweden: Included yet Excepted?", *Journal of International Political Theory*, no 6(1), 2010:95–116; Suter, Brigitte. *Tales of transit: Sub-Saharan African migrants' experiences in Istanbul*, (Linköping University, 2012)

¹² Bridget Anderson, "Nations, migration and domestic labour: The case of the UK", *Women's Studies' International Forum*, no. 46 (2014); Öberg, Klara, *Meanings of Social Networks and the Production of Deportability*

¹³ Nicholas de Genova, "Migrant 'Illegality' and Deportability in Everyday Life", *Annual Review of Anthropology*, no. 31 (2002):419–447.

¹⁴ Sandro Mezzadra and Brett Neilson, *Border as Method, or, The Multiplication of Labor* (Durham, NC and London: Duke University Press, 2013).

¹⁵ Sager, *Everyday Clandestinity*; Sager, Maja, "Precarity at Work"; Öberg, *Meanings of Social Networks and the Production of Deportability*.

dynamics and regulations of refugee migration as central in the production of vulnerability and dependency.

The lived experience of asylum seekers and irregular migrants engaged in the irregular labour market provides us with a lens that reveals how deportability is experienced. Interviewing irregular migrants and asylum seekers who work in the unregulated labour market in Sweden shows how legal-status regulation has a very direct effect on work relations as well as conditions for work in the informal labour market. Irregular migrants who engage in the informal labour market in Sweden are exposed to insecurities such as long hours, irregular payment or uncertain economic return for work as well as heavy and sometimes potentially dangerous labour tasks. The possibilities to negotiate salaries are few due to inequality, fear of being reported to the police or losing one's job. Asylum seekers are equally subject to these hardships and bad work conditions, but there are also marked differences. Asylum seekers do not have to negotiate fear of the police or strategies in relation to the everyday risks entailed in the status of an irregular migrant. They have the legal right to stay within Swedish borders while their asylum claims are being processed and assessed by the Swedish migration board. Asylum seekers that arrange their own accommodation receive a small monthly allowance. It will not cover the basic expenses but provides a certain security. There are two strong points to make in relation to comparing the situation of irregular migrants vis à vis asylum seekers when it comes to work conditions as well as social relation between employer and employee. The first is related to the fact that although asylum seekers have better possibilities to negotiate with employers for a higher salary or better working conditions, they experience similar vulnerabilities and insecurities as irregular migrants. This in turn is related to deportability and the uncertain outcome of the assessment of the application for asylum. The second point is related to an overlapping between migration politics and labour market politics – an example of where one field is intrinsically interlinked with the other. For asylum seekers, there is a potential to receive a residence permit if they have secured long term employment. If the application for asylum fails a strategy might be to find work. Thus, offering to work for free in hope of receiving a future employment becomes both an important strategy for asylum seekers in the informal labour market as well as a potential risk to be exploited as free labour.

It is obvious that temporality is a factor for insecurity and deportability. The interim legislation is a step towards institutionalising temporality and thereby deportability. The shift to replace permanent-asylum permits with temporary-asylum permits carries an obvious risk of a discontinued residence permit and hence the real prospect of deportation in the long run.

Here we see the practical appliance of the *continuum of deportability* at work: although someone with a temporary-residence permit is not threatened by deportation in an immediate sense, there is an obvious lack of stability and security to plan ahead. The labour-market participation condition that lies at the end of the three years will still place this person on the continuum of deportability and shape their relation to their employer and the possibility to make demands in relation to the employer.

The relation between a temporary-residence permit and one's position on the labour market is well-known in Swedish politics, where the broad use of permanent-residence permits for both refugees and labour migrants has long been a core principle as well as part of an inclusive welfare state project, explicitly aimed at keeping the labour force together and resisting labour-market segmentation and hence division between different groups of workers. It is important to underscore the huge shift happening now, one which could put both Swedish labour rights and the futures of newly-arrived migrants and refugees at stake through the use of only temporary residence permits.

The 2016 interim legislation and the continuum of deportability

Our concern with the 2016 interim legislation - our starting point for this paper - is based on our earlier ethnographic studies: In the 2016 interim legislation we identify mechanisms

that risk institutionalisation, solidification and expansion of the vulnerability and dependency that our ethnographic analyses have demonstrated. While these mechanisms earlier were mainly affecting migrants without residence permit, they now seem to expand and consolidate problematic links between the field of refugee migration and the field of labour market dynamics.

We aim to contribute to a further bridging of the analytical divide between studies of refugee migration and studies of labour migration through the conceptualisation of deportability as a continuum. That calls for an understanding of the productivity of deportability as stretching beyond the exact and direct threat of deportation and into those positions and experiences that are carrying any elements of insecurity and impermanence in relation to residence permit and citizenship. By using the concept of the continuum of deportability we hence approach an inclusive understanding of deportability. That understanding does not merely include irregular migrants who are facing an acute risk of deportation, but the notion of a continuum also helps us to pay attention to the ways in which the mechanisms of deportability can – and probably will – expand to more people beyond the narrower group of irregular migrants. This includes asylum-seekers who are still in the asylum process and who might also make choices and develop strategies from the perspective that deportation is a potential outcome. It also includes those who remain separated from their families, who also might make labour market choices in relation to the vulnerability which the separation creates.

In the Swedish context, our respective ethnographic studies explore the ways in which deportable persons are exploited on the informal labour market in Sweden.¹⁶ They not only demonstrate the deportability of refused asylum-seekers, but also how the risk of becoming rejected and hence deportable are related to difficult challenges in the negotiation of everyday life, as well as in formulating strategies for the future. In addition, by using the concept of continuum of deportability, we can detect elements of deportability in the position of those who may not (yet) be categorised as deportable, for example those who are waiting for a decision on their asylum application or those with a temporary permit. We suggest that the continuum of deportability is a productive concept for understanding current processes of differential inclusion because it describes how deportability is manifested as a societal structure – in contrast to deportability as an indirect consequence of legal status.

Further, our understanding of the continuum of deportability sheds a critical perspective on migration control as *producing* irregularity/deportability. The control and categorisation of migrants/migrations in the contemporary European migration regime are processes that produce irregularity and deportability in all its parts. The conditions for entry visas, work permits and student visas all create gaps of irregularity and often force people into irregular positions. However, it is the asylum procedure which is probably the most obvious process of production of irregularity. The asylum process is harboured in political discourses where asylum seekers are either categorised as refugees who are in need of protection or as “failed asylum-seekers” without such a need. The complexity of the reasons of migration and thus potential reasons for seeking asylum is rarely fully grasped in these processes. Research, but even more so the accounts of migration rights movements, reveals the arbitrariness common to these processes in regards to the ways in which applicants’ credibility and need of protection are officially assessed.¹⁷ The Swedish interim legislation can be argued to not only stimulate a hollowing out of the asylum process but a destabilisation of its former core structures, which focused on transforming migrants into workers and citizens to workers, through its opening up of different legal categorisation and temporalities. Those temporalities and categorisations can be linked to the proliferation of (Western) border control mechanisms as discussed by Mezzadra and Neilson.¹⁸ This proliferation includes internalisation and externalisation of border controls

¹⁶ ibid

¹⁷ Hanna Wikström, “Gender, Culture and Epistemic Injustice. The Institutional Logic in Assessment of Asylum Applications in Sweden” in *Nordic Journal of Migration Research*, no 4(4), (2014): 210-218.

¹⁸ Mezzadra and Neilson, *Border as Method, or, The Multiplication of Labor*, p.132

as well as bordering processes, such as the variety of struggles to cross and overcome borders that are part of many migrants' everyday life. Changes in migration legislation thus also shape the proliferation of bordering processes. Mezzadra and Neilson's work shows the complexity of border controls in relation to labour regulation, and makes visible the national level of labour and capitalism through pointing to how border controls produce specific subjects in relation to the labour market. We argue that the concept of the *continuum of deportability* has the potential to address and better understand these links between border control and labour segmentation.

A context of “crisis” production

The responses of the Swedish government leading up to the introduction of the interim legislation in June 2016 were strikingly similar to those in Germany during the same period. The Swedish Prime Minister Stefan Löfvén, together with Germany's Chancellor Angela Merkel, was clear in articulating the need for joint European action in relation to the EU and the consequences of the Dublin regulation.¹⁹ In early autumn 2015, Sweden demonstrated a relatively open approach towards the movements of people fleeing to and through Europe. This period was also particular in terms of the remarkable jointly-led actions by social justice movements and individuals in Sweden.

In a sense, the initial relatively open approach in Sweden can be argued to have stimulated a visibility of migration that, in its turn, enabled the production of a crisis narrative. To handle the crisis, the introduction of border control and implementation of the interim legislation were enacted by the Swedish government in 2015 and 2016. Through these political measures, the Swedish government formulated the problem alongside with a solution under the guise of solving the “migration crisis”. Bojadzijev and Mezzadra analyse this as an emblematic case of “crisis production.”²⁰ They describe how the German Chancellor Angela Merkel articulated the ongoing situation as crisis by pointing to a system breakdown: the current migration flow was unmanageable through the EU's Dublin system; hence, the situation was framed as crisis and the actions taken as the means of dealing with that crisis.

De Genova's concept of deportability as a “border spectacle” refers to it as a practice less focused on actual border control and deportations (although those obviously happen too) than on the *performance* of border control and deportation and how that performance work as a reminder of the threat of deportation. Crisis production can be seen as a governmental tool for controlling migration flows by creating temporary categories of persons, previously categorised as asylum-seekers and refugees but now categorised collectively as labour migrants. In this way one crisis links smoothly into another crisis and continues its narrative of logic where the *need* for refuge is swapped for the specific *need* for labour force.

The crisis narrative that grew in the period before October 2015 when the Swedish government initiated the turn towards new, more restrictive, interim legislation is central to the arguments behind the interim legislation. The government's proposition 2015/16:174 explicitly declares the aim of the interim legislation to be about creating order and decelerating costs in the reception system:

The government has judged the situation to be a serious threat to public order and internal security. (...) On November 24, 2015 the government presented measures aiming at drastically delimit the

¹⁹ The 1990 Dublin Regulation is a European Union agreement that an asylum application has to be filed and processed in the first country in which one arrives to the EU.

²⁰ Manuela Bojadžijev, and Sandro Mezzadra, “‘Refugee crisis’ or crisis of European migration policies?” in *FocaalBlog* (November 12, 2015), <http://www.focaalblog.com/2015/11/12/manuela-bojadzijev-and-sandro-mezzadra-refugee-crisis-or-crisis-of-european-migration-policies/>. (accessed December, 08, 2015)

numbers of asylum seekers, in order to create a “space to breath” [“andrum”] for the Swedish refugee reception and to improve the capacity of the reception and establishing of asylum seekers”.²¹

There are several different elements of the interim legislation that are key to the analysis of links between labour-market dynamics and different forms of migration. First, the introduction of temporary-residence permits for refugees means that recognised refugees can remain in Sweden for three years, and those granted subsidiary protection are granted to be able to remain for an initial 13 months. After three years, a temporary residence can be turned into a permanent residency if the need for protection remains *or* if the person has secured a job with a certain income threshold. The second element is the limitation of the right to family reunification. It is now only persons with a permanent-residence permit who have the right to apply for family reunification. As those who are granted asylum receive only temporary residence permits, this means that in practice family reunification is significantly limited. A third element is the aim to open specific low-skilled work sectors for migrant workers by expanding the tax deduction schemes to service sectors.²² Bojadžijev’s and Mezzadra’s perspective on crisis is in its core a Marxist perspective on a crisis that is capitalist, manipulative and created in order to induce change and also different forms of crisis, such as closed borders. Dahlstedt and Neergaard discuss crisis in relation to the same interim legislation from another angle – the crisis of solidarity – as a much wider process, where the right to labour turns into a responsibility and a precondition in order to gain social protection, where neoliberal forces have yielded a particular power relation, one that is racialised and excluding. This is the real crisis, the authors argue, and it is an internal crisis that is not dependent on the inflow of migrants.²³

A radical break: From the exceptional welfare system towards the expansion and institutionalisation of the continuum of deportability

We identify two central themes in how the 2016 interim legislation risks producing breaks but also continuities in the relation between refugee migration and labour-market dynamics in Sweden. First, the interim legislation can be understood as entailing an expansion and institutionalisation of the continuum of deportability in two ways: First, there is a risk that the number of irregularised migrants increases, and second, there is a risk that the mechanisms of deportability expand from shaping the positions of those living in direct risk of deportation, to also shaping the conditions of migrants with other kinds of legal statuses – such as persons with a temporary-residence permit or those in need of family reunification. Second, the interim legislation in combination with Swedish labour market policies creates a sub-category of labourers with segmented access to rights and a specific gendered, racialised low-pay service sector. Both of these two central themes must be understood in a wider EU context which has seen a shift away from refugee migration and protection towards controlled and temporary labour migration since the 1990s.²⁴

The Scandinavian welfare model that developed in the aftermath of World War II was characterised by its aim of inclusiveness and its emphasis on shared social values such as

²¹ Swedish Government, “Regeringens proposition 2015/16:174”, 21

²² Promemoria: Kompletteringar av RUTavdraget

<http://www.regeringen.se/48d24d/contentassets/3fa064a709c64c95a4c2080af2339217/kompletteringar-av-rut-avdraget>, (accessed 14th of June 2017)

²³ Magnus Dahlstedt & Anders Neergaard, “Crisis of solidarity? Changing Welfare and Migration Regime in Sweden” in *Critical Sociology*. 1 (2016): 1-15.

²⁴ Peo Hansen, ”Nya medborgare eller invandrare arbetskraft.“ in *Framtider*, no. 1. (2009): 9-13. Schierup, Carl-Ulrik. ‘Migration, arbetsmarknad och välfärdsstat i förändring’, in Reyes, Paulina de los (ed.) *Arbetslivets (o)synliga murar*, SOU 2006:59 (Stockholm: Statens offentliga utredningar, 2006). Schierup, Carl-Ulrik, Hansen, Peo and Castles, Stephen. *Migration, Citizenship and the European Welfare State. A European Dilemma*, (Oxford: Oxford University, 2006).

solidarity, equality and universality. After the early 1970s, when labour immigration to Sweden was practically stopped, refugee migration together with family reunification became the main form of immigration. These forms of migration were articulated as completely separated from labour issues until 2008, when Swedish labour immigration law was revised and linked up with the issue of refugee migration by allowing asylum seekers to swap from applying for asylum to applying for work and residence permits.²⁵

The current policy changes have the most significant impact on Swedish asylum politics. But the policy changes should also be understood as intimately related to a foundational and articulated change in the Swedish welfare system, which once relied on institutionalised equality and is now opening the door for institutionalised inequality and segmentation of access to rights.

Our research shows how deportable persons whose asylum applications have been rejected end up in situations in which they work informally for the lowest wages and in the worst working conditions. From a labour market perspective and the perspective of the informal labour market and its labour force, it is clear that the interim legislation with the switch from permanent residence permits to temporary residence permits opens up a situation where persons are even more vulnerable in relation to employers. Those who know that their residence permission will expire will have to depend on social networks and work in order to find a solution for everyday life as well as for the future. To contest a deportation order for someone whose asylum application was rejected costs money and involves risks. Thus, it can be argued that the way in which the interim legislation builds new vulnerabilities and dependencies into its system will create a new used and abused labour force in the informal labour market.

The meanings of deportability are about the potential threat of being deported – including the strategies that need to be applied in order not to be detected and surviving on a day by day basis. Facing the looming threat of deportation, finding the means to support oneself is a struggle and a dilemma, since working per se entails risks that potentially might lead to detection and deportation. However, the majority of persons who live in the state of deportability have no other way to support themselves. That very situation positions deportable persons in the most vulnerable situations in the lowest bracket within the informal labour market.

Articulations of racialisation of low pay sectors

The content of the government's responses and the interim legislation can be clearly understood as actively creating and entrenching a division of labour, boosting a specific gendered, racialised low-pay service sector along with a general withdrawal of labour rights for refugees. The understanding of recent events as a “crisis” is thus again mobilised to push through labour-market changes leading to reduced labour rights and more articulated gendering and racialisation in certain sectors of the labour market. Further, as the interim legislation was launched with the explicit intent to respond to the “migration crisis”, the ideology about migrants as best accommodated by the cheap service sector has been made explicit.

The opening-up of certain labour-market sectors also needs to be understood as a condition for making a temporary residence permit permanent, and as a condition to become eligible for family reunification (along with accommodation). When the need to work becomes connected to every aspect of one's life and even survival – as it has become in the setting of the new policies – we argue that it pushes asylum seekers and migrants into the precarious sectors of the labour market, which are much more easily accessible.

The interim legislation is a clear example of the interplay between migration and labour market politics. This is not a new phenomenon as migration politics have always been intimately connected to labour-market politics. The seasonal migration of labour in

²⁵ Sara Bonfanti, “New Rules for Labour Immigration’: Delving into the 2008 Swedish Reform of Labour Migration and Its Effects on Migrants’ Well-Being.” in *Int. Migration & Integration.* 15 (2015): 371-386; Sager, Maja, “Precarity at Work”.

the seventeenth-century workforce in Europe is an historic example of the interconnection between migration and labour. Likewise, the periods after WWI and WWII saw an upsurge of the negative and racialised discourses towards an immigrant labour force that was purposefully attracted to replace the men who died in those wars.²⁶

What is new in the interim legislation is the clear articulation of politics that intertwine asylum politics with labour-market needs, as well as the institutionalisation of temporality. The strong contemporary relation between national migration politics and the need for cheap labour hence comes together in the *expansion of new temporal spaces* that provide a foundation for an increased precarity of labour within the national (and arguably also global) context. As such, we need to conceptualise what this new legislation means and to understand the fluidity and the re-categorisation from a need as asylum-seeker to a nation's need for (flexible and precarious) labour.

Concluding discussion – a shift towards control, temporality and the continuum of deportability

In this analysis of the Swedish government's responses to the so-called "migration crisis" and specifically the interim legislation that was implemented in June 2016 – which was developed in a moment of intense debates on migration and a strongly dominating narrative on "crisis" – we have showed how several mechanisms in the interim legislation tend to strengthen and further entrench already existing links between migration control, differential inclusion and deportability, and hence risk violations of migrants' human rights as well as increased segmentation and racialisation of the labour market. This is reflected in the actual legal mechanisms introduced in the interim legislation, which break with one of the "foundational" principles in the approach to migration of the Swedish welfare state: the aim to avoid segmentation and weakened labour rights through access to permanent residence and fast routes to naturalisation. These developments need to be understood in the general context of European states trying to turn away from refugee migration and towards regulated, temporary and controlled forms of labour migration.

We have argued that the interim legislation points towards the ways in which border control can organise, shape and categorise migrants and direct them into certain parts of the labour market. The interim legislation can be described as actively stimulating a segmented and racialised labour market where migrant labour mainly is transferred into a subsidised (for the financially strong consumer) low-paid service.

A critical understanding of the new transformation and intertwining of migration politics with labour politics is dependent on connecting these issues. We hence argue that there is a strong tendency to approach newly-arrived migrants and refugees from the perspective and needs of the labour market. Within this approach and context it is the low-paid service sector, marked by insecure employment terms and, low economic returns and strong competition, which is most accessible to those who are unqualified and/or are threatened by deportability. Another threshold that increased migrant vulnerability in relation to the labour market is the conditions for family reunification, which through the interim legislation requires a certain and stable income and a permanent job position, making it increasingly impossible to apply for such for many refugees in Sweden.

A central concern in this article is to bridge an analytical divide we have seen in scholarly approaches to migration; a split where labour migration dynamics and refugee migration are discursively separated although they are intertwined in practice. The need to jointly analyse these dynamics has become even more important as the interim legislation is reinforcing the links and overlaps between asylum and migration and is leading to a further precaritisation of the labour market. The interim legislation came out of a context discursively discussed as one of "crisis," "system collapse," "we have reached the limit" and

²⁶ Saskia Sassen, *Guests and Aliens* (New York: The New Press, 2001).

“this is a growing tsunami.”²⁷ Arguably, these racist and nativist concerns with numbers have been mobilised to enable a major shift away from a traditional focus on strong labour rights and hence highlight the links between migration and labour policies. Our ethnographic research shows that deportability creates dependence and vulnerability that becomes particularly visible in a segmented labour market. It further shows that deportability works as a continuum including more persons than those who risk immediate deportation. The introduction of more insecurity and vulnerability through the interim legislation also risks expanding the continuum of deportability in terms of increasing the segmentation of the labour market.

The concept of the continuum of deportability is vital as it serves as a site where the increased temporality and vulnerability is articulated. That site is not coincidental, but the intended consequence of new legislation. Through identifying the expansion of deportability - the introduction of temporary residence permits and increased numbers of persons who become irregular migrants, the effects of the interim legislation has been made visible.

²⁷ Dagens Nyheter, “Svenska beredskapen höll inte närr krisen kom”, <http://www.dn.se/nyheter/sverige/svenska-beredskapen-holl-inte-nar-krisen-kom/> (accessed December, 20, 2015).

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<http://www.regeringen.se/artiklar/2015/11/regeringen-foreslar-atgarder-for-att-skapa-andrum-for-svenska-flyktingmottagande/>. (accessed December 4, 2015)
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Precarious Integration: Labour Market Policies for Refugees or Refugee Policies for the German Labour Market?

Mouna Maroufi¹

Abstract

Following decades of restricting refugees' access to work, the German state has re-orientated its refugee policies by emphasising their role as potential labour market participants. Since 2014, legal reforms have liberalised refugees' access to the labour market and innovative mechanisms for qualification and labour market integration were established. Given the role of migration policies for labour regulation in the context of neoliberal globalisation, it seems reasonable to assume that this shift is not merely driven by humanitarian concerns, but points to an increasingly utilitarian approach to refugee policies. By applying concepts from the political economy of labour, such as activation and flexibilisation, to refugee policies in Germany, I aim to provide an analysis that considers refugee policies an integral and dynamic part of transformations of post-Fordist labour markets. For this purpose, the legal and institutional reforms undertaken to integrate refugees into the labour market, in particular the recent integration law, will be analysed critically. Moreover, the paper will draw connections between refugee policies and previous labour market reforms in Germany which aimed at increasingly activating and disciplining the workforce. This way, the paper will explore to what extent the state's recent approach to refugees' labour market participation represents a continuity with the process of neoliberalising the German labour market. Consequently, refugee policies that are presented as a chance for quicker and better integration are shown to contribute to further flexibilisation and segmentation of the labour market.

Keywords: Refugee Policies, Labour Market Integration, Activation, Flexibilization, Precarisation.

Introduction

Refugee rights activists in Germany have criticised refugees' limited access to work for years.² However recently, the German state has re-orientated its refugee policies by starting to emphasise refugees' role as potential labour market participants. Since 2014, institutional and legal reforms have opened up the labour market and eased refugees' access by establishing innovative mechanisms for skill verification, training and job placement. Today, refugees are allowed to start working three months after registration as asylum seekers, to carry out unpaid internships under certain conditions, and to accept temporary contract work and 'voluntary' job opportunities for eighty cents per hour. Moreover, the 'priority review' (Vorrangprüfung) is omitted in most regions for two years.³ However, these reformed regulations for labour market integration do not apply to

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² Karin Scherschel. "Asylsuchende und Geduldete. Staatlich regulierte Integrationsverweigerung in Deutschland". *Widerspruch* (2010), 59, Integration und Menschenrechte.

³ Except in the federal state of Mecklenburg-Vorpommern and certain districts in Bavaria and North Rhine-Westphalia

refugees from the so-called “safe countries of origin”⁴. These changes in Germany’s recent refugee policies have been described as a paradigmatic change.⁵ Yet, the institutional and legal reforms under way should also be analysed considering the continuous transformations of the German labour market and the country’s migration policies in the last few decades.

On the one hand, the current attempts to integrate refugees quickly into the labour market can be viewed against the backdrop of previous labour migration policies, such as the guest worker system and more recent attempts to attract skilled immigrants. On the other hand, they are deeply anchored in broader transformations which European welfare states undergo in the context of neoliberal globalisation. In this way, it is insightful that Scherschel labels the current approach to labour market integration a “neoliberal guest worker system”, pointing to the continuities and transformations in Germany’s immigration policies.⁶ Despite the spontaneous and autonomous character of refugees’ movements towards Germany, the reaction of the German state reflects certain political rationalities and interests. In this spirit, it can be argued that the neoliberalisation of the German labour market plays an important role in the shaping of recent migration and refugee policies. At the same time, racist and despotic migration and border regimes from the past and present influence policy and opinion making. The grounds on which Germany’s current refugee policies are shaped and which interests they serve thus demand to be questioned. As will be argued in this article, the evolution of migration policies in the last decades, as well as labour market reforms implemented in the frame of Agenda 2000, play a decisive role in shaping the labour market integration of refugees. To this end, the article will explore recent reforms concerning the integration of refugees into the labour market in light of more general trends in Germany’s migration and labour market policies.

The first part of the paper will present the reforms that have taken place concerning refugees’ labour market access by analysing the evolution of migration and refugee policies in Germany and their impact on labour market participation. The second part will focus on transformations of the German labour market and argue that the implemented reforms for refugees’ labour market integration reproduce general tendencies in the regulation of labour markets, such as the activation and flexibilisation of labour. In a period of labour regulation based on flexible accumulation, attempts to liberalise refugee integration policies might thereby be implemented in a way that contribute to a further segmentation and precarisation of the labour market.

Liberalising Integration Policies for Refugees

The specific circumstances of refugees’ flight and the particular legal categories designed for them do distinguish refugee policies from labour migration policies. Nevertheless, there are important connections between refugee and labour migration policies, not least because the dichotomy between refugees and labour migrants is in many aspects artificial and because policies shaped in relation to one group have important implications on the other.⁷ For instance, the current movement of refugees from Syria comprises important economic dimensions despite the context of forced migration. Few livelihood options and

⁴ Albania, Bosnia and Herzegovina, Ghana, Kosovo, Macedonia, Montenegro, Senegal and Serbia, - and adding the People’s Democratic Republic Algeria, the Kingdom of Morocco and the Tunisian Republic is planned - are “safe countries of origin” since 2016, allowing the German state to conduct an accelerated asylum procedure for asylum seekers from these countries, to exclude them from integration measures and to place them in special accommodation facilities (besondere Aufnahmeeinrichtungen) from which asylum seekers do not have the right to leave (Muy 2016: 230)

⁵ Karin Scherschel “Citizenship by Work? Arbeitsmarktpolitik im Flüchtlingsschutz zwischen Öffnung und Selektion”. *Prokla* 138, 46(2) (2016): 246

⁶ Scherschel, “Citizenship by Work?”, 256.

⁷ Oliver Bakewell, “Conceptualising Displacement and Migration: Processes, Conditions, and Categories”. In: Koser, K., & Martin, S. (Eds.): *The Migration-Displacement Nexus: Patterns, Processes, and Policies*. (Oxford 2011), 14-28.

economic opportunities in Syria's neighbouring countries - such as Lebanon, where Syrians barely have formal access to the labour market and if so only to its lowest segments -constitute motivations for refugees to move further away from their homes.⁸ Particularly in protracted refugee crises, the right to work and earn one's livelihood is crucial for refugees in order to re-establish their autonomy and membership in a society through access to good work.⁹ At the same time, even the recruitment of guest workers after WWII, which is often considered the benchmark of regulated labour migration, contains elements of flight from dictatorships in Southern Europe without being framed as a refugee movement.¹⁰ Moreover, attempts by advanced capitalist states in the last two decades to attract more skilled or highly-skilled migrants for labour market sectors with an acute shortage can be presumed to have inspired the recent economism vis-à-vis refugees' integration process. Nevertheless, the undertaken reforms reflect a positive turn in Germany's rather restrictive integration policies for refugees.

Regulating Migrants' Labour Market Participation

While the German government's recent attempts to integrate refugees into the labour market represent a rupture with previous policies that restricted refugees' access to the labour market, Germany's economy has clearly long made use of migrant labour. It is thus important to consider the evolution of migration policies within their historical context to be able to grasp the continuities and transformations. In the context of the economic recovery and shortage of workers - but also as a means of controlling existing movements of people - an extensive guest worker system was introduced in West Germany in the 1950s, recruiting workers from European countries such as Italy, Portugal, Spain, Greece, Poland, as well as from Turkey and Morocco.¹¹ The guest worker system was elaborated carefully in a way to ensure the state's continuous control over the recruitment process and guest workers' labour rights and conditions. For instance, systems of regular workforce rotation were devised to prevent permanent settlement of guest workers and their families in Germany.¹² The dominant Fordist regime of accumulation since the 1950s based on mass production and consumption reached its limits in the 1970s though, as profits decreased and resistance of the workforce against their working conditions rose.¹³ In this context of crisis in the Fordist system of production, the guest worker system was officially abandoned in 1973. Subsequently, the conflicting interests concerning labour migration policies became apparent as employer associations, alongside the Confederation of German Industry (Bundesverband der Deutschen Industrie, BDI), opposed this political development. They lobbied for continuous recruitment of workers from abroad and the liberalisation of labour migration in order to make use of a reserve army of labour to

⁸ Martin Armstrong, "Lebanon resists granting work permits to Syrian refugees". The Middle East Eye (2016), 4th of February 2016: <http://www.middleeasteye.net/news/lebanon-syria-refugees-jobs-554259285>

⁹ Katy Long, "Extending Protection: Labour Migration and Durable Solutions for Refugees". In: *New Issues in Refugee Research* 176 (2009)

¹⁰ Manuela Bojadžijev, Panel I. Logistische Regulation migrantischer Arbeit. Eine Forschungsperspektive. Arbeitstagung für die Vermittlung mobiler Arbeit. (Berlin: Humboldt University, 2016)

¹¹ See Manuela Bojadžijev, *Die windige Internationale. Rassismus und Kämpfe der Migration*. Münster (2008), 97; Birgit Glorius, "Report from Germany". In: Eds. Doomernik, J. & Mandl, J.: *Modes of migration regulation and control in Europe*, (Amsterdam University Press, 2008), 82.

¹² Stephen Castles. "Migration, Precarious Work, and Rights". In: Schierup, C.; Munck, R.; Likić-Brborić, B. and Neergaard, A. (Eds.): *Migration, precarity, and global governance. Challenges and opportunities for Labour*. (Oxford, 2015), 51

¹³ See Michel Aglietta, *Régulation et crises du capitalisme*. (Paris: Odile Jacob 1997), 137; Bojadžijev, *Die windige Internationale*, 122; Hürtgen, Stefanie. "Qualifizierung und Polarisierung im transnationalen Raum der Lohnarbeit. Die zeitgemäße (un-)qualifizierte Arbeitskraft als betrieblich und gesellschaftlich konstruiertes Herrschaftsverhältnis". In: Atzmüller, Roland; Hürtgen, Stefanie. & Krenn; Manfred (Eds.): *Die zeitgemäße Arbeitskraft. Qualifiziert, aktiviert, polarisiert*. (Weinheim: Beltz Juventa, 2015), 49

further decrease workers' bargaining power.¹⁴ Later in the article we will encounter the BDI again concerning its position on refugee policies.

In subsequent decades, labour migration policies have aspired to restrict the increasingly uncontrollable migration patterns, while allowing for few forms of legal migration to persist. Family reunification had for a long time been a major mode of migration particularly for women and children, but was progressively restricted from the 1980s. Since 1990, industrial and employers' interest groups have gained increased leverage over strategies to attract (highly-) skilled workers to Germany. To this end, tools such as the Blue Card¹⁵ were devised to allow for a competency-based selection of labour migrants.¹⁶ This trend towards a "global hunt for talents" illustrates and underpins the new international division of labour concentrating the labour-intensive parts of production in the global South and the knowledge- and capital-intensive parts in the global North.¹⁷ However, given the heterogeneity of post-fordist labour markets requiring sophisticated technological skills, as well as workers with soft and artistic skills for the growing service sector and creative economy, this conceptualisation only describes part of the reality.¹⁸ A more nuanced understanding of labour market requirements in the context of flexible capitalism recognises the importance of the exact management of migration movements which aims at responding to the "just-in-time and to-the-point" requirements of the global economy.¹⁹

Forced migration has had a turbulent history in Germany throughout the World Wars and their aftermath. So-called 'refugees of the republic' from East Germany constituted a welcome opportunity to mitigate the federal shortage of workers in the 1960s. While they did not face legal and political discrimination nor language barriers, their labour market participation nevertheless caused resentment among local workers.²⁰ In the context of large refugee movements to Germany from the Central Eastern European countries during the late 1980s and early 1990s, Germany became the second largest immigration country worldwide in 1996.²¹ Despite the admission of many refugees from the (former) Soviet Union - motivated by the Cold War ideology - refugees' legal, social, and economic integration in Germany remained hindered by exclusionary regulations. Most refugees were only granted temporary protection and were subsequently deported.²² The access of refugees to the labour market was for long severely restricted in Germany as they could only apply for work permits for certain jobs fifteen months after submitting their asylum

¹⁴ Georg Menz. "European employers and the rediscovery of labour migration". In: Jurado, E. und Brochmann, G. (Eds.): *Europe's immigration challenge. Reconciling work, welfare and mobility*. (London: IB Tauris/Policy Network, 2013), III

¹⁵ A residence title can be granted for the length of a work contract or four years for Non-Europeans with employment opportunities with a yearly gross income of 50.800€ or more or 39.624€ in professions with an acute shortage, such as natural sciences, mathematics, engineering, IT and medicine. Access to permanent residence titles and family reunification is also facilitated for Blue Card holders.

¹⁶ Georg Menz. "European employers and the rediscovery of labour migration"

¹⁷ See Folker Fröbel, Jürgen Heinrichs, , & Otto Kreye . *The new international division of labour*. (Cambridge Books, 1981); Kapur, Devesh & McHale, John. *Give us your best and brightest: The global hunt for talent and its impact on the developing world*. (Center for Global Development, 2005).

¹⁸ See Stephen Castles, "Migration, Precarious Work, and Rights". In: Schierup, C.; Munck, R.; Likić-Brborić, B. and Neergaard, A. (Eds.): *Migration, precarity, and global governance. Challenges and opportunities for Labour*. (Oxford 2015), 54-55; Michael Samers, *Migration*. (London: Routledge, 2010), 129.

¹⁹ Sandro Mezzadra, Panel I. Logistische Regulation migrantischer Arbeit. Eine Forschungsperspektive. Arbeitstagung für die Vermittlung mobiler Arbeit (Berlin: Humboldt University, 2016)

²⁰ Ursula Mehrländer & Günther Schultze,. „Einwanderungskonzept für die Bundesrepublik Deutschland: Fakten, Argumente, Vorschläge“. (Bonn: FES-Library, 1992).

²¹ Birgit Glorius, "Report from Germany". In: Eds. Doomernik, J. & Mandl, J.: *Modes of migration regulation and control in Europe*, Amsterdam University Press (2008), 81, 83.

²² Khalid Koser, "Refugees, transnationalism and the state". *Journal of Ethnic and Migration Studies* (2007). 33(2).

application.²³ Moreover, limited access to German language classes and the lack of recognition of existing qualifications further obstructed labour market participation. Restricting the access to work for refugees is a widespread political practice in many host countries and is justified with the dominant but unfounded assumption that economic disadvantages would deter further refugees from seeking refuge.²⁴ However, this approach has not only been criticised as inhumane and constitutive of precarious working conditions by refugee rights activists, but is also increasingly perceived as unproductive and wasteful of potential by liberal economic actors, such as employers and business consulting groups.

First indications of an increasing convergence of labour market and refugee policies were noticeable in EU regulations since the 2000s and centred on the promotion of greater access to education and work for refugees. This policy orientation was later reflected in Germany's Right to Stay Regulation allowing tolerated refugees²⁵ to remain in Germany if they could support themselves financially or had begun vocational training.²⁶ Since 2012, the aspiration to gain skilled refugees for the German labour market has transpired through the conditions according to which Syrian refugees were chosen for humanitarian admission programmes by the German embassy in Lebanon.²⁷ Admission to Germany for two years was granted to more than 20 000 refugees who, among other criteria, possessed useful skills for the reconstruction of Syria or knowledge of the German language. Moreover, the selected refugees had the right to work after only three months, a legal reform that was generalised for all refugees in 2014, except those from "safe countries of origin". Such a programme reflects the increasing tendency to make refugees' right to enter and remain in Germany contingent on their professional skills, wealth or a perceived "integration potential" due to ties to Germany and religious affiliations.

These moderate reforms were accelerated following the temporary opening of Germany's borders in 2015 and the lodging of more than half a million asylum claims, mainly by refugees from Syria, Albania, Kosovo, Afghanistan and Iraq.²⁸ After being criticised for not being in control of its borders, the German state took a proactive stance by engaging in a process of reforms with regards to asylum and integration procedures. Accordingly, the arrival of refugees shed light on the deficiencies of German administrations following decades of reshaping state functions and delegating social security and welfare to the private domain. While political and popular discourse focused on the numbers of refugees, attention was distracted from the failure of neoliberalised state institutions to fulfil their duties in the provision of social welfare. Arguably, instead of constituting a "refugee crisis" the movement of refugees towards Germany has thus triggered a crisis of administration ("Verwaltungskrise"), which could only be handled thanks to voluntary and private support structures.²⁹ However, for the German government the sudden scale and urgency of autonomous refugee movements towards Europe constitutes the manifestation of a "crisis of European migration policies" based on a deadly

²³ Karin Scherschel, "Asylsuchende und Geduldete. Staatlich regulierte Integrationsverweigerung in Deutschland". *Widerspruch* 59 (2010) Integration und Menschenrechte.

²⁴ Lucy Mayblin. "Complexity reduction and policy consensus: Asylum seekers, the right to work, and the 'pull factor' thesis in the UK context". *The British Journal of Politics and International Relations* 18(4) (2016).

²⁵ „Duldung“ refers to the German practice of granting refused asylum seekers a temporary status of toleration, --up to a few months, but often prolonged repeatedly thereafter- due to the impossibility of deporting them. The deportation might be hindered by the lack of travel documents or other circumstances such as medical conditions.

²⁶ Scherschel, "Citizenship by Work?" 252, 253

²⁷ Mouna Maaroufi,. "Selektiver Schutz. Die humanitären Aufnahmeprogramme für syrische Flüchtlinge in Deutschland". *Peripherie. Zeitschrift für Politik und Ökonomie in der Dritten Welt* 35 (2015): 138/139.

²⁸ BAMF. Aktuelle Zahlen zu Asyl. Ausgabe: November 2015. Bundesamt für Migration und Flüchtlinge (Nürnberg: BAMF, 2015)

²⁹ Silke Van Dyk & Elène Misbach."Zur politischen Ökonomie des Helfens. Flüchtlingspolitik und Engagement im flexiblen Kapitalismus". *Prokla* 183, 46(2) (2016): 209.

yet permeable European border regime.³⁰ Efforts to take refugee and migration management back into the hands of the state are reflected in the drafting of a integration law in 2016 with support from the management consulting agency McKinsey. This cooperation is emblematic of an increasingly economicistic approach to policy making in post-Fordist innovative competition states.³¹

The integration law with its clear focus on the employment of refugees is based on the afore-mentioned reforms that have been implemented progressively since 2012. The law eases refugees' labour market access by shortening the period during which refugees do not have the right to work, expanding the kinds of employment relations refugees can enter into, and reducing bureaucratic burdens.³² The fact that refugees are now allowed to apply for a work permit three months after their first registration in Germany, instead of 15 months as was previously the case, is doubtlessly a major step forward. Yet this step does not imply that refugees have the right to work immediately after three months as the work permit has to be granted by the immigration authorities (Ausländerbehörde), who in turn have to consult the Federal Employment Agency (Bundesagentur für Arbeit; henceforth BA). This procedure ranges from weeks to months, as the BA checks the employment conditions of the job offered, for instance whether tariff wages or the minimum wage are respected.³³ This mechanism has become significantly easier as the range of accepted forms of employment has expanded to also include temporary and subcontracted work, (unpaid) internships and other forms of preparatory professional occupations. Moreover, the integration bill has omitted the priority review in most regions for the next two years, which had previously made it necessary to reject a work permit in the case of a registered German or EU-citizens seeking employment being eligible for the job instead. Due to the length of the procedure it remains difficult for refugees to take up formal employment as employers may not be willing to wait to fill positions. Besides easing the labour market access, the integration law also established important tools for the regulation and control of refugees' settlement, such as residential obligations (Wohlsitzauflage) and conditionality of entitlements to welfare and of permanent residence titles. Moreover, access to work is not only constituted through formal regulations, but also other factors such as institutional and social support and the openness of vocational systems and employers. In the next section, the supportive structures for refugees' labour market integration will be analysed as part of a larger state project to transform Germany into, in Angela Merkel's words, a modern "immigration country".³⁴

Innovating Integration

The notion of integration has been the subject of much scholarship within migration studies. The debates focus on whether the use of the term implies a two-way opening of the society or simply a request directed to newcomers to adapt to the society of their host

³⁰ Manuela Bojadžijev & Sandro Mezzadra, "Refugee crisis' or crisis of European migration policies?" FocaalBlog (2015). 12 November. www.focaalblog.com/2015/11/12/manuela-bojadzijev-and-sandro-mezzadra-refugee-crisis-or-crisis-of-european-migration-policies.

³¹ See Bob Jessop, "Changes in welfare regimes and the search for flexibility and employability. In: Overbeek", H. (Ed.): *The Political Economy of European Employment: European integration and the transnationalization of the (un) employment question*, (London: Routledge, 2003), 38; Joachim Hirsch, *Der nationale Wettbewerbsstaat. Staat, Demokratie und Politik im globalen Kapitalismus* (Berlin: Edition ID Archiv, 1995).

³² BMI (2016). "Entwurf eines Integrationsgesetzes". https://www.bmi.bund.de/SharedDocs/Downloads/DE/Gesetzestexte/entwurf-integrationsgesetz.pdf?__blob=publicationFile, 1

³³ Flüchtlingsrat Baden-Württemberg. "Überblick zu den Änderungen durch das Integrationsgesetz vom 6. August 2016". <http://fluechtlingsrat-bw.de/files/Dateien/Dokumente/INFOS%20-%20Asyl-%20und%20Fluechtlingspolitik%20BRD/2016-8-31-BeitragIntegrGfinal.pdf>

³⁴ Frankfurter Allgemeine Zeitung. Merkel: "Deutschland ist ein Einwanderungsland". Published on 01.06.2015. <http://www.faz.net/aktuell/politik/ausland/europa/angela-merkel-sieht-deutschland-als-einwanderungsland-13623846.html>

country.³⁵ German legislation has long been particularly restrictive and discouraging of naturalisation and integration and has hence created a very narrow understanding of who can and does belong to German society. Since the late 1970s, the term integration has been appropriated by the state to curtail the self-organisation and claims of migrants to equal rights and frame them in governmental terms.³⁶ Instead of constituting a demand directed at the government by migrants striving for social, political and economic rights, integration thus started to be used by policy makers as a dispositif to shape migrants and formulate requirements and expectations towards them.³⁷ In recent years, liberal political and economic forces have begun to promote Germany's transformation into an open immigration country, comparable to Canada for instance.³⁸ The Immigration Act 2004 illustrated this transformation in the approach to integration, as Germany was presented as an active immigration country managing at the same time to attract, integrate and control migrants.³⁹ This approach certainly contains progressive elements, such as efforts to advance the intercultural opening of public institutions and private actors. Yet the economicistic and utilitarian notions of this (neo-)liberal trend are also clearly recognizable in the way immigration and integration opportunities are increasingly attached to individual capacities such as education, job skills, language knowledge, and bureaucratic literacy. This way the discourse of integration is instrumentalised to select and privilege suitable migrants before and after immigration according to categories which to a large extent disguise social class as an overlying factor of differentiation. In this spirit, the tendency to associate integration more and more with labour market participation, considered as the key to society and inclusion, should be critically interrogated.

As refugees' access to work not only depends on legal constraints, support for other factors such as language and professional skills and recognition of credentials is equally important in determining refugees' chances of finding employment. While the German labour market is still restricted and regulated, there has been a multiplication of actors supporting integration efforts of refugees. The official recognition of skills and degrees remains a costly and demotivating process in a highly regulated vocational education system. Studies and professional experiences acquired in non-European states are often not valued, possibly due to post-colonial assumptions on the superiority of European credentials as well as the lack of formalised procedures. Nevertheless, there have been important institutional changes in this regard. The public institution supporting the credential recognition and qualification of migrants in Germany, the IQ Network, has enlarged its capacities significantly and come up with new approaches to job training and verifying skills in cooperation with the Federal Employment Agency.⁴⁰ The initiative KompAS (entitled "Competency verification, early activation, and language acquisition") implemented by the Federal Employment Agency in cooperation with the Ministry of Migration and Refugees (BAMF) exemplifies such innovative approaches by making refugees simultaneously learn German, apply their German knowledge on their professional skills, qualify further for the German labour market, and be evaluated based on the demonstrated skills. The BA constitutes the principal public employment agency which has delegated the responsibility over the long-term unemployed and their job

³⁵ See Richard Alba & Victor Nee. "Rethinking assimilation theory for a new era of immigration". *International Migration Review* (1997); Kundnani, Arun. "Multiculturalism and its discontents: Left, Right and liberal". *European Journal of Cultural Studies* (2012), 15(2); Kymlicka, Will. "The rise and fall of multiculturalism? New debates on inclusion and accommodation in diverse societies". *International social science journal* 1, 61 (2010): 199.

³⁶ Manuela Bojadžijev, *Die windige Internationale. Rassismus und Kämpfe der Migration*. (Münster: Dampfboot, 2008), 241-244

³⁷ Bojadžijev, *Die windige Internationale*.

³⁸ Oliver Schmidtko, „Einwanderungsland Kanada – ein Vorbild für Deutschland“. *APuZ* 44(09) (2009)

³⁹ Birgit Glorius, "Report from Germany". In: Eds. Doornenrijck, J. & Mandl, J.: *Modes of migration regulation and control in Europe*, (Amsterdam University Press, 2008), 83.

⁴⁰ Jutta Aumüller, "Arbeitsmarktintegration von Flüchtlingen: bestehende Praxisansätze und weiterführende Empfehlungen". (Berlin: Bertelsmann Stiftung, Gütersloh, 2016)

placement to the Job Centre. However, their approach to labour market integration differs significantly: while the BA puts more effort into qualifying refugees further, the Job Centre is more concerned with a rapid placement in employment.⁴¹ For specific professions in which there is a shortage in the German labour market there are special measures for recognition of foreign-obtained qualifications. In Brandenburg for instance, the IQ Network offers support for people who have not received recognition of their foreign vocational degrees in the health sector and in the so-called dual-tracks in Germany, and of university degrees in engineering, natural sciences, information technology, and media.

While these offers certainly represent a chance for the recognition of refugees' skills and the integration into adequate employment, it is important to consider who has access to such initiatives and how they impact employment relations. These measures are mostly targeted at asylum seekers with 'good prospects to remain' (gute Bleibeperspektive), a new concept developed by the Ministry of Migration and Refugees (BAMF) in 2015 arguably to process the large stack of asylum applications more efficiently and pragmatically. As such, desired groups of refugees are granted facilitated access to German language classes and other integration measures. In 2016, that group included refugees from Eritrea, Iraq, Iran, Somalia and Syria, as these countries' protection quotas exceed 50 percent. Moreover, most offers for support in the recognition of skills and labour market integration seem to be conceived for refugees with educational or professional experiences in sectors in which there is an acute shortage in Germany. These are often skill-intensive technical and scientific sectors, which might also lead to disadvantaging female refugees. It is telling that 60 percent of refugees without a vocational or university degree have found employment through informal networks. Refugees with a formal degree are more likely to find employment by means of the BA or the Job Center (33 percent) instead through personal connections (26 percent).⁴²

Racism in the labour market, as well as in society at large, is another major aspect which makes it more difficult even for German citizens with a migration background, migrants and refugees to find good employment despite the economic benefit for employers and companies who might be lacking qualified workers.⁴³ Thus, the Chambers of Industry and Commerce as well as the Chambers of Craft have begun to actively support and promote the integration of refugees in companies. Moreover, several initiatives guide companies through the process of hiring refugees to reduce their reservations, such as the BEA (Betriebliche Begleitagentur) in Brandenburg. On the refugees' side, a large private sector support structure is also developing, as many initiatives have been founded in the form of private-public partnerships, charitable organisations or start-ups for labour market integration and job placement for refugees, such as [Arrivo](#), [Avenir](#), [Jobs 4 Refugees](#), [Wefugees](#), and [Workeer](#). Even networks for the "right to stay" (Bleiberechtsnetzwerke), previously mainly involved in fighting the state's restrictive asylum policies including deportations, have been mobilised by the state in order to advise and support refugees in their labour market integration.⁴⁴ Finally, the main trade union federation (DGB) has begun to advocate supporting refugees' formal labour market integration, while being

⁴¹ Aumüller, „Arbeitsmarktintegration von Flüchtlingen“

⁴² Brücker, H., Rother, N., Schupp, J., Babka von Gostomski, C., Böhm, A., Fendel, T., & Kroh, M. (2016). *IAB-BAMF-SOEP-Befragung von Geflüchteten: Flucht, Ankunft in Deutschland und erste Schritte der Integration* (No. 24/2016). IAB-Kurzbericht, 62

⁴³ See ENAR. "Racism and related discriminatory practices in Germany". Dr. Andreas Hieronymus & Ines Fögen. Shadow Report 2011-2012. <http://platform.imir.de/files/Germany.pdf>; SVR. "Diskriminierung am Ausbildungsmarkt. Ausmaß, Ursachen und Handlungsperspektiven". (Berlin: Bosch Stiftung 2014). www.bosch-stiftung.de/content/languageI/downloads/SVR-FB_Diskriminierung-am-Ausbildungsmarkt.pdf

⁴⁴ Moritz Altenried, & Mira Wallis, Panel I. Logistische Regulation migrantischer Arbeit. Eine Forschungsperspektive. Arbeitstagung für die Vermittlung mobiler Arbeit.(Berlin, Humboldt University, 2016)

apprehensive of the reaction of their members who might fear increased competition of labour and a subsequent weakening of workers' bargaining power.⁴⁵

This mobilisation of diverse and numerous actors illustrates the intended and successful activation of the public and private sector and civil society in supporting and regulating refugees' labour market participation. This is largely following the public framing of the "refugee crisis" and the political emphasis on the required joint efforts to manage the integration of refugees. According to Jessop, states draw their power from gathering various social forces around a common state project based on hegemonic discourses.⁴⁶ In a similar vein, Ong speaks of "concrete assemblages" – such as welfare programmes, refugee camps and non-profit organisations – that come together to shape refugees as citizens through modes of surveillance, regulation, punishment and reward.⁴⁷ To her, these processes of integration serve to define "deserving and undeserving citizens" according to neoliberal ideas of human capital as well as racial hierarchies. The multiplication of actors involved in the labour market integration of refugees is an interesting example of such a state project constituted of concrete assemblages. Yet the motivations behind such an integration project require further investigation, as discussed in the following section.

Activating and Flexibilising Refugees for the Labour Market

The approach taken by the German government to support the integration of refugees into the labour market cannot be seen as detached from broader transformations of the national labour market and previous labour market reforms. Migration as a social phenomenon and the policy responses to it are part and parcel of global social transformations. From a political economy perspective these transformations can be described as changes in production and accumulation patterns which lead to new systems of regulation.⁴⁸ In flexible post-industrial accumulation regimes, the hub of the workforce does not work in Taylorist assembly line production anymore and certain tasks and sectors of work are instead becoming increasingly diversified.⁴⁹ Technical progress has driven the development of sectors such as information and communication which constitute knowledge-oriented economies and the less-valued service sector. These changes affect the workforce significantly, as workers are increasingly required to possess diverse and specific skills and qualifications, such as soft skills in the service sector, creativity in the creative economy or highly specialised technical knowledge in research and development. In order for employers to find suitable and employable workers and to ensure continuous accumulation, they seek to respond in innovative ways, for instance by flexibilising labour. In the corresponding neoliberal modes of labour regulation, working conditions are increasingly insecure and precarious giving employers more power over the workforce.⁵⁰ These transformations are driven and answered to by states intervening in the regulation of labour by means of labour market policies and institutions.

⁴⁵ See Mark Bergfeld. „Germany's Willkommenkultur: Trade Unions, Refugees, and Labour Market Integration“. *Global Labour Journal* 8(1) (2017): 81-81; Peter Birke. „Migration@Work“. *Zeitschrift Luxemburg*. 01/2016. <http://www.zeitschrift-luxemburg.de/migrationwork/>

⁴⁶ Bob Jessop. "Fordism and Post-Fordism: A Critical Reformulation". (2013). <https://bobjessop.org/2013/11/05/fordism-and-post-fordism-a-critical-reformulation/>

⁴⁷ Aihwa Ong. *Buddha is hiding: Refugees, citizenship, the new America*. (Berkley: University of California Press, 2003), 10

⁴⁸ Michel Aglietta, *Régulation et crises du capitalisme*. (Paris: Odile Jacob 1997).

⁴⁹ Jessop, 2013.

⁵⁰ David Harvey,. *The condition of postmodernity*. Vol. 14, (Oxford: Blackwell 1989), 147.

Activating and Disciplining Refugees

It is not new that states take an active role in the organisation of the labour market. Yet since the 1990s the interference of European states in the regulation of labour has evolved from active to activating.⁵¹ These activating labour market policies are justified by arguing that an increasingly heterogeneous and flexible labour market requires more interference to match supply and demand in a labour market with diverse needs.⁵² It is important to differentiate between different forms of activation policies however, which can address employers' hiring behaviour or workers' willingness and ability to enter into labour relations. While employers can be encouraged in various ways to employ more people including disadvantaged groups, for instance through tax benefits, most recent policies focus on the potential workers.⁵³ Thus, the aim of achieving high rates of employment is mainly tackled by encouraging or pressuring people to take up employment or by providing further qualifications to match the demands of the labour market. For this purpose, the provision of unemployment benefits and social services is reduced or made conditional upon the compliance with new measures for qualification, labour market integration and job placement. This process contributes to rendering power relations between employers and employees even more unequal, as less and less services are granted by public institutions which had previously allowed workers to not have to constantly sell their labour power in the market.⁵⁴ Consequently, employable workers are encouraged, or even forced to, constantly sell their labour power, often for employment below their qualifications resulting in a downgrading of wages and working conditions even in skill-intensive sectors.⁵⁵ In this sense, the emerging workfare states try to influence either the employability of people or the willingness or compulsion to work.⁵⁶ This approach is also reflected in the phrase "fordern und fordern" (encourage and demand), which has served as a Leitmotiv for the activation of the unemployed since the Hartz IV⁵⁷ reforms in 2000 and is now applied regarding refugees.

This perspective is helpful in order to analyse the impact of ongoing efforts to integrate refugees into the labour market on working conditions and on power relations in the labour market. As with the unemployed, the predominant discourse on refugees' labour market participation contains elements that attribute the responsibility over being employable and employed to individuals. In this spirit, many of the measures designed to integrate refugees into the labour market also imply that a lack of success in doing so must stem from their lack of valuable skills and willingness to qualify further. Thus, they carry the assumption that refugees' behaviour needs to be regulated and disciplined in order for

⁵¹ Lane Kenworthy, "Labour Market Activation". In: Castles, F.G. S.; Lewis, J.; Obinger, H. and Pierson, C. (Eds.): *The Oxford Handbook of the Welfare State*, (Oxford 2010).

⁵² Giuliano Bonoli, "The political economy of active labour market policies". REC-WP 01/201 Working Papers on the Reconciliation of Work and Welfare in Europe RECOWWE Publication (2010). Dissemination and Dialogue Centre, Edinburgh. http://www.sps.ed.ac.uk/_data/assets/pdf_file/0010/39268/REC-WP_0110_Bonoli.pdf, 10

⁵³ Christian Brütt, "Von Hartz zur Agenda 2010. Die Realpolitik im „aktivierenden Sozialstaat“. *Prokla* 133 (2003), 652

⁵⁴ Theo Papadopoulos, "The recommodification of European labour: Theoretical and empirical explorations". The University of Bath (2005), 5. <http://www.bath.ac.uk/eri/ERI-working-papers/ERI-working-paper-05-03-final.pdf>.

⁵⁵ Anke Hassel, "The paradox of liberalization—Understanding dualism and the recovery of the German political economy". *British Journal of Industrial Relations*, 52(1), (2014), 69; Sowa, Frank Sowa, Nancy Reims, & Stefan Theuer. "Employer orientation in the German public employment service". *Critical Social Policy* (2015), 0261018315601040, 2.

⁵⁶ Jamie Peck, "The rise of the welfare state". *Kurswechsel* (2003), 3

⁵⁷ The Hartz IV reforms implemented by the Social Democrats in 2005 in the frame of new laws for modern services in the labour market devised by the Hartz commission since 2002 aimed at pushing unemployed workers to remain employable and take up employment faster by increasing individual responsibility and prerequisites and conditionality of benefits. This led to extensive institutional restructuring in the process, through which personal services agencies were created and precarious forms of employment were expanded such as subcontracted labour and one-euro jobs.

them to be educated as good citizens and workers.⁵⁸ In this vein, the integration bill foresees sanctions for refugees who have not attended the required German language classes and holds refugees accountable for neglecting to learn German rather than focussing on the insufficient availability or quality of language courses offered.⁵⁹ Thus, welfare benefits can be withdrawn from refugees who refuse to attend German language and integration courses, while many still experience difficulties finding a place in such courses.⁶⁰ Besides language classes, the labour market institutions offer various measures for labour market integration to refugees with ‘good prospects to remain’ (such as the afore-described *KompAS* initiative), which might be helpful for some of their “clients”. Yet these measures are compulsory regardless of refugees’ professional aspirations, language skills, family situation and psychological state, all for the sake of the institutions’ statistics. Most tellingly, even the so-called one Euro job opportunities⁶¹ can be forced on refugees. While this supplementary income does not lead to a reduction of welfare, refusing such a job opportunity -if suggested by the Job Center- can be sanctioned by withdrawing most of the welfare provisions.⁶²

In addition to using the reduction and conditionality of welfare benefits to sanction and discipline refugees, the integration law makes use of refugees’ insecure immigration status to create incentives as well as to exert pressure. Thus, it is foreseen that the permanent residence title is only granted five years after applying for asylum as opposed to three years of possessing a protection status previously.⁶³ Moreover, acquirement of the residence permit is made conditional upon the “integration performance” as measured by language knowledge and the capacity to earn one’s living. Further incentives are meant to be provided by rewarding refugees who can show outstanding “integration achievements” through their language knowledge or employment. If excellent German knowledge and nearly full financial independence can be proven, a permanent residence title can already be attributed after 3 years instead of 5 years of asylum in Germany.⁶⁴ Besides blurring the responsibility of the state in allowing for successful integration, this approach also increases pressure to enter and remain in employment. However, such pressure is precisely a reason why refugees could accept precarious or even exploitative labour relations in the hope to facilitate their access to secure residence rights. Further vulnerability is created if the employment relationship is necessary for one’s right not to be deported. Such a scenario concerns refugees who are temporarily tolerated in Germany and manage to enter a vocational training at a company (*Ausbildung*). Previously, there was already a chance for refugees younger than twenty-one years to be granted a temporary residence permit for one year, but the decision remained at the discretion of the responsible employee at the immigration authorities.⁶⁵ The integration law gives the right to remain in Germany for the duration of the vocational training to all tolerated refugees, improving the security of stay

⁵⁸ Aihwa Ong, *Buddha is hiding: Refugees, citizenship, the new America*, 7

⁵⁹ BMI (2016). “Entwurf eines Integrationsgesetzes“. https://www.bmi.bund.de/SharedDocs/Downloads/DE/Gesetzestexte/entwurf-integrationsgesetz.pdf?__blob=publicationFile, 2

⁶⁰ Scherschel, “Citizenship by Work?” 260.

⁶¹ Temporary job opportunities that were compensated with one Euro per hour additional to unemployment benefits were introduced by the Hart IV reforms for unemployed people who could not easily be placed in employment by the Job Centers. The jobs are meant to serve public interest and to keep unemployed people active.

⁶² Flüchtlingsrat Baden-Württemberg. “Überblick zu den Änderungen durch das Integrationsgesetz vom 6. August 2016“. <http://fluechtlingsrat-bw.de/files/Dateien/Dokumente/INFOS%20-%20Asyl-%20und%20Fluechtlingspolitik%20BRD/2016-8-31-BeitragIntegrGfinal.pdf>

⁶³ Flüchtlingsrat Baden-Württemberg. “Überblick zu den Änderungen durch das Integrationsgesetz“, 4

⁶⁴ See BMI (2016). “Entwurf eines Integrationsgesetzes“, 3. https://www.bmi.bund.de/SharedDocs/Downloads/DE/Gesetzestexte/entwurf-integrationsgesetz.pdf?__blob=publicationFile; Flüchtlingsrat Baden-Württemberg. “Überblick zu den Änderungen durch das Integrationsgesetz.”

⁶⁵ Flüchtlingsrat Baden-Württemberg, “Überblick zu den Änderungen durch das Integrationsgesetz“, 7

for that period, but rendering them dependent on one or two employers. Consequently, the residence status is used as a means to exert pressure on refugees to integrate economically in a labour market whose precarity and segmentation allow for insecure and exploitative employment relations.

Selective Policies for a Segmented and Precarious Labour Market

In the context of the global restructuring of labour markets as part of neoliberal transformations in the global South and North, precarity has become a core feature of labour relations. The notion “precariat” has become emblematic for the transforming patterns of exploitation and subordination of the working class, which suffers from the increasing insecurity, lack of protection and unpredictability of work arrangements.⁶⁶ Not all workers are affected to the same extent by these processes of rendering labour flexible and thereby precarious, but categories such as gender, race, age, nationality, and legal status play a role in determining employment prospects and power relations.⁶⁷ Theories of labour market segmentation have long since pointed to an increasing polarisation of working conditions on different labour market segments within national economies.⁶⁸ The so-called core labour market, composed essentially of the traditional male and white working class, has managed to remain more protected based on established mechanisms, such as collective agreements, tariffs and trade union membership. New entrants into the labour market such as women, youth, and migrants are most exposed to the increasing flexibilisation and precarisation of work on marginal labour market segments.⁶⁹ Despite this tendency towards segmentation and polarisation of the working class, it is also important to emphasise the interdependence of different segments of the labour market, as pressure exerted on one segment reinforces capital’s control over other segments as well.⁷⁰ Moreover, dividing the workforce in two entities neglects the heterogeneity of emerging knowledge and service-oriented economies.⁷¹ Multiple categories are constructed to differentiate between migrant workers, such as the immigration status and labour market potential. This increasing stratification stems from the contradictory attempts to regulate labour migration and has been described adequately by the concept of “differential inclusion” by Mezzadra and Neilson (2013).⁷²

In Germany, increasing segmentation and flexibilisation have been visible since the labour market reforms implemented in the early 2000s. They have led to the multiplication of forms of non-standard employment, such as fixed-term contracts, mini jobs, temporary agency work, and part-time employment, which affect migrants relatively more often.⁷³ By

⁶⁶ Carl-Ulrik Schierup, Ronaldo Munck, Branka Likić-Brborić; Anders Neergaard, “Introduction: Migration, Precarity, and Global Governance. Challenges and Opportunities for Labour”. In: Schierup, C.; Munck, R.; Likić-Brborić, B. and Neergaard, A. (Eds.): *Migration, precarity, and global governance. Challenges and opportunities for Labour*. (Oxford, 2015), 2.

⁶⁷ Stephen Castles. “Migration, Precarious Work, and Rights”. In: Schierup, C.; Munck, R.; Likić-Brborić, B. and Neergaard, A. (Eds.): *Migration, precarity, and global governance. Challenges and opportunities for Labour*. (Oxford, 2015), 58

⁶⁸ See Helga Leitner. “The political economy of international labor migration”. In: Sheppard, E. and Barnes, T.J. (Eds.): *A Companion to Economic Geography*. (Malden, MA: Blackwell, 2003), 455; Palier, Bruno, & Thelen, Kathleen. “Institutionalizing dualism: Complementarities and change in France and Germany”. *Politics & Society* 38(1) (2010)

⁶⁹ Ulrich Brinkmann, Klaus Dörre, Silke Röbenack, Klaus Kraemer & Frederich Speidel, “Prekäre Arbeit. Ursachen, Ausmaß, soziale Folgen und subjektive Verarbeitungsformen unsicherer Beschäftigungsverhältnisse”. *Gutachten für die Friedrich-Ebert-Stiftung* (2006), 51. <http://library.fes.de/pdf-files/asfo/03514.pdf>

⁷⁰ Werner Eichhorst & Paul Marx. "Reforming German labour market institutions: A dual path to flexibility." *Journal of European Social Policy* 21.1 (2011): 73

⁷¹ Michael Samers. *Migrations*. (Oxford: Routledge, 2010), 129

⁷² Sandro Mezzadra & Brett Neilson, *Border as Method, or, the Multiplication of Labor*. (Durham: Duke University 2013).

⁷³ See Ulrich Brinkmann, Klaus Dörre, Silke Röbenack,; Klaus Kraemer, & Frederich Speidel, “Prekäre Arbeit. Ursachen, Ausmaß, soziale Folgen und subjektive Verarbeitungsformen unsicherer

facilitating subcontracting labour, the reforms have contributed to the spread of a precarious form of work in which employers have even greater power over their workforce, as firing is facilitated greatly and temporary employment agencies almost never have a works council.⁷⁴

Labour migration policies, particularly in the context of programmes for highly-skilled migrants and temporary migration schemes, can be considered emblematic for processes of selection of immigration according to labour market needs. Yet the integration law illustrates how this selective approach can be applied to refugees in the context of external and internal border regimes.⁷⁵ In this spirit, the labour market integration of refugees seems to respond to the heterogeneous needs of a segmented labour market in which different qualifications and sectors make for strongly diverging labour market conditions and labour rights. By granting increasingly short-term protection statuses such as subsidiary protection, the ‘deportability’ of refugees persists while tools such as residential obligations allow holding refugees in certain areas with labour market needs and pressuring them to find employment in order to move.⁷⁶

Mechanisms to select certain groups of refugees for privileged labour market access are noticeable in the three clusters which constitute the basis for access to formal support for labour market integration depending on the country of origin. Thus, the most desired and “genuine” refugees stemming from Cluster A, or the so-called countries with ‘good prospects to remain’, are fast-tracked in their asylum application, and hosted in new arrival centres with better access to the immigration and labour market institutions and integration measures.⁷⁷ Refugees with complex cases from Cluster B, with an open outcome in their asylum application, have to wait significantly longer for a response and receive less support for the labour market integration in the meantime. This is particularly significant in the case of the many refugees from Afghanistan, who despite high rates of approval for asylum, do not fit the benchmark of 50 percent required to have ‘good prospects to remain’ and hence fall under Cluster B and not A. Arguably, the option of being tolerated for the period of a vocational training (and subsequently, if employment has been found, in the corresponding profession) serves to test the economic use value of refugees before providing them with more secure residence rights.⁷⁸ Advancing the economic integration of refugees to avoid deportations was previously employed by the committees for cases of hardship acting on the Ministry of Interior. The generalisation of this tool in the integration law mostly applies to refugees with ‘insecure prospects to remain’ whose labour market potential might be perceived as less promising. Lastly, cluster C gathers refugees from “safe countries of origin” who do not have any possibility to receive asylum or formally integrate into the labour market, and are deported as quickly as possible.⁷⁹

The approach of the government and of economic actors to integration in the labour market reflects that integrating certain groups of refugees into precarious segments of the

Beschäftigungsverhältnisse“. Gutachten für die Friedrich-Ebert-Stiftung (2006),42. <http://library.fes.de/pdf-files/asfo/03514.pdf>; Johannes Giesecke, “Socio-economic risks of atypical employment relationships: evidence from the German labour market”. *European Sociological Review* 25(6) (2009): 636

⁷⁴ See Johannes Giesecke, & Groß, Martin. “Arbeitsmarktreform und Ungleichheit”. *Aus Politik und Zeitgeschichte* (2005). Bundeszentrale für Politische Bildung, 16, 26; Markus Promberger, “Leiharbeit im Betrieb. Strukturen, Kontexte und Handhabung einer atypischen Arbeitsform”. Düsseldorf: Abschlussbericht für die Hans-Böckler-Stiftung (2006). 266

⁷⁵ Basisdemokratische Linke Göttingen. “Arbeit um jeden Preis. Das „Integrationsgesetz“ soll Kontrolle und Verwertbarkeit migrantischer Arbeitskraft verbessern”. *Sozial Geschichte Online*. 20 (2017): 12

⁷⁶ See Nicholas, P. & Genova, D. “Migrant” illegality and deportability in everyday life”. *Annual review of anthropology* (2002), 419-447; Basisdemokratische Linke Göttingen. “Arbeit um jeden Preis.“

⁷⁷ Moritz Altenried, & Mira Wallis,. Panel I. Logistische Regulation migrantischer Arbeit. Eine Forschungsperspektive. Arbeitstagung für die Vermittlung mobiler Arbeit 08.12.2016. (Berlin: Humboldt University 2016).

⁷⁸ Dorothee Frings, Arbeitstagung für die Vermittlung mobiler Arbeit. (Berlin: Humboldt University 2016).

⁷⁹ Frings, Arbeitstagung für die Vermittlung mobiler Arbeit

labour market is accepted, if not intended. This approach is underpinned by the argument that once in employment, it will become easier for refugees to improve their employment situation. For instance, allowing refugees to find work through temporary employment agencies has been celebrated by industrial stakeholders such as the BDI, promoting subcontracted labour as an “instrument for the integration of refugees”.⁸⁰ Under the slogan of refugee integration, the new “charitable” temporary employment agency Avenir was created which posts refugees to various companies in gastronomy, logistics and metallurgy for internships or as subcontracted labour.⁸¹ With ten Euros, refugees receive approximately one euro more than tariff wages require for the lowest pay grades in Germany and profits are to be re-invested in refugees’ qualifications. Such initiatives normalise subcontracted labour as an employment solution for refugees. However, such work arrangements considerably weaken workers’ bargaining power, as they are not directly facing employers, suffer from non-transparent contracts, and cannot benefit from sector-specific collective agreements due to the nature of temporary agency work and the lack of union representatives within firms.⁸²

According to the integration law, the German government counts on integrating refugees on “a low threshold” in the labour market, as exemplified by the policy to create more one-euro jobs for refugees.⁸³ These job opportunities, which supposedly constitute non-profit work with a small compensation, were introduced by the Hartz IV reforms. They were meant to keep the long-term unemployed occupied in the labour market while receiving unemployment benefits. Such a measure of activating policies shows to what extent extremely precarious job opportunities are normalised by policy makers,⁸⁴ especially if they are applied to refugees who have not shown difficulties of finding regular employment in Germany yet. The value of refugees’ labour market participation is devalued to the point where the integration law lowers hourly compensation from previously one euro and five cents to eighty cents. As these job opportunities are mainly created in refugee accommodation centres, they might also benefit private firms funded by the government to run these facilities, as they can portray making refugees clean and cook for themselves as job opportunities that contribute to labour market integration.⁸⁵ Even if these job opportunities seem not to be carried out as often as expected, their existence constitutes a disempowering message for refugees, as they become accustomed to being paid below minimum wage.

Lastly, refugees from Cluster B and C in the asylum procedure are particularly at risk of entering the labour market informally, due to limited or non-existent access to work permits and are therefore extremely vulnerable for exploitation. Arguably, heterogeneous post-Fordist labour markets rely on groups of workers on the absolute fringes of the labour market whose undocumented and unprotected nature of work excludes them from formal labour rights and constitutes the hyper-precariat.⁸⁶ In this spirit, the modes of regulating

⁸⁰ Deutschlandfunk, „Flüchtlinge auf dem Arbeitsmarkt. BDI-Präsident lehnt Sonderregelungen ab“. Ulrich Grillo im Gespräch mit Christoph Heinemann, 26. Februar 2016. http://www.deutschlandfunk.de/fluechtlinge-auf-dem-arbeitsmarkt-bdi-praesident-lehnt.694.de.html?dram:article_id=346744

⁸¹ Meital Rozental, „Avenir“. In (Eds.): Schiffauer, W.; Eilert, A. & Rudloff, M. *So schaffen wir das – eine Zivilgesellschaft im Aufbruch 90 wegweisende Projekte mit Geflüchteten*. Transcript (2017), 131, 132

⁸² Wills, Jane. “Subcontracted Employment and its Challenge to Labour”. In: *Labour Studies Journal* 34(4) (2009), 444.

⁸³ Flüchtlingsrat Baden-Württemberg. „Überblick zu den Änderungen durch das Integrationsgesetz vom 6. August 2016“, 10. <http://fluechtlingsrat-bw.de/files/Dateien/Dokumente/INFOS%20-%20Asyl-%20und%20Fluechtlingspolitik%20BRD/2016-8-31-BeitragIntegrGfinal.pdf>

⁸⁴ Kai Marquardsen, “Was ist Aktivierung in der Arbeitsmarktpolitik?” WSI Mitteilungen 5/2007, 3, http://www.boeckler.de/wsimit_2007_05_marquardsen.pdf

⁸⁵ Flüchtlingsrat Baden-Württemberg. „Überblick zu den Änderungen durch das Integrationsgesetz“, 10

⁸⁶ Guy Standing, “From Denizen to Citizens: Forging a Precariat Character”. In: Schierup, C.; Munck, R.; Likić-Brbrić, B. and Neergaard, A.(Eds.): *Migration, precarity, and global governance. Challenges and opportunities for Labour*. (Oxford, 2015), 86-87.

refugees' labour market participation have to be understood in their diverse and complex forms, encompassing selective and flexible inclusion as well as exclusion from formal labour markets and rights according to the ever-changing requirements of accumulation.

Conclusion

This article presented the key dimensions and impacts of the recent legal and institutional reforms concerning refugees' access to the labour market in Germany, which have come to be referred to as a paradigmatic change in Germany's refugee policies. While the described changes render labour market participation easier for refugees from countries with 'good prospects to remain', and are certainly a positive development for the concerned persons, the implications of these policies deserve to be analysed more carefully. It can be criticised that the overarching aim with which labour market integration is approached seems to be based mainly on the profit Germany's economy can draw from refugees' labour. Activation and integration policies are implemented selectively according to the requirements of the German economy. Thus, refugees considered as educated, skilled or fit to respond to specific shortages on the labour market receive particular support in having their qualifications recognised. However, those without 'good prospects to remain' or without formal vocational training or specific skills face significantly more obstacles in accessing work.

The integration law is underpinned by the assumption that refugees have to be motivated if not pressured to find employment as quickly as possible and that most are under-qualified for the German labour market. Thus, in the discourse on the labour market potential of refugees, the solution appears to lie in integrating them on a low threshold into the labour market and through precarious forms of work. It is highly questionable, however, if such labour market integration on a low threshold could lead to integration into regular and good employment for refugees in the long-term. More likely, many "integrated" refugees will remain in precarious segments of the labour market, contributing further to the overall precarisation of the labour market even in the more skill-intensive labour market segments.

Finally, it is of crucial importance for all workers in Germany to consider the long-term developments of the labour market and the way that the state attempts to regulate labour. In this moment of an alleged "refugee crisis", the German state seems to further develop ways of interfering in the activation and flexibilisation of the workforce in an increasingly precarious and segmented labour market. The double vulnerability of refugees based on their insecure residence status and their constructed identity as new, less valuable, and potentially problematic participants in the labour market could make them easier to control and to exploit by the state and employers. In practice, the policies pursued by the state might play out differently as planned and be negotiated and resisted by refugees whose reactions could influence the further formulation and implementation of policies. However, this article argues that labour market integration policies serve to regulate labour so that the heterogeneous needs of post-Fordist labour markets for flexibilised and precarious, yet diverse, workers can be balanced and managed even more to the advantage of employers and the capitalist economy. In an interview given to Deutschlandfunk in 2016, the president of the Confederation of German Industry, Ulrich Grillo, declared it positive that if through the topic of refugees' integration more overall flexibility and less bureaucracy can be introduced into the German labour market.⁸⁷ This remark is emblematic for a labour market policy for refugees that goes along with and forges even more solidly a neoliberal labour market rationality in the German economy and society.

⁸⁷ Deutschlandfunk. "Flüchtlinge auf dem Arbeitsmarkt. BDI-Präsident lehnt Sonderregelungen ab". Ulrich Grillo im Gespräch mit Christoph Heinemann, 26. Februar 2016. http://www.deutschlandfunk.de/fluechtlinge-auf-dem-arbeitsmarkt-bdi-praesident-lehnt.694.de.html?dram:article_id=346744

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“Burden on Our Shoulders” Rhetoric: Objectification of Syrian Refugees in Turkey through Political and Economic Discourse

Orhun Gündüz¹

Abstract

Since Turkey became an inevitable destination as a safe third country for Syrian peaceseekers, Syrian refugees have had vulnerable encounters with Turkish media and mainstream politics, which deem them to be political Others. Considered with the recent work permit regulation that came into force in January 2016, Syrian refugees and refugee workers have become targets of nationalist and xenophobic claims and the regulation contains ambiguous elements against refugee's right to work. Not only mainstream and nationalist media and political organs but also international media coverage tends to define refugees as “burdens” on Turkey's economy. Apart from the media, politicians' rhetoric centers on essentialist claims that mute the refugees' existence and self-made agency in employment. Based on the concept of Productive Others by Robert F. Barsky (1994) and Boundary Event (Minh-ha 2011), this study encompasses critical analyses of the refugee event as to their right to work and refugee representation in political economic discourse. The study addresses this question specifically: “What is the relationship between the new work permit regulation and the rise in nationalism which lead to stigmatisation of refugees?” With the inspiration of post-structuralism, content and discourse analysis are applied as a method on different cases of news pieces, political statements and law regulations. The study takes into account the entangled nature of the refugee position and analyzes intersections of different notions such as gender, nation and refuge.

Keywords: Syrian Refugees, Refugee Labour, Refugee Workers, Political Discourse, Turkey.

Introduction

The outburst of civil-war in Syria has displaced around seven million Syrians so far and constitutes one of the biggest humanitarian crises that global actors have failed to solve since World War II.² Being a temporary and a permanent destination, Turkey has become a passageway for two and a half million Syrian peaceseekers who are maintaining life inside and outside camps.³ 85 percent of Syrians live outside the camp facilities and have become part of the Turkish labour market, mostly in informal businesses.⁴ Life challenges

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² European Commission, Humanitarian Aid and Civil Protection, 1-3.

³ "Regional Refugee Migrant Response Plan Europe ." UNHCR. January-December 2016. <http://www.unhcr.org/partners/donors/570669806/regional-refugee-migrant-response-plan-europe-january-december-2016-19.html> (accessed November 24, 2016), p. 24-31.

⁴Ximena V Del Carpio, and Mathis Vagner. "The Impact of Syrian Refugees on the Turkish." (Washington: World Bank Group, 2015), 2. ; Murat Erdoğan., Syrians in Turkey, Social Acceptance and Integration. Executive Summary, Ankara: Hacettepe University Migration and Politics Research Center (2014), 24.

for out-camp refugees are more up-front compared to in-camp ones, particularly considering the complex adversities of an insecure informal labour market. Around eighty thousand Syrians who passed the border on regular procedure with their passports and are regarded as “foreigners” have the right to residence and a work permit; however the great majority of them arrive out of the fear of current conflicts and have no paper legitimisation.⁵ This second group is much more vulnerable to the ambiguity of national protection laws and labour legislations for refugees.

Law enactments regarding the refugees’ status in Turkey have gone through a lot of changes since the civil war; however, the evolution of the enactment process is not a systematic one and enjoys reactionary characteristics that are shaped in relation to the crisis itself and the political and economic agenda. Turkey used to embrace an open-door policy and the non-refoulement criteria after the arrival of Syrian refugees who authorities named “guests”. However, since the end of 2015, human rights organisations have observed serious violations of rights on the borders.⁶ The EU-Turkey Readmission Deal reveals its inhumane structure in this sense, bringing out various types of rights violations against refugees.⁷ These current political landscapes have practically transformed the legal policy implementation on refugees’ status and refugee labour legislations, on both of which I will try to analyse the legal regime.

Legal Regime, Refugee Labour and Political Pragmatism

To be identified in legal terms always has the risk of building a generalising definition of a status that the claimant has no instrument to speak of. Beneficial as legal facilitator on the one hand, implying a cumbersome burden on the other, refugee status has various implications on the refugee’s life.⁸ The determination of refugee status by national actors can create power mechanisms that operate under the discourses of migration laws. Robert F. Barsky makes a critical discourse analysis of Canadian refugee laws based on three refugee hearings and reveals the impacts of these procedures on refugees’ responses.⁹ The author argues that the refugee status process embarks on the construction of the refugee as the “Productive Other”, deeming the refugee agent as the product of status determination thus appropriating the claimant under the dominant discourse of validity. Although Barsky’s work focuses on legal linguistics and assessment of individual hearings, the creation of productive Other and power structures orchestrated by different discourses entails a macro-level understanding of the concept. “Discourse analysis is also a study of rules, conventions and procedures which *legitimizes* and to some degree *determines* a particular discursive practice within a particular chronotope.”¹⁰ Again with a similar method, I reflect on the chronotopes of the legislative and political process with respect to refugee workers and their positioning in the discourse. Drawing on the concept of productivity of a refugee worker as an agent in the legal discourse and a marginalised subject, I construe the legal and political roots behind the objectification of refugees.

The legal framework in the Turkish national law to define a refugee situation did not share the same terminology with international definitions until the so-called crisis, nor does it enjoy a historical continuity. Turkey’s geographical limitation to the 1951 Geneva

⁵ Erdoğan and Ünver, *Turkish Business Sector on Syrians*, 30.

⁶ Human Rights Watch, “UN: Press Turkey to Open Border” (2016) <https://www.hrw.org/news/2016/05/20/un-press-turkey-open-border> (accessed December 10, 2016).

⁷ Amnesty International. Turkey: Illegal Mass Returns of Syrian Refugees Expose Fatal Flows of EU-Turkey Deal. April 1, 2016. <https://www.amnesty.org/en/press-releases/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/> (accessed December 10, 2016).

⁸ Bernadette, Ludwig. “Wiping the Refugee Dust from My Feet”: Advantages and Burdens of Refugee Status and the Refugee Label.” *International Migration* 54, no. 1 (2013): 5.

⁹ Robert F. Barsky, *Constructing a Productive Other: Discourse Theory and the Convention Refugee Hearing*. (Philadelphia; Amsterdam: Pragmatics and Beyond, 1994).

¹⁰ ibid., 11-12.

Convention and its 1967 protocol makes a separation as to the definition of refugee legal status between European refugees and non-European ones.¹¹ Considering Turkey as a host country mostly to non-European asylum applicants, this separation implemented through an outmoded law of 1994 proved no applicability for Syrian refugees in the eye of current movements and needs.¹² Turkey adopted the most recent regulation on 11 April 2013 coinciding with the time of the crisis and negotiations with international community.¹³ However, compatible with the Article 91 of the Law, The Council of Ministers proposed a new directive that encompasses Syrian refugees under the “temporary protection” regime.¹⁴ Although international directives define the concept in limitation to the emergency of the migration situation and have certain guidelines for states under the framework of the refugee convention, the applicability of the legal regime is open to creating inconsistencies and state actors tend to abuse it.¹⁵ The fact that this law is implemented only for Syrian refugees implies a solid separation between them and other asylum applicants, sweeping away their right to individual assessment for conditional refugee or subsidiary protection guaranteed by the international legislation Turkey is part of. Moreover, this regime puts Syrian refugees in a “legal limbo” where legal violence is enforced through unstable mechanisms and legal inaction which do not promise a systematic solution.¹⁶ The emphasis of temporality in the regime suggests a wide range of obscure interpretations of protection obligations and eviscerates the right to individual application and assessment. Barsky’s analysis of refugee status and its interaction with the state may contribute to understanding this type of legal regime.

Barsky rests his theorisation of Other on a dialogical level, as Mikhail Bakhtin suggests, where refugee claimant does not enjoy an opportunity to create a reasonable and complete Other in the hearings. There is always an inadequate dialogue between the hero (claimant on this case) and the sovereign who denotes the frames of production process, thwarts the hero to enjoy an answerable status, thus rendering them “lost even before the hearing begins.”¹⁷ In the above case, the refugee does not have a chance to produce itself individually, which ultimately occludes their way to achieving an answerable status vis-à-vis the state. Although Barsky theoretically constructed his textual Other through a comprehensive analysis of juridical rhetoric on refugee hearings, I track a similar path in regard to legislative rhetoric of the recent law enactments and handle the discussion in sociopolitical and socioeconomic frameworks.

Being in alignment with the legal process, the obscurity in refugee status has endured its existence in labour regulations, as well. The Law on Foreigners and International Protection has drawn a vague scheme for a possible work permit procedure and has not given clear steps for employment. This was one of the biggest hindrances faced by refugees in accessing the right to work as guaranteed by ILO agreements and UN Directives.¹⁸ Although the 2003 law designed to reach EU standards was already in force to include

¹¹ Mültecilerin Hukuki Statüsüne İlişkin Sözleşme (Agreement on the Legal Status of Refugees)

¹² Regulation No. 1994/6169 (the Procedures and Principles related to Possible Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum) provides only two options of definitions; either refugee or asylum seeker and fails to acknowledge a possible emergency related to forced immigration.

¹³ Law on Foreigners and International Protection, Law No. 6458 keeps the geographical limitation on the refugee status but adds “conditional refugee” status for applicants outside EU having similar fears of inhuman actions, however shall be allowed to reside in Turkey temporarily until they are resettled to a third country. Subsidiary protection is also possible for a foreigner or a stateless person who falls outside of both definitions and has fear of inhuman activity in their home country.

¹⁴ Temporary Protection Regulation Article 29 mentions the probability of employment accessibility for refugees under the temporary protection although it does not present structured steps for refugees’ right to work.

¹⁵ Guidelines on Temporary Protection or Stay Arrangements, UNHCR.

¹⁶ Zeynep Kivilcim, "Legal Violence Against Syrian Female Refugees in Turkey." Feminist Legal Studies, 2016: 197.

¹⁷ Barsky, *Other*, 14.

¹⁸ Anna Wirth, et al., *Refugee Work Rights*, 5-6; CMW, Shadow Report on Turkey to the UN.

work permit regulations, it could not respond to the needs of Syrian refugees since it failed to recognise the temporary regime.¹⁹ Various reports and studies before 2016 showed that the absence of a legal regulation of work permits for the people under temporary protection creates precarious working conditions, forcing them to seek informal channels to find jobs that are mostly low-skilled with much lower wages than the minimum wage.²⁰

Taking into consideration refugee's hurdle in accessing to the labour market, the Council of Ministers introduced "The Regulation Regarding the Work Permits" on 11 January, 2006 with the initiative of the Ministry of Labour and Social Security.²¹ While the law protects the anonymity on its written form, Syrian refugees are the only group of people subjected to the law under the temporary protection. In one Turkish representative's words, the new regulation is said to aim to "reduce the pressure for illegal migration by giving Syrians in Turkey work permits."²² To prevent "illegal" migration to EU stands as one of the main objectives of the EU-Turkey Deal that urges Turkey to take necessary steps toward a more grounded legal regulations to hold the irregular Syrian migrants in Turkish soil in exchange of EU fund and facilitating free-visa to Turkey.²³

There have been disappointments by both parties to the deal over the implementation of necessary measures, which creates tensions between Turkey and EU. Both international and national organs orchestrate Syrian refugees as a bargaining tool in several politicians' remarks that transformed into much more masculine rhetoric in domestic addresses. One of the high-ranking deputies of the ruling Justice and Development Party (AKP) stated: "The European Parliament will discuss the report that will open up visa-free travel in Europe to Turkish citizens. If it makes the wrong decision, we will send the migrants back!"²⁴ In one of his most recent remarks, he did not even hesitate to use the words "unleash" refugees back to EU instead of "send" them.²⁵ These different tunes in the speech act of the political correctness between two words do not attenuate its perlocutionary effect on the refugee stigma and strengthen the commodification of Syrian refugees as interchangeable subjects between countries. The politicians' remarks in general, together with the inhuman nature of the deal itself, are compatible with the notion of "guest" that has been used to define refugees in welcoming terms.

As evident here, refugees as diminished Others are subject to dehumanisation under the real-politic paradigm of international politics and cannot achieve self-representation in the small end of discursive funnel due to such relegating speeches.²⁶ Coinciding with the remarks of AKP in essence, the leader of main opposition Republican Peoples' Party (CHP)

¹⁹ Law No. 25214 Resmi Gazete (Official Gazette); İçduyu, "Turkey's Evolving Migration," 10; İçduyu, *Syrian Refugees*, 5-6.

²⁰ Gülay Toksöz, et al., *Irregular Labor*; Çağatay, *The Impact of Syria's Refugees*, 10-11; Kirişçi, *Syrian Refugees*, 21-22; Orhan and Gündoğar, *Effects of the Syrian*, 35-36; Üzgören and Yıldız, "Limits to Temporary Protection," 203.

²¹ Geçici Koruma Sağlanan Yabancıların Çalışma İzinlerine Dair Yönetmelik (The Regulation Regarding the Work Permits of the Foreigners Under the Temporary Protection) opened the access to employment of Syrian refugees and their self-employment under certain conditions. Article 5 gives the right to work permit for refugees who has been registered under Ministry of Interior Directorate General of Migration Management (DGMM) at least six months. The only way to apply is through an employer, unless the refugee wants to self-employ, which requires different warrants. Foreigners working in seasonal agriculture and husbandry sectors are exempt from the work permit procedure but can face certain geographical and sectorial quotas. Article 8 proposes employment quota that prohibits businesses to hire foreign employees in figures that exceed 10% of Turkish citizens working in the same place.

²² Ercan Gürses and Mert Özkan. Turkey plans to introduce work permits for Syrian refugees, minister says. January 11, 2016. <http://www.reuters.com/article/us-europe-migrants-turkey-idUSKCN0UPoQP20160111> (accessed December 2, 2016).

²³ European Commission, "Fact Sheet on EU-Turkey Agreement."

²⁴ RT Ruptly. Turkey will send migrants back to EU if visa-free deal fails – Erdogan party's MP. May 11, 2016. <https://www.rt.com/news/342682-turkey-send-migrants-eu/> (accessed December 3, 2016).

²⁵ Hurriyet Newspaper, "Sınırlı açar Suriyeli mültecileri üzerinize salarız."

²⁶ Barsky, *Other*, 231.

criticised the recent Work Permit regulation with the excuse of unemployment of Turkish citizens: "Considering the government's failure to find jobs for 6 million 200 unemployed people, foreigner's work should be the least of a concern."²⁷[Emphasis added]. The words of politicians stratify the limited structure of the Work Permit regulation, drawing a strict line of labour valuation between Turkish and alien workers. The dichotomy of Turkish and non-Turkish labour is reinforced through the discourse of citizenship whose privileges are re-valued at the edge of nationalist utopia. In addition to legal ambiguities, the sovereign parties invigorate the geography of fear around the refugee and anchor the walls between bodies on the move, which ultimately creates a "virtual fear" that shapes the frames of the boundary event.²⁸ Although it is soon to come to a conclusion on the impact of Work Permit Regulation in terms of its objectives, several researchers observe possible problems that may rise from the implementation of the regulation. The alien quota of 10 percent may be harder to put in practice for small and medium businesses than the big ones.²⁹ Some Syrians think that the regulation covers only Syrians who are "educated and well-connected socially."³⁰ Another concern is that the law will not respond to reduce the informality in refugee work as refugees may not want to lose their jobs for the sake of the new regulation.

Legal implementations and political rhetoric suggest that the refugee worker's situation is regulated by three discourses: temporality, real-politic pragmatism and nationalism. The content of the legal regulations signifies that the refugee worker has to face either tentative regimes of legality or pre-determined limitations before being part of the labour market. Similar to refugee status complications, the means of production during legislative process diminish rather than complete the refugees' right to work and perpetuate their "non-existence" or limited existence in the labour regulations³¹. The emphasis on temporality in both legal and political discourse indurates the insecure structures of labour where most of the refugees are employed informally. Besides, the nationalist reactions of politicians build new hierarchies visible in labour valuation between the local and foreign workers. The refugee's agency is debarred from existing in the labour market and abused as a threatening instrument in a political rhetoric embedded with the corporeal interests of the nation.

Social Stigmatisation of Refugee Workers

As part of ongoing neo-liberalisation policies in Turkish economy, labour market policies have been restructured to facilitate the "wage flexibility and labour mobility."³² Considering the 1980s' IMF and World Bank process and EU regulations with its liberalisation policies on trade, the economic development created new needs in line with neoliberal market such as "cheap, semi-qualified, and flexible labour."³³ I aim to reassess Work Permit Regulation and labour policies with this economic context. Although the "flexibilisation" of market system in Turkey has brought upon new industries thus

²⁷ Aljazeera Turk. Kılıçdaroglu: Geriye Yabancılar Kaldı. May 19, 2016. <http://www.aljazeera.com.tr/haber/kilicdaroglu-geriye-yabancilar-kaldi> (accessed December 12, 2016).

²⁸ Minh-ha, *Elsewhere*.

²⁹ Daryl Grisgraber and Ann Hollingsworth. Planting the seeds of success? Turkey's New Refugee Work Permits. Field Report (Washington, DC: Refugees International, 2016), 5-7

³⁰ ibid.

³¹ Barsky, *Other*, 3-4.

³² Berrak Kabasakal, "A Neoliberal Assault Through Employment Relations: Turkish Labour Market Flexibilization." Master Thesis. (Ottawa, Ontario: Institute of Political Economy, Carleton University 2006), 44-45.

³³ Nergis Canefe "Management of irregular migration: Syrians in Turkey as paradigm shifters for forced migration studies." *New Perspectives on Turkey*, no. 54 (2016): 9-10; Nazlı Şenses, "Rethinking Migration in the Context of Precarity: The Case of Turkey." *Critical Sociology* 42, no. 7-8 (2016): 978;

opening new job opportunities, this neoliberal input also endured exploitative labour environments especially for the most vulnerable and marginalised individuals of the society. Many scholars turn to the precarity concept to describe refugee workers and their insecure working conditions.³⁴ Refugees working for agriculture sector often have to work informally and provide labour in precarious conditions which include impoverishment, chronic indebtedness, recurrent work accidents, insecure work equipment, low wages,³⁵ the lack of social security registration, and increase in the livelihood pressures.³⁶

In addition to the adverse implications of precarious conditions, refugee workers also face social discrimination on the basis of their Syrian background and their mobility. Considering the previous findings of growing anti-refugee sentiment, the use of the welcoming term “guest” for Syrian refugees proved to be a fallacy in reality. According to Murat Erdogan’s report on Social Acceptance, 20 percent of the participants chose to describe Syrians as a “burden”. Around 70 percent of the population still thinks that Syrians deteriorate the Turkish economy. Near 50 percent of the participants opposed a possible work permit regulation for Syrians. Besides the popular thought, the representation of refugees in national and international media as “burdens” on the economy or on Turkey has become a common usage in defining the refugees.³⁷ Even the academic knowledge production feeding the media statistics revolves around the term “burden” as the final explanatory refuge for themselves in their assessments. From survey questions to research topics, the findings come to bind the refugee agency with an “effect on something” or an “impact of itself on somewhere outside”. The unilateral causality on interpreting the refugee agency creates a stigmatised epistemology of the refugee and reinforces the dichotomy between insiders and outsiders, local and foreign, settlers and the ones on the move. Once again, the refugee stands as the productive other of economic discourse; both pledged to enjoy flexibilisation in reaching their rights and at the same time deprived of privileged position or capital of the citizen. The refugee’s access to the right is declared null and void at this point; even though there is regulation, there is no understanding of access to right to work but rather access to services in the production of the labour law and economic system.

The peaceseeker as a travelling source of the self and its cultural markers embarks on an “undetermined journey practice, having constantly to negotiate between home and abroad. But a here, a there and an elsewhere.”³⁸ Seeing the boundary event and walls beyond the material reality, Minh-ha would like to see refugee-ism outside of its physicality. The hindrances imposed by legislation (the discourse of temporality around Syrian refugees in this case) constitute virtual fences as the products of cyberspace between security and insecurity. In this sense, the burden argument becomes an *a priori* suggestion of refugee-ism. A burden to itself, to a nation and to others; each denote a unique positionality of the self in the new homeland. The new colour of fear is created around the foreign embeddedness of the Syrian and there starts the erosion of the self-agent, which eventually lead to stigmatisation of Syrian refugees. Despite the government’s insistence on the “guest” regime, Turkey practiced serious drawbacks from its open door policy and constructed a security framework of control and containment, framing Syrians as threat or

³⁴ Sinem Kavak, "Syrian refugees in seasonal agricultural work: a case of adverse incorporation in Turkey." *New Perspectives on Turkey* (2016): 33-53; Canefe, ibid.; Şenses, ibid.

³⁵ According to Disaster and Emergency Management Presidency (AFAD) Report, 67 percent of Syrian households have monthly income 155 USD or below. This is a huge difference in income equality compared to Turkish minimum wage of average 400 USD.

³⁶ Kavak, ibid.

³⁷ Al Monitor. *Süriyelilerin Yükü Taşınamaz hale geldi.* (The burden of Syrians become unbearable). October 20, 2015. <http://www.al-monitor.com/pulse/tr/originals/2015/10/turkey-syria-refugees-spent-billion-in-three-months.html> (accessed November 22, 2016).

³⁸ Trinh Minh-ha, *Elsewhere, Within Here, Immigration, Refugeeism and the Boundary Event*. (New York: Routledge, 2011), 27.

destabilising factor.³⁹ Groundless fear created under the refugee category has its repercussions on the roots of hate speech against Syrian refugees.

After the issue of Work Permit Regulation, there has been an increasing tension between locals and Syrian employers and employees.⁴⁰ In the days following the attempted coup d'état on 15 July there were xenophobic raids and assaults against Syrian workplaces. On 17 July, in Ankara there was a racist social media campaign aimed at protesting against Syrians and some of the Syrian homes were set on fire.⁴¹ On 18 July in Konya, a group cast stones at the workplaces and homes of Syrians, and attempted to stab individuals of a Syrian background; five Syrians were injured in an attack that appears to have racist undertones.⁴² These incidents are the implications of the virtual fear administrated by local actors with nationalist impetus. With a state of emergency declared after 15 July the disadvantaged groups have become more vulnerable to such harassments that relegate refugee bodies to "disposable" or "rightfully injurable" imaginaries.

At the beginning of July, the president and deputies of AKP brought up a regulation plan to grant Syrian refugees Turkey citizenship.⁴³ Opposition parties, CHP and People's Democratic Party (HDP) criticised the hastiness of AKP's plan and gave more constructive insights that foresee the plan in all humanitarian aspects.⁴⁴ In spite of short-sighted discussions proposed by ruling party that does not pay regard to the views of refugees, the announcement of a possible path to citizenship for the refugees resulted in the emergence of racist slurs on Syrian refugees in Turkish nationalist media and hate campaigns in social media under the hashtag of #ÜlkemdeSuriyeliİstemiyorum (I don't want Syrians in my country).⁴⁵

It may be significant to note that the time proximity between hate campaigns does not necessarily signifies a correlation between the events, however, the speech act maintains its perlocutionary characteristic in these types of hate speeches. "Linguistic survival implies that a certain kind of surviving takes place in language. Indeed, the discourse on hate speech continues to make such references."⁴⁶ The injurious feature of the speech endures its scar and preserves its implications in the linguistic encounters.

³⁹ Burcu Toğral Koca, "Syrian refugees in Turkey: from "guests" to "enemies"?" *New Perspectives on Turkey* 54 (2016): 55-75.

⁴⁰ International Crisis Group. *Turkey's Refugee Crisis: The Politics of Permanence*. Europe Report, Brussels: International Crisis Group (2016), 12-13.

⁴¹ Evrensel. Ankara'da Suriyelilere İrkçi Saldırı. July 17, 2016. <https://www.evrensel.net/haber/285296/ankarada-suriyelilere-irkci-saldiri> (accessed December 16, 2016).

⁴² Cumhuriyet. Can Nöbeti... Alevilere Taciz, Suriyelilere Linç . July 18, 2016. http://www.cumhuriyet.com.tr/haber/turkiye/569951/Can_nobeti..._Alevilere_taciz_Suriyeliye_linc.html (accessed December 16, 2016).."

⁴³ Aljazeera. Erdoğan: Syrian refugees could become Turkish citizens. July 4, 2016. <http://www.aljazeera.com/news/2016/07/erdogan-syrian-refugees-turkish-citizens-160703133739430.html> (accessed December 22, 2016).

⁴⁴ Aljazeera Turk, "Muhalefetin Tepkisi." July 12, 2016. <http://www.aljazeera.com.tr/haber/muhalefetten-suriyelilere-vatandaslik-tepkisi> (accessed December 20, 2016)

⁴⁵ Pro-Kemalist newspaper "Sözcü" brought citizenship regulation plan for three successive days to its headlines that target Syrian refugees in a discriminative language. The headlines explicitly downgrade Syrian refugees and try to cool off the idea of citizenship. One of the headlines reads: "Turks pay taxes, Turks have to work, Turks enroll in the army, Turks became martyrs, Syrians live for free."

⁴⁶ Judith Butler *Excitable Speech: A Politics of the Performative*. (New York: Routledge, 1997), 4.

Labour in the Margins and Refugee Failure

"Today, when I'm asked where home is for me, I am struck by how far away it is; and yet, home is nowhere else but right here, at the edge of this body of mine."⁴⁷ In this section, I touch upon the marginalised bodies of the refugee labour with a change of focus to the individual labour on the peripheries of both the labour market and the patriarchy. Opening a temporal space for the critique of the victimising or degrading rhetoric of the refugee, I will try to embrace an Affective Turn derived from my emotions and politics.⁴⁸ This turn refers to an emphasis on what is regarded as a public feeling in the dispositions of otherness, reaching towards the residual "affect" of being stigmatised, and going beyond the rhetoric that relegates the subject (refugee worker in this work) to a mass in a discourse. The reflexivity of this turn and my positionality as a gay activist propels me to deliberate on the Syrian women refugees and the queer refugees within the overlooked forms of signification in the labour discourse.

Women represent almost half of the Syrian refugees arriving Turkey, including girls.⁴⁹ More than 60 percent of them wish to participate in the labour market. The legal framework places Syrian women and children in a vulnerable category and does not yield a permanent solution for the problems of refugee women participating in the labour market in Turkey.⁵⁰ Moreover, perpetual forms of legal violence are enforced through the temporary protection regime, the legal inaction of the authorities, the legal exceptionalism and the lack of economic security, procreating new conditions of precarity for the Syrian women.⁵¹ Female labour is also more precarious and women are subjected to more informal employment compared to Syrian men.

Against all odds, some examples of womens' stories are quite empowering, in the sense that they tell the story of self-empowerment and engaging in solidarity. A recent example from İstanbul is the initiative of "Woman to Woman Refugee Kitchen"⁵² and the project of "Mülteciyim Hemşerim Dayanışma Ağı" (I am a Refugee, Citizen Solidarity Network).⁵³ The network has neighborhood collectives and seems to have a horizontal structure in terms of bureaucracy and hierarchy. Their aim is to maintain "hemşeri hukuku" (citizen friendship/law)⁵⁴ and cohabitation among everyone in the same neighborhood union, including refugees. For them, everybody is refugee and also citizen. Woman to Woman Refugee Kitchen initiative brings 15 Syrian refugee women in the same place to cook jams and make pickles to sell and earn a living.⁵⁵ Their slogans posit an "affective" stance for the refugee women: "In this jar, there is plum/grape/apple jam of women solidarity and togetherness against wars, exiles and borders." Putting the victimisation rhetoric behind, the initiative displays how feminist solidarity can be an alternative solution to the hurdles refugees face. Through these ways of escaping from the patriarchal legal and political regime, women refugees may endure their positions as a self-making agency in employment.

One of the other neglected areas of refugees' labour is queer labour. In the sense of both queering the labour regime and queer subjectivities working under the regime, the reality of Syrian queer refugee labour is overlooked by heteronormative labour structure.

⁴⁷ Minh-ha, 12.

⁴⁸ Ann Cvetkovich, Depression: a public feeling. (Durham: Duke University Press, 2012).

⁴⁹ AFAD. Türkiye'deki Suriyeli Kadınlar (Syrian Women in Turkey). Survey, Başbakanlık Afet ve Acil Durum Yönetimi Başkanlığı, 2014..

⁵⁰ Kivilcim, 200.

⁵¹ ibid, 201.

⁵² Their facebook page can be reached here: <https://www.facebook.com/kadinkadinamultecimutfagi/>

⁵³ The website can be reached here: <https://multeciyimhemserim.org/>

⁵⁴ Literally translated as "citizenship law."

⁵⁵ Öğünç, Pınar. 'Mecbur kalip geldik, sizi de rahatsız ettim' ('We came here out of obligation, and we disturb you.'). December 17, 2016.

http://www.cumhuriyet.com.tr/haber/siyaset/647048/_Mecbur_kalip_geldik__sizi_de_rahatsiz_ettik_.html (accessed December 26, 2016).

The fact that it is hard to document should not construct barriers to recognising it/them (both the concept and the people). Currently, the LGBTI+ community in Turkey tries to cope with increasing LGBTI+ murders, especially targeting Trans women who engage in sex work. Werde, a refugee Trans sex worker woman who was found murdered at her home in İstanbul was one of them.⁵⁶ She was the target of anti-refugee sentiments and transphobia. Considering the recent legal limitations toward the publicity of sex work, sex workers are incarcerated into the most vulnerable peripheries of illegality. The position of the queer refugee worker can be compartmentalised in terms of neither legal nor political economic framework dressed for the refugee, since both of the regimes are elusive for queer existence and death. Nevertheless, the position of queer labour smeared as a “failure” in the heterosexist capitalist system also signifies a challenge to the normative structures of the system. “As a practice, failure recognises that alternatives are embedded already in the dominant and that power is never total or consistent; indeed failure can exploit the unpredictability of ideology and its indeterminate qualities.”⁵⁷ Here, Halberstam explains the queer in a self-productive sense where the dominant power counts the queer as failure and yet the failure practice constitutes the self-evidence of the dominant’s own indeterminacy, if not its failure. Accordingly, queer labour posits the possibility of having both an elusive and confronting disposition that is hard to be achieved in the dominant discourse. As signifiers of the inconsistencies in the labour system, Werde and her labour self-evidently expose the atrocities within the labour regime at her new home and also “at the edge of her body,” yet not relinquishing her subjectivity into the mainstream discourse of refugee labour.

Conclusion

The objectification of Syrian refugees as Productive Others under political discourse is enforced by legal regulations regarding the refugee labour and current political agenda, both of which approach the refugee labour under the concepts of temporality, real-political pragmatism and nationalism. The 2016 Work Permit Regulation for Temporary Protection regime suggests uncertain implementations of refugee labour and needs to be publicised more efficiently in order to create awareness. The regulation also needs to be revised to alleviate foreigner quotas and its geographical and sectorial limitations which may lead to confusion and intricacies on its implementation. In the economic discourse of flexibilisation and liberal market, refugee labour continues to be abused in informal employment where most refugees work under precarious conditions. The refugee stands as the productive but unachieved Other of economic discourse, both pledged to enjoy flexibilisation in reaching its rights and at the same time deprived of privileged position or capital of the citizen. This duality strengthened through hate crimes committed against the existence of refugees increased in number after the Work Permit Regulation and the promise of citizenship. Syrian women refugee workers are among the most disadvantaged groups in the legal and patriarchal system and refugee labour is open to abusive conditions. However, there is also a hope for empowering feminist solidarity and collectives that challenge the predicaments of patriarchal and dominant labour regime. Queer labour of the refugee is overlooked in most of the contexts of the refugee and sex work since queer labour makes a promise of struggle against heteronormative capitalist structures. Dwelling on the refugee labour in Turkey requires a more comprehensive insight into the intersections of being a refugee worker that can encapsulate various

⁵⁶ Tar, Yıldız. Suriyeli trans kadın İstanbul'da öldürüldü. December 20, 2016. <http://www.kaosgl.org/sayfa.php?id=22666> (accessed December 25, 2016).

⁵⁷ Jake Halberstam, *Queer Art of Failure*. (Durham: Duke University Press, 2011), 88.

dimensions of the category as well as the diminished otherness of the refugees in the economic discourse.⁵⁸

⁵⁸ This publication has been produced during my scholarship period at the University of Gotheburg, thanks to a Swedish Institute scholarship."

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Losing human(itarian) capital: An analysis of barriers to and prospects of refugees' labour market integration in Germany

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Abstract

Forced migration is rarely associated with human capital gains for the host nation since refugees frequently remain dependent on aid and isolated from the labour market for an extended period of time. In Germany, however, there are currently high hopes regarding the demographic potential and human capital of incoming refugees, particularly Syrians. Nonetheless, the question remains how to foster their successful incorporation into the labour market and avoid falling into the common pattern of aid-dependency and deskilling. Findings gathered through a multilingual survey and in-depth interviews with refugees and non-refugee respondents in Kiel, Northern Germany, suggest a substantial degree of heterogeneity in the human capital of refugees arriving to Germany. This capital however often goes unrecognised, which influences the determination refugees show in their actions, and whether they challenge the structural status quo. Tailoring legislation to account for refugees' various capabilities and encouraging a change in the mind-set of relevant policy-makers could lead to refugees' successful incorporation into the host nations' labour market.

Keywords: Forced Migration, Refugees, Human Capital, Labour Market, Mixed Methods.

Introduction

Germany presents a pioneering case study in labour market integration of refugees.² Behind Chancellor Angela Merkel's "*Wir schaffen das*" (translated roughly into "We can do it")³ is a changed discourse surrounding the newest influx of refugees, mainly from Syria. The asylum debate quickly moved on from mere labelling, to how Germany's society and economy could prepare itself and benefit from the refugees' demographic potential.⁴

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² In contrast to voluntary migration, which usually comes about in search of better economic opportunities, I employ the term of forced migration to describe migration that takes place due to push rather than pull factors. The "push" can be triggered by a number of manmade or natural causes. In this particular study, I will focus on migrants who are forced from their homes due to security concerns (such as ongoing civil war in Syria). According to the 1951 Refugee Convention, people fleeing their homelands in fear of persecution are entitled to international humanitarian protection. Whilst being in the process of formalizing this humanitarian migrant status, the term "asylum-seeker" should be used. One officially becomes a "refugee" when the host country has granted asylum and therewith granted refugee status. In regard to this study, "refugees" will be used as an overarching generic term as recognised by the UNHCR, signifying a person in need of international protection irrespective of whether the status has been given legally.

³ Angela Merkel, "Aktuelle Themen der Innen- und Aussenpolitik." August 2015. <https://www.bundesregierung.de/Content/DE/Mitschrift/Pressekonferenzen/2015/08/2015-08-31-pk-merkel.html> (accessed 7th July 2016)

⁴ See: Jochen Bittner, "Nicht Warten, Business Starten!" *Zeit Online*, 4 June 2015. <http://www.zeit.de/gesellschaft/zeitgeschehen/2015-06/fluechtlinge-syrien-arbeitserlaubnis; Thomas>

Nonetheless, how exactly to foster refugees' successful incorporation into the host's labour market continues to be a matter of contention. Multiple studies suggest that refugees persistently show poorer economic outcomes than other immigrants⁵ by often having difficulties entering the labour market in the first place and becoming dependent on government support in the long run.⁶ Therefore, the questions arise: what factors determine refugees' incorporation⁷ into the labour market? And how can such incorporation be facilitated through meaningful policy measures?

The literature suggests that both social structure,⁸ i.e., the existing environment of opportunities and constraints in any given society, and agency, i.e., the ability to act⁹ on the basis of individual capital, play a big role in refugees' labour market incorporation.¹⁰ Refugees tend to experience limited ability to act autonomously, in particular while waiting for a decision on their asylum claim.¹¹ At the same time, the prevailing humanitarian approach towards refugee settlement, which has repatriation at its core, has gained currency among policy makers.¹²

Öchsner, "Arbeitsministerin Nahles will Jobs für Zehntausende Flüchtlinge" *Süddeutsche Zeitung*, December 2015. <http://www.sueddeutsche.de/wirtschaft/arbeitsmarkt-arbeitsministerin-nahles-will-jobs-fuer-zehntausende-fluechtlingse-1.2773302>; Inga Rahmsdorf, "Gut Ausgebildet, Motiviert, Jung Sucht." *Süddeutsche Zeitung*, October 2015. <http://www.sueddeutsche.de/muenchen/gemeinsames-projekt-gut-ausgebildet-motiviert-jung-sucht-1.2690630>; Markus Dettmer, "German Companies See Refugees as Opportunity" *Spiegel Online*, August 2015, <http://www.spiegel.de/international/germany/refugees-are-an-opportunity-for-the-german-economy-a-1050102.html>; Florian Diekmann, "Deutschlands Mittelständler Hoffen auf die Flüchtlinge." *Spiegel Online*, February 2, 2016. <http://www.spiegel.de/wirtschaft/soziales/fluechtlings-kann-der-mittelstand-ihnen-arbeit-geben-a-1075189.html>

⁵ "Other immigrants" refers here to family migrants and labour migrants. Similar distinction was made in the Dutch case described by Engbersen et al. (2015) and Bakker et al. (2016).

⁶ See for example Godfried Engbersen et al., "No Time to Lose: From Reception to Integration of Asylum Seekers," *WRR Policy Brief* 4 (2015): 11–13; Pieter Bevelander, "Integrating Refugees into Labor Markets," *IZA World of Labor* (2016): 1; Linda Bakker, Jaco Dagevos, and Godfried Engbersen, "Explaining the Refugee Gap," *Journal of Ethnic and Migration Studies*, November 4, 2016: 8; Melissa Kelly and Lina Hedman, "Between Opportunity and Constraint," *Journal of International Migration and Integration* 17, no. 3 (August 2016): 650; Rainer Bauböck and Milena Tripkovic, *The Integration of Migrants and Refugees: An EUI Forum on Migration, Citizenship and Demography*, European University Institute, Robert Schuman Centre for Advanced Studies (2017): 11; Institut für Arbeitsmarkt- und Berufsforschung, "Flüchtlinge und Andere Migranten am Deutschen Arbeitsmarkt: Der Stand im September 2015," *Aktuelle Berichte* 14 (2015): 10.

⁷ Nina Glick Schiller and Ayse Çağlar, "Towards a Comparative Theory of Locality in Migration Studies." *Journal of Ethnic and Migration Studies* 35, no. 2 (February 2009): 177–202. The somewhat neutral term of *incorporation* is used in this study as a synonym for *integration* and *inclusion*. Glick Schiller considers integration and inclusion to have a political agenda. All terms, however, signify the process of refugee settlement by building connections to the local institutions. In this paper, the focus is on *economic and labour market incorporation/integration*, which means participating in the local workforce by gaining employment or becoming self-employed.

⁸ Social structure is understood in this paper according to Bakewell (2010) as states or cultural norms. In the context of this article, structure is seen in terms of labour markets, governments' policies and host culture.

⁹ Lisa Hunt, "Women Asylum Seekers and Refugees" *Social Policy and Society* 7, no. 3 (July 2008); Ruth L. Healey, "Asylum-Seekers and Refugees," *Population, Space and Place* 12, no. 4 (July 2006): 257–71.

¹⁰ Multiple previous studies have discussed the importance of including both structure and agency in refugee research. See for example Kelly and Hedman, "Between Opportunity and Constraint"; Oliver Bakewell, "Some Reflections on Structure and Agency in Migration Theory," *Journal of Ethnic and Migration Studies* 36, no. 10 (2010): 1689–1708.

¹¹ Several studies take a look at refugees' limited ability to act. Richmond (1988), whilst speaking about proactive and reactive decision-making of refugees, states that most often they have limited "degrees of freedom" in their decisions. Even in the case of refugees with higher capabilities studied by Kelly & Hedman (2016) they find that the agency to determine their own future is limited.

¹² Humanitarian approach aims to protect the 'asylum space' by introducing regulations to distinguish between refugees and other migrants. Even if such an approach might protect the

This study aims to contribute to the discussion around refugees' labour market integration by analysing how newly arrived refugees attempt to integrate into the German labour market. By combining the fields of forced migration studies with human capital theory, the following questions are addressed: how do refugees themselves perceive their agency? What strategies do they employ in transferring individual capital from a situation of war to the new host country? And how are these activities enabled and/or constrained by structural factors in the host country? In doing so, this paper takes a transformative approach: first, research participants are provided a voice, and second, an action agenda for reform is brought forward.¹³ This requires a further assumption, namely that the interplay between individuals and their environments leads to societal and economic transformations in the host country (as per the works of Archer¹⁴ and Giddens¹⁵).¹⁶ Therefore, evidence-based suggestions for labour market policy reform are the second, practical contribution that the study aims to make.

Research for this article was conducted using a concurrent nested mixed methods design in which the data was collected in one stage.¹⁷ Data from 139 multilingual surveys and 25 in-depth interviews were collected in the first half of 2016 in Kiel, Germany from working-age newly arrived (2014-2015) refugees who are likely to stay in Germany (with so-called *Gute Bleibeperspektive*), and non-refugee respondents.¹⁸ As refugees are commonly understood as a "hard to locate"¹⁹ and "hard to reach"²⁰ population, the inclusion of non-refugee respondents aided in identifying refugee respondents as well as detecting issues otherwise not discussed. However, self-selection problems could not be fully mitigated. Being identified through local bodies may indicate that the interviewed refugees stand out a little more or have shown initiative to be noticed. They themselves decide to come forth, which does not necessarily mean that they are representatives of the community. Nevertheless, the multiple entry approach provided a way into the group of self-settled refugees outside official housing and centres, which are difficult to reach.²¹

immediate right of entry (or settlement in a third country), it fails to consider economic needs of refugees, which exasperates their inequality and dependency. For further reading on how the humanitarian approach has led to the "refugee issue" to become morally questionable, see Didier Fassin, *Humanitarian Reason: A Moral History of the Present Times*. (Berkeley: University of California Press, 2012).; Michel Agier, *Managing the Undesirables*, (Cambridge: Polity Press, 2011); William Walters, *Foucault and Frontiers: Notes on the Birth of the Humanitarian Border* (New York: Routledge, 2011); Feyzi Baban, Suzan Ilcan, and Kim Rygiel, "Syrian Refugees in Turkey." *Journal of Ethnic and Migration Studies* 43, no. 1 (January 2, 2017): 41–57

¹³ Donna M. Mertens, "Transformative Paradigm: Mixed Methods and Social Justice," *Journal of Mixed Methods Research* 1, no. 3 (2007): 223; John Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*. 2nd ed. (Thousand Oaks, CA: Sage, 2003)

¹⁴ M. S. Archer, *Realist Social Theory: The Morphogenetic Approach*. (Cambridge: Cambridge University Press, 1995)

¹⁵ Anthony Giddens and Phillip Sutton, *Sociology*. Seventh edition. (Cambridge Malden, MA: Polity, 2013)

¹⁶ See Bakewell (2010) for a thorough overview of these two scholars and how they discuss the process of social change considering structure and agency.

¹⁷ John Creswell et al., "Advanced Mixed Methods Research Designs." In *Handbook on Mixed Methods in the Behavioral Andsocial Sciences*, edited by C. Teddlie and A. Tashakkori, 209–40. Thousand Oaks, CA: Sage, 2003

¹⁸ Non-refugee respondents included reception centres workers and volunteers working with refugees in Kiel on a day to day basis. The basis for selection was experience with working with refugees, and the potential of providing rich data due to direct and continuous contact with the subject group.

¹⁹ Alice Bloch (1999) refers to the non-existence of a complete and accurate sampling frame.

²⁰ Linguistic, cultural and emotional (trusting issues) barriers have been mentioned by Bloch (1999) and Jacobsen and Landau (2003). Oftentimes, the inclusion of women's views is particularly difficult in this group.

²¹ Karen Jacobsen and Loren B. Landau, "The Dual Imperative in Refugee Research: Some Methodological and Ethnical Considerations in Social Science Research on Forced Migration," *Working Paper*, 2003: 12.

The outline of the article is as follows: first, the literature regarding labour market integration as part of asylum policies is introduced. Second, the data collection method is briefly presented. The third section focuses on the case of the Northern German city of Kiel, which is followed by an overview of the findings about factors that enable and constrain labour market integration of refugees. Lastly, policy suggestions are given on how to facilitate refugees' incorporation into the German labour market.

Refugees' economic lives beyond aid

Barbara Harrell-Bond has stated that "the history of responses to refugees in the 20th century has been one long series of attempts to circumvent the problem," when discussing the increasing focus on refugee returns and repatriation in Western asylum policies since World War II.²² In her historical account, Long has traced the movement away from the pre-Convention²³ approach towards refugees as migrants to the contemporary protection regime, which increasingly frames refugee protection as humanitarian.²⁴ In its ideal form, the humanitarian approach is guided by a state's morality and altruism to help people "who need admission" (refugees) in contrast to those "who want admission" (migrants).²⁵ However, this humanitarian "cause to protect" has, according to many scholars, given way to restrictionist migration agendas.²⁶ Protection of refugees became a "sedentary pursuit" in which refugees were expected to just wait to return.²⁷ Any meaningful long-term integration solution has thereby been forestalled.

With no solution in sight for Syrian war raging since 2011, many Syrians are now among the refugees coming to Europe. As such, the long prevailing refugee protection policy model that assumes temporality of the situation for the refugee as well as for the host state has become outdated and increasingly inept to provide sufficient solutions.²⁸ With a proliferation in protracted conflicts, asymmetric warfare and failed states, displacement is now increasingly protracted and often lasts for decades or even generations.²⁹ This requires sustainable solutions in the form of improved integration measures.

Harrell-Bond and Long show that historically the answer to increased refugee movements was in labour market integration.³⁰ Examples given by Betts et al.³¹ and Zetter³²

²² Barbara Harrell-Bond, *Refugees and the International System: The Evolution of Solutions*, (Oxford: Refugee Studies Centre, 1995) 3, 16. She also refers to Richmond's writings about a "global apartheid" in which developed countries are practicing institutional racism by introducing restrictive immigration and refugee policies.

²³ That is the Refugee Convention of 1951.

²⁴ Katy Long, "When Refugees Stopped Being Migrants: Movement, Labour and Humanitarian Protection." *Migration Studies* 1, no. 1 (2013): 4–26

²⁵ Ibid. 21; Miriam Ticktin, "Transnational Humanitarianism," *Annual Review of Anthropology* 43, no. 1 (October 21, 2014): 274; Fassin, *Humanitarian Reason*, Berkeley: University of California Press, 2012: 2.

²⁶ Ibid. 5; Harrell-Bond, *Refugees and the International System: The Evolution of Solutions*.

²⁷ Long, "When Refugees Stopped Being Migrants: Movement, Labour and Humanitarian Protection," 21–22. Harrell Bond maintains that the key measure in temporary asylum system has been the refugee camp. She illustrates her point with the case of Germany "which in the 80s and 90s opted for the view that refugees are an issue to be dealt with outside Germany's territory, and if people do end up entering then their repatriation to a 'safe host country' (note: also, often to a refugee camp) will follow on easy terms." (Harrell-Bond, *Refugees and the International System: The Evolution of Solutions*) Germany has had these agreements with a number of neighbouring countries.

²⁸ This is challenged by Jeff Crisp, "Protection and Pragmatism: The EU-Turkey Refugee Deal in Historical Perspective." *OpenDemocracy*, March 21, 2016. He argues that European asylum policy still keeps to the same principles, with for example the EU-Turkey of restricting and managing the arrival of asylum seekers offshore and in "safe zones."

²⁹ Kathleen Newland, *Rethinking Global Protection: New Channels, New Tools*. (Washington, DC: Migration Policy Institute, 2015).

³⁰ Harrell-Bond, *Refugees and the International System: The Evolution of Solutions*, 3; Long, "When Refugees Stopped Being Migrants: Movement, Labour and Humanitarian Protection."

further prove the economic and societal value of including refugees in the host country's workforce. This has also led multiple scholars to call for a more utilitarian approach from host countries, mainly because integrating refugees into the labour markets serves their self-interest.³³ Pre-war Syria had relatively high literacy rates and provided sufficient employment opportunities, and many of the incoming Syrian refugees now present different characteristics to previous migration movements from other countries.³⁴ "Higher educated" and "experienced workers" are characterisations that are commonly featured in the public discourse.³⁵ These attributes are further reflected by Syrians' choices of mobility strategies which are often similar to those of voluntary economic migrants.³⁶ Higher educated refugees in particular seem to have more leeway in making conscious choices about their host country with regards to the economic opportunities it provides. Kunz³⁷ refers to this displacement strategy as "anticipatory" movement, which in contrast to reactive "acute" movements are undertaken by refugees with higher capabilities to somewhat plan their flight.

Considering, however, that refugees differ from other migrants in their ability to act and the power they possess over their legal status³⁸, a policy-makers' stance (humanitarian/altruistic or utilitarian/self-interest) plays a significant role in determining the success or failure of labour market incorporation.³⁹ One such an example is keeping in place refugee-specific barriers to labour market entry instead of allowing capable refugees to find better economic opportunities on their own.⁴⁰ This paper will focus on how the German government has decided to handle the labour integration of the newest refugee group from Syria, in particular highlighting the prevailing integration mechanisms and how Syrian refugees perceive their power and capabilities within these.

³¹ Alexander Betts et al., *Refugee Innovation: Humanitarian Innovation That Starts with Communities*" (Oxford: Humanitarian Innovation Project, University of Oxford, 2015); Betts et al., *Refugee Economies: Rethinking Popular Assumptions*. (Oxford: Humanitarian Innovation Project, University of Oxford, 2014).

³²Roger Zetter, "Labelling Refugees". *Journal of Refugee Studies* 4, no. 1 (1991): 39–62"

³³ T. Alexander Aleinikoff, *From Dependence to Self-Reliance: Changing the Paradigm in Protracted Refugee Situations*, (Washington, DC: Migration Policy Institute, 2015); Phillippe Legrain et al., "Migrants Knocking on Europe's Doors: Towards a Coherent Response to Irregular Immigration" In *Global Economic Symposium (Panel)*. Kiel, 2015; Katy Long, *From Refugee to Migrant? Labor Mobility's Protection Potential*, (Washington, DC: Migration Policy Institute, 2015); Demetrios Papademetriou, "Beyond Asylum: Rethinking Protection Policies to Meet Sharply Escalating Needs" (Washington: Migration Policy Institute, 2015); Klaus Zimmermann, "Migration, Jobs and Integration in Europe" *Migration Policy Practice IV*, no. 4, October–November (2014): 4–16; Anna Wirth, Cara Defilippis, and Jessica Therkelsen, "Global Refugee Work Rights Report: Taking the Movement from Theory to Practice," 2014.

³⁴ OECD, "Is This Humanitarian Migration Crisis Different?" *Migration Policy Debates*, September 2015; United Nations Development Programme, "About Syria," *UNDP in Syria*. Interviews with refugees and non-refugee respondents conducted by the author in Kiel, Germany in 2016 concur with that.

³⁵ Bittner, "Nicht Warten, Business Starten!"; Öchsner, "Arbeitsministerin Nahles will Jobs für Zehntausende Flüchtlinge"; Rahmsdorf, "Gut Ausgebildet, Motiviert, Jung Sucht..."; Dettmer, "German Companies See Refugees as Opportunity"; Dickmann, "Deutschlands Mittelständler: Hoffen auf die Flüchtlinge."

³⁶ Germany was a preferred destination for Syrian refugees due to better access employment and education, in particular in comparison to the situation in Turkey.

³⁷ E.F. Kunz, "The Refugee in Flight: Kinetic Models and Forms of Displacement," *The International Migration Review* 7, no. 2 (1973): 125–46

³⁸ Harrell-Bond, *Refugees and the International System: The Evolution of Solutions*; Giddens and Sutton, *Sociology*; Kelly and Hedman, "Between Opportunity and Constraint."

³⁹ Healey, "Asylum-Seekers and Refugees," 263.

⁴⁰ Long, *From Refugee to Migrant? Labor Mobility's Protection Potential*, 16. An example of such 'migration activities' is moving somewhere else within or outside the host country to find better opportunities, and not being constrained by quotas and other measures, which limit refugees' freedom of movement.

Destination: Germany

Germany received more than a million refugees in the period from 2014 to 2016, mostly working-age men from Syria.⁴¹ The last time such a steep rise in asylum applications occurred was in the early 1990s as a consequence of the war in former Yugoslavia. This resulted in German policy-makers opting for a more restrictive asylum regulation (*Asylkompromiss 1993*). The view guiding asylum policies in Germany revolved around the notion that after providing humanitarian assistance for people fleeing persecution, they will be repatriated to their home countries.⁴² Such a practice led to the view that refugees are only ever staying in Germany temporarily. This, however, has led to the protracted aid-dependency of refugees who have stayed longer and have not been able to return home, but have received little integration assistance.⁴³

Recently, Germany has developed a more utilitarian stance in its immigration regulation. It started with the relaxation of the rules for third-country nationals entering the German labour market, and acceptance of Germany's position as an "Immigration country" (*Einwanderungsland*) to tackle shortages caused by aging demographics and limited skill-pools.⁴⁴ Considering that the unemployment rate has been low,⁴⁵ and that levels of innovation and entrepreneurship are lagging,⁴⁶ the potential that the immigrant population brings is appreciated for economic growth.

Still, the steps taken to integrate refugees were minor and often politically undesirable⁴⁷ until the reality of the newest "wave of refugees" (*Flüchtlingswelle*) took place in 2015. Since November 2014, advancements have been undertaken with the aim to support refugees to become self-sufficient, which means integrating them into the labour market and contributing to the host country's economy at a faster pace. Since the interviews for this paper were conducted (in the first half of 2016), the federal government has adopted a new comprehensive Integration Law (31.07.2016), that introduces various refugee-specific measures such as reducing the period of restrictions on working, and providing "one-euro-job" opportunity during an ongoing asylum procedure which enables refugees to take up employment faster.⁴⁸ Shortening, and in some places fully waiving the requirement of job market tests (*Vorrangprüfung*), serves the same objective by simplifying the process of hiring a refugee for employers.⁴⁹ Furthermore, in order for refugees who are under full or subsidiary protection to gain a settlement permit, they need to show their ability to make a secure living.⁵⁰ These are the first attempts by German lawmakers to change the notion of "refugee as a burden" to "refugee as a potential benefit" and hence bring about a significant policy shift.

⁴¹ BAMF, "Asylzahlen." <http://www.bamf.de/DE/Infothek/Statistiken/Asylzahlen/asylzahlen-node.html> (Accessed November 11, 2016)

⁴² Dietrich Thränhardt, *Die Arbeitsintegration von Flüchtlingen in Deutschland - Humanität, Effektivität, Selbstbestimmung*, Bertelsmann Stiftung, 2015: 10; Harrell-Bond, *Refugees and the International System: The Evolution of Solutions*, 13.

⁴³ Thränhardt, *Die Arbeitsintegration von Flüchtlingen in Deutschland - Humanität, Effektivität, Selbstbestimmung*, 14.

⁴⁴ OECD, *Recruiting Immigrant Workers*. OECD Publishing, 2013

⁴⁵ Statistisches Bundesamt (Destatis), "Arbeitslosenquote Deutschland." <https://www.destatis.de/DE/ZahlenFakten/Indikatoren/Konjunkturindikatoren/Arbeitsmarkt/arb210.html> (Accessed December 7, 2016)

⁴⁶ Global Entrepreneurship Monitor, "A Relatively Low Level of Activity – but Favourable Entrepreneurial Framework Conditions in Terms of Government Policy Support," *GEM Global Entrepreneurship Monitor*, 2014. <http://www.gemconsortium.org>; Copley, "Refugees Bring Entrepreneurial Spirit to Risk-Shy Germany."

⁴⁷ Thränhardt, *Die Arbeitsintegration von Flüchtlingen in Deutschland - Humanität, Effektivität, Selbstbestimmung*, 10–14.

⁴⁸ Deutscher Bundestag, "Integrationsgesetz." *Bundesgesetzblatt* Teil I, no. 39 (August 5, 2016)

⁴⁹ Deutsche Bundesregierung, "Verzicht Auf Vorrangprüfung." (2016)

⁵⁰ "BAMF - Bundesamt Für Migration Und Flüchtlinge - Forms of Protection," <http://www.bamf.de/EN/Fluechtlingschutz/AblaufAsylv/Schutzformen/schutzformen-node.html> (accessed February 23, 2017)

Determinants of labour market integration for refugees

The following factors that determine refugees' incorporation into the labour market were identified from the research data: (1) structural status quo and structure selectivity; (2) heterogeneity of human capital and limited agency; (3) hindered human capital transfer; and (4) adjusted social capital and structural capacity. They are discussed in more detail below.

Structural status quo and structure selectivity

In regard to refugees, principal social structures both at country of origin and country of asylum play a significant role in determining the success or failure of labour market incorporation.⁵¹ Whether the host state has taken a humanitarian (altruistic) or utilitarian (self-interest) stance in its policy-making towards refugees influences the ease of finding employment. As described above, German asylum policy has until recently focused on the temporality of the refugee situation as well as return and repatriation.⁵² For the refugees interviewed for this study in the first half of 2016, this meant that they felt constantly excluded from the workforce. The government's rigid view of the right to work and freedom of movement was articulated by non-refugee respondents as well. Respondents who worked at refugee reception centres illustrated this by highlighting the lack of coordinated effort to assess skills of refugees, and thereafter matching labour supply and demand in their placement. Likewise, not having a mechanism ready for refugees' integration in general (e.g. language classes from the start⁵³), and keeping them waiting in limbo during the lengthy asylum procedure, kept strong structural barriers to labour market integration firmly in place.⁵⁴

One of the main issues brought up in the interviews as an obstacle to integration was command of the language. According to Healey, language can be both a structural and agency factor, depending on whether one learns it to increase one's capabilities, or because it is mandated by the authorities.⁵⁵ "Language is most important for integration and gaining employment" was mentioned in some form or another in every interview. Refugees insisted they want to learn the language, whilst also stating that without knowing German they will neither be employed nor accepted. Non-refugee participants agreed that proficiency in the local language is the cornerstone of improving one's opportunities in Germany.

The existing societal structure enables or hinders everyone in different ways.⁵⁶ One clear example of this brought up by many non-refugee respondents is the limited availability of integration measures for refugees without a "good prospect of staying" (so called *gute Bleibeperspektive*). While Syrian, Iranian, Iraqi and Eritrean refugees (i.e. asylum-seekers with a good prospect of staying) were invited to join state funded language classes, Afghans and those from the Balkans (i.e. asylum-seekers without a good prospect of staying) had to find volunteers to teach them, pay for private classes or not learn at all. Language as a tool to enhance agency was, therefore, taken away.

⁵¹ Healey, "Asylum-Seekers and Refugees," 263.

⁵² Harrell-Bond, *Refugees and the International System: The Evolution of Solutions*, 12–13; Constant and Zimmermann, "Towards a New European Refugee Policy That Works," UNU-MERIT Working Paper Series #2016-062 (October 2016): 4.

⁵³ As of the end of 2015, language classes were organised for asylum-seekers from Syria, Eritrea, Iran and Iraq (*Einstiegskurse*).

⁵⁴ In November 2016, BAMF introduced the Integrated Refugee Management system which should both speed up the process and inquire about skills in earlier stages and in a more coordinated manner.

⁵⁵ Healey, "Asylum-Seekers and Refugees."

⁵⁶ Ibid.; Hunt, "Women Asylum Seekers and Refugees"; Pierre Bourdieu, "The Forms of Capital" In *The Sociology of Economic Life*, edited by Mark S. Granovetter and Richard Swedberg, 3rd ed., 78–92. Boulder, CO: Westview Press, 2011; Giddens and Sutton, *Sociology*.

Not only do certain regulations cement a status quo in refugees' employability, but based on the personal experience of some interviewees, employers also have shown negative attitudes towards hiring refugees by dismissing their job applications. Nevertheless, many respondents doubted that the cause is pure unwillingness, but instead the high numbers of refugees arriving in Germany. The interplay between willingness and ability in structural capacity will be discussed below in more detail.

Heterogeneity of human capital and limited agency

The picture of a large, collective human mass in perpetual trouble is what characterises much of the media coverage of the so called “wave of refugees/refugee crisis”. This reproduces the view of a homogenous group of vulnerable people that are not able to act self-determinedly and only possess limited agency. Within the aforementioned structural environment, refugees exercise agency based on what they have experienced in the past, what they perceive as possibilities for the future, and how they evaluate their situation in the present.⁵⁷ In itself, agency can be constrained or enabled by human and social capital.⁵⁸ The existence of skills required in the host market, and personal characteristics such as resilience and motivation help gain employment, while on the other hand a lack of skills and personal issues extend the time spent outside the labour market.⁵⁹

There are a whole range of people coming in, because when a war breaks out it is just not one segment that will flee - from lawyers, and doctors, and university professors to people with no education at all.
(MZ, non-refugee respondent, male)

Multiple backgrounds and multiple future trajectories were emphasised by non-refugee interviewees as well as by refugees themselves. “Not all are good people who come” and “not all want to contribute” were utterances that occurred almost as often as praise for the “highly educated and experienced.” Heterogeneity of formalised human capital (work experience and education) also shows in the results of the multilingual survey carried out amongst working-age newly arrived refugees in Kiel, Germany in the first half of 2016.

⁵⁷ Mustafa Emirbayer and Ann Mische, “What Is Agency?” *The American Journal of Sociology* 103, no. 4 (1998): 962–1023

⁵⁸ There is a vast body of literature on the definitions of human and social capital, and how and why they are best used (mainly by Pierre Bourdieu in Bourdieu, “The Forms of Capital.”). In this paper, human capital is defined as both its measurable formalised (education, work experience and training) and non-formalised (punctuality, honesty, motivation etc.) aspects. Social capital will be discussed in a following section in further detail.

⁵⁹ Alexander Betts, Louise Bloom, and Nina Weaver, *Refugee Innovation: Humanitarian Innovation That Starts with Communities*, 45; Kelly and Hedman, “Between Opportunity and Constraint,” 652; Val Colic-Peisker and Iain Walker, “Human Capital, Acculturation and Social Identity,” *Journal of Community & Applied Social Psychology* 13, no. 5 (September 2003): 339.

Table 1: Refugees' skills survey, respondent sample⁶⁰

| Human capital (formal) | % of respondents |
|-----------------------------|------------------|
| High occupational profile | 48 |
| Medium occupational profile | 39 |
| Low occupational profile | 13 |
| Total | 139 |

The occupational profile was categorised with the help of the International Standard Classification of Occupations (ISCO)⁶¹ based on university attendance, specified profession and self-perceived skill level. Generally, most respondents indicated having some work experience, and more than half stated that they had attended university.⁶² The highest level makes up 48% of the participants' occupations due to large number of teachers, engineers, computer programmers and lawyers. Secondly, ISCO-08 Group 7 (craft and related trades workers, such as electricians, food processors and tailors) and Group 5 (services and sales workers) boosted the number of medium level occupations, accounting for 39% of the whole sample of the survey. Low level occupations, mostly comprised of Afghan housewives, came in third with 13%.⁶³

If agency is said to be enabled or constrained by individual capital, there is merit in speaking about various levels of agency among refugees based solely on the formalised human capital differences. Refugees with higher occupational profiles might exert more self-determination in their actions than uneducated and lesser-skilled persons.⁶⁴ This point was also highlighted by many of the interviewees who noted that it is tougher for refugees who are older, less educated, female or not from Syria to take charge of their own future in the host country.

However, higher formal capabilities do not necessarily mean an enhanced ability to act. There could be two reasons for this. First, structural barriers in human capital transfer

⁶⁰ The survey is not representative of the whole refugee population, mainly due to the small sample size and the inclusion of only those refugees who, in the beginning of 2016, had a somewhat high likelihood of being granted some form of protection (e.g. meaning asylum-seekers from the Balkans were not included). Nevertheless, the survey findings have been largely confirmed by a representative study carried out by IAB-BAMF-SOEP about qualifications of refugees who arrived in Germany between 2013 and 2016. Where possible in this paper, I have emphasised the connections. (Institut für Arbeitsmarkt- und Berufsforschung, Bundesamt für Migration und Flüchtlinge, and SOEP-DIW Berlin, "IAB-BAMF-SOEP-Befragung von Geflüchteten: Überblick Und Erste Ergebnisse.")

⁶¹ International Labour Organization, "International Standard Classification of Occupations, 2008 (ISCO-08)."

⁶² In comparison to the IAB-BAMF-SOEP study, the number of university attendees is comparatively very high. Their study says that 31% attended tertiary, university or vocational education, which might be due to groups of refugees I left out of my survey. The work experience figure is similar to my findings (73%).

⁶³ Besides Syrians, other groups were also included in the survey. From the survey answer sheets 29.8% were from women and 70.1% from men. With regards to nationality, 69% were from Syrians, 10.5% from Iran, 9.6% from Iraq, 6% from Afghanistan and 4.9% from other countries. The gender distribution matches the one found by the IAB-BAMF-SOEP study, but my sample does have an overrepresentation of Syrians in comparison. There are regional differences in Germany and it is the case that more Syrians end up in Kiel than do from other nationalities according to local authorities. A report from the Interior Ministry of Schleswig-Holstein also shows that the gender distribution varies a little from the general estimates of Germany – namely around 76% of the incoming refugees in Schleswig-Holstein are men. Findings of the IAB-BAMF-SOEP study also show that of the incoming female refugees, 38.5% are under 16 years old and hence outside the working-age considered in this study (NDR, "Was Passiert mit den Flüchtlingen im Norden?"; Ministerium für Inneres und Bundesangelegenheiten, "Jung, Männlich, Flüchtlings"; Bundesamt für Migration und Flüchtlinge, "Aktuelle Zahlen Zu Asyl.")

⁶⁴ Bauböck and Tripkovic, *The Integration of Migrants and Refugees: An EUI Forum on Migration, Citizenship and Demography*, 9.

influence highly skilled refugees in the form of problematic recognition of qualifications⁶⁵ as will be discussed in the next section. Secondly, it clearly emerged from the interviews that many refugees accept their limited agency and structural status quo as a survival strategy due to past experience and future uncertainty. This strategy is often described in forced migration research, when people in precarious situations want to promote a particular vision of their suffering as part of their survival strategy.⁶⁶

In some cases, however, the opposite occurs and refugees try to remove the metaphorical equals sign between being a refugee and therefore passive and unemployable by default. By drawing attention to their motivation, resilience and potential for success, refugees are challenging the notion of limited agency and framing a different narrative.⁶⁷ This will be discussed further in the following section in regard to informal human capital.

Hindered human capital transfer

The disruption of the life-cycle due to flight often leads to the depreciation of skills, knowledge and networks.⁶⁸ Skills and knowledge in general are not directly transferable across frontiers, but with a war raging at home the process becomes even more complicated. Mincer and Ofek⁶⁹ have noted that the loss of human capital is more severe when the interruption of a work career has been unanticipated (e.g. due to a war breaking out) and when the economic and cultural “distance” between countries of origin and destination is greater. As human capital acquired domestically often outweighs human capital from abroad (due to lack of country-specific skills and information), even highly educated refugees experience problems in sustaining a career status like the one they had at home.⁷⁰

This constraint is most visible in the recognition of formal qualifications. First, Germany has a strict system for recognising foreign certificates.⁷¹ Secondly, many refugees have problems supplying any documentation for examination in the first place. These points are illustrated by HM (refugee, Eritrea, male) who studied medicine in Eritrea:

We did not have our certificates with us, because we are political refugees, and our government did not give us the documents. Our families and friends cannot go and ask for the documents, because they could also be arrested. I took my course list with me, but no grade transcripts. Those I could not get. /.../ I studied in English in Eritrea. Here you cannot do that. The possibility to study medicine

⁶⁵ Ibid.

⁶⁶ Karen Jacobsen and Loren B. Landau, “The Dual Imperative in Refugee Research: Some Methodological and Ethnical Considerations in Social Science Research on Forced Migration,” 8.

⁶⁷ Example was given by BM (refugee, Syria, male): “I say it actually all the time. *Ich bin Flüchtlings* (note: “I am a refugee” in German). Because this is the reality. I am not ashamed of that. I am a refugee and I will be a successful refugee.”

⁶⁸ Bakker, Dagevos, and Engbersen, “Explaining the Refugee Gap,” 4. The authors have referred to this as the “refugee entry effect.”

⁶⁹ Jacob Mincer and Haim Ofek, “Interrupted Work Careers: Depreciation and Restoration of Human Capital,” *The Journal of Human Resources* 17, no. 1 (1982): 18.

⁷⁰ Rachel M. Friedberg, “You Can’t Take It with You? Immigrant Assimilation and the Portability of Human Capital,” *Journal of Labor Economics* 18, no. 2 (April 2000): 221; Bauböck and Tripkovic, *The Integration of Migrants and Refugees: An EUI Forum on Migration, Citizenship and Demography*, 9. For more on studies done on higher educated refugees’ integration to the labour market see Bakker et al. (2016) and Jamil et al. (2012).

⁷¹ Federal Ministry of Education and Research, “Recognition in Germany.” On this portal one can research the requirements for the qualifications’ recognition of various professions. The standard depends on whether the profession falls under regulated professions or under non-regulated professions. In regulated professions (including many trades) the full recognition of foreign qualifications is essential for being able to practice the profession (either as an employee or self-employed).

here is very complicated. It is also alright for me to start from the beginning again.

Medicine is not the only field where the respondents have identified a qualifications mismatch. Lawyers, teachers, hairdressers, and engineers who were part of the sample have all experienced problems getting their certificates recognised. Often the only valid option is to retrain in Germany from the very beginning. The question posed by MM (refugee, Iran, male), who trained and worked as a hairdresser back home in Iran, exemplifies the situation well. He said: "What do they mean I have to start from the beginning again?"

One strong indicator that came out of the surveys⁷² and interviews⁷³ was the number of formerly self-employed people and entrepreneurs⁷⁴ among the refugee respondents, who often do not have certificates to prove their expertise.⁷⁵ For a country such as Germany, which is said to lag in entrepreneurship,⁷⁶ it could be especially beneficial to allow these individuals to contribute to the economy. As shared by many interviewees, these groups of refugees unfortunately have a particularly hard time adjusting to the German setting due to these structural constraints. An example was given by MK (refugee, Syria, male):

My cousins did not study too long in Syria, until the sixth grade, no high school diploma. They just went to a company and worked there for 10 years. Now they have their own company. In Germany, they have problems. They are not allowed to work here. They do not have any certificates.

Often the self-employed people are self-taught, which does not match with the rigid vocational training and education standards in Germany. As reported by PU (non-refugee respondent, male), refugees often bring with them very limited formalised vocational training and education. This means that even construction workers, electricians, mechanics, hairdressers, etc. cannot offer their services legally without completing the training in Germany first.⁷⁷

⁷² Instances of chosen profession "expert in crafts and related trades" with no educational background.

⁷³ "Syrians do a lot of business. I lived in Turkey for four months and saw how many companies were founded by Syrians. Wherever the Syrians are, they are active and good for the economy." (RL, refugee, Syria)

⁷⁴ The representative study done by IAB-BAMF-SOEP (2016, 6) also found that 27% of the refugees who arrived in Germany during 2015 were self-employed in their origin country.

⁷⁵ Bundesministerium für Arbeit und Soziales, "Wir Gründen in Deutschland." In accordance to regulation explained on this portal - if a refugee would want to become self-employed or start a business multiple barriers are faced. First, depending on their legal status, one is allowed or restricted from self-employment and entrepreneurship. Secondly, according to the field of activity, requirements of "professional suitability" exist. This is determined by formal qualifications. In a majority of cases the recognised qualifications must be equal to German ones to take on self-employment or start a business. Also, additional requirements such as licenses, permits or memberships from the professional associations might be required.

⁷⁶ Global Entrepreneurship Monitor, "A Relatively Low Level of Activity – but Favourable Entrepreneurial Framework Conditions in Terms of Government Policy Support"; Copley, "Refugees Bring Entrepreneurial Spirit to Risk-Shy Germany."

⁷⁷ For example, per the "Recognition in Germany" portal the following requirements exist to become a self-employed hairdresser or mechanic: "Register of Crafts and Trades (the so-called Handwerksrolle) is mandatory if you wish to become self-employed in this occupation. For this, your foreign qualification usually must be recognised as being equal to the corresponding German master craftsman qualification." According to the "Wir Gründen in Deutschland" portal, being allowed to start a company in these two fields in Germany also requires a full recognition of formal qualifications of the person wishing to do so.

Paperwork is also often not available at all with the non-formalised part of human capital, often referred to as soft skills.⁷⁸ According to Collett and Zuleeg, “while technical skills and professional qualifications are important, translating proficiency into economic output requires soft skills.”⁷⁹ When speaking about their journeys to Germany, many interviewees described resilience, dynamism and ingenuity in their actions and experiences. Many Syrian refugees for example had worked in Turkey before to support an onwards journey or to send money back home, which shows ability to adapt and find solutions. As it is complicated to work legally in Turkey due to a precarious status of Syrian refugees,⁸⁰ in many instances both the soft skills and hard skills gathered are left undocumented and are hence not formally documented and transferrable. Besides the most recent work experience abroad in Turkey, many refugee respondents included in this study mentioned previous internships and jobs they had completed abroad. This is further proof of the international ties which characterise part of the incoming refugees from Syria.

The refugees are very motivated to work. They arrive here (note: reception centre) and after one-two days already ask about employment possibilities. They want to know how they can work, if they can help out. Also as volunteer. Just to have something to do.
(RN, non-refugee stakeholder)

From my study in Kiel and from the work of Bakker et al.⁸¹ in the Netherlands, it becomes apparent that most refugees are very motivated and determined to “make a success of their life” in the new host country. Not only because return is not an option,⁸² but as the refugee respondents in Kiel summarised it “to not just sit around and wait.” Motivation as a soft skill is invaluable for integration into the labour market and can reassure the host state that refugees have potential.

Adjusted social capital and structural capacity

Besides human capital, social capital⁸³ also influences refugees’ ability to act. Findings suggest that even if the traditional ties of family, friends and ethnic groups become limited when displaced, new forms of social capital emerge through relationships with volunteers and workers at reception centres. In almost all instances of successful attainment of work (such as volunteering for a language course or doing mini-jobs around the reception centres and temporary housing), refugee respondents named these connections as critical. The individual effort by a few local contacts to overcome structural constraints such as language insufficiency and information gaps whilst looking for work also became evident from the interviews with non-refugee respondents.

Returning to structural constraints and enablers, the absorption capacity of the receiving society must be mentioned. According to Jacobsen, “a receiving community’s absorption capacity is defined as the extent to which the community is willing and able to absorb an influx of refugees.”⁸⁴ Ability signifies the factual capability of incorporating refugees into the society and economy, whilst willingness refers to the perception of one’s capabilities. Willingness, therefore, can be limited by the presence of fear, racism and antagonism in the society even if the economic capacity to handle the influx of additional refugees has been assured. In general, the narrative about “a welcoming North-Germany”

⁷⁸ Elizabeth Collett and Fabian Zuleeg, “Soft, Scarce, and Super Skills”; Fitz-enz, *The ROI of Human Capital*; Bourdieu, “The Forms of Capital,” 2nd ed. New York: AMACOM, 2009.

⁷⁹ Collett and Zuleeg, “Soft, Scarce, and Super Skills,” 12.

⁸⁰ Baban, Ilcan, and Rygiel, “Syrian Refugees in Turkey.”

⁸¹ Bakker, Dagevos, and Engbersen, “Explaining the Refugee Gap,” 4.

⁸² Ibid.

⁸³ Social capital refers to available networks and ties within any given society, and benefits individuals accrue through membership within a group (Pierre Bourdieu, 2011).

⁸⁴ Jacobsen, “Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes,” *International Migration Review* 30, no. 3 (1996): 666.

emerged from the interviews. The aforementioned helpful connections were available for most of the interviewed refugees. But not all newcomers benefit from it. Large parts of the German society are still closed off, literally and figuratively, leading many refugees to remain in ethnic enclaves.⁸⁵ Being stuck in the pre-existing networks was said to contribute to the pull factor of the informal market. Even though many refugee respondents recalled success stories of earlier refugees in regular employment, the dominant view was that it would be very easy to find work on the informal market.

Discussion

The magnitude of the changes the current refugee influx brings to the German labour market is yet to be seen. In regard to incorporation into the German labour market, many Syrian refugees with higher capabilities follow the path of voluntary migrants, and thus challenge the prevailing structures. They are reinventing themselves as workforce by challenging the “limited assumption” and expect the policy-makers to follow.

But I think the government here wants us to educate us, not only to work in factories or something. They want to make educated people, because I think eventually most of them will be Germans. They will build a new Germany. Like for me - I am thinking about it like that - I am living in Germany, I will learn this or that and eventually this will go to Germany. This is the positive role for the government. (BM, refugee, Syria, male)

It is common that the early investments made into individual capital in the new setting are done by refugees themselves.⁸⁶ Temporality of refugees’ situation discourages host states from investing in the restoration of human capital and thereby refugees’ agency.⁸⁷ As stated by Mincer and Ofek⁸⁸, this is a mistake because “repairing” previously eroded human capital is less costly than the accumulation of new human capital. The first step to rebuild and employ existing capital would be to recognise the educational and professional qualifications of refugees. Delimiting refugees’ self-worth by forcing them to start over is the biggest reason for staying outside of the labour market for so long.

This does not, however, mean that all refugees will be able to start working the moment their credentials are officially checked and approved. In contrast to what is often portrayed, the incoming group of refugees is very heterogeneous. Considering the members of the group as identical has led to a one-dimensional refugee protection policy which acts as a structural constraint. Tailored legislation that takes differences in formal and informal educational and professional background into account could improve integration by letting those who can access the labour market immediately do so, whilst offering additional help to those who need it. Currently high levels, as well as low levels, of human capital act more as a constraint than an enabler.

Lack of certain professional and educational backgrounds is evident from the data and could be attributed to the social contexts back home. For example, university studies in social sciences and professions in those fields were rarely mentioned by refugee respondents. According to the Syrian respondents, it was more prestigious and forward-looking to embark on a natural sciences path instead of social sciences. In order to build a more diverse community that can one day assist in building up the origin country, there should be a conscious choice to encourage refugees to take up social sciences. Also, more

⁸⁵ Navjot K. Lamba, “The Employment Experiences of Canadian Refugees,” *Canadian Review of Sociology/Revue Canadienne de Sociologie* 40, no. 1 (July 14, 2008): 45–64: 47.

⁸⁶ Within my sample, the majority had taken steps to learn German beyond mandatory courses and had managed to gather local employment practise in the form of voluntary work or a mini-job.

⁸⁷ Bakker, Dagevos, and Engbersen, “Explaining the Refugee Gap,” 4.

⁸⁸ Mincer and Ofek, “Interrupted Work Careers: Depreciation and Restoration of Human Capital,” 4.

attention should be focused on getting women into education or training, and thereafter to having professional careers.

Since language skills are often too low for finding regular employment, but the skills and motivation to work exist, self-employment would be the way to avoid deskilling and aid-dependency. Survey respondents and interviewees indicated that there are many former business-owners and entrepreneurs within the group of refugees in Kiel who could start new ventures in the host country if given adequate support. This can be in the form of changes to legislation and to the procedure of recognition of qualifications, but also by providing possibilities for entrepreneurial refugees to present and cultivate their ideas at workshops or innovative spaces. In general, local work experience of any sort is likely to enhance agency.⁸⁹ Furthermore, many refugee respondents mentioned that they also worked in sales and services in various other countries along the way to Germany. This wide range of work experience, and the informal skills that it suggests, should also be considered.

The experience of interviewees also shows that what matters to integration into local labour market are local connections. Mostly people who have chosen to interact with refugees are the ones who support the creation of such networks, but for wider effects the rest of society should also be engaged. One way to address this would be giving potential employers and future colleagues the option to partake in intercultural trainings.

Germany is slowly moving towards a more utilitarian stance in regard to refugees' settlement. Self-interest is shown in the amount of measures introduced with the new Integration Law of 2016 to foster refugees' incorporation into the labour market. This could be taken a step further if the non-negotiable German proficiency requirement would be more lenient, especially in positions where English, Arabic, Farsi etc. are sufficient. However, as both refugees and non-refugee respondents considered language to be the most important factor of integration and gaining employment, it is unlikely that this will change.

This study set out to produce research with a transformative goal. With the help of perceptions gathered from refugee and non-refugee respondents, a picture of the factors that influence labour market incorporation of refugees in Germany has emerged. This, in turn, can inform reform of integration and labour policies.

Conclusion

Even though the right to work is included in both the Refugee Convention⁹⁰ and the Universal Declaration of Human Rights [Article 23],⁹¹ multiple barriers exist for refugees to exercise this right.⁹² In the light of the latest movement of refugees to Europe, many migration scholars⁹³ call for a shift in asylum policies and increased incorporation of refugees into local labour markets. Nevertheless, previous experience shows that integrating refugees is a far more complicated task. Not only is this due to limited capabilities of refugees that keep them out of the workforce on average much longer than other immigrants, but the changing of immigration policies in general tends to be politically undesirable. Therefore, the determinants needed to be studied in order to

⁸⁹ Gary S. Becker, *Human Capital: A Theoretical and Empirical Analysis with Special Reference to Education*. (New York: Columbia University Press, 1964)

⁹⁰ United Nations, *Convention and protocol relating to the status of refugees*.

⁹¹ United Nations, *Universal Declaration of Human Rights*.

⁹² Wirth, Defilippis, and Therkelsen, "Global Refugee Work Rights Report: Taking the Movement from Theory to Practice," 2014, 11–13.

⁹³ Betts et al., *Refugee Economies: Rethinking Popular Assumptions*; Betts, "What If We Helped Refugees to Help Themselves?"; Betts and Collier, "Help Refugees Help Themselves: Let Displaced Syrians Join the Labour Market"; Papademetriou, "Beyond Asylum: Rethinking Protection Policies to Meet Sharply Escalating Needs"; Aleinikoff, *From Dependence to Self-Reliance: Changing the Paradigm in Protracted Refugee Situations*; Long, *From Refugee to Migrant? Labor Mobility's Protection Potential*.

answer the research question posed in the beginning are in the line of social structure and refugee agency.

Data for the article was collected in Kiel, Germany through a multilingual survey and in-depth interviews with refugees and non-refugee respondents. Findings suggest that in contrast to what is often portrayed, refugees arriving to Germany exhibit a substantial degree of heterogeneity in human capital. Multiple backgrounds as well as multiple future trajectories influence how much determination refugees show in their actions, and whether they challenge the structural status quo. Some adopt “limited agency” as a survival strategy due to past experience and future uncertainty. Others frame a different narrative by drawing attention to their motivation, resilience and potential for success, refusing the narrative of the refugee as a victim of circumstance.

Nevertheless, data shows that the structural status quo, i.e. the contemporary asylum policy’s view of refugees as outside the workforce, still dominates. Furthermore, assumed temporality of refugees’ situation discourages host states from investing in the restoration of refugee’s social and human capital and thereby refugees’ agency. Two of the biggest obstacles are rigid language requirements and complicated recognition of foreign qualifications. Both extend the time refugees spend outside the labour market and hinder the transfer of potential human capital from origin to host country.

Based on the sample, the following recommendations can be formulated: (1) Germany should facilitate the recognition of refugee’s human capital (both formalised and non-formalised) and its transfer opportunities; (2) legislation should be tailored to account for heterogeneity of the refugees with regards to their skills; (3) and employers should be further engaged to provide employment for refugees.

Germany’s former president Joachim Gauck has described the refugees that reach Europe (and Germany in particular) as highly mobile, flexible, multilingual, motivated, and willing to take risks.⁹⁴ Considering that one of the main questions concerning labour market policy making in Europe is how to acquire human capital in the current demographic setting, the answer would be to stop losing the human capital already under one’s nose.

This study offers a unique insight into the economic lives of refugees through their own perceptions on the structural and agency-related constraints and enablers they face in attempting to integrate to the German labour market. By asking refugees to reflect on these implications, new information for policy-makers can be acquired. This also helps overcome the assumptions about refugees being mere victims, and incapable of carrying on economic lives in the host country.

⁹⁴ Joachim Gauck, *Berliner Symposium Zum Flüchtlingsschutz (Speech)*. 30th June 2014, Berlin <http://www.bundespraesident.de/SharedDocs/Reden/DE/Joachim-Gauck/Reden/2014/06/140630-Fluechtlingssschutz.html>

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“A dignified standard of living” for asylum-seekers? An analysis of the UK’s labour market restrictions for asylum-seekers

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Abstract

This article firstly explores how the Refugee Convention “implicitly” grants asylum-seekers the right to work. It then analyses core international human rights standards, thereby identifying that the right to work applies to everyone regardless of their legal status. It then moves on to illuminate that the EU asylum acquis, particularly the Reception Conditions Directive, frames the right to work strongly linked to human dignity and to a dignified standard of living, *inter alia*. The article further explores legal and administrative barriers within the UK that prevent asylum-seekers from participating in paid work. Drawing on the case of Zimbabwean asylum-seekers in the UK, the article argues that the absolute denial of their right to work implies a lack of full recognition of their human dignity and a “dignified standard of living.”

Keywords: Asylum-Seekers, Right to Work, Refugee Convention, Reception Conditions Directive, Human Dignity, Dignified Standard of Living.

Introduction

The right to work is a fundamental human right based on the international and regional legal framework in the Universal Declaration on Human Rights (UDHR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the European Social Charter, *inter alia*. These instruments frame the right to work as essential for realising other rights and as an inherent part of the human dignity and an adequate standard of living. In addition, the 1951 Convention Relating to the Status of Refugees and its 1967

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Protocol³ (hereinafter, the Refugee Convention), sets forth specific provisions relating to employment rights of refugees.

The focus of this article is access to the labour market for asylum-seekers. It begins by providing an overview of international standards that could be invoked to ensure access to the labour market. Article 17 of the Refugee Convention on wage-earning employment confers the right to work upon refugees “lawfully staying” in the host territory, which the Office of the United Nations High Commissioner for Refugees (UNHCR) interprets as inclusive of “asylum-seekers in a state where the asylum procedure is unduly prolonged.”⁴ Likewise, most human rights instruments protect the right to work, which entails the freedom to gain a living by work freely chosen or accepted, on a non-discriminatory basis. To this extent, the UN Committee on Economic, Social and Cultural Rights (CESCR) has deemed the right to work applicable to everyone, regardless of their legal status.

Beyond the Refugee Convention, this article analyses the legal basis of the right to work for asylum-seekers under the European Union (EU) asylum *acquis*.⁵ The EU’s Reception Conditions Directive 2003/9/EC⁶ and the recast Reception Conditions Directive 2013/33/EU⁷ lay down standards for the reception of asylum applicants, thereby providing them with certain necessities that guarantee them a “dignified standard of living.”⁸ In so doing, the latter states that access to the labour market should be extended to asylum-seekers if after nine months following their initial asylum application they have not received a decision on its merits.⁹ This section is followed by a brief assessment of the UK’s laws as they pertain to the right to work for asylum-seekers. While the UK has exercised its right to opt-out of the recast Reception Conditions Directive, it remains bound by the prior version of the Directive,¹⁰ which gives asylum-seekers the right to work after twelve months of waiting for status determination,¹¹ as well as by the Refugee Convention and other human rights instruments.

The article then draws on the case of Zimbabwean asylum-seekers in the UK,¹² exploring the extent to which the restrictions imposed by the UK’s Immigration Rules

³ *Convention relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137 (entered in force 22 April 1954). Amended by Protocol relating to the Status of Refugees, 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967) (hereinafter referred to as the Refugee Convention.)

⁴ UNHCR/Council of Europe (2012) “Conference Report: Joint UNHCR / Council of Europe Colloquium on the Right to Work for Refugees” under the Auspices of the Albanian Chairmanship of the Committee of Ministers, 27 September 2012, Strasbourg, France, cited in Council or Europe, Parliamentary Assembly, Committee on Migration, Refugees and Displaced Persons, *Refugees and The Right to Work*, Doc. 13462, 24 March 2014, at para. 15.

⁵ Since 1999, the EU has adopted laws to tackle asylum issues in the EU with the ultimate aim of establishing a Common European Asylum System with harmonised rules, procedures and conditions. These EU asylum body of laws are known as the asylum *acquis*.

⁶ *Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers*, OJ L 31/18, 06 February 2003 (hereinafter referred to as the Reception Conditions Directive.)

⁷ *Directive 2013/33/EU of the European Parliament and the Council of 26 June 2013 on laying down standard for the reception of applicants for international protection (recast)*, OJ L 180/96, 29 June 2013 (hereinafter referred to as the recast Reception Conditions Directive.)

⁸ Recast Reception Conditions Directive, Recital 11; Reception Conditions Directive, Recital 7.

⁹ Recast Reception Conditions Directive, Article 15.

¹⁰ House of Lords, “European Union opt-in decision: Asylum measures: Written statement - HCWS34.” <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-12-16/HCWS374/>

¹¹ Reception Conditions Directive, Article 11(2).

¹² This case study is based on data from a study entitled “A Living Death”: Zimbabwean Migrants in the UK who are Forced Apart from their Children,” which was conducted by the second author between October 2008 and January 2010. It employed ethnographic research methods, particularly in-depth interviews and participant observations with nineteen participants (fourteen mothers and five fathers) who had left their children behind when they fled their country in the context of the on-going political challenges. All names used in this article are pseudonyms in order to protect participants’ identities.

guarantee them a “dignified standard of living.” The Zimbabwean case is particularly interesting, as it was conducted at a period when the Home Office had temporarily suspended the forced removal of failed asylum-seekers to Zimbabwe, as an acknowledgement of the harm that deportees increasingly faced on return.¹³ However, as the second author has argued elsewhere, “to be afforded partial rights, that is, the right to continue to physically remain in the UK but not the right to work...has adverse effects on asylum-seekers lives.”¹⁴ The article thus argues that asylum-seekers’ access to work is crucial to preserve their human dignity and shows that challenges for policy and legal reform remain.

Legal basis for the right to work for asylum-seekers under international and EU law

This section does not seek to provide a full analysis of the law and practice in relation to the right to work for asylum-seekers in all contracting states to the Refugee Convention. Rather, it provides an overview of how the Refugee Convention, international human rights instruments and treaty monitoring bodies articulate the right to work, particularly for asylum applicants, thus assisting them to assert their right to work in practice. In so doing, it also identifies some overall trends in the practice of the EU Member States.

The right to work for asylum-seekers under the Refugee Convention and other human rights instruments.

The Refugee Convention contains specific provisions (Article 17-19 and Article 24) on access to work and employment rights. The right to work, however, depends on the individual’s level of attachment to the country of asylum. Article 17 of the Refugee Convention on wage-earning employment grants those “lawfully staying” in the territory of the host State the right to work. Article 24 provides the latter group for the same treatment as that accorded to nationals in respect of the rights relating to employment: wages, working conditions, social security, benefits and compensations.

The term “lawfully staying” has caused some controversy, as some States have exhibited a restrictive approach, thereby interpreting this to exclude asylum-seekers.¹⁵ A restrictive approach to the wording of the Refugee Convention, however, departs from the aims of the drafters of the Convention.¹⁶ In this regard, UNHCR and the Michigan Guidelines on the Right to Work argue that a lawful stay would also include asylum-seekers in a State where the asylum procedure is “unduly prolonged.”¹⁷ The Michigan Guidelines further state that when contracting States are unable or unwilling to remove an individual, then his or her presence “may be regarded as lawful for the purposes of the Refugee Convention.”¹⁸

¹³ UK Immigration Justice Watch (2016), accessed February 10, 2016 <https://ukimmigrationjusticewatch.com/2016/12/13/valid-passport-with-the-home-office-zimbabweans-with-no-claims-still-very-much-removable-from-the-uk/>

¹⁴ Roda Madziva, “Transnational parenthood and forced migration: the case of asylum-seeking parents who are forcibly separated from their families by immigration laws,” in *Families, Relationships and Societies: An International journal of research and debate*, 5(2): 281-297.

¹⁵ “The Michigan Guidelines on the Right to Work” 31 *Michigan Journal of International Law* 289 (2010). The Guidelines reflect the consensus of all the participants at the Fifth Michigan Colloquium on Challenges in International Refugee Law, held in Michigan, USA, on November 13–15, 2009, para. 15. (hereinafter referred to as the Michigan Guidelines)

¹⁶ The drafters of the Convention recommended contracting States to exceed the Convention’s contractual scope to grant the same treatment to those not expressly covered by the terms of the Refugee Convention. See Recommendation E of the Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951.

¹⁷ See above footnote 2. See above footnote 13, 298.

¹⁸ See above footnote 13, 298.

The Refugee Convention refers to the UDHR in its preamble and therefore must be read together with human rights treaties¹⁹ to best protect the individual rights-holder. This is required by the duty to interpret the Refugee Convention according to its purpose and object,²⁰ that is, to assure refugees “the widest possible exercise” of the rights and freedoms granted by the Refugee Convention.²¹ It is therefore argued that those interpreting the Refugee Convention must adopt a holistic approach to its terms thereof,²² thereby referring to human rights standards when elucidating a coherent understanding of its provisions.

The corpus of international human rights law grants all individuals the right to work. In so doing, work is framed as a foundation for a life with dignity.²³ Article 23 of the UDHR²⁴ stipulates that “[e]veryone has the right to work, to free choice of employment [...] and to protection against unemployment.” Although the UDHR does not have the force of law, the right to work has been codified into international human rights treaties thereby making it effectively binding on States that have ratified them.²⁵ Particularly, Article 6 of the ICESCR protects everyone’s opportunity to gain a living by work which he or she freely chooses.

In accordance with the provisions of the ICESCR and the UDHR, the right to work “derive[s] from the inherent dignity of the human person”²⁶ and is linked to a minimum standard of living.²⁷ The CESCR, in its general comment on the right to work, provides that:

The right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity. Every individual has the right to be able to work, allowing him/her to live in dignity.²⁸

The CESCR, in its general comment on the right to just and favourable conditions of work, further interprets that remuneration must be sufficient to enjoy, *inter alia*, social security and an adequate standard of living.²⁹ As such, scholars have interpreted that all individuals “should be able to enjoy their basic needs under conditions of dignity,” without “depriving themselves of their basic freedoms.”³⁰

In addition, the principle of non-discrimination enshrined in Article 2(2) of the ICESCR, whereby all within State parties’ jurisdictions are protected on a non-discriminatory basis, applies to the right to work (Article 6). States parties, thus, must adopt appropriate measures which ensure all individuals’ realisation of the right to work³¹ based

¹⁹ See, for instance, James C. Hathaway, *The Rights of Refugees Under International Law* (Cambridge: Cambridge University Press, 2005).

²⁰ Vienna Convention of the Law of Treaties, 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980), Articles 31-33.

²¹ Refugee Convention, Preamble.

²² *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225, para. 253.

²³ Economic, social and cultural rights “derive from the inherent dignity of the human person.” See, *Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) (ICESCR), Preamble.

²⁴ Universal Declaration of Human Rights, 10 December 1948, GA Res 2177, UN Doc A/810 (UNDHR).

²⁵ United Nations, “The foundations of International Human Rights Law”, <http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/>

²⁶ UDHR, Article 23; See also ICESCR, Preamble.

²⁷ UDHR, Article 25; ICESCR, Article 11.

²⁸ CESCR, *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, 6 February 2006, E/C.12/GC/18, para. I.

²⁹ CESRC, *General Comment No. 23 (2016) on the Right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)*, 27 April 2016, E/7C.12/GC/23, para. I8. Similarly, the Michigan Guidelines argues for an indivisible interrelation between the right to work and the right to an adequate standard of living, among others. See above footnote 10, 293.

³⁰ Asbjørn Eide, “The Right to an Adequate Standard of living Including the Right to Food,” in *Economic, Social and Cultural Rights, A Textbook*, ed. Asbjørn Eide et al. (Dordrecht, Boston, London: Nijhoff Publishers, 1995) at 89-90. See also, Hathaway, *Refugees*, 466.

³¹ ICESCR, Article 6.

on “non-discrimination and equal protection of employment.”³² To this extent, the CESCR has argued that, under the auspices of the ICESCR, the right to work should apply to everyone including asylum-seekers, regardless of their legal status.³³

The Council of Europe has also adopted regional legal instruments that guarantee the right to work to those within Member States’ jurisdictions, particularly, in the form of the European Social Charter. The Council of Europe has framed the right “to earn [a] living in an occupation freely entered upon” as a fundamental human right applicable to everyone.³⁴ At the core of the right to work lies the improvement of the “standard of living” and “social well-being” of Member States’ populations.³⁵ In this respect, the European Committee on Social Rights (ECSR) interprets that the right to work is of “fundamental importance” since the effective enjoyment of other rights set forth by the European Social Charter is “inconceivable unless the right to work is guaranteed first.”³⁶

The Parliamentary Assembly of the Council of Europe, in a resolution of 2014, provides that the right to work “is essential for exercising other human rights and preserving human dignity.”³⁷ For asylum-seekers, it further emphasises that the right to work is particularly important as “it can enhance their sense of dignity, self-respect and self-worth.”³⁸ Thus, it argues that it “makes sound economic and social sense to allow asylum-seekers to work”³⁹ and calls upon Member States of the Council of Europe to ensure that asylum-seekers gain access to the labour market.⁴⁰ Similarly, UNHCR underlines that allowing asylum-seekers access to the labour market enhances their dignity and self-respect.⁴¹

Yet, although the European Social Charter protects all individuals within a Member State’s jurisdiction, it remains unclear whether its provisions apply to asylum-seekers. Nonetheless, the protection afforded by the right to work is fundamentally linked to a minimum standard of living and to human dignity. To this extent, the ESCR has reasoned that rights that are linked to human dignity have to be granted to all people, including asylum-seekers, even if their claims for asylum are rejected.⁴²

³² See above footnote 27, para. 3.

³³ CESCR, *General comment No 20: Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, E/C.12/GC/20, para. 30.

³⁴ Council of Europe, *European Social Charter* (revised), Strasbourg, 3.V. 1996, *European Treaty Series*, no. 163, Part I (1) (hereinafter referred to as the European Social Charter.)

³⁵ *Ibid.*, Preamble.

³⁶ Council of Europe, European Committee of Social Rights, *Conclusion I*, First supervision cycle, 1969-1970, para.13.

³⁷ Council of Europe, Parliamentary Assembly, *Refugees and the Right to Work*, Resolution 1994 (2014), para. 1.

³⁸ *Ibid.*, para. 2.

³⁹ *Ibid.*, para. 7.

⁴⁰ *Ibid.*, para. 8.

⁴¹ UNHCR, Global Consultations on International Protection, 3rd Meeting, *Protection of Asylum-Seekers, including standards of Treatment, in the context of individual systems*, 4 September 2011, EC/GCoI/17, para. 13. See also Alice Edwards, 2006, “The Right to Work for Refugees and Asylum Seekers: A comparative view,” United Nations High Commissioner for Refugees Discussion Paper No. 1/2006 (UNHCR, 2006), at 8.

⁴² See ECSR, *International Federation of Human Rights Leagues (FIDH) v. France*, Complaint No. 14/200, Decision of 3 November 2004; see also ECSR, *Defence for Children International v. the Netherlands*, Complaint No. 47/2008, Decision of 29 October 2009; In ECSR, *Defence for Children International v. Belgium*, Complaint No. 69/2011, Decision of 23 October 2013, the Committee offered a more substantiated reasoning. It established that its interpretation only applies with regard to “those provisions whose fundamental purpose is closely linked to the requirement to secure the most fundamental human rights.”

The right to work for asylum-seekers: Law and practice under the EU Asylum Acquis

Pursuant to the Treaty on the Functioning of the European Union (TFEU),⁴³ the EU was entrusted with developing a common policy on asylum that strives for the harmonisation of the internal asylum policies across EU Member States. Through the implementation of a Common European Asylum System (CEAS,) the EU aimed to establish a system in which standards of living for applicants of international protection⁴⁴ and guarantees for beneficiaries of protection⁴⁵ were under equivalent conditions in all EU Member States.

Employment rights for asylum applicants are addressed by the EU asylum acquis, particularly in the Reception Condition Directive,⁴⁶ and in its revised version of 2012.⁴⁷ In this directive, such employment rights are identified as one of the common standards of living that respect human dignity⁴⁸ and guarantee “a dignified standard of living.”⁴⁹ Whilst under Article II of the Reception Conditions Directive EU Members States shall grant asylum-seekers access to the labour market no later than twelve months after they lodge their asylum application, the recast Reception Conditions Directive has reduced that period of time to nine months – provided the delay in deciding on the merits of the claim cannot be attributed to the claimant and the appeal process is ongoing.⁵⁰

The two versions of the Reception Condition Directive, as stipulated by its provisions,⁵¹ must be applied and interpreted in reference to the rights and principles recognised in the Charter of Fundamental Rights of the European Union (hereinafter, the EU Charter.)⁵² On this basis, they seek “to ensure full respect for human dignity,”⁵³ as to fulfil the terms of Article I of the EU Charter, which provides that “[h]uman dignity is inviolable” and therefore “[i]t must be respected and protected.” Moreover, the recast Reception Conditions Directive has to be applied on a non-discriminatory basis, especially on grounds of nationality.⁵⁴ Although not directly linked to Article I of the EU Charter, Article 15 of the EU Charter grants the right to choose one’s occupation, the right to engage in work and the freedom to seek employment.⁵⁵ Yet, in UNHCR’s view, access to the latter rights might be required by the obligation to protect and respect human dignity under Article I of the EU Charter, “since they are of paramount importance for any individual who wishes to be given the chance to become self-sufficient and to be able to participate in his or her host society.”⁵⁶

The TFEU may also aid in framing the content of Article 15 of the EU Charter. Particularly, Article 9 of the TFEU establishes that the EU,

⁴³ Consolidated versions of the *Treaty on European Union and the Treaty on the Functioning of the European Union*, OJ C 326, 26/10/2012 P. 0001 – 0390, Article 78 (TFEU).

⁴⁴ See above footnotes 4 and 5.

⁴⁵ Directive 2011/95/EU (Previously Directive 2004/83/EC) of the European Parliament and of the Council, 13 December 2011, on standards for the qualification of third country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), OJ L 337/9, 20 December 2011 (hereinafter referred to as the recast Qualification Directive).

⁴⁶ See above footnote 4.

⁴⁷ See above footnote 5.

⁴⁸ Reception Conditions Directive, Article 5; recast Reception Conditions Directive, Article 35.

⁴⁹ Reception Conditions Directive, Recital 7; recast Reception Conditions Directive, Recital II.

⁵⁰ Recast Reception Conditions Directive, Article 15(3)

⁵¹ Reception Conditions Directive, Recital 5; Recast Reception Conditions Directive, Recital 9.

⁵² European Union, *Charter of Fundamental Rights of the European Union*, OJ C 326/391, 26 October 2012.

⁵³ Reception Conditions Directive, Recital 5; recast Reception Conditions Directive, Recital 35.

⁵⁴ Recast Reception Conditions Directive, Preamble, para. 35.

⁵⁵ *Charter of Fundamental Rights of the European Union*, Article 15.

⁵⁶ Madeline Garlick (Head of Policy and Legal Support Unit, UNHCR Bureau for Europe), “Social rights in European Union Legislation” in UNHCR/Council of the Europe’s Department of the European Social Charter, *Round Table on the Social Rights of Refugees, Asylum-Seekers and Internally Displaced Persons: A Comparative Perspective*, 7 December 2009, Strasbourg.

[i]n defining and implementing its policies and activities [on asylum,]⁵⁷ [...] shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion [...] and protection of human health.

The TFEU further states that the promotion of human health includes the adoption of measures that prevent “mental illness.”⁵⁸

Overall, EU Member States appear to have contemplated a nexus between employment and the above-mentioned guarantees. This approach is also adopted by the Michigan Guidelines, as they provide that work is interconnected with, and is indivisible from, “the highest attainable standard of physical and mental health” and “the right to social security.”⁵⁹ The Michigan Guidelines further advance that state policy and domestic laws that lead to destitution through denial of access to social protection and/or access to employment might violate the absolute prohibition on inhuman or degrading treatment. Although the Guidelines do not elaborate further on this assertion, some domestic courts have ruled that measures that disregard human dignity, such as the denial of access to employment, might reach the threshold of serious harm.⁶⁰

Aiming at promoting the integration and self-sufficiency of asylum-seekers, the Commission has encouraged EU Member States “to grant [them] access to the labour market [...] as early and as broadly as possible.”⁶¹ Among EU Member States, it is common practice to grant access to employment to asylum-seekers after a certain period of time following their initial asylum application.⁶² Some EU Members States grant asylum-seekers the right to work earlier than the nine months stipulated by the recast Reception Conditions Directive. For example, Sweden allows asylum applicants to work immediately following the lodging of the asylum application.⁶³ Similarly, Portugal grants asylum-seekers access to the labour market as soon as the national asylum adjudicators find the application for asylum admissible, which takes up to twenty days.⁶⁴ In Belgium, Denmark, Finland, Italy, Poland and Spain, an asylum-seeker is permitted to work six months after filing the asylum application.⁶⁵ In contrast, other EU Members States only allow them access to employment under administrative restrictions, and with limitations on the nature of employment they may seek. For example, access to the labour market for asylum-seekers in Austria, Greece, France, and Germany is generally only permitted in jobs that cannot be filled by a member of the domestic labour force. Likewise, in the United Kingdom, although asylum-seekers have access to the labour market twelve months after making their asylum application, they are only allowed to take up high skilled jobs.⁶⁶ It is these legal restrictions to which we now turn.

⁵⁷ Article 9 of the TFEU is codified under Title II on Provisions having general application.

⁵⁸ TFEU, Article 168

⁵⁹ Michigan Guidelines, see above footnote 13, 293 and para. 22.

⁶⁰ See, for instance, *Chan v Minister for Immigration and Ethnic Affairs* [1989] 168 CLR 379, paras. 429-431; See also AC (*Egypt*) [2011] NZIPT 8000.1 (25 November 2011) and *NBFP v Minister for Immigration, Multicultural and Indigenous Affairs* [2005] FCAFC 95.

⁶¹ European Parliament, “Notice to Members – Petition 1690/2012, by Regine Schlacht (Austrian), on vocational training for asylum-seekers,” 29 November 2013.

⁶² For an overview of the national practice in 24 Member States with regard to the right to work for asylum-seekers, see European Migration Network (EMN), “Ad-Hoc Query on access to the labour market for asylum seekers,” 9 April 2013.

⁶³ Asylum Information Database (AIDA).

⁶⁴ *Ibid.*

⁶⁵ See for instance Migration Watch UK, “Asylum Seekers and the Right to Work in the European Economic Area,” accessed October 10, 2013 <https://www.migrationwatchuk.org/briefing-paper/316>

⁶⁶ UK Immigration Rules, Paragraph 360.

Access to the labour market for asylum-seekers in the UK

Legal Overview: Asylum-seekers and the right to work in the UK

In accordance with Articles 1 and 2, and Article 4(a) (1) of Protocol No 21 on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, the UK has exercised its right to opt-out of the recast Reception Conditions Directive.⁶⁷ Yet, the UK remains bound by the prior Reception Conditions Directive and hence must ensure that asylum-seekers access the labour market no later than twelve months after their initial asylum application.⁶⁸

The provisions of the Reception Conditions Directive have been transposed into the UK Immigration Rules. Paragraph 360 of the Immigration Rules thus extends the right to work to asylum-seekers who have not received a decision on their initial asylum claim within twelve months, as well as to failed asylum-seekers who have made further submissions on asylum grounds but who have not received a decision after twelve months.⁶⁹ However, the right to work only applies when applicants are not responsible for the delay in decision-making.

The UK competence to legislate on asylum is conditional on compliance with the provisions of the Refugee Convention⁷⁰ as well as to human rights standards, including those analysed in section two of this article.⁷¹ Article 6 of the Refugee Convention exempts refugees from requirements that they would have had to fulfil for the exercise of their rights insofar that they are not able to meet these requirements because of their particular situation as refugees. Accordingly, after the adoption of the Reception Conditions Directive, the UK allowed asylum-seekers to access the labour market without restrictions after the set time-period.

However, in 2010 the Immigration Rules incorporated a limitation in that asylum-seekers are required to apply for permission to work.⁷² If granted, such applicants are only allowed to take up a job that is included within the shortage occupation list.⁷³ Such employment includes only high skilled jobs such as “skilled classical ballet dancers who meet the standard required by internationally recognised United Kingdom ballet companies,” “nuclear medicine technologists” and “overhead lines workers in the electricity transmission and distribution industry,” *inter alia*.⁷⁴ Moreover, even those who hold high university qualifications are still required to overcome other practical barriers, such as appropriate language level, recognition of their qualifications, references from local employers, acquisition of skills that are required by the UK labour market, etc.⁷⁵ Accordingly, the likelihood of asylum applicants being able to participate in the labour

⁶⁷ Recast Reception Conditions Directive, Recital 33.

⁶⁸ Reception Conditions Directive, Article II.

⁶⁹ The Home Office originally considered that refused asylum-seekers who submitted a fresh asylum claim were not covered by the Directive. However, the UK Supreme Court ruled against this policy in *R (on the application of ZO (Somalia) and others) (Respondents) v Secretary of State for the Home Department*, [2010] UKSC 36.

⁷⁰ See Article 63 TEU and Article 78(1) TFEU. UK law, both as a matter of legislation and of judicial approach, it appears to be the key legal instrument for the protection of refugees. See, for instance, *Fornah v SSHD* [2007] 1 AC 412; and *FA (Iraq) v SSHD* [2011] UKSC 22 3 CMLR 23, paras. 46-47.

⁷¹ See recast Qualification Directive, Recital 34; Reception Conditions Directive, Recital 5; Recast Reception Conditions Directive, Recital 35.

⁷² Immigration Rules, Paragraph 360. See also Melanie Gower, “Should asylum-seekers have unrestricted rights to work in the UK?” *House of Commons Library* 1908 (2016): 5, accessed December 10, 2016.

⁷³ See, Immigration Rules appendix K: Shortage Occupation List, accessed December 9, 2016 <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-k-shortage-occupation-list>

⁷⁴ *Ibid.*

⁷⁵ For an analysis of labour market support policies for asylum-seekers and refugees, see European Parliament, Directorate-General for Internal Policies, Policy Department A: Economic and Scientific Policy, “Labour Market Integration of Refugees: Strategies and good practices,” 2016.

market is reduced.⁷⁶ Thus, the enjoyment of their right to work becomes de facto unfeasible.

In *R (Rostami) v Secretary of State for the Home Department*, the UK High Court addressed the restrictions that prevent asylum-seekers from accessing the labour market.⁷⁷ The Court ruled that interpreting the terms of the Reception Conditions Directive together with Article 15 of the EU Charter (freedom to choose an occupation and right to engage in work) does not create a general right to work for asylum-seekers, thereby resting on the assumption that Article 15 of the EU Charter “was not intended to and did not confer on non-EU citizens any discrete right to work.”⁷⁸ Whilst the Court of Justice of the European Union (CJEU) has recognised that the fundamental right to human dignity is a general principle of EU law,⁷⁹ the UK High Court held that access to the labour market for asylum-seekers must be with the EU principle of prohibition to “[jeopardise] the effectiveness of the positive right to access to the labour market” to EU nationals.⁸⁰ On the contrary, for instance, the German Constitutional Court has reasoned that human dignity may not be relativised by migration-policy considerations.⁸¹

According to the Reception Conditions Directive, the UK’s asylum policies should seek to ensure the full respect for human dignity⁸² and should lay down minimum standards that guarantee a “dignified standard of living” whilst asylum applications are processed.⁸³ In addition, any limitations on human rights must only be construed narrowly and in accordance with the legal principles of necessity, legality, and proportionality.⁸⁴ Additionally, the dignity of the human person must be respected, even under circumstances where a right enshrined in the EU Charter - including the right to work - is restricted.⁸⁵ Therefore, when a restriction of any of the rights of the EU Charter occurs, the UK is required to have a legitimate objective.⁸⁶

The recent decision of the Irish Supreme Court in *N.V.H. v. Minister for Justice and Equality*, may provide a useful insight and approach to our present matter. The Court recognized that work is connected to the dignity and freedom of individuals and that work is part of the human personality, thereby concluding that those aspects of the right which are part of human personality cannot be withheld absolutely from non-citizens, including asylum-seekers. It held that restrictions that do not merely limit the right severely, but that remove them altogether are contrary to the right to work as enshrined in the Irish Constitution.⁸⁷

Yet, whilst the labour market restrictions for asylum-seekers have recently received attention in the House of Lords when discussing the Immigration Bill 2015-16, the majority of the Parliament agreed not to withdraw them.⁸⁸ In order to assess the extent to which the UK’s current legal barriers to employment for asylum-seekers protect their human dignity

⁷⁶ The UK Visas and Immigration (UKVI) does not collect figures for the number of asylum-seekers who apply for, or are granted, permission to work in the UK.

⁷⁷ *R (Rostami) v Secretary of State for the Home Department* [2013] EWHC 1494 (Admin).

⁷⁸ *Ibid.*, para. 57.

⁷⁹ Case C-377/98 *Netherlands v Parliament and Council* [2001] ECR I-7079, paras. 70-77.

⁸⁰ See above footnote 75, para. 65.

⁸¹ Judgment of the Federal Constitutional Court in the proceeding 1 BvL 10/10, <https://www.esr-net.org/caselaw/2012/judgment-federal-constitutional-court-proceeding-1-bvl-1010>

⁸² Recast Qualification Directive, Recital 5. See also the argument made by Mark Symes (Garden Court Chambers) in GS (Article 15(c): *Indiscriminate Violence*) *Afghanistan v Secretary of State for the Home Department*, CG [2009] UKAIT 00044.

⁸³ Reception Conditions Directive, Recital 7.

⁸⁴ Article 51 of the EU Charter; See also, *Internationale Handelsgesellschaft mbH v Einfur- und Vorratsstelle für Getreide und Futtermittel* [1970] ECR 1125 and *Azienda Agricola Ettore Ribaldi v AIMA* [2004] EUECJ C-480/00 [2004] ECR I-2943, para.43 and Michigan Guidelines, see above footnote 13, para. 297.

⁸⁵ See above footnote 77.

⁸⁶ *R v Minister for Agriculture, Food and Fisheries, ex parte Fedesa* [1990] EUECJ C-331/88; [1990] ECR I-4023, paras. 13-14.

⁸⁷ *N.V.H. v. Minister for Justice & Equality and ors* [2017] IESC 35.

⁸⁸ Melanie Gower, “asylum-seekers,” 9-10

and provide them with a “dignified standard of living,” we now turn to our case study of Zimbabwean asylum-seekers in the UK.

The case of Zimbabwean asylum-seekers in the UK

In this section we draw on the narratives of Zimbabwean asylum-seekers and refused asylum-seekers based on a study that was conducted by the second author between 2008 and 2010. During this time, the Home Office had temporarily suspended enforced removal of refused asylum-seekers to Zimbabwe in view of turbulent political conditions.⁸⁹ In particular, participants were individuals who were involved in a complex and lengthy asylum determination process, and had no right to paid work.⁹⁰

Interviews with this asylum population revealed lives on the margins of society and in abject poverty.⁹¹ Without the right to work, research participants noted that they were unable to create new connections, have any sense of community belonging in the UK, and were unable to maintain an identity they once secured through work. More broadly, interviewees described their experiences of leading their lives in the UK as a “social death” – as persons who were biologically alive, but “socially dead.”⁹²

We start by considering the case of Mandi, a 49-year-old woman, former teacher, and mother of two girls who claimed asylum in the UK in 2007. Her initial claim was refused within a period of a year, after which Mandi appealed the refusal decision. By the time of her interview in 2009, she was still waiting for her asylum appeal to be determined. Reflecting on her journey of seeking asylum, she singled out her lack of the right to work in the UK as a major barrier to leading a dignified life. Mandi said:

My asylum claim took almost a year to be determined and without the right to work I have been depending on handouts. When it comes to shopping you do it at a cheaper place, such as charity shops, and you have to learn to be comfortable wearing second hand garments. Forced dependency has taken away my self-esteem, because as a professional person, I have always taken pride in working for myself. Forced dependency is like a death sentence because your life becomes controlled and limited. Prohibiting someone from working should be classified as gross human rights violation, because it is the sense of responsibility and purpose that makes a person human [...]

Indeed, it has long been established that “work is linked to improved self-esteem, improved mental health, and helps to maintain skills that asylum-seekers have from their home countries.”⁹³ Thus, for an asylum-seeker, to be refused access to employment often inflicts a feeling that one has been stripped of his/her humanity, as demonstrated in the above example. As Mayblin⁹⁴ argues,

Asylum-seekers receive £36.95 per week for food, clothes and other essentials, and are accommodated on a no choice basis... The welfare

⁸⁹ House of Commons, Transcript of Debate 5 May 2009, Available online: <https://www.publications.parliament.uk/pa/cm200809/cmhsrd/cmo90505/text/90505w0008.htm>

⁹⁰ For detailed discussion see Roda Madziva (2016), “Transnational parenthood and forced migration: the case of asylum-seeking parents who are forcibly separated from their families by immigration laws,” in *Families, Relationships and Societies: An International journal of research and debate*, 5(2):281-297.

⁹¹ Joann McGregor, ‘Abject spaces, transnational calculations: Zimbabweans in Britain navigating work, class and law’, *Transactions of the Institute of British Geographers*, 33 (2008): 466–482.

⁹² Orlando Patterson, *Slavery and social death*. (Cambridge, MA: Harvard University Press, 1982)

⁹³ Lucy Mayblin, Complexity reduction and policy consensus: Asylum seekers, the right to work, and the ‘pull factor’ thesis in the UK context, *The British Journal of Politics and International Relations*, (2012) DOI: 10.1177/1369148116656986.

⁹⁴ *Ibid.*, 5.

payment is around 50% of job seekers allowance, which is itself set just above the poverty line (so as to disincentivise unemployment), and as such asylum-seekers are effectively forced into a situation of poverty...

Experiences of poverty as well as accounts of lack were frequently reported by the Zimbabwean participants. One example is that of Temba, a 46 year-old Zimbabwean, a man who claimed asylum in 2004. By the time of his interview in 2009, Temba was a refused asylum-seeker who had just submitted a fresh asylum claim. Explaining his situation, Temba noted that:

My first claim took almost 2 years to be settled. Although I applied for the right to work after 12 months, I did not get any response from the Home Office. The life of limbo has treated me rough [...] I am having only one meal per day [...] there is no difference between me and those who are destitute in the worst places of the developing world, whom the UK government regularly sends handouts to [...]

During fieldwork, the second author was invited by a 45-year-old female refused asylum-seeker, Mudiwa, to see where she lived. When the author arrived, she could not believe what she saw: Mudiwa's room was wet and mouldy, the bed seemed broken and the room looked abandoned, as if no one lived there. When asked how she felt about her living conditions, Mudiwa related her lived experiences in ways that demonstrate the difficulties of leading life as an asylum seeker:

This is not home [...] it's just like a hole where I creep into, in the night and I leave as early as I can. ...Because I don't have a job to go to, I spend the day in the park. I don't regard this place as home at all. If I spend a day here I get depressed because this place reminds me of what I have lost – my humanity. People out there think that asylum-seekers come here to get benefits and yet we are leading a life of suffering [...]

While the second author's observations, noted above, point to concerns about the quality of accommodation made available to asylum-seekers,⁹⁵ Mudiwa's situation was made more complex by the fact that her weekly benefits had been withdrawn following when her appeal rights were exhausted. As a refused asylum-seeker, Mudiwa was in the process of applying for 'hard case' support under Section 4 of the Immigration and Asylum Act 1999. Such support is only made available to failed asylum-seekers who can prove that there is a "genuine obstacle that prevents them from leaving the UK at the point their appeal rights are exhausted."⁹⁶

In the case of Zimbabweans, it is important to point out that while the UK Home Office had temporarily halted the forced removal of Zimbabwean refused asylum-seekers between 2005 and 2010, (in review of the political situation in their country of origin), in policy contexts, the government did not make a legal declaration that there was no viable route of return to Zimbabwe.⁹⁷ This means that refused asylum-seekers were still expected to individually prove that they would face victimisation if they were deported. This created a limbo in which many Zimbabweans were neither in the category of those nationals who

⁹⁵ Sonya Sceats. "The private companies putting asylum seekers in slum housing". Politics.co.uk (2016) , Available online: <http://www.politics.co.uk/comment-analysis/2016/03/24/the-private-providers-putting-asylum-seekers-slum-housing>

⁹⁶ Immigration Act 2016 Factsheet – Support for certain categories of migrants, Available online: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537248/Immigration_Act_-_Part_5_-_Support_for_Certain_Categories_of_migrants.pdf

⁹⁷ Lisa Doyle, More Token Gestures: A report into the use of vouchers for asylum seekers claiming Section 4 support (London: Refugee Council, 2009).

had the legal right to remain nor the category of those liable to removal.⁹⁸ While it seemed that refused asylum-seekers from Zimbabwe could continue to remain in the UK, their situations demonstrate that they were people who had been deprived of the right to lead a dignified existence, as they were not legally entitled to receive even the meagre support offered to other failed asylum-seekers who officially could not return to their country of origin. Indeed, the appalling situation of the Zimbabwean asylum population was aptly captured by Webber⁹⁹ as follows:

Many refused asylum-seekers are in an impossible situation ... The Home Office has not returned anyone to Zimbabwe since 2005. But those refused asylum can't work, and are frequently refused all support. Yet even they have been jailed for using false documents to work.

Those who qualified to receive 'hard cases' support under Section 4 of the Immigration and Asylum Act 1999 often found themselves subjected to a cashless economy of meeting their basic needs. This is because refused asylum-seekers who cannot go back home due to circumstances that are beyond their control are entitled to receive welfare support in the form of vouchers, or more recently the Azure card system. The Azure payment card is a pre-paid card system which is administered by a private contractor called Sodexo Limited, on behalf of the Home Office. The card is automatically issued by the Home Office's Visas and Immigration department once a refused asylum seeker has been allocated accommodation under support provided by section 4.¹⁰⁰ However, the card cannot be used to access cash, but can only be used to purchase goods and services at stipulated stores and charity shops.¹⁰¹ This ultimately excludes refused asylum-seekers from shopping in other desired places, such as marketplaces or corner shops where culturally appropriate foodstuffs can be obtained.¹⁰² Moreover, the welfare support that refused asylum-seekers are entitled to under this system is valued at 70% of the basic income support to which a British citizen is entitled. If income support is calculated to ensure that no one lives below the poverty line, the provision of only 70% of this level implies that such asylum-seekers are, by law, people who are condemned to live in poverty.¹⁰³

More broadly, asking refused asylum-seekers to use vouchers/Azure cards to pay for goods that others purchase in cash is a form of stigmatisation and dehumanisation which often subjects the asylum population to humiliation by till operators and other customers. Temba's narrative, below, aptly illustrates this:

The first day I went to the shops with my vouchers was a nightmare. At the supermarket, I was served in a very cold way by the till operator when I handed her the voucher. At the same time I could hear those behind me whispering "asylum-seekers" and how they hated this group of foreigners [...] I wished if I could change my colour [...] I began to have a very low-esteem of myself [...]

The failure of the UK immigration regime to guarantee a "dignified standard of living" to asylum-seekers was often interpreted by the Zimbabwean asylum-seekers as human rights violation. This same sentiment was even more forcefully expressed by Shorai, a 39-year-old female refused asylum-seeker, whose son died in Zimbabwe while she was in the UK

⁹⁸ Frances Webber, *Hope for Zimbabwean asylum seekers*, Institute of Race Relations (IRR) (2008)

⁹⁹ *Ibid.*, 4.

¹⁰⁰ Mary Santo, *The Azure Card*. Library notes. (London: House of Lords, 2014)

¹⁰¹ British Red Cross (2014) The Azure payment card: The humanitarian cost of a cashless system, https://stillhumanstillhere.files.wordpress.com/2009/01/azure-card-report_2014_final-proof.pdf

¹⁰² Doyle, L. (2009).

¹⁰³ Emily Fletcher, *Changing Support for Asylum Seekers: An Analysis of Legislation and Parliamentary Debates*. Working Paper No 49, University of Sussex, Sussex Centre for Migration Research (2008).

waiting for her asylum appeal to be settled. As an asylum-seeker, Shorai could not go back to bury her son. In her grief and disappointment, she drew an interesting comparison between the Zimbabwean and the UK human rights systems as follows:

If I compare the two systems I feel Mugabe's system is better in that you know from the outset that human beings have no rights, if you try to fight against the system you will die physically [...] whereas the British system works on deception. From the outside the system appears democratic and caring, yet it is cruel, oppressive and discriminatory from inside – a good example is refusing asylum-seekers the right to work. It takes you to live through the system in order to realise its dehumanising nature. The system may not kill you physically, but it leaves you dead from the inside [...]

The above remarks lead us to conclude that the right to paid work is a fundamental human right. This means that by withdrawing such a right from those seeking asylum, the UK is failing to meet its obligation of providing a “dignified standard of living” for the most vulnerable people in the society who are unable to return to their country of origin.

Conclusion

This article has analysed the legal basis of the right to work for asylum-seekers. It has been argued that allowing asylum-seekers access to the labour market is particularly important as it helps, as shown by the empirical study of the lived experiences of Zimbabwean asylum-seekers, to preserve their human dignity, self-respect and self-sufficiency and enable them to integrate into the host society.

The starting point for this article was to explore how the Refugee Convention “implicitly” grants asylum-seekers the right to work. To this end, it has argued that the terms of the Refugee Convention should be construed against the background of human rights law, which has long established that everyone should have the right to work regardless of their legal status. In so doing, the article has shown that international human rights instruments have framed the right to work as a foundation for a life with dignity.

The article has further analysed how the EU asylum body of laws frame the right to work for asylum-seekers as fundamentally linked to other human rights, particularly to human dignity and a “dignified standard of living.” It then analysed the legal and administrative barriers that prevent asylum-seekers from permanently participating in paid work in the UK, which further denies them the full realisation of the above mentioned rights. Through our case study of Zimbabwean asylum-seekers, this article has tried to demonstrate that, without permanently realising the right to work, the asylum population often leads life on the margins of society. The situation of Zimbabwean asylum-seekers is by no means unique. Many asylum applicants from other countries and regions are similarly involved in protracted struggles to secure refugee status in the UK, during which time they are denied the right to sell their labour, resulting in many languishing in appalling circumstances.

This article seeks to contribute to the struggles to change law, policy and practices that de facto deny asylum-seekers the right to work. While the ICESCR oblige contracting states to strive to grant full and productive employment to everyone on non-discriminatory basis, the constitutional right to work seems to at least imply a negative obligation not to prevent individuals from seeking or obtaining employment. We thus propose that EU Member States should introduce faster decision procedures so as to reduce the length of time that asylum-seekers must wait for their claims to be determined. While the UK’s current restrictions on employment for asylum applicants might be based on a flawed assumption that access to the labour market encourages “bogus” asylum claims from so-

called “economic migrants,” a large body of literature refutes this “political imaginary.”¹⁰⁴ Thus, in light of this evidence, we propose that the UK should withdraw the labour market restrictions imposed on asylum-seekers, to enable this population to fully exercise their right to sell their labour power after the set-period of time, which is crucial to attaining a “dignified standard of living.”

¹⁰⁴ Mayblin 2012; Marko Valenta and Kristin Thorshaug. “Restrictions on right to work for asylum seekers: The case of the Scandinavian countries, Great Britain, and the Netherlands”. *International Journal on Minority and Group Rights* 20(3) (2013): 459–482.

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Capitalising on Asylum – The Reconfiguration of Refugees’ Access to Local Fields of Labour in Germany

Benjamin Etzold¹

Abstract

Since 2014, several legal reforms in Germany have reduced bureaucratic barriers for refugees’ access to work. They were coupled with the introduction of more language classes and other skill-enhancing measures. This proclaimed aim of quickly integrating refugees in the labour market marks a remarkable discursive shift because in previous years numerous installed hurdles had hindered refugees from entering local labour markets. The article seeks to shed light on the structural relations and inconsistencies between the German asylum regime and local labour markets by employing Bourdieu’s theory of practice as a conceptual lens and by drawing from empirical observations from the city of Bonn. The author argues that the two fields – the “field of asylum” and the “field of labour” – were purposely kept separate from another in the past. Now their relations are reconfigured in complex ways, dominated by the largely restrictive logic of the field of asylum. Refugees’ overwhelming dependence on their status in the asylum process, their “legal capital”, limits rather than enhances their access to decent work. Moreover, refugees’ chances to position themselves successfully in fields of labour depend to a large extent on social networks and very specific local contexts.

Keywords: Field of Asylum, Field of Labour, Refugees, Access to Work, Labour Market Integration, Legal Capital, Bourdieu’s Theory of Practice, Locality.

Introduction

In Germany, refugees’ quick access to work and “functional integration” into the labour market are seen by politicians, academics and civil society alike as key to broader “societal integration.”² Firms have also ‘discovered’ refugees and have started initiatives to ‘harvest’ their labour power, brain and skill pool. Since 2014, several legal reforms have reduced bureaucratic hurdles for refugees’ access to work. In addition, more language classes and skill-enhancing courses are offered to refugees, and new labour market incentives have been developed. The proclaimed aim of quickly integrating refugees into the labour market (which is portrayed to be good for ‘them’ and for ‘us’) has become commonplace in the public debate. This marks a remarkable discursive shift, for in previous years numerous hurdles had been erected that hindered refugees from entering local labour markets even though they had good qualifications and had lived in Germany for several years.

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² Peter Kühne. Flüchtlinge und der deutsche Arbeitsmarkt. In: *Zuwanderung im Zeichen der Globalisierung. Migrations-, Integrations- und Minderheitenpolitik*, edited by Christoph Butterwege and Gudrun Hentges, 253–267 (Wiesbaden: VS Verlag, 2009)

Many research institutes in Germany study the employability of refugees and their access to the German labour market:³ Think tanks close to the Federal Employment Agency and the Federal Office for Migration and Refugees, political foundations, trade unions, organisations involved in advocacy work and refugee protection, as well as scholars at universities contribute to an improved knowledge base on this topic with empirical research, statistical analyses, policy reports and reviews. It is not the purpose of this paper to give a comprehensive overview of the rapidly growing literature on the labour market integration of refugees in Germany.⁴ Instead, this article seeks to shed light on the structural relations and inconsistencies between the German asylum regime and local labour markets by employing Bourdieu's theory of practice as a conceptual lens. The reflections are supplemented by empirical observations from the city of Bonn.

From the perspective of Bourdieu's theory, which underpins the argumentation of this paper, the German asylum regime and the German labour market can be seen as two quite distinct social fields, each having own central organising logics. The "field of asylum" centres on the logic of refugee protection, the provision of shelter, services and care to 'those in need' by a recipient state, and questions of security, control and national identity. In contrast, "fields of labour" are built around the principles of capital accumulation, labourers' need to sustain their livelihoods and welfare states' services that ought to reproduce labour. Both fields are highly contested and in both actors and institutions of nation states play a fundamental structuring role. The central question that guides this article is: How do these two fields currently relate to one another in Germany? To be more precise: How do the structures and specific categorisations in Germany's "field of asylum" influence refugees' chances to position themselves adequately in local "fields of labour"? Can refugees capitalise on their asylum status or is it a structural hindrance?

The working hypothesis of this article is that the two fields were purposely kept separate from another in the past, but that their relation is now reconfigured due to the sheer number of refugees who have arrived in recent years. This development is both due to the specific structural requirements of Germany's labour market and to a paradigm shift in public opinion. Nonetheless, the restrictive logic of the field of asylum still prevails: refugees' legal capital influences their access to work.

The article opens with a brief introduction of Bourdieu's Theory of Practice as an analytical framework for the discussion of the "field of asylum" and the "field of labour" and for empirical studies of refugees' access to work. The next section proceeds to show how the increase of asylum-seekers in Germany is reflected in relevant labour market statistics before addressing the recent paradigm shift and changing regulations on refugees' access to work. Most importantly, it is argued that refugees' differential access to labour

³ The database of the BMBF-funded project "Flucht: Forschung und Transfer" lists 122 research projects in the field of forced migration and refugee studies that address the issue of "labour" in Germany from various disciplinary perspectives: <https://flucht-forschung-transfer.de/map?tab=&q=Deutschland&st=&k=46#6/51.200/9.000>

⁴ For recent overviews see: Maren Gag and Franziska Voges, ed., *Inklusion auf Raten. Zur Teilhabe von Flüchtlingen an Ausbildung und Arbeit* (Münster: Waxmann, 2014); Dietrich Thränhardt. *Die Arbeitsintegration von Flüchtlingen in Deutschland. Humanität, Effektivität, Selbstbestimmung* (Gütersloh: Bertelsmann Stiftung, 2015). <https://www.bertelsmann-stiftung.de/de/publikationen/publikation/did/die-arbeitsintegration-von-fluechtlingen-in-deutschland-1/> (accessed February 21, 2016); Matthias Knuth. *Arbeitsmarktintegration von Flüchtlingen. Arbeitsmarktpolitik reformieren, Qualifikationen vermitteln*. WISO Diskurs 21/2016 (Bonn: Friedrich-Ebert-Stiftung, 2016); Susanne Johansson, David Schiefer and Nora Andres. *Was wir über Flüchtlinge (nicht) wissen. Der wissenschaftliche Erkenntnisstand zur Lebenssituation von Flüchtlingen in Deutschland* (Berlin: Sachverständigenrat deutscher Stiftungen für Integration und Migration (SVR) und der Robert Bosch Stiftung, 2016); Roger Zetter and Heloise Ruaudel. *Refugees' Right to Work and Access to Labor Markets – An Assessment. Part II: Country Cases*. Global Knowledge Partnership on Migration and Development (KNOMAD) Working Paper Series. (Washington D.C.: KNOMAD, 2016). <http://www.knomad.org/publications> (accessed January 19, 2017); OECD. *Working together: Labour Market Integration of Refugees in Germany and other OECD Countries* (Paris: Organisation for Economic Co-operation and Development, 2017). <http://www.oecd.org/els/mig/Finding-their-Way-Germany.pdf> (accessed March 30, 2017)

markets is based on the stratification of refugees according to their asylum status. The last section explores in more detail the experience of refugees and how they are manoeuvring through legal frameworks and institutional landscapes to find adequate and meaningful employment. In doing so, the article draws on empirical examples from the city of Bonn. The case study also demonstrates that refugees do not enter *one* German labour market, but many highly differentiated and very localised “fields of labour”. The specific relation between the “field of asylum” and “fields of labour” thus not only depends on a person’s specific capabilities to position her-/himself in both fields but also on the very specific local contexts.

“Fields of Asylum” and “Fields of Labour” – a Bourdieuan Approach

Pierre Bourdieu’s theory of practice⁵ provides a suitable basis for relational and scale-encompassing studies of migration and labour regimes.⁶ It is thus also suitable for a critical analysis of the “field of asylum” and refugees’ access to and their positioning in “fields of labour”. According to Bourdieu, a society consists of multiple hierarchically structured spaces, “social fields”, in which people take on relative social positions in the sense of ranks in a social order. Bourdieu often uses the analogy of a game to explain his theory:⁷ In different fields there are different players (agents) involved, the resources (capital) that are brought in by the players have different values, there are different aims of the game, and there are specific norms, immanent rules or regulative principles that structure the game. Each field thus has its own logic that is imperative for the players engaged in it. On the basis of their endowment with different types of “capital”, namely economic, cultural, social, symbolic and – for this case particularly important – legal capital, players take on specific positions in a field.⁸ Within a field, agents play with and against each other. They compete and struggle over the distribution of resources and their own positions. The logic of a field also structures – not determines – agents’ habitus, i.e. their long-lasting dispositions of “being, seeing, acting and thinking”, and thus their strategies and practices. The relative position of a specific field always needs to be assessed in relation to other fields, in particular with regard to the “field of power”, which is the space within which agents struggle for power over the state and the state’s capacity to shape the structure of other fields.¹⁰

Refugees, bureaucrats making asylum decisions, social workers in shelters, activists and volunteers supporting refugees, representatives of organisations providing legal advice and politicians developing asylum laws are some of the key agents who take on positions in the “field of asylum”. This field has three core logics. First, the field centres on the logic of protection: A recipient state provides shelter, services and care to those who have been subject to persecution, violations of political and civil rights and/or war in their respective

⁵ Pierre Bourdieu, “The Social Space and the Genesis of Groups”, *Theory and Society* 14 (1985): 723–44. Pierre Bourdieu. *Praktische Vernunft: Zur Theorie des Handelns* (Frankfurt a.M.: Suhrkamp, 1998).

⁶ See Harald Bauder. *Labor Movement. How Migration Regulates Labor Markets* (New York, Oxford: University Press, 2006); Katherine Brickel and Ayona Datta, “Introduction: Translocal Geographies”, in *Translocal Geographies. Spaces, Places, Connections*, edited by Katharine Brickel and Ayona Datta, 3–20 (London: Ashgate, 2011); Tom Lusis and Harald Bauder, “Migration and labour markets: an interpretation of the literature”, in *Research Handbook on the Future of Work and Employment Relations*, edited by Keith Townsend and Adrian Wilkinson, 212–229 (Cheltenham: Edward Elgar, 2011).

⁷ Bourdieu, “Social Space”, 724; Pierre Bourdieu and Loic J.D. Wacquant, “The Purpose of Reflexive Sociology (The Chicago Workshop)”, in *An Invitation to Reflexive Sociology*, edited by Pierre Bourdieu and Loic J.D. Wacquant, 60–215 (London: The University of Chicago Press, 1992), 99.

⁸ Capital can be conceived of as “social energy” or power that can be accumulated, inherited and transferred, and thus, utilized. See Bourdieu and Wacquant “Reflexive Sociology”, 118.

⁹ Pierre Bourdieu, “Habitus”, in *Habitus: A Sense of Place*, edited by Jean Hillier and Emma Rooksby, 43–49 (Aldershot: Ashgate, 2002), 43.

¹⁰ Pierre Bourdieu, “Rethinking the State: Genesis and Structure of the Bureaucratic Field”, in *Sociological Theory* 12 (1994): 1–18.

country of origin and who are in need of protection and have thus applied for asylum.¹¹ Second, the field of asylum is structured by (national) concerns with security, control and national identity. The arrival of almost three million asylum seekers in the European Union within three years (2014 to 2016) has not only been framed as a ‘crisis’ and ‘security challenge’ but refugees themselves have become “border figures”¹² who encapsulate ‘threats to the public order’ and ‘fears of estrangement’. Many states thus seem to be compelled to reject rather than welcome refugees and to restrict rather than widen their protection. Despite recognition of fundamental principles laid out in the Geneva Convention, the European Convention for the Protection of Human Rights and fundamental Freedoms as well as EU directives and in national constitutions, the organisational and legal set up of the field of asylum is decided upon by politicians and ministries through laws at the federal and “*Länder*”-level. Asylum policy and practices – such as those described below – are changed on the basis of proclaimed national security interests and the atmosphere within the public discourse, and not in consideration of refugees’ needs. State actors assign positions within the field of asylum to refugees due to their respective country of origin, the need of protection, and other key characteristics (such as age, gender, disability). Their asylum and residential status – their ‘legal capital’ – becomes imperative for access to shelters, financial capital, social services, health benefits, and work; to name only a few key areas. Based on the residency law and diverse asylum laws, the state and its bureaucratic actors restrict the personal freedoms of asylum-seeking individuals so deeply and interfere so decisively in many spheres of their lives, that Achammer and Herbst have described the German asylum system – in line with Goffmann’s term – as a “total institution”.¹³ Third, although the distinction between a refugee and a labour migrant is often only possible in theory – as motives and trajectories of mobile people overlap in complex ways – separating the field of asylum from the “field of labour migrants” is crucial. Upon their respective endowment with capital, refugees navigate the field of asylum and enter and ‘play’ in other social fields as well. Yet, their practical agency is always restricted by their legal status and by the social marker of ‘being a refugee’.

The “field of labour” underlies a different organisational logic than the “field of asylum”. Conventionally, labour can be understood as an input factor in companies’ practices of production and capital accumulation and as a means to make a living through paid or self-employment. A neoclassical understanding of labour markets, in which access to work, wages and working conditions are largely shaped by the supply and demand of labour, is insufficient as labour is also a fundamental aspect of identity and belonging and a key indicator for a person’s socio-economic position.¹⁴ From the perspective of Bourdieu, positions within a society are largely distributed on the basis of professions, and people develop certain milieu-specific practices, lifestyles, attitudes and identities.¹⁵ Instead of one unified “field of labour” it is thus more appropriate to speak of distinct “fields of labour”, each having specific characteristics. Workers and non-workers, employers and investors, bureaucrats and politicians, trade unions and many other actors position themselves

¹¹ See for instance Klaus Bade, „Zur Karriere und Funktion abschätziger Begriffe in der deutschen Asylpolitik“, in *Aus Politik und Zeitgeschichte* 25 (2015): 3-8.

¹² Julia Schulze Wessel, “On Border Subjects: Rethinking the Figure of the Refugee and the Undocumented Migrant”, in *Constellations* 23 (2015): 46-57.

¹³ Michael Achammer and Sören Herbst, „Der (Asyl-)Proceß – Über die institutionelle Fremdbestimmung von Asylbewerberinnen und -bewerber in Deutschland“, in *Migration, Asyl und (Post-) Migrantische Lebenswelten in Deutschland. Bestandsaufnahme und Perspektiven migrationspolitischer Praktiken*, edited by Miriam Aced, Tamer Düzyol, Arif Rüzgar, Christian Schaft, 205-226 (Berlin: LIT Verlag, 2014), 9f.

¹⁴ Christian Berndt, „Arbeiten und Produzieren“, in *Schlüsselbegriffe der Kultur- und Sozialgeographie*, edited by Julia Lossau, Roland Lippuner and Tim Freytag, 227-242 (Stuttgart: UTB Ulmer, 2014); Andrea Komlosy. *Arbeit. Eine globalhistorische Perspektive. 13. bis 21. Jahrhundert* (Wien: ProMedia, 2014).

¹⁵ Pierre Bourdieu. *Die feinen Unterschiede. Kritik der gesellschaftlichen Urteilskraft* (Frankfurt a. M.: Suhrkamp, 1999).

within these respective fields. They each have specific interests and capacities to act. Fundamentally, capital – and consequently power – are unequally distributed within the field. How a specific field of labour functions and which institutions organise the field, regulate access to it as well as wages and working conditions within it, is always dependent on the respective historical and cultural contexts and on the state-of-play of the power struggle between capital, labour and the state. In European welfare states, labourers can rely on substantial welfare services such as unemployment benefits and pension schemes, as well as public health services and educational systems that are also designed to reproduce labour. Through the educational system, individuals acquire knowledge and skills (incorporated cultural capital) as well as certificates and academic qualifications (institutionalised cultural capital) that qualify them for specific fields of labour. Generally speaking, it is in the interest of labourers to find and carry out work that is adequate for their respective knowledge and skills as to maximise earnings, social recognition and future options and to secure their position in the longer run. As labour markets are normally framed in the territorial logic of nation-states, transnational labour migration as well as refugee movements pose a challenge to the existing order, institutions and other actors in fields of labour.¹⁶

If the logics of two different fields overlap significantly, then they are heteronomous fields; they are closely intertwined, and one is dependent on or even governed by the other. If in turn, two fields differ significantly in their operational logic and function independently according to their own rules, then they are autonomous.¹⁷ One could argue that due to their different logic the field of asylum and the field of labour are, in principle, autonomous fields. It is, however, the author's working hypothesis that these two fields are closely intertwined for refugees: their position in the field of asylum has become imperative for their chances to acquire an adequate position in the field of labour.

Refugees in Germany's Labour Market – a brief statistical overview

Germany's field of asylum has undergone fundamental structural transformations in recent years, both due to increasing numbers of arriving refugees and due to policy reforms that followed the long "summer of migration"¹⁸ and its digestion by the media and the public. Since 2008, the number of asylum applications has increased drastically until it reached 746,000 in 2016 (Figure 1). Overall, in the past ten years (2007-2016), 1.8 million people applied for asylum in Germany and 1.4 million asylum decisions were taken by the Federal Office for Migration and Refugees. During these ten years, 484,000 people were granted a refugee status (34 percent of all decisions), 177,000 people received subsidiary protection, as they had fled from violent conflicts and cannot return (12 percent of all decisions), and 58,000 applicants were not accepted as refugees but only temporarily tolerated (4 percent of all decisions). The applications of 452,000 people were rejected (32 percent of all decisions), while 270,000 applications were formally withdrawn or transferred to other countries as Dublin-cases (19 percent of all decisions).¹⁹ These legal categories matter crucially for refugees as they are assigned certain positions in the "field of asylum" on this basis: they are granted or denied access to state benefits, health and social services, language courses and integration classes and, most importantly, a residence permit. Their legal position also largely defines whether they are entitled to work in Germany.

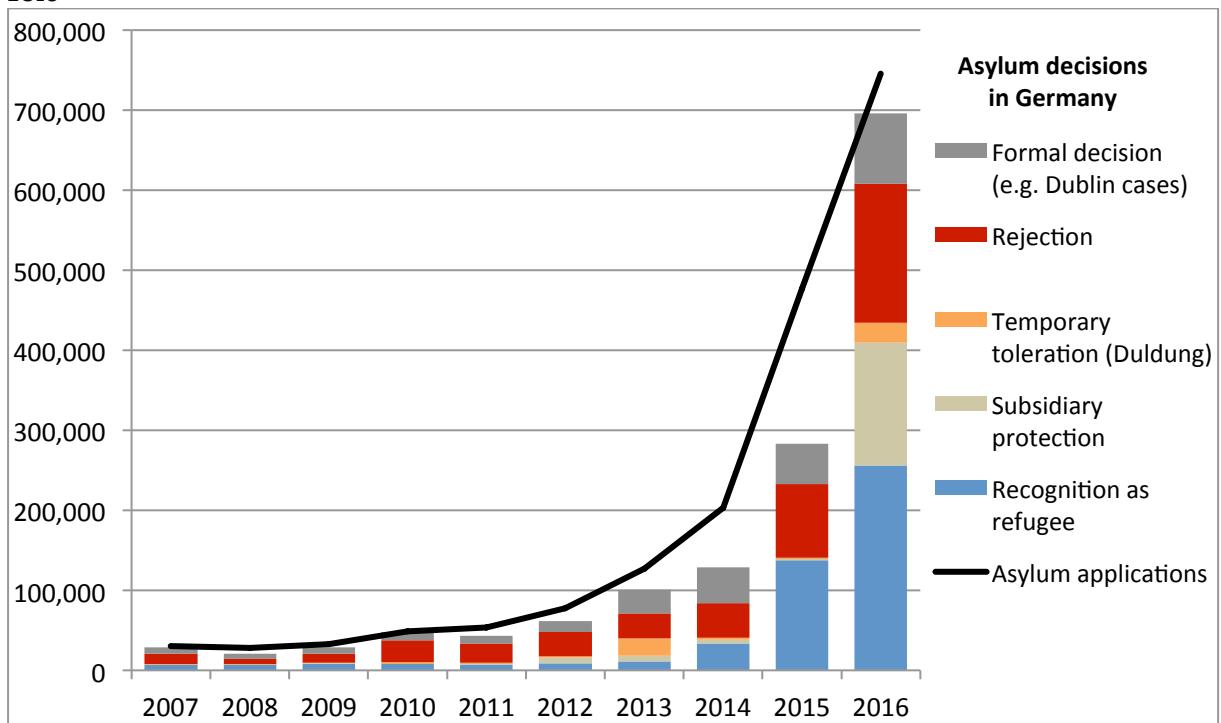
¹⁶ Bauder, *Labor Movement*; Brickel and Datta, "Translocal Geographies"; Lusis and Bauder, "Migration and labour markets".

¹⁷ Werner Fuchs-Heinritz and Alexandra König. *Pierre Bourdieu. Eine Einführung* (Konstanz: UVK, 2005), 142.

¹⁸ Bernd Kasperek and Marc Speer. "Of hope. Hungary and the long summer of migration". <http://bordermonitoring.eu/ungarn/2015/09/of-hope-en/> (accessed March 3, 2017)

¹⁹ Bundesamt für Migration und Flüchtlinge (BAMF). *Aktuelle Zahlen zu Asyl*, Ausgabe Dezember 2016. (Nürnberg: Bundesamt für Migration und Flüchtlinge (BAMF), 2017), 4, II.

Figure 1: Number of asylum applications and decisions in Germany between 2007 and 2016



Source: Bundesamt für Migration und Flüchtlinge (BAMF)²⁰

The refugees arrived at a time when Germany was enjoying remarkable economic growth and a job boom: In July 2016, 31.3 million people were regularly employed, 3.4 million more than in July 2010. Simultaneously, the number of unemployed people had substantially fallen from 3.2 million to 2.7 million in the same time span (BA 2017a).²¹ The refugees arriving in Germany are not responsible for this job boom, but they may benefit from it. Their arrival in the field of labour is visible in the relevant labour market statistics.

Figure 2 clearly shows the increase in the number of migrants in Germany's field of labour from the eight countries outside of Europe from which most refugees came in recent years: Syria, Afghanistan, Iraq, Iran, Eritrea, Pakistan, Nigeria and Somalia.²² The number of *registered employable persons* from these eight countries who are of working age and who can potentially work grew from 102,000 in January 2011 to 573,000 in November 2016.²³ The most fundamental challenges for refugees falling into this group are to gain adequate qualifications and language skills to become 'employable' and to be legally granted access to work. The number of migrants from these eight countries who are of working age but who were currently *unemployed* increased from 41,000 in January 2010 to 175,000 in December 2016; their unemployment rate stood at 50 percent in December

²⁰ BAMF, Aktuelle Zahlen, 4, II.

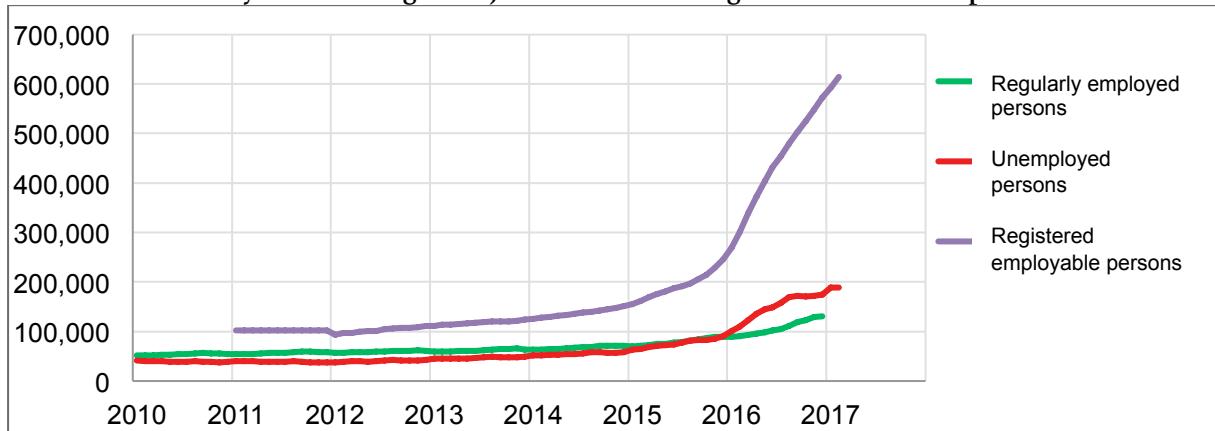
²¹ Bundesagentur für Arbeit (BA). Migrations-Monitor Arbeitsmarkt, Eckwerte Deutschland (Nürnberg: Bundesagentur für Arbeit, 2017). <https://statistik.arbeitsagentur.de/Navigation/Statistik/Statistik-nach-Themen/Migration/Migration-Nav.html> (accessed March 2, 2017).

²² In the relevant statistics of the Federal Employment Agency, the refugee status is being considered only since June 2016. Before, the country of origin of a person has often been used as a proxy. In the data, one can therefore not distinguish between labour migrants and refugees. In 2016, seven of the top ten countries of origin of asylum seekers were outside of Europe (ranking according to number of applications, BAMF, Aktuelle Zahlen, 9): 1. Syria, 2. Afghanistan, 3. Iraq, 4. Iran, 5. Eritrea, 6. Albania, 7. unknown, 8. Pakistan, 9. Nigeria, 10. Russian Federation. Due to high numbers in 2013/14, Somalia is commonly included in the list as well.

²³ BA, Migrations-Monitor Arbeitsmarkt.

2016.²⁴ Refugees who are listed in this group are legally entitled to work, yet face challenges finding adequate employment that matches their skills. Refugees who are still taking part in German language classes or other skill-enhancing courses are not considered as unemployed. The number of regularly *employed* migrants from these eight countries rose from 52,000 in January 2010 to 131,000 in December 2016; their employment ratio stood at 17 percent in December 2016.²⁵ Refugees who have found regular employment face different day-to-day challenges. For them, staying employed, adequate payment, and working conditions as well as accumulating working experience are central motives.

Figure 2: The potential labour force, employed and unemployed persons among asylum seekers in Germany from the eight major countries of origin outside of Europe



Source: Bundesagentur für Arbeit (BA)²⁶

Paradigm shifts and changing regulations on refugees' access to work

Many politicians, entrepreneurs, social workers and refugee activists have long noted that work can serve as an efficient and, most importantly, sustainable way of integration into society if only access to labour was organised adequately.²⁷ Before 2014, the barriers that refugees faced when trying to enter local fields of labour were however quite high, in particular for those who had not been granted refugee status or subsidiary protection but lived with only a temporary toleration (*Duldung*). In general, in the first nine months after their asylum claim, asylum seekers were not allowed to work. After this time, recognised refugees were allowed to work without further formal hindrances. Refugees under subsidiary protection or a temporary toleration could apply for a work permit in the immigration office, but only if they presented a job offer from an employer. Yet, even when both the employer and the local bureaucrat agreed, the employment agency first had to check whether no unemployed German or EU-citizens were available for that job. This priority check often led to situations in which refugees found work, but were *de facto* not allowed to work.²⁸ In an interview, a fifty-year-old refugee from Iran, who had lived in Cologne for 14 years with a temporary toleration, described his situation as follows:

²⁴ BA, Migrations-Monitor Arbeitsmarkt; Bundesagentur für Arbeit (BA). Fluchtmigration. Berichte: Arbeitsmarkt kompakt, Februar 2017 (Nürnberg: Bundesagentur für Arbeit, 2017), 9.

²⁵ BA, Migrations-Monitor Arbeitsmarkt; BA, Fluchtmigration, 8.

²⁶ BA, Migrations-Monitor Arbeitsmarkt

²⁷ Kühne, *Flüchtlinge und der deutsche Arbeitsmarkt*; Thränhardt, *Arbeitsintegration von Flüchtlingen*; Knuth, *Arbeitsmarktinintegration von Flüchtlingen*.

²⁸ The priority check (*Vorrangprüfung*) is regulated in §§39ff of the residence law. For the regulation prior to 2014 see Bundesministerium für Arbeit und Soziales (BMAS). *Flüchtlinge – Kundinnen und Kunden der Arbeitsagenturen und JobCenter. Ein Leitfaden zu Arbeitsmarktzugang und –förderung* (Berlin: BMAS, 2012).

“Often, I have tried to find work. I have had the opportunity to work as a cleaner for a cleaning company and as a kitchen hand in a restaurant. To work, I need the paper from the ‘Ausländeramt’. But every time, I went to the ‘Ausländeramt’ to get the working permit, they turned me down. [...] I do not need money from the ‘Sozialamt’. I only need work. Other people need ‘Sozialhilfe’, but I do not. [...] I need a work permit, work, and a residence title with a work permit. [...] Like this, I stay at home. And there are too many problems and stress, because I have been staying at home and did nothing for 14 years.”²⁹

This brief statement already highlights that before 2014, it was not so much the refugees’ willingness or ability that shaped their access to employment, but their legal status, i.e. their position in the field of asylum. The regulations on refugees’ access to work were highly exclusionary and limited their right to sustain their living by themselves. Such rules were also costly for Germany: Refugees who are not working have to rely solely on social welfare.³⁰

In 2013 and 2014, pleas by civil society and firm and trade union representatives for legal reforms to allow refugees easier access to work became louder.³¹ These political demands fell on increasingly fertile ground as the image of the refugee slowly seemed to change in the public discourse from a passive recipient of social services who is either not able or not willing to contribute to the economy, to a more active labourer who has skills and qualifications and who can thereby contribute significantly to the national economy.³² This changing perception of refugees went hand in hand with the public debate about an ageing German labour force and a projected shortage of well-qualified workers in the future. Despite an ever increasing share of employment in services, the demand for skilled workers in manufacturing is likely to continue to rise as the national economy is still based on the production of machinery and consumer goods.³³ In the years to come, positive net-migration – in particular from third countries outside of the EU – will be necessary to prevent Germany’s labour force from shrinking.³⁴ The currently high numbers of arriving refugees might thus play a major role in Germany’s labour market in the future. In particular, those young male refugees who quickly learn German and have technical skills are now offered apprenticeships in firms and factories.³⁵ They are seen as a remedy for the structural imbalances in the national labour market. They have arrived as refugees but

²⁹ Interview by Nathalie Maib, „Leben im Zwischenraum. Alltägliche Lebenswelten und strukturelle Ausgrenzung von Geduldeten”, unpublished Diploma Thesis, (Bonn: Geography Department, University of Bonn, 2014).

³⁰ For more details on refugees’ access to work from 1980 to 2014 see Kühne, *Flüchtlinge und der deutsche Arbeitsmarkt*; Thränhardt, *Arbeitsintegration von Flüchtlingen*.

³¹ Thränhardt, *Arbeitsintegration von Flüchtlingen*, 28.

³² For examples of the public media debate see Nadine Ahr, „Der Musterflüchtling”, Die Zeit, 02.03.2017, www.zeit.de/2017/08/integration-fluechtlinge-deutschland-geschichten ; Kolja Rudzio, „Dönerbude statt Daimler”, Die Zeit, 02.03.2017, www.zeit.de/2017/08/fluechtlinge-arbeitsmarkt-daimler-fachkraefte-mangel ; Thomas Fricke, „Arbeitsplätze statt Mutter Theresa”, Süddeutsche Zeitung, 10.09.2015; Alexander Hagelüken, „Ausbildung ist alles“, Süddeutsche Zeitung, 05.10.2015, www.sueddeutsche.de/wirtschaft/fluechtlinge-i-ausbildung-ist-alles-1.2677893

³³ Tobias Maier, Anke Mönnig and Gerd Zika, “Labour demand in Germany by industrial sector, occupational field and qualification until 2025 – model calculations using the IAB/INFORGE model”, in *Economic Systems Research* 27 (2015): 19-42.

³⁴ Johann Fuchs, Alexander Kubis and Lutz Schneider, “Replacement migration from a labour market perspective. Germany’s long-term potential labour force and immigration from non-EU member countries”. IAB-Discussion-Paper 4 (Nürnberg: Institut für Arbeitsmarkt- und Berufsforschung, 2016).

³⁵ For more details on refugees’ access to apprenticeships and vocational training see Franziska Schreyer and Angela Bauer, „Regional ungleiche Teilhabe – Geduldet Fluchtmigranten und duale Ausbildung in Deutschland“, in *Sozialer Fortschritt*, 63 (2014): 285-292.

should stay on as workers and professionals. This paradigm shift in public opinion has contributed significantly to recent policy changes.

In November 2014, the federal state implemented reforms in employment laws, which should allow refugees easier access to Germany's fields of labour.³⁶ These regulations were supplemented in October 2015 by the "Asylum Procedure Acceleration Act" and in August 2016 by the "Integration Act".³⁷ In principle, the new regulations have reduced the bureaucratic hurdles for refugees' access to work.³⁸ Yet, they have also further enhanced the stratification of refugees within the field of asylum. In consequence, the existing rules have led to a highly unequal access to fields of labour:

- *People with recognised refugee status* and those under *subsidiary protection* face no formal restrictions on their access to work. They are also allowed to start their own business, work as self-employed, do an internship, or begin an apprenticeship / vocational training. An application for a work permit is not necessary. There are no priority checks. They are also entitled to participate in language classes, integration courses, skill-enhancing programmes and to the support of the local job centres in finding employment.
- Those refugees who had entered Germany through *resettlement programmes* of the national state or a *humanitarian reception programme* of one of its federal states, face no labour market restrictions; they also have access to integration classes and job centres' skill-enhancing programmes. In the case of the latter programme, refugees who arrive with the support of family members who had settled in Germany before are not entitled to social welfare benefits for the first five years after arrival; similar to the private sponsorship programme in Canada, their families have to bear the cost of their living expenses.
- *Asylum seekers*, i.e. people who have entered the asylum process and are awaiting a decision and *tolerated persons* – and thus all refugees with only a temporary residency status – are not allowed to work in the first three months after arrival. In general, only asylum seekers from countries with high recognition rates (such as Syria, Eritrea, Iraq and Iran) are allowed to start integration courses and have access to support by the Employment Agency. Moreover, special 'low-threshold' work opportunities that should mobilise the labour market potential of asylum seekers are also not accessible for persons from 'safe countries of origin'.³⁹ After the initial working ban of three months, all asylum seekers and tolerated persons can apply for a work permit with the local immigration office. The instrument of the priority check is however not fully

³⁶ Refugees' access to work is addressed in §§47, 59-61 of the asylum law (*Asylgesetz*), in §5 of the asylum services law (*Asylbewerberleistungsgesetz*), in §§ 39, 40, 60a and 61 of the residence law (*Aufenthaltsgesetz*), and in §§ 26 and 32 of the employment regulation (*Beschäftigungsverordnung*). For an overview see:

<http://www.bamf.de/EN/Infothek/FragenAntworten/ZugangArbeitFluechtlinge/zugang-arbeit-fluechtlinge-node.html>

³⁷ For overviews on the recent policy changes in Germany's field of asylum see Jutta Aumüller, *Arbeitsmarktintegration von Flüchtlingen: bestehende Praxisansätze und weiterführende Empfehlungen* (Gütersloh: Bertelsmann Stiftung, 2016), 13ff.; Zetter and Ruaudel, *Refugees' Right to Work*, 34ff.; OECD, *Working together*, 27ff.

³⁸ The facilitation of an easier access to work was a central motif for the German government in the adoption of the Integration Act. See Lisa Caspari, „*Integrationsgesetz: Besser arbeiten, schneller scheitern*“, *Die Zeit*, 24.06.2016. <http://www.zeit.de/politik/deutschland/2016-05/integrationsgesetz-fluechtlinge-wohnsitz-parlament-meseberg>

³⁹ According to the Federal Office for Migration and Refugees, Germany currently considers the following countries to be safe countries of origin: all Member States of the European Union, Albania, Bosnia and Herzegovina, Ghana, Kosovo, Macedonia, former Yugoslav Republic of Montenegro, Senegal, and Serbia. See <http://www.bamf.de/EN/Fluechtlingsschutz/Sonderverfahren/SichereHerkunftsstaaten/sichere-herkunftsstaaten-node.html>

abolished. In regions with a high unemployment rate, it can still be applied so that Germans, EU-citizens and refugees with a more secure legal status are privileged in their access to work, in particular over persons from ‘safe countries of origin’. All over Germany, four years after the first arrival, there are no further restrictions on the labour market access of asylum seekers and tolerated persons. Moreover, a 3+2 rule has been established for these two groups. Refugees who have started an apprenticeship have the chance to receive a temporary residence status for three years (the normal duration of an apprenticeship), which can be prolonged for another two years if they are taken on by their employer.

- All *refugees with academic titles* or a recognised professional title in one of the economic fields in which there is a shortage of labourers in Germany – according to a ‘white list’ of professions⁴⁰ – are immediately allowed to work in the respective field. No priority checks are undertaken. Their legal status is not considered.
- *Refugees whose application are rejected* or is withdrawn have to leave Germany voluntarily or are deported. Of course, this implies that they are also blocked from entering Germany’s labour market – at least formally. Many of those who do not leave the country but go into hiding become part of a growing informal labour force in large cities.

The legal framework that should ease refugees’ entry into fields of labour is not only difficult to comprehend; it is also full of contradictions. Labour market entry should become quicker with skill-enhancing courses and work programmes, but not for all groups of refugees. More integration classes are provided, but not everybody has access to them. The priority check is not abolished but only temporary postponed for three years, and not all over Germany. Among the key structural parameters that are particularly decisive for refugees’ access to work, the legal status in the asylum process and the perspective to gain a residence status (*Bleiberecht*) – both largely depend on the country of origin and not on a refugee’s individual trajectory – have become the two most fundamental factors.⁴¹ Many refugees navigating these institutional landscapes experience the existing regulations that limit their access to work as arbitrary, unjust and coercive.⁴² Potential employers also find it hard to find their way through the bureaucratic jungle of legal statuses, residency titles, priority checks, white lists and employment-enhancing measures for refugees. Most importantly they express concern regarding the complex regulation of refugees’ access to the field of labour for its inconsistencies and a lack of planning reliability.⁴³

Confronting hopes with the reality – Challenges of gaining access to work

Representatives of municipalities, local employment offices, chambers of commerce, charity organisations and refugee activists are well aware of the multiple hurdles that refugees still face when trying to find work, despite the legal reforms that should have made access to employment easier. In October 2015, *weltoffen Bonn*, a group of local refugee activists, organised a workshop for volunteers and members of charity organisations who are supporting refugees in their pursuit of employment. Representatives from the local employment office (Agentur für Arbeit, Bonn) and from three organisations that support refugees in Bonn (*Flüchtlingsrat Köln, ASA – Ausbildung statt Abschiebung, LerNet*) discussed common problems faced by job-seeking refugees as well as possible solutions with the

⁴⁰ The ‘white list’ of particularly requested professions in Germany is frequently updated by the Federal Ministry of Labour and Social Affairs: <http://www.make-it-in-germany.com/en/for-qualified-professionals/working/demanded-professions/needed-vocational-qualifications>

⁴¹ Knuth, *Arbeitsmarktintegration von Flüchtlingen*, 6ff.; OECD, *Working together*, 27.

⁴² Knuth, *Arbeitsmarktintegration von Flüchtlingen*, 10

⁴³ Aumüller, *Arbeitsmarktintegration von Flüchtlingen*, 13.

workshop participants. They identified seven key challenges in the moderated group discussions, which are listed below. How job-seeking refugees living in Bonn are dealing with these challenges is explained on the basis of interviews that were held in August and September 2015.⁴⁴

Challenge I: Early assessment of skills, qualifications and ambitions

An assessment of a refugee's knowledge, skills, qualifications and professional ambitions – or, in Bourdieu's words, his/her 'incorporated cultural capital'⁴⁵ – is not part of a refugee's registration and not considered in the asylum process. Even though extensive surveys have now assessed the qualification levels of refugees who arrived in Germany in 2014 and 2015,⁴⁶ no data on the labour market suitability of refugees is available at the local level. In general, after their arrival, refugees need to be informed as early as possible about contact persons who can support their job search and the formal procedures that they have to follow to be able to work. The motivation to work and use their previously acquired qualifications productively became quite clear in our interviews. Mousa M., for instance, worked for fourteen years in an uncle's butchery in Syria. He has significant practical skills in this field, but never obtained a professional qualification. He wanted to work again as a butcher as soon as possible, but was also willing to do jobs in other sectors. Ahmed D., also from Syria, has a Masters' degree in education and worked at a Syrian university before becoming a refugee. He now plans to learn German first, and then get a part time job or a scholarship, which would enable him to pursue a PhD in Germany. Daniel T. completed an apprenticeship as a medical assistant (nurse) and had worked in this field in Eritrea for twenty years before he had to flee. He also wants to work, but only after acquiring sufficient German language skills.

In all interviews, it transpired that entering the labour market was considered a priority, but the crucial question was "how". As part of its project "early intervention"⁴⁷, which aims at supporting refugees' labour market access at a very early stage, the local employment office uses a standardised registration form to assess refugees' skills and qualifications so that appropriate steps such as job-specific language courses or professional training can be organised. Since January 2016, crucial services of the municipal immigration office, the social services bureau, the employment agency and some refugee support organisations have been brought together under one roof in so-called "integration points". It remains to be seen whether this concept of *one* contact point for refugees, which is not only pursued in Bonn but has been introduced in 80 cities all over North Rhine-Westphalia,⁴⁸ will contribute to a quicker assessment of refugees' skills and better recognition of their professional ambitions.

⁴⁴ All Interviews were conducted by Kim Kosiol for her B.Sc. Thesis „Wie finden Flüchtlinge Zugang zu Arbeit? Eine empirische Untersuchung in Bonn“, (Bonn: Geography Department, University of Bonn, 2015).

⁴⁵ For migrants, refugees and other mobile actors, the transferability and transformability of their capitals (e.g. financial assets, professional knowledge) is crucial when they seek to establish themselves in a different place or when they seek to sustain their 'translocal' livelihoods across multiple places. See Philip Kelly and Tom Lusis, "Migration and the Transnational Habitus: Evidence from Canada and the Philippines", in *Environment and Planning A*, 38 (2006): 831–847; Patrick Sakdapolrak, "Livelihoods as Social Practices: Re-energising Livelihoods Research with Bourdieu's Theory of Practice", in *Geographica Helvetica*, 69 (2014): 19–28.

⁴⁶ Herbert Brücker, Paul Schewe and Steffen Sirries, *Eine vorläufige Bilanz der Fluchtmigration nach Deutschland* (Nürnberg: Institut für Arbeitsmarkt- und Berufsforschung (IAB), 2016).

⁴⁷ For an evaluation of the initial stages of the Federal Agency for Labour's „Early Intervention“ programme see Volker Daumann et al., Early Intervention - Modellprojekt zur frühzeitigen Arbeitsmarktintegration von Asylbewerberinnen und Asylbewerbern. IAB-Forschungsbericht, 03/2015 (Nürnberg: Institut für Arbeitsmarkt- und Berufsforschung (IAB), 2015).

⁴⁸ Claudia Manke, „Integration von Flüchtlingen. Unnötiges Pendeln zwischen den Behörden soll ein Ende haben“, Bonner Generalanzeiger, 17.12.2015, <http://www.general-anzeiger.de>

Challenge 2: Formal recognition of previously acquired qualifications

“Getting the documents right” is crucial for refugees and other groups of migrants who seek entrance to the highly formalised German field of labour in which ‘institutionalised cultural capital’ often counts more than practical skills. Previously acquired qualifications (school graduates, academic titles, professional certificates, etc.), however, often do not match German standards or are not recognised. The rate of recognition of professional certificates and academic titles is not only lower for refugees than it is for other groups of migrants,⁴⁹ but it also varies according to different countries of origin. For example, in the years 2012 to 2014, 77% of the applications by Syrian nationals for full recognition of their professional qualifications were accepted, but only 51% of applications of Afghan nationals.⁵⁰ Because of a devaluation of their previously acquired institutionalised cultural capital, many highly-qualified refugees experience ruptures in their working biographies.⁵¹

The recognition of foreign qualifications is especially relevant for publicly regulated professions, such as nursing or teaching. Refugees certainly need more information about these strongly state-regulated segments of the labour market and the specific qualifications they require and then guidance through the procedure of getting their titles recognised by state agencies. In Bonn, just like in other German cities, specialised advisors provide support to refugees in this process.⁵² For Daniel T. from Eritrea this means that he will first have to get an official translation of his professional certificate as a medical assistant and send this to the federal state agency in Düsseldorf. If his title is officially acknowledged, he will immediately be able to start a job in this field, because medical personnel is on the ‘white list’ of professions in which there is a shortage of skilled labour in Germany. If his title is not acknowledged, he will have to take part in training courses, complete an examination, and thereby acquire the proper professional certificate allowing him to work. The loss or destruction of diplomas on the journey is a common issue among refugees. In some of those cases, it is possible to provide evidence of one’s competencies by way of a qualification analysis to gain recognition. It is, however, only possible to get official degrees recognised. Autodidactic competencies cannot easily be transferred into a title. The Syrian butcher Mousa M., who acquired all his skills in his family’s business and thus has no professional certification, would have to start an apprenticeship at a German butchery to receive formal proof of his professional skills. He can, however, also prove his practical skills in an internship to a potential employer. If that employer recognises his workplace skills, no further formal procedures will be necessary before he can start a job, as access to this profession is not regulated by the state. In most segments of the German labour market, recognised qualifications in the form of professional certificates and academic titles are of fundamental importance for finding adequately paid work. The official statistics⁵³ show that the rate of unemployment is highest for workers with no or lower professional qualifications and thus for all people who do not possess institutionalised cultural capital.

bonn.de/region/Unn%C3%B6tiges-Pendeln-zwischen-den-Beh%C3%B6rden-soll-ein-Ende-haben-article1787224.html

⁴⁹ Elisabeth Liebau and Zerrin Salikutluk, „Viele Geflüchtete brachten Berufserfahrung mit, aber nur ein Teil einen Berufsabschluss“, in *DIW Wochenbericht* 35. Berlin: Deutsches Institut für Wirtschaftsforschung, 2016: 732-740, 738.

⁵⁰ OECD, *Working together*, 90.

⁵¹ Johansson et al., *Was wir über Flüchtlinge (nicht) wissen*, 21.

⁵² In each federal state, there are centralized agencies for the recognition of school certificates and other professional titles: <https://www.anerkennung-in-deutschland.de/html/de/>. Organisations in the IQ-network (“Integration durch Qualifizierung”) funded by the German Ministry for Labour and Social Affairs and the EU’s Social Fund provide information and support to refugees in this process: <http://www.iq-netzwerk-nrw.de>

⁵³ Bundesagentur für Arbeit (BA). Der Arbeitsmarkt in Deutschland – Zeitarbeit – Aktuelle Entwicklungen. Nürnberg: Bundesagentur für Arbeit (BA), 2016.

Challenge 3: Acquiring language skills

A good command of German – also a form of incorporated cultural capital – is a crucial prerequisite for entering local fields of labour. Access to language classes is, however, still problematic. Since October 2015, all recognised refugees and asylum seekers from countries with a high recognition rate have the right to participate in integration courses which combine German classes and civic orientation. The number of these courses at public training institutes and private language schools has been expanded significantly in the last two years. Still, there are simply not enough places in free classes that are funded by the state. Asylum seekers from Syria, Iraq, Iran and Eritrea are given priority, while those from other nations, in particular from ‘safe countries of origin’, often fail to get a spot. The same exclusionary principle applies to job-oriented German language courses offered by local employment offices in which refugees can not only learn German but also the specialised vocabulary of different professional fields.⁵⁴ In many German cities, charity organisations and refugee activists try to compensate for this structural discrimination, but cannot reach all asylum seekers who might need a place either. Many refugees also use their own financial resources to enhance their German skills in intensive language courses offered by private companies, but a significant share would never be able to afford these. As such, tens of thousands of asylum seekers are waiting in limbo all over Germany – both for decisions in their asylum process and for access to German language courses. A lack of financial and legal capital is a very significant barrier to enhancing their own cultural capital.

In general, learning German is easier for children than it is for adults, and it is easier for those who went to high school or studied in their home countries than for others who are illiterate.⁵⁵ Of course, learning a language at a level that enables communication at the workplace requires one’s own dedication, time and concentration as well as social contacts with native speakers. Many initiatives are active in Bonn and establish such contacts between refugees and Germans. For refugees, these networks are not only valuable resources for enhancing their language proficiency but also for finding work later on.

Challenge 4: Overcoming legal barriers and acquiring a work permit

The status in the asylum process and thereby also the duration of the residence permit – refugees’ legal capital – still is the most significant barrier to job-seeking refugees. The long duration of the asylum process⁵⁶ means a long wait and personal insecurity, during which time access to work is difficult for personal and practical reasons, but also due to common bureaucratic practices. Likewise, access to Germany’s field of labour is not merely based on labourers’ qualifications or skills, but also on a territorial logic. For instance, the instrument of the priority check privileges Germans, EU-citizens and job candidates with secure refugee status (who are likely to come from certain countries) over people with only temporary residency status. The 2016 Integration Act did not fully abolish this principle as its suspension is only tested for three years. What counts more is that municipalities with a large number of refugees and a high unemployment rate can decide to uphold it to ‘protect’ their native working population. In fact, Dortmund and Duisburg decided to do

⁵⁴ Knuth, *Arbeitsmarktintegration von Flüchtlingen*, 8; OECD, *Working together*, 28.

⁵⁵ Elizabeth Liebau and Diana Schacht, „Spracherwerb: Geflüchtete schließen nahezu zu anderen MigrantInnen auf“, in *DIW Wochenbericht* 35. Berlin: Deutsches Institut für Wirtschaftsforschung, 2016: 741-748, 744f.

⁵⁶ In 2016, the average duration of asylum processes was 7.1 months (two more than in 2015), but this varies significantly between groups. Applications of people from ‘safe countries of origin’ and from Syria, Iraq, Iran and Eritrea are given priority. Refugees from Syria receive their decision already after 3.8 months, for those from Serbia it takes around 8.9 months and those from Somalia can expect a decision not earlier than in 17.3 months. <http://www.bpb.de/politik/innenpolitik/flucht/243582/migrationspolitik-februar-2017> (accessed 14.03.2017).

so.⁵⁷ What are the consequences? In 2016, 11 percent of the applications of foreigners from third countries outside the European Union for a work permit were rejected after a priority check. Since the adoption of the Integration Act, the chances of asylum seekers and tolerated persons to receive a work permit have however improved.⁵⁸ Still, the bureaucracy involved in this process takes time and is a great nuisance for employers too. For simply pragmatic reason of a quick and easy selection process, employers might refrain from offering a job to an asylum seeker when there are other suitable candidates for the job.

Likewise, many employers simply do not want to employ a worker for too short a period. Again, all asylum seekers who are still awaiting their decision and those with toleration are hence disadvantaged. The same applies to apprenticeships. Despite the newly introduced 3+2 rule, many firms do not want to offer apprenticeship positions to persons who are at risk of being deported during the three years of vocational training. Self-evidently, firms only want to ‘invest’ in human capital that they can retain for beyond the apprenticeship. The integration effects of such structural barriers are significant. Not only are the chances of already well-qualified persons and young talents to successfully enter the German fields of labour diminished, but young people – and in particular men – are also excluded from long-term livelihood opportunities. This might pave the way for their societal marginalisation, and sometimes even lead to a turn to illicit activities.

Bureaucrats in the Federal Office for Migration and Refugees, in the local immigration office or the local employment agency can greatly influence the trajectory of a refugee’s life. They not only decide whether a person has the right to stay in Germany, but also over his/her access to or exclusion from fields of labour. The example of Bikila B. from Ethiopia illustrates this well: He came to Germany 11 years ago, applied for asylum but only received toleration. Every six months, he had to renew his residence permit. Several times, he was told by potential employers that he could not start to work there due to his short-term legal status. When he found a job as a kitchen hand in a restaurant, the employer demanded that he present a residence permit of at least one year. Bikila B. applied for such an extension at the immigration office. To his surprise, he received a two-year residence permit and a work permit and was able to start that job then. He had several other jobs since and later received a permanent residence permit. At the time of the interview, he was considering applying for German citizenship. As illustrated, it was the decision of the person in the immigration office that paved the way for his labour market integration and his long-term perspective in Germany.

Challenge 5: Navigating through local fields of labour

Refugees are allocated to municipalities according to the logic of the field of asylum and not based on their skills or the requirements of the local labour markets, which can be quite specific. This often leads to the fact that refugees end up in places where they cannot utilise their skills optimally or where they are even structurally marginalised. For many of the 3,000 refugees who have been allocated to the city of Bonn, this might be the case.⁵⁹ 91 percent of Bonn’s employees are in the service sectors, mainly in private services, science, public administration, commerce, information and communication services. Only 8.5 percent of employees are working in the secondary sector – in industries and

⁵⁷ Knuth, *Arbeitsmarktintegration von Flüchtlingen*, 7; OECD, *Working together*, 44.

⁵⁸ According to the Federal Employment Agency, 215,000 foreigners from third countries received a work permit after a priority check in 2016, whilst 27,000 were rejected. Work permits were granted to 94 percent of all asylum seekers and tolerated persons since adoption of the Integration Act in August 2016; before the rate stood at only 60 percent. „27.000 Ausländern wurde der Job verwehrt“, Bonner Generalanzeiger, 03.03.2017.

⁵⁹ In February 2017, 2,800 asylum seekers and recognised refugees from forty countries lived in reception centres, hotels and private accommodation under the auspices of the city of Bonn. Recognised refugees who live in private apartments and not in one of the shelters run by the city are not included in these figures. The actual number of refugees living in Bonn is thus far higher. <http://www.integration-in-bonn.de/aktuell-fluechtinge-in-bonn.html> (28.02.2017)

construction.⁶⁰ Accordingly, the city's labour market mostly attracts highly qualified professionals with academic degrees. The share of employees who work in 'expert positions' is far above the national average, while the share of 'skilled workers' and 'helping hands' is far below the national level.⁶¹ Because there are comparatively few available jobs for workers with lower qualifications, they also face fiercer competition in Bonn than in other German cities and are more often affected by unemployment. A spokesperson for the local employment agency said that (on average) 22 unemployed people would compete for a single position as a 'helping hand'. In specific sectors, the quota is even worse: an open position as cleaner would draw around seventy-four applicants and 152 people would compete for a salesman position.⁶² This structure of the local field of labour might negatively affect the employment prospects of refugees in Bonn, in particular disadvantaging refugees who do not have professional qualifications or whose academic titles are not recognised.

In general, there is a welcoming attitude towards refugees and labour migrants in Bonn's local economy.⁶³ In November 2015, more than 140 employers in the city and the wider Rhein-Sieg district signalled their willingness to provide jobs, apprenticeship positions or work experience to refugees.⁶⁴ Nonetheless, there often seems to be a mismatch between refugees' priorities and expectations and the available jobs. Notwithstanding their specific qualifications or potential, refugees are often rather offered jobs in technical fields, industry or in the care sector than in consumer services, in which a high command of German is required. Many men from Syria would, however, like to work as a salesman or in office positions. Moreover, for a woman from a Syrian middle-class family, a job as a cleaner in private households or a cleaning company can be considered as downward social mobility, rather than an adequate entrance into a new labour market. In turn, potential employers might have a certain image of 'a refugee' and see her/him as a person in need of help and special treatment, and only secondarily as a person with skills and professional ambitions. This might lead to positive discrimination and further misunderstandings. Fields of labour cannot be reduced to a mere supply of and demand for labour power and skills. Social, cultural and gender-specific aspects need also to be considered when the positioning of persons in new fields of labour is investigated.

Challenge 6: Finding work (with the help of social networks)

Many refugees are not familiar with effective methods of searching for a job, or with the application standards in Germany. In this regard, social capital becomes a valuable resource: Those refugees with close contacts to people from the same country of origin, or relatives who have been living in Bonn for a longer period of time, and those who have access to networks of volunteers and refugee activists find it much easier to get an overview of the local labour market and learn about open positions. Many refugees are accompanied by locals to the employment agency. Local friends also indicate suitable job offers and help with compiling application documents. Bikila B. from Ethiopia got his first job as a helper in a restaurant through a friend who pointed out the open position. Later, he found

⁶⁰ Stadt Bonn, Amt für Wirtschaftsförderung, Liegenschaften und Tourismus. Jahreswirtschaftsbericht 2015, S. 18ff. http://www.bonn.de/wirtschaft_wissenschaft_internationales/wirtschaftsfoerderung_bonn/daten_un_d_fakten/15768/index.html

⁶¹ In Bonn, 37 percent of all employees work in 'expert' positions that require an academic title, compared to 13 percent at the national level. 53 percent of employees in Bonn are 'specialists' and 'skilled workers' (national average: 73 percent), and 10 percent 'helping hands' (national average: 13 percent). „74 Bewerber für eine Putzstelle“, Bonner Generalanzeiger, 02.02.2016.

⁶² „74 Bewerber für eine Putzstelle“, Bonner Generalanzeiger, 02.02.2016.

⁶³ Industrie- und Handelskammer Bonn/Rhein-Sieg, „Neue Willkommenskultur in Bonn/Rhein-Sieg“, in *Die Wirtschaft* (Bonn: IHK Bonn/Rhein-Sieg, 2015).

⁶⁴ Statement by a representative of the local employment office at a coordination round between the city of Bonn, charity organisations and refugee activists in Bonn, 02.11.2015.

employment with a postal service. A social worker from the Red Cross had helped him with writing his CV and preparing the application. In some cases, German friends established direct contacts with potential employers or accompanied refugees to job interviews, in which the presence of the German contact person seems to have a positive effect. Enam S., an asylum seeker from Egypt, asked for work in a large Italian restaurant. He indicated that he was offered a position as kitchen help because he was aided in his job research by a female German student. The Syrian butcher Mousa M. also managed to find work in a local butchery. A volunteer had established contacts to the employer and had also assisted him with his application documents. The employer specifically asked that a person who knows the candidate well should accompany him to the job interview. The application was also successful because the employer had good past experience with employing a Syrian Kurd before. He then also profited from his own intercultural competence, which is not self-evident in Germany.

In all the interviews with refugees, it showed that refugees' social capital improved their access to work significantly. This coincides with the findings of more comprehensive studies. In a large migration survey in 2013, more than half (53 percent) of the people who had arrived in Germany as refugees stated that they had found their first job through informal channels, that is via friends and relatives. In contrast, 43 percent found their first job via formal channels: 12 percent via newspaper ads, 11 percent through the employment agency and 11 percent through commercial employment agents. The study also showed that informal channels speed up refugees' access to work: Out of those refugees who could draw from social capital, 75% found employment within three years of their arrival. In contrast, only 50% of all refugee who could not draw on social capital, but relied on formal channels of job search, managed to find employment in the first three years.⁶⁵ However profiting from social capital also has its limitations, in particular when legal conditions restrict access to lawful employment.

Challenge 7: Finding 'decent' work instead of entering informal fields of labour

The field of labour is stratified into multiple subfields. Access to work, therefore, does not necessarily mean access to 'decent work'. As indicated above, many refugees now compete with other migrant workers over jobs at the bottom of the employment ladder which are not adequately paid, highly insecure, and in which workers might be subject to exploitation. Hasan B., an asylum seeker from Bangladesh who is still awaiting a decision on his asylum claim, explained that a significant informal labour market exists for refugees in Bonn:

"I know a lot of refugees here in Bonn who are working illegally. Almost all of them are working in restaurants. I mean, we want to work, but the immigration office does not let us. But we need money. Most of us, we are often the only ones from our families who can support them with money. Our parents et cetera are dependent on us. [...] I need to work! I'm trying legally, but you know, we're caught in the middle and so I will probably also start to work illegally."⁶⁶

People who are formally not (yet) allowed to work, but who are nonetheless obliged to earn an income because they only have limited access to social services and/or because they have to support family members elsewhere, are structurally forced to enter this 'black market'. Access to informal jobs in restaurants, cleaning companies or the construction

⁶⁵ Phillip Eisnecker and Diana Schacht, „Die Hälfte der Geflüchteten in Deutschland fand ihre erste Stelle über soziale Kontakte“, in *DIW Wochenbericht* 35 (Berlin: Deutsches Institut für Wirtschaftsforschung, 2016), 759,762.

⁶⁶ Interview conducted by Kim Kosiol on 19.08.2015 in Bonn

sector is often established through personal contacts, too. Moreover, in many large German cities like Berlin, Hamburg, or Cologne ‘contact zones’ exist at specific street corners, where employers can find day labourers who are willing to work at minimal wages.⁶⁷ Apparently, an increasing number of refugees contribute significantly to the “shadow economy” in Germany.⁶⁸ The differentiated rights to work set by the prevailing asylum regime and the high entrance hurdles to formal employment contribute to a further segmentation of the regions’ labour markets into niches, in which informal rules rather than fair working standards prevail. Refugees, in particular those with insecure legal status, are hence highly vulnerable to low payment, exploitation and degrading working conditions.⁶⁹

Conclusions

The nexus between asylum and labour in Germany is full of contradictions. One of the central paradoxes lies in the fact that a person who arrives in Germany by ‘irregular means’, applies for asylum and is later formally recognised as a refugee nowadays has comparatively easy and quick access to the labour market and a long-term perspective to stay in Germany. In contrast, a person from a different country who also enters Germany by irregular means but has economic motives in mind and nonetheless applies for asylum (as no legal channels for labour migration are available) but cannot prove that she/he is a refugee, is barred from entering the German labour market.

Employing Bourdieu’s theory of practice and conceptualising the asylum regime as a “field of asylum” and labour markets as “fields of labour” can help to comprehend such paradoxes. Accordingly, a ‘good’ position in the field of asylum opens up opportunities in fields of labour, whereas a ‘bad’ position in the field of asylum also leads to exclusion from fields of labour. The stratification within the field of asylum is, in effect, based on the “legal capital” that is given to refugees by the state. The German parliament has, for instance, decided that refugees from countries with a high recognition rate such as Syria and Eritrea and thereby a ‘good perspective to stay’ are entitled to access integration courses and are allowed to work while those from countries with a low recognition rate such as Serbia and Bangladesh and thus ‘bad perspectives to stay’ in Germany are not. Decisively, legal capital shows in the formal recognition as a refugee, in a permanent residence status, and eventually in access to full citizenship. Political differentiations and asylum decisions thereby structure the forms of citizenship and in effect the future lives of people who arrive as refugees. An asylum seeker might be recognised as a refugee, receive subsidiary protection, be temporarily tolerated or about to be deported. This crucial decision regarding legal status is taken by bureaucrats in Germany’s field of asylum, and not only opens up or blocks asylum seekers’ perspectives to stay, but also their future life chances regarding education and work. Even though it is too early to comprehensively judge the

⁶⁷ For cases from Hamburg see Christoph Twickel, “Die verdienen was anderes”, Die Zeit, 18.01.2015, <http://www.zeit.de/2015/40/fluechtlinge-hamburg-schwarzarbeit-billstrasse>; for cases from Cologne see Tim Stinauer, “Schwarzarbeit. Der Arbeiterstrich von Ehrenfeld”, Kölner Stadtanzeiger, 26.05.2013, <http://www.ksta.de/koeln/ehrenfeld/schwarzarbeit-der-arbeiterstrich-von-ehrenfeld-5569982>.

⁶⁸ Ernst Schneider, an expert on the shadow economy in Germany, estimates that one quarter of refugees that came to Germany in 2015 might potentially enter the informal labour market. These 200.000 informal workers could add 1.5 billion EUR in value to the shadow economy. They would also enhance competition and could contribute to lower wages for unqualified workers in the construction sector, private households or restaurants. Annette Dowideit and Annelie Naumann, „Wie Flüchtlinge den „Arbeiterstrich“ aufmischen“, Die Welt, 25.01.2016, <https://www.welt.de/politik/deutschland/article151420748/Wie-Fluechtlinge-den-Arbeiterstrich-aufmischen.html>; for further information see Friedrich Schneider and Bernhard Bookmann. Die Größe der Schattenwirtschaft – Methodik und Berechnungen für das Jahr 2016. Tübingen / Linz: Institut für Angewandte Wirtschaftsforschung (IAW), Johannes Kepler Universität Linz, 2016.

⁶⁹ Jörg Alt. *Leben in der Schattenwelt. Problemkomplex illegale Migration* (Karlsruhe: von Loeper, 2003); Johansson et al., *Was wir über Flüchtlinge (nicht) wissen*, 19.

legal reforms of the last two years in the field of asylum for all their labour market effects, they have clearly had one consequence: The field of asylum has been divided into further subfields, in which differently categorised groups of refugees are differentially positioned. This fragmentation of the field of asylum has ripple effects on refugees' access to work. It has enhanced the chances for rapid labour market integration for some – they can capitalise on asylum – but radically reduced the chances for others.

Of course, the individual chances of establishing oneself in a new field of labour not only depend on the respective person's legal capital, but also on other capitals that contribute to their positioning: their previous socio-economic position and financial means currently available to them, i.e. their economic capital; their professional skills and German language proficiency, i.e. their incorporated cultural capital; the formal recognition of their qualifications, i.e. their institutionalised cultural capital; and their networks of support in gathering information and finding employment, i.e. their social capital. Refugees seeking employment have to mobilise all the capitals available to them to overcome the multiple structural barriers that confront them. Moreover, the case study of Bonn also indicates that the structural set-up of the *local* fields of labour is a fundamental parameter for refugees' access to work. In Bonn, a substantial number of refugees have already been successful and found jobs or apprenticeships. The small share of industrial employment and stark competition between less qualified labourers does, however, pose a great challenge for the labour market entry of those refugees for whom positions as 'helping hands' in services and industries might be the sole option. Achhammer and Herbst note that for refugees who still fall under the priority check and live in a region with disadvantageous structural economic conditions for lower qualified workers, the chances to successfully enter the legal labour market are next to nil.⁷⁰ In consequence, pressing economic reasons, such as the urgent need to send remittances to family abroad or insufficient access to social services, are likely to lead those asylum applicants who are lacking rights of access to legal employment to start working illegally. If refugees are forced to work in the 'shadow zones' of the economy, they become subject to unsafe labour conditions and exploitation. Strict formal regulations in the asylum system thus also pave the way for informal conditions in the labour market.

At the beginning, it was argued that the field of asylum and the fields of labour are good examples for autonomous fields as they have different underlying logics. For refugees, this is not the case. The outlined policy developments and empirical examples indicate that the rules of the field of asylum, which is traditionally closer to the state's field of power and which increasingly centres on questions of security and control and employs practices of containment and exclusion, overrule basic principles in local fields of labour. In conclusion, it therefore becomes clear that the two fields are not converging – in the sense that they merge, give up or alter some central principles in each field – but that they are heteronomous. For refugees, their position in the field of asylum opens up or closes positions in local fields of labour. This overwhelming dependence on legal capital limits rather than enhances refugees' access to decent work. If those refugees who are purposely structurally disadvantaged want to establish themselves successfully in the field of labour, too, they first and foremost have to emancipate themselves from the field of asylum. In turn, it is pivotal that potential employers stop to see those persons who came to Germany and applied for asylum merely as refugees, but recognise them as labourers and professionals.

⁷⁰ Achhammer and Herbst, „Der (Asyl-)Proceß“, 19.

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Syrian Children In Turkey: The Little Workers Need To Go Back To School

Solène Poyraz¹

Since the Syrian uprising started in March 2011, Turkey has officially welcomed 3,2 million Syrian refugees²; half of which are under 18. According to Turkish law, Syrians are considered ‘guests’ (*misafir*) and benefit from temporary protection, which provides them with limited rights and prevents them from pursuing long-term purposes³. This absence of clear status causes uncertain living conditions for Syrians in Turkey, affecting the children even more.

As it might be expected, children constitute the most vulnerable group in any conflict or migration context. Indeed, the danger does not vanish when the children cross the border to enter Turkey. Within the hosting country, they have to overcome other impediments such as human trafficking, child labour, child marriage and other forms of exploitation. Child labour and the deprivation of education constitute the main issues that must be tackled in an emergency by the Turkish authorities and civil society.

Thus, this paper aims at setting out some of the difficulties which prevent Syrian refugee children from getting a proper education in Turkey, which has recently become the biggest refugee hosting country in the world.

These observations rely on two main fieldworks conducted in Istanbul and in the south-eastern city of Gaziantep, two of the four main hosting cities together with Urfa and Hatay. In Istanbul, I focused on the neighbourhoods of Esenler, where Syrian children are known to constitute a major labour force in textile factories, and Beyoglu, where they can usually be seen begging or selling tissues. In Gaziantep, I attended for one month the Rainbow centre’s activities with Syrian children, and had the opportunity to interview the children, some families and teachers, the director and the psychologist, focusing my research on the alteration of their socialisation process.

‘I want to go to school but I have to work’⁴: about Syrian children’s vulnerability

In May 2016, a Turkish association⁵ released a study conducted among 100 children and their families in several disadvantaged neighbourhoods of Istanbul known for the huge number of Syrian refugees living there. This report, entitled ‘To be a child immigrant in Turkey’, shed light on the various difficulties that Syrian child refugees from seven to 12 currently face in Istanbul.

Above all, it reveals that 39 out of 100 children assessed cannot read or write and that only 38 continue attending school. It is well known that the others go to work in the textile factories surrounding the areas inhabited by Syrian refugee families such as Bagcilar,

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² Syrian Regional Refugee Response UNHCR (2017) Available online: <http://data.unhcr.org/syrianrefugees/country.php?id=224>

³ It has been chosen here to call them ‘refugees’ as they deserve this status even though Turkey cannot recognise them as refugees because of the geographical limit they implemented on the 1951 Geneva Convention.

⁴ A Syrian child aged 7, interviewed in Gaziantep streets, March 2017.

⁵ SKYGD, association of development of the social and cultural life, based in Esenler (Istanbul).

Esenler, Okmeydani, Basaksehir. Consequently, volunteers who led the inquiry reported that they had to conduct the interviews on Sundays if they wanted the children to attend it; otherwise they were all working six days a week.

Another study conducted by Support to Life, a Turkish organisation, revealed that ‘at least one child works in almost every third Syrian household in Istanbul. With regards to the main sectors in which children are being employed, half of the respondents stated that their children are engaged in the textile sector, both confectionary and shoe production’⁶.

The whole world heard about the BBC investigation in Turkish factories which revealed the hiring of Syrian children in famous international factories such as Marks & Spencer, Mango, Zara or H&M. In these firms, the children are paid 4 TL (a bit more than 1€) per day and some of them work 12 hours a day. It is far from being an exception in Turkey.

Although President Erdogan announced in 2014 that child labour under 15 would be reprehensible, child labour is a persistent problem in Turkey. In her article about ‘Syrian Child Workers in Turkey’ released on December 2016, Sezen Yalçın reminds us that in 2012, before the massive influx of refugees, there were nearly 1 million child workers in Turkey⁷. The context of a slowdown economy and the fragile status of Syrians in Turkey did not improve the situation. Even if the authorities took a step forwards by relieving conditions for Syrians to obtain work permits; it is still very difficult to find a formal job and complete the administrative procedure. Much more needs to be done on this precise topic, as the destitute Syrian families are finally compelled to adopt the easiest ways to survive and send their children to work.

Syrian children are denied access to get a proper education: the other invisible impediments

A report released in January 2017 by UNICEF revealed that around 380,000 school-aged Syrian children living in Turkey were missing out on school, which represents 40% of them, leading some observers to denounce the constitution of a ‘lost generation’.

Although the increasing child labour obviously prevents children from getting a proper education, other elements are at stake when it comes to this issue. First, a majority of Syrian families cannot afford to pay the transport and schooling fees for all their children. Therefore, the economic situation and the changing context lead the children to assume new roles within the families as they have to embody an income provider.

The obstacle is also administrative, as it is known that a lot of Syrian children have no official documents (*kimlik*). The inquiry conducted in some disadvantaged neighbourhoods of Istanbul by the SKYGD organisation also deals with the registration of Syrian children required for the complete acquirement of temporary protection: if they are not registered, they cannot go to public schools. According to the mentioned inquiry, out of 100 children assessed, twenty-three did not have it.

This can be explained by several factors, such as the defiance of Syrian refugees towards the Turkish state but there is also a tremendous lack of information: Syrian refugees usually do not know their rights and sort out everything by themselves, or with the help of the Syrian community already settled there.

Another role which has to be taken into account is that of the families: some of them may choose not to send their children in some schools which provide the children with too many religious lessons or where the level of education is too low. Some parents argue that these kind of Syrian schools are gradually going to be closed and that the certificates obtained from them would not be valid for entering Turkish schools.

⁶ “Türkiye'de Çocuk İşçiliği Sorunu,” [Child Labour in Turkey] *Hayata Destek*, 11 March 2016, www.hayatadestek.org/media/files/Turkiyede_Cocuk_Isciligi_Sorunu_Suriyed.pdf

⁷ Sezen Yalçın, ‘Syrian child workers in Turkey’, *Turkish policy Quarterly*, December 2016.

Local initiatives against the dissemination of a « lost generation »: the example of the Rainbow centre in Gaziantep

One can observe that studies conducted on this topic tend to focus on numerical data about the children's access to healthcare or education, while a few of them deal with the specific life context of these children. My fieldwork in Gaziantep with the children of the Rainbow centre caught my attention to a different approach: the necessity of re-socialising these children who have to face a "vital rupture" (Bar de Jones, 2001) due to war, exile and violent living conditions.

Indeed, any migration implies an alteration of the "usual" socialisation process, which can take the form of a regression or presents an opportunity for the individual to develop his/herself. Thus, the Rainbow centre was created in August 2015, by Syrian volunteers in order to overcome the alteration of these Syrian children' socialisation process.

Situated in Gaziantep, near the Syrian border, the centre proposes everyday activities so that the Syrian children can enjoy their childhood a few hours a day before going back to work, begging, or taking care of their brothers and sisters. Indeed, the Syrian team chose to act in one of the poorest neighbourhoods of this south-eastern city to get closer to destitute families who hence do not have to pay anything.

The city of Gaziantep displays many other specificities, as it welcomes more than 350,000 Syrian refugees mainly coming from the destroyed city of Aleppo. Some children attending the centre have reached Gaziantep by crossing the border by foot, lacking food and terrorised by the border soldiers.

Aged from five to ten, they are provided with one meal a day by the centre to make sure that they eat something every day. A hundred children currently attend these activities (language lessons, cultural visits, artistic and music workshops, etc.). The team is composed of more than 15 volunteers but also professionals. One of the assets of the centre is the presence of a child psychologist who tends to help these traumatised children in voicing their traumas. Whereas some of the children speak easily about what they have seen there: 'there were planes bombing at us and then I saw my uncle cut in pieces', a seven-year-old boy told me.

This is not a school; the centre offers the opportunity to countervail the absence of education and they aim at providing the children with a basic program so that they can enter public schools later. To create and maintain such a centre is not an easy task as they received propositions coming from Islamic organisations: in return for giving money, they had to implement Koranic lessons and separate girls from boys in the classrooms. Thus, the centre is currently supported from part of a French association "Ma Belle Ecole" (My Beautiful School). It is far from being an exception, as a lot of community schools are compelled to close, running out of money, or to accept funds from some Islamic associations.

Conclusion

In sum, this article both outlines the various obstacles Syrian children have to face currently in Turkey to get a proper education and offers a glimpse at educative initiatives which deserve to be encouraged by the actors at stake.

Child labour constitutes one of the impediments, but other elements specific to the Turkish context tend to discourage Syrian families from sending their children to school. This issue has to be put on the political agenda of the main hosting countries, as a lost generation is growing up. The Turkish authorities supported by the international organisations already made noticeable achievements in this domain, but much more need to be done. It is mainly about making the administrative procedures easier and make sure that the Syrian families can improve their living conditions without relying on their children's jobs for income. However, civil society can also participate in this struggle for education as far as they are sensitised to this issue and can be encouraged to develop local

initiatives.

It must be tackled as an urgent issue, as the lack of education and the downfall of opportunities for these children to consider a better future will certainly affect the hosting countries in so far as we are creating uneducated citizens.

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Refugee Issues: Academic Articles

Women Refugees and Epistemic Privilege: Opening the Borders Between Postcolonial Feminism and Forced Migration Studies

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Abstract

This paper offers a critique of the scholarship on agency and victimhood in forced migration studies to reveal the often-hidden orientalist, neocolonial and oversimplified portrayals and understandings of refugee women's subjectivities. By revisiting notions such as victimhood, survival, empowerment, and emancipation, I attempt to bring what Chandra Talpade Mohanty refers to as the epistemic privilege of 'Third World' women to the discipline of forced migration. The paper argues for a postcolonial approach to forced migration studies in order to further our analysis of women refugee's experiences beyond eurocentric and orientalist modes of representation.

Keywords: Women, Refugees, Postcolonial Feminism, Orientalism, Agency, Victimhood.

Introduction

A longitudinal view of feminist literature on gender and forced migration reveals tremendous shifts in theorisation in the past three decades. In the 1980s, women were mostly conceptualised as "victims" (generally of gender violence) and as constituting a greater burden than men in countries of asylum. During the same period, other scholarship viewed refugee women as *victimised* and not victims *per se* through a questioning of gendered power relations and complex socio-economic and political realities.² This focus on the vulnerability of women foreclosed explorations of agency and multiple identities of women refugees.³ By the beginning of the 1990s, academic discourse shifted towards an emphasis on women's agency, and highlighted the different roles they played to mobilise or keep their families together. There was thus a shift in language from victimhood and vulnerability to one of resistance, survival and empowerment.⁴ For example, members of *Mama Maquin* - an organisation run by

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² Maroussia Hajdukowski-Ahmed et. al., *Not Born a Refugee Woman: Contesting identities, rethinking practices* (New York: Berghahn Books, 2008), 2-3.

³ Angela Raven-Roberts, "Women and the Political Economy of War," in *Women and wars: Contested Histories, Uncertain Futures*, ed. C. Cohn, (John Wiley & Sons, 2013), 36.

⁴ Hajdukowski-Ahmed et. al., *Not Born a Refugee*, 7-9.

Guatemalan women refugees in Mexico- are often portrayed as empowered and active agents.⁵ This case study crystallised the debate around the theme “victims of war *and* Agents of change”.⁶ The refugee experience was thus also portrayed as an opportunity for emancipation and agency.⁷

This paper focuses on the “Agents not Victims” discourse.⁸ It attempts to locate a postcolonial/anti Orientalist paradigm within forced migration studies to further our understanding of women’s refugee experience. In particular, this paper sets out to review and critique scholarship on agency, survival, emancipation, empowerment and victimhood of women in forced displacement and war zone contexts, while bringing to light orientalist, neo-colonial and oversimplified arguments and observations in such scholarship.

The contribution of feminist literature in challenging hegemonic discourses and understanding how power relations shape the (necessarily gendered) refugee experience is undeniable. It is, however, not without its shortcomings. As Sherene Razack⁹ argues, a Western feminist worldview, with its cultural and historical specificity, often adopts “cultural deficit explanations” to understand and explain non-Western women’s experiences, frequently describing them as “overly patriarchal and inherently uncivilized.”¹⁰ Thus, it is important to recognise the influence of patriarchy in shaping worldviews (especially around global migration) as well as in conceptualising notions such as the nation-state. At the same time, it is equally important to recognise factors such as colonialism and orientalism, and their impact on the very creation of these concepts and worldviews. As Razack convincingly argues:

We can make sense of migrations only by understanding ‘the ongoing weight of colonialism and Postcolonial forms of empire on major processes of globalisation today, and specifically those processes binding countries of emigration and immigration’ ... there is a corresponding need for low wage, manual and service workers, positions filled by immigrants. Those immigrants, in turn, flee the very conditions that have resulted in the concentration of capital in these cities.¹¹

In this sense, postcolonialism is understood as a theoretical paradigm, or more accurately a *Weltanschauung*, which originated from Marxism and post-structuralism, and which rejects Western hegemonic and orientalist knowledge production.¹² Postcolonial theory is regarded as a very diffuse body of ideas,¹³ and hence is understood differently by different scholars. In this paper, I refer to postcolonial theory as an all-encompassing concept that includes sub-schools as general as subaltern studies and as specific as Islamic feminism.

⁵ Wenona Giles et. al., eds., *Development and Diaspora: Gender and the Refugee Experience* (Ontario: Artemis Entreprises, 1996).

⁶ Hajdukowski-Ahmed et. al., *Not Born a Refugee*, 9.

⁷ See for instance, Barbara Ehrenreich and Arlie Russle Hochschild, *Global Woman: Nannies, Maids, and Sex Workers in the New Economy* (New York: Metropolitan Books, 2002) and Joke Schrijvers, “Fighters, Victims and Survivors: Constructions of Ethnicity, Gender and Refugeeness among Tamils in Sri Lanka,” *Journal of Refugee Studies* 12 (1999): 307-333.

⁸ Gudrun Dahl, “Sociology and Beyond: Agency, Victimation and the Ethics of Writing,” *Asian Journal of Social Science* 37, No. 3 (2009): 391-407.

⁹ Sherene Razack, “Imperiled Muslim Women, Dangerous Muslim Men and Civilized Europeans: Legal and Social Responses to Forced Marriages,” *Feminist Legal Studies* 12 (2004): 129.

¹⁰ Ibid., 129.

¹¹ Ibid., 147.

¹² Ranjoo Seodu Herr, “Reclaiming Third World Feminism: Or Why Transnational Feminism Needs Third World Feminism,” *Meridians: feminism, race, transnationalism* 12, No. 1 (2014): 1-30.

¹³ Vivek Chibber, *Postcolonial Theory and the Specter of Capital* (Verso Books, 2014)

I argue that through (a) recognising that race, gender, class and sexuality, as well as personalities, preferences and experiences are not fixed (especially from a Western heteronormative understanding¹⁴); and (b) challenging seemingly absolute notions such as emancipation, empowerment and victimhood as being socially constructed,¹⁵ a postcolonial feminist framework can advance our understanding of the factors shaping refugee identities. This argument furthers the structure/agency debate in forced migration studies, especially in understanding the victimhood/survival experience by questioning the “either/ or” relationship between the two notions.¹⁶ In other words, while many recent studies highlight different aspects of agency and empowerment in refugee experiences, postcolonial feminism explores the multiple shades that lie between agency and victimhood, and how they intertwine in certain circumstances. Postcolonial feminism then proposes a gendered refugee identity that incorporates not just demographic categories, but situational factors like personal experiences and memory.

Understanding the “Agents not Victims” Debate

Oliver Bakewell argues that scholars in the field of forced migration have long avoided defining the relationship between structure and agency.¹⁷ He revisits this relationship on the basis that many theories of migration, “rest on the assumption that migrants or potential migrants have a significant level of choice over their decisions to move.”¹⁸ This situation is reversed in the forced migration context where the refugee seems to lack any choice whatsoever. In this section, I focus on three main frames within forced migration empirical work that attempt to theorise women refugees’ agency in different contexts. Next, I propose how a postcolonial analysis is integral to understanding the experience of displaced populations in general and refugee women in particular.

Elissa Helms, studying the problematic conflation of victimhood with other passive connotations like innocence, grievance, and so forth,¹⁹ examines the ways in which women, specifically *Bosniaks* (Bosnian Muslim women), were confined to the role of ‘victim’ in the post-war reconstruction period. She argues that conflating victimhood with innocence allows no room for ambiguity or “sin”; they “erase the woman’s ethical coping with her violation.”²⁰ Thus, in Helms’ analysis, the problem is not with the notion of victimhood *per se*. Rather, she is more concerned with how social norms and factors impose the status of ‘victim’ in a way that erases other identities and conflates victimhood with ideal notions like innocence. Such a

¹⁴ Here used to mean a system that normalises behaviors and societal expectations that are tied to the assumption of heterosexuality, gender roles and gender binaries, for instance, associating women with nurturing and men with assertiveness. See for instance, Elissa Helms, *Innocence and Victimhood: Gender, Nation, and Women’s Activism in Postwar Bosnia-Herzegovina* (University of Wisconsin Press, 2013).

¹⁵ Sylvia Bawa, “Paradoxes of (dis) empowerment in the Postcolony: Women, Culture and Social Capital in Ghan,” *Third World Quarterly* 37, No. 1 (2016): 119-135.

¹⁶ Mats Utas, “Victimcy, Girlfrinding, Soldiering: Tactic Agency in a Young Woman’s Social Navigation of the Liberian War zone,” *Anthropological Quarterly* 78, No. 2 (2005): 403-430.

¹⁷ Oliver Bakewell, “Some Reflections on Structure and Agency in Migration Theory,” *Journal of Ethnic and Migration Studies* 36, No. 10 (2010): 1689.

¹⁸ Ibid., 1690.

¹⁹ Elissa Helms, *Innocence and Victimhood: Gender, Nation, and Women’s Activism in Postwar Bosnia-Herzegovina* (University of Wisconsin PresS, 2013).

²⁰ Ibid., 32.

conflation ends up dehumanising the subject and, more importantly, reflects a heteronormative understanding of gender that tends to associate women with “nurturing.”²¹

Mlodoch, on the other hand, adopted a methodological critique in which she argues that narratives emphasising or deemphasising agency are contextual.²² She explains that agency moves to the foreground or background of the narrative depending on the political and social climate. Thus, agency is always present, even in a victimising context. However, it is usually misread or not seen for methodological reasons that fail to recognise dominant discourses that push women into adopting a particular narrative. The latter necessarily impacts women’s self-perception and understanding of their own agency, while at the same time pushing them towards a negotiation of the dominant discourse to further particular political gains. For example, Mlodoch’s study focused on a group of Kurdish women called the “Anfal Women”, named so after the disastrous Iraqi Anfal operation of the 1980s that resulted in large scale death and disappearance of loved ones (mostly husbands and male figures in the family). The narrative produced during the conflict by the Anfal women was significantly different from that produced after. Initially portrayed as “weak and helpless victims and symbols of the suffering of the Kurdish nation,”²³ they internalised gender and social norms in a way that made them believe their lives were lost without their male relatives.²⁴ Later, as the political and social contexts shifted, so did the women’s narratives to highlight their agency. By the time the Kurdish people gained more stability, the narratives of the Anfal women transformed to focus on the “self”, their own experiences of violence, hardship, and feeling of pride for being able to raise their children on their own.²⁵

Finally, psychological research like Heru’s²⁶ demonstrates that women are more prone to identify as victims for two reasons. Due to the psychological influence on their socialisation, upbringing and development, men are socially constructed as perpetrators and women as victims.²⁷ Also, women potentially adopt this role for secondary gains. These factors are not present for men, who may reject inhabiting the role of the victim.

Heru’s study aligns with Mats Utas’, whose work focuses on social navigation strategies among young women in the Liberian war zone.²⁹ In his work, Utas challenges the heteronormative binary between “peaceful women and violent men that is ‘deep in the Western emotio-histories.’”³⁰ He uses the term “victimcy” to describe the “agency of self-

²¹ Ibid., 101-103. For instance, local and international organisations frequently associate women with jobs usually affiliated with nurturing such as therapy or handicrafts in an attempt to help them within this simplified understanding of victimhood.

²² Karin Mlodoch, ““We Want to be Remembered as Strong Women, Not as Shepherds” Women Anfal Survivors in Kurdistan-Iraq Struggling for Agency and Acknowledgement,” *Journal of Middle East Women’s Studies* 8, No. 1 (2012): 63-91.

²³ Ibid., 80.

²⁴ Ibid., 75.

²⁵ Ibid., 79-80.

²⁶ Alison M. Heru, “The Linkages between Gender and Victimhood,” *International Journal of Social Psychiatry* 47, No. 3 (2001): 10-20.

²⁷ Some literature refers subtly to the notion “feminisation of victimhood” (Helms, “Innocence and Victimhood”). Others adopt it explicitly, for instance Kjerseti Ericsson, *Women in War: Examples from Norway and Beyond* (Routledge, 2016). This notion developed from other concepts like feminisation of poverty (See, for instance, Barbara Cassidy et. al., “Silenced and Forgotten Women: Race, Poverty, and Disability,” *Feminist Issues: Race Class, and Sexuality* 3 (2001): 75-107), feminisation of refugees and feminisation of asylum (See for instance, Wenona Giles and Jennifer Hyndman, *Sites of violence: Gender and conflict zone*, (University of California Press, 2004)).

²⁸ Mlodoch, “We Want to be Remembered as Strong Women”, 17.

²⁹ Utas, “Victimcy, girlfrinding, soldiering”.

³⁰ Ibid., 406.

staging as victim of war”³¹ and studies its utilisation as a tactic to socially navigate the war zone—i.e., victimcy as a form of strategic self-representation. He, thus, argues against treating agency and victimhood as gendered and mutually exclusive. The representation of women as mere victims is ultimately disempowering, disenabling, and dehumanising to women in the war zone, creating a culture of “victimism.”³² In sum, Utas’ social navigation perspective rejects viewing women in the war zone as either solely a “victim” or an “agent/survivor” in a linear sense.³³ Rather, he pushes towards an articulation of women’s agency defined in terms of a “range of realisable possibilities that are informed by specific social contexts as well as larger economic and political contingencies.”³⁴

Utas’ argument draws our attention to the ways in which the naked orientalist eye is sometimes unable to understand everything based on observation. To remedy these blind spots, Utas suggests establishing long-term relationships with research participants to access and fully grasp the power dynamics and socio-political forces behind their actions. In his work, he explains how one of his research interlocutors returned to Liberia “to seek for her own successful future instead of passively waiting as a safer but marginalized and disempowered refugee in Guinea.”³⁵ His findings challenge the victim/survivor binary to explain why after becoming a survivor (a refugee), some actors choose to go back to the war zone. Survival in this understanding goes beyond safety or physical security (i.e., negative freedoms), to also include other factors like access to upward social mobility (i.e., positive freedoms).

“Agents not Victims” Critique: from Post-structuralism to Postcolonialism

Some scholars argue that the implied moral message from the “Agents not Victims” discourse is that agency has a *positive* connotation, and victimhood, a *negative* connotation. Thus, as Gudrun Dahl posits, “it tells us that the value of the described people *depends* upon them being prepared to act, or on acting with an impact.”³⁶ Dahl agrees with Baker’s work which corroborates the link between post-feminist thought and neoliberalism.³⁷ Such discursive frames efface notions of deservingness in the face of victimhood, and can potentially induce victim blaming. Thus, while the “Agents not Victims” literature succeeds in recognising the relationship between agency and victimhood as concomitant,³⁸ the very repetition of the moral message outlined above inevitably reinforces the interpretation of victimhood as shameful.³⁹ The neoliberal critique in Baker and Dahl’s work, and Utas’ problematisation of notions of survival and victimcy, pave the way for a postcolonial approach that avoids oversimplification or arbitrary categorisation of women refugees’ experiences.

Why Postcolonial Feminism?

³¹ Ibid, 408.

³² Ibid., 407.

³³ Ibid., 424.

³⁴ Ibid., 424.

³⁵ Ibid., 422.

³⁶ Dahl, Sociology and Beyond, 404.

³⁷ Joanne Baker, “Claiming Volition and Evading Victimhood: Post-Feminist Obligations for Young Women,” *Feminism & Psychology* 20, No. 2 (2010): 186-204. Ibid., 391 & 396.

³⁸ See for instance, Raven-Roberts, Women and the Political Economy of War; or Utas, Victimcy, Girlfrinding and Soldiering. Raven-Roberts, for instance concluded that women should be viewed as “Agents as well as Victims, and as winners as well as losers, in the complicated trajectories of war and violence.” (Raven-Roberts, Women and Political economy of War, 37).

³⁹ Dahl, Sociology and Beyond, 404.

Postcolonial studies have often been criticised, especially by feminists, for creating a dilemma of ethical relativism. Criticism has also been generated on the basis that the majority of the claimed postcolonial critical themes have in fact predated the popularity of postcolonial theory;⁴⁰ that it is haunted by the same figures it is trying to critique, such as linear history and progress;⁴¹ and that it fails to recognise the influence and bias created by factors such as capitalism⁴² and the nation-state.⁴³ That said, this paper views postcolonial theory as an elastic concept that is ever developing and adjusting to critique. For instance, I view transnational feminism and Third World feminism not as two separate schools of thought, but rather as organic extensions of one another. While Third World feminism does not emphasise the role of the nation-state and capitalism, transnational feminism emerged from dialectical debates within postcolonial studies to incorporate elements such as the nation-state and the global capitalist system in shaping the “subaltern”. In sum, I use the term postcolonialism here not as a theory with defined borders, but as a body of discourses that challenges the colonial modes of representation, i.e., Western hegemonic modes of knowledge production. These modes are determined by factors such as orientalism, patriarchy, capitalism and neoliberalism.

Postcolonial feminism challenges the “othered” portrayal of Third World countries as culturally backward and barbaric, and as passive victims of primitive patriarchy. In that sense, Gayatri Spivak developed a research strategy called “unlearning of one’s privilege as loss,” which entails, “... stopping oneself from always wanting to correct, teach, theorize, develop, colonize, appropriate, use, record, inscribe, enlighten; the impetus to always be the speaker and speak in all situations must be seen for what it is: a desire for mastery and domination.”⁴⁴ Similarly, in *Under Western Eyes*, Chandra Mohanty asserts that Western portrayals of Third World women as victims contributes to a further marginalisation of those women.⁴⁵ She argues that Western feminist and orientalist discourses produce “the ‘Third World woman’ as a singular monolithic subject,”⁴⁶ in which she is portrayed as “sexually constrained... ignorant, poor, uneducated, tradition-bound, domestic, family-oriented, victimized, etc.”⁴⁷ Such portrayals, she averred, are less concerned with the reality of Third World women and more with validating the supremacy of the West, hence justifying colonialism and imperialism in many ways.⁴⁸

Contrary to the claims of its critics, postcolonial studies don’t deny the existence of victimhood and victimising dynamics in the Global South; rather, it seeks to challenge essentialised understandings of binaries such as victims or agents. Postcolonial studies attempt to lay bare the essentialising Western gaze, and seek to subvert the idea that women of the Global South are innately victims. Such Eurocentric heteronormative renditions of victimhood typically synonymise femaleness with passivity and vulnerability as argued by Heru⁴⁹ and Utas⁵⁰. Therefore, a postcolonial paradigm can shed more light on the complexity of woman

⁴⁰ Arif Dirlik, "The Postcolonial Aura: Third World Criticism in the Age of Global Capitalism," *Critical inquiry* 20, No. 2 (1994): 328-356.

⁴¹ Anne McClintock, "The Angel of Progress: Pitfalls of the term "Post-Colonialism"," *Social text* 31/32 (1992): 84-98.

⁴² Chibber, Postcolonial Theory and the Specter of Capital.

⁴³ Herr, Reclaiming Third World Feminism.

⁴⁴ Gayatri Chakravorty Spivak, "Can the Subaltern Speak?," In *Can the subaltern speak? Reflections on the history of an idea*, ed. Rosalind C. Morris (Columbia University Press, 2010): 21, 62

⁴⁵ Chandra Talpade Mohanty, "Under Western Eyes: Feminist Scholarship and Colonial Discourses," *Boundary 2* (1984): 333-358.

⁴⁶ Ibid., 333.

⁴⁷ Ibid., 337.

⁴⁸ Ibid., 337.

⁴⁹ Heru, "The Linkages between Gender and Victimhood".

⁵⁰ Utas, "Victimcy, Girlfriending and Soldiering".

refugeeness in two ways. First, by addressing women's multidimensional and complex forms of oppression in the Global South by way of a careful examination of their local conditions and their historical specificity.⁵¹ And second, by recognising that women of the Global South hold an "epistemic privilege" in understanding the events and conditions affecting their lives and how the world around them works,⁵² requiring more than just the ability to speak or be heard.⁵³ Instead, more effort should be placed on interpretation and theorisation of Third World voices from an anti-orientalist stance. Below are some critiques that I propose postcolonial theory can help address, particularly within the agency and victimhood debates in forced migration studies:

- *Recognising that agency is a social construct:* Giddens' theory of structuration contends that agency reflects the capacity to make appropriate choices "within a particular spatio-temporal and culturally defined context, in a way transformative of the world."⁵⁴ He relates agency to "rationality, embodied human dispositions and knowledge about the structural environment."⁵⁵ A postcolonial perspective reveals how choice and decision-making as well as the processes involved in their production are all social constructs that differ based on the cultural context. Associating agency with rationality could, thus, be viewed in postcolonial theory as Eurocentric.⁵⁶ This implies a need for revisiting the meaning of agency in the first place and potentially revising our understanding of theories such as structuration or morphogenesis.
- *Challenging notions of emancipation and empowerment:* In her empirical work, Schrijvers attempts to problematise the two "dehumanizing" images that emerged about Tamil refugee women: (a) as aggressive soldiers and suicide bombers promoted by the LTTE and (b) as pitiful dependent poor victims of war in refugee camps.⁵⁷ She asserts that between these two binaries lie numerous ways in which Sri Lankan women (particularly widows) challenge both the Tamil and the LTTE ideals of womanhood. While she pushes for a "culturally specific knowledge informed by the experience of people themselves,"⁵⁸ a postcolonial lens reveals how listening to the narrative differs from drawing meanings and conclusions from the same. Schrijvers concludes that "[a]lthough war and fight certainly are not 'liberating' experiences in themselves, the new responsibilities as (sole) breadwinners and leaders of their families have given many refugee women strength and

⁵¹ Or as Mohanty mentions, the same practice may in fact be oppressive or liberating (or anything else in between) depending on the context: "While it is possible to state that there is a rise in female-headed households in the U.S. and in Latin America, this rise cannot be discussed as a universal indicator of women's independence, nor can it be discussed as a universal indicator of women's impoverishment. The meaning and explanation for the rise obviously varies according to the socio-historical context" (Mohanty, "Under Western Eyes," 348).

⁵² Chandra Talpade Mohanty, "'Under Western Eyes' Revisited: Feminist Solidarity through Anticapitalist Struggles," *Signs: Journal of Women in Culture and Society* 28, No. 2 (2003): 499-535, 511.

⁵³ Schrijvers, "Fighters, Victims, and Survivors"

⁵⁴ Dahl, *Sociology and Beyond*, 397.

⁵⁵ Ibid.

⁵⁶ Studies such as Cameron's, for instance, reveal psychological and cultural factors that may influence the claimant's perception, assessment, and management of risk and danger in a way that challenges common Eurocentric "rational choice" assumptions ingrained in the refugee determination process (Hilary Evans Cameron, "Risk Theory and 'Subjective Fear': The Role of Risk Perception, Assessment, and Management in Refugee Status Determinations," *International Journal of Refugee Law* 20, No. 4 (2008): 567-585).

⁵⁷ Schrijvers, "Fighters, Victims, and Survivors"

⁵⁸ Ibid., 307.

more confidence in themselves.⁵⁹ She implies that becoming the breadwinner has empowered and emancipated women in a way they would not have experienced otherwise. Similarly, other literature has also viewed the war context as “sort of” liberating and as an opportunity for some women.⁶⁰ A postcolonial critique challenges this Eurocentric understanding of empowerment or emancipation as achieved only through modern “productive” wage labour, becoming a breadwinner, or the assumption that all women want to work in the first place.⁶¹

- *What created the victimhood situation in the first place:* Susan Musarrat Akram draws attention to the dangers of neo-orientalism in framing and practicing refugee law in Western systems where an oversimplified and “othered” understanding of Islamic culture could have negative consequences on the presentation and outcome of asylum and refugee claims.⁶² In her study, Akram cites case law in which women refugees were forced to denounce Islam as the source of their persecution. Their own voices and characterisation of persecution were thus silenced. For instance, in a 1991 asylum case in Canada, a Saudi woman claimed persecution for refusal to wear the face cover (*Niqab*). Against the Saudi theocratic “Islamic” regime, her defence pushed for an argument that emphasised (a) her belief in feminism and (b) her membership to a particular group (women). Akram demonstrates how, by characterising Muslim women’s claims as gender-based persecution, and ridiculing the possibility of holding feminist views while adhering to Islam, the refugee determination system oversimplifies its understanding of Islamic political contexts.⁶³ Postcolonial and anti-orientalist discourses serve to complicate this Western understanding to reveal the myriad reasons that contribute towards asylum seeking/victimhood producing situations.
- *Challenging the meaning of marriage:* Emerging from a postcolonial feminist reading, refugee identities and their coping mechanisms challenge many Western-dominated understandings of marriage and trafficking. Some conjugal relationships challenge the idea of the nuclear family, intimacy, and romantic attraction as primary elements in such relationships.⁶⁴ In many cases, marriage turns into “an arena of exchange”⁶⁵ to satisfy needs. For example, in North Korea, “women may choose and utilize marriage to make a living in exchange for their sexuality and labour and, in this process, it is possible for marriage brokers, often generalized as “traffickers,” to work as the facilitators who enable

⁵⁹ Ibid., 328.

⁶⁰ See for instance, Raven-Roberts, “Women and the Political Economy of War”; Ehrenreich & Hochschild, *Global Woman*.

⁶¹ See Barbara Franz, “Bosnian Refugee Women in (Re) Settlement: Gender Relations and Social Mobility,” *Feminist Review* 73, No. 1 (2003): 86-103.; and Minna Säävälä, “Forced Migrants, Active Mothers or Desired Wives: Migratory Motivation and Self-Representation in Kosovo Albanian and Russian Women’s Biographies,” *Journal of Ethnic and Migration Studies* 36, No. 7 (2010): 1139-1155.

⁶² Susan Musarrat Akram, “Orientalism Revisited in Asylum and Refugee Claims,” *International Journal of Refugee Law* 12, No. 1 (2000): 10.

⁶³ Akram, “Orientalism Revisited”, demonstrates the misconception that interpretations of Sharia Law and all Islamic systems and factions are necessarily homogeneous, with no room for “political”, “legal” and “religious” dissent or variation over such interpretations.

⁶⁴ See for instance Mulki Al-Sharmani, “Transnational Family Networks in the Somali diaspora in Egypt: Women’s Roles and Differentiated Experiences,” *Gender, Place & Culture* 17, No. 4 (2010): 499-518; and Sung Kyung Kim, “I am well-cooked food”: Survival Strategies of North Korean Female Border-Crossers and Possibilities for Empowerment,” *Inter-Asia Cultural Studies* 15, no. 4 (2014): 553-571; and Razack, “Imperiled Muslim women”.

⁶⁵ Kim, “I am well-cooked food”, 560.

North Korean women and Chinese men's [different] needs."⁶⁶ Postcolonial theories urge reinterpretation of the different forms and reasons for marriage by inviting one to revisit notions like trafficking. This allows for a more accurate understanding and contextualising of gendered mobility.

- *Challenging the notion of individualised identity:* Razack argues that "if individualism and the language of individual rights are stronger today, it is likely because of their compatibility with racial as well as capitalist projects."⁶⁷ Such a Marxist insight furthers postcolonial revisions that question Western-centric imaginations of identity as the quintessential marker separating the "I" from the "Other". A postcolonial critique reveals how in forced migration contexts, the displaced identity can find empowerment in suppressing the individualised identity. For instance, as Al-Sharmani highlights, women of the Somali diaspora engage in a transnational family-based support system wherein they exchange goods, share childcare, take care of the elderly and so forth.⁶⁸ Such practices constitute "reciprocal obligations" that are expected to be maintained among different family members. The repercussions of this 'Reliable Daughter' identity, as she referred to it, are mixed. While reciprocity rewards these women with a sense of self-worth and respect as well as social capital, it can also be a source of constraint when it comes to personal aspirations like career and romantic goals.⁶⁹ One' identity, thus, becomes intertwined not just with the collective identity but is also dependent on relationships with other members of the group. Here, the reliable daughter shifts her understanding of marriage and the ideal husband to fit within her diasporic transnational identity.⁷⁰
- *A malleable understanding of gendered identities:* In addition to the shift in meaning of marriage and family, migration (and particularly forced migration) has pushed women to change their understanding of roles as wives, daughters, mothers, caretakers, and breadwinners. In these cases, women were able to utilise various forms of gendered identities for coping and survival as seen in the vignettes of the reliable daughter, the nurturing mother,⁷¹ and the tactical wife or girlfriend.⁷² Such utilisation of specific gendered identities speaks to their strategic malleability. For instance, in specific contexts the meaning of motherhood shifted away from emotional nurturing to material support of providing food and education. Here, mothers struggle between feelings of guilt for leaving their children behind, and pride that they could provide them with a better life.⁷³ In the forced migration context, shifts in women's gender roles (like becoming the breadwinner) often emerges *because of* her traditionally ascribed gender identity not *despite of* it.⁷⁴

⁶⁶ Ibid.

⁶⁷ Razack, "Imperiled Muslim Women", 148.

⁶⁸ Al-Sharmani, "Transnational Family Networks", 500-501.

⁶⁹ Ibid, 507-8.

⁷⁰ Ibid., Al-Sharmani reflects on these women expressing conflicting feelings about how their lives "are closely intertwined with that of their family, [and thus] this merger between the realization of the self and the other [becomes] a coping mechanism for those women".

⁷¹ For instance, in Säävälä, "Forced Migrants, Active Mothers or Desired Wives"; and Franz, "Bosnian Refugee Women"; and Alice Szczepanikova, "Gender Relations in a Refugee Camp: A Case of Chechens Seeking Asylum in the Czech Republic," *Journal of Refugee Studies* 18, No. 3 (2005): 281-298.

⁷² Kim, "I am well-cooked food"; Utas, "Victimcy, Girlfrinding and Soldiering"; and Lacey Andrews Gale, "Bulgur Marriages and "Big" Women: Navigating Relatedness in Guinean refugee camps," *Anthropological quarterly* 80, No. 2 (2007): 355-378.

⁷³ Al-Sharmani, "Transnational Family Networks"; Kim, "I am well-cooked food"

⁷⁴ See for instance, Penny Van Esterik, "Food and the Refugee Experience: Gender and Food in Exile, Asylum, and Repatriation," in *Development and Diaspora: Gender and the Refugee Experience*, ed. Wenona

These case studies highlight additional avenues for postcolonial feminist reinterpretations. These include challenging the notion of survival in the war zone, as well as understanding the impact of hegemonic discourses and political atmospheres that contribute to conceptions of agency or victimhood. While many refugee experiences contribute to further marginalisation, a postcolonial feminist analysis is useful to understand how traditional gender roles can also be empowering for refugee women.

Conclusion

This paper has demonstrated the promise of postcolonial theory for analysing refugee experiences, especially in terms of the interplay between structure and agency of refugee women. The reframing of notions like marriage, motherhood, family, agency, victimhood, survival and empowerment as social constructs and cultural products reflects the impact of a postcolonial reading on theory, as well as at the level of policy making. More precisely, this paper demonstrated how postcolonial frameworks can challenge Eurocentric heteronormative understandings of victimhood that conflate femininity with passivity and weakness.⁷⁵ Postcolonial critiques demonstrate how the global humanitarian regime's definition of a refugee, as also of notions such as family and household, are not just gendered but also often Western-centric. Thus, introducing postcolonial feminism to refugee studies can further both feminist and forced migration studies, as well as reassess assumptions about gender roles and survival mechanisms in precarious situations in the Global South.

At the policy level, especially those pertaining to refugee determination processes, a postcolonial perspective helps us recognise and problematise orientalist assumptions about refugees, victims, and the Global South in general. Further, a postcolonial feminist perspective complicates understandings of gender, context, social norms, and the different ways in which a person can incorporate hegemonic discourses in their memory and narratives. In this sense, notions such as risk-taking,⁷⁶ staged victimcy and social mobility,⁷⁷ women's empowerment,⁷⁸ strategic essentialism⁷⁹ and rational choice should be reinterpreted and re-incorporated in the logics of refugee determination processes. Similarly, questioning why refugee producing situations are created from a postcolonial perspective could contribute to reframing the refugee determination process in a way that recognises what David Murray referred to as the "saviour/victim" discourse.⁸⁰ Murray draws attention to the fact that fitting the refugee claimant into the role of the victim is integral to the "liberation nation" narrative. This victim identity, Murray explains, needs to be "located in the neo-colonial relations of subordination that have partially informed ... asylum and refugee policy."⁸¹

Feminisms (including hyphenated feminisms like marxist-feminism and post-structural feminism) are steadily successful in offering critical readings that challenge hegemonic discourses. In this piece, I argued that a postcolonial feminist framework can further the tacitly

M. Giles, et al. (Dundas, Ontario: Artemis Enterprises, 1996), 65. for instance argues how in many cultures "a woman's sense of self is based partly on her ability and her right to feed her family" (p. 66).

⁷⁵ For instance, the sub-Saharan African women carrying weapons and challenging stereotypes in Utas' piece (Utas, "Victimcy, Girlfriending and Soldiering").

⁷⁶ Cameron, "Risk Theory and Subjective Fear"

⁷⁷ Utas, "Victimcy, Girlfriending and Soldiering"

⁷⁸ Bawa, "Paradoxes of (Dis) Empowerment in the Postcolony"

⁷⁹ Spivak in Hajdukowski-Ahmed et. al., "Not Born a Refugee"

⁸⁰ David Murray, *Real Queer?: Sexual Orientation and Gender Identity Refugees in the Canadian Refugee Apparatus* (London: Pickering & Chatto Publishers, 2015)

⁸¹ Ibid., 78.

Eurocentric and heteronormative analysis of the gendered forced migrant experience. I advocated the importance of highlighting the epistemic privilege of marginalised groups through tracing the colonial and neocolonial histories as well as recognising the “ununiversalised” meaning of notions like oppression, exploitation, victimhood, agency and empowerment. The latter ultimately aims to expand academic imagination to view the context and not just the “categories” that shape and determine refugee identity and experience.

On a final note, even though almost all the literature cited here does not make reference to an explicit postcolonial framework in its analysis, I argue that postcolonial/anti Orientalist activism and literature must necessarily be included in forced migration and gender studies. Postcolonial theory is a challenge to Western hegemonic discourses and interpretations of global social phenomena. It thus can be used as means to *de-colonise* the academic language, assumptions and premises, as well as the way we think about women on the move.

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Exploring Barriers Refugees and Refugee Claimants Experience Accessing Reproductive Health Care Services in Toronto

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Abstract

Studies conducted in Canada and other countries with similar health care systems, such as Britain, Australia, and the Netherlands, demonstrate that refugees and refugee claimants experience barriers in accessing reproductive health care services, such as pre- and postnatal care and cervical cancer screening. These studies further indicate that the barriers that refugees and refugee claimants experience are largely due to racism and discrimination, culture, language, and/or communication. However, these studies rarely consider the broader political, economic, historical, and social contexts from which these women are attempting to access reproductive health care services. For example, they rarely consider the effects of neoliberal immigration policies and health care cut backs resulting from Canada's adoption of a neoliberal ideology that supports minimal government intervention in the economy. Many of the studies reviewed emphasise cultural barriers, that is, the researchers assume that a woman's culture is the most important determinant of their participation in reproductive health care services. When culture is viewed as the main problem attention is deflected from systemic racism and discrimination and other factors that impede access to reproductive health care services. These studies also fail to capture the unique gendered and racialised experiences of women refugees and refugee claimants and how these affect their access to reproductive health care services. To improve accessibility, most of these studies recommend culturally sensitive service delivery or increased awareness of racialised cultures among health professionals. Culturally sensitive or cross-cultural care, informed and shaped by neoliberal and multicultural policies, are popular approaches to addressing the needs of ethnic minority populations, or "multicultural others," and managing ethnic or cultural diversity within the Canadian health care system. Guided by antiracist theories and postcolonial feminist theories, this paper argues that neoliberal ideology and multicultural discourse have effectively moved attention away from racism and other systemic barriers in Canadian society and attributed the problem of unequal access primarily to the cultures of women refugees and refugee claimants. In the multicultural paradigm, the structural and material differences or inequities among populations are reduced to the issue of ethnic and cultural diversity. The discourse of diversity overlooks power differences by explaining inequities in cultural terms that construct culture, along with ethnicity and community, as static and independent of social, historical, economic, and structural forces. As such new research is required to explore whether and to what extent

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women refugees and refugee claimants underutilise reproductive health care services, such as pre- and postnatal care and cervical cancer screening, taking into account not just culture but also the social, economic, political, and historical context from which the women are seeking health care services.

Keywords: Women Refugees, Refugee Claimants, Reproductive Health, Race, Gender, Class and Barriers.

Introduction

Despite the general view that Canada's universal health care system is equally accessible to everyone living in Canada, two populations, refugees and refugee claimants, do not find this to be so. Several studies have found that although refugees, immigrants, and Canadian racial minority women have health care needs as great as or greater than other women in Canada, they utilise health care services at a significantly lower rate.³ As Anderson and Reimer-Kirkham insisted, the marginalisation of some groups within the so-called Canadian mosaic needs to be examined in order to uncover the reasons for women refugees' and refugee claimants' underutilisation of the country's health care services.⁴

Research studies on women refugees' and refugee claimants' access to reproductive health services, such as pre- and postnatal care and cervical cancer screening services, seem to be lacking in critical feminist and antiracist perspectives, that is they fail to consider the broader political, economic, historical, and social contexts of the populations being studied. Guided by antiracist and postcolonial feminist theories, in this paper we problematise the concept of culture as it is employed in the literature on women refugees' and refugee claimants' low utilisation of pre- and postnatal care and cervical cancer screening services. Because there is a significant gap in the research on reproductive health care in Canada with respect to women refugees' and refugee claimants' access to pre- and postnatal care and cervical cancer screening, we have drawn on studies conducted in other countries with health care systems similar to Canada's, such as Britain, Australia and Netherlands. However, this paper's focus is an examination and critique of the Canadian health care system and women refugees' and refugee claimants' access to reproductive health care services.

The first section of the paper draws on the literature on racism and discrimination and the barriers women refugees and refugee claimants experience accessing pre- and postnatal care as a result, and how these women are portrayed in the context of a state policy of multiculturalism and the culturally sensitive approach to health care service delivery.

In the next section, we present examples of culturalism in the existing literature on women refugees' and refugee claimants' use of cervical cancer screening and pre- and postnatal care in which culture is framed as the main reason or their failure to access these services. Finally, we consider the relevance of antiracist and postcolonial feminist perspectives for understanding women refugees' and refugee claimants' experience of unequal access to health care and their underutilisation of pre- and postnatal care and cancer screening services. We recognise that there is a vast literature in the area of postcolonial theory outside of the

³ Carolyn Egan and Linda Gardner, "Racism, Women's Health and Reproductive Freedom," in *Feminisms and Womanisms: A Women's Studies Reader*, ed. Althea Prince and Susan Silva-Wayne (Toronto, ON: Women's Press, 2004), 263–268.

⁴ Joan M. Anderson and Sheryl Reimer-Kirkham, "Constructing Nation: The Gendering and Racializing of the Canadian Health Care System," in *Painting the Maple: Essays on Race, Gender and the Construction of Canada*, ed. Veronica Strong-Boag et al. (Vancouver, BC: University of British Columbia Press, 1998), 242–261.

medical and public health fields, however, for the purposes of this paper we have restricted our considerations to literature coming out of the health care fields.

According to the 1951 United Nations Convention:

A refugee ... is someone who is unable or unwilling to return to his or her country of origin because of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group, or political opinion.⁵

In Canada, refugee claimants are temporary residents who have requested protection upon or after arrival in Canada by making a refugee claim.⁶ A refugee claimant receives Canada's protection if he or she is found to be a Convention refugee as defined by the United Nations 1951 Geneva Convention relating to the status of refugees and its 1967 Protocol, or a person in danger of torture as defined in the United Nations Convention Against Torture.⁷ This paper focuses on women refugees and refugee claimants as these statuses are defined by the government of Canada.

Racism and Discrimination: Pre- and Postnatal Care

Canada is an immigrant-receiving country and has an official multiculturalism policy that was implemented in 1971 in an attempt to alleviate the colonial practices of racial discrimination.⁸ However, racism is still embedded in Canadian institutions. According to Prendergast, some scholars, such as Bannerji and Jacobs, have identified racist institutional practices as the perpetuation of old colonial practices designed to preserve racial inequality.⁹

Traditionally, “race” was constructed in relation to biological origin and physical appearance,”¹⁰ and although the assumptions underlying this construction have been disproved, mainstream society continues to divide individuals into groups based upon physical characteristics.¹¹ Race is socially constructed, formed in and by the processes of social and political struggle, and tends to shape everyday relations and unequal power relationships in society.¹² Bannerji supported this understanding of “race,” arguing that “racism is after all a concrete social formation and race cannot be independent of other social relations of power and ruling which organise the society, such as those of gender and class.”¹³ Ahmad pointed out that “racialization assumes that race is the primary, natural and neutral means of categorization and that the groups are distinct also in behavioural characteristics, which result

⁵ United Nations High Commissioner for Refugees (UNHCR), *Convention and Protocol Relating to the Status of Refugees*, accessed December 2, 2016, <http://www.unhcr.org/3b66c2aa10.html>, 3.

⁶ Canadian Council for Refugees, *Talking about Refugees and Immigrants: A Glossary of Terms*, accessed December 2, 2016, <http://ccrweb.ca/sites/ccrweb.ca/files/static-files/glossary.PDF>.

⁷ Ibid.

⁸ N. Prendergast, “Deconstructing Hybrid Spaces: Internationally Educated Nurses of Colour in Canada,” in *“Righting” Humanity in Our Time?* M. Jacobs and L. A. Visano, L. A., eds. (Concord, ON: APF Press, 2015), 282–306.

⁹ Ibid.

¹⁰ Sheryl Reimer-Kirkham and Joan M. Anderson, “Post-Colonial Nursing Scholarship: From Epistemology to Method,” *Advance in Nursing Science* 25, no. 1 (2002): 1–17.

¹¹ Ibid.

¹² Ibid.

¹³ Himani Bannerji, *The Dark Side of the Nation: Essays on Multiculturalism, Nationalism and Gender* (Toronto, ON: Canadian Scholars Press, 2000), 128.

from their ‘race.’”¹⁴ Anderson further argued that rather than categorizing people by race one should examine how racial categories are constructed and used in everyday life to divide people and interpret their behaviour.¹⁵ Although racialising processes can affect anyone, they are most harmful in the context of unequal power relations in which some racialised individuals are constructed as subordinate, inferior, or needy. Assumptions of this kind, when acted upon, have dire implications for women refugees’ and refugee claimants’ access to reproductive health care services.

Several studies have suggested that refugee women avoid reproductive health care services as a result of prior experiences of disrespect, prejudice, and racial stereotyping by health care providers. In a Canadian study with 432 Somali women refugees (individuals who had applied for temporary residence) and immigrants (individuals who had received permanent residence), 87.5% reported hurtful comments made by their caregivers related to their having undergone female genital mutilation (FGM).¹⁶ They reported verbal expressions of shock and an attitude of disgust on the part of health care providers, which they perceived as a lack of respect. In some instances, colleagues were invited by providers to look at the women’s private parts without first seeking their permission, which was perceived as both a lack of respect for the woman and a lack of respect for her privacy. Similarly, Reitmanova and Gustafson explored discrimination against immigrant Muslim women accessing maternity care in St. John’s, Newfoundland.¹⁷ These women were subjected to remarks that were insulting, insensitive, stereotypical, and embarrassing when they asked providers to respect their religious or cultural beliefs and needs, for example, their preference for female providers, and/or need for privacy and to remain clothed. Although some women refugees subscribe to Western medical models for pre- and postnatal care they might still prefer female health care providers. That respecting this preference is not considered reasonable accommodation by many health care providers is an example of racism and discriminatory practices in health care services that create barriers for women refugees and refugee claimants.

Discriminatory practices and disrespect towards refugee women due to the fact they have experienced FGM or based on their religious beliefs is a violation of section 17 of the Canadian Medical Association Code of Ethics, which states that “health care professionals are ethically bound not to discriminate in providing medical services against any patient on such grounds as race, gender, marital status, religion, age, medical disability, sexual orientation or socioeconomic status.”¹⁸ This Code of Ethics is designed to safeguard refugees and other marginalised populations against discriminatory treatment by health care providers. Studies reviewed indicate that this goal has not been completely realised; this may be attributable to the neoliberal cut-backs in health care spending that has resulted in an increase of health care providers’ workload. However, clinical guidelines for the care of women and adolescents affected by female genital mutilation have been written and put into practice.¹⁹

As indicated in the introduction of this paper, the literature we reviewed included studies conducted in countries with similar health care systems. A study conducted by Small et al. in

¹⁴ Waqer Ahmad, *‘Race’ and Health in Contemporary Britain* (Buckingham, UK: Open University Press, 1993), 18.

¹⁵ Joan M. Anderson, “Reflections on the Social Determinants of Women’s Health. Exploring Intersections: Does Racialization Matter?” *Canadian Journal of Nursing Research* 38, no. 1 (2006): 7–14.

¹⁶ Beverley Chalmers and Kowser Omer Hashi, “432 Somali Women’s Birth Experiences in Canada after Earlier Female Genital Mutilation,” *Birth* 27, no. 4 (2000): 227–234.

¹⁷ Sylvia Reitmanova and Diana L. Gustafson, “They can’t understand it’: Maternity Health and Care Needs of Immigrant Muslim women in St. John’s, Newfoundland.” *Journal of Maternal Child Health* 12 (2008): 101–III.

¹⁸ Canadian Medical Association, *Canadian Medical Association Code of Ethics* (Update 2004), accessed December 2, 2016, <http://policybase.cma.ca/dbtw-wpd/PolicyPDF/PDo4-06.pdf>.

¹⁹ L. Perron et al., *Clinical Practice Guidelines: Female Genital Cutting*, no. 299(November 2013), accessed February 24, 2017. <https://sogc.org/wp-content/uploads/2013/10/gui299CPG13II.E.pdf>.

Melbourne, Australia, with Vietnamese and Turkish women, explored the women's experiences of obstetrical services and found that the women were less concerned that service providers know about their cultural practices than they were about the lack of kindness and support and the prejudices affecting the care they received.²⁰ Studies conducted in the UK have also found that refugee women often associate mainstream maternity services with a lack of sympathy, racism, and racial stereotyping, which affects their participation in pre- and postnatal services.²¹ These studies demonstrate some of the barriers to equitable health care access for women refugees and refugee claimants.

A few studies have explored the racism embedded in the broader practices, structures, and policies related to immigration and health care that shape women refugees' and refugee claimants' access to reproductive health care services. For instance, a study conducted in Canada with South Asian and Vietnamese women documented racist views among nursing staff that included views regarding "peculiar body odours" and "inadequate mother-infant bonding" among some ethnocultural groups arising from dealing with individuals who do not fit their preconceptions of how a patient in the Canadian health care system ought to present herself.²² This study also exposed broader systemic and institutional factors shaping practitioners' attitudes and behaviours. For example, health care reform and cutbacks, stemming from Canada's public services' adaptation to neoliberal market forces, have resulted in increased workloads and staff and supply shortages, which in turn have given rise to a tendency in nurses to ignore patients assumed to be problematic and more costly in terms of time and energy. These patients were visible minorities seen as problematic due to linguistic and cultural barriers.²³ Thus, health care restructuring may have particularly adverse effects on women refugees and refugee claimants, especially those who face language and communication barriers and are isolated and without the support of extended family. This results in increased marginalisation and racialisation of these women as the "other."

Similar studies examining barriers to health care access experienced by refugees in Canada have found that some health care providers are unwilling to accept refugees as patients even when they are seeking new clients;²⁴ this population is perceived to be challenging due to complex health needs, linguistic barriers, and complicated insurance coverage that can delay payment for services delivered.²⁵ These are examples of how the prevailing systemic institutional values driven by neoliberalism, neocolonialism, efficiency, objectivity, and technocracy produce, perhaps unintentionally, discrimination and inequitable access.

Some women refugees tend to present very late in their pregnancy for prenatal care due to fears arising from their uncertain immigration status and legal restrictions affecting their access to health care; this is particularly the case for rejected asylum seekers as they lack health

²⁰ Ronda Small et al., "Mothers in a Country: The Role of Culture and Communication in Vietnamese, Turkish and Filipino Women's Experiences of Giving Birth in Australia," *Women's Health* 28, no. 3 (1999): 77–101.

²¹ For example, Kate Harper Bulman and Christine McCourt, "Somali Refugee Women's Experiences of Maternity Care in West London: A Case Study," *Critical Public Health* 12, no. 4 (2002): 365–378 and Jenny McLeish, *Mothers in Exile: Maternity Experiences of Asylum Seekers in England* (2002), accessed December 2, 2016, <http://www.maternityaction.org.uk/wp-content/uploads/2013/09/mothersinexile.pdf>.

²² Denise L. Spitzer, "In Visible Bodies: Minority Women, Nurses, Time, and the New Economy of Care," *Medical Anthropology Quarterly* 18, no. 4 (2004): 490–508.

²³ Ibid.

²⁴ See Maria McKeary and Bruce Newbold, "Barriers to Care: The Challenges for Canadian Refugees and Their Health Care Providers," *Journal of Refugee Studies* 23, no. 4 (2010): 523–545 and Grace Pollock et al., "Discrimination in the Doctor's Office: Immigrants and Refugee Experiences," *Critical Social Work* 13, no. 2 (2012): 61–79.

²⁵ McKeary and Newbold, "Barriers to Care."

insurance coverage.²⁶ As mentioned earlier in this paper, Canada has a publicly funded universal health care system that is expected to provide equal access to services to Canadians and immigrants, however refugees and refugee claimants are covered through a different system, the Interim Federal Health Program (IFHP). In the province of Ontario, they only become eligible for provincial health coverage when they are given permanent resident status.²⁷ Further, not all refugees are eligible for IFHP coverage. For example, refugee claimants who have withdrawn their claim, and claimants who are considered by the Immigration and Refugee Board (IRB) to have abandoned their claim are not covered, neither are refugee claimants who had failed to submit their initial Basis of Claim (BOC) information form outlining claim details of their claim are ineligible to be referred to the IRB.²⁸

Because of these barriers, as well a lack of awareness of their coverage and other factors, it is common for refugee women, and particularly refugee claimants, within these categories to underutilise pre- and postnatal care because they have no health insurance. Similar to refugee women in the Netherlands, when medical complications that could be easily dealt with early in pregnancy are left untreated this may lead to more serious complications for refugee women in Canada for both the mother and the fetus, requiring increased levels of medical intervention and treatment.²⁹ Refugees and refugee claimants who are not covered by provincial public health plans are advised by health care providers or health care administration staff to purchase private insurance or pay out-of-pocket for health services. Refugees who are ineligible for IFHP coverage may be unable to purchase private health insurance, thus are deterred from accessing health care services as a result of both institutional and financial barriers.

Many studies have suggested that there is a need to provide culturally sensitive pre- and postnatal services to improve access to reproductive health care for women refugees and refugee claimants.³⁰ Culturally sensitive or cross-cultural care training is provided to service providers to help them to recognise how the client's culture and their own culture affect their relationships with clients.³¹ However, this training is informed and shaped by the state institution of biomedicine and multicultural policy, a popular approach to addressing the needs of populations of the "multicultural other," and managing diversity in the Canadian health care system. Biomedicine, as Ahmad argued, "depoliticizes and individualizes ill health, treats the afflicted in isolation from their social, economic and citizenship context and thus legitimates structural inequalities and supports the status quo."³²

Similarly, the discourse of culturally sensitive care tends to focus on the cultural or ethnic identity of the individual, and ignores inequities in Canadian society grounded in race, gender, class, age, sexual orientation, and ability. The structural and material differences among

²⁶ Nina Ascoly, Ineke Van Halsema, and Loes Keysers, "Refugee Women, Pregnancy and Reproductive Health Care in the Netherlands." *Journal of Refugee Studies* 14, no. 4 (2001): 371–393 and Anna Gaudion, Jenny McLeish, and Claire Homeyard, "Access to Maternity Care for 'Failed' Asylum Seekers," *International Journal of Migration, Health and Social Care* 2, no. 2 (2006): 15–21.

²⁷ Government of Canada, Interim Federal Health Program: Summary of coverage, accessed February 25, 2017, <http://www.cic.gc.ca/english/refugees/outside/summary-ifhp.asp>.

²⁸ Government of Canada, "Notice – Changes to the Interim Federal Health Program" (2016), accessed December 2, 2016, <http://www.cic.gc.ca/english/department/media/notices/2016-04-11.asp>.

²⁹ Ascoly, Van Halsema, and Keysers, "Refugee Women, Pregnancy and Reproductive Health Care in the Netherlands."

³⁰ See Kate Harper Bulman and Christine McCourt, "Somali Refugee Women's Experiences of Maternity Care in West London;" Mary Carolan and Loris Cassar, "Antenatal Care Perceptions of Pregnant African Women Attending Maternity Services in Melbourne, Australia," *Midwifery Journal* 26, no. 2 (2010): 189–201; Chalmers and Hashi, "432 Somali women's birth experiences in Canada;" and McLeish, "Mothers in Exile."

³¹ College of Nurses of Ontario, *Practice Guideline: Culturally Sensitive Care* (2009), accessed February 17, 2017, http://www.cno.org/globalassets/docs/prac/41040_culturallysens.pdf.

³² Ahmad, 'Race' and Health in Contemporary Britain, 12.

populations are reduced within the multicultural paradigm to the issue of cultural diversity. Bannerji insisted that through the discourse of community and cultural diversity inscribed in the official formulations and implementation of multiculturalism, notions of cultures and life practices of ethnic minority women are created and circulated within institutions and among providers of education, health, and other social services in efforts to deal with diversity and grapple with the challenges of providing cross-cultural services.³³ Razack also asserted that while health care providers try to ensure cross-cultural service delivery by raising awareness about behavior differences and cues that indicate a person's cultural identity, majority group members know very little about the impact of racism and neocolonialism on the lives of the racialised women they serve, such as women refugee and refugee claimants.³⁴ Culturally sensitive care is informed by simplistic notions of culture and community engraved in multicultural policy and constructs women refugees and refugee claimants as a homogenous group; refugees as a group are diverse with respect to ethnicity, language, sexual orientation, race, and political experience. Some refugee women experience privilege based on their social locations or identities. Culturally sensitive care overlooks the differences in this population and the complex and diverse social realities of these women. While there is a new emphasis on cultural competence, which is the integration and transformation of knowledge about individuals and groups of people into specific standards, policies, practices, and attitudes that enable professionals to work effectively in cross-cultural situations to increase the quality of health care,³⁵ integrating this into practice is moving at a slow pace.

Postcolonial scholars³⁶ have argued that the concept of cultural sensitivity, defined as knowledge about communal practices, beliefs, and meanings of other cultures is inadequate to change discriminatory practices in health care services. Anderson et al. suggest that the concept of culture must take into account the unequal relations of power that are the legacy of colonial past and neocolonial present, and how the cultures of the West have redefined local meanings, and dictated social structures, including health care delivery.³⁷

Gender, Race, and Culture in Women Refugees' and Refugee Claimants' Access to Cervical Cancer Screening and Pre- and Postnatal Care

As Ruzek, Olesen, and Clarke claimed, feminist models of health research place women at the center of analysis and emphasise how gender as well as other social roles and rules affect women's health.³⁸ However, they confessed that such models have not always adequately addressed the health issues of women whose life circumstances vary by race, class, or a variety of other factors, such as location, immigration status, and identity. Reimer-Kirkham further noted that the health care and nursing literature in Canada has been largely silent on

³³ Bannerji, *The Dark Side of the Nation*.

³⁴ Sherene Razack, "What Is to Be Gained by Looking White People in the Eyes? Culture, Race and Gender in Cases of Sexual Violence," *Journal of Feminism and the Law* 19, no. 4 (1994): 894–923.

³⁵ T. L. Cross, et al., *Toward a Culturally Competent System of Care: A Monograph on Effective Services for Minority Children Who Are Severely Emotionally Disturbed* (March 1989), accessed February 25, 2017, <http://files.eric.ed.gov/fulltext/ED330171.pdf>.

³⁶ For example, Sheryl Reimer-Kirkham et al., "Rethinking Cultural Safety While Waiting to Do Fieldwork: Methodological Implications for Nursing," *Journal of Nursing & Health* 25, no. 3 (2002): 222–232.

³⁷ Joan Anderson, et al., "'Rewriting' Cultural Safety within the Postcolonial and Postnational Feminist Project: Toward New Epistemologies of Healing," *Advances in Nursing Science* 26, no. 3 (2005): 196–214.

³⁸ Sheryl Burt Ruzek, Virginia L. Olesen, and Adele E. Clarke, "Social, Biomedical, and Feminist Models of Women's Health," in *Women's Health: Complexities and Differences*, ed. Sheryl Burt Ruzek, Virginia L. Olesen, and Adele E. Clarke (Columbus: Ohio University Press, 1997), 11–28.

inequities in health, marginalising health practices, racialization, and racism.³⁹ Instead, there has been a pervasive focus on culture as an influence on health and illness in an effort to account for differences in health outcomes. In the existing literature, studies on cervical cancer screening among women refugees and immigrants are based on epidemiological data and quantitative methods that do not capture the lived experiences and personal perspectives of these women. These studies often view women refugees' and refugee claimants' failure to access cervical cancer screening through a culturalist lens, which results in a lack of focus on racism and other systemic barriers in Canadian society. For these reasons, the culture of these women is viewed as the most crucial barrier to their access to cancer screening services. Jiwani argued that a culturalist framework:

Pathologizes immigrant women of colour from different ethnic backgrounds. At the backdrop of systematic and everyday racism, the focus on culture quickly becomes one of implicitly or explicitly comparing a backward, traditional, and oppressive cultural system to the modern, progressive, and egalitarian culture of the West. Such an approach again results in the production of cultural prescriptions or a culturally sensitive approach that further reifies stereotypic representations of some ethnic groups.⁴⁰

Dyck used two major models to analyze the health status and health care access issues of minority immigrant groups: one focuses on culture and the other focuses on the political economy and the marginalisation of immigrants.⁴¹ Feminist antiracist health researchers, such as Anderson, Dossa, and Jiwani, have studied the impact of the structural relations of power on the health of immigrant women.^{42⁴³} Anderson and Reimer-Kirkham and Jiwani, among others, have used antiracist and postcolonial feminist approaches to examine how the history of colonisation and systemic racism in Canada affects immigrants' and Aboriginal women's access to health care and the quality of care they receive.⁴⁴ Antiracist scholars, such as Ahmad (1993) and Jiwani (2001), have provided important critiques of Western biomedicine as a racialised and patriarchal system of dominance.⁴⁵ Several antiracist scholars have argued that culturally sensitive approaches often result in stereotypic assumptions and erroneous generalisations about marginalised people while keeping the unequal relations of power unchanged.⁴⁶

³⁹ Sheryl Reimer-Kirkham, "The Politics of Belonging and Intercultural Health Care," *Western Journal of Nursing Research* 25, no. 7 (2003): 762–780.

⁴⁰ Yasmin Jiwani, *Intersecting Inequalities: Immigrant Women of Colour, Violence and Health Care* (Vancouver, BC: Feminist Research Education Development and Action (FREDA) Centre, 2001), 161.

⁴¹ Isabel Dyck, "Immigration, Place and Health: South Asian Women's Accounts of Health, Illness and Everyday Life" (No. 04–05), *Research on Immigration and Integration in the Metropolis: Working paper series* (Vancouver, BC: Vancouver Centre of Excellence, 2004), accessed December 2, 2016, <http://mbc.metropolis.net/assets/uploads/files/wp/2004/WP04-05.pdf>.

⁴² Joan M. Anderson, "Gender, 'Race', Poverty, Health and Discourses of Health Reform in the Context of Globalization: A Postcolonial Feminist Perspective in Policy Research." *Nursing Inquiry* 7, no. 4 (2000), 220 – 229; Parin Dossa, *The Politics and Poetics of Migration: Narratives of Iranian Women from the Diaspora* (Toronto, ON: Canadian Scholars Press, 2004); and Yasmin Jiwani, *Discourse of Denial: Mediations of Race, Gender and Violence* (Vancouver, BC: University of British Columbia Press, 2006).

⁴³ Feminist antiracist health researchers place women at the center of their research and analysis.

⁴⁴ Anderson and Reimer-Kirkham, "Constructing Nation" and Jiwani, *Intersecting Inequalities and Discourse of Denial*.

⁴⁵ Ahmad, 'Race' and Health in Contemporary Britain and Jiwani, *Intersecting Inequalities*.

⁴⁶ For example, Ahmad, 'Race' and Health in Contemporary Britain; Anderson and Reimer-Kirkham, "Constructing Nation;" Lorraine Culley, "Transcending Transculturalism? Race, Ethnicity and Health-

Although there are several critical studies of immigrant women in the areas of mental health,⁴⁷ violence against women,⁴⁸ chronic illnesses, and general health status,⁴⁹ other areas of health, such as cervical cancer screening and pre- and postnatal care, tend to be ignored. Critical attention has not been extended to these areas of preventive health care. Most quantitative and qualitative studies that focus on cervical cancer screening and women immigrants and refugees take a culturalist approach, that is, they explain the differences in the rates of cervical cancer screening among these women in terms of their cultural origins.⁵⁰ In the broader literature on women refugees' and refugee claimants' access to pre- and postnatal care, there is a general recognition that cultural beliefs and practices are important in childbearing and that most women continue with their traditional practices when they immigrate to Western countries.⁵¹ These cultural beliefs and practices are viewed as barriers to these women's access to pre- and postnatal care services.

Culture in these studies is deemed the sole determinant of health practices, abstracted from the broader social, economic, historical, political, and structural factors affecting these women's lives. Culture in this context is viewed as fixed in a "timeless and unchangeable vacuum outside of patriarchy, racism, imperialism and colonialism."⁵² Another study that looked at barriers to effective uptake of breast and cervical screening services among Black minority ethnic groups living in Britain overemphasised the importance of culture and advocates culturally sensitive care.⁵³ It is widely recognised that beliefs about health care differ across cultural groups; Thomas et al.'s study suggests that it is essential for health professionals to be educated in cultural beliefs and customs, communication skills, and racial awareness of the populations they serve.⁵⁴

Care," *Journal of Nursing Inquiry* 13, no. 2 (2006): 144–153; and Razack, "What Is to Be Gained by Looking White People in the Eyes?"

⁴⁷ For example, Dossa, *The Politics and Poetics of Migration*; Sepali Guruge and Nazilla Khanlou, "Intersectionalities of Influence: Researching the Health of Immigrant and Refugee Women," *Canadian Journal of Nursing Research* 36, no. 3 (2004): 32–47; Sepali Guruge and Enid Collins, *Working with Immigrant Women: Issues and Strategies for Mental Health Professionals* (Toronto, ON: Centre for Addiction and Mental Health, 2008).

⁴⁸ For example, Vijay Agnew, *In Search for a Safe Place: Abused Women and Culturally Sensitive Services* (Toronto, ON: University of Toronto Press, 1998); and Jiwani, *Intersecting Inequalities and Discourse of Denial*.

⁴⁹ For example, Joan Anderson, Connie Blue, and Annie Lau, "Women's Perspectives on Chronic Illness: Ethnicity, Ideology and Restructuring of Life." *Journal of Social Science and Medicine* 33, no. 2 (1991): 101–113; Joan M. Anderson, "Gender, 'Race,' Poverty, Health and Discourses of Health Reform"; Dyck, "Methodology on the Line;" and "Immigration, Place and Health."

⁵⁰ For example, Abha Gupta, Ashesh Kumar, and Donna E. Stewart, "Cervical Cancer Screening among South Asian Women in Canada: The Role of Education and Acculturation," *Health Care for Women International*, 23 (2002): 123–134; James Ted McDonald and Steven Kennedy, "Cervical Cancer Screening by Immigrant and Minority Women in Canada," *Journal of Immigrant Minority Health* 9 (2007): 323–334; and Kelly J. Woltman and K. Bruce Newbold, "Immigrant Women and Cervical Cancer Screening Uptake: A Multilevel Analysis," *Canadian Journal of Public Health* 98, no. 6 (2007): 470–475.

⁵¹ For example, Carolan and Cassar, "Antenatal Care Perceptions of Pregnant African Women;" Chalmers and Hashi, "432 Somali Women's Birth Experiences in Canada;" Gina Higginbottom et al., "I Have to Do What I Believe": Sudanese Women's Beliefs and Resistance to Hegemonic Practices at Home and During Experiences of Maternity Care in Canada," *BioMed Central Pregnancy and Childbirth* 13, no. 51 (2013): 1–10; and Helen Stapleton et al., "Women from Refugee Backgrounds and Their Experiences of Attending a Specialist Antenatal Clinic: Narratives from an Australian Setting," *Women and Birth* 26, no. 4 (2013): 260–266.

⁵² Razack, "What Is to Be Gained by Looking White People in the Eyes?" 896.

⁵³ Veronica Nicky Thomas, Tariq Saleem, and Rachel Abraham, "Barriers to Effective Uptake of Cancer Screening among Black and Minority Ethnic Groups," *International Journal of Palliative Nursing* 11, no. 11 (2005): 562–571.

⁵⁴ Ibid.

This exemplifies the essentialisation of culture, the assumption that every culture has an essence that defines it and that every cultural group is homogenous. It also focuses on differences between or across what are assumed to be internally coherent groups based on gender, class, age, ability, sexuality, and other dimensions and maintains the “idea of consistent and coherent cultural groups with defined set of beliefs and health behaviours.”⁵⁵ In another example, Woltman and Newbold studied immigrant women, particularly women from Asia. Their cultural origin has been used to explain low rates of cervical cancer screening in this population.⁵⁶ The essentialisation of culture, a common feature of culturally sensitive care, also emphasises the importance of information and awareness, rather than the removal of the structural inequities of gender, racialisation, and poverty.

A woman’s ethnicity was taken by Woltman and Newbold to be predictive of her use of cervical cancer screening.⁵⁷ We argue that rather than focusing on culture as a barrier for cervical cancer screening among women refugees and refugee claimants the solution is to promote information addressing their cultural beliefs and misconceptions, and awareness of the availability of cervical cancer screening services in these populations.

A culturalist explanation of the barriers to cancer screening faced by refugees and ethnic minority immigrant women such as this fails to take into account factors from the broader context of their lives, such as racial discrimination in health care, social factors, education, economic status, immigration and settlement issues, and other challenges faced by non-White women. The very absence of the notion of racialisation, and the centeredness of the term *culture* in the literature perpetuates the culturalisation of racism.⁵⁸ Within such discourse, culture is viewed as the barrier to equitable and effective health care service delivery and refugees and immigrant women as a challenge creating special problems or requiring special attention and solutions from health care providers.

Language and Communication

Studies by many researchers have demonstrated a relationship between language barriers and access to reproductive care.⁵⁹ The literature in Canada and other countries recognises that women refugees’ and refugee claimants’ lack of proficiency in the new country’s dominant language, such as English or French in Canada, is a crucial roadblock to reproductive health care services accessibility.⁶⁰ For example, Woloshin et al.’s study, based on the responses of 22,448 women aged 18–74 years who had completed the 1990 Ontario Health Survey, found that refugee and immigrant women who do not speak English at home are less likely to access cervical cancer screening services than women who speak English at home because of communication barriers.⁶¹ Other studies have found that refugee and immigrant women who

⁵⁵ Culley, “Transcending Transculturalism?” 150.

⁵⁶ Woltman and Newbold, “Immigrant Women and Cervical Cancer Screening Uptake.”

⁵⁷ Ibid.

⁵⁸ Razack, “What Is to Be Gained by Looking White People in the Eyes?”

⁵⁹ For example, Eva Grunfeld, “Cervical Cancer: Screening Hard to Reach Groups,” *Canadian Medical Association* 157, no. 5 (1997): 543–545; Helen Stapleton et al., “Women from Refugee Backgrounds and Their Experiences of Attending a Specialist Antenatal Clinic;” Woloshin et al., “Is Language a Barrier to the Use of Preventive Services?”

⁶⁰ For example, Ascoli et al. “Refugee Women, Pregnancy and Reproductive Health Care in the Netherlands;” Carolan and Cassar, “Antenatal Care Perceptions of Pregnant African Women Attending Maternity Services in Melbourne, Australia;” Lisa A. Merry et al., “Refugee Claimant Women and Barriers to Health and Social Services Post-Birth.” *Canadian Public Health Association* 102, no. 4 (2011): 286–290; and Steven Woloshin et al., “Is Language a Barrier to the Use of Preventive Services?” *Journal of General Internal Medicine* 12, no. 8 (1997): 472–477.

⁶¹ Woloshin et al., “Is language a barrier to the use of preventive services?”

do not speak the dominant language of their new country do not know of the existence of pre- and postnatal classes or preventive services, such as the Pap smear for cancer screening, due to language barriers.⁶² While it is common for countries to have an official language or languages, in a country such as Canada that receives large numbers of refugees, it must be recognised that language barriers serve as an impediment to refugee women's reproductive care.

Informed by Bannerji's analysis of multiculturalism and Razack's critique of cross-cultural service delivery, we argue that by constructing culture as fixed and cultural/ethnic identities as immutable while simultaneously erasing the diverse backgrounds of women refugees and refugee claimants, the discourse of multiculturalism and culturally sensitive care homogenises these women as the multicultural other who belong to the margins of Canadian society.⁶³ Multicultural discourse has effectively obscured racism and other systemic barriers in the Canadian health care system, and attributed the problem of health inequalities and inequitable health care access to the cultures of women refugees and refugee claimants.

Feminist Antiracist and Postcolonial Scholarship and Women Refugees' and Refugee Claimants' Experiences of Health Inequities

Feminist researchers and theorists emphasise the importance of examining and understanding women's health within the broader social, economic, cultural, and political contexts of their lives. According to Bannerji's insightful critique of state multicultural policy, multiculturalism constructs women refugees and refugee claimants as creators of "ethnic cultures" while constructing White women as mothers of the nation and bearers of Canadian culture and identity.⁶⁴ These constructions show us how the lives and experiences of women refugees and refugee claimants are organised along the lines of gender, race, class, and immigration status. This can also be useful for understanding how their health is affected by the broader socioeconomic and political contexts. The culturalist view of health inequities decontextualises the health and health care practices of women refugees and refugee claimants from the broader political, economic, historical, and social contexts and the existing structural inequalities of the Canadian society. For example, the dominant understanding of women refugees' and refugee claimants' access to pre- and postnatal care and cervical cancer screening services fails to locate their health care practices within the context of their gendered experiences of migration, relocation, everyday racism, and the racializing practices and culture of biomedicine.

Antiracist perspectives can deflect attention away from the narrow focus on the individual and culture, and illuminate health inequities produced by racialised practices that sustain structural and material inequities within and beyond the health care system. Feminist postcolonial theories bring to the forefront issues of race, but also expand understanding of how this socially constructed category intersects with gender, culture, and class to structure human relationships within particular historical and neocolonial contexts.⁶⁵

⁶² See Ascoli et al., "Refugee Women, Pregnancy and Reproductive Health Care in the Netherlands;" and Aisha K. Lofters et al., "Predictors of Low Cervical Cancer Screening among Immigrant Women in Ontario, Canada" (2011), accessed December 2, 2016, <http://bmcwomenshealth.biomedcentral.com/articles/10.1186/1472-6874-11-20>.

⁶³ Bannerji, *The Dark Side of the Nation* and Razack, "What Is to Be Gained by Looking White People in the Eyes?"

⁶⁴ Bannerji, *The Dark Side of the Nation*.

⁶⁵ Annette Browne, Victoria L. Smye, and Colleen Varcoe, "Postcolonial-Feminist Theoretical Perspectives and Women's Health," in *Women's Health in Canada: Critical Perspectives on Theory and Policy*, ed. Marina Morrow, Olena Hankivsky, and Colleen Varcoe (Toronto, ON: University of Toronto Press, 2007), 124–142.

From postcolonial and antiracist, feminist perspectives we can seriously interrogate the notion of culture, ethnicity, and community as pre-given or natural constructs, challenge the multicultural and neoliberal approaches to health care, and examine how gender, race, and class intersect to shape women refugees' and refugee claimants' access to health care services. Anderson asserted that a postcolonial feminist perspective provides tools for analyzing how the intersecting social relations of power shape the experience and meaning of health and illness of immigrant women of color in the diaspora, and organise their ability to manage episodes of illness.⁶⁶ Anderson has put forward the idea of a postcolonial feminist epistemology, grounded in voices from the subaltern and the recognition of their historical positioning, to construct knowledge for practice and praxis. Supporting Anderson's view, we believe equity and justice in health care can be achieved through integrating the voices and perspectives of women refugees and refugee claimants into relevant policies. This can be achieved through qualitative research that includes the perspectives of other immigrant and racialised women as well as those of women refugees and refugee claimants on their access to health care services and their positioning within the intersecting forces of race, gender, age, and class, while also being sensitive to the experiences of migration above and beyond recognition of cultural diversity.

This paper critiques and challenges the cultural essentialist model of health research, it does not, however, reject the notion of culture and its influence on health. As Culley argued:

Abandoning the notion of fixed and homogenous cultures does not mean rejecting cultural processes as one set of influences on health and health behaviors or rejecting the importance of ethnic identification in specific contexts. It rather means that we cannot read off health status, health beliefs and behaviors from an individual's designated ethnic status.⁶⁷

In conclusion, the dominant strategies, guided by the ideologies and policies of multiculturalism, intended to address health inequities by providing culturally sensitive care for particular marginalised groups, are neither adequate nor effective. Such approaches, as Varcoe argued, must be replaced with antiracist and critical feminist perspectives and strategies that take into account the entire context in which women refugees and refugee claimants find themselves during and after migration, as women, as refugees, and at this time, as people of color in a White-majority society. Only from this perspective can we adequately address the fundamental social inequities these women experience and provide services in ways that take into account the experiences of women refugees and refugee claimants and their effects on the women and their families and communities.⁶⁸

⁶⁶ Anderson, "Toward a Post-Colonial Feminist Methodology in Nursing Research."

⁶⁷ Culley, "Transcending Transculturalism," 150.

⁶⁸ Varcoe, Colleen, "Inequality, Violence and Women's Health," in *Health, Illness, and Health Care in Canada* (4th ed.), ed. B. Singh Bolaria and Harley D. Dickson (Toronto, ON: Nelson Education, 2008), 259–282.

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Human Security and Gender Development: A Comparative Analysis of Internal Displacement in Colombia and Palestine

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Abstract

Law and Gender development have the ability to positively or negatively affect human security outcomes in conflict situations. Placing particular emphasis on the contemporary geopolitics of land and borders, this article seeks to deconstruct the political, economic, and social impacts that law and international organisations have on internally displaced persons in two different regions of the globe. The contradictory impacts of (in)security and the relationship between government and citizen is discussed in this paper by critically theorising the historical and contemporary construction of internally displaced persons as a legal category in Palestine and Colombia. Applying a critical feminist approach to this comparative analysis, it becomes clear that various aspects of human security have been disregarded in the wake of greater political interests. The results of this analysis call into question the current migration paradigm that is pioneered by peace and security institutions and the failures within the conceptualisations of statehood and sovereignty.

Keywords: Human Security, Gender, Development, Law, Migration, Colombia, Palestine.

Introduction

In international law, the state is considered the main provider of security for its citizens. Supposedly, its sole purpose is to maintain autonomy and sovereignty for the welfare of its citizens. At the same time, the state, under the weight of the “development” rubric and massive law production, constitutes a major source of insecurity when it fails to uphold actual human rights. Economic development, humanitarian assistance, and disaster management are

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employed to protect and ensure the safety of citizens, yet these institutions can and often do cause harm. This paper in no way implies that states should stop supporting inter-governmentalism or cooperation. Its purpose is to generate a more transparent analytic discussion on how some of these serious human errors can be circumvented. At the intersection of gender, law, and development, this analysis will outline the human rights implications of international law and the impact of its implementation on the daily lives of internally displaced persons in Colombia and Palestine.

The contradictory impacts of (in)security and the relationship between government and citizen will be discussed in this paper by critically theorising the historical and contemporary construction of internally displaced persons as a legal category in Palestine and Colombia. In the case of Palestine, the logic departs from one assumption: if the state is unable or unwilling to provide the majority of its citizens with sufficient security, it is entitled to international assistance and support. Complicating the narrative of sovereignty, national leadership relies on an international network of complex systems, laws, and norms in order to ensure not just the security of its citizens but also the legitimacy of its governance. Without international assistance, the state wouldn't be able to sustain itself. As a result, it would not be able to maintain power or rule over those it seeks to govern. In the case of Colombia, logic departs from a different assumption: if there is a social issue, the state solves it through its legal system. If the state has laws, it is a functional state. In that sense, law has the essential role of legitimising those practices and sometimes normalising the lack of will and ability of the state to provide security for its citizens.

Applying a critical feminist approach and using the cases of Colombia and Palestine, this article examines two mechanisms of human insecurity: the discourse of development (Palestine) and the production of law (Colombia). We argue that these two mechanisms have created a false sense of security, protecting the interests of the state at the expense of those displaced by the armed conflict. Drawing from feminist and gender perspectives, such as Jane Parpart's postmodern analysis in *Who is the 'Other'? A Postmodern Feminist Critique of Women and Development Theory and Practice*, this article seeks to challenge more liberalised dynamics within mainstream developmental paradigms.

The UN defines human security as "freedom from fear and freedom from want". For the UN, states (governments) are primarily responsible for "ensuring the survival, livelihood and dignity of their citizens."³ Thus, the UN sees human security as an approach that "calls for comprehensive, people-centered, context-specific and prevention-oriented actions that help to improve the capacities of Governments and people to provide early warning, identify root causes and address policy gaps with regard to current and emerging challenges."⁴ Consequently, when the UN is involved in the implementation of international law and development, it creates a false sense of security. Yet if the UN chooses to, it can claim that the state is the sole entity responsible for the security of its citizens. We argue that this paradigm within migration governance is a source of insecurity for displaced persons.

According to the UN, "human security and State security are mutually dependent and complementary. Without human security, State security cannot be attained and vice versa."⁵ Although human security advocates a shift in focus from the national to the human paradigms of security, some scholars argue that the shift has not been substantial. Instead, the logic embedded in the concept of security (the production of subjects and threats) remains the same.

³General Assembly. *Briefing on the Report of the Secretary-General on Human Security A/66/763*. Geneva: United Nations, 2012. Accessed February 2, 2017. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/285/37/PDF/N1228537.pdf>.

⁴General Assembly. A/66/763, 3.

⁵General Assembly. A/66/763, 19.

Security, it suggests, is so important to being human that it can and should form the foundation of freedom, democracy and the good society. Regardless of the misery conducted on its name, the bombing and the maiming, the slaughter and the torture, state led security is still a ‘good thing.’ All it needs is to be humanized.⁶

This article provides a framework for understanding why the security of certain privileged persons’ (i.e., those not directly impacted by political violence) is prioritised over others, and what legal and theoretical conditions allow for these decisions to be made in domestic and international political spaces. Although Colombia and Palestine differ geopolitically, these territories provide a transformative theoretical landscape for a comparative analysis of contemporary international security relations and global governance, particularly in the area of critical development studies, critical feminist legal theory and critical legal studies, because both cases outline particularly messy humanitarian interventions. In both cases, legal and operational norms were challenged, changed, and tailored to these individual unique cases.

The first section of this paper provides a theoretical evaluation of contemporary feminist perspectives on human security and gender development. The second section provides an overview of legal and normative frameworks relating to IDPs in Palestine and Colombia, including a critical evaluation of the neoliberal assumptions underlying their policy. The third section analyses how these particular frameworks impact the specific cases under consideration. We conclude by summarizing our main points and proposing topics for further research. As a critical analysis, this article does not provide concrete recommendations but instead lays bare the need for future research and development reform. Furthermore, this article attempts to engage both the academic and practitioner in mutual discussion and cooperation.

Gendered Approaches to Human Security and International Development

Theories underlying human security and international social relations, such as neoliberalism and ethnocentrism, facilitate the practice and creation of legal and social norms in economic and development policy. Drawing on liberal feminist thinking in the west, the field of Women in Development (WID) focused on “integrating women into male power structures.”⁷ This development structure, defined as masculine, has resulted in the socialisation of violence and even the rewarding of violent human behaviour by socialising and normalising participants into an arguably toxic social system. These harmful structures fail to grapple with the complexity of social power, making invisible the needs of women and other minority populations. For critical feminists, the overgeneralisation of women as a homogeneous category privileges the interests of some women at the expense of many others.

[T]he idea that women’s movements into workplaces was itself empowering or liberating seemed absurd or irrelevant to many working-class women and of color. They were already working for wages, as had

⁶ Mark Neocleous, “Inhuman Security,” In *Critical Perspectives on Human Security: Rethinking Emancipation and Power in International Relations*, ed. David Chandler et al. (London and New York: Routledge, 2010), 186.

⁷ Jane Parpart, “Who is the ‘Other’? A Postmodern Feminist Critique of Women and Development Theory and Practice,” *Development and Change*, Vol. 24 (1993): 442.

many of their mothers and grandmothers, and did not consider access to jobs and public life ‘liberating’.⁸

In the 1980s, critical feminists proposed that unequal power relations created disparities not only with respect to males but also among women. Zinn’s analysis “made it clear that women were not victimized by gender alone but by the historical and systematic denial of rights and privileges based on other differences as well.”⁹ In the case of women, “harm can be multiplied in many ways directly linked to gender, but also to gender in the context of race, class, ethnicity, political participation, rural life, or indigenous community.”¹⁰ Women in many so called “Third World” countries came to realise that the strategy of homogenising women only benefited specific groups of women, particularly elite classes. As Parpart points out, underlying feminist theory “explained” women as if the reality of white western middle-class women applied to women from all classes, races and regions of the world.¹¹ With its narrow focus on economic development, liberal and neoliberal feminism is accused of reproducing social hierarchies that benefit elite classes and Western markets, as well as reinforcing male dominance.

Zehra Kabasakal Arat explored the gap between theory and practice, stating that current development paradigms “fail to mention class oppression, capitalism, sexual orientation, or reproductive rights.”¹² Development agendas that focus solely on gender equality and not intersectional systems of oppression and privilege have remained largely unsuccessful in ensuring sustainable human development.¹³ Developmental institutions are intertwined with neoliberalism and tend to ensure the continued prosperity of “First World” nations at the expense and continued poverty of the so-called “Third World.” As a result of the failure of both international and national governance, civil society was forced to create alternative values and institutions such as hospitals, schools, and social clubs to fill the social and economic gaps. After the 1985 Women’s conference in Nairobi, Kenya, many women’s organisations in the “Second and Third Worlds” adapted their own counter-feminisms. Hasso concluded that,

[. . .] even those who were well-known activists on these issues in their countries, were often unwilling to discuss them before Western feminist audiences because they viewed this emphasis on internal dynamics as a part of an overall agenda to culturally legitimate international economic and political inequalities.¹⁴

⁸ Maxine Baca Zinn et al., “Sex and Gender through the Prism of Difference,” in *Gender through the Prism of Difference*, ed. Maxine Baca Zinn et al. (New York and Oxford: Oxford University press, 2005), 3.

⁹ Maxine Baca Zinn et al. “Sex and Gender,” 3.

¹⁰ Margaret Urban Walker, “Gender and Violence in Focus: A Background for Gender Justice in Reparations,” in *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations*, ed. Ruth Rubio-Marin (Cambridge: Cambridge University Press, 2009), 55.

¹¹ Jane Parpart, “Who is the ‘Other?’ A Postmodern Feminist Critique of Women and Development Theory and Practice,” *Development and Change*, Vol. 24 (1993): 443.

¹² Zehra F. Kabasakal Arat, “Feminisms, Women’s Rights, and the UN: Would Achieving Gender Equality Empower Women?,” *American Political Science Review* 109, No. 04 (2015): 679.

¹³ John Robinson, “Squaring the Circle? Some Thoughts on the Idea of Sustainable Development,” *Ecological Economics* 48.4 (2004): 369–384.

¹⁴ Frances S. Hasso, “The ‘Women’s Front’: Nationalism, Feminism, and Modernity in Palestine,” *Gender & Society* 12.4 (1998): 458.

Complicating international relations, “First World” nations struggle to escape their own standpoint, unable to recognise the growing threat of global inequality.¹⁵

Current International Initiatives and Laws for IDPs in Palestine and Colombia

The social construction and categorisation of IDPs is a relatively recent concept. Although forced displacement within the borders of a state is not new, it was originally understood as a domestic issue in which the international community did not have jurisdiction or influence. Initially, international regulations concerning forced migration related exclusively to refugees, that is, forced migrants who manage to cross national borders. The paradigm shift towards migration governance, although needed in order to ensure the security of refugees and IDPs, has come to create insecurity for migrant groups unwilling to conform to liberal ideas of free market capitalism and development.¹⁶ As mentioned before, the UN A/66/763 resolution, discussing the UN concept of human security, does not offer a particular definition of what is considered *violence* or a *threat*.

In 2001, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) presented the “Guiding Principles of Internal Displacement.” As the first attempt to make visible and regulate IDP matters, it pioneered practice and allowed for the expansion of liberal mechanisms of power, such as capitalist classes, within the communities in which it operated. For women, the liberalisation of their security meant integration in male dominated power structures, particularly as producers and reproducers of gendered processes. Although the principles provided in UN resolutions focus on non-discrimination, protection from sexual violence, and rights for expecting mothers and female heads of households, liberalism made assumptions about the integration of women into these power structures and how the structure itself may be a source of insecurity. This was particularly apparent in Resolution 1325, which portrayed women’s role as that of peace builders and mitigator of violent social structures. These assumptions created a false sense of change that only served to uphold power imbalances and decrease the visibility of violence.

The literature on gender and displacement concludes that women often face the most severe impacts of internal displacement. According to the Brookings Institute, “displaced women are often at greater risk than other affected populations because of the asymmetrical social structure of patriarchy.”¹⁷ Furthermore, women are also more susceptible to gender-based violence (SGBV) and have the greatest difficulty securing housing, land and property rights. In general, women are excluded from or have limited participation in the decision-making processes in the majority of public spaces. Focusing on this assumption, many international security and development programs are blind to the issues and challenges of women and other at-risk populations.

¹⁵ See Vicente Navarro, “Neoliberalism as a Class Ideology; Or, The Political Causes of the Growth of Inequalities,” *International Journal of Health Services* 37.1 (2007): 47-62, and Jan Nederveen Pieterse, “Global Inequality: Bringing Politics Back in,” *Third World Quarterly* 23.6 (2002): 1023-1046.

¹⁶ See Frances S. Hasso, “The ‘Women’s Front’: Nationalism, Feminism, and Modernity in Palestine,” *Gender & Society* 12.4 (1998): 441-465, and Zehra F. Kabasakal Arat, “Feminisms, Women’s Rights, and the UN: Would Achieving Gender Equality Empower Women?,” *American Political Science Review* 109, No. 04 (2015): 674-89.

¹⁷ Chaloka Beyani, *Improving the Protection of Internally Displaced Women*. (Washington, DC: Brookings LSE, 2014). Accessed February 17, 2017. <https://www.brookings.edu/wp-content/uploads/2016/06/Improving-the-Protection-of-Internally-Displacement-Women-October-10-2014.pdf>.

Several international legal documents, programs and guidelines claim to specifically address security issues of IDP women. However, these documents fail to address the unequal structures of power that govern social, political and economic relations which in turn constitute a major source of human insecurity. Also, the effectiveness of these laws and regulations depends upon their successful implementation. Although Colombia and Palestine are not geographically or historically similar, the enormous and specific impact of violence on women, children, and other marginalised communities is dramatically similar. In this section, we aim to explain briefly the historical background of these two case studies, emphasising the role of regional geo-politics.

The Colombian armed conflict is one of the longest running conflicts in the world. According to Human Rights Watch¹⁸, the Colombian conflict has resulted in the second largest number of IDPs in the world. According to the Colombian *Unidad de Víctimas*, as of November 2016, the country had 8.2 million registered victims, including 7.1 million IDPs from January 1985.¹⁹ Similarly, the Palestinian/Israel conflict has raged on for nearly seven decades as illegal Israeli settlements continue to encroach on Palestinian territory, affecting 5.3 million Palestinian refugees and millions more. Violent and entrenched, both conflicts serve as particularly interesting case studies for analysis.

According to the Colombian *Unidad de Víctimas*, 3,958,997 of the registered victims are women, 3,952,736 are men, and 1,818 are LGBTQ.²⁰ As these numbers indicate, both men and women have been seriously affected by the war. In 2004, the Constitutional Court declared that the internal displacement of persons in the Colombian conflict constituted a massive abuse of human rights that seriously challenged the national Constitution. International development initiatives and massive production of legal machinery in Colombia have had serious implications for women, especially those not protected under the 1951 Convention on Refugees. As explained above, IDPs were not a matter of global concern until only recently. The forced displacement of people within countries was seen as an inevitable consequence of war and thus not considered a crime. Over the last several decades, international and domestic laws have been created to address the humanitarian crisis, which have made visible internal displacement as a crime of global impact. IDPs only became visible in Colombia in 1997 through Law 387. Since then, the category of victim has been redefined and transformed in order to comply with international standards of protection and guarantees of victims' rights.

In 2005, the Colombian Congress issued Law 975 in order to regulate demobilisation of ex-combatants. In 2011, the Congress issued law 1448 and explicitly defined the category of victim as a person who; a) Individually or collectively has suffered real, concrete and specific harm as a consequence of a violation of international humanitarian laws or international human rights laws, or b) Is a family member in cases of killing or disappearances, and has been affected by the internal armed conflict, or c) Has suffered harm when assisting a direct victim or when preventing or attempting to prevent the intended harm. The law applies to crimes committed since January 1, 1985, and in the case of land dispossession, since January 1, 1991. The law is to remain in force until June 10, 2021. The Constitutional Court has had an essential role in challenging and expanding this category, attempting to make it more inclusive and sensitive to the particular needs of women and other vulnerable populations. However, people who have suffered the consequences of war still have to meet certain requirements to be granted rights to truth, justice and reparations.

¹⁸ Human Rights Watch. "The Risk of Returning Home: Violence and Threats Against Displaced People Proclaiming Land in Colombia," last modified in March 2013, <https://www.hrw.org/report/2013/09/17/risk-returning-home/violence-and-threats-against-displaced-people-reclaiming-land>.

¹⁹ "Unidad de Víctimas," last modified April 01, 2017, <http://www.unidadvictimas.gov.co/>.

²⁰ For more detailed information about registered victims of the internal armed conflict in Colombia, see: <http://rni.unidadvictimas.gov.co/?q=node/107>. Accessed April 7, 2017.

After that declaration (through the *Sentencia T-025/04*), the humanitarian crisis of IDPs became intensely visible and put pressure on the national government to create a comprehensive policy of attention, assistance and reparation to victims of the conflict. In 2008, the Constitutional Court released *Auto No.092/08*, which created special protection measures for women IDPs who, according to the *Auto*, have suffered a disproportional and specific impact of violence. For that reason, the Colombian government decided to include a gender-ethnic-class focus (*enfoque diferencial*) in all policies relating to the conflict in order to protect and effectively guarantee rights to vulnerable populations, including women and children. Although the legal system provides guarantees for protection of women, the implementation of these guarantees still poses a challenge. According to Mertens, “access to the judicial system should be improved at the local level, the granting of land titles to women should be speeded up and special protection should be accorded to women and their organizations in order to avoid re-victimization.”²¹

The Colombian definition of victim established in Law 1448 (explained above) is particularly problematic in a context where the dangers derived from war are still present. In addition, corruption, neo-paramilitarism, drug trafficking and inequality are serious obstacles to an effective, fast and comprehensive response and guarantee for victims’ and citizens’ rights. As Mertens (2010) states,

The armed conflict has had a considerable and disproportionate impact on women, as they suffer specific risks and confront specific vulnerabilities because of their gender. Examples include: forced displacement in conditions of marital abandonment or widowhood (leading to an increasing number of women-headed households in displaced populations in the cities); gender-based violence and especially sexual violence by armed actors as a weapon of war, the imposition of patriarchal models of social control by local power holders; and the historical lack of recognition of women’s rights that has facilitated their dispossession and violent seizure of their land.²²

Similarly, those internally displaced within Palestine have been shackled by the semantics used in the definition of their victimisation as “refugee”. The first mention of Palestine refugees was in the General Assembly Resolution 212, adopted November 19th, 1948. Recognized by the United Nations Economic Survey Mission of the Middle East, the resolution established the United Nations Relief and Works Agency (UNRWA) with the mandate to “carry out in collaboration with local governments the direct relief and works programmes as recommended by the Economic Survey Mission.” Less than a month later, the General Assembly passed Resolution 194 on December 11th. The resolution concluded that refugees,

[. . .] wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.²³

²¹ Donny Meertens, *Forced Displacement and Gender Justice in Colombia: Between Disproportional Effects of Violence and Historical Injustice*. (Washington, DC: ICTJ/Brookings, 2012): 157.

²² Donny Meertens. *Forced Displacement*, 154.

²³ UN General Assembly, *Resolution 194*, December 11, 1948. Article II.

As UNRWA operationalised and was granted programmatic functions, the UN High Commission on Refugees (UNHCR) came to define the rights and security of Palestine refugees as separate and distinct from other refugees worldwide. The UNHCR argued, “for the non-applicability of the UNHCR Statute and the 1951 Convention to refugees receiving protection and assistance from another UN agency, unless and until such protection or assistance ceased without an internationally accepted solution having been found.”²⁴ Predicting a swift solution to the Israel/Palestine conflict, the UNHCR chose to focus on refugees elsewhere, effectively limiting the UNRWA’s power under international law with regard to protecting Palestinians. Legal academics, particularly Susan Akram and Nidal al-Azza, have argued that Palestinian refugees are treated unequally and are not provided the same human rights as refugees worldwide, such as relocation and protection against violence.²⁵

The laws and procedures meant to protect Palestinians have now become the very legal mechanism that imprisons them under military occupation. The operational definition, as conceptualised by UNRWA, of a Palestine refugee is “persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict.”²⁶ Although this definition provides protection to refugees produced between 1946 and 1948, it doesn’t guarantee protection, services or the symbolic title of ‘refugee’ to those displaced since 1948, and particularly those affected by the continued expansion of illegal settlements in the West Bank. As long as the Israeli government continues to support Israeli settlements in the West Bank, Palestinians will continue to be forced off their land and have their property and livelihoods taken from them without international protection or justice.

In addition, defining Palestine refugees in terms of only those who fled between 1946 and 1948 created a symbolic social status that allows for the reproduction of trauma within Palestinian society. In Palestine, communities of higher social and economic status tended to cluster in urban areas while those living in rural areas were considered lower class. The majority of those displaced between 1946 and 1948 were from rural communities who didn’t have the social or economic power to stay.²⁷ Historically, these rural communities were often seen as weak or as not having defended their land effectively. These prejudices have been socialised into Palestinian culture and constitute an invisible force that manifests itself spatially through social and economic segregation of Palestine refugees from other Palestinians.²⁸

Researching Palestinian identity, Bowker concluded, “the inferior social status of refugee camp-dwellers, in the eyes of both non-Palestinian Arabs and Palestinians alike, has probably reinforced the boundaries between refugees and non-refugee populations more generally.”²⁹ These dynamics often remain hidden as development and humanitarian organisations focus only on external factors of violence and conflict. As a permanent symbol of the land, Palestinian refugees often feel obligated to register as a refugee in order to demonstrate their support of Palestinian liberation.

²⁴ Susan Akram and Nidal al-Azza. *Handbook on Protection of Palestinian Refugees in States and Signatories to the 1951 Refugee Convention*. BADIL Resource Center (2015): 32

²⁵ Susan Akram and Nidal al-Azza. *Handbook on Protection of Palestinian Refugees*, 32.

²⁶ UNRWA. “Palestine Refugees,” *United Nations* (2015), <http://www.unrwa.org/palestine-refugees>

²⁷ Riccardo Bocco, “UNRWA and the Palestinian Refugees: A History within History,” *Refugee Survey Quarterly* 28.2-3 (2009): 229-252.

²⁸ George E. Bisharat, “Exile to Compatriot: Transformations in the Social Identity of Palestinian Refugees in the West Bank,” *Culture, Power, Place: Explorations in Critical Anthropology* (1997): 203-233.

²⁹ Robert Bowker, *Palestinian Refugees: Mythology, Identity, and the Search for Peace* (New York: Lynne Rienner Publishers, 2003)

Although UNRWA provides gender-focused support to Palestinian refugees, it does so by enforcing patriarchal policies and procedures. Palestinian refugee status, as it's practiced, is passed down through male heads of household. Registered and eligible female Palestinian refugees terminate their rights and the rights of their children as refugees if she chooses to marry a non-refugee.³⁰ When Cervenak finally brought forward the negative implications of these practices in 1994, the General Assembly decided that including non-refugee families of refugee women was too much of a strain on the general budget. These policies create social pressure for women, where female refugees may feel obligated to marry another refugee-regardless of desire and want-limiting their agency and capability.

Development practitioners are not intentionally or deliberately implementing development and law in a way that undermines human security, but they are confined by specific legal parameters. As a result, even so called "Third World" women trained at western institutions are not allowed to champion techniques and tools that were originally used in less hierarchical social class systems as solutions to issues of poverty and inequality.³¹ Within mainstream development, gender is often treated as a separate issue, while race, ethnicity, class, and sexual orientation are frequently ignored. These outcomes are caused by specific gaps in development theory. First, the assumption that development policy is devoid of international and regional as well as geographical and biological politics provides space for the passive complacency of practitioners and institutions in systemic structural and emotional violence.

In other words, "developing agencies are not in the business of promoting political realignments" but that doesn't mean they are politically neutral.³² In fact, this means that policies and their subsequent implementation maintain the status quo and don't necessarily leave at-risk populations better off. Such assumptions perpetuate the suffering of those unfortunate enough to be born into economically and socially marginalised communities.³³ The development discourse adds to the assumption of law as neutral and inherently positive. This conception provides the idea of natural distance, a detachment between everyday lives and the rationality of legal knowledge. We argue that laws are not neutral but political. As in several cases of Palestine and Colombia, law and practice work as legitimacy tools for unequal power relations.

Contributing to stereotypes of "Third-World women" needing to be enlightened by western liberal values, these institutions have largely utilised a top-down method of development with a feminist theory that "is often seen as an opportunity to enlarge liberal knowledge rather than as a chance to explore the variety of modes of being female."³⁴ Without addressing the root causes of the conflict in Colombia, or without focusing on incentivising Israel to end the occupation, the language and semantics of international law and development have been tarnished and eroded. Facing complacency by the international community, many Palestinian and Colombian women have chosen to set aside their gendered need for equality and shift focus to survival.³⁵ Disappearing into male dominated structures, many of their voices

³⁰ Christine M. Cervenak, "Promoting Inequality: Gender-based discrimination in UNRWA's approach to Palestine Refugee Status," *Human Rights Quarterly* 16.2 (1994): 330

³¹ Jane Parpart, "Who is the 'Other'?: A Postmodern Feminist Critique of Women and Development Theory and Practic," *Development and Change*, Vol. 24 (1993): 444.

³² Elizabeth Harrison, "Fish and Feminists," *IDS Bulletin* 26.3 (1995): 41.

³³ Paul Collier, *The Bottom Billion: Why The Poorest Countries Are Failing And What Can be Done About It* (USA: Oxford University Press, 2008).

³⁴ Jane Parpart, "Who is the 'Other'?: A Postmodern Feminist Critique of Women and Development Theory and Practic," *Development and Change*, Vol. 24 (1993): 445.

³⁵ Ghada Heshem Talhami, "Evolution of the Palestinian Feminist Movement." 2006. Jerusalem: Palestine Center. Accessed on February 17, 2017. <http://www.thejerusalemfund.org/ht/display/ContentDetails/i/2600/pid/897>

are lost within the chaos of internalised war.³⁶ The inclusion of women in the peace process remains limited, and minimal at best, demonstrating the pitfalls of Resolution 1325 on the lives of both Colombian and Palestinian women.³⁷

Changing the Paradigm

As stated throughout this article, law regulates the bodies of displaced persons, not only in Palestine and Colombia but elsewhere as well. We argue that it is necessary to investigate the ways in which the language embedded in laws and regulation is practiced. A gender sensitive approach to internal displacement is an essential starting point to create sustainable solutions. Questioning assumptions and practices embedded in international development would allow for greater agency and self-determination and encourage changes in the current migration and refugee paradigms, including legal modifications to more conventions and multilateral treaties. Challenging conventional approaches to law would allow us to evaluate the discourses, practices and power relations in law, especially how laws may legitimate impunity, gender, and race inequality and exclusion of certain populations.

Parpart proposes Gender and Development (GAD) research, as a way to analyse “gender rather than women, particularly the social construction of gender roles and gender relations.”³⁸ Articulation among civil society groups is essential in promoting new epistemic communities that are able to challenge existing patriarchal institutionalism. Development research and implementation need to focus not only on empowerment of locals, but on the empowerment of *all* locals regardless of gender, ethnicity, class, sexual orientation, race, religion, political ideology, or capability. According to Charlesworth, epistemic communities and NGO influence are essential to articulate and diffuse critical perspectives to gender development, stating,

It is not simply the presence of women that would make a difference. Instead, it is the commitment and ability to develop, explore, rethink and revalue those ways of thinking that get silenced and devalued that would make a difference. For that to happen, men, too, would have to be central participants.³⁹

Conclusions

The IDP crisis in both the cases of Colombia and Palestine has been approached through two main institutional mechanisms: international development and massive law production. Under the guise of humanitarian assistance and development, global institutions and the contemporary development paradigm have come to contribute to and reinforce social and gender hierarchies and inequality. In the cases of Colombia and Palestine, the law has an

³⁶ Ihab Aldaqqaq, “Palestinian Women’s Movements and Their Relations With the Palestinian Nationalist Movement: A History of Partnership and A Future of Challenging Cooperation” (PhD diss., Columbia University, 2014). <http://academiccommons.columbia.edu/catalog/ac%3A176131>

³⁷ Mohammed Al-Kassim, “Middle East: Israel and Palestinian Women Together in Peace,” *Vision News*, April 29 2010, and Paul Collier, *The Bottom Billion: Why The Poorest Countries Are Failing And What Can Be Done About It.* (London: Oxford University Press, 2008).

³⁸ Jane Parpart, “Who is the ‘Other’?: A Postmodern Feminist Critique of Women and Development Theory and Practice,” *Development and Change*, Vol. 24 (1993): 444.

³⁹ Hilary Charlesworth, “Feminist Methods in International Law,” *The American Journal of International Law* 93, No. 2 (1999): 394.

essential role not only in regulating these power relations, but also in legitimising institutions and systems that uphold violence as a way of producing and reproducing inequality.

We argue that these two mechanisms contribute to human insecurity, as they facilitate the reproduction of violent social structures. Evaluating the underlying assumptions of international development and law, particularly the assumption of neutrality, this article explores how these assumptions come to negatively impact women, and make skewed power relations invisible. This article lays bare the need for challenging existing institutional arrangements that favour certain violent masculinities and certain types of violence against women. We echo Parpart on the need of applying gender and development approaches that promote an evaluation of research and knowledge about law and its connection with gender analysis.

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Doubly jeopardised: Provoking discussion for visibility of EU's refugees with disabilities

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Abstract

At present, there is marginal scholarly work covering the intersection between disability, forced displacement and refugee asylum intervention. Equally and perhaps more precariously, there is limited data and statistics as to experiences and actual figures concerning refugees with disabilities. The resultant effect is a curtailment of a full assessment of concerns and a corresponding complication of informed intervention. Bearing in mind the 1951 Convention on Refugees and its 1967 Protocol as our point of reference, the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR) in 2010 adopted the *Conclusion on Refugees with Disabilities and other Persons with Disabilities Protected and Assisted by UNHCR* to streamline inclusive humanitarian intervention in favor of refugees with disabilities within its programming, and in the States in which it operates. Irrespective of its specific intention being for policy guidance and its limited application (only to the UNHCR), the Conclusion constitutes a good starting point for disability inclusive refugee intervention. Perhaps more comprehensively, the United Nations Convention on the Rights of Persons with Disabilities (CRPD) lays down tangible benchmarks for member States, to realise inclusion generally for all persons with disabilities. From a vantage policy perspective, it would be remiss not to consider whether or where disability inclusive refugee intervention fits within the inclusive 2030 Sustainable Development Goals (SDGs). Consequently, the main objective of this work is to contribute to the current limited resource pool in favor of disability sensitive refugee asylum intervention among EU refugee host States and other safe countries.

With the current upsurge of populist ideals in favor of stricter border controls generally within the western developed world, the uncertain status of refugees has never been more unclear and non-more so than refugees with disabilities. Admittedly, a lot still has to be done to re-conceptualise the current refugee question as an opportunity to reflect our commitment to our shared humanity. Nevertheless, it is never too early to question these inequities and, especially in this case the current invisible and hence, marginalised status of refugees with disabilities. Although this paper is targeted to EU refugee hosting states, its relevance is general in nature and is applicable to all refugee hosting countries.

Keywords: Refugees with Disabilities, Inclusive Refugee Intervention, Disability Inclusion.

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Introduction

The current upsurge of refugees, especially from war torn parts of Syria and volatile parts of the Middle East, into Europe has reignited discourse on the pragmatism of humanitarian responses and raised questions concerning the practicality of the objectives of the 1951 Convention on Refugees and its 1967 Protocol among a host of EU States.² Indeed, a populist re-emergence of *fear driven* nationalist ideals in favor of protection of national interests, security and stricter border control is fast questioning decades-long development in refugee humanitarian practice. Nonetheless and despite the above war of ideologies, real conflicts and catastrophes leading to displacement continue to occur. In 2015 alone, Europe recorded an estimated 1.3 million asylum seekers - an almost threefold increase from the previous year and comfortably above the record of 695,000 recorded in 1992.³ Although that figure is reported to have substantially fallen in 2016, this is largely attributed to stringent closure of migrant routes and/or documented experiences of extreme hardships and even deaths during asylum migration and stay in EU States as opposed to any real drop in the actual causes of forced displacement. Notably, a key contributor to the current forced displacement trend has been the ongoing persistent conflict - especially in Syria and other parts of the Middle East and North Africa. Unsurprisingly therefore, according to the United Nations High Commissioner for Refugees (UNHCR) Global Trends Report 2015, the highest numbers of present refugees hailed from Syria and Afghanistan.⁴

In response to the increased refugee numbers that have *successfully* made it within its borders, EU refugee hosting States have been forced to devise reactionary, albeit reluctant measures to cater for the influx. The result has seen the opening of temporary camps, and evolving state departments as quick fix prescriptions. However, even this level of *hospitality* or *open door* approach (as some people believe it to be) has not gone unquestioned amid growing concerns from a fraction of EU citizens. Foremost among these concerns are national financial capability of individual states, security, and the fear of losing national identity. Obviously, it is entirely legitimate for the above concerns to subsist. Regardless, this should at the very least, spark constructive debate among and within EU States, individually and collectively; to first and in the long term, find comprehensively solutions for causes of forced displacement, and secondly and in the short term, to devise options to address these concerns whilst maintaining commitment to the principles of human rights. Simply advocating for stringent or closed border controls may not necessarily be sufficient, to say the least, and neither will it reflect any positive progress from an already chequered history of unchecked ultra nationalism, which fueled two World Wars in the first half of the 20th Century. As such, history and experience would suggest that an humane response to refugee issues is preferable.

Is it therefore too early too soon for disability inclusive refugee intervention?

As outlined above, the uncertain status of refugees generally has never been more unclear. Outside of status, one inconspicuously and hence doubly jeopardised group of refugees are refugees with disabilities. Unlike specific groups - for example, women and children - persons with disabilities have been historically invisible in their communities and consequently in State policy and intervention. As a result, poverty, unemployment, dependence and inaccessibility to essential services including healthcare are just some of the challenges they

² United Nations, "Convention Relating to the Status of Refugees", UN Treaty Series Vol. 189, p. 137 and the United Nations, "Protocol Relating to the Status of Refugees", UN Treaty Series, Vol. 606

³ Pew Research Centre, "Number of Refugees to Europe Surges to Record 1.3 Million in 2015", August 2016 Report

⁴ United Nations High Commissioner for Refugees (UNHCR), "Global Trends: Forced Displacement in 2015", 2015 Global Trends Report

incur in their daily life. One can therefore only imagine the heightened nature of their vulnerable status during forced displacements. Unfortunately, with limited coverage as to the experiences of persons with disabilities during and in forced displacement, and almost non-existent data about issues encountered by them, little to nothing has been done to redress their plight under their new title as refugees with disabilities.

Nonetheless, isolated estimates suggest that as many as 15% or 7.7 million of the world's 51 million displaced people by conflict have a disability.⁵ As noted earlier, these figures are likely higher, especially since the impact of conflict as a cause of disability and what forms of disability manifest thereafter is not specifically reported. It is also unclear how many disabled persons are displaced for reasons other than conflict. Yet, according to the United Nations High Commissioner for Refugees (UNHCR) persons with disabilities are more likely to be sidelined in every aspect of humanitarian assistance owing to a combination of physical and environmental barriers resulting in inaccessibility to information, healthcare, rehabilitation services and human rights protection.⁶ Ultimately, refugees with disabilities (as a group and individually) are owed rights by their virtue of being human. As this work shall point out, it is long overdue to ensure enforcement of existing rights guaranteed to refugees with disabilities. No doubt, doing so has important practical advantages for all.

Bearing in mind limitations to refugee time frames under different legal frameworks, and that in many cases refugees end up permanently residing in their host States, it is crucial that States ensure a productive population pool in the long term. With the adoption of the 2030 Sustainable Development Goals (SDGs) agenda and its overall theme - *Leave no one behind* - the need for inclusion of *all* in national and regional development cannot be clearer. Specific to the relevance for disability inclusion, according to the UN Special Rapporteur Report of August 2016, a significant amount of future resources can be saved if only government invested in disability inclusion from the beginning. For example, investing in disability inclusion in addition to preserving respect for human rights also enables States to tap into the untapped potentials of persons with disabilities, thereby ensuring their positive participation in employment and in the economic market whilst substantially reducing their dependence on the national welfare budget. Indeed, with the new shift in paradigm, overcoming main barriers rooted in the current *status quo* of environmental and attitudinal barriers that effectively curtail inclusion of persons with disabilities and hence attainment of their full potential and achieving 'an equal basis with others' is key to any meaningful development.⁷

Several questions arise with respect to refugees with disabilities. For example, what international instruments are there to hold States to their duty to refugees with disabilities? What are the salient challenges confronting refugees with disabilities, and in effect, what steps and/or recommendations can States take to realise disability inclusive refugee policy? Ultimately, in its exploration of the above questions, the main objective of this work is to contribute to momentum for disability sensitive refugee intervention in EU refugee host States and other safe countries.

Briefly however, the Executive Committee of the UNHCR in October 2010 adopted *the Conclusion on Refugees with Disabilities and other Persons with Disabilities Protected and Assisted by UNHCR*. Unfortunately, the Conclusion only applies to activities of the UNHCR and even then, only lays down policy direction at best without necessary specificity. Avoiding interrogations on the adequacies of the Conclusion for now, what of States? What legal instrument(s) can be used to commit them to respond to issues relating to refugees with disabilities?

⁵ Women's Refugee Commission, "Disability Inclusion: Translating Policy into Practice in Humanitarian Action", 2014 Report

⁶ See footnote 3 UNHCR Global Trends Report 2015

⁷ United Nations, Convention on the Right of Persons with Disabilities, General Assembly Resolution A/RES/61/106, 2006, article 1

The 2006 Convention on the Rights of Persons with Disabilities (CRPD) has been fundamental in bringing disability rights to the core of international human rights law. It constitutes the single most widely accepted disability rights code with currently 172 member states.⁸ Crucially, the EU as a regional integration body has ratified the Convention. Naturally therefore, the CRPD is a vital European regional advocacy tool. Sadly, there is still little scholarly work covering the intersection between disability under the CRPD and refugee humanitarian response. Regardless, the CRPD contains specific recommendations and/or steps that are potentially beneficial in order for States to meet their mandate to refugees with disabilities. Specifically, its provisions on accessibility and reasonable accommodation as anecdotes to overcoming existing barriers to disability inclusion in daily life echo important lessons. Equally vital as well is reflecting on the relationship between the SGDs and disability inclusive refugee policy, and the apparent lack of statistics/ literary works to provoke and in the long run inform appropriate related policy.

Existing international legal framework in favor of disability inclusive refugee asylum intervention

The Conclusion on Refugees with Disabilities and other Persons with Disabilities Protected and Assisted by UNHCR

The Conclusion on Refugees with Disabilities and other Persons with Disabilities Protected and Assisted by UNHCR is a policy document adopted in 2010 during the sixty first Executive Committee Sessions of the UNHCR to streamline disability inclusion within UNHCR's humanitarian and refugee programming in respective States.⁹ Briefly, the UNHCR was established in 1950 by UN General Assembly and tasked with the mandate to lead and co-ordinate international action to protect refugees.¹⁰ The UNHCR in effect serves as the guardian of the 1951 Convention on Refugees and its 1967 Protocol. The former consolidates previous refugee instruments and provides the most comprehensive codification of the rights of refugees generally at international level while its later Protocol extends the time and geographical application of the 1951 Convention to *all refugees* internationally irrespective of the previous deadline of 1st January 1951. Without a doubt, the persistent reference to beneficiaries of the 1951 Convention and its 1967 Protocol to be 'any (refugee) person' infers a non-discriminatory and all-inclusive obligation to all intended member State refugee intervention and UNHCR refugee activity.

The UNHCR conclusion codifies the Commission's policy in favor of disability inclusive humanitarian and refugee intervention. Once again the Conclusion notes that persons with disabilities are often the most vulnerable and yet continue to be persistently overlooked in humanitarian emergencies. As a consequence, they face discrimination, exploitation, and in some cases violence with minimal access to support services.¹¹ The Conclusion calls on States and the UNHCR "to protect and assist refugees with disabilities against all forms of discrimination and to provide appropriate and sustainable support services". Among its salient recommendations is; raising awareness and training on disability issues during emergency,

⁸CRPD ratification
http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CRPD&Lang=en last accessed January 18, 2017

⁹ United Nations High Commissioner for Refugees, "Conclusion on Refugees with Disabilities and other Persons with Disabilities Protected and Assisted by UNHCR", Executive Committee Sixty First Session, UN General Assembly Document No. A/AC.95/1096

¹⁰ History of the UNHCR <http://www.refworld.org/publisher,UNHCR,EXCONC,,,o.html> last accessed January 16, 2017

¹¹ See footnote 6 Conclusion on Refugees with Disabilities and other Persons with Disabilities Protected and Assisted by UNHCR, General Assembly Document No. A/AC.95/1096

systematic identification and registration of refugees with disabilities, ensure participation of refugees with disabilities during intervention design process, ensure accessibility of services and accessibility of information, and implementation of appropriate reasonable accessibility standards.

Overall, the conclusion recognises the progress made by the CRPD in respect of rights in general for persons with disabilities, and seeks to interpret the same in situations of humanitarian emergencies. Despite its adoption over 6 years ago, its effect in favor of positive change for refugees with disabilities within and among States hosting UNHCR activities is still unclear.

The UN Convention of the Rights of Persons with Disabilities (CRPD)

The Convention on the Rights of Persons with Disabilities (CRPD) was adopted by the UN General Assembly on the 13th December 2006 and came into force on 3rd May 2008 after submission of its 30th instrument of ratification. Essentially, it reinterprets pre-existing human rights instruments in favor of all persons with disabilities without necessarily creating new rights. The Convention is credited for ushering into international law a social and human rights based understanding of disability by attributing disability to social, environmental and attitudinal barriers (CRPD Preamble). It notes that disability is an evolving and interactive effect between impairment and the society. Rightly so, it lays great emphasis on accessibility¹², appropriate support and reasonable accommodation¹³ as tools to address discrimination and ensure that all persons with disabilities participate and enjoy rights on ‘an equal basis with others’.¹⁴

The CRPD in its preamble recognises the indispensable need for full protection of persons with disabilities during armed conflict and foreign occupation and consequently calls on State parties to do all that is necessary to ensure the safety and protection of all persons with disabilities in situations of risk including during conflict, humanitarian emergencies and during the occurrence of natural disasters.¹⁵ Relatedly, the Convention also provides for the right to freedom of movement and the right for persons with disabilities to choose their residence and nationality on an equal basis with others.¹⁶

Furthermore, the CRPD acknowledges, and in so doing, seeks to compliment previous international instruments and policy that guide inclusive refugee disability policy including the 1982 World Programme of Action Concerning Disabled Persons¹⁷ and the 1993 Standard Rules on the Equalization of Opportunities for Persons with Disabilities^{18, 19}. Importantly, the World Programme of Action highlights the situation of displaced persons and calls for the removal of social and physical barriers confronting persons with disabilities within refugee population. Equally, the Standard Rules on Equalization urges that the equalisation of opportunities of refugees with disabilities should be integrated into general development programs.

Granted, the CRPD does not expressly mention the term ‘refugees with disabilities’ and neither does it make specific reference to disability inclusive refugee intervention. Nevertheless, its underlying objective, as reflected in Article 1 and its text as a whole, is to

¹² See note 6, CRPD article 9

¹³ Ibid, CRPD article 2 & 4

¹⁴ Ibid, CRPD article 1

¹⁵ Ibid, CRPD article 11

¹⁶ Ibid, CRPD article 18

¹⁷ United Nations, “World Programme for Action Concerning Disabled Persons”, UN Doc. A/RES/37/52, December 3, 1982

¹⁸ United Nations, “Standard Rules on the Equalization of Opportunities for Persons with Disabilities”, Resolution 48/96, 48th Session, 20th December 1993, Introduction par 15 & Rule 21 (1)

¹⁹ See note 6, CRPD Preamble

'promote, protect and ensure the full and equal enjoyment of *all* human rights and fundamental freedoms by *all* persons with disabilities'. Importantly, the contrary argument that CRPD does not apply to refugees with disabilities sits uncomfortably with well-established human rights jurisprudence. Simply, human rights are, by definition, for everyone. The natural rights theory, the forerunner of modern conceptions of human rights, is premised on the assumption that a person is endowed with certain rights simply because he or she is human. The Universal Declaration of Human Rights of 1948 prescribes that 'all human beings are born... in equal dignity and rights'.²⁰

Additionally, although the Committee on the Rights of Persons with Disabilities is yet to make a General Comment clarifying the above rights of refugees with disabilities and other forcefully disabled displaced persons,²¹ the general purpose of the CRPD to protect persons with disabilities in *all* situations is undoubtedly clear. Of relevance, other treaty bodies have in the past already determined that human rights obligations are owed to individuals regardless of whether they are citizens or not. For example, the Human Rights Committee's in its General Comment number 31 stated that enjoyment of rights under the International Covenant on Civil Political Rights (ICCPR) are not "limited to citizens of state parties but must also be available to all individuals, regardless of nationality or statelessness such as asylum seekers, refugees, migrants workers and other persons".²²

With regard to enforceability and potential effectiveness, the CRPD has been impressively ratified by 172 countries - an unprecedented feat for a relatively new Convention. Specific to the European Union (EU), all but one (Ireland- signed but not yet ratified) of the 28 EU member states have ratified the Convention.²³ Equally and perhaps more significant for regional advocacy, the EU as a regional integration body has ratified the Convention.²⁴

Already and at a regional level, the EU has adopted the European Disability Strategy 2010-2020²⁵ whose main aim is to empower persons with disabilities to enjoy rights and participate in society. Using the CRPD as its point of reference, the Strategy aims at creating a barrier free Europe with action in eight priority areas including; accessibility, participation, equality, employment, education, training, social protection and external action. Exclusive to humanitarian response and as per its report to the CRPD Committee, the EU noted that its humanitarian aid and assistance is guided by the principles of international law and impartiality, neutrality and non-discrimination.²⁶ Accordingly, these EU measures and those of member states should complement and reinforce each other. Despite this, the CRPD Committee still questioned how EU humanitarian intervention is inclusive of all persons with disabilities, and particularly refugees with disabilities in the European Union.²⁷ Eventually, in its Concluding Observations, the CRPD Committee recommended that the EU adopt inclusive

²⁰ United Nations, "The Universal Declaration of Human Rights", General Assembly Resolution No. 217A, December 10, 1948, art. 1

²¹ See note 6, CRPD article 34

²² United Nations, Human Rights Committee on the International Covenant on Civil and Political Rights, General Comment No. 31 adopted during its Eighty Eighth Session on 29 March 2014, CCPR/C/21/Rev. 1/Add 1326 May, 2004

²³ CRPD ratification http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CRPD&Lang=en last accessed January 18, 2017

²⁴ EU ratification of the CRPD https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en last accessed January 18, 2017

²⁵ European Union, "European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier Free Europe", Communication 636/2010, November 15, 2010

²⁶ European Union, Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) by the European Union, SWD 2014, 189 Final, June 5, 2014, par 18 & 65

²⁷ United Nations Committee on the Rights of Persons with Disabilities, "List of Issues in Relation to the Initial Report of the European Union", CRDP/C/EU/Q/1, par 15, 31, 33 & 35

and accessible humanitarian programs to all persons with disabilities, share good practice among different EU institutions and member States, establish a respective monitoring and evaluation framework, maintain collection of appropriate disaggregated disability data, and implement the general mainstreaming of disability in its migration and refugee policy.

Importantly, the above interaction between the CRPD Committee and EU ought to form a common platform for advocacy for visibility for all persons with disabilities including refugees. Sadly, this invisibility is not exclusive to the EU and neither is it specific to EU member states. Despite overwhelming international support for disability rights and inclusion in all aspects of life, many policies and legal instruments are yet to be translated into real action. Nonetheless, there is now clear evidence that the CRPD has the potential to play an important role in pushing and galvanizing regional efforts for uniform realisation of inclusion and visibility for refugees with disabilities.

The Sustainable Development Goals 2030

In discussing the Sustainable Development Goals (SDGs), the relevance here is to provoke thought and reflection other than make specific reference. The SDGs are more generally crafted than their predecessor - the Millennium Development Goals (MDG). One cannot help but wonder whether discourse on refugees with disabilities is at all relevant within the SDGs framework and its 17-point agenda. And if so, where it does fit? It is in the opinion of this paper that this may constitute perhaps the most persuasive argument for the need for not just disability inclusion but *inclusion for all* as positive contributors in the economy and as beneficiaries of appropriate policy and intervention.

Briefly, the SDGs, which are part of the broad framework of the "*Transforming our World: the 2030 Agenda for Sustainable Development*", is a wider 2030 agenda for sustainable development building on the 2015 MDGs.²⁸ Nevertheless, besides its 17 point goals, what really sets the SDGs apart from the MDGs and other recent international development initiatives is its commitment to "*leave no one behind*"- including meeting the needs of the most vulnerable. Although it does not specifically mention refugees with disabilities, its emphasis on inclusion of *all* as a yardstick for meaningful development offers crucial insights for the topic at hand.

Accordingly, real development can only be achieved when all persons are included as equal participants, contributors and beneficiaries in the process. Affirming the above, the August 2016 Report by the Special Rapporteur on Disabilities, notes the positives of disability inclusion in all polices including enabling governments save in the long term. Indeed, inclusion marks maturity of our development and is a firm reflection of our humanity.

Understanding and responding to issues affecting refugees with Disabilities today

A salient challenge consistently highlighted in this work is the overwhelming lack of data and/or statistics on refugees with disabilities, accompanied with relatively low scholarly coverage in this area of human rights. Despite much clarity in terms of international legal frameworks, the sad reality is that refugees with disabilities continue to exist inconspicuously. Further, in spite of their high vulnerability status to exploitation and violation during the uncertain periods of asylum migration and in host country refugee asylum process, aggregated statistics on their numbers is limited and even, in most cases non-existent. Consequently, the lack of specific data has a disproportionately negative impact on refugees with disabilities since it curtails appropriate action and policy. Yet, the CRPD itself hinges its realisation on the

²⁸ SDGs <http://www.un.org/sustainabledevelopment/sustainable-development-goals/> last accessed January 18, 2017

availability of appropriate data and information on disability.²⁹ It mandates States to undertake to collect *all* necessary aggregated statistics and data on disability to enable formulation of and implementation of the Convention. Unique to refugee intervention and in accordance, UNHCR notes that “facts and figures are vital for preparedness and planning”.³⁰

A second challenge related to the above, is the limited existence of scholarly and academic coverage devoted to concerns and issues of refugees with disabilities. First, despite the blossom of disability rights since the turn of the century, specific disability groups including refugees with disabilities are yet to assume prominence within the disability rights movement itself. Secondly and perhaps even more curiously, according to some, mainstream human rights movement has historically ignored and unwittingly perpetuated invisibility of persons with disabilities generally.³¹ It was largely because of this very failure by mainstream human rights that the argument for a disability exclusive international convention gained traction, hence the CRPD. All the same, according to Janet Lord and following the adoption of the CRPD, a key test for the human rights movement will be its level of accommodation for disability rights including all groups under it.³²

To overcome challenges and ensure redress to issues facing refugees with disabilities, the nexus between the human rights challenges of today, humanitarian law, disability rights and domestic legislation has to be bridged. Of relevance also is the practical challenge of placing rights of refugees with disabilities within two major international instruments, that is, the CRPD, and the 1951 Refugee Convention and its Protocol. The reality is that the ambiguous status of refugees makes implementation of disability specific international instruments for *non-citizens* less straight forward. Equally, the trend of categorisation of international law as soft law enables States through national *hard* law, to prioritise its disabled citizens and interests over those of refugees with disabilities.³³ With the current populist wave in favor of stricter migration control, the placing of refugees generally, let alone refugees with disabilities, as a group in the human rights citizenry constitutes a significant impediment. Juxtaposing the same, the irony is that the above murkiness is reminiscent of the *special group or other* label which has been (is) a historical dark cloak over persons with disabilities, and was (is) often overtly used to exert protectionist paternalistic intervention in blatant disregard to their human rights.

Perhaps more specific to the day to day challenges, as noted previously, environmental and social barriers combined constitute the core barriers facing all persons with disabilities including refugees with disabilities. UNHCR notes that persons with disabilities are more likely to be sidelined in every aspect of humanitarian assistance owing to a combination of physical and environmental barriers resulting in inaccessibility to information, healthcare, rehabilitation services and human rights protection.³⁴ Furthermore, according to the 2014 study by the Women’s Refugee Commission, refugees with disabilities and their caregivers in refugee settlements are often victims of violence due to their vulnerability, discrimination, stigma and isolation, all of which ultimately affects their participation, potential and full enjoyment of rights.³⁵ The same Report notes with concern the unequal opportunity to durable

²⁹ See note 6, CRPD article 31

³⁰ History of the UNHCR <http://www.refworld.org/publisher,UNHCR,EXCONC,,,o.html> last accessed January 18, 2017

³¹ Janet Lord, “Here’s why disability rights must be on the fore front of the human rights movement”, blog post on Amnesty International website, available at <http://blog.amnestyusa.org/identity-and-discrimination/heres-why-disability-rights-must-be-on-the-forefront-of-the-human-rights-movement/> last accessed January 22, 2017

³² Ibid

³³ Clara Straimer, “Vulnerable or Invisible- Asylum seekers with disabilities in Europe”, Refugee Research Paper No. 194, UNHCR Policy Development and Evaluation Service, November 2010, par 6

³⁴ See footnote 3 UNHCR Global Trends Report 2015

³⁵ See footnote 4 Women’s Refugee Commission Report, 2014

solutions accessible to refugees with disabilities, and in effect raises a red flag against current rampant discrimination by hosting States in favor of able bodied refugees over disabled refugees.

Relatedly, and in terms of intervention, the non-homogenous nature of disability hinges great significance on appropriate accessibility standards and individual adjustments. This effectively renders a one-size fit all approach as too simplistic and not necessarily sufficient. The CRPD's recommendations on accessibility and reasonable accommodation as anecdotes to overcoming physical barriers and diversity of needs by persons with disabilities respectively are particularly relevant in this case. Unfortunately, despite disability related needs such as health care, rehabilitation and education often forming part of national intervention in most States, the reality is these needs are often far from being met. Many times, policy formulation processes are non-inclusive and persons with disabilities are hardly or not consulted at all. In the end, limited knowledge (data) amidst the reality of negative perceptions towards disability largely informs the nature of many interventions. In a nutshell, with a heightened reality of exclusion, violation, exploitation and discrimination during asylum migration and in the host country asylum process, coupled with little or no visibility, the almost insurmountable challenge of being a refugee with a disability cannot be overstated.

Conclusion

Generally, with recent developments in the US, parts of the EU and other places around the globe, refugees today face significant challenges in remaining relevant in national policy and intervention. With human rights arguments for favorable refugee intervention being discredited as being too liberal and naïve, the opposing tide in favor of stricter border and immigration control is gathering pace. A real concern of the later however is that, it was against such sentiments of closed, and even, myopic nationalistic devotion that the States collectively sought to start a new chapter in global humanity, drawing lessons following the end of the Second World War. The birth of the United Nations and the adoption of a global code of human rights in the form of the Universal Declaration of Human Rights were the first blocks to be created. Shortly following, the 1951 Convention on the Status of Refugees was adopted by the UN and later expanded by its 1967 Protocol. Specific to refugee human rights, in fact, there is now a huge body of positive history in favor of humane response.

Nonetheless, amidst the above distraction the real questions resulting from the unmet needs of individual groups of refugees, and in this case, refugees with disabilities continue to gape. Despite a relatively clear international legal and normative framework in the form of the CRPD which is supplementary to the 1951 Convention and the 1967 Protocol in this case, the UNHCR Conclusion on Persons with Disabilities and the insights from the SGDs and its commitment to "*leave no one behind*", refugees with disabilities still continue to exist almost inconspicuously. The lack of national aggregated statistics and the related scarce literary work especially in human rights academia covering their experiences are not only indicators of their neglect, but as also, perpetuates their current invisibility in national policy and intervention. This is regardless of the fact that refugees with disabilities are more likely to be sidelined in every aspect of humanitarian assistance owing to a combination of physical and environmental barriers resulting in inaccessibility to information, healthcare, rehabilitation services and human rights protection.

In addition to their heightened vulnerability status, the uniqueness and diversity of disability concerns ensures that a *one size fit all* approach may not be sufficient to resolve the needs of refugees with disabilities. Fittingly the CRPD emphasises implementation of general accessibility standards and in the event of specific individual needs calls for the provision of reasonable accommodation. Accessibility and reasonable accommodation in favor of persons with disabilities in refugee intervention would go to the core of ensuring access to basic crucial

services including equal access to asylum processes, access to appropriate accommodation, equal access to integration programs, education and fair access to any other livelihood opportunities and services. It should be remembered that all but one (Ireland) of the EU States have ratified the CRPD, and importantly, the EU as an integration body has itself ratified the Convention. Although very little has been done so far, it is long overdue for the obligations to refugees with disabilities to be met by the EU States collectively and the individually. Certainly, commitment in this respect shall reflect heavily on our shared humanity and, our aspiration for equity, inclusion and protect of all, including the most vulnerable and often invisible.

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After Garissa: Social Capital and Vulnerability Among Somali Refugees in Nairobi

Clayton Boeyink¹

Abstract

Somalis in Kenya have endured a history of collective punishment since colonialism. This history has affected refugee policy in Kenya since the 1990s and into the current of the ‘war on terror’ era. This article argues that many forced migration scholars have understated the prevalence of vulnerability in urban settings such as Nairobi. The underestimation of the prevalence of vulnerability of urban refugees is borne out of a desire to influence policy as well as an outcome of chosen methodology. This study utilises social capital theory to define and analyse vulnerability among Somali refugees in Nairobi. The shutdown of Money Transfer Operators (MTOs) and police crackdowns following the Garissa University College attack typifies the collective vulnerability of Somalis in general, and the acute vulnerability of people lacking social networks specifically.

Keywords: Somali refugees, Eastleigh, Remittances, Vulnerability.

Introduction

On 2 April 2015, the militant group Al-Shabaab attacked Garissa University College in Kenya causing the biggest loss of life from a terrorist attack since the US Embassy bombing in Nairobi in 1998. The Kenyan government’s response was swift, resulting in police crackdowns and a shutdown of thirteen Money Transfer Operators (MTOs), which many Somali refugees depend on to send and receive remittances. MTOs were shut down because the Kenyan government claimed these were used to fund terrorist activities. The MTOs were allowed to operate again on 22 June, but the effects of this shutdown deeply shook the refugee community in Eastleigh. Recent actions by the Kenyan Government should not be seen in a vacuum, however. This article will examine the effects of these government actions and the history of Somali marginalisation in Kenya, and the levels of vulnerability they expose for Somali refugees in Nairobi.

The Garissa attack and the government’s response have been the latest iterations in Kenya’s war against Al-Shabaab. In 2011 Kenya’s armed forces invaded southern Somalia to fight against Al-Shabaab. This invasion had the goal to create a “buffer zone” where refugees could return.² In retaliation to the invasion, Al-Shabaab perpetrated a spate of attacks in Kenya which culminated in dramatic atrocities in Westgate Mall and Garissa.

On 21 September 2013, Al-Shabaab sieged Westgate shopping mall in Nairobi, resulting in the death of sixty-seven people including the four attackers. Kenya responded to these attacks by initiating Operation Usalama Watch, which deployed 6,000 police to Eastleigh. Nearly 4,000 people, mostly Somali refugees, were detained. Many accused the authorities of harassment, extortion, and abuse. Hundreds of Somalis were deported to

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² Anna Lindley and Laura Hammond, “Histories and Contemporary Challenges of Crisis and Mobility in Somalia,” In *Crisis and Migration: Critical Perspectives*, edited by Anna Lindley, (London: Routledge, 2014).

Mogadishu.³ The Independent Policing Oversight Authority (IPOA) concluded: “the Operation was not conducted in compliance with the law, respect for the Rule of Law, democracy, human rights and fundamental freedoms.”⁴ The economic results were devastating. Ahmed Mohamed, head of the Eastleigh Business District Community, claimed an estimated 80% of businesses were affected, and 15% of the businesses left Kenya to other East African countries. There are startling similarities between Usalama Watch and the State of Emergency in Northeastern Province following independence. This history perpetuates vulnerability of Somalis in general and of Somali refugees in particular.

This article contributes to understandings of labour and integration for urban refugees in Nairobi by examining livelihood strategies for refugees and the effects of the Kenyan government’s response on Somali refugees residing there. Much of the academic literature on urban refugees in Nairobi looks at the success of de facto integration by Somali refugees. For example, Campbell’s research focuses on the economic self-sufficiency of Somali refugees in Nairobi and Landau and Duponchel argue that urban refugees are on aggregate less vulnerable than local residents.⁵ Contrary to this narrative, I interviewed a subset of refugees who were struggling to survive. This article seeks to modify rather than nullify the aforementioned academic narrative of self-sufficiency of Somali refugees in Nairobi. While many Somali refugees are self-sufficient and even thriving economically, they are exposed and collectively vulnerable to the Kenyan state. These scholars, however, gloss over the many vulnerable Somali refugees, such as domestic workers in Nairobi. Utilising social capital theory, I will analyse the fluid determinants of vulnerability. This framework will enhance the understanding of vulnerability in forced migration studies. Additionally, the unique temporality of research during the MTO shutdown gives valuable insight into the importance of remittances for Somalis in Nairobi, and how collective punishment by the Kenyan state disrupts livelihoods tied to complex social networks. My research in Nairobi lasted two months from April through May 2015. Through Somali interpreters, I interviewed thirty-eight Somali refugee households (seven men, thirty-one women) which represented 199 people. All names are pseudonyms to protect the identity of the informants.

The Somali Problem

The history of Somalis in Kenya is one of differentiation and control by the British colonial and Kenyan post-colonial state. This is consistent of colonial indirect rule across the continent.⁶ In Kenya, recent police crackdowns and remittance shutdowns by the Kenyan state should not be seen as new, but rather as a pattern of collective punishment. Under colonialism, Northern Frontier District (NFD) of Kenya, populated predominantly by Somalis, was severely isolated and underdeveloped.⁷ Just two weeks after independence in 1963, an irredentist movement agitating for a unification with Somalia attacked police and

³ Human Rights Watch, “Kenya: End Abusive Round-Ups,” Human Rights Watch (2014): <https://www.hrw.org/news/2014/05/12/kenya-end-abusive-round-ups>, accessed July 25 2015.

⁴ Independent Police Oversight Authority, Monitoring Report on Operation Sanitisation Eastleigh Publicly Known as “Usalama Watch”. Nairobi: The Independent Policing Oversight Authority, (2014): 19.

⁵ Elizabeth Campbell, “Urban Refugees in Nairobi: Problems of Protection, Mechanisms of Survival, and Possibilities for Integration,” *Journal of Refugee Studies* 19 (2006): 396-413; Loren Landau and Marguerite Duponchel, “Laws, Policies, or Social Position? Capabilities and the Determinants of Effective Protection in Four African Cities,” *Journal of Refugee Studies* 24 (2011): 1-22.

⁶ Mahmood Mamdani, *Citizen and Subject*. (Kampala: Fountain Publishers, 1996).

⁷ Ioan M. Lewis, “Pan-Africanism and Pan-Somalism,” *The Journal of Modern African Studies* 1 (1963): 147; E. R. Turton, “Somali Resistance to Colonial Rule and the Development of Somali Political Activity in Kenya, 1893-1960,” *Journal of African History* 13(1972): 119-143.

other government posts (Whittaker 2013, 392).⁸ This insurgency was known as the *shifta* conflict, which is a derogatory term that means bandit or rebel. Kenya's response to the insurgency was to enact a State of Emergency. This allowed for the authorities to enter, search, seize, or destroy livestock or property without warrant. Somalis were required to carry ID cards, forced to live in concentrated villages, and hundreds of cattle and livestock were seized, which devastated the pastoral economy.⁹

Despite the end of conflict in 1967, the State of Emergency remained in place until it was repealed in 1991.¹⁰ Under an increasingly securitised state under President Daniel arap Moi, many human rights were violated, including the 1984 arrest of 5,000, mainly Somali men from the Northeastern Region (NER) (formerly NFD). They were stripped naked on the airstrip, starved, and beaten. An estimated 1,000-2,000 of these men were killed.¹¹ In 1989 citizenship screenings of Somalis led to thousands of deportations to Somalia despite some barely speaking Somali.¹² The *shifta* conflict and State of Emergency greatly affected refugee policy following the influx of Somali refugees.¹³ This resulted in a restriction of rights in camps and cities for refugees, and a securitisation of refugee policy outlined below that is still being felt today.

From 1991-1992, over 400,000 Somali refugees fled to Kenya as Somalia collapsed under clan-based violence.¹⁴ Kenya's response was to confine the refugees to camps in the periphery of the country and to abdicate responsibility of managing, protecting, and granting asylum status to UNHCR.¹⁵ Before this influx, however, Kenya was known to have open refugee policy, in which refugees enjoyed the right to work and the freedom of movement consistent with the 1951 Refugee Convention and 1969 OAU Refugee Convention.¹⁶ Despite these treaties and UNHCR mandated to advocate and protect refugees, life in camps remain insecure. Violent conflict over resources with local communities is frequent, nutrition difficult to maintain, and a plethora of human rights abuses are constant features of encampment.¹⁷ Due to the difficulties of camps and a desire to engage in more livelihood opportunities, thousands of Somali refugees have sought refuge in the Eastleigh district of Nairobi.¹⁸

Outside Nairobi's city centre is Eastleigh neighbourhood, known as "Little Mogadishu" for the high density of Somali residents, is a bustling business and residential centre filled with many shopping malls, restaurants, and matatus (mini buses).¹⁹ Today it is

⁸ Hannah Alice "The Socioeconomic Dynamics of the Shifta Conflict in Kenya, c. 1963–8," *Journal of African History* 53(2012): 392.

⁹ *Ibid.* 406.

¹⁰ Korwa G. Adar, *Kenyan Foreign Policy Behavior Towards Somalia, 1963-1983*. (Lanham, Md.: University Press of America, 1994).

¹¹ Africa Watch Committee, "Kenya: Taking Liberties. An African Watch Report. Human Rights Watch", (1991): 273-277; David Anderson, "Remembering Wagalla: State Violence in Northern Kenya, 1962–1991," *Journal of Eastern African Studies* 8 (2014).

¹² Emma Lochery, "Rendering Difference Visible: The Kenyan State and its Somali Citizens," *African Affairs* 111 (2012): 615-639.

¹³ James Milner, *Refugees, the State and the Politics of Asylum in Africa*. (Basingstoke: Palgrave Macmillan, 2009).

¹⁴ Anna Lindley, "Between a Protracted and a Crisis Situation: Policy Responses to Somali Refugees in Kenya," *Refugee Survey Quarterly* 30 (2011).

¹⁵ Guglielmo Verdirame, "Human Rights and Refugees: The Case of Kenya," *Journal of Refugee Studies* 12 (1999): 54-77.

¹⁶ Peter Mwangi Kagwanja, "Strengthening Local Relief Capacity in Kenya: Challenges and Prospects". In *Eroding Local Capacity: International Humanitarian Action in Africa*, edited by Monica Kathina Juma and Astri Suhrke, (Spain: Grafilur Artes Graficas, 2002): 94-115.

¹⁷ Jeff Crisp, "A State of Insecurity: The Political Economy of Violence in Kenya's Refugee Camps," *African Affairs*, 99 (2000): 601-632; Guglielmo Verdirame and Barbara Harrell-Bond. *Rights in Exile: Janus-Faced Humanitarianism* (New York: Berghahn Books, 2005).

¹⁸ Campbell, "Urban Refugees in Nairobi," 396-413.

¹⁹ Neil Carrier and Emma Lochery, "Missing States? Somali Trade Networks and the Eastleigh Transformation," *Journal of Eastern African Studies* 7 (2013): 336.

estimated that there are as many as 100,000 refugees living in Nairobi, of which Somalis make the largest group.²⁰ Due to their uncertain legal status, as well as endemic corruption of Kenya's security forces, refugees have been subject to police harassment and solicitation of bribes since the 1990s.²¹ Somalis usually have different physical features than other Kenyans, which makes it difficult to hide and blend in Nairobi as compared to Congolese, Rwandan, and Burundian refugees.²² Somali refugees' lives have been disrupted and made more precarious from the securitisation of refugees. This demonstrates that despite many Somali refugees thriving economically, they are still vulnerable at the hands of the Kenyan state. The following section situates the Somali urban refugees with broader debates about urban refugees and vulnerability within forced migration studies.

Vulnerability

Vulnerability is difficult to define. The classic image of refugees is comprised of bedraggled, "madonna-like" women and children in huddled masses symbolising dependence and vulnerability.²³ Refugee aid projects create arbitrary categories of vulnerability such as women, children, disabled, elderly, among others.²⁴ No category of people are essentially vulnerable.²⁵ This article will argue that vulnerability is socially determined by the quality and density of social connections.

History in Kenya has shown that Somali refugees are collectively vulnerable due to hostility from the Kenyan state. The informants encountered during fieldwork, however, illuminated that some lived far more precarious lives than others. The most vulnerable were those with the least access to social networks or social capital. Popularised in the 1980s and 1990s, social capital theory espouses that people will not prosper in a society without social ties.²⁶ Putnam defines social capital as "features of social life, networks, norms and trust that enable participants to act together more effectively to pursue shared objectives."²⁷ Woolcock expanded this theory by creating three typologies of social capital: bonding, bridging, and linking.²⁸ Scholars have utilised this social capital typology to fit various refugee milieus.²⁹ Bonding social capital refers to refugees living in the same

²⁰ Elizabeth Campbell, Jeff Crisp, and Esther Kiragu. "Navigating Nairobi: A Review of the Implementation of UNHCR's Urban Refugee Policy in Kenya's Capital City". Policy Development and Evaluation Service. (Geneva, UNHCR, 2011): 7.

²¹ Verdirame, "Human Rights and Refugees, 54-77; Campbell, "Urban Refugees in Nairobi," 396-413.

²² Elizabeth Campbell, Jean D'Arc Kakusu, and Iddi Musyemi "Congolese Refugee Livelihoods in Nairobi and the Prospects of Legal, Local Integration," *Refugee Survey Quarterly* 25 (2006): 99.

²³ Liisa Malkki, "Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization," *Cultural Anthropology* 11 (1996): 377-404.

²⁴ Barbara Harrell-Bond, *Imposing Aid* (Oxford: Oxford University Press, 1986); Cindy Horst, *Transnational Nomads: How Somalis Cope with Refugee Life in the Dadaab Camps of Kenya* (New York: Berghahn Books, 2006).

²⁵ Maroussia Hajdukowski-Ahmed, "A Dialogical Approach to Identity: Implications for Refugee Women," in *Not Born a Refugee Woman*, edited by Maroussia Hajdukowski-Ahmed, Nazilla Khanlou, and Helene Moussa. (New York: Berghahn Books, 2008).

²⁶ Pierre Bourdieu, "The Forms of Capital," in *Handbook of Theory and Research for the Sociology of Education*, edited by John Richardson (Westport, CT: Greenwood Press, 1986); Robert Putnam, "Tuning in, Tuning out: The Strange Disappearance of Social Capital in America," *Political Science and Politics* 28 (1995): 664-683; Robert Putnam, *Bowling Alone* (New York: Simon & Schuster, 2000); James S. Coleman, "Social Capital in the Creation of Human Capital," *American Journal of Sociology* 94 (1988): 95. Alejandro Portes, "Social Capital: Its Origins and Applications in Modern Sociology," *Annual Review of Sociology* 24 (1998): 1-24.

²⁷ Putnam, "Tuning in, Tuning out," 664-665).

²⁸ Michael Woolcock, "The Place of Social Capital in Understanding Social and Economic Outcomes," *Canadian Journal of Policy Research* 2v(2001): 12-22.

²⁹ Alice Boateng, "Survival Voices: Social Capital and the Well-Being of Liberian Refugee Women in Ghana," *Journal of Immigrant & Refugee Studies* 8 (2010): 386-408; Sangeetha Madhavan and Loren

locality as one another. Bridging social capital represents relationships between refugees and the local host community. Linking social capital is the access to outsiders who wield significant power and resources such as NGOs, host government elites, and people living in the West.

The definition of vulnerability for this study is “the lack of access to social capital.” The most vulnerable are those with access only to bonding social capital. Additionally, the weaker the bonding ties among Somalis in Eastleigh, the less chances for upward mobility. This article will show that vulnerability is a fluid status, whereby people can ascend from vulnerability by gaining and leveraging social capital. People can descend into vulnerability by actions from the Kenyan state, which will be examined below.

Academics have grappled with the concept of vulnerability since the rise of the forced migration studies field in the 1980s.³⁰ More recently, there has been an interest in livelihoods for urban refugees, and the vulnerability debate has moved to this milieu.³¹ Academics generally emphasise the self-sufficiency of urban refugees,³² whereas humanitarian policy makers seek to “visibilise” or reveal vulnerable groups.³³ The academic discourse focuses on urban refugees’ self-sufficiency, and in turn “invisibilises” vulnerable people. Many forced migration scholars’ efforts to debunk the humanitarian discourse on vulnerability is informed by researchers’ drive to influence policy themselves.³⁴

Significant studies have been conducted with the intent to debunk myths about refugee livelihoods and to show that refugees are innovative and not a burden to the state.³⁵ It is commendable to influence Kenyan policy among a population that has faced so much upheaval. However, by glossing over particularly vulnerable refugees they risk making these people invisible to policy interventions. The ubiquitous theme that emerges from these studies are that urban refugees are able to attain self-sufficiency and thrive despite being legally forbidden to reside or work in these cities and facing constant harassment. The most prominent voice on refugees in Nairobi, Elizabeth Campbell, especially trumpets this self-sufficiency view:

Landau, “Bridges to Nowhere: Hosts, Migrants, and the Chimera of Social Capital in Three African Cities,” *Population and Development Review* 37 (2011): 473-497; Eugene Guribye, “Quislings’: Barriers to Linking Social Capital Amongst Members of Pro-Liberation Tigers of Tamil Eelam Non-Governmental Organizations in Norway in a Post-Conflict Situation,” *Journal of Civil Society* 9 (2013): 233-247.

³⁰ Harrell-Bond, *Imposing Aid*.

³¹ Landau and Duponchel, “Laws, Policies, or Social Position?” 1-22; Karen Jacobsen and Rebecca Furst Nichols. Developing a Profiling Methodology for Displaced People in Urban Areas. (Medford, MA: Feinstein International Center, 2011): 1-33.

³² Tara Polzer and Laura Hammond, “Invisible Displacement,” *Journal of Refugee Studies* 21 (2008): 417–431; Loren Landau, “Urban Refugees and IDPs,” in *The Oxford Handbook of Refugee and Forced Migration Studies*, edited by Gil Loescher, Katy Long and Nandno Sigona (Oxford: Oxford University Press, 2014).

³³ Sara Pavanello, Samir Elhawary, and Sara Pantuliano, “Hidden and Exposed: Urban Refugees in Nairobi, Kenya,” HPG Working Paper (London: Humanitarian Policy Group, 2010): 1-36.

³⁴ Karen Jacobsen and Loren Landau, “The Dual Imperative in Refugee Research: Some Methodological and Ethical Considerations in Social Science Research on Forced Migration,” *Disasters* 27 (2003): 185-206; David Turton, “Refugees, Forced Resettlers and ‘Other Forced Migrants’: Towards a Unitary Study of Forced Migration’. Working Paper No. 94, *New Issues in Refugee Research* (Geneva: UNHCR, 2003); Catriona Mackenzie, Christopher McDowell, and Eileen Pittaway, “Beyond ‘Do No Harm’: The Challenge of Constructing Ethical Relationships in Refugee Research,” *Journal of Refugee Studies*, 20 (2007): 299-319.

³⁵ Lucy Hovil, “Self-settled Refugees in Uganda: An Alternative Approach to Displacement?” *Journal of Refugee Studies* 20 (2007): 599-620; Landau and Duponchel. “Laws, Policies, or Social Position?” 1-22; Alexeander Betts, Louise Bloom, Josiah Kaplan and Naohiko Omata. “Refugee Economies: Rethinking Popular Assumptions,” (Oxford: Humanitarian Innovation Project, 2014) 1-44; Alexander Betts, Louise Bloom, and Nina Weaver. “Refugee Innovation: Humanitarian Innovation that Starts with Communities,” (Oxford, Humanitarian Innovation Project, 2015): 1-48,

Most urban refugees in Nairobi are self-sufficient and many are economically integrated. This research thus lends support to the work of others who argue that the development of a policy on local integration and the promotion of self-reliance can, in circumstances like these, be an appropriate and viable means of addressing refugee situations...This study reveals that only those refugees with the economic means necessary remain permanently in the city.³⁶

The aforementioned authors' conclusion advocating for local integration is valid and their research is important. However, advocating that refugees are not a burden causes them to neglect, or at least underestimate the prominence of vulnerable refugees in cities.

Campbell's groundbreaking research set the stage for research on urban refugees in Nairobi. Landau and Duponchel also looked at urban refugees in Johannesburg, Maputo, Nairobi, and Lubumbashi.³⁷ They found that on aggregate, refugees were not the most vulnerable and were better off economically than some citizens of those countries. It is important to note that both of these studies used businesses and public places for their point of departure for snowball-sampling and meeting sources.³⁸ These methods would mostly likely put them in contact with more established, visible, and therefore less vulnerable informants. Snowball-sampling would also put them at risk of confining their sample to certain clan networks. If business people and shopkeepers are used as gatekeepers for snowball sampling, then their networks most likely include refugees who are better off socially and economically.

I encountered vulnerable people not because I sought after them, but by the first contact introduced to me in Eastleigh. My first interviews were facilitated by Abshir, a self-employed refugee who makes a living informally as a broker between Somali refugees and UNHCR and embassies who make decisions for resettlement to third countries. He connected me with domestic workers and unmarried mothers he knew from supporting them in applying for resettlement. I also interviewed women from an *ayuuto* group. Others I met in Eastleigh while supporting a Kenyan refugee advocacy NGO. I conducted a door-to-door survey in low-rent apartment complexes, and interviewed people at their legal outreach clinic. I made explicit that I was administering a survey for the NGO, but was an individual researcher and would be asking additional questions that I would not share with the NGO. This may have biased the informants' answers. Each of these places I met people of diverse clans and incomes. Simply put, it is difficult to meet vulnerable people in the marketplace, as the aforementioned studies did. By virtue of their lack of social networks and fear of being detained by the police, they are often not found there.

Campbell's studies occurred over ten years ago and in her recent follow-up research she contends that urban refugee protection has vastly improved due to UNHCR's urban refugee policy shift in 2009 and the prioritisation and cooperation from the Kenyan state and implementing partner agencies. While she briefly mentions that many families "live in acute poverty,"³⁹ she makes no mention of Usalama Watch crackdowns and even claims that "rampant police abuse and arbitrary arrest and detention has been addressed more systematically."⁴⁰ By underestimating the degree of vulnerability for refugees in cities such as Nairobi, scholars may be making invisible the acutely vulnerable.

³⁶ Campbell, "Urban Refugees in Nairobi," 409.

³⁷ Landau and Duponchel, "Laws, Policies, or Social Position?" 1-22.

³⁸ Elizabeth Campbell, "Refugee Protection Challenges in the Era of Globalisation: The Case of Nairobi," (PhD diss., Binghamton University; State University of New York, 2005); Landau and Duponchel, "Laws, Policies, or Social Position?" 1-22.

³⁹ Elizabeth Campbell, "Increasing Urban Refugee Protection in Nairobi: Political Will or Additional Resources?" In *Urban Refugees: Challenges in Protection, Services and Policy*, edited by Koichi Koizumi and Gerhard Hoffstaeder (Oxford: Rutledge, 2015): 109.

⁴⁰ *Ibid.* 98.

There is a wealth of academic studies about refugee livelihoods in urban environments, but there is little research on those who work as domestic workers, who are some of the most vulnerable people living in Eastleigh.⁴¹ The existing literature focuses on Somali refugees in Egypt and Yemen who work for host country citizens.⁴² Campbell alludes to, but glosses over Somali domestic workers, and makes no mention of the magnitude of the vulnerability of these people.⁴³ Pavanello et al., humanitarian policy advocates, do more to illuminate the experience of domestic workers:

A number of respondents complained of exploitation within the Somali community, whereby better-off families hired Somali girls as domestic workers and kept them in slave-like conditions. These young women were described by respondents as very vulnerable. They are usually either orphans smuggled into Kenya by other Somalis, often in return for sexual favours, or escapees from refugee camps. Once they arrive in Eastleigh they usually go to relatives or friends, and end up working in their households... Many work long hours, are not paid and are subjected to physical, sexual and psychological abuse.⁴⁴

The aforementioned study, however, is dismissed by Landau as “a Malthusian vision, portraying both cities and those living therein as borderline catastrophes threatening descent into Hobbesian states of nature should rapid and firm intervention fail to arrive.”⁴⁵ This quote explicitly downplays vulnerability in Nairobi.

I interviewed nine domestic workers, and will demonstrate that they enter into and are confined to these livelihood strategies due to an insufficiency of social capital. Every domestic worker interviewed took this occupation because they did not know anybody in Nairobi. They often work twelve hours a day, seven days a week, and receive no cash but are given food and a place to stay. This was the case for Halima. Halima is twenty-four years old and left Somalia because her brother and father were killed and she was raped and tortured. She fled with neighbours in 2011 and came to Nairobi, where she knew no other people. She found a woman with two children who took her as a housekeeper, but she feels insecure in this house: “the house I am staying with is saying bad things to me everywhere, but I don’t have money or another place to go, and because I have been raped, nobody would want to be married to me.”

The relationship between a domestic worker and their employer is considered bonding capital, the minimum capital needed for survival. However this bond is weak with little trust or reciprocity. Working as a housekeeper for another Somali comes with social stigma.⁴⁶ These relationships can actually be damaging and become social deficit rather than capital. For instance, Deka moved to Nairobi in 1999 when she was eight and was married, but later divorced and had nobody to support her. She found a family to work for, but became pregnant and was fired by this family as a result. Ardo left Somalia in 2008 and lived in Kakuma refugee camp for two years, but left to Nairobi because of security issues.

⁴¹ Campbell, “Urban Refugees in Nairobi,” 396-413; Karen Jacobsen, “Refugees and Asylum Seekers in Urban Areas: A Livelihoods Perspective,” *Journal of Refugee Studies* 19 (2006): 273-286; Landau and Duponchel, “Laws, Policies, or Social Position?” 1-22.

⁴² Mulki Al-Sharmani, Refugee Livelihoods: Livelihood and Diaspora Identity Constructions of Somali Refugees in Cairo. New Issues in Refugee Research, (Geneva: UNHCR, 2004); Marina de Regt, “Preferences and Prejudices: Employers’ Views on Domestic Workers in the Republic of Yemen,” *Signs: Journal of Women in Culture and Society*, 34 (2009): 559-581.

⁴³ Campbell, “Urban Refugees in Nairobi,” 405.

⁴⁴ Pavanello et al. “Hidden and Exposed,” 28.

⁴⁵ Landau, “Urban Refugees and IDPs,” 143.

⁴⁶ Mulki Al-Sharmani, “Living Transnationally: Somali Diasporic Women in Cairo,” *International Migration* 44 (2006): 60.

She found a family to join, but they mistreated her and forced her to marry a fifty year-old man they had sold her to. She ran away and found another family to work for, but she was fired by this family due to provocations with the previous family. Saida was slashed across the face with a knife by a member of the family she was housekeeping for who was a member of the “Super Power” gang that operates in Eastleigh. The already tenuous livelihood strategy of housekeeping was made more precarious with the shutting down of the remittance companies. Every domestic worker interviewed worried about being fired because the families they worked for relied on remittances. They all described feeling trapped in their situation.

Duco and Binti were the only people interviewed who were able to leave the precarious position of domestic worker, but only by combining their limited bonding capital. Duco came to Nairobi in 2006 with her sister. They both worked as housekeepers for a Somali woman until her sister left for Libya in 2012 to cross the Mediterranean to Europe. Duco later broke her arm and was forced out of the house because she was unable to work. The next family she lived with did not last because they tried to force her to marry a boy in the family. She eventually met a fellow Marehan clan member, Binti, who had gone through her own turmoil. Binti came to Nairobi in 2010. She joined the woman as “house help”, but ran away because she was married against her will to the woman’s brother who often beat her. She joined another woman, who was later resettled to the United States, but allowed her to stay in her flat. Duco moved in with Binti and agreed to take care of her three children while Binti sells tea and asks for donations from neighbours and the mosque. Duco also occasionally receives cash from three Marehan boys she knows who receive remittances from abroad. While their positions are still tenuous, both expressed happiness for their friendship and for no longer needing to be domestic workers. This story is similar to the Somali women Thomson encountered in Nairobi who exercise agency through silence, muted voice, and problem solving through peer networks. This bonding social capital allows the young women to survive. Nonetheless, bridging and linking social capital is out of reach because they remain “out of view of the Kenyan refugee service providers that might be able to provide succor.”⁴⁷ Other women, however, have been able to leverage their bonding capital into financial capital.

I met a group of 15 women who also showed that vulnerability is not always a static position. These women were able to pool their bonding social capital, and in the process acquire bridging and linking capital. Known as an *ayuuto* group, which means “help” in Italian, Somalis—often women—form savings and loan groups to leverage their economic and social capital in order to collectively prosper.⁴⁸ The group formed with the facilitation of the NGO Jesuit Refugee Services (JRS). These women were receiving food rations from JRS, and although they did not know each other and had different clan affiliations, the NGO facilitated them to form a group. The group meets weekly and each save and deposit 100 Kshs (\$10). They save for three months and the money is then loaned to one woman who typically uses this money to develop her business or invest in education for their family. Additionally, when members of the group face economic shocks such as illnesses, they donate to each other. “Life was very low before I joined the group” explained Fatima, “I have a sick child and never had money to buy medicine. I became a member of the group and they helped me to buy medicine.” After establishing the group, they were able to network with other national and international NGOs to provide additional training and capital to the group. They meet at the premises of a local community based organisation (CBO) called Umma, run by a Somali Kenyan. The day I met with them they were also signing up for official Kenyan bank accounts.

When asked what life was like before joining the group, Sulekha, a thirty-eight year-old mother of five said, “my life was so miserable. I used to sell chips but had social phobia

⁴⁷ Susan Thomson, “Agency as Silence and Muted Voice: The Problem-Solving Networks of Unaccompanied Young Somali Refugee Women in Eastleigh, Nairobi,” *Conflict, Security & Development* 13 (2013): 596.

⁴⁸ Horst, *Transnational Nomads*, 104.

of people from the community, even my neighbours. Since I joined the group my life has been prosperous. My life has been more valuable than ever before. We are developing in interactions and self-reliance." She now sells clothing, earning more than selling chips. Fardosa also transitioned from selling tea to clothing. "I joined the group because of many things, I used to be stressed when I was alone. I was looking for people who are committed to each other to make our lives better." Fatuma, who is forty-seven and is the only wage earner among a family of seven explained, "Before I couldn't pay rent. Life was hard before the group. Getting income from the group, I can now pay rent and school fees." "I was like a blind person before I joined the group," said Malyun, a 36 year-old caring for her son and two others, "now I see so much hope, and I am engaged in so many activities. I didn't save before and now I do."

Before knowing each other, they were struggling to earn money, pay for necessities, and had psychological traumas. The bonding capital has helped alleviate these shocks. This group has acquired bridging ties to national and local organisations such as Umma CBO, as well local banks, which gives them a safe and secure way to save their money. They even found some ties to linking capital with international NGOs that injected 80,000 Kshs (\$8,000), which was divided among the group. The benefits of this group come with a caveat, however. Due to the Usalama Watch crackdown in 2014, the group was unable to meet for an entire year, and were only beginning again when I interviewed them. This shows the precariousness of the refugee experience in Nairobi. Even if gains are made, the Kenyan state can constrain or even erase these completely. The following chapter shows the most recent iteration of collective punishment for Somalis in Kenya.

After Garissa

The Kenyan state's contentious relationship with Somalis has been stretched to the breaking point with the waves of forced displacement since the early-1990s.⁴⁹ This final section will establish the historic primacy of remittances to Somali refugee livelihoods in Kenya in order to demonstrate the devastating effects recent Kenyan refugee policy has had on this population. I will further the vulnerability discourse by showing the effects of collective punishment of Somali refugees, as well as illuminate the acute vulnerability of refugees lacking social capital in Nairobi.

Somalis have been characterised as "transnational nomads" because of their history of mobility.⁵⁰ They are also known for having strong kinship ties and obligations. When wealth is gained it is expected to be shared with poorer people within family and clan.⁵¹ The conglomeration of conflict and mobility, family and clan commitments, and technology has made remittances an indispensable livelihood element for Somalis in Somalia and in exile. Remittances to Somalia took off in the 1970s and 1980s due to migration to Saudi Arabia and the Gulf during the oil boom.⁵² Somali remittances, known as *xawilaad* (Somali word derived from the Arabic word *hawala*, meaning "transfer of debt," greatly increased in the 1990s due to the improvement of radio and telecommunications technology.⁵³ *Xawilaad* is predicated on trust, and often occurs along clan lines. Due to the protracted nature of the Somali conflicts, Somali refugees have resettled in places like US, Canada, and the UK and now remittances have become ubiquitous to Somali displaced

⁴⁹ Lindley and Hammond, "Histories and Contemporary Challenges of Crisis and Mobility in Somalia."

⁵⁰ Horst, *Transnational Nomads*.

⁵¹ Ian M. Lewis, *Blood and Bone: Call of Kinship in Somali Society* (Lawrenceville, NJ: Red Sea Press, 1994).

⁵² Ismail I. Ahmed, "Remittances and Their Economic Impact in Post-war Somaliland," *Disasters* 24 (2000): 380-389.

⁵³ Anna Lindley, "Between 'Dirty Money' and 'Development Capital': Somali Money Transfer Infrastructure Under Global Scrutiny," *African Affairs* 108 (2009): 519-539.

economies across the globe.⁵⁴ Two-thirds of Somali refugees in Nairobi received remittances, and 60% of these receive them regularly.⁵⁵ This social capital transfer decreases vulnerability of family members in Nairobi significantly. Many people live in Nairobi solely from remittances, while others utilise remittances to start businesses or pursue education.⁵⁶

If remittances are the ship that keeps the Somali refugee economy in Kenya afloat, then the "war on terror" is the weather that can sink the vessel. The first major storm facing Somali remittances followed the 9/11 attack. Since the attack as well as the global financial collapse, there has been US led tightening of regulations for money transfer operators. This led to the closure of large MTOs.⁵⁷ The most decisive, if short-lived, assault on Somali remittances came following the Garissa University College attacks in April 2015, when the MTOs were shut down for two and a half months.

The unique timeframe of the shutdown of MTOs was devastating for livelihoods in Eastleigh, yet proved to be revelatory for how deeply imbedded remittances in the Somali refugee economy are. The time of the shutdown exposed the collective vulnerability of Somali refugees as well as the acute vulnerability of refugees with weak social networks. The majority of the informants interviewed do not directly receive any money from overseas, and yet they felt the financial impacts just as much, if not more, than those who rely directly on remittances.

This research found that the disruption of MTOs most notably affected businesses and charity. Less than two weeks after the closure of MTOs, Khadra was let go from her job at a clothing shop because the family owning the business depended on remittances to fund the shop. Many others have had their own petty trade businesses impacted. Tamam runs a small stall selling butter and honey and other luxury foods. She explained the impacts of the shutdown: "when people get money from *hawalas* they come to my business, the business has gone down after *hawala* shutdown. Before I would sell at least 500-1,000 Kshs, now sometimes only 200 Kshs in a day. That is not enough for my children." Fatima typically earned 15,000-16,000 Kshs per month selling clothing and perfumes, but in the two months that the MTOs were closed her profits reduced to 10,000 Kshs. Hodan, a sixty year-old woman, lives with her daughter and sells camel milk, a popular treat for Somalis. She had a regular customer who would purchase two litres of milk per month from her, but he was only buying half a litre per month with no access to remittances. Fadumo supports her five daughters selling cakes and biscuits. Her income halved during the shutdown, and the family has had to ration from three meals a day to just one.

Ibrahim also had his family meals compressed to just once a day. They went from spending 1,500 Kshs to 300 Kshs per day on food. He has a more varied livelihood approach, smoothing work income with donations. Ibrahim is a religion educator teaching children in *madrasa*, or Koranic style. He teaches for families in apartment complexes. On a good month he earns 30,000 Kshs. He is respected in the religious community, and if he does not earn enough income he seeks donations from the mosque to pay the rest. Donations and payments dropped precipitously for the family in the wake of the shutdown. Others in the community, however, depend entirely on donations.

It is central to Somali and Muslim culture to give to those with less resources.⁵⁸ This charity is known as *zakat* in Arabic and features prominently in livelihoods of Somali

⁵⁴ Lindley, "Between a Protracted and a Crisis Situation," 14-49.

⁵⁵ Anna Lindley, "Diaspora and Transnational Perspectives on Remittances," in *A Companion to Diaspora and Transnationalism*, edited by Ato Quayson and Girish Daswani (Oxford: Blackwell Publishing Ltd., 2013), 326-327.

⁵⁶ Horst, *Transnational Nomads*, 150.

⁵⁷ Cindy Horst and Nicholas Van Hear, "Counting the Cost: Refugees, Remittances and the 'War Against Terrorism,'" *Forced Migration Review* (2002):32-34; Anna Lindley and Jason Mosley, "Challenges for the Somali Money Transfer Sector," Rift Valley Institute Briefing Paper. Rift Valley Institute, 2014.

⁵⁸ Lewis, *Blood and Bone*, 128; Horst, *Transnational Nomads*, 64-65.

refugees. *Zakat* came to a standstill following the Garissa attack. Charity commonly occurs along family lines as well as through mosques and neighbours. Semira perhaps most embodies the damage wrought by the remittance closures. She supports her five children by herself. Her first husband died in Somalia, and her second husband abandoned her. Her son is epileptic and requires expensive medicine to survive. She sells tea but often cannot afford to pay for the medicine. The mosque often provides donations and if she does not have the money the pharmacy will supply her on credit or even donate the medicine. Following the closure of MTOs, Semira says, "people are tired of making donations". Additionally, many of the pharmacy's customers rely on remittances and business decreased so much during the shutdown that they could not afford to stock the medicine her son needs. She could not leave Eastleigh to get the medicine at another pharmacy because she would not be able to afford the bribe police would force from her outside Eastleigh. Omar is fifty-nine and lives with his wife and eight children. He worked as a security watchman at Eastleigh Mall, but was fired in April 2014 at the height of Usalama Watch because his employer told him it was too risky to employ refugees. After he was fired, people from his Ogaden clan donated money to support his family. He acknowledges this precarious position: "Most of the money the people gave me at the mosque they received from *hawalas*. If they cannot receive to support themselves, how can they support people like me?" Due to the transnational nature of displacement, as well as a long history of Somali mobility, remittances are the fulcrum for livelihoods in exile. This article demonstrates that entire displacement economies are uplifted by remittances, not only primary beneficiaries.

Police and security forces have an omnipresence in Eastleigh that affect refugees psychologically and economically. Every Somali refugee I spoke with said that they have been harassed by police, and after the Garissa attack the bribe price from the police has increased dramatically. Police are invading houses in the middle of the night. Bribes range anywhere from 2,000 Kshs to 20,000 Kshs. This occurs despite many refugees possessing proper refugee documentation. Police refer to Somali refugees derogatorily as "ATMs" due to the amount of bribes they solicit. Often when somebody is detained by the police they will call family and friends or neighbours will even spontaneously gather money for their release. Even this act of bonding capital is being strained: "Before Garissa attack, people used to help to pay money to the police, but with *hawalas* shut down people aren't able to," explained Shukri. Others utilise their bridging social capital and contact Kenyan refugee advocacy NGOs such as Refugee Consortium of Kenya to secure their release from the police station.

The effects go beyond just the price of bribes. Most refugees are afraid to leave Eastleigh, and some are afraid to even leave their homes for fear of harassment from the police. Ibrahim's children have not yet received UNHCR mandates, making them especially vulnerable, and yet Ibrahim is afraid to leave the house to go to UNHCR or another NGO because of the chance of being caught by the police. The lack of freedom of movement has compressed business hours for many people. Semira is a petty trader selling samosas. She cannot sell during the day because the District Council will ask for taxes, which she does not make enough money to afford. However, she cannot sell during the evening, the most profitable time of the day, because this is when police patrols are most frequent. Policy actions such as the shutdown of MTOs and police raids create a ceiling to the amount of freedom a refugee can experience in Kenya. This continuation of collective punishment by the Kenyan state leaves all Somali refugees vulnerable.

Conclusion

Early in my research I met refugees that did not fit the narrative of self-sufficiency that scholars were telling of urban refugees in Nairobi. These individuals were exploited by employers and Kenyan security forces. The forced migration literature highlights the

economic successes of urban refugees and they offer policy recommendations to advocate for local integration for refugees in cities. I endorse these prescriptions, but argue that they are informed by their chosen methodology. In the process they are understating the prevalence of acute vulnerability of many urban refugees. I found that vulnerability is inversely correlated to social networks. The less social capital, the greater the level of vulnerability. Social networks are dynamic and not easily delineated. The history of Somalis in Kenya has shown that bridging and linking capital has been difficult to obtain. Somalis were isolated during colonialism, and oppressed during the *shifta* war and State of Emergency. This made Somali Kenyans vulnerable and susceptible to collective punishment as lower citizens on the "citizenship ladder."⁵⁹ Conflations of Somalis with *shifta* and terrorism has affected Kenyan refugee policy of encampment in the 1990s and police crackdowns today.⁶⁰ Linking capital, while most difficult to obtain, can be most easily converted to economic capital. This is most clearly demonstrated when friends and families begin as bonding capital, resettle to Western countries, and transform into linking capital. This network is converted to financial capital when they send remittances.

Bonding capital is the minimum capital necessary to survive. Those with the least amount of bonding capital are the most vulnerable. Domestic workers embody the difficulties of not having salient bonding social capital. In order to transcend vulnerability, social capital must be leveraged. Duco and Binti, and to a greater extent the women in the *ayuuto* group embody this social capital accrual. Even when gains are made, however, the Kenyan state has the ability to collectively punish Somalis by police crackdowns and remittance shutdowns. Despite the resiliency and self-sufficiency of many Somali refugees in Nairobi; nearly all are potentially vulnerable to an antagonistic Kenyan state. Many lack social networks to endure the cycles of collective punishment. People in vulnerable positions introduced in this article are at risk of being made further invisible to policy interventions, and assistance programmes must be designed to address these social deficits.

⁵⁹ Lochery, "Rendering Differences Visible," 617.

⁶⁰ Milner, *Refugees, the State and the Politics of Asylum in Africa*.

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Refugee Issues: Practitioner Reports

Supporting Aid

How Non-Lawyers Can Assist the Legal Needs of Asylum Seekers

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Abstract

This article examines the ways that non-lawyers can assist the legal needs of asylum seekers. As practicum students within the Rights in Exile program based in Oxford, United Kingdom the authors of this article assisted Dr. Barbara E Harrell-Bond ensuring asylum seekers received the legal assistance they so desperately need. The authors have found that providing beneficial legal assistance to asylum seekers does not require one to have a law degree, but rather only requires one to have a strong understanding of refugee law and the refugee status determination process. Working in the United Kingdom, the authors realised that the testimony of an asylum applicant is an imperative component, if not the most crucial part of the asylum application and it is important that the testimony be recorded as accurately as possible. The article reads as a guide or “how to” for those determined to learn more about how to effectively assist those who are seeking asylum, especially focusing on how to effectively record the testimony of an asylum applicant.

Keywords: United Kingdom, Asylum, Refugee Law, International Law, Legal Aid.

As of mid-2016, close to 65.3 million individuals have been forced to flee their homes and cross international borders in order to seek refuge.³ This marks an unprecedented spike in the number of displaced persons around the world. Yet in the increasingly complex process of claiming asylum, crossing an international border is only the first obstacle, and by no means the most significant one. The global ‘refugee crisis’ has once again revealed the interpretative fracture between the declaratory ideals of the UNCHR Handbook, which stipulates that “[One] does not become a refugee because of recognition, but is recognised because he [sic] is a

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³ UNHCR *Figures at a Glance*. UNHCR, (2017) Retrieved 20 March 2017, from <http://www.unhcr.org/figures-at-a-glance.html>

refugee,”⁴ and the increasing number of hoops that would-be refugees must jump through to cohere with this ideal. *Refugee until proven otherwise* unfortunately was never the case: the law does not serve to recognise refugees as much as continually refine the criteria by which a refugee might demonstrate himself thus.

In 2009, under the Ministry of Justice’s Legal Services Commission (LSC), the UK had the highest legal aid spending per capita in the world.⁵ This article will define legal aid as the utilisation of public funds to provide legal advice or proceedings to persons otherwise unable to afford legal representation. Then in April 2013, the *Legal Aid, Sentencing and Punishment of Offenders Act* (LASPO) came into force, part of a plan to cut £350m a year from the ministry’s £2bn annual bill.⁶ Although legal aid is still available, the resultant cuts to publicly funded asylum legal services have devastated the availability and quality of assistance: by fixing the legal aid fee regardless of the hours representatives work on cases, firms are incentivised to maximise their number of cases while minimising the hours spent per case. This has been termed the ‘sausage factory’ effect: law firms are more likely to take on the least-complex cases and process them as rapidly as possible, in turn leaving a proportion of the most-needy clients with no representation.⁷ Compounded by the forced closure of small, specialist immigration and asylum firms, in-part the effect of the removal of non-asylum immigration from the scope of legal aid in 2013, asylum lawyers are now overstretched, underfunded, and spread far too thinly over an ever-growing pool of potential clients. The situation in the UK is a metonym for the wider shifts in reception and resources proffered to asylum seekers across the world. The decreasing number of limited resources and services has created a void in the realm of refugee law and it is important, if not imperative, for refugee advocates and academics to fill this gap.

Non-lawyers cannot provide legal representation or advice, however, aid in asylum cases extends beyond solely providing legal assistance. Being one of the most diverse and complex areas of law, there are many avenues within requests for asylum where non-legal help can be pivotal. *These areas include assisting lawyers and law firms with taking the testimony of asylum seekers and visiting asylum seekers within detention centres.*

Testimony

A refugee’s testimony is arguably the most important part of their case: how the facts are gathered can be pivotal in establishing the legal grounds for granting refugee status to applicants. To qualify for asylum, an asylum seeker must prove that they meet the criteria defining a ‘refugee’ under international law (1951 Geneva Convention), which the United Kingdom ratified in March of 1954 and has continued to be implemented in UK domestic law most recently with the UK *Immigration, Asylum, and Nationality Act 2006*.⁸ This consists of the following elements:

⁴ UN High Commissioner for Refugees (UNHCR), *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*, December 2011, HCR/IP/4/ENG/REV. 3,

⁵ Jenny Kleeman, “The Real Impact Of The Legal Aid Cuts: How The Cuts To Legal Aid Have Affected Asylum-Seekers, Migrants And The Lawyers Who Defend Them.”. *New Statesman* (2016) <http://www.newstatesman.com/politics/uk/2016/03/real-impact-legal-aid-cuts>.

⁶ Jo Wilding, “Asylum Seekers Poorly Served By ‘Sausage Factory’ Law Firms.”. *The Justice Gap*. (2016) <http://thejusticegap.com/2016/04/asylum-seekers-poorly-served-sausage-factory-law-firms/>.

⁷ Ibid

⁸ *States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol*. UNHCR. Retrieved 25 May 2017, from <http://www.unhcr.org/protect/PROTECTION/3b73bod63.pdf>; *Immigration, Asylum and Nationality Act 2006*. (2006). *legislation.gov.uk*. Retrieved 25 May 2017, from http://www.legislation.gov.uk/ukpga/2006/13/pdfs/ukpga_20060013_en.pdf

- I. *Alienage*: the asylum seeker is outside their home country.
- II. *Persecution*: the asylum seeker suffered or there is a 10% chance or greater that they will suffer serious harm – more than discrimination or harassment – if forced to return to their home country.
- III. *Well-Founded Fear*: the asylum seeker fears return based on past persecution or the likelihood of future persecution. This element consists of both subjective and objective components; the applicant subjectively fears persecution, and this fear is substantiated by objective, relevant evidence of conditions in the home country.
- IV. *On Account of at least Enumerated Statutory Ground*: Listed in the 1951 Refugee Convention⁹, is the legal document that forms the legal definition on what can qualify. The individual requesting asylum needs to prove that their well-founded fear of persecution is due to (1) race, (2) religion, (3) nationality, (4) political opinion, or (5) membership in a particular social group. The asylum applicant only needs to prove they meet at least one of the enumerated grounds.
- V. *Failure of State Protection*: the government is unwilling or unable to protect the applicant.

To receive asylum in the UK an individual must formally submit a request for asylum with the UK government. This may be done at port of entry or at any UK immigration screening office. Once an asylum request has been registered the applicant will be assigned a caseworker with whom they must provide all necessary documents and a written explanation on why they are requesting asylum in the UK. The most crucial part of these explanatory documents given to the caseworker is the applicant's testimony on why they need asylum. This testimony consists of a series of events, facts, and timeframes that address the above criteria and are invaluable evidence for the asylum determination procedure. Guiding questions can include: What is the likely harm that the asylum seeker would face upon return to their country? Could the asylum seeker safely live in another part of the country? Why would the government be unable or unwilling to protect them? It is important to note that while it may be clear that somebody is at risk of suffering persecution in their home country, this threat must be by virtue of at least one of the five statutory grounds. The fifth option, membership in a social group, is the most ambiguous, and its potential breadth makes it a plausible vehicle for many refugee claims. While it can be used successfully in a diversity of issues at the boundaries of refugee law - from homosexuality to female genital mutilation, gender-based violence, and coercive family planning policies - the testimony *must* be used to demonstrate what constitutes both the social group and the asylum seeker's membership within it.

Due to the extensive amount of information required in a comprehensive testimony, writing time may vary from several hours to several days; the latter particularly so when the refugee's experience of persecution extends over decades, as is often the case. As the recording of a testimony diverts much of a lawyer's time, this is something that non-lawyers can assist with to save limited legal resources, all the more pertinent in the legal aid landscape of payment per case. It is therefore important for non-legal practitioners to understand how to compose a testimony for an asylum case.

The first part of the testimony is designed for the *personal and family information* of the asylum seeker. This includes the full names and dates of birth of the applicant and their parents. Specific dates and years can often be problematic; when unsure, it is usually best to approximate the date in question so that an answer later proved to be incorrect or inconsistent cannot be used to make negative inferences about the applicant's credibility. Such assertions can follow the applicant through the process and be very difficult to rebut as inconsistencies may bring into question all parts of an application's validity, which can then be grounds for

⁹ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137; The formal name of the 1951 Refugee Convention is the Convention Relating to the Status of Refugees

denial. The second part should be on *family history and applicant's background*, such as where they were born, where they lived, their religion, education, job, the social status of family, current status of immediate relatives, and level of contact with family. This should be followed by the most important testimony: a detailed *chronology* of the refugee's life from birth until their arrival in the host country.

Key events should then detail all the information relevant to the assertion that the applicant is a refugee under the 1951 Convention. It requires as much detail as possible, including violence, arrests and/or detention. Dates, those involved, physical descriptions, geographical locations, exchanges of words, and as much background as possible are crucial here. In the incidence of torture, descriptions of how the torture was carried out, by whom and what, if any, words were exchanged. If the applicant was arrested, charged, detained, or released from detention, information on the conditions of each should be provided in as much detail as possible. Where there are witnesses to any aspect of the key events, they should be mentioned using full names. It is possible that the applicant's lawyer might want to get in touch with some of these contacts to provide supporting evidence for the case.

Passage is the penultimate part of the testimony. Details of transit routes to the final destination, including transit through other countries, should be included. All travel documents, visas, dates on exit and entrance are important. Equally important is a description of what happened once the applicant arrived in the host country. Other important details include when and where they applied for asylum, travel companions, place(s) of residence, financial situation and any contacts they have in the host country.

The final section can outline what would likely happen if the applicant were returned to his host country and why he would not be safe in any part of that country. Afterward, the applicant should sign beneath a statement reading: "*Everything contained in this statement is true and accurate.*"

Finally, there are four additional pieces of advice that individuals taking a testimony must bear in mind. Foremost of these is the importance that language and translation plays in the successful transcribing of a refugee's testimony. It is key that everything an applicant says in his or her testimony is properly understood. If an asylum seeker does not speak proficient English, it is important to find a translator in a language in which the applicant can comfortably express him- or herself; the goal should always be to find a translator for the client's native tongue and exact dialect.

Secondly, taking a testimony demands a close awareness of what your role is, and is not. Assisting with a testimony is to extract and coherently record the refugee's own narrative. It is not to query the validity of their statements, nor to feature your own voice or value judgments.

Third, patience is essential throughout the process. Recording a life chronology is never an easy task, more so when it involves complex, interrelated and often-traumatic events spanning many years. The applicant may be unable to recall key dates, and will need time to compose themselves before or after discussing difficult experiences.¹⁰ Empathy and patience are paramount here. Finally, it is of vital importance to assure to the asylum seeker that, similar to a lawyer, all the information they share with you is confidential and will not be shared nor discussed with anyone outside the necessary parties.

¹⁰ It is important to keep in mind that trauma impacts memory and recall, and if the person taking testimony is not aware of this, it can lead to inconsistencies which will plague the case from day one. Many leading experts in asylum law have discussed the issue in depth. Suggested reading to look at is James C. Hathaway and Michelle Foster. *The Law of Refugee Status*, 2nd Edition. (Cambridge, UK: Cambridge University Press, 2014): 139 – 150;

Hilary Evans Cameron, "Refugee Status Determinations and the Limits of Memory", *Int J Refugee Law* (2010) 22 (4): 469-511

Detention Visitation

Individuals outside the legal profession can also advance the process of claiming refugee status by going to visit asylum seekers in detention centers. These visits can provide many benefits. Most of those who are in detention centers in the UK are newly arrived refugees with little or no understanding of the asylum process. The Home Office finds that in order to prevent these individuals from absconding and disappearing they must be kept in administrative detention in these centres although the Home Office would call these centres “temporary homes” rather than prisons. Detainees are not automatically provided with legal representation and if they manage to secure access to counsel, it may take months for an asylum seeker to first meet with their lawyer, months in which they remain in administrative detention and have limited channels of communication. It is vital that detention visits are used to direct asylum seekers to the relevant support and services they may need, and foremost of these is a lawyer. A U.S. study found that for individuals without a lawyer, only 11% were granted asylum; meanwhile those with a lawyer were granted asylum 51.5% of the time.¹¹

In the UK, there are many diverse paths to obtaining competent legal representation, but there are certain tenets that should be adhered to. First of these is the fact that, where possible, *lawyers specialising in refugee law are best*. As is the case with most areas, a specialist adviser is likely to provide higher quality representation, regardless of their qualifications. Secondly, *is a lawyer willing to work pro bono?* It is imperative to find out whether a lawyer will charge any fees and what these fees are prior to connecting them with an asylum seeker, to avoid clients accruing high bills.

Thirdly, it is important to bear in mind that *other asylum seekers often give inappropriate advice or perpetuate misinformation*. As drawn from the authors’ own personal experiences, individuals in detention centres are likely to receive much of their information from other detainees who may be unrepresented or who do not have access to information and resources. For the asylum seeker, it is therefore important to research legal practitioners to make sure that they are properly qualified and experienced, rather than recommended by another non-qualified individual or group.

One should not underestimate the effect a detention visit can have on an asylum seeker, even if there is no immediate way in which you can assist with their case or provide other forms of tangible assistance. The life of a detainee is frightening and very often without a clear end in sight. The process of applying for asylum appears as illogical and obfuscating. The opportunity to explain their case, to practice their English, or even to make fractured small talk can make a large difference in breaking up the frustration of detention.

One of the many predicaments with the current situation is the shortage of allies. Refugees are stranded across southern Europe, in Greece, Macedonia, Serbia, and Turkey. Refugees in protracted situations in Ethiopia, Jordan, Kenya, Lebanon, Uganda, Sudan, and Thailand often wait a lifetime for resettlement, for which only a minutiae of camp residents qualify. Aiding refugees in these situations is almost singularly framed in terms of humanitarian relief and macro transformations to international policy. This should not be so. Transforming migration regimes can be as simple as sitting down with an asylum seeker and taking a statement, allowing them to tell their story in full, quite possibly for the first time. It can be helping a detainee practice their conversational English. It can be the extension of pastoral assistance and social support in a visitors’ lounge. Aid is by no means insurmountable and something that can only be provided by a select few. Non-lawyers can provide impactful and beneficial support in the realm of legal aid through detention visits and by the thorough and proper drafting of an asylum applicant’s testimony and being even more beneficial connecting those seeking asylum with the proper legal support they so desperately will need.

¹¹ Jason Dzubow, "Do I Really Need An Asylum Lawyer?". Blog. *The Asylumist*. (2016) <http://www.asylumist.com/2016/07/07/do-i-really-need-an-asylum-lawyer/>.

Aid is something that can not only be done on a micro level through government offices and bureaucracies, but can be done on an individual level in one's own community.

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Agency encamped: The case of Calais' Jungle inhabitants

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Abstract

This opinion article invites the reader to reflect about the processes that brought the inhabitants of the refugee and migrant 'Jungle' camp in Calais to develop agency over the construction and running of the camp. In engaging with this Journal's theme of "Refugees and Work", we look at how the Calais' Jungle inhabitants gained direct involvement in the running of two key activities going on in the camp: the construction of shelters and schooling. As volunteers in the Calais' Jungle ourselves, we wrote this article by reordering first hand observations stemming from our participatory experience in the camp. Thus, we hope to provide readers with a direct account that, based on our participation and involvement, surely needs to be considered as informative as partial and biased by our own individual experience. In looking at the dynamics of interaction between the Jungle's inhabitants and other groups present in the camp, be them independent volunteers, established humanitarian organisations or border authorities and police, this article seeks to give testimony of the ways in which the camp's inhabitants negotiated their own involvement in organising life in the camp. At the same time rejecting the humanitarian logics of protection and dependence, as well as the security logics of policing and control, their presence and agency over the camp's activities, despite often problematic and conflicting, embodied their struggle against the France-UK border regime. Recognising this form of agency might be important when engaging with similar situations emerging in the future.

Keywords: Agency, "Jungle" Camp, Schooling, Shelter Construction.

Introduction

Over the course of this past year, what used to be an anonymous town of northern France suddenly became one of the most talked about locations in reference to the "European immigration crisis".³ The establishment of the migrant camp renown as "the Jungle"⁴ in the outskirts of Calais became one of the most potent symbols of such crisis, gaining

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³ Human Rights Watch. "Europe's Migration Crisis." Accessed December 2016. <https://www.hrw.org/tag/europe-migration-crisis>.

⁴ Calais Migrant Solidarity. "Introduction to Calais." Accessed December 2016. <https://calaismigrantsolidarity.wordpress.com/introduction-to-calais/>.

international coverage as the largest migrant camp in Western Europe, hosting nearly ten thousand inhabitants by the time of its final eviction in October 2016.⁵ When the French government issued the mandate⁶ for the forced eviction and destruction of the camp, the Jungle had already experienced two full winters; what had begun as a gathering of few tents pitched in the mud had developed into a semi-stable settlement. Evicting the Jungle of Calais meant the tearing down of hundreds of shelters, schools, first aid centres and caravans, churches and mosques, recreational spaces for women and children, and many restaurants and shops. Beyond the merits and demerits of the camp's eviction, and resting on the side all debates emphasising the degrading status of its inhabitants' living conditions, or the inhabitants' right to struggle against the UK's restricted-entry regime⁷, few have reflected how, in the space of nearly three years, the Jungle transformed from a momentary tent-camp into a complex living settlement.

In this article, the authors aim to reflect on how life in the Jungle soon organised around cultural, political and economic patterns of cohabitation that allowed the camp's inhabitants to progressively assume a prominent role in its running. Challenging normative impositions from both police authorities and humanitarian assistance, the Jungle's inhabitants were principal actors shaping life in the camp on their own terms, obviously dependent upon available means. Such a level of agency, successfully expressed within the camp's progressive development, was unquestionably a strong reason behind the French government's ultimate goal to eradicate the camp. This opinion piece aims to briefly reflect on the patterns of collective action and community formation which brought the camp's inhabitants to organise and effectively sustain their direct role in the making of the Jungle. Despite the involvement of local and international NGO's, of the Calais municipality, of border security agencies and anti-riot police, not to mention the engagement of hundreds of volunteers and activists from all over Europe, it was ultimately the inhabitants of the camp who directed – often in conflicting, contradictory and fragmented ways – the flourishing of the Jungle as a space of resilience against the British and French border regime. This focus on the inhabitant's agency will be considered as the main link between refugees and work, the main conceptual focus of this issue of *Refugee Review*.

Between personal bias and conceptual clarity

First, however, a few words about the authors. Our engagement in the Jungle started at different stages and through different means. Nonetheless, both volunteered in Calais's camp on a temporary basis since 2014, being mostly involved with either the construction of shelters or the schooling activities established in the camp. Hence, this article is built on the direct, individual and surely partial and limited experience gathered during the authors' temporary permanence in the camp. As this issue focuses on the topic of refugees and work, this article aims to reflect on these two categories in respect to the circumscribed topographical context of the 'camp' seen and understood through the eyes of the authors, with the limits and structural biases such an approach duly involves.

That said, there are conceptual definitions that, given our partial look on the matter,

⁵ Ian Bremmer, "These 5 Different Camps Highlight a Global Refugee Crisis." *Time*, October 27 (2016).

⁶ Kim Wilsher. "France to close Calais refugee camp and tells UK it must play its part.", *The Guardian*, September 26 (2016).

⁷ Marta Latorre, Will Somerville, Dhananjayan Sriskandarajah. "United Kingdom: A Reluctant Country of Immigration", *Migration Information Source* (2009). Accessed April 2017. <http://www.migrationpolicy.org/article/united-kingdom-reluctant-country-immigration>

we seek to clarify before arguing any further. Rather than speaking of refugees and migrants as those fearing persecution in their own country and/or as those motivated by the search of better livelihood, this article will refer to people we met and worked with in the Jungle as ‘inhabitants’ of the camp, individuals with specific stories and motivations that came together in the Jungle of Calais as members of fluid communities established for the duration of their stay. Such a generalised term is useful to shift the focus of this paper away from a potentially problematic analysis that would need to be made to clarify differences amongst the huge number of individual histories, motivations, and expectations held by the Jungle’s inhabitants; an analysis which ultimately could only be made by those inhabitants themselves. In a similar fashion, we will generically label as volunteers, all of those regular frequenters of the Jungle who, through their voluntary involvement and presence in the camp participated in the making of daily life of the Jungle. Volunteers engaged in such a space for disparate reasons, ranging from political activism and solidarity to more humanitarian and charitable sentiments, from diffusion of professional expertise to mere personal calculations including, often, a simple desire for adventure.

Resolving to conceptual clarity through such wide-sweeping generalised categories, we hope to be able to successfully focus on the main key area of this publication: work. Nonetheless, rather than talking of work intended as labour, involving classical employer-employee relations and salary remuneration, work in the context of the Jungle will be redefined along the broader lines of two specific activities such as schooling (the teaching and learning of languages such as French and English), and construction (the building of shelters and communal spaces). As it will be further explained, schooling and construction were two of the most consistent operations taking place in the camp at most times. As such, the specific interactions between inhabitants, volunteers and work are purposefully constructed in this article to shed light on the inhabitant’s agency in shaping the development of the camp.

From transit space to (temporary) settlement

Calais has been a migrant transit site for decades prior to the Jungle, and the world’s attention on the area.⁸ Only since 2013, with the progressive militarisation of the Calais port and train station through barb-wired fences, CCTV cameras and border patrol enforcement, have crossings become more and more difficult, slowing – though never halting – irregular migration. The Jungle camp was formed when growing numbers of migrants and asylum seekers residing mostly in squats close to the town centre, were pushed outside the city by coordinated police operations. Such operations were aimed at demobilising, often through arrests and short-term detention, groups of migrants who would be found living in town. This protracted deterrence action by the French authorities was successful only in pushing those willing to cross the border to resettle on an empty land used for waste-disposal in the outskirts of Calais, strategically adjacent to the highway branch leading cargo-vans to the port. Between 2014 and 2016, the camp grew to become a functioning settlement, serving as the main residing area for migrants and asylum seekers willing to cross the British channel. Through the growing involvement of activists, humanitarian groups and organisations, material and monetary capital progressively began being invested in the camp. Investment allowed the inhabitant communities to structurally self-organise their space by sustaining the establishment and development of activities such as construction of shelters, first aid centres, educational and religious

⁸ Calais Migrant Solidarity. “Introduction to Calais.” Accessed December 2016. <https://calaismigrantsolidarity.wordpress.com/introduction-to-calais/>.

congregational spaces, safe-areas for women and children, and numerous private activities most commonly in the forms of restaurants and shops. As relative surplus of materials circulated in the camp, an economy was established, linked to activities such as the construction of shelters and infrastructure.

Work as the construction of the camp's infrastructures

Initially born as a camp constructed exclusively of tents donated to migrants by local associations in Calais, independent charities and activist groups began fundraising initiatives for assistance strategy-plans to support the sheltering of inhabitants from the cold and rainy winters ahead. Wood, timber, pallets, plastic tarpaulins, insulating materials, nails and hammers were bought, ordered, delivered and assembled on site through the collaborative work of various local organisations, a strategy that intensified when bigger and better funded international organisations such as Médecins Sans Frontières joined working in the camp.

Initial coordination between organisations and the camp's inhabitants was minimal. Volunteers would scout the camp, compiling lists with names and locations of the most vulnerable people in immediate need of a shelter, typically children, women, and the elderly. Teams of builders and volunteers would then transport all materials to the camp, having been previously sorted in rented warehouses around Calais. Standard-designed shelters hosting from two to four people would be pre-assembled, transported and finally built on site once the residents on the list were identified. This system didn't last long. Practical dynamics between builder-volunteers and the camp's inhabitants soon suggested limiting the intermediary action of builders and volunteers to sole distribution. Being impossible, with limited resources, to regulate the construction of shelters for an always-increasing number of people, materials started being delivered on site by volunteers who would then leave the responsibility of choosing the construction site and design to the inhabitants themselves. Community leaders within the different areas of the camp thus became crucial actors in the process of receiving and delivering materials, gathering upon themselves responsibilities fundamental to make sure that all materials were delivered safely, used efficiently and distributed fairly amongst communities. As widely publicised on the websites of organisations active in the camp,⁹ the estimates of shelters being constructed on site through this system of self-building increased from five to ten, to between fifteen and forty shelters a day. Residents in the camp soon radically transformed the distribution process as it had been initially planned by support organisations. As much as the enlisting of highly vulnerable people who were either not part of larger communities or could not build for themselves continued, the construction of the large majority of shelters in the whole camp was assumed by residents themselves, with little to no supervision or control by support organisations.

This change was fundamental for the rapid development of the Jungle as a semi-permanent settlement. As meaning is created through negotiations between people and spaces, the inhabitants' agency in deciding where and how to build their shelters can be understood as a conscious political act, embodying needs of individuals and communities facing the need to confront the increasingly difficult reality of crossing the border. Every shelter and structure was built with relatively temporary materials (timber frames, pallet floors, plastic for walls covered by insulation material, the whole kept together by nails and staples), these organisational features allowed the camp's inhabitants to model and shape constructions well beyond their original functions, addressing their needs of more than

⁹ See web pages of organisations such as L'Auberge des Migrants, <https://www.laubergeredesmigrants.fr/fr/accueil/>; or Care4Calais, <http://care4calais.org>.

simple resting spaces. Congregational areas such as mosques and churches, restaurants and shops, numerous schools, health-centres and kitchens run by inhabitants, a market square and even a theatre were built by deconstructing and reconstructing various single units, often with the addition of ad hoc donations of specific materials arriving on site after precise orders had been issued via awareness raising campaigns mobilised by inhabitants themselves and reproduced on social media by volunteers or organisations active on site.

Thus said, the account given so far would significantly miss its point if the major problematic issues were overlooked; issues that emerged as a result of inhabitants taking a major role in the every-day infrastructural re-construction. The tendency of organisations and volunteers to progressively identify and associate individual inhabitants with specific communities, or community leaders, in the camp pushed many other inhabitants to a condition of invisibility. Such invisibility took place if individuals had been excluded from a specific community, or, as often the case for newcomers, had not yet been included in one. These invisible individuals experienced challenges accessing services in the camp and finding spaces to sleep; a condition often lived by unaccompanied minors. As the camp consolidated into a stable physical form through progressive construction of shelters, it simultaneously segmented the camp in community-specific areas. Patterns of exclusion became as strong as those of inclusion, in an overarching context, which especially during winters or in periods of scarce donations or police brutality, would ignite tensions amongst the inhabitants.

Relational patterns in schooling and community building

Nonetheless, the growing degree of agency negotiated by inhabitants among themselves, as well as vis-à-vis both volunteers and border security, was tantamount to the development of the camp into a space that allowed migrants and asylum seekers to establish their own patterns of resilience. The specific case of schools and schooling activities can be seen as a case in point. By the middle of 2015 a group of volunteers engaged with teaching activities in the Jungle camp proposed the inhabitants of a specific community to build a school within the area they inhabited in the southern part of the camp, as by that time most schools had already been built on the northern side. This community, as most others all over the camp, was prevalently composed of young men sharing the same ethnic background, but who had been in the camp for different amounts of time. Volunteers agreed with the members of the specific community that the school was to cater also to inhabitants beyond those living in its immediate proximity, attracting learners from the rest of the camp.

As a volunteer-led project only loosely connected to other organised initiatives in the camp, materials for construction were mainly acquired through private donations gathered by the volunteers themselves. Eventually the school was constructed as a central shelter within the space the community had been inhabiting, offering French and English classes daily, providing students with learning material free of charge and functioning essentially as drop-in classes not requiring formal registration. The school was open to all learners regardless of gender, ethnic background, language or religion. Since classes took place within the community's recognised premises, the school's activities would bring together three recognisable categories of people, some of them already mentioned above: volunteers, who were mostly teachers; the community's members, who lived in shelters directly around the school; and other inhabitants of the camp that joined the school's classes as learners. In the following sections we will briefly analyse those observable patterns of relations between such groups, in order to sustain our argument that as time shaped relations, the members of the community hosting the school grew prominent in the decisional management of all activities involving the school.

Since the very beginning, the school had no formal administration: volunteers either organised their work and schedules themselves or in groups comprised of both volunteers and inhabitants. Such flexibility was required, especially considering the circumstances by which volunteers and teachers would come for a limited period of time, either regularly or sporadically according to availability. Despite the efforts by a group of long-term volunteers to formalise the organisation of the school's activities, from the management of resources to the content of the curriculum, the ever changing realities of the camp did not allow for fixed rules, as the turnover of both volunteers and learners from outside the community made it hard to organise long-term planning and involve learners in the development of the curriculum. As such, interactions between volunteers and learners mainly took place within the classroom, with learners regularly attending classes soon developing closer ties with the most committed and present volunteers. As a general observation, as members of the community surrounding the school were most likely to attend classes regularly, their relation to committed volunteers extended beyond the classroom environment, increasing opportunities to access further resources and information. Volunteers would assist community members in their demands regarding material for building shelters, medications, and movement in and out of the camp. The presence of the school improved the living environment and increased attention towards the needs of the community. The school soon became a meeting point for volunteers involved in other projects and a crucial crossroad of information concerning the developments taking place within the Jungle. Volunteers benefited from the safe environment of the school and its closer community to gather and organise, while community members took advantage of the school to develop stronger links with volunteers. Ultimately, this was crucial in improving the latter's capability to organise and raise awareness regarding their needs, a significant factor in improving the community's living conditions in the camp.

Exerting agency through exclusion

Privileged interactions between volunteers and learners from the community increased as the project developed and volunteers' involvement regularised. As more volunteers focused their work on implementing regular weekly timetables for teaching, members of the community and learners also increased their direct involvement in the schools' management by voicing their preferences and concerns. It wasn't long, however, before tensions arose. The points of disagreement, initially emerging amongst long-term and newly-arrived volunteers, were about increasing the involvement of community members within the school organisation, the planning of specific school activities and curriculum, as well as creating greater transparency regarding the administrative tasks of the school. This tension led to outspoken disagreements between volunteers and within the community, initiating discussions that were resolved once a majority of the community sided with the newly-arrived volunteers, who proposed more leadership roles for the inhabitants themselves. This ultimately led to the distancing of those long-term volunteers who had supported the very first construction of the school. As such, in the space of a relatively brief time period, not only did the community members establish closer relations with the new-comer volunteers due to their constant presence vis-à-vis learners from outside the community, but they also demonstrated their influence on school management by partaking in the discussions over the future of the school, effectively exercising their power of inclusion/exclusion on volunteers.

Such disagreements acted as a catalyst for the school's development and the progressive advancement of the community's inhabitants in the school's organisational process. Up until the final dismantlement of the school in the October 2016 final eviction,

community members had a leading role in most of the school's activities, driving discussions regarding teaching content, and managing the drop-in lists of expected teachers coming to give classes, according to their presence on camp. Not long before the final dismantlement of the school, the rearrangement of power relations between community members and volunteers reached the point by which the former had even built a shelter to accommodate volunteers, since lack of accommodation in both Calais and the Jungle had become a main constraint for teachers.

As with volunteers, community members exercised similar patterns of inclusion and exclusion with other inhabitants of the camp coming to participate as learners to the school's activities. Nonetheless, this dynamic needs to be put into the context of daily life, managing the uncertainties and dangers faced by any inhabitant of the Jungle camp. Establishing preferential links with certain volunteers or Jungle inhabitants over others can be seen as an attempt to safeguard those gains the community acquired by allowing the school to be built and operate in their area of living. Overall, the inhabitant's agency in assuming leadership in the school's running was decisive for its overall functioning. Inhabitants created and maintained a safe space for volunteers to gather, teach and manage the school, as well as guaranteed the security of the area, benefitting learners outside their immediate community. At the same time, inhabitants exerted a process of exclusion/inclusion on both other Jungle inhabitants and volunteers, allowing themselves to rest independent of specific volunteers or teachers, as much as to prevent the possibility of conflicting situations arising with other communities in the Jungle camp.

Conclusion

In conclusion, this opinion paper merely wishes to share the personal observations of two volunteers experienced in the complex dynamics that ruled our stay in the Jungle camp of Calais in 2016. While not explicitly engaging with the topic of refugees and work, the context of Calais' Jungle holds explanatory value in assessing how migrants, asylum seekers and refugees organised to face the no-entry border regime enforced within the internal frontiers of Fortress Europe itself. The observed experience of the Jungle's inhabitants provided, despite huge and even fatal difficulties, to be often the result of self-empowered actors constantly bargaining their will to reach the UK with the circumstances at the border.

Overall, our observation of the camp's development over the time we participated in its activities has reinforced that migrants' and refugees' agency in camps should be not only recognised and acknowledged, but also supported. Considering the exceptional circumstances that influenced the formation of the Calais Jungle, we witnessed how working with migrant and refugee communities on their own terms can be highly functional for the immediate amelioration of otherwise deplorable situations – which should be avoided in the first place – such as the formation of migrants' camps at the impermeable borders of states, or even of migrants' ghettos in urban areas. The Calais' Jungle proves to be an example of how the dual logic of protection and surveillance embodied by the French state's sole reliance on volunteers and security forces was rejected and surpassed by the activity of its inhabitants, refusing both the humanitarian logics of protection and control, as well as the security logics of policing and repression. Today the camp in Calais stands no more. With the re-entrenchment of national frontiers, tighter border-enforcement policies and political scaremongering over the presence of irregular migrants, other camps in and outside Europe, are bound to emerge. Recognising agency and resilience of migrant and refugee communities is but the first step in supporting their struggle for a better life in lands far from their homes.

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Stemming the flow: refugees, migrants and the EU containment strategy

Roberto Forin¹

Abstract

Based on the dichotomy between migrants and refugees, between voluntary and forced movement, current EU migration policies introduce a hierarchy of perceived deservingness of people on the move. They form an intricate part of the pledged safeguarding of the international protection system, whereby “to safe ‘refugees’, ‘migrants’ are being thrown to the wolves” (Carling 2015). As a result, profiling of whole population groups on the basis of assumed needs has sometimes replaced a case-by-case assessment, therefore denying, de facto, individual access to international protection. Beyond that, if we look at the case of Greece for instance, these same policies have left thousands of ‘genuine’ asylum seekers, theoretically entitled to relocation or to join their families elsewhere in Europe, stuck for months in degrading ‘reception’ camps. So, has the dichotomy failed in fulfilling its self-proclaimed task of safeguarding the international protection system? It certainly did so in many occasions, but, as I argue in this paper, this should not come as a surprise. In fact, the real purpose of the use of the dichotomy is not to improve access to international protection, but rather to stop the flow of migrants entering Europe. As such, it is merely another component of the broader EU’s containment strategy that has been put in place by EU countries since the early 2000s to ‘protect’ its Southern border, whatever the cost.

Keywords: EU Migration Policies, Containment, Categories, Refugees and Migrants, Vulnerability, Protection.

Introduction

In the wake of the massive increase of arrivals along the so called Western Balkans route in 2015 the dichotomy migrants versus refugees was propelled at the centre of public debate by Al Jazeera when it argued for a more inclusive use of the term ‘refugee’ (Al Jazeera 2015). The point of the Qatar based network was that a hermeneutic distinction between ‘refugees’ and ‘migrants’ was at the core of a potentially polemic discourse of ‘deserving refugees’ versus ‘undeserving migrants’. Unsurprisingly, a few days later UNHCR responded, calling for a more careful distinction between ‘refugees’ and ‘migrants’ (UNHCR 2015). The UN Refugee Agency strongly argued for upholding this distinction, in order to safeguard the existing international protection regime and enable a targeted

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response to a particular group of people protected by the 1951 Refugee Convention. This title has sparked a wider debate in academic circles and amongst humanitarian workers and volunteer groups. One of the most poignant critiques was put forward by migration scholar Jorgen Carling, who argued that 'to save 'refugees', 'migrants' are being thrown to the wolves' (Carling 2015).

If we look at the turn that EU migration policies have taken ever since, particularly along the 'Western Balkans route', it seems like the UNHCR argument has prevailed. States have been upholding the dichotomy 'refugees' and 'migrants' in their migration policies, arguing that 'illegal' migration poses 'a challenge for the reception and asylum systems of all partners concerned' (Austrian Ministry of Foreign Affairs 2016); 'a peril, thus, not only for European security and stability, but for the institution of asylum itself' (Ihring 2016). In practical terms, this resulted in a gradual closure of the borders along the 'Western Balkans route' initially for certain national groups coming from countries considered safe, such as Algeria and Iran, but also Afghanistan and certain parts of Iraq, and, as of April 2016, for all nationalities.

So, has the dichotomy been successful in fulfilling its self-proclaimed task of increasing access to the international protection system for refugees and asylum seekers? If we take the Greek example it does not appear to be the case. In Greece, this approach has left thousands of 'genuine' asylum seekers, theoretically entitled to asylum in Greece but also to be relocated or to join their families elsewhere in Europe, stuck for months in degrading 'reception' camps. On the other hand, this approach has been very effective in stemming the flow of new arrivals in central and northern European countries. Thus, I argue in this paper, rather than as an instrument of protection, the dichotomy is used as yet another element of the EU's containment strategy, aimed at stemming the flow of migrants entering Europe.

EU Containment strategy: the history of an idea

Particularly since the early 2000s irregular migration across the Mediterranean Sea has come to be seen as a security risk and a threat to European stability, despite the fact that, as documented by many authors, these concerns were based on false assumptions, sensational media reports and popular discourses not supported or even contradicted by empirical evidence (Pastore et al 2006, De Haas 2007).

This led to the adoption of a series of migration policies based on a containment strategy. Such strategy was 'pioneered' in Libya in the early 2000s. Following negotiations with the Italian authorities first and the EU later, the then leader of the country, Gaddafi, introduced severely restrictive migration measures against, in particular, Sub-Saharan migrants, aiming at reducing the number of new arrivals at the southern European shore. The restrictions resulted in tens of thousands of migrants being unable to obtain a clear legal status in Libya, becoming particularly vulnerable to abuse and exploitation. Migrants became the prime targets of everyday discrimination, violence, and crime. Worse still, in the detention centres used for "deportable" migrants, abuse and exploitation turned into torture and 'enslavement', as documented by several human rights organisations (FIDH 2012, HRW 2006).

The subsequent fall of the Gaddafi regime and the descent of the country into chaos proved challenging for the collaboration between the EU and Libya in the containment approach. As a result, toward 2014 the focus shifted further South, with the so-called 'Khartoum process' aiming at 'tackling irregular migration and criminal networks', 'address[ing] trafficking in human beings and smuggling of migrants' and 'promoting sustainable development in countries of origin and transit, in order to address the root causes of irregular migration' (Italian MFA 2014).

As for the past agreement with Libya, the aim of such policies was to manage migration flows so as to prevent migrants from reaching Europe, especially by establishing asylum-processing centres. In addition, these agreements specifically focussed on 'facilitating the return of undesirable migrants'. Other recent initiatives such as the declaration following

the ‘Valletta Summit’ (EU Council 2015) and the Italian ‘Migration Compact’ proposal (Italian MFA 2015), while focusing more on the ‘development’ aspects, fundamentally draw on the same broader containment paradigm.

Failure and New Approach

Despite the considerable financial and diplomatic efforts, the containment strategy has proven ineffective to stem the flows of new arrivals and migrants continued reaching the southern European shore. In 2014, 170.000 migrants entered the EU through Italy while 43.500 entered Greece from Turkey. In 2015, the number of new arrivals skyrocketed and the Western Balkans route became the main entry point with more than 850.000 entering the EU from Greece.²

The opening of the Western Balkans route and the dramatic increase in new arrivals introduced a new dynamic, which posed a fundamentally new challenge to the EU’s containment strategy. In fact, whilst until then the containment of migrants was mostly focusing at the EU’s external borders, the border to keep migrants out now shifted from *the fringes of Europe into Europe*, risking to question the very essence of the Schengen agreement.

Indeed, with tens of thousands of potential asylum seekers moving from a European country to another, in 2015 many states, claiming the necessity to screen mixed migration flows and ensure access to international protection for refugees, started adopting measures and revising legislation designed to contain or avoid the migratory pressure on their own country. Distinguishing between migrants from refugees became an institutionalised means to deny entry and redirect the flow towards other, neighbouring countries. The dichotomy between refugee and migrant was thereby added to the toolbox of the existing *non-entrée* regime (Zetter 2014).

The Vienna Declaration of February 2016, which followed the conference ‘Managing Migration together’, a multi-lateral meeting between different states along the Western Balkans route, is a clear example of this. Allegedly ‘in order to help people in need of protection as close as possible to their country of origin’, countries such as Austria, Croatia, Slovenia, FYROM and Serbia called for ‘increased cooperation and mutual support at the borders in the region’ to screen mixed migration flows and differentiate between migrants and asylum seekers (Vienna Declaration 2016:4).

However, to ‘help people in need of protection’ and not to merely keep them ‘as close as possible to their country of origin’ the *non-entrée* regime should have been coupled with other migration policies aiming at expanding and guaranteeing access to legal pathways for people in need of protection in their countries of origin or in countries of first displacement. This should have included migrants stranded in first countries of entry in Europe, such as Greece, but also, and most importantly, from conflict areas and from countries in the regions of origin which host the overwhelming majority of displaced people, such as Lebanon, Jordan, Turkey and Pakistan.

Unfortunately, the same states that argued for the protection of people on the move fall short from participating in responsibility sharing programmes, such as the EU Relocation Scheme. Despite an initial pledge of 20.000 “emergency” relocations from Greece to other European country (EU 2015, EU Council 2015a), as of February 2017, only 8.800 asylum seekers were actually transferred.³ Also delays in family reunification procedures from gateway countries, such as Italy and Greece, to other EU countries, in accordance with Dublin III regulations, illustrate the lack of willingness of these states to ‘help people in need of protection’. In 2016, amongst the 4.886 asylum seekers eligible for family reunification, only 996 were transferred.⁴

² See <http://www.iom.int/news/irregular-migrant-refugee-arrivals-europe-top-one-million-2015-iom>

³ See https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170208_factsheet_on_relocation_and_resettlement_en.pdf

⁴ See <http://www.asylumineurope.org/reports/country/greece/asylum-procedure/procedures/dublin>

Conclusion

I have argued in this paper that the dichotomy between refugees and migrants, as it is used today in Europe, has become a central element of the ‘containment strategy’, aiming at stemming the flow of new arrivals on the southern European shore. It is instrumental to the establishment of a two-tiered system with, on the one hand, the ‘deserving refugee’, and, on the other, the undeserving ‘migrant’ and the claim that only by keeping out the latter, the former can have access to the international protection they are entitled to. However, as illustrated in this paper, the reality of the response to the massive influx of new arrivals along the Western Balkans route from 2015 onwards tells us a different story.

The aim of this short paper is not to challenge the importance of understanding who is entitled to international protection and who is not. Quite to the contrary, because of its importance, this distinction must be at the centre of any migration policy.

However, when this distinction is instrumentalised for the politics of containment and becomes a mere tool for the management of ‘mixed migration flows’, the risk is that many people in need of protection will simply lose their access to existing international protection mechanisms. As the Greek example shows, this could be the case for asylum seekers entitled to relocation or family reunification, but also for other vulnerable individuals, such as victims of trafficking or migrants persecuted in their country of origin for their sexual orientation.

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“We Refugees”, Construction of a Collective Memory Through Oral History: Experiences from being forcibly displaced to resettlement

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Abstract

In the last decade of peace-building in Colombia, oral history has played a significant role in discovering a history of persecution and oppression, and in supporting the victims to heal their trauma – to “remember without pain and without hatred”. This article describes the life experiences of three Colombian refugees resident in Winnipeg, Canada, who were forcibly displaced from their homeland, faced with the effects of extreme conflict, oppression and discrimination. This article explores the questions: What do stories do? How are oral histories and storytelling themselves an instrumental movement of change? We focus on proposing the narrator as a protagonist of self-empowerment through unifying stories. We seek in this article to examine the implications of oral history and storytelling for Colombian refugees resident in Winnipeg, Canada toward reconciliation and reconstruction of their lives in their new society after exile. This study uses the oral testimonies as the primary source of data. These interviews were conducted in Winnipeg, Manitoba, Canada from 2011 to 2016 with three Colombian refugees who were displaced from parts of Colombia controlled by paramilitary and guerrilla groups.

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Keywords: Storytelling, Oral History, Reconciliation, Displacement, Refugee, Extreme Conflict, Trauma.

I, Vodniza, always introduce myself as a refugee at any event that I have had the opportunity to participate in; not because I feel proud of it, but because I want to remember my friends, and other victims who could not escape from the internal armed conflict in Colombia; those who were killed, tortured and forcibly disappeared. Our stories themselves are political⁴ with the power to change the present, as my grandmother mentioned in our conversation in the jungle.⁵ According to the 1951 Geneva Convention Relating to the Status of Refugees, “refugee” is a person who fled his or her country of nationality because of the well-founded fear of individual political or religious persecution.”⁶ In the last decade of peace-building and reconciliation in Colombia, oral history has played a significant role to discover a history of persecution and oppression⁷ and to support the victims to heal their trauma, and “remember without pain and without hatred.”⁸ This article describes the life experiences of three Colombian refugees resident in Winnipeg, Manitoba, Canada, who were forcibly displaced from their homeland, and faced with the effects of extreme conflict; oppression and discrimination.

This article explores the questions: What do stories do? How are oral histories and storytelling themselves an instrumental movement of change? We focus on proposing the narrator as a protagonist of self-empowerment through unifying stories. We seek in this article to examine the implications of oral history and storytelling for Colombian refugees living in Winnipeg, Canada, toward resettlement and reconstruction of their lives in their new society after exile.

This study uses oral testimonies as the primary source of data. These interviews were conducted in Winnipeg, Manitoba, Canada between 2011 and 2016 with three Colombian refugees who were displaced from parts of Colombia controlled by paramilitary and guerrilla groups. We have changed the names of some of the subjects for the reasons of privacy.

In order to have a deep conversation during the interviews with refugees, I, Vodniza, met with them several times for coffee, to talk and to laugh. I sometimes shared parts of my own story with them to build trust. I heard them and similarly they heard me. It has been an experience of sharing our fears, challenges and hopes. In this context, we argue that these memories should not be interpreted only as sad stories, but as memories that come from the effort and the courage of the victims. The interviews were conducted in our native language, Spanish. In most of the interviews, the interviewees spoke about their memories from the past in present tense. It was a moment where memories became alive to replace the long period of silence and fear. Throughout this paper, readers may find some sentences in present tense where we have added the past tense of the verb to assist in better understanding. For example,

⁴Richael L. Einwohner, “Ethical Considerations on the Use of Archived Testimonies in Holocaust Research: Beyond the IRB Exemption,” *Qualitative Sociology Spring Journal* (2011): 1.

⁵Guillermo Vodniza, “Stories That Are Not Told: Everyone has a Story; or a Story that matters.” ed. Our School/Our-selves The Canadian Centre for Policy Alternatives. (Winter 2016), 136.

⁶Taya Korovkin, “The Colombian War and “invisible” Refugees in Ecuador,” *Peace Review: A Journal of Social Justice* 20 (2011): 322.

⁷Oral History Forum d’histoire orale 32 Special Issue/Edición Especial “Oral History in Latin America/Historia Oral en América Latina,” guest edited by Pablo Pozzi, Alexander Freund, Gerardo Necoechea, and Robson Laverdi, (2012), accessed November 20, 2015, Online

<http://www.oralhistoryforum.ca>

⁸Juana Alicia Ruiz Hernandez, Interview by Guillermo Vodniza, Popayan, 4 June 2014.

“... In reality they destroy(ed) the town. They kill(ed) many people from the town that are (were) innocent people.”⁹

As expressed by J. Baker, “we are reminded that stories are powerful, and that once told, can never be taken back.”¹⁰ The memories of refugees play a significant role in creating a connection between the narrators and listeners as well as between the narrators themselves. In other words, their memories become a practice of action¹¹ where their stories in interviews¹² create understanding, empathy and a way of constructing history through their dialogue. So, oral history and storytelling allow the interviewed to have “the sense that they are story makers and not mere spectators of what happens in history.”¹³ Their narratives in interviews are a practice that empowers refugees to explain who they are. These memories are not only focused on pointing out the violence in form of selective assassinations, rapes, discrimination, threats, disappearances and forced displacement, imprinted on the lives of Colombian refugees resident in Winnipeg, but also these memories explain who they are; their memories of the past and present dreams and hopes, as well as their journey of displacement and exile, their struggles and success to reconstruct their lives in another society.

One interviewee, Ruiz, pointed out from her own experience that oral history plays a key role in supporting the victims to heal their trauma.¹⁴ Ruiz and her entire community of Mampujan were displaced on 10 March 2000 by the paramilitary group called “Los Heroes de Maria, Las Autodefensas Unidas de Colombia (AUC)”. Ruiz and her community faced serious issues of trauma and pain after being forcibly displaced, “we had too much hatred and resentment because we lost our traditional way of living ... families had to live in brothels, ten people in one room. We also experienced internal conflicts, women were raped, families became aggressive and our peaceful way of life started to break down”¹⁵ They decided to ask for help from the Mennonite Central Committee in Colombia to overcome their trauma. Yet, Ruiz and the members of her community were determined to build their own way of surmounting their trauma after the techniques developed by the psychologists sent by the Mennonite Central Committee failed to meet their needs.

We started making blankets “textile on textile”. It is a technique of sewing our stories into quilts. We tell a painful story. You ask the person where this event happened, if it was a city, or town; if it was in a town, we start making trees and houses; you ask the person what kind of skin colour the person was: white or black and the person begins to tell her/his story. This work is accompanied by players and traditional songs. Through oral history we found our voice to not to forget, but to remember without pain and without hatred.¹⁶

In this context, oral history and storytelling becomes a pedagogical instrument of reconciliation that supports the victims to release their pain and trauma from the memories of

⁹ Veronica, Interview by Guillermo Vodniza, Winnipeg, 2012.

¹⁰ JJ Baker, “Learning to Relate: Stories from a Father and Son,” Canadian Journal of Native Education 8, (2010): 8.

¹¹ Luis Eduardo Guarmizo, “Assimilation and Transnationalism: Determinants of Transnational Political Action Among Contemporary Migration,” (University of Chicago:2013), 78.

¹² Alexander Freund, “Under Storytelling’s Spell? Oral History in a Neoliberal Age,” (Oxford University Press :2017);, 109.

¹³ Gerardo Necoechea Gracia, “Custom and History: Teaching Oral History in the Community Museums Project of Oaxaca, Mexico,” *Radical History Review* (1996): 21-22.

¹⁴ Ruiz, June 4, 2013.

¹⁵ Ruiz, June 4, 2013.

¹⁶ Ruiz, June 4, 2013.

the violence experienced. Alexander Freund points out that “storytelling has always been with us; it is ‘one of our basic social acts.’”¹⁷ During the interviews, it was necessary to talk about our past to uncover “the collective story of perpetration and our memories of pain.”¹⁸ In this way, oral history provides an opportunity for reconstruction of our lives to “remember without pain and without hatred.”¹⁹ It is a way of reconciliation between us with those memories of violence.

This is echoed by an opinion by Ingrid Betancourt in her essay, “The Silence of Shame,” which prefacing her six and half year jungle captivity, prior to the national Colombian army rescue of her and several other individuals. She explains that “sharing is also your way out. Every time you tell your story, you can distance yourself from it, take a step back. You learn to remember without reliving, and begin to recover.”²⁰ Remembering is a form of illustration of the past that contributes to shaping the present.²¹ Individual and collective memories illustrate the ultimate inner spaces of the victims’ lives. Even though these memories are of personal struggles and suffering as a result of violence, fear, humiliation, loss and the pain, these stories are also a vital form of social movement that creates understanding, wisdom and reconciliation.

Internal armed conflict in Colombia

Alongside Colombia’s democracy, there has been an internal armed conflict for over fifty years, in which around 8 million people, or 15 percent of the country’s total population, experienced forced displacement. This is compounded by 280,619 people killed, over 29,000 kidnappings, 45,000 forced disappearances, 11,000 victims of land mines, 10,000 victims of torture, and 13,000 victims of sexual violence.²²

The murder of the liberal leader Jorge Eliecer Gaitan in 1948 was followed by a long “period of violence”²³ between conservative and liberal parties. This period of violence, which pitted Colombian communities against one another for ten years, left around 180,000 dead and “turned the country into a cemetery.”²⁴ The cruelty of this war ended in 1958 with the National Front Agreement.²⁵ Some groups, however, did not recognize this political agreement between the liberal and conservative parties because it excluded many community leaders and social organisations. As a result, many of these groups became guerrilla organisations in the 1960s. Their objective was to create a democratic system where the political parties and social movements that did not belong to the mainstream political system would be allowed to participate in democratic Colombian elections.²⁶ As a consequence of a peace dialogue between the Colombian government and the guerrilla groups, in 1986 a left-leaning party called Patriot Union (UP) participated in the Colombian elections for the first time and made significant political gains that let them play an important role in the Colombian political

¹⁷ Freund, “Oral History in a Neoliberal Age,” 97.

¹⁸ Armand Volkas, “Healing the Wounds of History: Japanese and Chinese Cultures Facing the Legacy of the Nanjing Massacre,” In Ritsumeikan Human Services Research Muramoto K. (ED.) (Kyoto Japan: Institute of Human Sciences, Ritsumeikan 2010), 4.

¹⁹ Ruiz, June 4, 2013.

²⁰ Ingrid Betancourt, forward to *Silence of Shame*, by Sibylla Brodzinsky and Max Schoening (McSweeney’s and Voice of Witness, 2012): 13.

²¹ Einwohner, “Beyond the IRB Exemption,” 1

²² Tatiana Garavito, “Peace in Colombia Hopes and Fears,” New International Magazine (2016): 13.

²³ Eduardo Galeano, “Open Veins Latin America Five Centuries of the Pillage of a Continent,” New York: Monthly Review Press, (1997): 102.

²⁴ Galeano, “Five Centuries of the Pillage of a Continent,” 102.

²⁵ Galeano, “Five Centuries of the Pillage of a Continent,” 102.

²⁶ Milton Mejia, “Armed Conflict and Human Rights in Colombia,” *The Ecumenical Review* 63 (2011): 63.

scenario.²⁷ However, after elections, more than 3000 UP members were killed by paramilitary organisations, including “two presidential candidates, nine members of congress, 70 councilors and dozens of deputies, mayors, leaders of community organizations, trade unionists, students leaders, persons involved in cultural activities and the administration of justice, professional people and hundreds of local activists.”²⁸ According to official statistics from the Fiscal General de Nacion (General Prosecution Office), “during Uribe’s first year [2002] there were four persons per day disappeared. But between 2002 and 2006 the number was seven persons per day, and between 2007 and 2008 this number grew to eleven.”²⁹ More than four million Colombians have had to leave their country for security and economic reasons. According to the 2006 Canadian census, there were 39,145 Colombians living across Canada, and 455 of them were living in Winnipeg.³⁰

I, Vodniza, am amongst the many Colombians who had to leave his country to save his life and his family. I witnessed how the paramilitaries destroyed entire communities. The paramilitary groups killed people with axes and machetes, and bodies of dead people were sometimes found in the river without hands or heads. Women and girls were raped and corpses lay on the street. I also witnessed how the guerrilla groups in Putumayo killed, planting terror among Putumayo’s communities and displaced innocent people. Looking back, it is hard to believe the criminal actions we faced in our communities. For example, sometimes the paramilitaries stopped buses on the road and told people that the last person to get off the bus must be a guerrilla member; sometimes this person was killed. On many occasions, before the paramilitaries killed someone, they forced the victim to sign a document, which was a legal government document for selling land. This was a form of forcing the expropriation and accumulation of land. Two of my friends were killed with stones and sticks. Another friend was taken away from his home when he was sleeping. His wife told me that he was burned alive. Because of my work encouraging children to refuse involvement with army groups, I learned that Fidel, a guerrilla member, was looking for me, with the intention to kill me. After three months of living as a displaced person in Bogota, I left my country with the support of the Colombian National Union of Teachers. Being a refugee means leaving one’s community, the people he loves, in most cases, leaving family members, friends, and everything that you built with a lot of effort.

Narrative of Oral Memories: The Memories of Veronica

Veronica is an Indigenous person to Colombia, who lived with her community until she was approximately 21 years old. Veronica also taught Spanish in an Indigenous community near Brazil. Veronica’s life changed after her husband’s death, a police officer killed by a guerrilla group of the area, with the complicity of fellow police officers. In her interview, Veronica described her life in her Indigenous community, her traditional beliefs and the way of living in her community and the problems that Veronica and her family faced when the guerrilla group began to mix with the communities in her village and others nearby:

²⁷ Mejia, “Human Rights in Colombia” 63

²⁸ Mejia, “Human Rights in Colombia” 63

²⁹ Diana Ojeda, “Whose Paradise? Conservation, Tourism and Land Grabbing in Tayrona National Park,” LDPI International Conference on Global Land Grabbing (Brighton, UK, 2011): 5.

³⁰ “Immigrants Status and Period of Immigration (8) and Place of Birth (261) for the Immigrants and Non-permanent Residents of Canada, Provinces, Territories, Census Metropolitan Areas and Census Agglomerations, 2006 Census-20% Sample Data”. Statistics Canada, accessed November 4, 2011.

My life in my village was very happy. We were very poor but we lived very well. We did not have enough food, nor enough clothes. In spite of the fact that we didn't have anything, I think that we had it all because there was no violence; there was no evil at that time in the village. You could go out free, walk where you would like. It was a town totally free. So, the whole world (the people) was happy there. It was very different. In my region, one lives from the agriculture, fishing and hunting. In general, the indigenous people go fishing. They have a way of processing it so that it lasts several days. We are from an Indigenous ethnicity. Every Indigenous ethnicity has traditional dances. They get together in the malocas³¹, there are big houses and the ceiling is made with leaves. They used it to do cultural events. They (her Indigenous people) have different ways to express the things. For instance, if you arrive to the community, and you get along with them, they do it to you as a welcome. Many of them go fishing, others go hunting, others go to bring pineapples, sugar cane, fruits and they gave everything to you. You drink chicha³² and eat. The Carrizo is a traditional dance. The woman dances without anything, with breasts at the air. They just cover here (pointing to the waist) with a skirt, barefoot and they paint the face, the arms. One dances, but with natural instruments that are made by themselves.³³

Veronica also recalled in her interview, the irreversible damage caused by the guerrillas to the lives of families from her community and others around it. Veronica explained the way the guerrillas started mixing with the people, as well as the form the guerrillas used to convince children to get involved with them:

The guerrilla arrived, (in Veronica's town) and they arrived to mix in middle of the people, to be part of the people. They (the guerrilla group of the area) did not become very visible, but they arrived as in silence and they were mixing with the people. They (the guerrilla group) started taking the children...They started giving money to the children; they showed them the guns so that they (the children) played with them. I speak about my cousin. He was 14 years old. They started telling him "touch it (the gun), take it, look you can use it, we can lend you" my cousin was happy because he had never seen a thing like that. They told my cousin that they were going to give 500.000 pesos (around \$370 Canadian dollars) monthly to his mother if he were with them"³⁴. She stated, "We are going to give 500,000 pesos to your mother and 500,000 pesos monthly to you, if you are coming with us. When you want to leave, you tell us and you can go. He says yes, and he went with them. After two weeks, he arrived around 11 pm. He was with uniformed and wet because he had escaped in a canoe. He escaped from them. He came crying and he said to my mother, "I cannot stand it anymore. I do not want to be over there. They lied to me. Everything what they told me was a lie." After a while, they (the guerrilla members) arrived. They went to look for him to his house. He was hidden. They (the guerrilla members)

³¹ Maloca is a communal house built by Indigenous people

³² Chicha is a traditional alcohol drink that is made of corn

³³ Veronica, Winnipeg, 2012

³⁴ Veronica, Winnipeg, 2012

told us. If he does not come back, the entire family is going to die. He was listening to them, so what he did he went back to them. His friend who he went with (at the beginning) sent us to say that he had been shot. My aunt, (his mother) went to there to talk with the commander (of the guerrilla group). The commander told her (her aunt) "what one told you, it is a lie. Maybe there in the corner, we killed "a dog" (Spanish expression of killing someone). We buried him and it must be him. He said to my aunt, "if you want to take that dog that we buried, go and take him out" Actually, my aunt never check it. ...because a person told her, "senora (you) should go back" She said to him, "Help me to find a shovel that I am going to look for him. The man told her, "At the moment that you start, they are going to kill you, go. So, she left and she does not know if her son is dead or alive nowadays.³⁵

After the first part of the interview where Veronica talked about the history of her life without interruption or questions, I asked Veronica if she could give more details about her experiences of living through the attack by the guerrillas on her town:

Practically is (was) a massacre... after three days in the town it smelled terrible, terrible...The attack on the town practically is (was) a massacre where the guerrilla come (came) into the town supposedly to kill police officers. But in reality they destroy(ed) the town. They kill(ed) many people from the town that are (were) innocent people. People that they have nothing to see with the war, not with a group neither with the other. They (the guerrilla) steal (stole) the money from the banks, they steal (stole) the food from the shops and they kill(ed) all the police officers that they can and the civilians as well. That confrontation lasted almost three days... one could only hear gunshots and gunshots and bombs because the guerrilla used many cylinder bombs (gas cylinders parts). Later, the Colombian army arrived with the aviones fantasmas (ghost planes) to bombard everything too.³⁶

Veronica worked as a teacher in the Indigenous community called Los Angeles; half an hour from Brazil. She taught kindergarten in the community. When she was working there, she met her husband, and decided to resign from her job to get married. Yet, after two months of marriage, her husband was killed and her problems began:

Two months after I got married, my husband was killed and the problems started. When they killed my husband, I already had two months of being pregnant. Two months of being married! I do not know what happened. I do not know anything. Actually, nobody wanted to talk to me. I had around two months of being married, my husband told me that, he was a police officer, he had seen and realized that some coworkers (other police officers) were working with other group (with the F.A.R.C.). So, they told him that he had to join them or go away from there. He said that he would not join it, then one day he went to work and they killed him...The next day (one day after her husband was killed) they, (persons that she did not know) arrived, and they moved

³⁵ Veronica, Winnipeg, 2012

³⁶ Veronica, Winnipeg, 2012

everything. They were looking for something. One man arrived there, and he told me that I had to go away from there. So I went away...after nine days, I went back. I went back to do some papers because I had to do some papers in the police town officinal. I had found a lower in the city where I had gone, and he told me "talk to the police officers; they should know something because the death of him (her husband) was very strange." So, when I told the police officer who was there, "I need to talk to you" so he was serious, serious, serious with me. He gave a note. The note said that "they were forbidden to speak with me, no police could talk to me". So, I came on in to talk with the police commander, and he told me that "the only thing that I can tell you is that your husband died in a special action of service." No police officers were authorized to talk to me; I do know why, I do not know what happened. I do know anything. Actually, nobody wanted to talk to me. I went back to the city where I was; I went back to Cucuta (city of Colombia) that was where my fathers and mother-in-law were. They realized that I was there; I had to move from one to another until I went to Bogota (the capital of Colombia). I went to Bogota in 2001.³⁷

After facing serious issues of her security, Veronica and her child took a bus from Cucuta to Bogota. She decided to go to Bogota to start a new life. Coming back from a visit to Veronica in Bogota, her uncle was killed by the guerrillas; after that Veronica had to hide in different places:

Being in Bogota, my uncle went to visit us. When he went back to the town, they (the guerrilla) killed him. To him, they cut off his ears alive; they cut off the nails of the hands and feet alive; they cut off part of his arm like that, other part here (showing me); They cut his leg. They did him many things. They cut off completely this (showing me her mouth and her nose). They poured gasoline on him; they burned him. They dried him off and burned him again. The last thing they did was they shot him.... I lived in many houses; in a lot houses. I had to change from one has to another one.³⁸

Veronica also talked in her interview how her life changed after finding the Mennonite Church. The Mennonite church supported Veronica in her spirituality, as well as sponsoring her to come to Canada. She says her life is totally different here, because "here she lives, she can live. One does not have to be hiding, one does not have to be fleeing, one does not have to be sleeping in one house and another because you are safe."³⁹

After being asked how her life is here in Winnipeg, Veronica mentioned her happiness:

I am happy, I think that this is already my home; this is my city. I have been able to have friends from different countries. I have a friend from Afghanistan. She speaks another language, and I do as well. She has another culture, and I do also, but we are here for the same situation,

³⁷ Veronica, Winnipeg, 2012

³⁸ Veronica, Winnipeg, 2012

³⁹ Veronica, Winnipeg, 2012

and for some cases almost similarities. I have several friends that are from different countries. I think it is very nice to have friends like that.

Narratives Oral Memories: Memories of Albear

Albear (pseudonym) came from the province of Valle of Cauca in western Colombia. He has a Business Administration degree. In Colombia, he worked for the department of agriculture in the provincial government for approximately 10 years. Threats against his life and the security of his family caused Albear to end his work with government research projects. He was also involved with a national student movement and a militant of the guerrilla group called M-19. When the M-19 signed a peace agreement with the Colombian government, Albear became a member of the leftist Alianza Democratic Party. Albear decided to leave his homeland because of a paramilitary group who attempted to kill him. The paramilitary group also attempted to kidnap Albear's six-year-old son as a way of finding Albear. In his interview, Albear mentioned that he realised that a series of assassinations were about to begin in his town. This information was gained through his friend's brother, who was the leader of the paramilitary group of the region where Albear lived at the time. After Albear made his report to Colombian authorities, he left his village because of a threat against his life. He left his town and family in June, 2011, and went to Cali, Colombia. Because the paramilitary group who followed him there could not find him, they attempted to kidnap his son who was six years old and was living with his mother in Albear's home. A member of the paramilitary group of the area went to Albear's son's school pretending that he was instructed to pick up Albear's son and bring him to Albear's house. Albear explained that this was the reason he left Colombia and came to Canada.

A person came for my son. He was six years; six years was when somebody came to pick him up saying that he was going to bring him to his house. She (the teacher from the school) told him that he had already been taken. Then immediately I pulled him out of the town.⁴⁰

Albear arrived to Canada as a refugee. He described his challenges and the challenges of his family from the beginning of his journey as an internally displaced person in Colombia, as well as his first days living in Winnipeg:

In Bogota...that was pretty hard. My partner was initially in a state of depression. Obviously, there were lots of questions from my son. Why did we have to leave? I have a nephew who has Down syndrome and they (Albear's son and his nephew) were raised together. My son was small when he was born, and he considered him his little brother. When we were in Bogota, he suffered for him, he was not able to adapt. He could not sleep well. The same thing, my partner also did not sleep well; many problems in our relationship as a couple. It deteriorated...(from the first day in Winnipeg). I believe that the most difficult was that I could not communicate with my family. Nobody here from what is called the Welcome Place tells you that there is a plan to communicate with your country Colombia. This is the code that you have to dial, please contact your family, tell them you are well at least.⁴¹

⁴⁰ Albear, Interview by Guillermo Vodniza, Winnipeg, 2012

⁴¹ Albear, Winnipeg, 2012

Narrative of Oral Memories: The Memories of Carmen

Carmen (pseudonym) used to live in the province of Putumayo, in the south-west of Colombia, bordering Ecuador. Carmen used to work as a teacher in her hometown. Carmen also worked with the municipal government of her town. She had to interrupt her university studies as a social worker due to the forced displacement that she and her family faced. Carmen has four children. Two of them are living in Colombia. Carmen works full-time in Winnipeg. Through her interview Carmen discussed her memories from different times and moments that played a deep role in her life. Carmen talked about her parents, her children, her displacement and exile, as well as her life in Winnipeg. In her interview in June 2012, in Winnipeg, Carmen pointed out that after her tremendous difficulties living with the father of her children, Carmen raised her children until they were 11 and 12 years old. As a single mother, she had to wake up early in the morning, around 5:00 AM. She paid somebody to look after her children because she had to take two buses to go to work. However, her company went bankrupt and consequently, she lost her job. She could not find another job and the only possibility that she had, so that her children did not suffer, was to call her children's father to give her children to him:

I lived with my children for many years. I worked and lived with them until they were already older. The girl was 11 years and the boy was a year less. I was left without work (Pinsky & Asociados is finished, they went bankrupt). After I lost that job, I could not get a job. I did not know how to pay the rent, I did not have money to buy the groceries, I did not know how to pay the study of my children, and once without work and without money I didn't know what to do. I was with arms crossed and the doors closed. I have to give back the apartment and deliver to the children. I call the father of them and I said to him, "Now you have to care after them while I get a way to work" I suffer here alone but I don't want my children to suffer, so I gave my children to him.⁴²

Carmen continued her narrative talking about her new experiences in a rural area in the province of Putumayo. She found a job as a teacher due to her knowledge in English and accounting. Putumayo was a place that faced serious problems of violence due to the neglect of the region by the Colombian government. A guerrilla group called Front 32 dominated the area where she worked. This group belongs to the Revolutionary Army Forces of Colombia, FARC-EP. She mentioned that this group had control of the town where she worked:

When I went to the Putumayo, and I signed the contract to replace a teacher, the people in the office of education they told me, "You are going to go there? No! There, they block the doors with the dead people!" That place where I went to go was famous for the violence. I did not know anything about it. I had no idea of the conflict that these persons were living there, absolutely, that was not known in the country. The news never revealed so. When I got there I began to realise how the people there live, how the people suffer without water, without energy. They were completely isolated from the world. The guerrillas had the power. They treated us as if we were employees of them, and they controlled the office of telecom (Phone public communication office), they listened to the conversations. When there was a different person

⁴² Carmen, Interview by Guillermo Vodniza, Winnipeg, 2012

from the people (town), they accused him that they were paramilitary, and they killed them⁴³

In her interview, Carmen mentioned that she did not directly face threats from any group in particular. However, she explained that the father of her girls received threats and he was forced to displace by the Front 32:

What they did was to displace the father of my girls. I met him there. We decided to work for a common front with the teachers, and from one moment to the next, we started living together and we had two girls. He suffered direct threats from the guerrillas and that is why he had to leave the village. I left because that life was in danger. One did not know at that time they (the guerrilla group) could release a bomb, a cylinder bomb or another grenade, or die as a consequence of a bullet lost. We lost everything we had, absolutely everything. The land, the house, the things that we had achieved, the work...It was hard for my children. To me, I felt unsafe because I did not know what I was going to do. When one leaves do not know what is going to be doing, you do not know how you are going to begin with, one does not know what situation you are going to live; it is a very large uncertainty situation, children do not know that yet. They do not think about it, but they feel that they have lost something. For instance, the little girl said, (three years old at this time) "where are we going to carry the fridge? Where are we going to bring my bed?" We do not take out anything, we couldn't take out anything. She felt that she was feeling robbed. She felt that she was abandoning something that was hers. The immediate impact was that she did not want to eat. She only drank her milk which I prepared with chocolate.⁴⁴

Carmen and her daughters landed in Toronto from Bogota on May 18, 2006, and on May 19, they arrived to settle in Winnipeg. The members of the Mennonite Church who were their sponsors received Carmen and her family. She explains that their support was essential for her adaptation to life in her new society.

They did not only give economic support per year, but what was worth the most was the emotional, psychological support and the love they gave us. They gave us that kind of support that was essential for our adaptation. People from the Mennonite church accompanied us at all times. They accompanied us to the all government offices, to the schools, all the places that we needed to go for our adaptation process. They were always there with us. For instance, on the second day that I was here, they were celebrating my birthday. I arrived in Toronto on May 18 and on May 19 was my birthday. I arrived in Winnipeg that day. They brought us to the apartment. They brought blankets, they brought everything. At 2 o'clock in the afternoon, they arrived again in a group with flowers, with things, with cakes and then they celebrated my birthday. It was beautiful, I never expected it.⁴⁵

⁴³ Carmen, Winnipeg, 2012

⁴⁴ Carmen, Winnipeg, 2012

⁴⁵ Carmen, Winnipeg, 2012

Carmen works full-time for a company in Winnipeg. She feels pleased seeing her daughters growing safely in Winnipeg. She now feels that Canada is her country. She also supports her children who live in Colombia. One of them will soon be a lawyer and the other works for the Colombian government.

At the end of each interview, I asked the people who I interviewed how they felt about being interviewed. In the case of Veronica:

It is weird because it is to think of everything what I have lived. But now that I am here talking with you and talking about it, I realise that I have healed the pain because before I could not speak about it. I just only cried. (Now) I feel okay.⁴⁶

In the case of Albear:

I would say that it transports me to the space in which one lived the situations, difficult moments because it recalls situations of risk that are emotionally complicated, but it serves as a therapy. One realised that has exceeded a stage...in some way, one does not hold a grudge for anyone. It is necessary to use the position of not forgotten, although it might have forgiveness. There may be possibility of reconciliation. The difference does not make enemies of the people. In contrast, it enriches and strengthens and can help to grow and make better. I think that in synthesis, in some way I feel alive...the part of the experience that all of us who lived this kind of circumstances, we have to share. I would say that it would be a historic mistake to not do so. I believe that we must leave the people the stories about what happened. Not what people read in the media or what has been said by many of the newscasts. I think that we need to collect the experiences of the people, the tragedy, one more than others. What I experienced, I would say that it is insignificant related to what many people have suffered.⁴⁷

In the case of Carmen:

It is like returning...as if one had fallen into a pit of mud and one is already bathed and clean, and one returns and gets there voluntarily. Again it is the pain, again one feels the suffering, the pain but this is something that contributes in some way to the knowledge of this situation, it contributes to the history and that is why I am doing it.⁴⁸

Overall, in this article, we have attempted to illustrate the complexities of the ongoing efforts of many Colombian refugee families to restart and accommodate their lives after being forced into exile. Similarly, we have also attempted to reflect the lives of Colombian refugee families prior to their suffering of criminal actions against them; prior to leaving everything behind them to protect their lives and the lives of their children. We want to show their independence, as well as engagement and full responsibility for their families and the nature of their communities in Winnipeg. So, after hearing the narratives of Albear, Carmen and

⁴⁶ Veronica, Winnipeg, 2012

⁴⁷ Albear, Winnipeg, 2012

⁴⁸ Carmen, Winnipeg, 2012

Veronica, what do stories do? The role of oral history for victims has a strong significance in its context of unfolding, creating and disseminating what happened in the internal armed conflict in Colombia. In this scenario, oral sources are the most important support to rebuilding the reality of the more than 8 million victims. One of the most important works in the history of Colombia is the General Report of the Historical Memory Group called, “BASTA YA! Colombia: Memories of War and Dignity,” which expresses that “historical memory can be constructed and the search for the truth honoured.”⁴⁹ Throughout these oral interviews conducted between 2011 to 2016 with Colombian refugees residing in Winnipeg, we found that these oral memories are positive and valuable resources to deliver a message of peace, reconciliation, forgiveness, and a small but significant step of strength towards healing the internal pain carried on by Colombian refugees for years, as a consequence of the violence they experienced. The interviewees agreed that sharing their memories was difficult, as it involved the reconstruction of untouchable and sensitive memories of the past. Yet, these oral memories come together to provide concrete examples of moving from feelings of shame and humiliation to creating a transformative social meaning. Our hope is that by sharing these memories, we can provide a basic understanding about why Colombian refugees left their homeland, and at the same time, to tell to other refugees that the pain believed to be untouchable, is possible to transform. Through the oral memories, our goal is perhaps to build forms of support for the victims, to heal their trauma and discover the present through oral stories and storytelling.

⁴⁹ GMH, Basta Ya! Colombia: Memorias de War and Dignity: National Center for Historical Memory (Bogota: CNMH, 2016), accessed January 12, 2017. <http://centrodememoriahistorica.gov.co/descargas/informes2016/basta-ya-ingles/BASTA-YA-ingles.pdf>

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Multimedia Pieces

Visuals and Poetry in Migration Research Video Supporting Material

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Abstract

In this video, we explore the role of the visual and poetry in migration research based on two different research studies. The first study used transnational feminist methodology, narrative inquiry, and poetic inquiry to explore experiences, transitions, and identities of ten refugee women teachers from the former Yugoslavia who immigrated to Ontario and Québec during and after the civil war (1991-1995) in the country. The second study employed Photovoice methodology to identify the impact of employment circumstances on the health and well-being of twenty immigrant and refugee women from Korea, Asia, Africa, Japan, Arab world and Latin America (KAAJAL) in Grand Erie. KAAJAL in India means eyeliner. People wear KAAJAL to beautify themselves. This acronym emerged from discussions with the participants. Women clearly conveyed that by bringing their culture, language, food, skills, and education, they added to the beauty of Canada. We introduce participants, research methodologies, and the challenges of being an ethnographer and an artist. Inspired by Paulo Freire's education for critical consciousness, transnational feminism, documentary photography, and poetic inquiry, we compare and contrast the transcript poems created by the researcher in the first study with the photographs generated by the participants in the second study while scrutinising the role of the visual and poetry in migration research and policy.

Keywords: Refugee, Immigrant Women, Photovoice, Poetic Inquiry, Transnational Feminism, Ethnography, Migration Policy.

¹ Dr. Snežana Ratković is a refugee woman teacher from the former Yugoslavia who immigrated to Canada in 1998, after the war in the country. She is the Research Officer in the Faculty of Education at Brock University, St. Catarines, Canada and a published poet in the former Yugoslavia. In one of her poems, Snežana travels with Romani people through the landscapes of untamed horses, wounded birds, and fearless women, professing her refugeehood and immigration to Canada. Snežana's research interest lies in migration and indigeneity, intersectionality, identity, transnational and transdisciplinary teacher education, research education, decolonizing research methodologies, and knowledge mobilization.

² Dr. Sethi's research interests are focused on issues effecting immigrants to Canada's urban/rural communities. She is currently a co-investigator in two SSHRC funded multi-site research projects impacting immigrant/refugee integration in Canada. Her research has earned her several prestigious awards including the Ontario Women's Health Scholarship, Tutor-Primary Health Care Fellowship, the Vanier Canada Graduate Scholarship, and the Hilary M. Weston Scholarship. In 2014 her photovoice doctoral project earned her a Governor General's Award. In 2013, due to her community advocacy efforts she received the 'Citizens Award' by the Member of Provincial Parliament. In 2012 she was nominated as one of the 'top 25' immigrants to Canada.

Introduction

Aesthetic forms of representation engage readers at a non-discursive, embodied level of experience³ and allow them to deepen their understanding of a given phenomenon by “tapping into the imaginal realm of experience.”⁴ In this video, we combine multiple research methodologies, aesthetic forms, and disciplinary approaches to discuss two doctoral studies conducted in Ontario, Canada while scrutinising the role of the visual and poetry in migration research and policy.

We first met in June 2014. We defended our doctoral dissertations in the winter of that year, and were invited to present our individual doctoral studies at the Centre of Excellence for Research on Immigration and Settlement (CERIS) at York University in Toronto, Ontario. Listening to each other’s presentations and chatting during the lunch that day, we realised how similar our findings were despite the difference in the research question, participant population, methodology, and discipline. In her doctoral research, Author A used narrative inquiry, transnational feminist research, and poetic inquiry to explore experiences, transitions, and identities of ten refugee women teachers from the former Yugoslavia who immigrated to Ontario and Québec during and after the civil war in the country (1991-1995) while Author B employed Photovoice methodology to identify the impact of employment circumstances on the health and well-being of twenty immigrant and refugee women from Korea, Asia, Africa, Japan, Arab world and Latin America (KAAJAL) settling in Grand Erie. In India, KAAJAL means eyeliner. People wear KAAJAL to beautify themselves. This acronym emerged from discussions with the participants. Women clearly conveyed that by bringing their culture, language, food, skills, and education, they added to the beauty of Canada.

In the fall of 2015, we received a call for conference proposals from the 33rd Qualitative Analysis Conference: Visual Research Methodologies and Visual Ethnographies. Inspired by each other’s studies and the conference focus on visual methodologies, we decided to combine our research findings (i.e., Author A’s transcript poems and Author B’s photographs) and create a conference paper entitled “Scrutinizing Research Methodologies with Refugee and Immigrant Women: The Role of the Visual in Migration Research and Policy.” Our proposal was accepted and we co-presented the paper in May 2016. The audience appreciated the artistic and multimodal dimensions of our presentation, and we took this social justice (and knowledge translation) project one step further by developing this video.

³ Mark Johnson, “The Meaning of the Body: Aesthetics of Human Understanding.” (Chicago: University of Chicago Press, 2007): 326.

⁴ Alexandra L. Adame, Larry M. Leitner, and Roger M. Knudson, “A Poetic Epiphany: Explorations of Aesthetic Forms of Representation.” *Qualitative Research in Psychology* 8, no.4 (10, 2011): 370–379. doi:<http://dx.doi.org/10.1080/14780880903304519>; Brady, “Poetics for a Planet: Discourse on Some Problems of Being-in-place,” in *The Sage Handbook of Qualitative Research*, ed. NK Denzin & YS Lincoln (Sage, Thousand Oaks, 2005).

Teachers without Borders

The first author of this video is an education scholar. She used transnational feminist research⁵ narrative inquiry⁶ and poetic inquiry⁷ to explore experiences, transitions and identities of ten refugee women teachers from the former Yugoslavia who immigrated to Ontario and Québec during and after the civil war in the country. Author A is a refugee woman teacher from the former Yugoslavia herself, and her refugee story of leaving Yugoslavia, coming to Canada, pursuing a PhD, and negotiating multiple and conflicting identities was also included in the study. Additionally, a Canadian woman principal participated in the study, sharing her strategies for hiring and supporting refugee women teachers from the former Yugoslavia. Author A conducted two individual in-depth, open-ended interviews with each woman and two focus group interviews, one in Ontario and one in Québec. She was also interviewed by one of her PhD colleagues to write her story in a systematic manner. She analysed 613 pages of interview transcripts, 100 pages of field notes, fifty pages of a reflexive journal, ten pages of demographic sheets, and ten teacher identity maps. One of the focus group questions involved the participants creating a teacher identity map. I created a picture drawing question⁸ to explore the perceived professional identities of Yugoslav refugee women teachers settling in Canada. The women described their sense of being a teacher over time (i.e., before exile and after exile) and across space (i.e., in Yugoslavia and in Canada), charting powerful images of passionate teachers, missionaries, and guardian angels in Yugoslavia, as well as those images of caring grandmothers, disposable persons, and lifelong learners in Canada.

The First Author combined multiple research methodologies and methods to develop the multiple voices model.⁹ In addition to creating interpretative stories, dominant stories, and personal and collective experience narratives from participants' transcripts, she also created transcript poems. Author A first identified the main stories in the transcript, and condensed those stories into poems by keeping in key words and phrases while taking out prepositions, adjectives, and adverbs. She kept enough of the participants' words together to represent their

⁵ Tanya Bahkru, "Negotiating and Navigating the Rough Terrain of Transnational Feminist Research," *Journal of International Women's Studies* 10, no. 2 (2008): 209; Alexander, M. J., & Mohanty, C. T., "Cartographies of Knowledge and Power: Transnational Feminism as Transnational Praxis": in *Critical Transnational Feminist Practice*, ed. A. Lock Swarr, & R. Nagar (Albany, NY: State University of New York Press, 2010): 23-45.

⁶ Coralie McCormack, "From Interview Transcript to Interpretive Story: Part 1—Viewing the Transcript through Multiple Lenses," *Field Methods* 12, no. 4 (2000): 282–297, accessed November 11, 2009, <http://dx.doi.org/10.1177/1525822X0001200402>; McCormack, Coralie, "From Interview Transcript to Interpretive Story: Part 2—Developing an Interpretive Story," *Field Methods* 12, no. 4 (2000): 288–315; Anne Elliott and Susan Drake, "Concentric Storying: A Vehicle for Professional Development in Teacher Education." Paper presented at the Ontario Educational Research Council, December 1999.

⁷ Rich Furman, Cynthia Lietz, and Carol L. Langer, "The Research Poem in International Social Work: Innovations in Qualitative Methodology" in *International Journal of Qualitative Methods* 5, no. 3 (2006): 25; Corrine Glesne, "That Rare Feeling: Re-presenting Research through Poetic Transcription," in *Qualitative Inquiry*, 3 (1997): 202–221, accessed July 20, 2011, <http://dx.doi.org/10.1177/107780049700300204>;

Laurel Richardson, "The Consequences of Poetic Representation," in *Investigating Subjectivity: Research on Lived Experience*, in ed. C. Ellis and M. G. Flaherty (Newbury Park: Sage, 1992); Laurel Richardson, "Nine Poems," *Journal of Contemporary Ethnography* 23, no. 1 (1994): 3–13.

⁸ Nicole B. Balan, "Displaced Women Professionals: An Exploration of Perceived Learning Processes during Workplace Transition," Master's thesis, St. Catharines: Brock University, 2004.

⁹ Snežana Ratković, "Teachers without Borders: Exploring Experiences, Transitions, and Identities of Refugee Women Teachers from the Former Yugoslavia," PhD diss., St. Catharines: Brock University, 2014.

“way of saying things.”¹⁰ Finally, Author A reread each poem several times during data analysis to trim the poem down to its core, trimming down for rhythm, rhyme, and memorable stories.

Each transcript poem and each narrative contributed to a detailed picture of immigration, settlement, and professional integration processes as women spoke of continuing their education, knowing or learning the official language, and building Canadian society and the economy. The findings challenge the image of victimised and submissive refugee women, and bring to the centre of discourse the image of refugee women as skilled professionals who often remain un- or underemployed in her new country. Moreover, the women asserted: “We are a gift to Canada.”

Do You See What I See?

The Second Author is a social work scholar. The purpose of her community-based participatory research, “Do you see what I see?” was to understand the employment-health relationship for immigrant and refugee women from Korea, Asia, Africa, Japan, Arab world and Latin America (KAAJAL) in—a mid-sized urban/rural region in Ontario, Canada. The study utilised photovoice—a visual qualitative research methodology in which participants were given cameras to record their experiences (Wang, 1999, 2006).¹¹ 400 pages of interviews, 525 participant-generated photographs, and diaries of twenty women were analysed using Charmaz’s constructivist and intersectionality theory. Charmaz’s constructivist grounded theory¹² was used to develop initial codes, focused codes, categories, and descriptive themes. Intersectionality analysis was used to develop final analytical codes.

Study results showed that participants were deskilled, meaning they were working in jobs that did not match their credentials and/or required university education. Wherever women went, they were asked, “Do you have Canadian experience?” Women were encouraged to volunteer to gain that Canadian experience. However, they felt that while volunteering helped them meet people, it was not useful to find meaningful employment. Women felt trapped in survival jobs. For example, Krishna states: “I often feel like the fish trapped in a small bowl although I want to swim in the ocean. It is suffocating to be in a bowl. I want to be free.” The Second Author found that deskilling negatively impacted women’s mental health and sense of identity. For example, Susan questions: “Who am I here?” Findings highlight evidence of racism and micro-aggressions that made women feel worthless. Alma resists such racialisation: “We are NOT second-class citizens.” Despite all the post migration stressors, women stayed for the sake of their children. They felt that life in Canada was better for their children (especially the girl child) than it would have been in their country of origin. It is very important to highlight that women demonstrated incredible resistance in the face of post migration barriers. All the participants retrained and found meaningful jobs in Canada.

¹⁰ Glesne, *The Rare Feeling*: 205.

¹¹ Caroline C. Wang, “Youth Participation in Photovoice as a Strategy for Community Change,” *Journal of Community Practice*, 14, no. 1 (2006): 147-161.

doi: 10.1300/J125v14n01_8; Caroline C. Wang, “Photovoice: A Participatory Action Research Strategy Applied to Women’s Health,” *Journal of Women’s Health*, 8, no. 2 (1999): 185-92.

¹² Kathy Charmaz, “Constructing Grounded Theory: A Practical Guide through Qualitative Analysis.” (Sage, Thousand Oaks, 2006):224.

The Challenge of Being an Ethnographer and an Artist

The Second Author hired a local photographer and graphic artist to work individually with each participant from the beginning of the project. The task of the photographer was to teach women how to use digital cameras and take care of the cameras throughout the research, provide tips for taking professional photographs, and teach them how to download and save the photos into the USB stick that was provided to them. I worked with the graphic artist to convert the photographs into art pieces. The Second Author and the graphic artist chose the layout, the color, and the design. Each art piece represented a particular theme. The Second Author organized several art exhibitions in Ontario. These exhibitions were attended by a local Members of Parliament, Mayors Office, local Members of Provincial Parliament, employers, health care practitioners, academics, social workers, immigrants, and refugees, religious leaders and community members.

The First Author submitted several research papers and book chapters that included transcript poems. When submitting manuscripts to a special issue of the *in education journal* and to *Refugee Review II*, her transcript poems were challenged on the ground of their merit. More specifically, one reviewer stated that transcript poems interrupt the flow and another questioned if the transcript poems were really poetry. These comments excavated the ghosts of subjugated knowledges¹³ and generated the following questions in her mind: What counts as poetry? Whose poetry counts? Who produces poetry (and knowledge) about refugee female teachers and from what location? What are the politics of production of this poetry (and knowledge)?

Kent Maynard & Melisa Cahnmann-Taylor stated that aspiring ethnographic poets must become active participant observers, “reading contemporary poetry, attending readings, and engaging in the rigorous practices of writing and re-visioning within the poetic community.”¹⁴ The First Author argues, however, that ethnographic poets should also be receptive to the poetics of the field. She suggests extending researcher vision from poetry creation to poetry discovery. In her participants’ interview transcripts, the First Author discovered the poetry of the participants’ struggle and resilience, the vibrant verses of their lives.

Conclusion

While researchers continue to negotiate aesthetic approaches in research through individual endeavors or through collaborations, visuals and poetry are here to stay; they are experiential, evocative, and persuasive. They offer methodological authority and new social scripts. Visuals and poetry inspire research, inform policy, and innovate the field.

¹³ Michael Foucault, “Society Must be Defended: Lectures at the College De France 1975-76.” (New York, Picador, 2003):310.

¹⁴ Kent Maynard and Melisa Cahnmann-Taylor, “Anthropology at the Edge of Words: Where Poetry and Ethnography Meet,” *Anthropology and Humanism*, 35, no. 1, (2010): 2-19. doi: 10.1111/j.1548-1409.2010.01049.x

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Cross-border displacement and its invisibility: An introduction to the Colombian-Panamanian case

Natalie Tines¹

Editor's Note: This article accompanies a multimedia piece by the author, which can be viewed at <https://vimeo.com/187989120> using the password DarienGap.

Abstract

The research is aimed at refugees who cross into Panama by land, primarily from Colombia. The migrants are confined to the southern jungle region of the Darién and live in camp-like conditions, also called "Prison Villages" but without basic assistance or services usually provided to refugees. While there are no current statistics, it is estimated that as many as 100,000 to 200,000 Colombians reside in Panama, with no statistics on other nationalities. The situation of refugees is characterized by a combination of a restrictive protection environment, a broken asylum. The research project investigates key questions regarding the relation between mediums and mobility. With more visits planned to communities and villages spread across the Darién, the focus of analysis is the migrant subject and their stories intertwined with the pragmatic structures of Panamanian migration politics. The critical engagement reveals the emergency conditions of the current "Prison Villages" in the Darién, the militarised borders, xenophobic relations and uneven geographies.

Keywords: Forced migration, Borders, Doing Borders, Invisibility, Human Rights Abuses, Border Regimes, Migration in Darién.

At the end of 2014, I traveled up the pacific coast of Colombia by boat to the Panamanian town of Jaque in the Darien Gap, to do research on a documentary and write an article about the struggle for recognition by a very small population of Colombian refugees.

"Here we live like slaves."

Jaque, a small town on the Pacific coast of Panama, and its immediate surroundings, are home to a group of Colombian asylum seekers with Humanitarian Temporary Protection (HTP) status. HTP status was established by the Panamanian government for the 863 asylum seekers in the Darien border region in 1997, when there was a massive influx of Colombians due to increased violence in Colombia. The Panamanian Asylum Law specifies that beneficiaries of HTP status will not enjoy the legal and social benefits accorded to refugees under the 1951 Convention. HTP holders require permission to travel outside the immediate vicinity of Jaqué, which has a three-mile radius, for any purpose.

The restrictive definition of a refugee is only one of the many flaws in the Panamanian asylum system. Such a system appears to deter refugees from seeking protection, and has been found to be the last option possible for many Colombians. Female Colombian applicants who

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have been victims of sexual and gender based violence are regularly encouraged by migrant advocates to apply for other types of visas (e.g., domestic worker visas), rather than seek protection through Panama's asylum system.² In addition, for the very small number of applicants who actually do receive refugee status (2% success rate for asylum), it is very important to note that currently in Panama, refugee status does not provide a path to permanent status or citizenship, resulting in continued limited protection even for recognised refugees.

Since 2012, the border between Panama and Colombia has seen a rapid growth in military presence and concerns for the physical security of the Colombian refugee population are prevalent, as the same porous borders allow persecuting irregular armed groups to pursue civilian targets and conduct trafficking operations in drugs, arms, and sometimes people.³ Although Jaque is the official port entry to the Darien, there is a lack of civilian government presence; the only presence is in form of patrolling armed police forces, which make people in Jaque feel as though they are in an occupied police state.⁴ The police enforce a restrictive curfew on the HTP population. There have been reports of police misconduct and abuse, ranging from unwarranted physical assault on refugees and confiscation of food from the refugee community, to arbitrary detention and twelve-hour-long interrogations.⁵ Young Colombian women and girls have reported improper treatment and sexual exploitation.⁶ Colombian refugee children are particularly vulnerable due to recruitment by Colombian armed groups that operate in the Panamanian border region. There is only one low-level state person assigned to work in the local immigration office, the ONPAR. Although UNHCR and ONPAR representatives travel to Jaque periodically, HTP holders have expressed a lack of presence and an overall feeling of abandonment. The village Jaqué has been described as a *prison village* by international observers due to the extremely restricted rights and access to assistance. The plight of the PTH population in Jaque is so dire that the RCUSA delegation members were unsure how the group is able to survive at all.⁷ The local and national Roman Catholic Church ministries, Jesuit Refugee Society, a newly established Hebrew Immigrant Aid Society (HIAS) office, and UNHCR have provided targeted assistance, such as food and basic assistance as there is no right to work or access to health care. These efforts are, however, insufficient to create the necessary environment to support and sustain refugee integration. While UNHCR recognises the Colombian refugee and IDP population as one of their "largest populations of concern," the budget for refugee relief, recognition, orientation, and integration in the region is notoriously under-funded by donor states.⁸

There has been little written or visually documented on the violence in Panama, which makes sense since the forms of violence and institutional justice take place in rural spaces, and are committed away from the public eye. Using film and an ethnographic approach, this multimedia trailer contributes to a collaborative project between research and documentary filmmaking that examines the lived experiences of refugees and provides important insights that move beyond polarized and simplistic arguments. This project has expanded multiple questions concerning human rights, constitutional protection for refugees, and viable modes of contestation. In the first stage, the research and filming has been conducted on my own using a multi methodological approach, consisting of ethnographic participative observation and interviews (in-depth and other styles) in different places within the region (?).

² Refugee Council USA "Living on the edge: Colombian Refugees in Panama and Ecuador" 2011, 3-4.

³ Jesuit Refugee Service, "Colombian Refugees in Panama" March 23, 2011, 2.

⁴ Refugee Council USA "Living on the edge: Colombian Refugees in Panama and Ecuador" 2011, 6.

⁵ Refugee Council USA "Living on the edge: Colombian Refugees in Panama and Ecuador" 2011, 6.

⁶ Alberto Arce, "Creating or Regulating Development: Representing Modernities Through Language and Discourse" in Anthropology, Development and Modernities, ed. Alberto Arce and Norman Long (London: Routledge, 2010), 32.

⁷ Refugee Council USA "Living on the edge: Colombian Refugees in Panama and Ecuador" 2011, 6.

⁸ Jesuit Refugee Service, "Colombian Refugees in Panama" March 23, 2011, 2.

The multimedia is a first step at a project that compares strategies of response to forced displacement, reinforcing an image of enablement and activity rather than one that is static or passive. Visual testimonies widen the terrain of representation in the continent regarding its violent past. Of course, it is important to contextualise the history in relation to national experiences of state violence, which is why I would like to construct a visual archive that is politically motivated to interrupt the normalising tendencies of accepting displacement as the norm. Forced migrants are currently categorised as individuals of a homogeneous group, a stream of people who embody political and security problems and thus need to be segregated from society - if not, they can potentially destabilise host communities.⁹ Furthermore, the categorisation in the contemporary field poses the migrant as a 'problem', locating the object of study within bodies and minds of people categorised as migrants instead of in the political conditions or processes that produce massive territorial displacement.¹⁰ Silencing the migrants is not an act solely performed prior or during the displacement, it also means the ability or lack of ability, to establish narrative authority over one's circumstances and future. The impossibility of confronting the populations in their historical and political context takes away the right to testimony about a personal story and silences the migrants.¹¹

Since 2012, the Colombian government has been engaged in peace talks with the country's largest guerrilla group, the Revolutionary Armed Forces of Colombia (FARC), amidst an armed conflict that has dragged on for over 50 years and has displaced more than six million people.

The peace agreement will be just the beginning of a transition period that will encompass a range of measures aimed at reducing the country's risk of relapsing into conflict, one being finding comprehensive durable solutions for the country's displaced populations as a key aspect.

In the light of the peace agreement, the question arises what is supposed to happen to those refugees who have not been through formal asylum procedures and thus do not possess a regular migration status, leaving them '*invisible*' in the territories of asylum countries, such as PTH holders? The government, for example, provides repatriation support to Colombians residing abroad who organise their return through consulates in the countries of asylum. Yet refugees who repatriate spontaneously or are forced to return do not receive long-term reintegration support from the state.

⁹ Cosanna Preston, "The Most Important Quality of all Migrants – Forced Migrants included – is their Agency," E-International Relations, 2008.

¹⁰ Lisa H. Malkki, "National Geographic: The Rooting of Peoples and the Territorialization of National Identity Among Scholars and Refugees", *Cultural Anthropology* 7/1 (1992): 33.

¹¹ Lisa H. Malkki, "Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization", *Cultural Anthropology* 11/1 (1996): 378.

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