OXMO

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Editorial

Dear Readers,

at UNHCR's most recent annual meeting of the Executive Committee, the High Commissioner for Refugees, Mr António Guterres, announced that an increasingly complex international environment is making it harder to find solutions for the world's estimated 43 million refugees, internally displaced, and stateless people. In light of this fact, the High Commissioner called on the international community to "up its collective game to prevent conflict, to adapt to climate change and to better manage natural disasters". While Mr Guterres is right to emphasise that it remains pertinent that governments around the world continue to proactively address situations which induce widespread human displacement, he was less vocal in calling on states to adhere to established international obligations regarding access to the refugee protection regime.

Paralleling states' failure to respond to the effects of a worsening environmental disaster that has already displaced hundreds upon thousands of people in the Horn of Africa, efforts to reinforce zones of exclusion remain front and centre on many national agendas. In 2011, we continue to witness Europe's on-going neglect of people attempting to flee the violence catalysed by revolutionary struggles in North African and the Middle East; UNHCR rejecting Sri Lankan refugee claims *en mass* in first asylum countries across Asia, declaring that it is now safe for them to return home despite evidence from several human rights organisations pointing to the contrary, as well as reports of exponential increases in profits for those willing to capitalised on free market solutions to detention and migration management that are grossly inhumane.

Further a field, despite the High Court of Australia's decisive blow to the Gillard Government's plan to send 800 asylum seekers to Malaysia to deter boat arrivals, amendments to federal legislation are being considered in an effort to reinforce moves towards furthering the externalisation of asylum. This development, eloquently analysed by Luke Lovell in the Policy Monitor, illustrates that nations are still looking to burden shift rather than burden share. As a consequence, forced migrants are facing increasingly insurmountable barriers to accessing mechanisms of asylum, receding geographies in which adequate protection can be granted and the retraction of human rights. Clearly, the protection space available to forced migrants continues to be shrinking.

These events amongst others underscore that in addition to humanitarian assistance *in situ*, forced migrants across the world continue to be in desperate need of durable solutions outside their home countries and at times, beyond the bounds of their region of origin altogether. Therefore, as well as countering the causes of forced migration, we must not lose sight of our other vital duties namely, to ensure that asylum and comprehensive international protection remains a real option.

In response to the scaling back of asylum, Adeagbo Oluwafemi proposes that states should respect the human rights of forced migrants as global citizens rather than treating them as the excluded *other* on health grounds.

Forced migrants also continue to be restricted by structural constraints and dated bureaucratic labels that have failed to keep in step with the realties that are actually encountered. Moreover, binary conceptions of 'good' and 'evil' distinguishing the figure of the refugee from all others perpetuate a distortion of the complexities and nuances of human displacement. Too often, popular discourse and well-intended prescriptions can lead to the perception of forced migrants as passive victims. In the Academic Articles section, Kasli points out that the UN Protocol against Smuggling and its reception by UNHCR may reinforce a certain image of the 'smuggled migrant' that emerges simultaneously as a 'victim' of smuggling and a 'threat' to the states' authority over border crossings.

Standing in contrast to this notion, articles from First Hand over to the Policy Monitor reconfigure forced migrants as empowered agents. Elsa Oliveira presents the story of a Zimbabwean migrant sex worker who holds the South African state to its duty of accept her livelihood choice and to protect her human rights. Based on ethnographic fieldwork conducted in Hong Kong between January 2010 and July 2011, Terence C.T. Shum discusses the intersection between refugee protection and refugee tactics used to negotiate spaces for living.

In addition to the articles aforementioned, in the Field Monitor, Aoife O'Higgins looks into the causes of destitution amongst unaccompanied male Afghan and Iranian minors and asks: Why are these young people made destitute? And Naohiko Omata draws upon his fieldwork in Ghana, and reports on the challenges Liberian refugees faced due to the lack of formal refugee status.

In the Law Monitor, Christian Konrad provides an overview of the recently adopted Victims Law in Colombia and discusses some of the possible effects of the initiative's implementation. Adam Weiss looks at the exploitation of child labour by family members and explores the response of the European Court of Human Rights in the recent judgment of *Osman v Denmark*. And Amanda Gray considers the age assessment process of undocumented migrants in the UK in relation to the best interest of the child.

Finally in the Policy Monitor, Joakim Daun rethinks durable solutions for IDPs in West Darfur. Sheena Choi explores education issues faced by North Korean refugee youths in South Korea and their socialization into South Korean society. And Danielle Grisby presents an analysis of key divergences from Convention norms as present in The Russian Federation's asylum policy.

We hope you will find our author's contributions as engaging and thought provoking as we have.

The array of insightful articles included in this issue as well as the massive number of people who continue to languish in limbo remind us that greater attention needs to be focused on how the refugee regime is being harnessed to protect or repel forced migrants. Heed must be paid to the enactment of government policies, the passing of laws and on-going developments in the maze of bureaucratic procedures which forced migrants must navigate in order to be able to reclaim their rights. Taken together, they highlight that governments must be responsible for actions that seek to reinforce a distinction between the "us" and "them" that often stand in direct contention to the fundamental tenets and spirit of our own societies. International Organisations, particularly in non-signatory countries must also continue to fulfil their mandate to protect those who have little access to much else rather than bowing to the will of donors and host countries.

Since the launch of the first issue we have received very positive feedback and much interest in the publication, from academics and practitioners alike. As OxMo grows we continue to urge you, the reader, students, forced migrants, NGOs, advocates and those situated at the frontiers of humanitarian crises in all areas of the world to share your insights and experiences. By shedding light on forced migration issues you can contribute to drawing attention to the injustices as well as the promises of a better a future.

With this issue, OxMo has moved in to a new phase. We welcome a dynamic incoming board of editors who will take over from the founding team: Emily Bates, Hanna Baumann, Chloé Lewis, Rachel Mayer, Ellie Ott, Anne Peters, Robyn Plasterer, James Souter, Emma Tobin and Ursula Wagner. We are also proud to announce the addition of a new section on our website "From Academia, Policy and Practice" which is open to all to express ideas and reflections, as well as the launch of the OxMo student lecture series. For more information on these developments and the details of upcoming calls for papers please visit our website www.oxmofm.com.

As we hand over the reigns, we hope that the founding of OxMo and its expansion as a project is only the beginning of a concerted effort on the part of the student community, forced migrants and those on the ground to promote a better understanding of the complexities and challenges of displacement. Most importantly, we hope that critical discourse may lead to the strengthening of the rights of forced migrants everywhere.

V. Tai Sayarath
Editor-in-Chief

October 2011
Bangkok, Thailand

The Destitution of Young Refugees in the UK

By Aoife O'Higgins

Mahdi arrived in the UK alone at 16 and claimed asylum after being persecuted for his involvement with a Kurdish Independence Party in Iran. At 18, his application for asylum was refused and he lost his appeal. He was then made homeless by the local authority previously responsible for his care. A human rights assessment was later conducted by social services to determine whether this decision was unlawful. The assessment concluded that Mahdi should be offered support on a "discretionary" basis. Months of destitution have severely affected Mahdi's mental health and the limited support he now receives does not guarantee him a secure future.

Many young asylum seekers in the UK face similar difficulties. In 2009, approximately 3,000 young people came to the UK to claim asylum in their own right. When their age is accepted to be under 18 – 35% of children have their age disputed (UKBA, 2011a) – young refugees are taken into the care of social services by virtue of the Children Act 1989. Local authorities are given a grant by the UK Border Agency (UKBA) to provide for young refugees in care, and up until the age of 21 or 24 if they are in full time education.

Where a young person has some leave to remain in the UK, their entitlements are relatively straightforward though service delivery is patchy (Brownlees and Finch, 2010). When young people have reached the end of the line their entitlements become more difficult to interpret. In a recent Court of Appeal case, a presiding judge reflected on the "impenetrable nature of the legislation" (paragraph 3) in relation to the legal welfare – asylum nexus. So where does this leave the young people directly affected? Why do young refugees become destitute? These are the issues I explore in this article. I also reflect on recent legislation of particular relevance to young refugees.

Processes and guidance for young refugees in the UK

In the UK, the majority of young people under 18 are refused asylum and granted discretionary leave to remain until 17.5 according to the Home Office policy on unaccompanied minors (UKBA, 2011a). To extend their stay in the UK, they must make an in-time application for extension of Discretionary Leave. If this is refused they may have a right of appeal.

In previous years, young people would often wait years for a decision on their application to extend their discretionary leave. During this time, they continued to be eligible for support from the local authority. However, since early 2010, practitioners at The Children's Society – New Londoners Project have noted that UKBA now make decisions within a few weeks or months. Many young people therefore reach the end of the line very soon after their 18th birthday and are at risk of becoming destitute.

Small numbers of young people may also have pending asylum applications beyond their 18th birthday and some may have outstanding fresh claims for asylum if they have been able to provide new evidence towards their claim for protection. However, because these young people turn 18 without any leave to remain, determining their entitlements is complex and they may face the same risks of losing support as those who are at the end of the line.

Why do young refugees become destitute?

Local authorities often seek to discharge young refugees over 18 who do not have leave to remain. These are young people who have an application for asylum or a fresh claim outstanding, or young people at the end of the asylum process.

In order to discharge young refugees from the care of the local authority, social workers must have regard for the Nationality, Immigration and Asylum Act 2002. This complex piece of legislation lists individuals excluded from any local authority support, namely failed asylum seekers (who do not have any outstanding applications or appeals) and who resist removal attempts as well as those who are unlawfully in the country and not (or no longer) asylum seekers. Therefore, young people who have an outstanding application should not be discharged. Where young people are at the end of the line, they may be excluded from support unless this would constitute a breach of their human rights (usually under article 3 or 8 of the European Convention on Human Rights). This should be determined in an assessment conducted by a social worker of the relevant local authority.

Where a decision is made to terminate support, young people are given a three-months grace period, funded by UKBA, to make arrangements for future care (UKBA, 2011b). In reality, as failed asylum seekers are not allowed to work, the options are limited to voluntary return or destitution. The Children's Society has found that many young people then become homeless until arrangements are made for removal to their country of origin. For young people from Iran or Eritrea, significant administrative barriers to removal mean young people may be destitute in the long-term.

Because legislation and guidance are extremely complex and change so often, practitioners at The Children's Society have commented that implementation on the front line is patchy. While local authorities grapple with their policies, young people are not consistently provided with the support they are entitled to. Some local authorities deal with large numbers of young people who no longer have any leave to remain. As a consequence, local authorities incur costs for which they do not have a budget. Such limited resources may create an incentive for local authorities to discharge a greater number of young refugees from their care without proper regard for legislation.

Destitution in practice

In 2010, the Court of Appeal clarified the law, with respect to young people who have outstanding claims, in *R (SO) v London Borough of Barking & Dagenham [2010] EWCA Civ 110,* (hereafter referred to as *SO*). The judges in the case found that local authorities could provide accommodation to young people with outstanding claims where their welfare requires it. Moreover, young refugees should not be supported by Asylum Support (accommodation provided by UKBA), as it is not considered adequate accommodation for care leavers.

However, some local authorities do not acknowledge their responsibilities to support young people which follow this legislation. Naser came to the UK alone, at 16, after being tortured in Iran. He was in care for nearly a year in a large South London local authority, but was discharged when he exhausted his appeal rights at 18. When he submitted a fresh claim in May 2011 Naser was told by social services that support could not be reinstated, as per *SO*, and that "if he had returned to his country when we discharged him, he wouldn't be in this situation now." Local authorities do not get grants from UKBA for those young people affected in the *SO* case (UKBA, 2011b) and with recent government cuts, local authorities have very limited resources (Pemberton, 2011). Perhaps this is why they are keen to ignore legislation. In practice however,

this means young people become destitute, or, like Naser, are housed in inappropriate accommodation.

For young people at the end of the line, like Mahdi, the *SO* case does not apply and they are excluded from local authority support by virtue of the Nationality, Immigration and Asylum Act 2002. Recent guidance from UKBA states that local authorities must, in such cases, conduct Human Rights Assessments. However, there is still very little guidance or training for social workers. The No Recourse to Public Funds (NRPF) Network in Islington has a pro forma questionnaire for practitioners to use[1]. The guidance on the form is very limited. For example, it suggests that social workers should refer to UKBA Country of Origin guidance notes when making such decisions; however these are also problematic (Independent Chief Inspector of UKBA, 2011). For example, these guidance notes make no reference to specific risks on return to children. Even where local authorities follow statutory guidance before discharging young people, decisions are not based on sound information, legislation or social care good practice.

The young people I advise are on the brink of destitution due to poor decision making in local authorities and incorrectly applied (or ignored) legislation. Local authorities may be frustrated that UKBA is not fulfilling its part of the contract by removing young people back to their country of origin when their claims fail, leaving them to make difficult decisions and take the blame for the destitution of young people. In reality many young people are detained and removed, particularly young Afghans. But most find themselves destitute for some time before this happens. Many question whether the government has a moral obligation to avoid destitution of those living in the UK (Red Cross, 2010). It is urgent in the first instance that local authorities and social care services comply with their legal obligations to support young people and prevent destitution. Social care services exist first and foremost to safeguard and promote the welfare of children and young people. It is not unreasonable, therefore, to suggest that local authorities should reflect on their moral duty to avoid destitution of all young people regardless of their immigration status.

Aoife O'Higgins is a French / Irish national who holds a Masters in Refugee Studies from the University of East London, where she concentrated on issues affecting refugee children. She conducted research on the concepts of agency and vulnerability in refugee children in the UK. She has worked for 7 years in the refugee sector, most recently as a Young Refugee Rights Practitioner with The Children's Society – New Londoners Project. Aoife is about to embark on a Masters in Evidence-Based Social Interventions at University of Oxford.

References Cited

BROWNLEES, L. and **FINCH, N**. (2010) *Levelling the playing field A UNICEF UK report into provision of services to unaccompanied or separated migrant children in three local authority areas in England.* London: UNICEF

CHIEF INSPECTORATE OF UKBA (2011) *The Use Of Country Of Origin Information In Deciding Asylum Applications: A Thematic Inspection* [Online] Available from http://icinspector.independent.gov.uk/report-published-on-the-use-of-country-of-origin-information-in-deciding-asylum-applications/ [Accessed 15 July 2011]

[1] The form can be found on the NRPF website: http://www.islington.gov.uk/community/equalitydiversity/refugees_migrants/nrpf_network/policy_guidance.asp

PEMBERTON, C (2011) Protests against cuts to services for child asylum seekers *Community Care* 8/4/11 [Online] Available from http://www.communitycare.co.uk/Articles/2011/04/08/116644/protests-against-cuts-to-services-for-child-asylum-seekers.htm [Accessed 15 July 2011]

R *(SO) v London Borough of Barking & Dagenham* [2010] EWCA Civ 1101

RED CROSS (2010) *Not gone, but forgotten. The urgent need for a more humane asylum system* [Online] Available from http://www.redcross.org.uk/About-us/News/2010/June/~/media/BritishRedCross/Documents/Archive/GeneralContent/N/Destitution%20report%20Not%20gone%20but%20forgotten.ashx [Accessed 15 July 2011]

UKBA (2011a): Control of Immigration: Quarterly Statistical Supplementary Tables - Q4 2010 (October to December 2010) [Online] Available from http://webarchive.nationalarchives.gov.uk/20110218135832/http://rds.homeoffice.gov.uk/rds/immigration-asylum-stats.html [Accessed 15 July 2011]

UKBA (2011b) Grant Instructions for Local Authorities [Online] Available from http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithasylumseekers/local-authority-grants/leaving-care/grant-instructions.pdf?view=Binary [Accessed 15 July 2011]

Forgotten or Neglected? Non-Registered Liberian Refugees in Ghana: Their Rights and Protection

By Omata Naohiko

This paper reports on the existence and plight of non-registered Liberian refugees in Ghana. According to UNHCR statistics, the Buduburam refugee settlement, located in Southern Ghana, accommodated approximately 12,000 Liberian refugees as of the end of 2009 (UNHCR 2010). However, this number was not quite accurate. These 12,000 refugees were only those who had been registered with UNHCR in Ghana. Besides these 'formal' refugees, according to settlement residents, there were more than a few thousand non-registered Liberians. Most of them were forced migrants who had fled from Liberia to escape violence and persecution during the Liberian civil war, which began in 1989 when Charles Taylor took up arms against Samuel Doe's regime. Nonetheless, these Liberians had not been recognised by UNHCR and its Ghanaian refugee counterparts and had been excluded from any forms of refugee protection and assistance in Ghana.

Between August 2008 and July 2009, I conducted a one-year doctoral field-research in the Buduburam refugee settlement. The main focus of my research was to explore refugees' livelihood strategies to understand how they had been making ends meet. During the research period, in order to observe refugees' daily life as closely as possible, with permission from the Ghanaian government, I lived inside the settlement and conducted more than 300 semi-structured interviews with settlement residents from different ethnic groups and with different ages, socio-economic status and gender. To obtain a balanced perspective, I also interviewed non-refugee stakeholders in Ghana, such as UNHCR Ghana office and the Ghana Refugee Board (GRB), which is the government body responsible for refuge issues in the country. This report is based upon these first-hand data and my direct interactions with Liberian refugees.

Complicated refugee status in Ghana

The legal status of Liberian refugees in Ghana was quite complicated. Overall, they were categorised under three different 'labels' (Zetter 2007). The first category consisted of the so-called 'formal' refugees who had been issued with a UNHCR ID card which was later 'verified' by UNHCR. The second comprised those who had been granted a UNHCR ID card but had missed getting it verified. The third group, the main focus of this paper, was non-registered Liberians without a UNHCR ID card, who were not recognised as refugees by UNHCR or the Ghanaian government.

This complication over refugee status emanated from previous refugee registration and verification exercises. In August 2003, UNHCR and the GRB conducted a first and last registration exercise for refugees in the Buduburam settlement (UNHCR and WFP 2006). Liberian refugees who had arrived in Ghana before this registration and who managed to show up for this exercise were at that point granted their *prima facie* status and given a UNHCR ID card (UNHCR 2008). Since then, there had been no update of new arrivals, meaning that those who arrived after this 2003 exercise, or who missed it, never had an opportunity to receive this ID card and to be registered as refugees in Ghana.

To make matters more complicated, in early 2007, UNHCR organized a verification exercise, but only for those who had already been issued with their ID card in 2003. UNHCR verified the individual data of ID card holders and took their fingerprints during this exercise. The ID card

holders who went through this verification were called refugees with a 'verified' UNHCR ID card. Although granted their ID card in 2003, refugees who missed the 2007 verification were no longer considered 'formal' refugees by UNHCR. In January 2008, UNHCR Ghana produced a document titled *Answers to Frequently Asked Questions on Legal Status and Durable Solutions of Liberian and Sierra Leonean Refugees in Ghana*. This document stated that those who had missed either the 2003 registration or the 2007 verification were not 'refugees', regardless of their physical presence in the Buduburam settlement. As the document gave no explanations why they were not refugees, it seemed that the provision of refugee status was based upon whether refugees had successfully gone through both of the exercises rather than on an assessment of the well-founded fear of being persecuted in the country of origin.

During the fieldwork, I specifically asked around thirty refugees, both registered and non-registered, what they thought about the registration and verification. Regardless of their refugee status, they complained about a series of these exercises conducted by UNHCR and the GRB. All of them confirmed that these events had been announced with only a few days' notice. Therefore, some refugees who were outside the settlement for various reasons, including medication, schooling and economic activities, were unable to return for these exercises (also see Tete 2005: 50). I interviewed three refugees who had missed the 2003 registration exercise for medical reasons. For instance, when the registration was announced, a female Liberian refugee had been hospitalised in the Ghanaian capital, Accra, because of severe malaria and was therefore unable to be present for the registration. After she left the hospital and returned to the settlement, she explained why she could not attend the registration and asked UNHCR staff members to issue her ID card, but her request was rejected. Also, the majority of refugee interviewees confirmed that the 2003 registration was never really completed. The registration exercise team organised by UNHCR ran out of ID card materials and promised to come back to those waiting in a queue but never returned, consequently leaving these refugees without any formal identification in Ghana.

When I interviewed public information officers of UNHCR Ghana, I pointed to the large number of Liberians without a UNHCR ID card and asked them why UNHCR had not conducted another registration after 2003. Their answer was that the final ceasefire agreement of the Liberian war was made in August 2003 and Charles Taylor had subsequently left Liberia and hence there was no longer a risk of persecution in Liberia (Interview with UNHCR public information officers, Ghana, 8 April 2009). They also insisted that Liberians who arrived in Ghana after the 2003 registration were all economic migrants, not refugees, who were only interested in third-country resettlement in the West.

These views, however, risk oversimplification for two reasons. First, the Liberian civil war was a quite complicated conflict that involved several different warring parties based on different ethnicities. Charles Taylor was not the only cause of persecution and violence and therefore removing him from power did not mean an elimination of the risk of persecution in the country for all refugees. For example, several families from the same village in Liberia expressed the peril of persecution upon return. According to them, one of the Generals of the warring faction who had committed atrocities against their family members was alive and running a business there. Because their family had not joined this warlord during the civil war, they firmly believed that their repatriation to the village would seriously endanger their lives. The plausible risk of persecution and insecurity upon return has also been documented by other studies (for example, Hardgrove 2009; Sahan 2008).

Second, due to the rise of insecurity in Ivory Coast between 2002 and 2003, a large number of Liberian refugees in Ivory Coast were forcibly relocated to Ghana. There are no statistics to show exactly how many of them escaped to Ghana. But according to Drumtra's report (2003), at

the outbreak of the Ivorian war, there were some 70,000 Liberian refugees in Ivory Coast and about 30,000 of them fled from there to safer neighbouring countries including Ghana. These Liberians somehow managed to flee from Ivory Coast but not of all of them, especially households with multiple children and elderly members, could reach the Buduburam settlement before August 2003. During the fieldwork, I interviewed more than ten refugee families which had missed the registration because they had had to stop at several places prior to their arrival in Buduburam.

The views presented above by UNHCR public information officers seem to be an organisational official position. For example, some UNHCR documents highlighted the restored peace and stability in Liberia marked by the final ceasefire agreement and the departure of Taylor in 2003 (UNHCR 2004: 169; UNHCR & WFP 2006: 10). The tone of the documents seems to suggest that these events were a sign of the absence of any persecution risk in Liberia for all refugees after August 2003. But the presented evidence questions the legitimacy of UNHCR's perspective.

Plight of non-ID card holders

In Ghana, as in other refugee-hosting countries, refugees without a UNHCR ID card had been excluded from protection and assistance provided by the UN Refugee Agency. This exclusion made their lives extremely daunting. For instance, they were denied access to the UNHCR/WFP free food ration for vulnerable refugees even if they met the vulnerability criteria, such as being HIV positive or being disabled. Inside the settlement, there was a UNHCR clinic which provided a subsidized medical service for refugees but non-ID card holders had not been able to benefit from it so they had had to pay all their medical expenses on their own. They had been unable to access vocational training programmes organised by UNHCR Implementing Partners to teach new livelihood skills. UNHCR Ghana conducted a voluntary repatriation programme for Liberian refugees between April 2008 and March 2009 with a provision of transportation services and a USD 100 repatriation stipend for returnees. Nevertheless, refugees without a UNHCR ID card could not avail themselves of this repatriation package. Thus, if they wanted to go back to Liberia, they had to cover their transportation and other necessary expenses, which cost at least USD 50 per person according to refugees who returned spontaneously, on their own.[2]

Unfortunately, according to the findings from my field-research, very often, these unrecognised refugees without a UNHCR ID card were the most vulnerable group that required external support and protection from the refugee-supporting regime. During the fieldwork, I classified the refugee population into different economic categories and learned that more than one-third of the poorest refugees were non-registered, female-headed households with multiple children. Many of them were directly attacked by the rebel groups in Liberia, were forcibly displaced a few times, and ended up in Ghana after August 2003 by following other refugees. Given their scarce livelihood assets and lack of access to external support, they had been constantly compromised in terms of the most basic needs such as daily diet and medications. Because of the lack of recognition, however, they had not been able to appeal their adversity to UNHCR and the national refugee authority since they were 'invisible' (Polzer and Hammond 2008: 417) to the non-refugee stakeholders.

[2] Non-verified ID card holders could access some of these services provided by UNHCR but were not allowed to use the UNHCR repatriation package like non-ID card holders. Only the verified ID card holders could use the UNHCR repatriation package to Liberia between 2008 and 2009.

Disappearing boundary between registered and non-registered refugees

Recently, however, the boundary between formally registered refugees and non-registered refugees has been rapidly disappearing. This does not mean that UNHCR and the GRB have finally recognised non-ID card holders as refugees and have started providing protection for them. Rather, the assistance that registered refugees could access has recently been terminated by UNHCR. Therefore, the level of protection and support offered to even 'formal' refugees has been deteriorating to that of non-ID card holders. In 2009, UNHCR stopped subsidizing the settlement's clinic and schools, terminated the free food ration for vulnerable families, and finally handed over most of the settlement facilities to the Government of Ghana. With a decreasing budget for protracted Liberian refugees (UNHCR 2007), a senior international UNHCR officer in Ghana confirmed frankly that there was no more finance for Liberians in Ghana as it was very difficult for UNHCR to "sell this refugee population" (Interview with a senior international UNHCR officer, 8 June 2009).

Regardless of their sheer vulnerabilities, non-registered Liberians in Ghana have mostly been neglected by UNHCR and have not been granted another opportunity to be registered in order to receive protection. Regrettably, there seems to be very little prospect of any improvement in the level of protection and welfare for non-registered Liberians since the UN refugee agency is disengaging even from formally registered Liberian refugees. Some UNHCR staff members in Ghana suggested that the UN Refugee Agency has been seeking the moment to declare the cessation clause for residual Liberian refugees. Nevertheless, my field-study confirmed the existence of unrecognised Liberians and pointed to the higher percentage of vulnerable groups among them. Given their predicaments, more attention to their rights and protection should be paid by the international refugee regime.

Naohiko Omata is a Japanese national who is in a PhD programme at the School of Oriental and African Studies (SOAS) at the University of London. He conducted field-research on the economic life of Liberian refugees in Ghana and their reintegration upon repatriation to Liberia. Previously, he worked for World Relief, Mapendo International and UNDP in Sub-Saharan Africa in the area of forced migration and development.

References Cited

DRUMTRA, J. (2003) 'West Africa's Refugee Crisis Spills Across Many Borders,' *Migration Information Source*, Washington DC, Accessed on 20 October 2009 via

http://www.migrationinformation.org/feature/display.cfm?ID=148

HARDGROVE, A. (2009) "Liberian Refugee Families in Ghana: The Implications of Family Demands and Capabilities for Return to Liberia", *Journal of Refugee Studies*, **22**, 4, 483-501.

POLZER, T. and HAMMOND, L. (2008) "Editorial Introduction: Invisible Displacement", *Journal of Refugee Studies,* **21**, 4: 417-431.

SAHAN, E. (2008) "Residual Liberian Refugee Populations in Bududuram, Ghana", *Draft Discussion Paper,* Australian Refugee Rights Alliance**,** Accessed on 7 January 2011 via

http://www.refugeecouncil.org.au/docs/resources/reports/arra08_bududuram.pdf

TETE, S.Y.A (2005) *Narratives of Hope? Displacement Narratives of Liberian Refugee Women and Children in the Gomoa-Bududuram Refugee Camp in Ghana*, Master's Thesis in Development Studies, Norwegian University of Science and Technology.

UNHCR (2004) *Global Appeal 2005.*

UNHCR (2007) *Global Appeal 2008-2009*.

UNHCR (2008) *Answers to Frequently Asked Questions on Legal Status and Durable Solutions of Liberian and Sierra Leonean Refugees in Ghana.*

UNHCR (2010) *Statistical Yearbook 2009*.

UNHCR and WFP (2006) *Joint Assessment Mission Ghana: Buduburam and Krisan camps.*

ZETTER, R. (2007) "More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalisation", *Journal of Refugee Studies*, **20**, 2: 172-192.

Interviews Cited

UNHCR Public information officers, Ghana, 8 April 2009.

UNHCR Senior international officer, Ghana, 8 June 2009.

Refugee Protection and Spaces: Seeking Asylum in Hong Kong

By Terence C.T. Shum

More than 7,000 refugees are now struggling to survive in Hong Kong. Ninety percent of them come from South Asia (i.e. Sri Lanka, Nepal, Pakistan, Bangladesh and India), nine percent from Africa (e.g. Somalia and Uganda) and one percent from other countries (Christian Action 2010). Living in a small city like Hong Kong is a challenge to them as there is no comprehensive programme to deal with refugees after the Vietnamese boatpeople saga in the 1990s. The lack of domestic refugee policy in nowadays Hong Kong is attributed to its past experience in handling Vietnamese boatpeople. In a legislative council meeting, the authority recalled the experience in 1980s when the number of boatpeople arrivals hit record highs; the Hong Kong government spent 'HK$8.7 billion (£676 million) in providing assistance to them' (Legislative Council, HKSAR government 2006). The Hong Kong SAR government believes that the extension of the 1951 Refugee Convention will trigger the drastic surge of asylum seekers (Legislative Council, HKSAR government 2006). The government further reiterates in front of the UN Committee for Torture that the authority has a 'firm policy not to grant asylum' (Loper 2010: 435) and 'has no plan to extend to Hong Kong the application of the [Refugee Convention]' (Loper 2010: 435).

This article examines refugee tactics used to negotiate spaces for living within current refugee policy arrangement in Hong Kong. Space, as Henri Lefebvre has defined, is relations between activities, processes and elements in the environment (Lefebvre 1991). Some scholars even perceive space as 'landscapes of power' (Zukin 1991). Space in this paper is a construct of power relations. I aim to examine the ways that refugees practice their lives in this refuge space. The refuge space is examined through the ways in which the local policies shape refugees' opportunities, as well as by how they react to these structural settings; the power relationship between refugees and local people, and the tactics they use in their everyday struggles.

As a volunteer worker at a refugee center in Hong Kong, over the past three years, I maintained contacts with refugees with whom I have developed a personal relationship. This article is based on interviews with refugees and ethnographic observation in refugee communities conducted between January 2010 and July 2011. I examine how refugees practice their lives in Hong Kong and provoke discussion about the viability of asylum in an urban context in Asia, which is under-researched.

Refugee Policies

Assistance to refugees in Hong Kong is limited. Hong Kong SAR government provides nothing more than a monthly rental allowance of £ 78, a food bag equivalent to £ 23 every 10 days and medical services. Once the asylum seekers receive refugee status, Hong Kong SAR government immediately shirks their responsibility to UNHCR for further support where refugees receive £ 93 and around £ 23 as monthly rental and living allowances respectively. My field experience shows that such policies make poverty endemic amongst refugees.

The only legal space that protects refugees is the principle of *non-refoulement* under the 1984 Convention Against Torture. Legally, it aims to prohibit the *refoulement* of people who would face 'torture or cruel, inhuman or degrading punishment or treatment' [Article 3, Convention Against Torture (United Nations 1984)]. According to my informants, staying in Hong Kong does not necessarily free them from inhuman treatments. Structural constrains, insufficient financial support, high cost of rent, discrimination and the deprivation of rights force refugees to apply different survival strategies within the refuge space in Hong Kong.

Space of Detention

Upon arrival, asylum seekers must surrender to the Immigration Department. They must go through mandatory detention in order to be eligible to receive rental allowance and food bags from the government. However, detention periods vary from one case to another. The Immigration Ordinance of Hong Kong legitimises detention of asylum seekers, meaning it is lawful to put asylum seekers in detention centres. One informant visits the Immigration Department three times on the second day of his arrival asking to be arrested. Although the officer asks him to return home and they will arrest him later, my informant still insists in immediate arrest because he knows that he will not be financially and materially supported by the government without detention. He explains, 'I don't want to be detained, but I have to be detained in order to survive.'

In Hong Kong, many refugees possess valid visas and passports upon entry. Mandatory detention is widely criticized as illegitimate and as a violation of human rights (see for example Ozdowski 2002, Bhagwati 2002 and Johnson 2007). In Hong Kong, Article 28 of the Basic Law protects persons from being arbitrarily or unlawfully arrested, detained and imprisoned. However, all of my informants have been detained without trial. It shows that the authority has violated the fundamental rights of refugees which should be protected under Basic Law in Hong Kong. I argue that what is more important beyond mandatory detention is the diminishing self-worthiness of ex-detainees. While some informants consider themselves have no importance in this world, some consider their status to be even worse than pets as there is Hong Kong law protect animals (Daly 2009). Some even see themselves as similar to trees in Hong Kong. One of my informants says, 'I just realise that all trees in Hong Kong have own numbers. I am just a tree because I also have numbers. I have UN number.'

Spaces of Living and 'Working'

'What kind of room they expect to get for only HK$1,000 (£78)', a real estate agent asks while I am accompanying my informants to look for decent accommodation. Refugees usually live in small and poorly furnished accommodations in low-income districts of Hong Kong. James Scott (1985) has argued that the weak do have 'weapons'. For the refugees who are subject to all sorts of institutional barriers, they have found various ways of resisting. My research shows that refugees have high level of mutual supporting in surviving. To secure a better place to live, many refugees wisely pool together their rental allowances so as to get relatively better and decent accommodations. However, finding a place to live is a challenge as many landlords are not willing to rent rooms to 'foreigners'. By searching on their own, the only response my informants get from the agents and landlords are the unpleasant attitudes and a simple answer, 'No, go, go' ('*Mouh a*, *jau la*, *jau la*' in Cantonese). With the assistance of local friends, some are lucky to find decent places to live. However, some are still forced to live in rooms less than 50 square feet without any windows or air-conditioning. Due to space limitation, many of them have to cook inside their rooms. One informant describes his room as 'a boiling container' that makes him feel crazy.

Refugees are required to report to the Immigration Department every two months where they are repeatedly warned by the authority that they are not allowed to work even voluntarily under Hong Kong law. However, my informants complain about this arrangement as crazy idea. In order to get money to survive, especially for paying utility charges and daily expenses, many refugees have no choice but to engage in either illegal or voluntarily works. Some social organisations provide transportation subsidies to those who either attend classes or do volunteering. Refugees save money by walking instead of taking transportation to the organisations. Some of them work for licensed street hawkers by assisting them to set up hawker stalls every day. Others work illegally in Chungking Mansions, a dilapidated building in Hong

Kong where thousands of traders from Africa seek their fortune through low-budget transnational trades across Africa-Hong Kong-China (Mathews 2008 and 2011).

Space of Discrimination

Local impressions of immigrants often create stereotypes and even conflicts. Eriksen (1993:24) has stated, 'Stereotypes help an individual to create order in an otherwise excruciatingly complicated social universe. They make it possible to divide the social world into kinds of people, and they provide simple criteria for such a classification.' My experience in the field shows that culture is mostly used by the locals to create order while dealing with refugees. They often perceive local culture as normal whereas 'foreign' culture as abnormal. The local landlords ask my informants not to wear traditional clothing outside their rooms because their strange appearance might scare neighbouring local tenants. They should wear normal western clothing like T-shirts and jeans when they are outside. My informants believe that following the new order in cultural space is the only way to survive. However, this does not mean that they have given up their own culture in Hong Kong. Instead, my informants all practice their own culture when they are inside their rooms such as wearing local clothing and eating with hands. One informant explains, 'This make me feel like home.'

Stereotypes and prejudice is created through public and private discourses. Public discourses include news report on television and writings that have imparted violent and unfriendly images of all refugees - 'refugee as a special kind of person' (Malkki 1995:9). Private communications between local people also transmitted these stereotypes of refugees in Hong Kong. Many locals believe these immigrants are violent. In return, my informants always have to reiterate in front of the locals that 'I am different, no problem!' In that way they try to distinguish themselves from those trouble makers.

Conclusion

The existing policies and practices of the Hong Kong SAR government fail to provide adequate protection and assistance to refugees. Asylum seekers are subject to mandatory detention upon arrival, which is clearly illegitimate and is violation of human rights. In order to survive, refugees have to use their own ways to negotiate spaces for living such as mutual-supporting amongst refugees, engaging in illegal employment and thinking of ways to avoid being stereotyped. Understanding how refugees develop and use interactive strategies in the local community can assist policymakers design more effective protection and assistance programmes. This article has examined the refugee tactics used in Hong Kong and has also identified policy fault lines that Hong Kong SAR government should properly address.

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References Cited

BHAGWATI, P.N. (2002) Regional Advisor for Asia and the Pacific of the United Nations High Commissioner for Human Rights, *Report on Mission to Australia 24 May to 2 June 2002:*

Human Rights and Immigration Detention in Australia, [Last accessed on 22 August 2011 at http://www.unhcr.ch].

CHRISTIAN ACTION (2010) *Working with refugees and asylum seekers*, PowerPoint presentation, 4 October 2010.

DALY, M. (2009) 'Refugee Law in Hong Kong: Building the Legal Infrastructure', *Hong Kong Lawyer*, September, pp. 14-30.

ERIKSEN, T. H. (1993) *Ethnicity and Nationalism: Anthropological Perspective*, London, Pluto Press.

JOHNSON, J. (2007) 'Fearing the United States: Rethinking Mandatory Detention of Asylum Seekers', *Administrative Law Review*, Vol. 59, Issue 3 (Summer), pp. 589-620.

LEFEBVRE, H. (1991) *The Production of Space*, Oxford: Blackwell.

LEGISLATIVE COUNCIL, HONG KONG SAR GOVERNMENT (2006) *Minutes of joint meeting of the panel on welfare services and the panel on security*, 18 July 2006, LC Paper No. CB (2)3077/05-06.

LOPER, K. (2010) 'Human Rights, Non-refoulement and the Protection of Refugees in Hong Kong', *International Journal of Refugee Law*, 22(3), pp. 404-439.

MALKKI, L. (1995). *Purity and Exile: Violence, Memory and National Cosmology Among Hutu Refugees in Tanzania*. Chicago: Chicago University Press.

MATHEWS, G. (2008) "Chungking Mansions: A Center of 'Low-End Globalization.'" *Ethnology*, XLVI (2), pp.169-183.

_____. (2011) *Ghetto at the Center of the World: ChungKing Mansions, Hong Kong*, Hong Kong: Hong Kong University Press.

OZDOWSKIL S. (2002) *A Report on Visits to Immigration Detention Facilities by the Human Rights Commissioner 2001, Human Rights and Equal Opportunity Commission, Sydney*, [last accessed on 22 August 2011 at http://www.hreoc.gov.au/human_rights/idc/index.html].

UNITED NATIONS (1984) *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, United Nations High Commissioner for Human Rights, [last accessed on 10 July 2011 at http://www2.ohchr.org/english/law/cat.htm].

ZUKIN, S. (1991) *Landscape of Power: From Detroit to Disney World*, Berkeley: University of California Press.

Territory, Displacement and Land Restitution in Colombia: The Victims Law as a New Perspective for Internally Displaced Persons?

By Christian Konrad

For first time in recent history, the Colombian government has centred its attention on the victims rather than on the victimisers in striving to bring an end to the country's long-standing armed conflict. Despite a government-led demobilisation process beginning in 2005, aiming to reintegrate over 30,000 paramilitary combatants into society, the policy has thus far produced little tangible change. Indeed, confrontations between government forces, guerrilla groups and successors of the paramilitaries continue. However, rather than pursuing the exclusively military doctrine adopted by the former government, the current administration under President Juan Manuel Santos signed and approved a law intent on bringing justice to the victims of the conflict. The Presence of the United Nations Secretary-General Ban Ki-Moon for the approval of the act in June 2011 underlined the political importance of and the high level of expectations surrounding the Victims Law, both nationally and internationally. This has led some to characterise this legal initiative as a "historical step" (Semana 28 May 2011: n.p.).

Against this backdrop, this paper introduces the legal content of the Victims Law, highlighting in particular the importance of rural land in Colombia as a basis of political and economic power. Viewed as such, the acquisition of land in Colombia becomes an important motive for forced displacement. Secondly and relatedly, this article will discuss the potential of the Victims Law to improve the situation of the Internally Displaced Persons (IDPs) in Colombia. While recognising the incipient nature of this legislation, this article ultimately concludes that the law represents an important though incomplete instrument to deal with the complex land situation in Colombia and provide justice to the victims of the conflict.

The Victims Law

on 10 June 2011, a broad political coalition adopted the Victims Law following several months of debate. The enactment of this law is remarkable in its recognition of the victims of the internal conflict in Colombia at the governmental level. Importantly, it overturns the position adopted by previous administrations, which denied responsibility for civilians adversely affected by the violence. The alleged purpose of this legislation is two-fold and brings together two pieces of legislation that were formerly separate. Firstly, the law mandates the provision of humanitarian, and psychological and financial assistance signifying both symbolic and substantive compensation to the millions of displaced, kidnapped, disappeared, threatened and assassinated persons. Secondly, the Victims Law requires the implementation of measures to return land titles to their former owners (Semana 28 August 2011: n.p.). Though it is estimated that four million people will potentially benefit from the law, IDPs represent the largest single group of beneficiaries. According to the Internal Displacement Monitoring Centre (IDMC), between 3.6 and 5.2 million Colombians have been forcibly displaced as a result of the conflict (IDMC 2010: n.p.)[3], with levels of displacement peaking in 2002 when approximately 450,000 people fled their homes. Notwithstanding the drop in numbers of newly displaced persons, in 2010 an estimated 280,000 IDPs were registered (CODHES 2011). Although Colombia established a legal

[3] The figures published by Acción Social, the Colombian authority responsible for IDPs, reflect the number of persons officially recognised by the state who benefit from Law 387. In contrast to the so-called official numbers, Colombian civil society headed by the non-governmental organisation CODHES also includes persons excluded in the official reference. The reasons for being excluded were investigated by the *Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado* (2008).

framework for displaced persons in 1997, Law 387, the recently enacted Victims Law goes much further. Indeed, the scope of Law 387 is limited to IDPs and only provides basic assistance to its beneficiaries, and unlike the Victims Law, does not provide broad compensatory or land restitution measures.[4] Nevertheless, both laws overlap in several respects and it is difficult to predict how they will interact in practice.

According to the Victims Law, victims are defined as "those persons who have individually or collectively suffered damages after 1 January 1985 as a consequence of infractions of International Humanitarian Law or severe and manifest violations of the norms of International Human Rights, which occurred in the context of the internal armed conflict" (Ley de Víctimas 2011, author's translation). The key ideas in the text are "truth", "justice" and "reparation". These notions are to be enacted through five programmes, including: psychosocial support, administrative indemnification, restitution of land titles, material reparation and guarantee of non-repetition of the conflict-related human rights violations (Presidencia de Colombia 10 June 2011: n.p.). Notwithstanding the aforementioned political progress marked by the Victims Law, it has, nevertheless, provoked a number of debates, and some civil society organisations, such as the *National Movement of Victims of State Crimes* (MOVICE) or the critical *Lawyers Collective José Alvear Restrepo* have raised concerns regarding its legal content, in addition to questioning the substantive viability of the provisions. This is strongly evidenced by the land restitution programme. Inextricably intertwined with territorial and land disputes, and widely identified as one of the root causes of the conflict, this particular aspect of the legislation has set expectations high, simultaneously provoking strong disputes (El Colombiano 2 August 2010: n.p.).

The land issue as a factor of displacement

Indeed, land conflicts are a seemingly ever-present problem in Colombia. In 1984, 0.5% of landowners possessed 32.7% of farmland, whereas in 1996, 0.4% of the populace possessed 44.6% of land and in 2009, 62.91% of cultivatable land was in the hands of only 0.43% of the population. Behind these numbers lies what analysts call a process of 'counter-agrarian reform' (Prensa Rural 15 August 2009: n.p.). Land concentration, growing use of land for cattle breeding, diminishment of food production and constantly high rates of displacement of landowning peasants have increased in previous decades and have intensified as a result of the dynamics of the armed conflict (Presa Rural 15 August 2009: n.p.). It is estimated that seven million hectares of land formerly owned by small landowners have been appropriated illegally. Now, in view of the magnitude of land-grab, the Victims Law intends to return only a part of the land to the displaced population. It is, nonetheless, expected that over the next decade, two million hectares of land will be redistributed.

The difficulties facing the land restitution programme become evident when we consider the complexities surrounding landownership in rural Colombia. For instance, the legal status of different landholdings are often unclear and the property titles difficult to distinguish. Moreover, these issues tend to be further complicated by the scarcity of official information. Crucially, the possession of land appears to be a question of power and wealth, as demonstrated by the fact that the majority of territories appropriated in the last decades have ended up in the hands of big

[4] According to Law 387 (1997), a displaced person is defined as "any person who has been forced to migrate within the national territory, abandoning his place of residence or customary economic activities, because his life, physical integrity, personal freedom or safety have been violated or are directly threatened as a result of any of the following situations: internal armed conflict, civil tension and disturbances, general violence, massive Human Rights violations, infringement of International Humanitarian Law, or other circumstances arising from the foregoing situations that drastically disturb or could drastically disturb the public order.". The law mandates that the government provide humanitarian aid, guarantee free access to the health and education system and to re-establish the economic self-sufficiency of IDPs.

landowners, agro-industrial companies, paramilitaries, members of organised crime, drug dealers or local Caudillos. As a result of the boom of the palm oil industry, many of the formerly peasant-owned estates were converted into large-scale plantations to meet the growing demands of the world market. This has led to whole villages being displaced by a variety of actors, as seen most famously in the case of Cacarica in the Chocó region in 1997 whereby paramilitary groups supported by the Colombian army murdered and displaced inhabitants to exploit the region´s rich natural resources. As part of the displaced population of Cacarica returned to their lands years after the incident, they found it covered with palm oil plantations (Comisión Intereclesial de Justicia y Paz: n.p.). The case of Cacarica serves to exemplify the connection between economic interests and forced displacement, or so-called development-induced displacement. As Colombia mainly exports natural resources, such as mining or agrarian products like bananas or the palm oil, the availability of large territories is an important economic necessity.

However, processes of forced displacement and land acquisition in Colombia are not necessarily achieved by violent means. Over time, agents of dispossession and displacement have developed more inconspicuous methods to realise their aim often threatening inhabitants to sign a purchase contract In other cases, agents of displacement exploit the desolate situation of the conflict-affected population, convincing them to sell their land for less than fair value. The 'legally' attained properties can be resold to third parties or companies that incorporate them into their stock of real estates. In such situations, the original land title is increasingly dissolved, and responsible actors become harder to locate. Thus, the challenges facing displaced persons seeking to prove their claims to certain estates are high, especially given the fact that many peasants in Colombia have never possessed a legal document of land ownership. Some rural areas lack state authorities and many property acquisitions are not the result of a sales contract, but the gradual taking-over of formerly uncultivated land. Though Colombian law provides legalisation on the possession of territory acquired after several years of active cultivation, many peasants have never made use of this law.[5]

Arguments for and against the Victims Law

This, broadly speaking, outlines the context in which the Victims Law entered the legal and political stage in 2011. As the principal authorities in charge of implementing the land restitution programme, Acción Social (a Social Services Ministry assigned to the Presidency), the Ministry of Agriculture and the Colombian Institute for Rural Development (Incoder) face the difficult task of unravelling the non-transparent property situation to return to the victims the land that once belonged to them. That the law includes mechanisms that acknowledge the complexity of the conflict and the social situation represents a positive step in the right direction. Furthermore, when former landowners claim their purported land, under the new law it is the current owner who must establish the legitimacy of his or her contract. This contrasts directly with the usual jurisprudence where the burden of proof lies with the claimant. Moreover, the fact that the sale was authorised in the past by a judge or other local authority does not automatically render it valid. This accounts for the possibility of corruption between local authorities and agents of displacement, which may have facilitated the formalisation of illegally acquired land titles (La Silla Vacia 1 June 2011: n.p.). Such provisions might prove helpful in implementing the land restitution programme in a sustainable way.

Still, many concerns and criticisms exist with regards to the forthcoming restitution process. First, there is the question of the security of returning persons. As the armed conflict persists, the security risks facing IDPs have not disappeared. They may become victims of further

[5] Following the NGO *Corporación Jurídica Yira Castro*, the spectrum of methods of land-grab in Colombia are diverse and even include legal jurisprudence to induce displacement (Corporación Jurídica Yira Castro 2007).

aggression, or be displaced for a second, or even third time. Though the law is supposed to provide protective measures, they remain vague, while the experience of previous legal initiatives shows that the state is not very vigilant in the application of these provisions. Between 2002 and 2011 alone, 49 people were allegedly murdered for attempting to claim their rights to land restitution (Semana 5 July 2011: n.p.). These threats continue and are likely to increase as the most recent restitution programme is implemented.

A second point of contention lies in the decision to limit the restitution process to those estates that were illegally appropriated after 1 January 1991 (Amnesty International 6 June 2011: n.p.). This temporal restriction has been criticised by a number of civil society organisations, as well as by the government's opposition, and was heavily debated before the bill passed. Since displacement and land accumulation in Colombia have occurred for several decades, the law is not designed to indemnify all damaged persons. Furthermore, the decision to only restore two of the estimated seven million hectares provoked many critics and it is believed that only the economically less important territories will be part of the restitution process.

While at this early stage it is not possible to give a full prognosis vis-à-vis the development of the Victims Law, this paper has highlighted the importance of the long-overdue step made by this legislation to create a more expansive legal framework for the victims of the Colombian conflict. Within the different pillars forming the law, the article focused on the land restitution programme because of its important role for the displaced population. It argued that the programme contains remarkable instruments to face the complex situation of landholdings in the rural areas, which represent one of the conflict´s key issues. However, in light of its lack of protective measures for the returning population and its failure to indemnify the totality of IDPs, future amendments will be indispensable.

The author is a German national and holds a degree in Human Geography and Spanish Philology. He studied in Potsdam, Berlin and Bogotá and visited Colombia several times to complete field- work on forced displacement in the country. During his last stay, he worked as a volunteer for a human rights campaign and investigated the relationship between memory and displacement at the Colombian office of the International Centre for Transitional Justice.

References Cited

AMNESTY INTERNATIONAL (2011) 'La Ley de Víctimas de Colombia, un paso importante, pero quedan cuestiones pendientes', 6 August, Amnesty International. [last accessed on 14/07/2011 at http://www.amnesty.org/es/news-and-updates/ley-victimas-colombia-cuestiones-pendientes-2011-06-03].

CODHES (2011) 'Consolidación de qué? Informe sobre desplazamiento, conflicto armado y derechos humanos en Colombia en 2010', *Boletin informativo de la Consultoria para los Derechos Humanos y el Desplazamiento*, Número 77, Bogotá.

COMISIÓN DE SEGUIMIENTO A LA POLÍTICA PÚBLICA SOBRE DESPLAZAMIENTO FORZADO/CODHES (2008) 'Verificando el cumplimiento de los derechos', *Primer informe de verificación presentado a la Corte Constitucional*, Bogotá.

COMISIÓN INTERECLESIAL DE JUSTICIA Y PAZ (2011) 'Communities file suit against the contract for the Transversal de las Américas', 23 May. [last accessed on 15/09/2011 at http://justiciaypazcolombia.com/Communities-file-suit-against-the].

CORPORACIÓN JÚRIDICA YIRA CASTRO (2007) *Despojo de Tierras. La Verdad detrás del Desplazamiento Forzado*
[last accessed on 12/07/2011 at http://cjyiracastro.org.co/images/stories/articles/despojofinal5B1%5D.pdf].

EL COLOMBIANO 2011) 'Plan de restitución de tierras ilusiona a las víctimas', 2 August, [last accessed on 23/08/2011 at http://www.elcolombiano.com/BancoConocimiento/P/plan_de_restitucion_de_tierras_ilusiona_a_las_victimas/plan_de_restitucion_de_tierras_ilusiona_a_las_victimas.asp].

INTERNAL DISPLACEMENT MONITORING CENTRE (2011) *Global Statistics*
[last accessed on 11/07/2011 at http://www.internal-displacement.org/8025708F004CE90B/%28httpPages%29/22FB1D4E2B196DAA802570BB005E787C?OpenDocument].

LA SILLA VACIA (2011) '¡Aprobada la Ley de Víctimas!', 1 June. [last accessed on 12/07/2011 at http://www.lasillavacia.com/historia/aprobada-la-ley-de-victimas-24894].

LEY 387 DE 1997 (2011), 18 July, Bogóta.
[last accessed on 11/07/2011 at http://www.brookings.edu/projects/idp/Laws-and-Policies/~/media/Files/Projects/IDP/Laws%20and%20Policies/Colombia/Colombia_Law387_1997_Eng.pdf].

LEY DE VÍCTIMAS (2011), 10 June, Bogóta. [last accessed on 14/07/2011 at http://www.archivogeneral.gov.co/index.php?idcategoria=4419#].

PRENSA RURAL (2009), 'La cuestión agraria en Colombia', 29 October. [last accessed on http://prensarural.org/spip/spip.php?article3153#nb1 at 23.08/2011].

-------(2009), 'Una auténtica contrareforma agrarian en Colombia', 15 December. [last accessed on 13/07/2011 at http://www.prensarural.org/spip/spip.php?article3412].

PRESIDENCIA DE COLOMBIA (2011), 'Presidente Santos destacó los elementos

fundamentales de la Ley de Víctimas y Restitución de Tierras', 10 June. [last accessed on 11/07/2011 at http://wsp.presidencia.gov.co/Prensa/2011/Junio/Paginas/20110610_12.aspx].

SEMANA (/2011), 'Ley de Víctimas, un paso histórico', 28 May. [last accessed on 11/07/2011 at http://www.semana.com/nacion/ley-victimas-paso-historico/157521-3.aspx].

-------(2011) 'Los retos de la aplicación de la Ley de Víctimas', 5 July. [last accessed on 14/07/2011 at http://www.semana.com/nacion/retos-aplicacion-ley-victimas/159759-3.aspx].

Forced Migration of Children: The Recent Judgment of the European Court of Human Rights in *Osman v Denmark*

By Adam Weiss

Introduction

The European Court arguably has the most well-developed jurisprudence on the rights of victims of exploitation, including victims of human trafficking, of any international court or human rights body.[1] This brief article looks at the exploitation of child labour by children's family members, in particular it explores the response of the European Court of Human Rights ('ECtHR') to this phenomenon in the recent judgment in *Osman v Denmark*.[2]

Exploitation of Children by Their Family Members

Sometimes parents or other relatives forcibly move their children to exploit them for economic gain. This is an issue that has only been tangentially considered by the ECtHR. In *Siliadin v France*, the ECtHR dealt with the case of a teenage girl trafficked[3] from Togo to France, where she was exploited in domestic servitude. The Court dealt with the failure of the French authorities (and French law) to sufficiently punish those who exploited her. Although the ECtHR did not explore the issue, it is clear from the judgment that members of the applicant's family were involved in trafficking her, notably her uncle, who, when she escaped her 'employers', persuaded her by telephone to return to them.[4]

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[1] See, e.g., *Siliadin v France* (application number 73316/01, judgment of 26 July 2005) (domestic servitude); and *Rantsev v Cyprus and Russia* (application number 25965/04, judgment of 7 January 2010) (sexual exploitation). But see *Hadijatou Mani Koroua v Niger*, judgment of Court of Justice of the Economic Community of West African States, judgment of 27 October 2008 (slavery).

[2] Application number 38058/09, judgment of 14 June 2011.

[3] Although the ECtHR did not explicitly conclude that the applicant had been a trafficking victim, the facts of the case fit the trafficking definition, as set out in Article 4 of the Council of Europe Convention on Trafficking Against Human Beings, 16 May 2005, CETS 197:

> *For the purposes of this Convention :*
> *a) "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;*
> *b) The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;*
> *c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article;*
> *d) "Child" shall mean any person under eighteen years of age;*
> *e) "Victim" shall mean any natural person who is subject to trafficking in human beings as defined in this article.*

[4] Paragraph 17 ('Subsequently, in obedience to her paternal uncle, who had been in contact with Mr and Mrs B., she returned to the couple, who had undertaken to put her immigration status in order. However, the situation remained unchanged: the applicant continued to carry out household tasks and look after the couple's children.

The ECtHR was asked to deal more fully with such a situation in *Osman v Denmark*, a case in which the Court delivered judgment on 14 June 2011.[5] The case involved a Somali national who was residing legally in Denmark with her family from the age of seven. Her parents divorced and she lived with her mother. The applicant had disciplinary problems and was expelled from various schools; by the age of 15, was no longer in school at all. The applicant's father proposed taking her on a short trip to visit her paternal grandmother in Kenya. The applicant was then abandoned by her father with her paternal grandmother who had to take care of her. After two and a half years, the applicant was able to leave the refugee camp and contacted the Danish authorities in Nairobi in order to obtain a new visa to re-enter Denmark. Danish immigration law, and specifically the law on family re-unification, had changed, however, and she was now too old to be eligible for a new visa. She re-entered Denmark clandestinely, rejoining her mother and siblings, and unsuccessfully challenged the refusal to grant her residence status.

The Court found that the refusal to re-instate the applicant's residence status violated Article 8[6] of the European Convention on Human Rights. In her application to the ECtHR, the applicant alleged that she was a victim of human trafficking; indeed, she alleged not only that her Article 8 rights had been violated but also her Article 4[7] rights, as the authorities had alleged in an act of human trafficking. As this was the first time the trafficking allegation had been made, the ECtHR found that 'the Danish authorities had… no reason to take this allegation into account', and rejected the complaint under Article 4. However, the Court did take up the applicant's suggestion that the Danish authorities (and, indeed, the Court) should 'look past the exercise of parental authority in order to protect her interest and that it was obvious that her father's decision to send her to Kenya was not in her best interest'.[8] The Court took particular notice of the applicant's allegations 'that she had been obliged to leave Denmark to take care of her grandmother at the Hagadera refugee camp for more than two years; that her stay there was involuntary; that she had no means to leave the camp'; in short, that she was exploited by her own parent. The Court looked past the principle of the 'exercise of parental rights' and found that in this case, the Danish authorities did not give due consideration to the child's own interests which were, in fact, quite different from her father's and her father's vision of them.

The Court could have accepted the applicant's invitation to see this as a trafficking case. Child trafficking has only two elements: the act (recruiting, transporting, transferring, harbouring or receiving a person) and the purpose (exploitation). It is, however, not necessary to show means.[9] Child trafficking certainly appears to have happened in this case and, as such, the Danish authorities had an obligation, under Article 10[10] of the Council of Europe Convention on Action

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She slept on a mattress on the floor of the children's bedroom, then on a folding bed, and wore second-hand clothes. Her immigration status had still not been regularised, she was not paid and did not attend school.').

[5] Application Number 38058/09.

[6] '*1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*'

[7] '*1. No one shall be held in slavery or servitude. 2. No one shall be required to perform forced or compulsory labour.*' The third paragraph of this Article excludes certain forms of work from the definition of 'forced or compulsory labour'.

[8] Paragraph 63.

[9] See above, note 3.

[10] *1 Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.*

Against Trafficking in Human Beings, to identify the applicant as a victim of trafficking. The Court found that the applicant had not exhausted domestic remedies on this point, placing the onus on her to identify herself as a victim of trafficking. It resulted in a more mitigated examination of the nature of the applicant's forced migration from Denmark to Kenya.

The ECtHR's judgment is nonetheless an important step in recognising the insidious ways in which a parent or relative can subject her/his own child to human rights abuses entailing forced migration. The Court concluded that the Danish authorities were not required to take into account the potential human-trafficking element in the case. However, they were required to recognise that her father acted inconsistently with his child's best interests. This may provide the basis for a more child-centred jurisprudence from this Court, which in the past has been reluctant to look past, or require States to interfere with, the exercise of parental responsibility.[11]

Conclusion

There is a growing appreciation at European level of children's vulnerability to human trafficking and exploitation. The *Osman* case marks a tentative step towards recognising the existence of these phenomena within the family unit. It will take more time, and more cases, before we understand the extent of forced migration of children for the purposes of exploitation within families and, more importantly, the legal consequences this has for States.

Assistant Director of the AIRE Centre (Advice on Individual Rights in Europe), a London-based NGO whose mission is to promote awareness of European law rights and assist marginalised individuals and those in vulnerable circumstances to assert those rights. The author was involved in the representation of the applicant in Osman v Denmark, along with Saadiya Chaudary, Hildur Hallgrímsdóttir and Sarah St Vincent.

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2 Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.

3 '*When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.*'

4 As soon as an unaccompanied child is identified as a victim, each Party shall:

a provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child;

b take the necessary steps to establish his/her identity and nationality;

c make every effort to locate his/her family when this is in the best interests of the child.

[11] Compare, e.g., *Nielsen v Denmark* (10929/84), judgment of 24 October 1988, finding no violation of Article 5 in the case of the involuntarily detention of a child in a psychiatric hospital because it was done with his mother's consent. 'The care and upbringing of children normally and necessarily require that the parents or an only parent decide where the child must reside and also impose, or authorize others to impose, various restrictions on the child's liberty' (paragraph 61).

Age Assessment of Undocumented Migrants in the UK and the Best Interests of the Child

By Amanda Gray

Unaccompanied and separated asylum seeking children ('UASC') are a particularly vulnerable group of displaced persons. Identification as a child (i.e. under 18 years old) is vital to ensure they benefit from the unique rights granted to them by international law. Yet, the task is easier said than done especially for children approaching 18-years-old. Lack of reliable identity documents, developmental and physiological variations among and within different ethnic groups and the effects of poor nutrition exacerbate the difficulties.

This article argues the principle of the best interests of the child is key to improving the effectiveness and accuracy of age assessment of UASC's. Article 3 of the UN Convention on the Rights of the Child ('CRC') makes clear the bests interests of the child is the primary consideration for states in all actions concerning children.

Age Assessment in the UK:

The current practice for age assessment in the UK has evolved through social service processes and legal challenges to such processes. In most cases age is first disputed when the individual approaches the authorities to claim asylum. The initial dispute is between what an Immigration Officer (checked by a more senior staff) believes the age of the young person to be based on physical appearance and demeanour and what that person says their age is.[17] If disputed, the individual is referred to the local authority for an assessment, unless they are believed to be 'significantly' over 18, when they will be immediately placed into adult procedures.[18]

The leading UK authority on age assessment is *B v Merton LBC*[19], which created a pseudo legal standard for formal assessments, known as 'Merton Compliant'. Merton Compliant age assessments are conducted by local authority social workers. Where age is disputed, the credibility of the applicant, physical appearance and behaviour, general background of the applicant – including ethnic and cultural considerations, family circumstances, education, and recent history – must be assessed by two trained social workers. The Court in *B v Merton* found a medical report was not necessary.

The *Merton* standard has come under criticism due to concern over accuracy of the process, the lack of independence of social services who have resource implications when children are identified and the use of the assessment in the asylum adjudication.[20] In practice these assessments are often appealed by legal practitioners who commonly rely upon medical evidence. In *A v Croydon,* however, the UK Supreme Court clarified that since medical reports have a margin of error of two years or more, they too cannot be considered as conclusive evidence of age and should only be taken into consideration with all evidence presented. As a result, we are currently caught between three positions in the UK, with lawyers appealing cases using medical

[17] Age may also be disputed by Social Services at a later stage after they been referred to the local authority by UKBA.

[18] *See UKBA Asylum Instruction at; http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/assessing-age*

[19] B v Merton London Borough Council [2003] EWHC 1689 (Admin)

[20] See Anna Verley Kvittingen 'Negotiating childhood: Age Assessment in the UK asylum system' Working Paper Series No. 67 Oxford (RSC. 2010)

evidence, the Supreme Court questioning the authority of medical evidence alone, and the Merton Compliant standard relying on a subjective assessment. With delays caused by appeals, some age assessments in the UK can take several months or more. This adds additional burdens to resources and has a damaging practical and emotional impact on USAC's.

The removal of the UK's reservation to Article 22 of the CRC[21] in November 2008 means CRC rights now apply to non-British children. Introduced in 2008, UK domestic legislation gives specific effect to Article 3 of the CRC with s.55 of the Borders, Citizenship and Immigration Act 2009 obligating all public bodies to safeguard and promote the welfare of *all* children in the UK.[22] Those s.55 duties, which extend to matters of legislation policy and practice, apply also to age assessment. With such legal obligations, age assessment in the UK must be revisited to ensure it is in line with these legal obligations, of primary importance the child's best interests.

Legal obligations require a new approach:

Given the difficulties of assessing age in borderline cases, an assessment must take into account all relevant determining factors, including physiological, psychological, cultural, linguistic and religious factors, and must be carried out without delay by specialists in those disciplines. The use of objective methods that are thorough, multi-disciplinary and include a scientific method, would contribute to fairer and safer decisions and increase confidence in the system. The introduction of scientific principles is necessary in order to ensure coherent and consistent outcomes.[23] While more research is required into effective medical methods which uphold the rights of the child, with appropriate safeguards and for borderline cases, such methods may be proportionate and necessary.

The former UK Children's Commissioner, Sir Ansely Green concludes that a combined approach is a pragmatic way forward:

> *Multi-professional* assessment involving social workers, educationalists, paediatricians and psychologists.....would seem to be a pragmatic way forward in order to obtain a consensus decision on age.[24]

The UN Committee on the Rights of the Child has made clear states are required to take positive steps to ensure any age assessment process is as efficient, timely, accurate and safe as possible and that where a margin of error prevails in borderline cases, the benefit of the doubt is automatically applied.[25] By increasing confidence in the system, in borderline cases states may be more willing to apply the benefit of the doubt. The starting point, however, in accordance with Article 8 of the CRC must be one that respects the identity of the child. Hence age assessment is a last resort. Only borderline cases can justify a legitimate aim (assessing the age of the child) as is required by Article 8 of the European Convention of Human Rights which protects the right to privacy. There should also be informed consent by the individual to any assessment procedure

[21] Article 22 requires states to ensure all refugee seeking or refugee unaccompanied children receive appropriate protection and humanitarian assistance in the enjoyment of the rights within the CRC.

[22] While the terminology of s.55 ('safeguarding and promoting the welfare of the child') is different from that of Article 3 of the CRC, the UK meaning is the same. 'Every Child Matters – Change for Children' is the statutory guidance to UKBA staff issued under s.55 of the 2009 Act. It states that, 'in accordance with the UN Convention on the Rights of the Child the best interests of the child will be a primary consideration'.

[23] EXCOM Conclusion, Children at Risk, 5 October 2007, No. 107 (LVII) – 2007; www.unhcr.org/4717625c2.html

[24] '*The assessment of age in undocumented migrants*', p.12, Professor Sir Al Aynsley-Green Kt, A report for the Office of the Defensor del Pueblo, Madrid Spain, March 2011

[25] Para 31 (a) of UN Committee on the Rights of the Child General Comment No. 6 (2005)

taking into account the physical and psychological maturity of the child. This is supported by the UN Committee;

> …. The (age) assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child, giving due respect to human dignity…. (emphasis added)[26]

A multi-disciplined approach is more likely to increase accuracy and safety of results, reducing the risk of appeals and making the process more efficient. Respecting the principle of best interests, it is vital the assessment is completed before the asylum decision as whether they are a child is a key factor to assessing persecution and risk.

Conclusion

A fresh approach to age assessment for UASC's is urgently required in the UK. This approach should be substantiated by the principles of international law with regard to children – with the primary consideration being the best interests of the child. Best practice must be an approach that increases the fairness and accuracy of the decision at the outset, which can be best done by using a multi-disciplinary approach which is more likely to narrow the margin of error in decisions. This should increase the confidence of all involved in the decision-making process, reducing the need for appeals to challenge less reliable assessments and facilitating the application of the benefit of the doubt.

This more sophisticated approach is vital to ensure age assessment is fair, accurate and timely. In light of the legal obligations upon the UK to respect the best interests of all children, it must urgently revisit its age assessment procedures so the rights of this vulnerable population are protected at every stage of displacement.

References

Statutes:
UN Convention on the Rights of the Child accessed at;
http://www2.ohchr.org/english/law/crc.htm

European Convention of Human Rights accessed at;
http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf

UN Documents:
UN Committee on the Rights of the Child, General Comment No. 6 (2005) accessed at;
http://tb.ohchr.org/default.aspx?Symbol=CRC/GC/2005/6

EXCOM Conclusion, Children at Risk, 5 October 2007, No. 107 (LVII) – 2007 accessed at;
www.unhcr.org/4717625c2.html

[26] See footnote 9

Statutory Guidance:
'Every Child Matters – Change for Children' acccessed at;
http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/legislation/bci-act1/change-for-children.pdf?view=Binary

Articles:
"A New Approach to Age Assessment of Unaccompanied and Separated Children: Current Practices and Challenges in the UK," *Fahamu Refugee Legal Aid Newsletter*, no. 11 (Jan. 2011)

Negotiating Childhood: Age Assessment in the UK Asylum System, Working Paper, no. 67 (RSC, Nov. 2010)

'The assessment of age in undocumented migrants'. Professor Sir Al Aynsley-Green Kt, A report for the Office of the Defensor del Pueblo, Madrid Spain, (2011)

The Silent Plague: *Refoulement* in the Russian Federation

By Danielle J. Grigsby

Receiving nations' efforts to limit the influx of refugees whom they would then be obligated to protect seriously challenges the guarantee to *non-refoulement* in the 1951 Refugee Convention. International advocacy efforts focus on curtailing incidences of dramatic interception of asylum seekers when attention should also be paid to other, silent incidences where receiving states' policies functionally provide no guarantee of *non-refoulement*. The Russian Federation's 1997 Law on Refugees exemplifies an overt disregard to protection from *refoulement*. Based on a study conducted by the author in Moscow from June to August 2010, this article presents an analysis of the pivotal divergences in Russia's asylum policy from the norms set forward in the 1951 Refugee Convention. It first examines the principles of *non-refoulement* and the debate surrounding its implementation, followed by an historical examination of Russia's post-Soviet refugee policy. Conclusively, by citing legal documents, this article demonstrates Russia's silent, yet calculated, disregard for the principle of *non-refoulement* evidenced by exceptions to the international standard codified in Russian Federal Law.

Principles of *Non-refoulement*

Non-refoulement stipulates that refugees should not be returned (*refouled)* to any country where they are likely to face persecution or torture (UNHCR 2008). It constitutes the single, crucial guarantee of protection bestowed on refugees by states party to the 1951 Refugee Convention. Article 33(1) of the Convention establishes that 'No contracting state shall expel or return (*refoul*) a refugee in any manner whatsoever to the frontiers or territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion' (United Nations 2008).

However, migratory patterns can place cumbersome economic burdens on receiving states, due to geographic proximity to conflict areas or perceived economic and political stability (UNHCR 2008). Should states be mandated to guarantee protection in cases of status abuse, misrepresentation, or criminal activity (UNHCR 1997)? The framers of 1951 sought to ensure the rights of the sovereign by including the following exception to *refoulement*, Article 33(2): *Refoulement* 'could not be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.' Traditionally, States draw on Article 32 to determine crimes deemed 'particularly serious.' Article 32 stipulates that, 'Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order' having first been awarded due process of the law (UNHCR 1997).

There has been a sharp rise in receiving nations' efforts to curtail the influx of asylum seekers whom they would be obligated to protect as parties to the Convention. Receiving nations challenge the guarantee to *non-refoulement*: must a refugee be *inside* the receiving state before *non-refoulement* becomes a guarantee, and must refugees first meet the strict status determination requirements *before* they are guaranteed *non-refoulement* (UNHCR 1994)?

Focus has been on states found openly violating *non-refoulement*. The dramatic show of turning away 'boat people' or holding asylum seekers during refugee status determination (RSD) outside national boundaries overshadow other states' silent, yet calculated, abuse of Article 33(2) of the 1951 Convention (UNHCR 1997).

Refugees in the Russian Federation

The collapse of the Soviet Union ushered in a complex period in Russia's experience with migration. The sudden restricting of borders necessitated a hastily constructed asylum system to manage the flow of people – whether economic migrants or refugees – from across the Commonwealth of Independent States (CIS) (Marks 2009).
Migration constituted one of the most dramatically contested policy issues of the mid-1990s in Russia. Due to the State's lackadaisical implementation of its migration policy, porous borders and thriving shadow economy, Russia experienced an unprecedented influx of undocumented migrants and asylum seekers which led to escalated tension between the migrants, refugees and their host communities (Afshar 2005).

Responding to a national outcry, the Russian Federation, already party to 1951 Convention and the 1967 Protocol, revised its refugee policy. In 1997, the State passed a version of the Law on Refugees, which set forward a series of requirements for Russia's unique asylum process (RFFL 1997).

Russian Policy on Refugees

The 1997 Law on Refugees is largely punitive and is influenced by the sovereignty provision[27] of the 1951 Convention. Article 5.1(1) states that any individual applying for – or holding – refugee status may become subject to immediate expulsion from the country if they are found in violation of *any* law. This becomes problematic with Russia's reception and asylum policies; many fail reasonability tests and effectually guarantee a refugee's eminent violation of legal provisions – intentionally or otherwise.
Technical aspects of the 1997 Law include a 24-hour post-arrival time limit for registering an asylum claim. Article 5.1(7) states that a violation of this timeframe can be the basis for denial of an asylum claim: It constitutes a legal violation and thus leads to *refoulement*.
Article 4.6 asserts that upon the asylum application's receipt, authorities must provide an authorized certificate of asylum. This certificate serves as legal registration which authenticates the individual's presence within the Russian Federation, per *propiska*[28] standards, allowing refugees to enjoy certain freedoms in country and access to basic livelihoods or provisions while awaiting State-backed RSD. However, refugees report that these documents are rarely, if ever, given to asylum claimants at the time of filing (Wordofa 2011). Without these documents asylum seekers are not recognized as having any rights, whatsoever, which – if caught undocumented during the official RSD process – constitutes a legal violation and another opportunity for *refoulement* under Article 5.1(1).
The Law also states that at the point of registration, asylum seekers must agree to reside in a state-funded Temporary Accommodation Centre (TAC) to await their status determination. If the local TAC is full, or otherwise unavailable, asylum seekers must find, without assistance, an alternative housing solution. If asylum seekers have not received their registration, or if their case is significantly delayed, they cannot legally obtain an apartment (Yaftali 2010). Persons caught residing in the country without proper documentation are in violation of residence laws, which, again, provides grounds for *refoulement*.
Article 3.3 requires RSD to be actuated through an interview, completion of questionnaire and an examination of the credibility of the data provided. Federal Migration Service policy allows

[27] Article 33(2) of the 1951 Refugee Convention.
[28] *Propiska* is the system that governed migration within the USSR. While formally abolished in 1993, Russia's current registration policy greatly resembles its Soviet precedent. It requires a Russian citizen, or person legally in Russia, to live in an apartment, hotel, or place of domicile in any city across Russia. It is a registration stamp administered in a person's passport by the regional authority when new residence, or hotel presence, is taken up (Immigrant and Refugee Board of Canada 2003).

for a three-month timeframe to process the claim. The law denies access to procedure during RSD, which is problematic in the case of asylum claimants, albeit not technically illegal. During the three-month RSD period refugees can be stopped by suspecting police – notorious for racial profiling – and their documents may be checked. Often police do not recognize temporary status, or process determination papers, which places refugees at risk for being accused of illegal activities; thus they become, again, vulnerable to *refoulement* without legal recourse (Wordofa 2011).

Article 5.1(5) denies asylum claims from individuals who have traveled through a safe third country. The Russian Federation defines a safe third country as *any* nation that is signatory to the 1951 Convention, even if residing therein for less than a day (AI 2003b: 60; UNHCR 2002c: 290). Again, while not incompatible taken alone, the highly contested notion of safe third country is arguably too broadly defined by the Russian government as nations such as Afghanistan, Iran, Tajikistan and others are considered 'safe'. However, in opposition to the broad Constitutional norms that define safe countries of return, individuals found in violation of Russia's strict legal code have been forcibly returned to North Korea – a state *not* party to the 1951 Convention (Bassenko 2008). Such deportations demonstrate flagrant disregard of Russia's legal standard.

Article 5.1(6) makes the illegal departure from the country of origin grounds for case dismissal and *refoulement*. Understandably problematic, this exclusion is impossible to either prove or sustain as a state from which individuals flee rarely, if ever, authorizes the refugee's departure.

At the point of RSD a positive or negative admissibility ruling is issued to the asylum seeker. If the case is found credible, the status of refugee is granted and refugees are issued state-endorsed identification and travel documents granting them access to state-sponsored services[29], the ability to move within Russian borders, obtain employment and, eventually, apply for citizenship.

If the status claim is denied, asylum seekers are allowed the right of appeal, but a claim must be filed at the moment a negative RSD decision is made. If immediate appeal is not filed the asylum seeker loses the right to remain in the Russian Federation and their case is transferred to the Ministry of Internal Affairs, which places the applicant under formal deportation proceedings. Fortunately or not, there exists little coordination between the two federal departments. Weak, non-enforced policies allow many migrants who have been denied asylum to bypass the system and remain in the country, without permission, though still quite vulnerable to *refoulement* (Shea 2005).

The official refugee status provided by a positive RSD has, of itself, several provisions that further deviate from traditionally accepted international norms. Article 7.9 states that asylum is ever only temporary, granted on first filing for a period of three-years. Individuals wishing, or requiring, to remain in Russia and extend their refugee status must reapply yearly after the initial three-year period. From 2000 onward the FMS granted an increasingly small number of status reauthorizations after the initial three-year period[30]. This system, aside from extending opportunities for extortion and discrimination, undermines the notion of refugee integration, since status is, simply, not a durable solution. Furthermore, it holds that refugee status may be revoked and the refugee deported if they are found – at any point – in violation of *any* law of the Russian Federation.

Cases of Refoulement

Exact numbers of refugees or asylum seekers who have been deported from Russia as a result of these poorly executed policies do not exist, and estimates vary (UNHCR 2004). Moscow-based diaspora groups attempt to collect data and information about refugees and asylum seekers who

[29] These include access to hospitals and education for refugees or their offspring.

[30] As an example, in the year 2001, 40,000 refugees lost their status while only 15,000 had status extension reapproved (Afshar 2005).

are – or have been – placed in deportation proceedings (Yaftali 2010). Under increased government scrutiny these rights-based organizations seek to promote awareness and interest in Russia's ill-articulated and haphazardly actualized 'guarantee' of *non-refoulement*.

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References Cited

The views and facts presented here result from a study conducted in Moscow from June to August 2010. The English translation of Russian laws sourced herein can be found at www.legisltionline.org.

AFSHAR, A. (2005) 'Refugees in Russia: The Law on Refugees and Its Implementation'*, Journal of Refugee Studies*, **18**(4): 468-491.

AMNESTY INTERNATIONAL (2003). *Russian federation: Violent racism out of control,* No. 11, London.

BASSENKO, E. (2008). 'North Koreans Cross the River to be Jailed in Russian Prison'. *Rossiskaya Gazetta*, Moscow, 29 October. http://www.rg.ru/2008/10/29/reg-priamurje/koreets-anons.html

IMMIGRANTION AND REFUGEE BOARD OF CANADA. (2003). 'Russia: Information on the *propiska* or *propiska*-like registration system in Russia; regions with *propiska*-like registration systems; governing authority; its application in practice; effect on individuals lacking registration; reports of corruption in registration. No. 1) Ottawa: Immigration and Refugee Board of Canada.

MARKS, S., Kazmina, O., and Graney, K. (2009). In Bressler M. L. (Ed.) 'Understanding contemporary Russia. London: Lynne Rienner Publishers.

UNITED NATIONS. (2008) *Convention and Protocol Relating to the Status of Refugees*. Geneva, Switzerland. Available from: <http://www.unhcr.org/pages/49da0e466.html>.

FEDERAL LAW OF THE RUSSIAN FEDERATION. (1997) *On Amendments and Additions to the Law of the Russian Federation 'on Refugees'*, 284 (3 July 1997). Available from: < www.elgislationline.org.> (accessed: June 2011).

SILVESTRIA, A., and **TCHERNISHOVA, O.** (1998) 'The legal framework regulating asylum in the Russian Federation', *International Journal of Refugee Law,* **10**(1): 184-198.

UNHCR. (2002) *2002 global trends: Refugees, asylum-seekers, returnees, internally displaced and stateless persons*, Geneva.

UNHCR. (2004) *Russia Country Profile*, Geneva.

UNHCR. (1994) The Principle of *Non-Refoulement* as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal

Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93, 31 January 1994. Available from: http://www.unhcr.org/refworld/docid/437b6db64.html.

UNHCR. (1997) '*UNHCR Note on the Principle of Non-Refoulement*,' November 1997. Available from: http://www.unhcr.org/refworld/docid/438c6d972.html.

Interviews, conducted by Danielle Grigsby in Moscow, Russia from 2005-2011:

SHEA, D. (2005) Interview with author. **(**Moscow Times Reporter)

YAFTALI, M. (2010) Interview with author. **(**Director Afghan Diaspora Organization)

WORDOFA, G. (2011) Interview with author. (Former Director of Opora)

Why Australia's 'Malaysian Solution' is No Solution at All

By Luke Lovell

On 7 May this year, Australian Prime Minister Julia Gillard announced that her Labor government was in talks with their Malaysian counterparts to finalise a bilateral agreement that would see the two nations trade asylum seekers and refugees. Signed on July 25, 2011, this policy stipulated that the next 800 asylum seekers intercepted attempting to reach Australia by boat after that date would be sent to Malaysia to have their claims for asylum heard there. In turn, Australia would have accepted 4,000 UNHCR-certified refugees currently residing in Malaysia for permanent resettlement – 1,000 a year over the next four years. A legal challenge against the policy lodged in the High Court of Australia by refugee lawyer David Manne saw this deal declared illegal on August 31, with the Court decreeing that asylum seekers could not be processed offshore unless the country in which processing would occur had certain legal safeguards in place to protect asylum seekers, safeguards Malaysia lacks (Hyland, 2011). Popularly dubbed the 'Malaysian Solution' the plan was certainly not the first time a country has sought to deter boat arrivals through the forced deportation of people to non-Convention states. However, in attempting to solve the nation's supposed asylum seeker 'problem' by engaging in such a trade, the Australian government was at risk of legitimising the future behaviour of other signatories to the Refugee Convention who would seek to prioritise negating domestic political pressure at the expense of fulfilling their international human rights obligations.

Why implement policies aimed at deterring asylum seekers arriving by boat? As an isolated island nation, Australia has always been able to maintain a tightly-controlled immigration program. A decade after former Prime Minister John Howard opined that 'We will decide who comes to this country and the circumstances in which they come' (Howard 2001), his sentiment still resonates deeply with many Australians. Historically the majority of asylum seekers have arrived by air, with estimates since 1976 typically varying from 96 to 99 percent (Phillips and Spinks 2011). The proportion of boat arrivals has increased significantly over the past few years, with figures for 2009-10 (the latest official figures available) show asylum seekers arriving by boat made up 47 percent of all applications for asylum lodged onshore – up from 16 percent in 2008-09 (Phillips 2011). Although irregular maritime arrivals still comprise less than half of Australia's asylum seeker population, this jump in numbers has seen debate and policy turn almost exclusively to asylum seekers arriving by boat. As unsolicited and largely undocumented arrivals, asylum seekers coming by boat provoke in many Australians a feeling of loss of control over the country's borders that stirs anxiety about national security and identity (Gale 2004). In a rush to court voters anxious about this perceived threat both major political parties have sought to position themselves as tough on border control (Gale 2004). The current Labor government recognised the political implications of increased boat arrivals with then Immigration Minister Chris Evans conceding in mid-2010 that a surge in irregular maritime arrivals was 'killing the government' (*Sydney Morning Herald* 2010). Undoubtedly, subsequent immigration policies have been developed in response to these concerns.

The 'Malaysian Solution' was not without historical precedent. From 2001 to 2007, asylum seekers attempting to reach Australia by boat were held in offshore detention centres as part of the then conservative Coalition government's 'Pacific Solution' (Phillips and Spinks 2011). Under this policy asylum seekers were actively intercepted in Australian waters and transferred to third countries for processing. Ensuring that people were processed outside of Australian territory denied them access to the nation's refugee determination process and court system, decreasing the likelihood that asylum seekers would be granted refugee status in Australia. In this way it was

hoped that the implementation of third-country processing would dissuade asylum seekers attempting to reach Australia by boat. Taken at face value, the policy appears to have been hugely and immediately successful, with boat arrivals dropping from 5516 in 2001 to just one person in 2002 (Phillips and Spinks 2011). What these numbers do not capture is the methods by which this decline was achieved – namely that asylum seekers were intercepted in Australian waters and transferred to Nauru and Manus Island for processing, or that boats were turned back to Indonesia during this period. Although exact numbers are difficult to ascertain, the UNHCR estimates that more than 1,600 people were transferred for third country processing (UNHCR 2008) – an estimate that does not include those asylum seekers pushed back out to sea.

While the Pacific Solution was successful in reducing the number of maritime arrivals seeking asylum in Australia, the policy came with an associated cost that went largely unseen. Detaining already vulnerable people in remote locations had severe consequences for their mental and physical health. Australia's policy of mandatory immigration detention has been found to have a number of adverse mental health effects, with rates of depression, post-traumatic stress disorder and self-harm skyrocketing among detainees (e.g. Coffey *et al.* 2010; Silove *et al.* 2007). Being detained indefinitely on islands thousands of kilometres from Australia without access to adequate mental health support would have only compounded these issues. The damage wrought by detention was undoubtedly exacerbated by the length of time people spent in detention facilities, with detainment for periods in excess of two years not uncommon (Coffey *et al.* 2010).

The primary concern with the more recent policy (and a major factor cited in the High Court ruling) is that it would have directly contravened Australia's international obligations governing how asylum seekers and refugees must be treated. As a signatory to the 1951 UN Convention on the Status of Refugees (1951 Convention), Australia is bound to protect those people seeking asylum within its territory. At the very heart of this obligation is the principle of *non-refoulement* – that individuals seeking protection should not be expelled into an area where they could again face persecution, or to a third territory that may return them to such an area (Goodwin-Gill 2011). During the time of the Pacific Solution, Australia maintained a significant presence in the running of offshore detention centres on Manus and Nauru. This would not have been the case under this new arrangement, under which Australia would have had little involvement in the refugee determination process for the 800 people who ended up in Malaysia.

Given the documented gaps in the treatment of refugees and asylum seekers in Malaysia, there was good reason to harbour concerns about what this agreement would have meant for the people transferred. Malaysia is not a party to the Refugee Convention and as such considers refugees and asylum seekers illegal immigrants. This failure to recognise asylum seekers means that people seeking refuge in Malaysia often find themselves placed into immigration detention. While conditions in Australian detention centres are sub-standard, the conditions facing asylum seekers in Malaysian immigration 'depots' such as Lenggeng and Semenyih can be much worse. Detainees in Malaysia face overcrowding, a lack of healthcare as well as insufficient supplies of food and clean drinking water (Amnesty International 2010a). Caning is employed as a form of punishment in Malaysian immigration detention, a practice that has been flagged as torture in violation of international law (Amnesty International 2010b). Those asylum seekers not in detention are forced to eke out a living on the fringes of Malaysian society, living in constant fear of harassment and arrest from the police and the People's Volunteer Corps (Ikatan Relawan Rakyat or RELA), the civilian paramilitary corps established by the Malaysian government to curb illegal immigration. Although the bilateral agreement between Malaysia and Australia contained safeguards exempting transferees from Malaysian immigration law, this would inevitably have led to issues about the logisitics and ethics of Malaysia maintaining two systems for dealing with asylum seekers and refugees – one for transferees from Australia and the other

for the tens of thousands of mostly Burmese asylum seekers already in the country. The treatment transferees could have expected in Malaysia must also be questioned given the resistance to such safeguards encountered during talks to finalise the agreement. A draft agreement obtained by the Australian Broadcasting Corporation's Lateline program on June 2 exposed that the Malaysian government had initially replaced all references to refugees with the term 'illegal immigrant' and exorcised all references to human rights (Cannane 2011).

Although overturned, this policy bolsters a dangerous trend for the way in which the governments of many Convention countries conceive of their obligations to asylum seekers. Symptomatic of a deteriorating international commitment to asylum, border control policies have also tightened significantly in Europe and the US over the past decade (Bosworth 2008). The introduction of the Malaysian Solution would have further eroded the fundamental right of people fleeing persecution to seek protection from a Convention country. By denying safe haven to those who would arrive on their shores uninvited, the Australian government would have, through their actions, diminished the value other states place on fulfilling their international obligations, paving the way for other countries to deny refuge to those seeking sanctuary if politically prudent. Sending asylum seekers to Malaysia would have also run the risk of legitimising current shortcomings in their treatment of asylum seekers and refugees.

The question is what would the Malaysian Solution have solved, and for whom? Unfortunately for the 800 asylum seekers set to be transferred to Malaysia under this arrangement, the policy was a political fix and not a human rights-oriented solution. While the move to resettle 4,000 refugees currently residing in Malaysia was a positive one, it should not have come at the cost of the mental and physical well-being of 800 other potential refugees, who would have faced an uncertain future in that country. By seeking to transfer asylum seekers offshore for domestic political gain, this policy would have only further eroded the institution of asylum. Although the Malaysian Solution may have helped to arrest the Australian government's sliding public approval, it would not have been a real solution. The policy is testament to the tension that exists globally between states trying to court domestic political popularity by being tough on border control and still living up to their international human rights obligations. By electing to prioritise domestic popularity, vulnerable people fleeing persecution would have unfortunately lost out under the Malaysian Solution. Now that the High Court has deemed it invalid, it will be of interest to see how the Australian government attempts to balance its international obligations and domestic political concerns in its response.

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References Cited

AMNESTY INTERNATIONAL (2010a) *Abused and Abandoned: Refugee denied rights in Malaysia,* Amnesty International, London.

___ (2010b) *A Blow to Humanity: Torture by Judicial Caning in Malaysia,* Amnesty International, London.

BOSWORTH, M. (2008) 'Border control and the limits of the sovereign state', *Social and Legal Studies* **17**(2): 199-215.

CANNANE, S. (2011) 'Malaysia playing hardball over refugee swap', *ABC News* (Australia). Available from: <http://www.abc.net.au/news/2011-06-02/malaysia-playing-hardball-over-refugee-swap-2/2744052> (accessed 14 August 2011).

COFFEY, G.J., *et al.* (2010) 'The meaning and mental health consequences of long-term immigration detention for people seeking asylum', *Social Science & Medicine* **70(**12): 2070-2079.

GALE, P. (2004) 'The refugee crisis and fear: Populist politics and media discourse', *Journal of Sociology* **40**(4): 321-340.

GOODWIN-GILL, G.S. (2011) 'The right to seek asylum: Interception at sea and the principle of non-refoulement', *International Journal of Refugee Law* **23**(3): 443-457.

HOWARD, J. (2001) 'Federal election campaign policy launch speech', October 28. Accessed from: < http://www.australianpolitics.com/news/2001/01-10-28.shtml> (accessed 14 August 2011).

HYLAND, T. (2011) 'Manne of the moment', September 4, *The Age* (Melbourne). Available from: <http://www.theage.com.au/national/manne-of-the-moment-20110903-1jrm1.html> (accessed 4 September 2011).

PHILLIPS, J. (2011) *Asylum seekers and refugees: what are the facts?,* Parliament of Australia, Department of Parliamentary Services, Canberra.

PHILLIPS, J. and **SPINKS, H.** (2011) *Boat arrivals in Australian since 1976,* Parliament of Australia, Department of Parliamentary Services, Canberra.

SILOVE, D., AUSTIN, P. and **STEEL, Z.** (2007) 'No refuge from terror: The impact of detention on the mental health of trauma-affected refugees seeking asylum in Australia', *Transcultural Psychiatry* **44**(3): 359-393.

SYDNEY MORNING HERALD (2010) 'Immigration debate killing govt: Evans', July 14, Available from: <http://news.smh.com.au/breaking-news-national/immigration-debate-killing-govt-evans-20100714-10amz.html> (accessed 15 August 2011).

UNHCR (2008) 'UNHCR welcomes close of Australia's Pacific Solution', *Briefing Notes,* Available from <http://www.unhcr.org/47ac3f9c14.html> (accessed 16 August 2011).

Rethinking Durable Solutions for IDPs in West Darfur

By Joakim Daun

As a result of the conflict in Darfur some 200,000 people were killed and some 1.9 to 2.7 million fled their villages and settled in IDP camps in the three Darfur States (OCHA 2009 and IDMC 2010).[31] Most of the displacement took place in 2003 and 2004, but small scale displacements took place after that and continue to take place (OCHA 2009 and Human Rights Watch 2011). Eight years later, in 2011, many IDPs have not yet found a durable solution[32] and the Darfur IDP situation should be considered protracted. The Government of Sudan (GoS) continues to promote return as the durable solution for the IDPs in Darfur. While some IDPs might voluntarily return, the majority of them are likely to stay in urban areas due to the larger trend of urbanisation. Therefore, the main approach to durable solutions for the Darfur IDPs should be reconsidered by the GoS and the international community with an emphasis on local integration and sustainable interventions.

Despite evidence that most IDPs are unlikely to return, GoS has continued to view *return* as the preferred durable solution.[33] In 2005, UNHCR and GoS signed a letter of understanding that UNHCR would monitor the right of return to areas of origin.[34] As of 2010 it was clear that there had *not* been any larger number of IDP return in West Darfur. Although some IDPs started returning in 2010, the majority have not opted to return.

Return has been promoted mainly in the form of 'model villages' (also known as 'cluster villages') where schools, housing, police stations and the like have been constructed. These types of efforts have largely been unsuccessful for various reasons. The return has often been induced by GoS, mainly at the local level, and there is rarely any long-term sustainable support that can allow the IDPs to settle in the area. In addition, the villages have often not been constructed in the places where the IDPs originated from, and they are often not properly consulted. Consequently, the majority of the villages remain uninhabited. Further, findings suggest the population movements have been *seasonal*, rather than *permanent*, with the vast majority of IDPs leaving the camps to engage in cultivation as a complementary livelihood strategy and returning immediately to areas of displacement following the harvest (UNHCR 2010).

Multiple factors contribute to return as a less than ideal durable solution. There are not only physical obstacles to return such as insecurity, access to land and availability of livelihoods, but also less tangible factors that must be taken into account, such as social or ethnic identity and access to humanitarian assistance and services. First of all, as of end of 2010, many areas of West

[31] Some 250,000 Darfurians also crossed the border to Chad as refugees.

[32] The UN Inter-Agency Standing Committee (IASC) has in its *Framework on durable solutions for internally displaced persons* (2010) defined durable solutions for IDPs as: 1) Sustainable reintegration at the place of origin (referred to as "return"); 2) Sustainable local integration in areas where internally displaced persons take refuge (local integration); and 3) Sustainable integration in another part of the country (settlement elsewhere in the country).

[33] In August 2010, GoS launched its new policy called *Darfur: Towards A New Strategy to Achieve Comprehensive Peace, Security and Development.* The policy declared that 'voluntary, safe and systematic return of the IDPs to their home will be the lasting indicator of the successful solution of the conflict', and 'the organization of the return is one of the government top priorities.' The policy also prioritises providing assurances and incentives for IDPs to return to their homes as well as development support to people in their areas of origin.

[34] According to the agreement UNHCR shall monitor the voluntary character of any return and that it takes place in conditions of safety and dignity, as well as humanitarian access to IDP and returnee populations.

Darfur still remained non-conducive to return due to general **insecurity** and lack of law and order, particularly banditry, crop destruction, and looting (UNHCR 2011).[35] In particular, women face harassment and violence mainly when returning to cultivate (UNHCR 2010).

Second, the ability for IDPs to **access land** in their villages of origin, and the possibility for IDPs to re-assert traditional land rights are crucial to allow for permanent return to take place (Pantuliano 2007). Further complicating the issue is the fact that pastoralist/nomadic communities are changing their lifestyles and have started to permanently settle in areas where IDPs assert land rights (UNHCR 2009).[36] The native administration is currently too weak to address the situation and defend the land tenure rights of IDPs. Although there are local administrative structures such as Peace and Reconciliation Committees in some places, they often reflect significant power imbalances between sedentary and newly-settled semi-nomadic and pastoralist communities. If these committees are not significantly strengthened, return will not be a viable option for most IDPs. These issues remain politically sensitive, complex, and compounded by different understandings of the native administration and its relationship to the state and by a lack of legal documentation (Tajeldin 2010).

Third, **livelihoods** and food security are a major factor affecting returns. Decreasing food rations in the IDP camps have led to larger numbers of IDPs returning seasonally as a livelihood strategy but not to the extent that they would consider staying permanently. Those who have returned permanently tend to be those still depending on agriculture as their primary livelihood, and they have weaker camp-based mechanisms (UNHCR 2010).

The fourth factor that prevents return is **social/ethnic identity:** the IDP status still confers a political status based on the IDPs' perception of victimization during the conflict. Many permanent returnees continue to consider themselves IDPs and are not willing to give up that status. IDPs remaining in the camps are reluctant to return permanently, fearing the loss of their IDP status and the assistance and protection attached to it (De Waal 2009).

Fifth, most IDPs living in camps currently have better **access to humanitarian assistance and services**, mainly education, sanitation, and health, than they had before displacement. The provision of services in rural areas (villages of origin) is still largely non-existent. The line ministries, such as Education and Health, have so far been largely unable to place staff in rural areas and successful rural projects often rely on local structures, such as voluntary teachers, midwifes etc. to ensure sustainability.[37] Also, few international NGOs operate in these areas, partly due to lack of security, lawlessness and banditry (UNHCR and Human Rights Watch 2011).[38]

Thus, return may not be the preferred durable solution for many IDPs in West Darfur. Although there are some opportunities for return it is not likely to take place on the scale that has been envisioned and promoted by GoS. In 2010, UNHCR shared its return findings with GoS, indicating that few IDPs had returned permanently. Nonetheless, the issue continues to be

[35] UNHCR identifies insecurity, land occupation and crop destruction as major constraints to return.
[36] UNHCR has in its field monitoring observed alleged land occupation in over two hundred villages in West Darfur since 2005.
[37] For example, students may be required to pay school fees to raise funds for teacher's salaries, and parents are often reluctant to send their children to school due to the high cost it imposes on the family.
[38] In its annual country report for 2010, *Human Rights Watch* reported that the 'United Nations and humanitarian agencies increasingly came under attack and were targeted for robberies, kidnappings, and killings by armed elements in Sudan's western region. UNHCR has also expressed its concerns about security for humanitarian workers and the reduced presence of NGOs in Sudan, mainly due to insecurity and government restrictions and scrutiny put in to place after the ICC indictments of President Bashir.'

politically sensitive. GoS disputed these findings and continued to view return as the most viable durable solution.[39]

The IDPs in West Darfur have become part of a *larger trend of urbanisation* in Sudan. From the start of the conflict until now, the cities in Darfur have doubled in size. Aside from the IDPs living in the camps in close proximity to the towns, there has been an additional huge influx from the rural areas (Pavanellon 2010). Scholar De Waal has pointed out the relevance of recognising urbanisation as an important element affecting durable solutions for IDPs:

> Whatever political resolution is achieved, many IDPs – perhaps the majority – will have a future in the cities. If we recognize this reality, it can only help in finding workable solutions to the immediate challenges of livelihoods, services and protection for these people (De Waal 2009).

Despite the strong focus on return, GoS acknowledged in 2010 that a significant percentage of IDPs are now urbanised and will likely not return to their villages of origin.[40] Most of the IDPs have spent over six years in the camps and their livelihoods and social structures have changed from before their displacement. The changes in livelihood are strongly linked to access to services provided by international community, in particular among urbanised IDPs, whose coping strategies and educational and employment opportunities have undergone profound shifts in the past years. Further, children and youths growing up in IDP camps do not have the experience of living in rural areas with a rural farming lifestyle and cannot be expected return to villages in the rural areas where subsistence agriculture is the only possible livelihood (UNHCR 2011).

Since 2003, a large portion of IDPs has become urbanised, and many rural areas remain non-conducive to return. Therefore, there is a need to rethink the strategies to find durable solutions. Despite the intense political focus on return from GoS[41], there are likely greater opportunities for early recovery programming in urban areas. A stronger focus should be on those who have de facto locally integrated but still depend on humanitarian assistance. While it has now been recognised that many IDPs will never return, there has been little focus on addressing sustainable extension of services and creating sustainable livelihoods in urban areas. Also, a change in the service provision in camps is necessary. Many (if not most) of the international NGOs continue to provide 'care and maintenance' type assistance exclusively in IDP camps. Instead, livelihood opportunities and vocational training should be given greater attention, in particular for youths.[42]

These interventions should focus on community ownership and self-reliance to avoid the current problem of aid dependency. Although the 2010 government policy for Darfur focuses heavily on return, it also calls for the need 'to restructure of humanitarian operation in order to shift the focus from relief to development'. Further, it considers it a '…top priority for the government to re-direct the humanitarian efforts towards rehabilitation and shifting from depending on the relief to development and self-reliance'. Thus, more emphasis should be given to sustainable

[39] For more on GoS' push for return and some of its related problems see Eric Reeves recent piece: 'Darfur: No Way Forward from a Dangerous and Unsustainable Situation'.

[40] The government estimated that 25-40 per cent of the IDPs may choose to locally integrate. De Waal has also argued that some 30% of the IDPs in the camps are economically integrated into the towns and that others have some urban and some rural based livelihoods.

[41] Potential reasons for the continued emphasis on return may include trying to decongest the urban areas and viewing IDP return as an indicator of achieved peace and stability in the region.

[42] For more details see: The Women's Commission for Refugee Women and Children's report 'Too Little for Too Few: Meeting the needs of youth in Darfur.'

development interventions, and it is essential that the national and local authorities become more involved in the process of assessment, planning, and priority setting for these interventions.[43]

The rapid urbanisation and associated land alienation as a result of conflict mean that many will not return to rural villages, and. while more efforts shall be given to local integration, this opens up possibilities for new land share arrangements in return areas. Hence, a constructive conversation with the GoS on the dimensions of alleged land occupation is necessary. This should include supporting and strengthening traditional conflict solving mechanisms in villages with land disputes between returnees and pastoralist populations. Such interventions can assist in creating peaceful coexistence between the two communities and allow for permanent return for those that cannot or do not want to locally integrate.[44]

Lastly, despite on-going insecurity, recent developments in regional peace initiatives could provide further momentum for a much-needed shift to self-reliance projects in the camps and urban areas and long-term peace in Darfur (*Sudan Tribune* July 14 & 17 2011). Hence, besides a change in strategy from the international humanitarian community, the success in the quest for durable solutions will foremost depend on the government's ability and willingness both to commit political will to address harmful legacies from this prolonged conflict and to provide economic resources and support for all durable solutions for IDPs.

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References Cited

BROOKINGS-BERN PROJECT ON INTERNAL DISPLACEMENT. (2010) 'IASC Framework on durable solutions for internally displaced persons'. Available from: http://ochanet.unocha.org/p/Documents/IASC%20Framework%20DS%20for%20IDPs.pdf > (Accessed: 5 July 2011).

DE WAAL, A. (2009) 'Do IDPs have an urban future? - Makin Sense of Darfur SSRC.' Available from: <http://africanarguments.org/2009/03/31/do-darfurs-idps-have-an-urban-future/> (Accessed: 10 June 2011).

HUMAN RIGHTS WATCH. (2011) *Darfur in the Shadows: The Sudanese Government's Ongoing Attacks on Civilians and Human Rights*. Available from: *http://www.hrw.org/reports/2011/06/05/darfur-shadows-0* (Accessed: 31 August 2011).

-- (2011). *World Report 2011: Sudan – Country summary*. Available from: <http://www.hrw.org/sites/default/files/related_material/sudan_1.pdf> (Accessed: 31 August 2011).

INTERNAL DISPLACEMENT MONITORING CENTRE (IDMC). (2010) 'Durable solutions elusive as southern IDPs return and Darfur remains tense: A profile of the internal displacement situation.' Available from: <http://www.internal-

[43] Although this has been recognised by many international organisations, little has been done to change it.
[44] This has been done to some extent by UNHCR and other UN agencies, and these types of interventions could have a positive impact if implemented in more areas.

displacement.org/8025708F004BE3B1/%28httpInfoFiles%29/246575AD2147601DC125780200526DA9/$file/Sudan+-December-2010.pdf> (Accessed: 31 August 2011).

PANTULIANO, S. (2007) *The land question: Sudan's peace nemesis*, Humanitarian Policy Group (HPG). Available from: <http://www.odi.org.uk/resources/download/3182.pdf > (Accessed: 10 July 2011).

PAVANELLO, S. (2010) *Urbanization in Sudan: An Overview of International Engagement*, Middle East Institute. Available from: <http://www.refugeecooperation.org/publications/Sudan/03_pavanello.php> (Accessed: 11 July 2011).

PRESIDENT'S OFFICE - GOVERNMENT OF SUDAN. (2010) *Darfur: Towards a New Strategy to Achieve Comprehensive Peace, Security and Development.* Available from: <http://www.smallarmssurveysudan.org/pdfs/facts-figures/darfur-peace-process/HSBA-Darfur-Peace-Process-New-Strategy.pdf> (Accessed: 1 July 2011).

REEVES, E. (2011) 'Darfur: No Way Forward from a Dangerous and Unsustainable Situation.' Available from: <http://www.sudanreeves.org/2011/08/30/darfur-no-way-forward-from-a-dangerous-and-unsustainable-situation/> (Accessed: 31 August 2011)

SUDAN TRIBUNE (2011) 'Sudan and LJM rebels sign a Darfur peace agreement in Doha', 14 July. Available from: <http://www.sudantribune.com/Sudan-and-LJM-rebels-sign-a-Darfur,39539> (Accessed: 15 July 2011).

-- (2011) 'Darfur mediators defend Doha deal and urge rebel groups to join peace', 17 July. Available from: <http://www.sudantribune.com/Darfur-mediators-defend-Doha-deal,39556> (Accessed: 18 July 2011).

TAJELDIN, A. (2010) 'Land Rights Confusion Hinders Darfur IDP Returns. As pressure mounts to send IDPs home, little is being said about the crucial issue of land rights', International Justice – *ICC. IWPR Institute for War & Peace Reporting.* Available from: <http://iwpr.net/report-news/land-rights-confusion-hinders-darfur-idp-returns> (Accessed: 10 July 2011).

UNHCR. (2009) *Land Occupation in West Darfur: Affected Areas as of December 2009*.

-- (2010) *Overview of post-harvest return in West Darfur, August 2009 - February 2010*.

-- (2011) *2011 UNHCR country operations profile – Sudan*. Available from: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e483b76> (Accessed: 10 July 2011).

UN OCHA. (2010) *Sudan Humanitarian Overview* 6 (1): January 2010. Available from: http://www.internaldisplacement.org/8025708F004CE90B/(httpDocuments)/FCD3AB8C59DB3449C12576C8007290AB/$file/Sudan+Humanitarian+Overview+vol6+no1+Jan2010.pdf (Accessed: 31 August 2011).

-- (2009) *Darfur Humanitarian Profile no. 34*. Available from: <http://www.unsudanig.org/docs/090330%20DHP%2034%20narrative%201%20January%202009.pdf> (Accessed: 31 August 2011).

HIV/AIDS Health Exclusion of Forced Migrants: A Challenge to Human Rights

By Adeagbo Oluwafemi

Introduction

Migrants have often been stigmatised as a risk group for the spread of HIV/AIDS as well as carriers of a range of other diseases (Wolffers *et al* 2003). This is in particular the case for refugees due to their perilous journey: Especially women and children are seen to be vulnerable to diseases as they migrate from conflict zones. Thus, in host states, they are often called 'exclude filth', 'Asiatic Menace', diseases carriers' etc. As a result, host communities seek to deny them entry, and where that fails, to exclude them from their social order (Harper and Raman 2008; Groove *et al* 2006; Junghanss 1998). Countries like Canada, South Korea and Saudi Arabia have strict immigration policies against migrants with HIV/AIDS some of whom are often denied entry, stay, or residence. In some countries, immigrants with HIV/AIDS are even detained pending deportation to their home countries where they have poor quality or no health care or access to antiretroviral drugs for their conditions (UNAIDS 2008; Human Rights Watch 2007). According to Human Rights Watch (2009:1), there exists:

In **Saudi Arabia**: mandatory HIV testing, detention for up to a year without access to medication, and deportation of HIV-positive migrants;
In the **United Arab Emirates**: deportation of 1,518 non-citizen residents infected with HIV, hepatitis types B and C, or tuberculosis in 2008;
In **South Africa**: the inability to continue treatment - amounting to a death sentence - for people living with HIV who are sent back to Zimbabwe;
In the **United States**: poor access to treatment in detention and harsh conditions or lack of access to medical treatment for some HIV-positive individuals who are deported; and
In **South Korea**: mandatory HIV testing of migrants and deportation of those found to be HIV positive, despite South Korea's international legal obligations and a recent Seoul High Court ruling that such deportation is not the most effective means of protecting public health.

It is important to note that HIV-related restrictions not only affect refugees or asylum seekers but also other migrants –labour migrants students, short and long-term travellers etc. (Amon and Todrys 2008; Bisaillon 2010). This paper contends that migrants, particularly refugees and asylum seekers, should not be denied entry, stay, or residence due to health-related issues such as HIV because this violates their human rights.

Discussion

Constantly, societies undergo changes - socio-economic, political, and cultural – and some of these changes are structural as well as institutional. In some cases, they are the direct effect of immigrants or a response to them. An example is the health-exclusion of refugees and asylum seekers by some countries that used to be immigrant-friendly. This exclusion which is based on health issues like HIV/AIDS violates the 1951 Convention on the Status of Refugees to which many of these countries are parties.

Of the 186 countries party to the 2001 Declaration of Commitment on HIV/AIDS to eliminate all forms of discrimination against People Living with HIV (PLHIV), 66 now have restrictive policies on PLHIV, particularly forced migrants, in order to restrict or exclude them from their

countries (United Nations Generally Assembly 2001; Deutsche AIDS 2008). In spite of their commitment to non-discrimination against people with HIV/AIDS, these countries often compel non-citizens to have periodic HIV tests and deny entry to or deport those who test positive (Bisaillon 2010; Amon and Todrys 2008) . The World Health Organisation (1987 and 1988) argues that subjecting international travellers to HIV screening is not a panacea to curbing the transmission of HIV and advised that this measure be abolished. Similarly, the Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS state that 'any restrictions on these rights [to liberty of movement and choice of residence] based on suspected or real HIV status alone ...cannot be justified by public health concerns' (2006: 3). Also, Amon and Todrys state that 'HIV-related restrictions on entry, stay, residence…can be considered both overly intrusive and ineffective public health policy' (2008: 2). The implication of these statements is that it is not proper for states to use HIV as a yardstick for restriction or exclusion of migrants, particularly forced migrants who are entitled to international protection, because this act violates their human rights.

Writing on the current situation of migrants in Canada, Bisaillon (2010) shows that long and short-term migrants, including refugees and asylum seekers, from 15 years of age and above are subjected to HIV tests and often rejected based on health grounds. She argues that both the Canadian policy for HIV screening of refugees and asylum seekers and their consequent exclusion if found positive violates their human rights. Similarly, it is a violation of human rights to follow the year 2000 recommendations of Health Canada to Citizenship and Immigration Canada (CIC) stating that HIV-positive applicants, including asylum seekers and refugees be excluded (Bisaillon 2010). Weibe's study (2009) also reveals that 2,000 visa applications are refused yearly in Canada on health grounds.

This decision was ostensibly made to prevent the spread of HIV amongst Canadians despite different anti-discrimination treaties. For example, the Universal Declaration of Human Rights, Article 13(1) states that 'everyone has the right to freedom of movement and residence within the borders of each state' as well as the Article 14(1) that states that 'everyone has the right to seek and to enjoy in other countries asylum from persecution'(see also 1951 Convention on the Status of Refugees; European Convention on Human Rights Article 5(1) (e); and African Charter on Human and People's Rights Article 12(3)). The implication is that any state that rejects an asylum application, or returns an asylum seeker to a country where he or she faces discrimination on the basis of HIV status; or rejects people living with HIV; or discriminates on the basis of HIV status based on 'travel regulations, entry requirements, or immigration and asylum procedures' violates the right of that individual. While the challenge forced migrants' health problems could pose to host countries might be real it should not be a basis for denying or discriminating against them.

A recent study shows that some HIV-positive refugees from Sub-Saharan Africa originally admitted to New Zealand now face rejection due to public opinion about their status (Worth 2006). Also, Farmer (1992) describes the US response to Haitian immigrants during the AIDS epidemic as bordering on the paranoid. Haitians were labeled as a risk group and carriers of AIDS. The effect of this on Haitian workers and students was devastating because the stigmatisation pervaded their everyday lives (Farmer 1992).Writing on the inhumane treatment of asylum seekers in Australia, McNeil (2003) argues for concerted political action by various groups such as academics, health professionals and institutions against this type of institutionalized discrimination and gross violation of human rights.

Conclusion

Having been labelled, refugees and asylum seekers find themselves in a quandary – escaping the dangers of a return to a home they had been forced to flee, and facing the threat of an uncertain future in a world in which they are not only increasingly unwelcomed but in which they are tagged 'physical and social ills' by the country that happens to find them at its borders (Harper and Raman 2008). The notable effects of the generalised anti-foreigners (particularly refugees) sentiments as carriers of diseases in some countries of the world can be summarised as follows:

- Continuous stigmatisation and discrimination of migrant-PLHIV often brings about the concept of the 'other'. The 'other' here means non-citizens (e.g. refugees) who are believed to be carriers of diseases due to their vulnerability during migration, and they are often seen as dangers to the citizens, thereby necessitating their removal.
- Such discrimination also violates the Universal Declaration of Human Rights, Article 13(1) which states that 'everyone has the right to freedom of movement and residence within the borders of each state' as well as Article 14(1) that states that 'everyone has the right to seek and to enjoy in other countries asylum from persecution'. This violation is against Human Rights Law that sees everybody as equal whether citizens or non-citizens of a particular state.

In sum, since HIV/AIDS cannot be contracted through casual meetings and has few negative impacts on public health, migrants - particularly refugees and asylum seekers - should be seen as global citizens and not strangers. This means that rather than being turned back, migrants with health issues deserve care. Furthermore, HIV-positive immigrants could contribute to the development of their host countries if given adequate care whereas stigmatising them could harm them mentally and physically. States should respect their treaty and human rights obligations.

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References Cited

AMON, J. and TODRYS, K. (2008) 'Fear of Foreigners: HIV-related restrictions on entry, stay, and residence', *Journal of the International Aids Society*: 1-6.

BISAILLON, L. (2010) 'Human rights consequences of mandatory HIV screening policy of newcomers to Canada', *Health and Human Rights International Journal* **12**(2). Available from: <www.hhrjournal.org>. (Accessed 13 August, 2011)

Deutsche AIDS-HILFE E.V. (2008) *Quick reference: travel and residence regulations for people with HIV and AIDS*, 2008/2009 quick reference guide.

FARMER, P. (1992*) AIDS and Accusation: Haiti and the geography of bla*me, Los Angeles, University of Carolina Press**.**

GROOVE, N. and ZWI, B. (2006) '*Our Health and theirs: Forced migration, othering, and public health*', *Social Science and Medicine* **62**: 1931-1942.

HARPER, I. and RAMAN, P. (2008) 'Less than Human? Diaspora, Disease and the Question of Citizenship', *International Migration* **46** (5): 3-26.

HUMAN RIGHT WATCH (2007) '**Chronic indifference: HIV/AIDS services for immigrants detained by the United States',** *Human Rights Watch*, **19**(5 (G))**:**1-70.

HUMAN RIGHT WATCH (2009) 'Deporting HIV-Positive Migrants Threatens Lives and Global Goals' Available from: <http://www.hrw.org/news/2009/09/24/deporting-hiv-positive-migrants-threatens-lives-global-goals>. Accessed 10 August, 2011.

JUNGHANSS, T. (1998) 'How unhealthy is migrating?', *Tropical Medicine and International Health* **3**(12): 933-934.

McNEIL, P. (2003) 'Public Health Ethics: Asylum Seekers and the Case for Political Action', *Bioethic*s **5-6**: 487-502.

OFFICE OF THE UNITED NATIONS HIGH COMISSIONER FOR HUMAN RIGHT and THE JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS (2006) *International guidelines on HIV/AIDS and human rights.*

UNAIDS (2008) *Statement of the UNAIDS secretariat to the sixty-first World Health Assembly: agenda item 11.9 – health of migrants.*

UNITED NATIONS GENERAL ASSEMBLY (2001) (G.A.) Res. S-26/2, U.N. Doc. A/RES/S-26/2

WEIBE, S. (2009) 'Producing bodies and borders: A review of immigrant medical examinations in Canada', *Surveillance and Society* **6**: 135. Available from: <http://www.surveillance-and-society.org/ojs/index.php/journal/article/view/bodies/bodies>

WOLFFERS, I. VERGGHIS, S. and MARIN, M. (2003) 'Migration, Human Rights, and Health', *The Lancet*, **362**: 2019-20.

WORLD HEALTH ORGANIZATION (1987) *Report of the consultation on international travel and HIV infection*, **WHO/SPA/GLO/787.1.**

WORLD HEALTH ORGANIZATION (1988) *Statement on screening of international travelers for infection with Human Immunodeficiency Virus,* WHO/GPA/INF/88.3.

WORTH, J. (2006) 'Unconditional Hospitality: HIV, Ethics and the Refugee Problem', *Bioethics* **20** (5): 223-232.

Ethnic Bretheren and the National 'Other': North Korean Refugee Youth in South Korea

By Sheena Choi

Introduction

As of December 2010, the number of *sae-ter-min* (North Korean refugees in South Korea)[45] who had arrived in South Korea, their preferred destination, reached 20,360, including 1,300 youths (Haggard and Norland, 2011).[46] This influx of sae-ter-min youths poses significant challenges to South Korea's educational system. At the same time, the integration of sae-ter-min youths into South Korea's education system holds the potential to contribute to increased levels of communication and understanding between the two Koreas.

This paper explores the challenges faced by North Korean youths in their integration into South Korea, particularly the education system. First, in order to demonstrate the significance of the adjustment youths experience when arriving in South Korea, brief background information about the North Korean system and socio-economic situation will be offered. Second, in order to show how South Korea has further complicated the transition for sae-ter-min youths, the historical role of the South Korean education system in contributing to the construction of the North Korean "Other" will be explained. Third, the structural challenges inherent in integrating North Korean youths in South Korea will be explored. Finally, it will be argued that although challenges to integration remain, as long as the stories of sae-ter-min youths are heard and respected, education has the potential to be a stabilizing force between South and North Korea.

Background

Sae-ter-mins who arrive in South Korea face numerous problems adjusting and adapting to South Korea. In spite of 1,500 years of history as a unified country, shared ethnicity, language, and culture, sixty years of living apart in a different political and economic system has created a gulf between the two Koreas. Until 1990, North Koreans who came to South Korea were considered *gwi-soon-ja* (defectors from an enemy camp/state) or *gwi-soon-youngsa* (defecting heroes from an enemy camp/state). These defectors, who came primarily from the elite, left the country for political reasons and offered political propaganda value for South Korea, as well as the practical value of serving as an access point to military or political information. In the 1990s, however, when North Korea experienced a great famine, famine stricken refugees began to cross the Sino-North Korean borders, eventually arriving in South Korea (Haggard and Noland, 2008). These refugees have largely come from the peripheries of North Korean society, representing a politically and socially marginalized group with little social and cultural capital (Lee, 2006; Together, 2005).

[45] Historically there have been different names for North Koreans who came to South Korea, reflecting political positions between South and North (See Heller, 2011). In this article, I will refer North Korean refugees in South Korea as *sae-ter-min* meaning new settlers, as this is how they are referred to in South Korea. North Korean refugees outside of South Korea will be referred as North Korean refugees.

[46] A survey of North Korean refugees in China and South Korea found that the most common countries North Korean refugees wish to go to are South Korea (64%) and the United States (19%).

The Historical Role of the South Korean Education System in Constructing the North Korean "Other"

The trials of North Korean refugees are not over when they reach South Korea. Rather, they are presented with the challenge of making a successful transition to a new society. For youths, this transition takes place in the context of the South Korean education system. Educational systems play a crucial role not only in transmitting knowledge, customs, norms and rules, but also in (re)forming national subjectivities within particular visions of nationhood (Bourdieu & Passeron**,** 1990). By sustaining a national ideology and controlling images and narratives about North Korea and its people, the South Korean education system has played an important role in the development of a national identity that holds the North Korean as "Other".

As Korea was divided following independence, both Koreas strived for legitimacy. This legitimacy was (re)imagined through each country's construction of the other as the ultimate national "Other". In South Korea, this imagination began with the introduction of democratic ideals, independence, and anticommunism through the national educational system. During the military regime of Park Chung Hee, the formation of anti-communist consciousness was the principal goal of education and led to the creation of new subjects of study, including anti-communist morality (*pangong dodok*) and national history (*kuksa*) (Moon 2005: 35). During this period, 'South Korean schools prepared the younger generation to be mobilized to confront North Korea politically and ideologically' (Kim, 2009: 151). As such, common South Korean textbook depictions of North Koreans of the late 1970s include "spies", "terrorists" and "infiltrators" (Grinker, 1998).

The following administrations softened their ideological stance toward North Korea, but negative images of North Korea continue. As Grinker has observed, a poverty of information and discourse on North Korea in the South Korean educational system has resulted in the demonization of the North (Grinker, 1998: 167). According to Kim, sae-ter-min youths in the South Korean educational system have to confront 'ambivalent images of North Korean people as antagonists' and South Koreans' sense of superiority over North Koreans remains supported by images of 'starving refugees' (Kim, 2009: 155). It is in this context that sae-ter-min youths have been incorporated into the South Korean educational system.

Structural Challenges to the Integration of North Korean Youth

Structural differences between the North and South Korean education systems further complicate the integration of sae-ter-min youths into the South Korean system. According to studies, grade placement is the major issue for sae-ter-min youths in the South Korean school system (Kim, 2009; Together, 2005). As Kim notes, 'The variations between the two systems make it unreasonable to place students in classes merely by considering their age and grade designation in North Korea' (Kim, 2009: 158). Further, 'many youths missed months or years of education while living as refugees before entering South Korea' (Kim, 2009: 154; Lee, 2006). This situation places students two or three grades lower than their age level, leaving them to study with younger South Korean students. The fact that malnourished sae-ter-min youths are often noticeably smaller than their South Korean classmates further contributes to their being considered outsiders and different from their classmates (Kim, 2009; Kim and Jang, 2007; Together, 2005).

Adjusting to a significantly different learning culture is another challenge sae-ter-min youths must face in South Korean schools. Educated under the strict and regimented North Korean school system, the free and student-centred instructional style that characterizes the South Korean educational system is alien to them (Kim 2009; Together, 2005). In addition, as communication

between North and South has been minimal in the past 60 years, language diversion has occurred, with English frequently inserted into colloquial speech in South Korea (Kim, 2009; Together, 2005). The combination of differences in academic preparation and cultural norms results in the isolation and alienation of sae-ter-min youths in South Korean schools. Under such conditions, many sae-ter-min youths eventually drop out of the formal educational system, leaving their future prospects for social mobility in South Korea bleak (Laurence, 2011; Kim 2009). In fact, statistics demonstrate that 3.5% of elementary students, 12.9% of middle school students, and 28.1% of high school sae-ter-min youths drop out of formal education, compared to 0.8% in middle school and 1.8% in high school for other students (Schwartzman, 2008, citing from Moon, 2008).

Education for Understanding

Although the rhetoric of Koreans as ethnic brethren who came from the same womb (*dongpo*) with five thousand years of history persists, this rhetoric alone is not enough to help recent sae-ter-min to adjust. The successful integration of sae-ter-min youths into the South Korean school system must be viewed from a larger perspective of successful integration into South Korean society, which will require the re-imagination of a collective future together. Social institutions, especially educational institutions, need to be rearticulated and reorganized to reflect the collective views of both Koreas. Equally important is identifying the different psyche of South Koreans and sae-ter-mins that derives from living and being educated in different social systems. More inclusive representations of North Korea in the educational setting may be one way to combat the development of an image of sae-ter-min youths as the "Other".

More extensive training of sae-ter-min youths prior to entry into South Korean schools and society may be another step that South Korea can undertake. The testimonies of sae-ter-mins about what happened during their migration helps to give power to the individual experiences and must be heard. Indeed, since the life story, as a representation and interpretation, is a cultural vehicle that allows people to make their individuality visible and enhance their reflexive consciousness, it is vital that the life stories of sae-ter-min youths be recognized (Cain 1991; Desjarlais 2000; Middleton & Hewitt 1999; Myerhoff 1982). Educational settings are an ideal location for such enterprises. The voices of refugees communicated to the mainstream will contribute to the generation of a collective voice and begin the process of a mutual imaging of the future of a unified Korea. Forging mutual understanding between South Koreans and North Korean refugees in South Korea is of prime importance in order to mend the physical and moral wounds and restore sae-ter-min youths' life trajectory and eventual integration into South Korean society.

Conclusion

As this paper has demonstrated, the primary challenges to integrating sae-ter-min youths into South Korea arise from the difficult circumstances they experienced in North Korea, the historical role of education in "othering" North Korea(ns), and the structural differences between the two education systems. The maladjustment of sae-ter-min youths in South Korea poses significant ideological and practical challenges to South Korea, particularly the education system. Yet at the same time, the education system holds the potential to be a source of positive change in the lives of these youths. If the South Korean education system provides more inclusive representations of North Korea and commits to providing opportunities for sae-ter-min youths to share their stories and opportunities for South Korean youths to listen openly and honestly to the realities of life in North Korea, a new understanding between the two peoples may be forged.

Table 1: Annual Number of North Korean Defectors Arriving in South Korea										
Year	1950-92	1993	1994	1995	1996	1997	1998	1999	2000	2001
Number	633	8	52	41	56	86	71	148	312	583
Total		641	693	734	790	876	947	1,095	1,407	1,990
Year	2002		2003	2004	2005	2006	2007	2008	2009	2010
Number	1,138		1,281	1,894	1,383	2,018	2,544	2,809	2,927	2,376
Total	3,128		4,409	6,303	7,686	9,704	12,248	15,057	17,984	20,360

Source: Executive Summery, 2011 from ROK Ministry of Unification.

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References

AGIER, M. (2008) *On the Margins of the World: The Refugee Experience Today*, (trans. Fernbach) Cambridge, UK, Malden, MA, Polity Press.

BANDLAMUDI, L. (1994) 'Dialogics of Understanding Self/Culture', *Ethos,* **22**(4): 460-493.

BBC NEWS (2010, 20 December) 'Inter-Korean Crisis' *BBC News: Asia-Pacific*. Available from: http://www.bbc.co.uk/news/10130413 (accessed 16 February 2011).

BBC NEWS (2010) 'President Barack Obama: North Korea 'a serious threat", *BBC News: Asia-Pacific* November 23. Available from: http://www.bbc.co.uk/news/world-asia-pacific-11825445 (accessed 16 February 2011).

BLEIKER, R. (2005) *Divided Korea: Toward a Culture of Reconciliation*. Minneapolis MN, London, UK, University of Minnesota Press.

BOURDIEU, P and & PASSERON, J. (1990) *Reproduction in Education, Society and Culture,* 2nd ed., London, Sage.

CENTRAL INTELLEGENCE AGENCY (2011) *The World Factbook: Country Comparison: GDP - per capita (PPP).* Available from: https://www.cia.gov/library/publications/the-world-factbook/rankorder/rawdata_2004.txt (accessed 7 August 2011).

CHANG, Y., HAGGARD, S., and NOLAND, M. (2006) 'North Korean Refugees in China: Evidence from a Survey' 14-32 in Haggard, S. and M. Noland, M (eds.) *The North Korean Refugee Crisis: Human Rights and International Response*, Library of Congress Control Number: 2006934326. Washington, DC, U. S. Committee for Human Rights in North Korea. Also available from: http://works.bepress.com/cgi/viewcontent.cgi?article=1005&context=marcus_noland

DESJARLAIS, R. (2000) 'The Makings of Personhood in a shelter for people considered homeless and mentally', *Ethos,* **27**(4**)**: 466-489.

EXECUTIVE SUMMARY (2011, 14 July). 'Strangers at Home: North Koreans in the South: Asia Report N 208', *International Crisis Group: Working to Prevent Conflict Worldwide*. Available from: http://www.crisisgroup.org/~/media/Files/asia/north-east-asia/north-korea/208%20Strangers%20at%20Home%20-%20-North%20Koreans%20in%20the%20South.pdf (accessed 24 August 2011).

GRINKER, R. (1998) *Korea and Its Futures: Unification and the Unfinished War*, New York, St. Martin's Press.

HAGGARD, S. AND NOLAND, M. (2011) *Witness To Transformation: Refugee Insights Into North Korea*. Washington DC, Peterson Institute for International Economics.

HAGGARD, S. AND NOLAND, M. (2008) *North Korean on the Precipice of Famine*. (Policy Brief) Washington DC, Peterson Institute for International Economics.

HEATHER, D. AND DE CEUSTER, N. (2008) *North Korean Posters*. Munich, Berlin, London, New York, Prestel.

HELLER, B. (2011) 'Terms of Endangerment: Evolving Political and Legal Terminology for North Koreans', *Oxford Monitor of Forced Migration,* ***1***(1): 14-19.

HIGGINS, M. (2006) 'Those Who Flee: North Korean Refugees'. *North Korea Now*. Available from: http://www.northkoreanow.org/the-crisis/those-who-flee-north-korean-refugees/ (accessed on 20 August 2011).

KANG, C. and RIGOULOT, P. (2000) *The Aquariums of Pyungyang: Ten Years in the North Korean Gulag*. New York, Basic Books.

KANG, C. (2000) *The Aquariums of Pyungyang: Ten Years in the North Korean Gulag*. Preface for the Revised Edition. In Kang, C. (trans. Y. Reiner) New York, Basic Books. Pp. vii-xiii.

KIM, Y. (2009) *Making National Subjects: Education and adaptation Among North Korean Immigrants in South Kore,* (Unpublished Dissertation) Honolulu, The University of Hawaii.

LANKOV, A. (2010, 8 December) 'Op-Ed/Analysis: The Yeonpyeong Island Incident: Why It Happened, Why Nothing Can Be Done, and What to Expect: Some Thoughts' *Helping Hands Korea*. Available from: http://www.helpinghandskorea.org/2010/12/08/op-edanalysisthe-yeonpyeong-island-incident-why-it-happened-why-nothing-can-be-done-and-what-to-expect-some-thoughts-special-thanks-to-dr-andrei-lankov (accessed 16 February 2011).

LANKOV, A. (2006) 'Bitter Taste of Paradise: North Korean Refugees in South Korea', Haggard, Stephan and Noland, Marcus (eds.) *The North Korean Refugee Crisis: Human Rights and International Response*. Pp. 53-72.

LAURENCE, J. (2011, 12 August) Insight – North Korean Defections Rise, But Is the South Ready? Reuters. From http://news.indialocals.com/read/2011/08/22/Z2RkZTDlAwR3KmH3ZGD1AN==/full-story-insight---north-korean-defections-rise--but-is-the-south-ready? (accessed on 3 September 2011).

LEE, C. (2007) 'The Emperor's Famine', *Asia Policy,* (5): 185-221.

LEE, K. (2006) 'The Border-Crossing North Koreans: Current Situations and Future Prospects', *Studies Series 06-05*. Seoul, Korea Institute for National Unification.

Lee, K. (2006) *Tal'buk'ja mun'je ui sil'che'juk hae'bu* [Examination of Issues on North Korean Escapees] Seoul, Doseo Chul'pan.

LUBORSKY, M. (1987) 'Analysis of Multiple Life History Narratives', *Ethos,* **15**(4): 366-381.

MIDDLETON, D. & HEWITT, H. (1999) 'Remembering as Social Practice: Identity and Life Story Work in Transitions of Care for People with Profound Learning Disabilities', *Narrative inquiry.* **9**(1): 97.

MYERHOFF, B. (1982) 'Life History Among the Elderly: Performance, Visibility and Remembering', *Crack in the Mirror* (J. Ruby (ed.)) Philadelpia, University of Pennsylvania Press.

MYERS, B. (2010) *The Cleanest Race: How North Koreans See Themselves and Why It Matters*. Brooklyn, NY, Melville House.

RIGOULOT, P. (2000) *The Aquariums of Pyungyang: Ten Years in the North Korean Gulag*, Introduction. Kang, C. (trans. Y. Reiner) New York, Basic Books. Pp. xv-xxiv.

SAETERMIN CHONGSONYUN KYOYOOK UI HYUNHWANG KWA KWAJE [*New Settler Youths' Education and Challenges*] (n. d.). Seoul, Doburo Moojigae Nambuk Munhwa Tonghap Kyoyookwon.

SCHWARTZMAN, N. *(2009, 5 June) 'Alternative School is First With Principal From North Korea*', *Asian Correspondent.com*. Available from: http://asiancorrespondent.com/23517/alternative-school-is-first-with-principal-from-north-korea/ (accessed 24 August 2011).

SCHWARTZMAN, N. *(2008, 26 January) 'North Korean Refugee Students Increasing, Still Face High Drop-Out Rates*', *Asian Correspondent.com*. Available from: http://asiancorrespondent.com/22599/north-korean-refugee-students-increasing-still-face-high-drop-out-rates/ (accessed 24 August 2011).

SUNG, M. (2006) 'Sae-ter-min chung'so'nyun hak'kyo sa'hui guk'eung dop'nun jong'hap ji'won cen'ter sul'lip [Establishment of Comprehensive Supporting Center for sae-ter-min Youths]', *Naver.com*. Available from: http://blog.naver.com/gilgirl?Redirect=Log&logNo=60032008403 (accessed 24 August 2011).

TAKAHASHI, R. (2011, 10 January) 'North Korea's Forgotten Crisis', *The Japan Times*. Available from http://search.japantimes.co.jp/cgi-bin/eo20110110a2.html (accessed 16 February 2011)

TOGETHER (2005) *Sae-ter-min chung'so'nyun kyo'yuk ui hyun'hwang kwa kwa'je* [Sae-ter-min Youths' Educational Present and Issues] Seoul, Togetherkorea.

TRESTON, M. (2004) *North Korean Memoires*, Lincoln, NE, iUniverse.

WIKIPEDIA (2011, 9 August) 'Economy of South Korea', Available from: http://en.wikipedia.org/wiki/Economy_of_South_Korea (accessed 12 August 2011).

WINN, P. (2011, 8 June) 'North Korea Defectors Take to the "Underground Railroad"', *Global Post*. Available from: http://www.globalpost.com/print/5649495 (accessed 22 August 2011).

Other References

ALLEN, R. and SOLARZ, S. (2006) *The North Korean Refugee Crisis: Human Rights and International Response.* (Preface. In Haggard, Stephan and Noland, Marcus (eds.)) Pp. 7-8.

AMNESTY INTERNATIONAL (2004) *Starved of Rights: Human Rights and the Food Crisis in the Democratic People's Republic of Korea (North Korea)*, New York, Amnesty International.

ANDERSON, B. (1983) *Imagined Communities: Reflections on the Origin and Spread of Nationalis,*. London, Verso.

BANKS, J. ET. AL. (2001) *Diversity Within Unity: Essential Principles for Teaching and Learning in a Multicultural Society,* Seattle, Center for Multicultural Education, University of Washington.

BBC NEWS (1999, 30 August). '3.5 m North Koreans starved to death', *BBC News*. Available from: http://news.bbc.co.uk/2/hi/asia-pacific/433641.stm (accessed 3 January 2010).

BEFU, H. (1993) *Cultural Nationalism in the East Asia: Representation and Identity,* (Introduction. In Harumi Befu ed.) Berkeley, Institute of East Asian Studies.

CAIN, C. (1991) 'Personal Stories: Identity Acquisition and Self-Understanding in Alcoholics Anonymous.' *Ethos,* ***19***(2): 210-253.

CENTRAL INTELLEGENCE AGENCY (CIA) (2011, 8 July). 'North Korean Economy in *The World Factbook',* Available from: https://www.cia.gov/library/publications/the-world-factbook/geos/kn.html (accessed 12 August 2011).

CHAN, S. (2004). *Survivors: Cambodian Refugees in the United States*, Chicago, Urbana Champaign, University of Illinois Press.

HAGGARD, S. and NOLAND, M. (2007) *Famine in North Korea: Markets, Aid, and Reform*, New York, Columbia University Press.

HAGGARD, S. and NOLAND, M. (2006) 'Introduction: The North Korean Refugees as a Human Rights Issue', (Haggard, Stephan and Noland, Marcus (eds.)) *The North Korean Refugee Crisis: Human Rights and International Response*. Pp. 9-13.

HAGGARD, S. and NOLAND, M. (2005) *Hunger and Human Rights: The Politics of Famine in North Korea*, Washington DC, U. S. Committee for Human Rights in North Korea.

HAWK, D. (2005) *Thank You, Father Kim Il-Sung: Eyewitness Accounts of Severe Violations of Freedom of Thought, Conscience, and Religion in North Korea*, Washington DC, United States Commission on International Religious Freedom.

HAWK, D. (2003) *The Hidden Gulag: Exposing North Korea's Prison Camps Prisoners' Testimonies and Satellite Photograph,*. Washington DC, U. S. Committee for Human Rights in North Korea.

KIM, J. AND JANG, D. (2007) 'Aliens Among Brothers?: The Status and Perception of North Korean Refugees in South Korea', *Asian Perspective,* ***31***(2): 5-22.

KIRK, M. (1998) 'Mission to North Korea and China August 11-23, 1998', International Relations Committee, US House of Representatives, Washington DC.

KOREA INSTITUTE FOR NATIONAL UNIFICATION (KINU) (2006) *White Paper on Human Rights in North Korea,* Seoul, KINU.

KURKANTZICK, J. and MASON, J. (2006) 'North Korean Refugees: The Chinese Dimension' (Haggard, Stephan and Noland, Marcus (eds.)) *The North Korean Refugee Crisis: Human Rights and International Response*. Pp. 34-53.

LANKOV, A. (2004) 'North Korean Refugees in Northeast China', *Asian Survey*, **44**(6): 856-873.

MINISTRY OF UNIFICATION (2004) *Pukhan it'al chumin ipguk hyonhwang* [Information on Entry of North Korean Escapees] *(01-04.06).* (Paper issued by the Ministry of Unification on 28 July 2004).

MINISTRY OF UNIFICATION (2002) *Pukhan it'al chumin poho mit chongch'ak chiwon* [Information on Protection and Support for Resettlement of North Korean Escapees] (Paper issued by the Ministry of Unification on 28 July 2004).

ROSETT, C. (2007, 13 February). 'Cash for Kim: From drugs to contraband to U.S. aid - the many rackets of North Korea', *The Weekly Standard*. Available from: http://www.canadafreepress.com/phprint.php (accessed 10 February 2007).

Searching for the 'Land of Opportunities'
A Story about a Migrant Zimbabwean Woman who Sells Sex in Johannesburg

Story told by Lili Moses[47] to Elsa Oliveira

©Lety

"I was afraid. I battled to find a job because I did not have legal documentation."

The economic collapse that began nearly a decade ago in Zimbabwe has forced many people like me to leave their country of birth and seek survival in South Africa. Food shortages, lack of work opportunities, and political unrest made it impossible for me to remain in Zimbabwe. I was the sole breadwinner for my family, and there was nothing that I could do to ensure that they remained fed and safe unless I left Zimbabwe.

In 2006, I decided to cross the border and look for work in South Africa. Very few people reading this piece will understand what it is like for someone like me, unless you have faced the same heartache. Leaving your country of birth is difficult. No one wants to leave their families behind under such circumstances, but I had to face the harsh reality that remaining in Zimbabwe would be detrimental to my life and that of my family .

[47] Actual name has been replaced by a pseudonym. Images and captions in this paper were taken and written by Lili Moses during her elective participation in a photo project, which culminated in a public exhibition held at the Market Photo Workshop (MPW) in Johannesburg during the month of October 2010. It was entitled *"Working the City: experiences of migrant women in inner-city Johannesburg"*. The month-long exhibition and photoproject benefitted from collaboration between Sisonke Sex Worker Movement, the MPW and the African Centre for Migration and Society (ACMS) at Wits University. This project contributes to an ongoing body of research that is being undertaken with women involved in sex work in inner-city Johannesburg. Further information about the exhibition may be found at this website: http://www.marketphotoworkshop.co.za/GALLERY/PastExhibitions/2010/WorkingtheCity/tabid/3257/language/en-US/Default.aspx

"South Africa is the 'land of opportunity' for most people in Africa. Most of them face difficulties, like I did, when crossing the border."

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I risked my life coming to South Africa illegally without much money. I relied on truck drivers to transport me through Zimbabwe and then crossed the Limpopo River at night in order to avoid being caught by border patrols . While in Zimbabwe, I heard countless stories about women who had been raped and abused when attempting to cross the river and I felt so afraid, but I had to make this journey. Alone.

Crossing the border is not easy. Sometimes you have to force your body through tiny spaces. Often times, you have to walk across barbed wire, pay bribes, have sex, and impose pain on your body and mind in order to get to the other side. As I crossed into South Africa, I thought about my family; I thought about how they needed me to survive so that they too could survive. Sometimes, that was all that kept me going when I felt afraid.

After spending a night at the border town of Musina, I managed to find a transporter who brought me to Johannesburg. When I arrived in Johannesburg, I felt completely alone. I did not speak Zulu;[48] therefore, navigating the City was extremely difficult. I walked the streets for days on end trying to find work and a place to sleep. Unfortunately, xenophobia against foreigners was, and still is, a reality for non-South Africans, so I had to be careful when moving around the City.

Soon after I arrived in South Africa, I learned that many Zimbabweans lived in Hillbrow, so I quickly made my way to what, at the time, I considered a filthy, shady, and dirty place. Now, after four years, I see Hillbrow a little differently. I see Hillbrow as a place occupied primarily by 'foreigners'. Now that I have spent almost five years in Hillbrow, I realize that city officials do not spend money in places mostly occupied by non-South Africans because they do not care about spaces that foreigners occupy. There is hardly any maintenance and little is done to improve these areas; therefore, the living conditions are often dilapidated. What the government fails to recognize is that most people living in Hillbrow are hardworking, honest people who are trying to survive very challenging circumstances.

Eventually I found a job as a domestic worker for a family, but the earnings were not enough to support myself, let alone my family in Zimbabwe. After three months of

[48] Zulu is one of eleven official South African languages spoken widely in Johannesburg.

working as a maid, I met someone who introduced me to sex work in South Africa. As a sex worker I am able to make enough money to send some back home to my family, take care of myself, and travel to Zimbabwe a few times a year. I would not have been able to do this had I remained working as a domestic.

There are many people who criticize sex workers and pin their moral agendas on us. The reality is that sex work exists around the globe and it is not going anywhere. Although sex work is considered "the oldest profession," this line of work is not synonymous with the protection and dignity that other professions might receive. Most countries around the world, including South Africa, do not protect sex workers from the gross human rights violations that we face on a daily basis. Issues of police brutality, client abuse, and access to public health care are virtually ignored. This criminalization of sex work can exacerbate hostility against migrants and legitimise abuse against sex workers. It also poses significant challenges for public health officials attempting to prevent the spread of HIV.[49]

Fortunately, sex workers are starting to unite to demand human rights protection and decriminalize their profession internationally, but these efforts are making slow progress. As a forced migrant with little education in South Africa, my ability to find other work in order to earn the income that I do as a sex worker is nearly impossible. My choice to use my body in order to earn a living should not be met with the rape, abuse and discrimination that I and other sex workers routinely face.

As a member of the Sisonke Sex Worker Movement,[50] I am motivated by the work that we are doing to improve the lives of sex workers, but it isn't enough. We need public health officials, city officials, the police, and researchers to take a greater interest in our lives in order to encourage the government to make the necessary legal changes that can positively impact on our lives. I believe that many of the human rights violations that we experience as migrants and/or sex workers stem from the policies and laws that exist in South Africa. Fears of deportation, discrimination, exploitation and abuse by the police, collectively and independently, prevent me from filing police reports on abuse incidents.

I am thankful that I can go to Sisonke for support and to the Esselen Sex Worker Clinic[51] for health visits. However, this is not an option for most sex workers who live outside of the city; the realities of gaining support and health assistance for migrant sex workers elsewhere are grim and depressing.

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[49] Sex Work is illegal in South Africa under the Sexual Offences Act, Act 23 of 1957. There is extensive public health research on high-risk behavior that has identified sex work as an elevated transmission area (e.g. Gould & Fink, 2008; Richter 2008; Vearey, et al. 2010; Venables, 2010). Richter et al. (2010) argues that sex workers commonly experience violence, and due to criminalization laws sex workers are less likely to report rape, abuse and/or seek medical care.

[50] Sisonke Sex Worker Movement is an organization run by sex workers fighting for human rights and decriminalization of sex work in South Africa.

[51] Esselen Sex Worker Clinic is a health clinic run by the Wits Reproductive Health and HIV Institute located in Hillbrow, Johannesburg that serves the sex worker community of Johannesburg.

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My personal story as a migrant woman who sells sex in Johannesburg, South Africa is complex and entwined with the legal frameworks and negative attitudes within which I live and work.

"I am in charge of my life. My hands and mind are the main elements to my dreams and aspirations."

As a migrant Zimbabwean woman living in South Africa, I face the imminent threats of xenophobic violence and discrimination. As a sex worker, I face a series of threats that range from verbal abuse to physical violence, rape and even murder.

It is my hope that this story serves as an example of the struggles that forced migrants everywhere negotiate . I also hope that this story is a testimony of their strength. I chose to be a sex worker as it provides my family and me with options. However, I and the many other women and men who find themselves in the same position do not solicit abuse or humiliation because we are migrants and earn a living by selling sex.

Lili Moses was one of eleven migrant women sex workers who elected to participate in a ten-day photo project that was conducted in Hillbrow, South Africa during August 2010. During the participatory photo project, women shed light on a wide range of experiences and life stories. Participants highlighted issues of abuse, stigma (related to their work), structural violence, migration histories, and trajectories into sex work. Their varied and innovative coping strategies and their exercise of individual agency in the face of hardship and personal danger were both striking and challenging to traditional notions of victimhood.

Like Lili, many migrants moving into Johannesburg engage in informal livelihood strategies. Migrants often enter new urban cities and begin searching for work that will support them and their families in their home countries. Migrant populations, especially undocumented migrants, often find the informal economy sector more accessible than the formal employment sector. Sex work is currently illegal in South Africa and considered to be an informal albeit "illegal" livelihood strategy. Extensive research on sex work in South Africa is lacking; however, research clearly indicates that sex workers in inner-city Johannesburg experience challenging and often times dangerous, unsafe, and unhealthy living and working conditions (Flak, 2010; Oliveira, 2011; Vearey et al, 2010). Furthermore, research clearly shows that sex work is a viable option for many migrant women as they seek to support themselves and their families back home; nonetheless, the current environment in which sex work takes place subjects migrant women sex workers to a high risk of violence, discrimination, and HIV (Richter 2010).

Contrary to trafficking discourse, not all sex workers are victims of trafficking. In fact, the great majority of sex workers choose to enter the sex work industry; however, the choice to enter sex work is often constrained, judged and discounted due to criminalization laws and the stigma placed on sex work and sex workers. Conflating trafficking discourse with sex work ignores, and directly discounts, the choice that women are making to enter sex work; consequently, the human rights abuses and discrimination faced by sex workers worldwide are widely ignored (Richter et al. 2010)

Sex work is a profession chosen by many migrants as they enter new urban spaces; therefore, the choice to enter sex work should not be ignored and/or relegated to emotive conclusions but rather acknowledged, accepted and protected. A deliberate shift away from the moral judgment placed on sex workers by the institutions and individuals that negatively impact and directly or indirectly abuse sex workers is vital in order for the lives of migrant women to be protected.

Lili Moses - Lili is a Zimbabwean migrant who has been working as a sex worker in inner city Johannesburg, South Africa since 2006. Lili is also a member of Sisonke Sex Worker Movement and hopes to one day return to Zimbabwe permanently.

Elsa Oliveira – Elsa Oliveira recently completed her MA degree in Forced Migration at the African Centre for Migration and Society at Wits University in Johannesburg, South Africa. As part of Elsa's MA research on migrant women and the impacts (if any) of urban space on self (re) presentation, she co-coordinated the participatory photo project in which Lili was one of eleven migrant women sex workers to participate. The images were used as entry points into narrative inquiry and served as an opportunity to gain deeper insight into the lives of migrant women who sell sex in inner city Johannesburg. Contact: elsa.alexandra.oliveira@gmail.com

References Cited

FLAK, A. (2011). 'Fictional representation of migrant women involved in sex work in inner-city Johannesburg: How does Self-Representation Compare?', *MA Thesis, Forced Migration Studies Programme,* University of the Witwatersrand.

GILBERT, Liz. (2002). 'Meeting the Urban Challenge.' *Population Reports*, XXX(4).

GOULD, C. & FICK, N. (2008) S*elling sex in Cape Town, Sex Work and Human Trafficking in a South African City*, Pretoria: Institute of Security Studies.

NYANGAIRI, B. (2010) 'Migrant Women in Sex Work: Trajectories and Perceptions of Zimbabwean Sex Workers in Hillbrow, South Africa' Unpublished.

OLIVEIRA, E. (2011) 'Migrant women sex workers: How urban space impacts self-(re) presentation in Hillbrow, Johannesburg', *MA Thesis, Forced Migration Studies Programme,* University of the Witwatersrand.

RICHTER, M. (2008). 'Erotic Labour in Hillbrow: Sex work, Johannesburg's 'Den of Inequity' and HIV/AIDS', Submission to *HIV and World of Work Conference.*

RICHTER, M. (2010) 'The Slippery Slope of Prostitution Hill and being highbrow in Hillbrow', *Perspectives: South Africa and the World Cup,* 16-19.

RICHTER, M., CHERISH, M., SCORGIE, F., LUCHTERS, S., TEMMERMAN, M., STEEN, R. (2010) 'Sex Work and the 2010 FIFA World Cup: time for public health imperatives to prevail', *Globalization and Health*, 6(1).

RICHTER, M. and MASSAWE, D. (2011). "Did South Africa's soccer bonanza bring relief to sex workers in South Africa? The 2010 FIFA World Cup and the impact on sex work". *Agenda,* 85, 21-30.

VEAREY, J., OLIVEIRA, E., MADZIMURE, T., NTINI, B. (2011). 'Working the City: Experiences of Migrant Women in Inner-city Johannesburg', *The Southern African Media and Diversity Journal*, (9), 228- 233.

VENABLES, E. (2010) 'Visual Hillbrow: Inner-city Johannesburg as represented by AfrEVacc participants', *Reproductive Health and HIV Research Unit (RHRU),* Cognitive mapping protocol approved by Wits HREC (medical), 19 January 2010.

Criminalising and Victimising the Migrant: Reflections on the UN Protocol and UNHCR's Position against Smuggling

By Zeynep Kasli

Abstract

This paper discusses the ways in which the UN Protocol against Smuggling and its reception by UNHCR reinforce a certain image of the 'smuggled migrant' that emerges simultaneously as a 'victim' of smuggling and a 'threat' to the states' authority over border crossings. The paper further claims that such seemingly contradictory images in fact complement one another and provide the legal and institutional basis to 'manage' migration by securitising it.

The strengthening of border controls and measures to deter people's entry into Western states has pushed migrants to search for other ways to enter and rely more on 'smuggling rings'. Due to stricter border measures, smuggling routes have become more dangerous for those who have to rely on them (Hagen et al 2011, W2eu 2011). Concomitant to an increasing number of 'smuggling victims,' like the act of trafficking, people smuggling is also a matter of humanitarian concern for organisations such as UNHCR (UNHCR Refugees Daily 2009). This paper discusses the ways in which the UN Protocol against Smuggling and its reception by UNHCR reinforce a certain image of the 'smuggled migrant' that emerges simultaneously as a 'victim' of smuggling and a 'threat' to the states' authority over border crossings. The paper further claims that such seemingly contradictory images in fact complement one another and provide the legal and institutional basis to 'manage' migration by securitising it.

Many scholars have pointed to the fact that the securitisation of migration and new instruments of border management target migrants as a 'risk' and impede humanitarian assistance for 'migrants in need' by, for example, erasing the categorical distinction between 'asylum seekers' and 'others' (Leonard 2010; Morrison and Crosland 2001; Noll 2003; Schuster 2005; van Munster 2009). Despite recognising the difficulties of categorising people as smuggled migrants/trafficked persons/refugees due to the increasing complexity of the economic and social reasons to move across borders, previous studies have generally not given due consideration to what functions such categories serve. By claiming that 'the concept of labelling reveals and contests the subjectivity and arbitrariness by which labels are made, and the way in which everyday bureaucratic processes transform identities' (Zetter 2007: 180), Zetter stresses how institutional practices transform the 'refugee' label by developing new instruments, such as the overseas application processes or third country readmissions. Similarly, Zetter also mentions, the 'asylum seeker' label functions 'to manage…and to decline refugee claims' made on the basis of the Geneva Convention (2007: 182). While acknowledging the role bureaucratic interests and practices play in labelling and the role labelling plays in managing migration, the analysis of the 'smuggled migrant' label in this paper is limited to the rhetoric of international actors and their possible effects on the process of label (trans)formation.

Through the adoption of the UN Protocol against Smuggling of Migrants by Land, Sea and Air (supplementing the UN Convention against Transnational Organised Crime), human smuggling, as well as trafficking, has been accepted as a 'transnational organised crime' in the international

political field (UN 2000).[52] UNHCR Summary Position on the UN Protocol against Smuggling and Trafficking states that during the Ad-Hoc Committee sessions for the Protocol, 'UNHCR emphasized the need to reconcile measures to combat the *smuggling of migrants* and the *trafficking of persons* with existing obligations under international refugee law' (UNHCR 2011, emphasis added). UNHCR declares its appreciation for the 'protection of smuggled migrants' and for not punishing migrants 'for the mere fact of having been smuggled or at penalising organisations which assist such persons for purely *humanitarian reasons*' (emphasis added). However, by underlining 'humanitarian reasons' as the only just cause for being exempt from punishment, UNHCR makes it clear that the distinction between *persons* who are trafficked and *migrants* who are smuggled can be reconciled if and only if they 'deserve' protection for being 'victims' in the hands of smugglers. For that matter, it can be said that the framing of migrant smuggling has increasingly resembled what Aradau (2004) calls the 'politics of pity' and the 'politics of risk' that are simultaneously used in trafficking cases. Just as the ways in which security and humanitarian discourses were simultaneously utilised to prevent the 're-trafficking' of previously trafficked women for the sex industry (Aradau 2004), the criminalisation of smuggling has also aimed at preventing the *re-smuggling* of previously smuggled migrants unless they are migrating for immediate 'humanitarian reasons'. Although UN Protocol positions 'smuggled migrants' closer to victims of trafficking and guarantees them temporary protection under international law from potential abuses of 'smuggling rings' and UNHCR reaffirms the necessity to provide such protection, both UN Protocol and UNHCR take for granted the limits of UNHCR's mandate, that is protecting refugees as they are defined by the 1951 Refugee Convention and the 1967 Protocol.

Within this paradigm, 'smuggled migrants' remain in a precarious position not only because they are outside UNHCR's protection mandate but also because, contrary to UNHCR's claims, the Smuggling Protocol's priority lies in protecting states against smugglers more so than in protecting migrants against the act of smuggling, which is defined in Article 6 entitled Criminalisation. For instance, Article 11 (5) on Border Measures includes the right to take 'measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons' and Article 11(6) emphasises the 'strengthening cooperation among border control agencies, by *inter alia*, establishing and maintaining direct channels of communication.' Just as the former reinforces state sovereignty at the expense of the free movement of people, the latter encourages the securitisation of migration through the patrol and strengthening of borders. In other words, Article 11 provides the legal basis for intergovernmental cooperation and for that matter, the formation of external border agencies such as FRONTEX[53] in the European context. Similarly, Article 18 on Return of Smuggled Migrants considers states' concerns for managing cross-border movement more so than the concerns of individuals who are smuggled into a country which otherwise does not authorize them to cross its borders and stay. As in Aradau's (2004) emphasis on the simultaneous use of 'politics of pity' and 'politics of risk' in the case of trafficked women, Article 18 shows that the Protocol anticipates return as the ultimate measure to 'protect' migrants against the act of smuggling. Indeed, contrary to the Protocol's initial definition of those individuals as 'victims' of smuggling, Article 18(8) legitimises the criminalisation of migration and individuals 'who have been the object of [smuggling]

[52] It was adopted on 15 November 2000 and entered into force on 28 January 2004. Yet there is no updated information in the website of UNHCR regarding the status of the ratification of either the Smuggling Protocol or the Convention.

[53] FRONTEX is a Warsaw-based intelligence driven EU agency that was formed in 2004, with the ultimate aim of improving information coordination and dissemination efforts in the field of border security. As a public clearing house, it integrates several centres (the Air Borders Centre in Rome, the Centre for Land Borders in Berlin, Maritime Borders Centres on Madrid and Piraues, COLPOFOR and the Risk Analysis Centre in Helsinki).

conduct' by stating that 'this article shall not affect the obligations entered into under any other applicable treaty, bilateral or multilateral, or any other applicable operational agreement or arrangement that governs' the return of smuggled migrants. For that matter, Article 18 provides the legal basis also for readmission agreements signed by EU member states with neighboring countries that are transit points for people to reach and cross EU borders. Therefore, by pushing them outside the borders of host states, the Protocol first victimises and then criminalises the migrants as well as the smugglers.

In his study on securitisation of EU immigration policy, Van Munster argues 'for what may seem as a managerial question of abject populations is in the end also a question of who is allowed access to the social fabric of society and how society should be structured' (2009: 123). Since the legal distinctions between migrants/asylum seekers/refugees have so far depended on the discretion of states, rather than the needs of individuals, for Van Munster (2009), challenging this current trend of securitising migration would be possible only through a political shift away from the discourse of 'migrant rights' (as a distinct category) to the 'right to have rights' as equal subjects.[54] Indeed, one might assume that the following statement by UN High Commissioner for Refugees Antonio Guterres in 2007 emerges as a sign of such a proposal for challenging states' discretionary power:

> In exactly a week from now, we will be celebrating International Migrants Day. Let us use that day, and let us use this Dialogue, to reaffirm the need to *respect the rights of all those people* who have left their own country, *irrespective of their legal status or their motivation for moving*. In making that remark, I am not seeking an expansion of my Office's mandate… I do believe, however, in the universality and indivisibility of human rights. By creating a global environment in which *migrant rights* are respected, we will also be creating an environment in which UNHCR can more effectively exercise its mandate for refugee protection and solutions.[55] (emphasis added)

Guterres' rhetoric differs from what Van Munster suggests, as Guterres still clearly labels migrants as a distinct category of individuals with distinct rights. Yet by stating that 'Irregular migration can only be curtailed if people who want to move can aspire to do so in a safe and legal manner' (Guterres in Crisp 2008: 4), Guterres at least makes a more inclusionary statement compared to the previously discussed UNHCR Summary Position in 2000 which considered the protection of migrants only on 'humanitarian grounds' while at the same time criminalised them for crossing borders illegally.

Furthermore, the same year as Guterres' statement, UNHCR released the 10-Point Plan of Action.[56] As Crisp confirms, this plan did provide 'a framework for states and other stakeholders to address the phenomenon of mixed movements in a principled manner' (footnote 4 in Crisp 2008). Nevertheless, the language of the headings and details of each point reaffirms UNCHR's stance regarding the necessity to expand and deepen surveillance at entry points. In other words, like the UNHCR Summary Position on Smuggling Protocol, the 10-Point Plan also serves the

[54] Van Munster borrows Arendt's notion of 'a right to have rights' which she introduced in her 1949 essay 'The Rights of Man: What are they?' and her 1951 book *The Origins of Totalitarianism.*

[55] In December 2007, UN High Commissioner for Refugees Antonio Guterres's opening statement for the two-day meeting in Geneva that was titled a 'Dialogue on Protection Challenges' (cited in Crisp 2008).

[56] This plan is composed of: 1. Cooperation among key partners. 2. Data collection and analysis. 3. Protection-sensitive entry systems. 4. Reception arrangements. 5. Mechanisms for profiling and referral. 6. Differentiated processes and procedures. 7. Solutions for refugees. 8. Addressing secondary movements. 9. Return arrangements for non-refugees and alternative migration options. 10. Information strategy (UNHCR 2007).

securitisation of migration and criminalisation of individuals who are unable to prove their 'victimhood' within the existing humanitarian framework. Thus it reinforces UNHCR's distinction between 'deserving' and 'undeserving' migrants on the basis of its predetermined notion of 'humanitarian grounds'. Although at first glance this plan might seem contradictory to Guterres' 2007 statement, which stresses the 'universality and indivisibility of human rights', the plan and Guterres' rhetoric, in fact, mutually reinforce one another. While both underline the limits of UNHCR's mandate as well as the need to respect *migrant rights*, the already existing categories of migrants and refugees are taken for granted and the possibility of revising these distinctions and labels on the basis of the newly emerging 'protection needs' is absent (Zetter 2007).

Though no detailed information is available about the ongoing processes of implementation, the coming into force of this UN Protocol also seems as an important factor that paved the way for the agreement between FRONTEX and UNHCR in 2008, namely the 'working arrangements establishing a framework for cooperation agreement with FRONTEX' (FRONTEX 2008). For instance, UNHCR has urged FRONTEX 'to ensure that asylum in Europe is not being threatened in the drive for tighter policing of the continent's external borders' (UNHCR 2010). Despite calling attention to the problems faced by asylum seekers at EU borders, UNHCR, as an international humanitarian agency, underlines the fact that their main concern is not *migrants* per se but *asylum seekers* who have to resort to 'people smuggling rings' in order to cut through increasing border controls around Europe (UNHCR 2010). Therefore, by seeking measures which are 'protection-sensitive' yet at the same time drawing boundaries of protection for 'asylum seekers' at the expense of 'migrants', UNHCR forms and transforms the image of the 'smuggled migrant' as a 'deserving' individual on the basis of the Smuggling Protocol that provides the legal ground for temporary protection for merely 'humanitarian reasons'. In other words, the UN Protocol as well as UNHCR's position seem to reinforce the securitisation of migration and institutionalise the criminalisation of smuggling in international law. Yet they also served to create a certain image of the 'smuggled migrant' that is paradoxically labelled both as a 'threat' who challenges state sovereignty through 'unauthorised' border crossing and as a 'victim' of the act of smuggling that UN Convention defines as a 'transnational organised crime'.

In sum, neither the UN Protocol nor UNCHR's interpretation of it problematise the fact that smuggled migrants/trafficked persons/refugees/asylum seekers are labelled as distinct groups, whose distinct legal rights are subject to states' discretionary power. While defining smuggling as organised crime, the critical articles of the Protocol and UNCHR's interpretation of this Protocol, as discussed in this paper, protect states against smuggled migrants whom they treat not only as 'victims' of the crime but also as 'threats' to states' territorial sovereignty. Finally, the simultaneous use of these images shows that unless 1) international law protects people's 'right to have rights' rather than the right to temporary protection for individuals who prove their victimhood based on 'humanitarian reasons', and 2) state borders are accessible for all those who have left their home country, as Guterres also once underlined, irrespective of their motivation for moving, the fight against smuggling in the international as well as national level will remain as yet another means to perpetuate the securitisation of migration.

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References Cited

ARADAU, C. (2004) 'Words: Risk and Pity in the Securitization of Human Trafficking', *Millennium: Journal of International Studies,* Vol. 33, No. 2, pp. 251-279.

CRISP, J. (2008) 'Beyond the Nexus: UNHCR's evolving perspective on refugee protection and international migration', Geneva: UNHCR Policy Development and Evaluation Service.

FRONTEX (2008) *Frontex- UNHCR: Reinforced Cooperation*. [online] (Updated 01 September 2010) Available at: <http://www.FRONTEX.europa.eu/newsroom/news_releases/art39.html> [Accessed 01 September 2011]

LEONARD, S. (2010) 'EU border security and migration into the European Union: FRONTEX and securitisation through practices', *European Security*, Vol. 19, No. 2, pp. 231-254.

MORRISON, J. and CROSLAND, B. (2001) 'The trafficking and smuggling of refugees: the end game in European asylum policy?', Working Paper No. 39, UNHCR.

NOLL, G. (2003) 'Securitizing sovereignty? States, refugees, and the regionalization of international law', in Newman, E. and J. van Selm (eds.) *Refugees and Forced Displacement: International Security, Human Vulnerability, and the State*. United Nations University Press: United Nations University.

HAGEN, C. ET AL (2011) *Frontex and human rights implications of Europe's border security.* [online] (Updated 12 September 2011) Available at: <http://assembly.coe.int/Documents/WorkingDocs/Doc11/EDOC12704.pdf> [Accessed 28 September 2011]

SCHUSTER, L. (2005) 'The Realities of a New Asylum Paradigm', COMPAS Working Paper No.20, Oxford University, COMPAS.

UN (2000) *Protocol against Smuggling of Migrants by Land, Sea and Air Supplementing the UN Convention against Transnational Organised Crime*. [online] United Nations. Available at: <www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_smug_eng.pdf> [Accessed 01 September 2011]

UNHCR (2010) *UNHCR urges EU and FRONTEX to ensure access to asylum procedures, amid sharp drop in arrivals via the Mediterranean.* [online] (Updated 01 September 2010) Available at: <http://www.unhcr.org/4d022a946.html> [Accessed 01 September 2011]

UNHCR REFUGEES DAILY (2009) *Scores of Smuggling Victims Dead or Missing in Gulf Of Aden*. [online] (Updated 16 September 2009) Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=463ef21123&id=4ab079555> [Accessed 28 September 2011]

UN**HCR** (2007) *Refugee Protection and Mixed Migration:A 10-Point Plan of Action*. [online] UNHCR. Available at: < http://www.unhcr.org/protect/PROTECTION/4742a30b4.pdf > [Accessed 01 September 2011].

VAN MUNSTER, R. (2009) *Securitising Immigration: The Politics of Risk in the EU*, Great Britain: Macmillan Palgrave.

W2EU (2011) *Dublin-Deaths between Kerkyra/Greece and Bari/Italy (15th of January 2011).* [online](Upated 20 July 2011) Available at: <http://w2eu.net/2011/07/20/dublin-deaths-between-kerkyragreece-and-bariitaly-15th-of-january-2011/> [Accessed 28 September 2011]

ZETTER, R. (2007) 'More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalisation', *Journal of Refugee Studies,* Vol. 20, No.2, pp. 172-192.