

FORCED MIGRATION review

Issue 44
September 2013

Detention, alternatives to detention, and deportation

Detention of refugees, asylum seekers and other migrants is widely used by many states as part of their migration management strategy, often as the precursor to deportation. However, there are viable, more humane alternatives.

plus:

mini-feature on the Syria crisis

and articles on: Afghan refugees in Iran, community rejection in DRC, cash and vouchers, CAR refugees in Cameroon, refugees' right to work, and information about cessation for Rwandan refugees.



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From the editors

Forced Migration Review

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Seeking asylum is not an unlawful act. Yet asylum seekers and refugees – men, women and even children – are increasingly detained and interned around the world, as are numbers of other migrants. Sometimes detained indefinitely and often in appalling conditions, they may suffer not only deprivation of their liberty but other abuses of their human rights too. Families are separated. Medical and psychological needs are ignored. Contact with the outside world is fractured. Rigid rules, surveillance and restraints degrade, humiliate and damage. And lack of information and hope leads to despair.

Detention may appear to be a convenient solution to states' political quest to manage migration but it is an expensive option and has lasting effects on people and on their capacity to be independent, self-sufficient and fulfilled members of the community when released. In the search for a more humane – and cheaper – approach, agencies and government authorities have trialled a variety of alternatives to detention, some of which are promising in terms of low levels of absconding, a greater degree of normality for the people involved, and improved chances of eventual integration. It will take shifts in attitudes as well as successful pilots, however, for alternatives to detention to become the norm.

For many people, their detention is the precursor to their deportation (or 'removal'). Here again, there seems to be a marked lack of care for people's rights and protection, as well as for their safe, successful and sustainable reintegration.

We would like to thank Jerome Phelps, Robyn Sampson and Liza Schuster for their assistance as special advisors on the feature theme. We are very grateful to the the Oak Foundation and UNHCR for funding this issue.

This issue also includes a mini-feature on the current **Syria crisis**, plus a number of general articles on other aspects of forced migration.

The full issue is online at www.fmreview.org/detention in html, pdf and audio formats. It will be available in print and online in English, French, Spanish and Arabic. An expanded contents listing for the issue is available at www.fmreview.org/detention/FMR44listing.pdf

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With our best wishes

Marion Couldrey and Maurice Herson
Editors, Forced Migration Review

Detention under scrutiny

Alice Edwards

Seeking asylum is not an unlawful act, yet asylum seekers and refugees are increasingly detained and interned around the world, suffering not only deprivation of liberty but also other abuses of their human rights. UNHCR's new detention guidelines challenge governments to rethink their detention policies and to consider alternatives to detention in every case.

"It is a gross injustice to deprive of his liberty for significant periods of time a person who has committed no crime and does not intend to do so. No civilised country should willingly tolerate such injustices." Lord T Bingham, *The Rule of Law* (London: Allen Lane, 2010).

The widespread and increasing use of immigration detention has come under considerable scrutiny in recent years. As a means of controlling entry to the territory and, supposedly, as a form of deterrence, immigration detention is increasingly being questioned on practical and functional grounds, as well as on human rights/legal grounds. Politically, too, many countries are facing growing civil opposition to the practice of immigration detention.

It is clear that irregular migration can challenge the efficient functioning of asylum systems in many countries. States are increasingly confronted with the complex phenomenon of mixed population movements, including smuggling and trafficking in persons, and the multiple push and pull factors driving such movements. Being able to deport persons rapidly if they are found to have no grounds to stay is also a government objective. UNHCR has long held that the return of rejected asylum seekers is an important part of functioning asylum systems, and one which may be required in order to safeguard national and/or regional protection systems and to prevent onward movements.¹

Governments are also concerned about national security and criminal activities, which have in turn propagated an increasingly hostile and xenophobic climate in many countries. Xenophobia, racism and related intolerance are used in subtle and

overt ways by the media, politicians and other leading public figures to ignite fears of the 'other' in host communities; they pose some of the greatest threats to the global asylum system, and need to be combated.²

As governments have attempted to respond to these challenges, detention policies and practices have in some contexts been expanded; however, they have not always differentiated sufficiently between the special situation of persons in need of international protection and the broader category of irregular migrants. People are also at times detained in criminal facilities, including maximum security prisons, which do not cater for the particular needs of asylum seekers or other migrants and which, in effect, criminalise them. These are worrying trends, not least because the latest empirical research shows that not even the most stringent detention policies deter irregular migration or discourage persons from seeking asylum.³ In fact, recent research commissioned by UNHCR suggests that many asylum seekers are unaware of the detention policies of their destination countries, or indeed have little or no say about their journey or their final destination.⁴

The negative and at times severe physical and psychological consequences of detention are well-documented, yet appear to have had limited impact on the policy-making of some nations. A study by the Jesuit Refugee Service, for example, reveals that regardless of whether asylum seekers show symptoms of trauma at the start of their detention, within a few months they do show such symptoms. The research concludes that everyone is vulnerable in detention.⁵ The psychological effects of detention, especially prolonged detention, can

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also affect the ability of refugees to integrate into their host countries, and to become positive contributors to their new societies.

New detention guidelines

In October 2012, UNHCR launched its new Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012).⁶ The ten inter-related guidelines [see back cover] touch on different facets of the right to liberty and the prohibition against arbitrary detention for asylum seekers. Drawing upon international refugee and human rights law standards, they are intended to guide governments in their elaboration and implementation of asylum and migration policies which involve an element of detention, and help decision makers, including judges, in making assessments about the necessity to detain a particular individual.

UNHCR's Detention Guidelines outline the international legal framework that applies in different situations, and provide information

on alternatives to detention. The policies of many industrialised countries, for example, are out of step with the latest research. Evidence shows that alternatives to detention work in practice, whether in the form of reporting requirements, designated residence or supervision in the community, for example. Research indicates, too, that asylum seekers consistently comply with conditions of their release from detention in over 90% of cases.⁷

The same studies have shown that when asylum seekers are treated with dignity and humanity they demonstrate high levels of cooperation throughout the entire asylum process, including at the end of that process. There is even evidence which supports a correlation between going through an alternative to detention before having cases finally rejected and higher voluntary departure rates.⁸

UNHCR's Detention Guidelines emphasise that seeking asylum is not an unlawful act and, as such, even those who have entered or



An Afghan asylum seeker walks in the courtyard used for outdoor recreation time at Belawan Immigration Detention Centre, North Sumatra.

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remained in a territory without authorisation are protected from penalisation, including in the form of detention or other restrictions on their movement. The Guidelines also draw upon the human right to liberty and the correlative prohibition against arbitrary detention, which apply to all people regardless of their immigration, asylum-seeker, refugee or other status. They explain the parameters of the right to liberty as it applies in the asylum context, and place particular prominence on the need for states to implement open and humane reception arrangements for asylum seekers, including alternatives to detention.

These new guidelines supersede UNHCR's 1999 guidelines, and include a special annex on alternatives to detention, an expanded section on special or vulnerable groups who – because of disability, age, gender, sexual orientation or gender identity – require special measures to be taken, and a recommendation calling for independent monitoring and inspection of places of detention. In support of the latter recommendation, UNHCR is working with the Association for the Prevention of Torture and the International Detention Coalition to publish a joint monitoring manual, to be released in late 2013. The Guidelines also specify minimum procedural safeguards plus humane and dignified conditions of detention.

The core of the message is that while detention is often a feature of asylum/migration systems, the detention of asylum seekers should in principle be avoided and used only in exceptional circumstances. Detention may only

be applied where it has been determined that it is necessary, reasonable and proportionate to the legitimate objective in the individual case, and alternatives to detention need to be considered in each case.

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See also Edwards A (forthcoming) 'Introductory Note to UNHCR's Guidelines on Detention and Alternatives to Detention', *International Journal of Refugee Law*.

See also Refworld's special page on detention: www.unhcr.org/refworld/detention.html

1. UNHCR, Protection Policy Paper 'The return of persons found not to be in need of international protection to their countries of origin: UNHCR's role', November 2010, para 3 www.refworld.org/docid/4cea23c62.html UNHCR, Protection Policy Paper 'Maritime interception operations and the processing of international protection claims: legal standards and policy considerations with respect to extraterritorial processing', November 2010, para 32. www.refworld.org/docid/4cd12d3a2.html
2. Edwards A 'Measures of First Resort 'Alternatives to Immigration Detention in Comparative Perspective'', 2011 *Equal Rights Review Special Feature on Detention and Discrimination*, 117-142 www.equalrightstrust.org/ertdocumentbank/ERR7_alice.pdf.
3. Edwards A *Back to Basics The Right to Liberty and Security of Person and "Alternatives to Detention" of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, UNHCR Legal and Protection Policy Research Series, PPLA/2011/01.Rev.1, April 2011 www.unhcr.org/refworld/docid/4dc935fd2.html International Detention Coalition, *There are Alternatives, A Handbook for Preventing Unnecessary Immigration Detention*, 2011, <http://idcoalition.org/cap/handbook/> UN, Report of the Special Rapporteur on the Human Rights of Migrants, François Crépeau, A/HRC/20/24, 2 April 2012 www.unhcr.org/refworld/docid/502e0bb62.html.
4. Costello C & Kaytaz E, *Building Empirical Research into Alternatives to Detention: Perceptions of Asylum-Seekers and Refugees in Toronto and Geneva*, UNHCR Legal and Protection Policy Research Series, June 2013 www.unhcr.org/51c1c5c9.html
5. Jesuit Refugee Service, Europe, *Becoming Vulnerable in Detention*, June 2011 www.unhcr.org/refworld/docid/4ec269f62.html
6. The Guidelines are available at: www.unhcr.org/refworld/docid/503489533b8.html
7. Edwards, endnote 3.
8. Edwards and IDC, endnote 3.



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Psychological harm and the case for alternatives

Janet Cleveland

Studies in countries around the world have consistently found high levels of psychiatric symptoms among imprisoned asylum seekers, both adults and children.

Immigration detention is often trivialised in government discourse. In 2012, for example, Canadian Immigration Minister Jason Kenney described Canada's largest immigration detention centre as "basically a two-star hotel with a small fence around it" where "people have hotel rooms, with fresh cooked meals there every day".¹ He also stated that in all immigration detention centres "conditions are entirely appropriate for families".

Yet, in Canada, as in many other countries, immigration detention centres are prisons in all but name. Detainees are under constant surveillance by cameras and uniformed guards, subject to repeated searches, in a facility with centrally controlled locked doors surrounded by fences topped with razor wire. Men and women are held in separate wings, with a special section for children detained with their mothers. There is no family section, so fathers are separated from their children, although they can see them daily. Personal effects are confiscated. Movement from one area to another within the centre is prohibited unless escorted by a guard.

All aspects of daily life are controlled by rigid rules, and failure to respect rules may be punished by brief solitary confinement or withdrawal of privileges (such as visits). There are virtually no activities except watching television. Primary medical care is provided but no mental health services. All detainees except pregnant women and minors are handcuffed during transportation. Detainees in need of hospital care are handcuffed, sometimes shackled, while in the public waiting room, and may be chained to the hospital bed. Additionally, close to 30% of detained asylum seekers and refused claimants are held in ordinary provincial jails or remand centres alongside the criminal

population, primarily due to lack of space in dedicated immigration detention centres.

Yet in Canada, fewer than 6% of these detainees are suspected of criminality or viewed as a security risk. Asylum seekers (i.e. people whose refugee claim has not yet been heard) and refused claimants are an almost entirely non-criminal and low-risk population. Imprisoning individuals who are not even suspected of criminality is a serious breach of their fundamental right to liberty and fair treatment – rights possessed by all human beings, not just citizens.

Research on impacts on mental health

My colleagues and I recently conducted a study on the impact of imprisonment on asylum seekers' mental health with 122 adult asylum seekers held in Canadian immigration detention centres and a comparison group of 66 non-detained asylum seekers.² After a relatively short imprisonment (average 31 days), 32% of detained asylum seekers reported clinically significant levels of post-traumatic stress symptoms, compared to 18% of their non-detained peers. Depression levels were 50% higher among detained than non-detained participants, with 78% of detained asylum seekers reporting clinical levels of depressive symptoms compared with 52% of non-detained asylum seekers.

These findings are in line with those reported by other researchers but are particularly striking because in this case detention was comparatively brief. Also, although conditions in Canadian immigration detention centres certainly could be considerably improved (e.g. with internet access, more activities, elimination of handcuffs), they are better than in many other countries. Nonetheless, imprisonment was a highly distressing

experience for most of the detained asylum seekers interviewed in our study. Imprisonment inherently involves disempowerment and loss of agency – in other words, loss of the ability to make personal decisions, exercise control over one's daily life and take actions to achieve desired goals. This loss of agency is one of the major predictors of depression as well as one of its core characteristics. Feeling powerless is also an important dimension of post-traumatic stress as traumatic events such as torture and rape typically involve inability to escape or retaliate. Regaining a sense of agency and mastery over one's life is central to recovery from both depression and post-traumatic stress disorder.

Detained asylum seekers are deprived of liberty and agency not only by confinement but also by rigid rules, constant surveillance and the use of restraints. When immigration agents first decide to detain an asylum seeker, the latter is handcuffed and transported to the detention centre in a locked van. This is generally experienced as degrading and humiliating, and typically described as "being treated like a criminal". At the detention centre there are multiple restrictions. For example, when a newly detained asylum seeker refused to get up at the compulsory 6am wake-up call, he was placed in 24-hour segregation for insubordination. Similarly, in one detention centre, men were not allowed to go back to their rooms during the day nor to take naps in the common room, with no recognition that many of them suffered from insomnia, often trauma-related, compounded by the disturbances of night rounds.

This kind of tight control over the most minute details of daily life, normally reserved for dangerous criminals, is experienced as a loss

of dignity and agency. More fundamentally, detained asylum seekers cannot take steps to achieve security and start rebuilding their lives. They can do little but wait and worry: wait for their identity papers to arrive, wait for their detention review hearing, wait for their immigration agent or lawyer to return their calls, worry that their detention will be prolonged, worry that they will be deported, worry about their families back home.

Such conditions would be difficult for anybody but are particularly distressing for asylum seekers, most of whom have experienced violence and mistreatment in their country of origin. Asylum seekers are often amazingly resilient and able to recover even from severe trauma when placed in favourable conditions, including quick access to secure status, employment and basic services and rapid reunion with close family. On the other hand, stressors such as immigration detention can be the final straw that will tip the balance towards mental health problems. Certain people are particularly vulnerable, including children, pregnant women and persons who have experienced severe trauma such as torture or rape, but asylum seekers in general are a potentially vulnerable population because of high rates of exposure to traumatic events. They are in need of respect, support and fair treatment, not imprisonment.

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1. House of Commons Debates, 15 March 2012; House of Commons Standing Committee on Citizenship and Immigration, 27 March 2012 and 26 April 2012.

2. For details see Cleveland, J and Rousseau, C (2013) 'Psychiatric symptoms associated with brief detention of adult asylum seekers in Canada', *Canadian Journal of Psychiatry*, 58(7), 409-416

Torture survivors in detention

Little attention is paid to the impact of detention on torture survivors, a particularly vulnerable group. Detention may aggravate mental health issues experienced by them; closed detention centres may share characteristics with the environment in which they experienced torture, and treatment may not be available to them. Detainees' prior experiences of trauma and torture are often neither evaluated nor registered. If trauma history – including exposure to torture – is not known, meeting the recommendation of refraining from detaining survivors of torture set forth by UNHCR is made impossible. See Tania Storm & Marianne Engberg 'The impact of immigration detention on the mental health of torture survivors is poorly documented – a systematic review', *Danish Medical Journal*, forthcoming end October www.danmedj.dk

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Establishing arbitrariness

Stephen Phillips

States have international obligations to ensure that all deprivations of an individual's liberty are consistent with international human rights law. The majority of provisions in the international human rights law instruments that deal with such deprivations of liberty contain the term 'arbitrary', yet there is no clear definition of what this entails. Arbitrariness is defined differently by different supervisory bodies in different cases, and in different contexts; understanding it requires awareness of the different factors affecting how individual deprivations of liberty are examined and understood.

An important factor is the dominance of discourses around national security and notions of territorial sovereignty. The right of states to control entry into their territories has consistently been made explicit by the European Court of Human Rights (ECtHR), emphasising that as long as the detention is considered to serve a legitimate public interest it cannot be considered as arbitrary. The apparent counter-

balances to this are the concepts of proportionality and necessity, and the UN Human Rights Committee suggests that these two concepts remain central in situations of deprivation of liberty. It is not enough that a detention serves a political purpose; if it fails the tests of proportionality and necessity it cannot be justifiable and is therefore 'arbitrary'. Indeed, some argue that in cases concerning asylum seekers there is no legal justification for detention unless in exceptional circumstances such as a threat to national security or public order. Nevertheless, states continue to detain migrants without regard to proportionality and necessity. Closely linked to the ideas of proportionality and necessity, the notions of fairness, justice and predictability are also central to understanding arbitrariness, and must be kept in mind in any examination of whether a particular detention is or is not arbitrary.

In the context of deportation proceedings, according to the ECtHR, detention can only be justified for as long as proceedings are in progress, and "if such proceedings are not prosecuted with due diligence, the detention will cease to be permissible".¹ Irrespective of state claims to the contrary, detention of those awaiting deportation must be both proportionate and necessary; that the detainee in question is subject to removal is not sufficient justification.



Family locked in holding cell, Tucson, Arizona, in the US.

Finally there must always be consideration of the individual circumstances of any particular case. It is crucial that a 'one size fits all' approach be avoided. It should not be enough that a state is acting in pursuit of a broader policy of immigration control or that generalised notions of national security are being invoked; the proportionality and necessity of each and every instance of detention should be scrutinised.

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1. Chahal v. the United Kingdom [GC], Application No. 22414/93, ECtHR, Judgment of 15 November 1996, Reports 1996-V, para. 112.

Voices from inside Australia's detention centres

Melissa Phillips

At the heart of the asylum debate in Australia there is little sense of the individual in question. People who had previously been asylum seekers in immigration detention (and are now Australian permanent residents) express in their own words the impact that detention had on them.

"When the walls are closing I feel I can't win. I have got lost in this life."
(asylum seeker in detention, 1998)

Between 1998 and 1999 I conducted in-depth interviews with refugees who had formerly been held in immigration detention centres. The testimonies that follow reflect the experiences of one female and three male asylum seekers who had collectively spent a total of 36 months in detention. Notably all interviewees had arrived in Australia by air, whereas most asylum seekers in detention today have arrived by sea. Three were from Iraq, one from Iran.

Moussa was told en route to Australia that he would be detained but, believing he had a strong case and that Australia was a "good country", he thought detention would last a matter of weeks. Instead he was detained for over a year.

Abdul made no effort to hide his false passport on arrival in Australia but expected to be detained for a short time only, while his identity was being ascertained: *"I thought I would be detained for a few weeks [by] people who would deal with me as a human being. Not to be isolated from the world. Five months... I didn't know where I was. The only thing I knew was that it was a place in the airport."*

After presenting himself to the authorities, he interpreted his detention in an airport detention facility as a sign of inhospitality on the part of Australia. He was puzzled by their failure to see that he had no choice

after leaving Iraq and Jordan but to seek asylum somewhere else, and his sense of inhumane treatment lasted long after he had left immigration detention.

Fatima had no idea how hard it would be inside detention. As she said, *"When I was outside Australia I just wanted to arrive ... but I didn't think it would be this way. I just wanted to escape from a risky life."* Her experiences refute recent policy discussions that rely on largely outdated notions of push-pull factors that control people's movements.

When Amir sought asylum at the airport he was transferred to what he thought was a prison. Seeing the barbed wire fence around the detention centre made him 'wake up'. On reflection he clarifies that *"Actually, it wasn't a prison but still for me it was. I didn't try to cope in detention. I become a big mess."*

The daily practices of immigration detention often had the greatest impact on people. Amir explained that there was nothing to keep him busy. Rules determined what time you had to wake up and go to sleep or attend 'muster', the daily routine of counting people according to their identification number (not by name). Resignation soon follows. *"You couldn't raise your voice, you couldn't [express] your rights... If you complained, they would isolate you. So... you kept quiet."* (Abdul)

Moussa had an extreme physical and emotional response to the stress of immigration detention; his hair turned grey and every day he was afraid of

Approximately 114,473 people (including women and children) were held in immigration detention in Australia between 1997 and 2012. The average period people are held in detention facilities is 124 days (as at 31 January 2013), although the range of detention periods varies greatly.

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being deported. Abdul also experienced nightmares and talked of hearing voices. Interviewed more than six months after being freed from immigration detention, Amir was still plagued by uncontrollable thoughts about detention. A coping strategy he and Fatima developed was to talk with others about their problems so that *“even for a short time maybe you forget your problem and you thinking about his problem or her problem and how you can help him...”*

Fatima queried why she was placed in jail and treated as a criminal in a way that made her feel *“ashamed for everything”*. Worse still was the loneliness with no one visiting her: *“You are alone. You listen to the people [who] have a lot of friends and family coming to visit them but you wait for nothing. You know already nobody is coming to ask about you, nobody one day will call you on the loudspeaker [to say] ‘visitor for you’. Because already you know you don’t have anybody. You are alone in this life.”*

For Fatima and the other interviewees, *“the [asylum application] decision is the*

most important thing.” Preoccupied with a possible rejection, Amir took the extreme step of getting a razor so that if/when his application was refused, he could *“put the lines sometimes here”* [indicates his wrist]. Sadly there continue to be many instances of self-harm and attempted suicide in immigration detention as well as hunger strikes.

Fencing off individual stories behind the imposing barrier of an immigration detention centre makes it easier for politicians to insert a new narrative of refugee protection – that of the ‘orderly refugee resettlement queue’ and the illegality of onshore arrival. Both are founded on myth.

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Thanks to the research participants who gave generously of their time to recount what were often upsetting memories of immigration detention.

Health at risk in immigration detention facilities

Ioanna Kotsioni, Aurélie Ponthieu and Stella Egidi

Since 2004 Médecins Sans Frontières (MSF) has provided medical and psychosocial support for asylum seekers and migrants held in different immigration detention facilities across Europe (in Greece, Malta, Italy and Belgium) where the life, health and human dignity of vulnerable people are being put at risk.

High-income countries have been adopting increasingly restrictive immigration policies and practices over the last decade, including the systematic detention of undocumented migrants and asylum seekers. Such policies are now implemented by middle- and low-income countries as well (e.g. Mauritania, Libya, South Africa, Turkey). In some cases detention facilities are actually financed by high-income neighbouring countries (e.g. Spain financing immigration detention facilities in Mauritania or the European Union financing immigration detention facilities in Turkey and Ukraine).

Many asylum seekers and migrants arrive in relatively good health, despite their difficult journey. However, once in detention, their health soon deteriorates, at least in part due to substandard detention conditions. Recurrent issues observed by MSF teams included overcrowding; failure to separate men, women, families and unaccompanied minors; poor hygiene and lack of sanitation; poor heating and ventilation. Shelter was often substandard, with some people detained in containers, in rooms with broken windows or even outdoors, sleeping on wet mattresses on the ground. In addition, detainees had

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Detained migrants and asylum seekers in Greece.

very limited or no possibility to spend time outdoors. In nearly every detention centre there was no facility for isolating patients with communicable diseases.

The most frequent illnesses were linked to the lack of systematic and/or preventive medical care.¹ Respiratory problems were often linked to exposure to cold, overcrowding and lack of treatment for infections. Skin diseases including scabies, bacterial and fungal infections reflected overcrowding and poor hygiene. Gastrointestinal problems including gastritis, constipation and haemorrhoids could be a result of poor diet, lack of activity and high stress. Musculo-skeletal complaints were among other things linked to limited space and exercise and a cold, uncomfortable environment.

“What we witness every day inside the detention facilities is not easy to describe. In Soufli police station, which has space for 80 people, there are days when more than 140 migrants are detained there. In Tycherio, with a capacity of 45, we counted 130 people. In Feres, with a capacity of 35, last night we distributed sleeping bags to 115 detained migrants. One woman who had a serious gynaecological problem told us that there was no space to sleep and she had no other option but to

sleep in the toilets. In the detention centre of Fylakio, several cells were flooded with sewage from broken toilets. In Soufli, where winters are known to be harsh, the heating is not working and there is no hot water. In many detention facilities, we saw many unaccompanied minors detained in the same cells as adults for many days without being allowed out in the yard.” (MSF humanitarian worker, December 2010)

The context of detention poses additional significant challenges for asylum seekers and migrants with chronic medical conditions, disabilities or mental health problems. Patients already under treatment for a medical condition often had to interrupt

the treatment upon being detained because of lack of access to their medication and/or inadequate medical care in detention. In the centres where MSF works, medical services were either not provided or were gravely lacking. Furthermore there was no system in place for the screening and management of vulnerable persons such as persons with chronic health problems, victims of torture, victims of sexual violence and unaccompanied minors and the facilities were not adapted for use by persons with limited mobility.

Impact on mental health

Detention increases anxiety, fear and frustration and can exacerbate previous traumatic experiences that asylum seekers and migrants endured in their country of origin, during the trip or during their stay in a transit country. Their vulnerability is further aggravated by uncertainty about their future, the uncertain duration of their detention, and the ever-present threat of deportation. Difficult living conditions, overcrowding, constant noise, lack of activities and dependence on other people's decisions all contribute to feelings of defeat and hopelessness.

In all detention centres, a high percentage of MSF patients mentioned previous traumatic

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experiences. In Belgium in 2006, for example, 21% of patients reported suffering physical abuse prior to arrival while many reported having witnessed deaths of family members or fellow travellers. In Greece in 2009-10, 17.3% of patients sought psychological support for traumatic experiences. In Malta, 85% of MSF patients who suffered from mental health problems in detention had a history of trauma prior to displacement. Many had witnessed people dying while crossing the desert or drowning crossing the Mediterranean.

Detention came as a shock to most of them, as they had very different expectations and found it very difficult to cope with being restricted in often overcrowded cells, with no or very limited time outside and no private space at all. Detention was the precipitating factor for the mental health complaints of over one third (37%) of migrants according to the symptoms recorded in MSF patients in Greek immigration detention facilities during 2009-10. Symptoms of depression or anxiety were diagnosed in the majority of patients in all centres where MSF intervened.

Despite these obvious mental health needs, most detention centres where MSF had to intervene completely lacked mental health services. Even when mental health-care services were introduced, these were insufficient and not adapted to the specific needs of migrants and asylum seekers, for example with no interpretation service available.

Conclusion

Working in closed settings like prisons or detention centres poses ethical challenges for humanitarian organisations because of the risk of being perceived by detainees as complicit in the detention system. Thus this work requires a high level of responsibility and vigilance to safeguard the interest of patients' physical and mental health, in a context where operations fully depend



MSF / Giorgos Alexandratos
Providing medical care in detention, Greece.

on the consent of the state. Negotiating and maintaining access to these facilities (which are often closed to external scrutiny) is essential, as is being able to raise awareness through public advocacy on the health and humanitarian consequences of restrictive migration policies.

Based on MSF's operational experience, we can only conclude that immigration detention undermines human dignity and leads to unnecessary suffering and illness. Due to the disproportionate risk it presents for individuals' health and human dignity, it is a practice that should remain the exception and not the rule. The widespread and prolonged use of immigration detention should be carefully reviewed by policymakers in view of its medical and humanitarian consequences, and alternatives should be considered.

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1. Data derived from more than 5,000 medical consultations with migrants and asylum seekers in immigration detention facilities in Greece and Malta between 2008 and 2011.

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The impact of immigration detention on children

Alice Farmer

States often detain children without adequate attention to international law and in conditions that can be inhumane and damaging. Asylum-seeking and refugee children must be treated first and foremost as children, with their rights and protection needs given priority in all migration policies.

Over more than ten years of research in Europe and beyond, Human Rights Watch (HRW) has documented serious violations of children's rights arising from immigration detention of children.¹ Children may be arbitrarily detained, held in cells with unrelated adults, and subjected to brutal treatment by police, guards and other authorities. They are often held in poor conditions that fall far short of international standards governing appropriate settings for children deprived of their liberty.

Children in immigration detention include unaccompanied migrant children, children in families (including young infants), asylum-seeking and refugee children, and children whose parents are seeking asylum or are refugees. Many leave refugee-producing countries such as Afghanistan, Somalia and Sri Lanka and embark on long journeys to seek safety. Children are detained both in transit countries, like Indonesia, Turkey, Greece, Libya and Egypt, and in countries that they or their parents see as the ultimate destination country, such as Australia, the UK and Scandinavian countries.

Greece is one of the major gateways for migrants entering the EU but has particularly bad practices for migrant children.² Unaccompanied children can spend months in detention centres – often in the same cells as unrelated adults – in conditions that the European Committee for the Prevention of Torture called “unacceptable”. Twelve-year-old Sharzad and her 16-year-old brother Sardar from Afghanistan, for example, were detained in the Kyprinou facility in Fylakio when we interviewed them in 2008: “We have been here for 65 days,” she said. “Someone informed us that we would stay here for three

months.... I want to be released and I don't want to stay longer.” Sharzad shared her cell with six adult women to whom she was not related and with whom she was unable to communicate.



Two asylum-seeking boys at Belawan Immigration Detention Centre, North Sumatra.

Once released from detention in Greece, unaccompanied migrant children are typically served an order to leave the country. If they do not leave the country, they may find themselves back in detention, no matter how vulnerable they are or whether they could have a claim for asylum. For instance, a 10-year-old unaccompanied Somali girl who was detained at Petrou Ralli detention facility told us that the Greek authorities detained her four times within six months.

Greece is not alone in its mistreatment of asylum seekers entering the EU. Malta has a harsh policy of automatic detention for virtually all migrants who arrive irregularly in Malta (that is, not through an official

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port of entry).³ While some migrants, including families, are released within hours or days, others are held for extended periods; asylum seekers can be held for up to a year and those denied asylum can be detained for up to 18 months.

In Malta, we found that unaccompanied children are detained with unrelated adults pending the outcome of age determination examinations. Malta presumes that anyone who is not 'visibly' a child, meaning anyone who looks older than about 12, is an adult. Migrants claiming to be children must go through a prolonged age determination process and are locked up in an adult jail for weeks or months while the proceedings unfold.

In detention facilities, children may be exposed to violence or exploitation. Abdi, a Somali asylum seeker who was 17 when he was detained, told HRW: *"Every day a big man from Mali came and said, 'Give me your food.' And one day I said no and he hit me. I was out on the floor [unconscious] for half an hour. I told the [guards] but they said, 'We don't care'."*

In other parts of the world asylum-seeking and refugee children fare no better. In Indonesia thousands of migrant children, especially unaccompanied children, from Sri Lanka, Afghanistan, Burma and elsewhere, face detention, mistreatment in custody, no access to education and little or no basic assistance. Indonesian law provides for up to ten years of immigration detention without judicial review, and the Indonesian government does not provide migrant children or their families opportunities to obtain legal status, such as to seek asylum. Indonesia frequently detains undocumented migrants, including unaccompanied children and children in families, for months or years in squalid conditions without access to education or, in some cases, outdoor recreation. We have documented cases of brutality in several facilities in which guards beat unaccompanied migrant children, or children are forced to watch while guards beat adults.

Conditions for children who are detained along with their parents can be inhumane and degrading. We met a three-year-old boy in the Suan Phlu immigration detention centre (IDC) in Bangkok in Thailand who had spent almost his entire life in detention.⁴ He was held with his father, a Somali refugee, while his mother was detained in the women's section of the IDC together with his sister. The boy's father described the conditions of detention:

"The room has 50 occupants at the moment, most of whom are smokers. ...The room is hot and dirty which has caused the boy to be sick frequently. The diet for the boy consists of the same rice that everybody else eats. He needs fruits which are neither provided nor available for purchase. ...It is absolutely difficult for a boy of three years old to grow up amidst 50 grown-up men in a locked room and only allowed to go out for a short period of less than two hours in the sunshine after three days."

The toll of immigration detention on children is high. Children are often without access to education for months and years. Immigration detention – which often lacks clear time limits – takes its toll on the mental health of many detainees, and this problem is especially severe for children.⁵ A psychologist who volunteers at an immigration detention centre in Indonesia told HRW that his child clients experience psychological deterioration connected to the prolonged, ill-defined wait: *"They lose hope, they lose dreams. There's no timeframe on when they can have a normal life and go outside as humans. It leads to hopelessness and depression."*⁶

Limits to the use of immigration detention against children

In too many situations of immigration detention, states deprive children of their liberty as a routine response to illegal entry, rather than as a measure of last resort. Yet international law indicates that children should not be detained for reasons related to their migration status, and places strict limits on the exceptional use of detention:

Article 37 of the Convention on the Rights of the Child (CRC) states that detention

of any type should only be used against children as “a measure of last resort and for the shortest appropriate period of time”.

Article 37 of the CRC mandates that all children deprived of their liberty (including children in immigration detention) have the right to “prompt access to legal and other appropriate assistance” and to challenge the legality of the deprivation of their liberty before a court.

The Commissioner for Human Rights for the Council of Europe has stated that “as a principle, migrant children should not be subjected to detention.”⁷

The Committee on the Rights of the Child in General Comment No 6 states that “unaccompanied or separated children should not, as a general rule, be detained,” and “detention cannot be justified solely on... their migratory or residence status, or lack thereof.”

UNHCR specifically argues that “children seeking asylum should not be kept in detention and that this is particularly important in the case of unaccompanied children.”⁸ In the exceptional cases where asylum-seeking children are detained, UNHCR emphasises that this detention must conform to the parameters expressed in article 37 of the CRC. States must also adhere to UN standards on conditions of confinement, including by segregating children from unrelated adults where it is in their best interest, and by always providing education. Where children in families are subject to immigration detention, states should ensure that the child should not be separated from his or her parents against his or her will. The CRC (as well as UNHCR’s specific guidelines for asylum-seeking children) emphasises that immigration detention of children must have at its core an “ethic of care”⁹ prioritising the best interest of the child above immigration enforcement.

In February 2013, the UN Committee on the Rights of the Child urged states to “expeditiously and completely cease

the detention of children on the basis of their immigration status”, arguing that such detention is never in the child’s best interest.¹⁰ In the interim, while immigration detention of children remains, states should impose strict time limits to the child’s detention in order to minimise the loss of education and impact on mental health.

Yet as migration routes become more complicated and asylum seekers travel through many countries in search of refuge, states are increasingly resorting to the use of immigration detention. Children – even unaccompanied children – are found in detention when states should, instead of detaining them and their families, use alternatives to detention and provide children with opportunities to find some normality in their uprooted lives.

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2. HRW, *Left to Survive: Systematic Failure to Protect Unaccompanied Migrant Children in Greece*, December 2008 www.hrw.org/reports/2008/12/22/left-survive
3. HRW, *Boat Ride to Detention: Adult and Child Migrants in Malta*, July 2012 www.hrw.org/reports/2012/07/18/boat-ride-detention-0
4. HRW, *Ad Hoc and Inadequate: Thailand’s Treatment of Refugees and Asylum Seekers*, September 2012 www.hrw.org/node/109633/section/12
5. Dr Allan S Keller et al, ‘Mental health of detained asylum seekers’, *The Lancet*, vol 362, issue 9397, 22 November 2003, pp1721-23; International Detention Coalition, *Captured Childhood: Introducing a New Model to Ensure the Rights and Liberty of Refugee, Asylum Seeker and Irregular Migrant Children Affected by Immigration Detention*, Melbourne, 2012, pp48-49. <http://idcoalition.org/ccap/>
6. HRW interview with C A, psychologist, 5 September 2012.
7. Council of Europe, Commissioner for Human Rights, Positions on the Rights of Minor Migrants in an Irregular Situation, Position Paper (2010)6, Strasbourg, 25 June 2010 <https://wcd.coe.int/ViewDoc.jsp?id=16543777>
8. UNHCR, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, 1997, paras 7.6-7.8 www.unhcr.org/refworld/pdfid/3ae6b3360.pdf
9. UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, para 52 www.unhcr.org/505b10ee9.html
10. UN Committee on the Rights of the Child, Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration, February 2013, para 78 <http://tinyurl.com/OHCHR-CRC-2012>

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Captured childhood

David Corlett

States should develop alternatives to immigration detention to ensure that children are free to live in a community-based setting throughout the resolution of their immigration status. Children should not be detained for migration/immigration purposes. There are alternatives, and the International Development Coalition¹ has developed a model for preventing the immigration detention of children, based on three fundamental principles: children who are refugees, asylum seekers or irregular migrants are, first and foremost, children; the best interests of the child must be the primary consideration in any action taken in relation to the child; and the liberty of the child is a fundamental human right.

These principles shift the focus from the state's right to detain children to the right of refugee, asylum-seeker and irregular migrant children to be free from the risk of being incarcerated as a consequence of states' desires to control migration.

The IDC has developed a five-step Child-sensitive Community Assessment and Placement (CCAP) model, which provides a decision-making model for governments, NGOs and other stakeholders to prevent detention.

Step 1: Prevention

Step 1 is a presumption against the detention of children. It applies prior to the arrival at a state's territory of any children who are refugees, asylum seekers or irregular migrants.

Step 2: Assessment and Referral

Step 2 takes place within hours of a child being discovered at the border of, or within, a state's territory. It includes screening the individual to determine age, the assignment of a guardian to unaccompanied or separated children, the allocation of a caseworker to children who are travelling with their families, an initial assessment of the child or family's circumstances, strengths and needs, and the placement of the child or family into a community setting.

Step 3: Management and Processing

Step 3 is the substantive component of the child-sensitive assessment and placement model. It involves 'case management', including an

exploration of the migration options available to children and families, a 'best interests' determination, and an assessment of the protection needs of children and/or their families.

Step 4: Reviewing and Safeguarding

Step 4 involves ensuring that the rights of children and their best interests are safeguarded. It includes legal review of decisions already taken regarding children and their families – including decisions about where they are accommodated and about their legal status. It also includes an opportunity for states to review the conditions tied to the child or family's placement in the community following a final immigration status decision.

Step 5: Case Resolution

Step 5 is the implementation of sustainable migration solutions. International research shows that with case management support, asylum seekers and irregular migrants are more likely to comply with decisions about their status and are better able to cope with return or integration because they have been supported and empowered throughout the migration process. Building trust and

respecting and valuing each person as an individual with dignity, skills, rights and needs are fundamental to this process. Providing a supportive role that is both realistic and sustainable, and also compassionate and consistent, for the period of time that the individual is awaiting a final outcome is critical. This applies to adults and, importantly, to children. The five-step Child-sensitive Assessment and Placement model takes seriously states' interests to manage migration, while at the same time recognising that it is never in the best interests of children to be detained.

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1. The International Detention Coalition (IDC) is a civil society network based in Melbourne, Australia with a membership base of 300 NGOs, faith-based groups, academics, practitioners and individuals working in 50 countries globally. <http://idcoalition.org>

"Some of [the other kids in detention] were really going crazy and I remember twice when I was there, there were two who tried to kill themselves. Just to get out of the prison. ... I used to just go to my room and cry and not talk to anybody. I felt I would never get out." (Grace, from South Sudan, detained in Israel aged 15)

No change: foreigner internment centres in Spain

Cristina Manzanedo

Draft regulations for the running of Spain's Foreigner Internment Centres fall far short of the hopes and demands of those campaigning for better guarantees of the rights of detainees.

Spain has a number of specially designated administrative detention centres for immigration detention; most are along its Mediterranean coastline, with one in Madrid, the capital. These Foreigner Internment Centres (*Centros de Internamiento de Extranjeros* – CIE) are operated by the police.

In January 2012, when the government finally began drafting regulations to govern the operation of these centres, campaigners hoped that this would involve a full review and would be an opportunity to move towards an alternative model giving more consideration to the basic needs of detainees and guaranteeing their rights. However, the current draft regulations do not pick up on any of the proposals put forward in previous years from various sources – except for the designation of detainees by names instead of by numbers. In some cases, they are even more restrictive than current practice. Furthermore, the drafting of the regulations offered an ideal opportunity for social and political debate between entities in the political, social, union and business spheres on the need for CIEs and the fitness of these institutions – an opportunity which was not taken up.

An evaluation of the draft regulations undertaken by a group of nearly 20 Spanish organisations and networks¹ highlights a wide range of concerns.

Police management: In 2012, the Ministry of the Interior expressed its wish to modify the management of CIEs so that the police would only be responsible for security in the centres rather than the entire operation, as is currently the case. However, according to the draft regulation, the Ministry of the Interior will retain exclusive competence over the CIEs and each centre will continue to operate under a Director who is a police officer.

Lack of information: Most detainees do not understand why they are in a CIE. The resulting

uncertainty and lack of information generate anxiety, vulnerability and distrust. The draft regulations ignore detainees' need for:

- information on their legal situation: When they enter a CIE, each detainee should be interviewed in a language that they understand to have their situation explained to them; they must also be kept informed of the latest administrative and legal rulings affecting them.
- prior warning of the date and time of expulsion and the location of their destination, including flight information: Detainees live in a state of great anxiety, knowing that they could be expelled at any time of the day or night without prior warning. Advance notification would allow them to, for example, inform family members in their country of origin in order to be met at the airport, say goodbye to friends and family in Spain or inform their legal representative in order to ensure that all possibilities of legal defence have been explored.²
- access to records or possibility to request copies of their records: A record is kept on each individual in the CIE but these are only available to lawyers.

Restrictions on communications: The draft regulations only allow for telephone communication by payphones. The total ban on the use of mobile telephones in CIEs raises constant complaints from detainees for various reasons. Many detainees have contact telephone numbers in their mobile phones that they do not keep in their heads; CIEs place limits on the length of telephone calls; and for family members, friends and lawyers, it is very difficult to call a CIE detainee and speak with them as the telephones are in high demand. The use of a mobile phone, even if only within certain timeslots and under certain conditions, may be their only form of communication with the outside world, and should

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be allowed. Moreover, detainees are unable to receive and send faxes, or photocopy documents. They have no access to email or the internet. This hinders communication with their lawyers and with the outside world, and from seeking information or carrying out necessary business.

Restrictions on visits: The CIEs currently have a daily timetable for visits. However, the draft regulations restrict visits to two days per week (except for partners and children). There is no reason given for this retrograde step.

Reduced opportunities to register complaints: Individuals detained in a CIE can currently present complaints to the CIE Supervisory Court. However, the draft regulations state that all petitions and complaints must be submitted to the Director, who will examine them before referring them, if he/she considers it necessary, to the appropriate department. Given the many and repeated complaints by detainees on conditions and reports of attacks, it is essential that detainees be given the opportunity to write directly to the court without having to go through the Director of the CIE itself.

Control and security: The draft regulations provide for: the possibility of restricting or cancelling visits; prohibiting the entry of items for detainees; inspection of dormitories and personal property of detainees; and personal searches of visitors and detainees (including, for the latter, the possibility of being strip-searched). There is no clarification of the justification for such restrictions, nor of the procedures to be followed, leaving it open to discretionary and abusive implementation. The regulations also state – ambiguously – that isolation cells may be used “for the period of time which is strictly necessary”. The Ministry of the Interior has ignored the ruling by the Supervision Courts of Madrid that limits use of this measure to a maximum of 24 hours. The regulations suggest camera coverage within CIEs as a possibility, not as an obligation; however, this equipment can be a key element in controlling possible abuses and in complaints investigations.

Lack of specific care for vulnerable populations: The regulation makes no reference at all to the conditions of internment and care for specific vulnerable populations. They cite no mechanism

for the identification and protection of refugees, victims of trafficking, stateless individuals or minors, nor do they provide a procedure to prevent refoulement. Provision of medical care within the CIEs will continue to depend on the Ministry of the Interior and contracts with private companies, instead of allowing Spain’s public health service to inspect and determine the medical care on offer. There is also no mention of the consequences of interning people responsible for children.

Restrictions on access by external organisations: The draft Regulations do cover the possibility of access to CIEs by organisations in addition to those contracted to provide services but, in some CIEs, on more restrictive terms than those currently in place:

- NGOs “could be authorised” to make visits, say the draft regulations but without explanation of the criteria governing that authorisation, which leads to the assumption that it will be at the discretion of the Director.
- Authorisation will be granted “for interviews with those detainees who request this”; in other words, NGOs will be unable to visit anyone who has not made a prior request.
- The Director must be asked for prior authorisation for each visit and details of the purpose of the visit must be provided. For NGOs that make regular visits to a CIE, a procedure of general accreditation for visits would make more sense.

For the reasons discussed above, the draft regulations for CIEs in Spain must be subjected to thorough revision prior to the approval currently expected by the end of 2013.

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1. This evaluation was undertaken jointly by members of the ‘Que el derecho no se detenga a la puerta de los CIE’ campaign, involving some 20 organisations and networks in Spain. <http://tinyurl.com/a-la-puerta-de-los-CIE>

2. The CIE Supervision Courts for Madrid and La Palmas have demanded a minimum of 12 hours’ written warning in Madrid and 24 hours in Las Palmas. This is a good practice that should be extended to all CIEs as part of the regulations.

Detention monitoring newly established in Japan

Naoko Hashimoto

Recently established monitoring committees in Japan are opening new channels of communication and opportunities for improvements in detention facilities.

The Immigration Bureau of the Ministry of Justice of Japan manages a number of immigration detention facilities across the country where foreign nationals arriving or remaining in Japan with irregular status are detained, as they are in many other countries. Until recently, however, the condition and treatment of detainees inside the detention facilities were hidden behind walls, with little opportunity for public scrutiny.

Following recommendations from various international sources,¹ as well as from pressure groups inside Japan, the Government of Japan amended the Immigration Control and Refugee Recognition Act and as a result two Immigration Detention Facilities Monitoring Committees were established. The main purpose of these Committees, which started work in July 2010, is to ensure transparency about the treatment of detainees and to contribute to the proper management of detention facilities. The Committees regularly visit detention facilities; examine confidential information on the detention facilities and statistics provided by the Immigration Bureaus which run the facilities; interview detainees upon request from the detainees; receive, study, clarify and solicit resolutions to complaints confidentially submitted in writing by detainees; and make recommendations for improvements to the Directors of the detention facilities.

Each of the two Committees (one in western Japan, the other in eastern Japan) is composed of 10 independent experts appointed by the Minister of Justice: two academics (professors in law), two attorneys-at-law, two medical doctors, two representatives from the local communities hosting the detention centres, one international civil servant working for an international organisation and one NGO staff member.

Some of the noteworthy recommendations put forward by the Committees after their first two years – and measures taken by the detention facilities in response to them – include:²

- To increase privacy for detainees, walls and curtains were installed around toilets and shower rooms.
- To enable detainees to take exercise, have showers or make phone calls over the weekend as well as during the week, some of the detention facilities started to allow detainees to go out of their detention cells during the weekend.
- To avoid confusion about the rules and procedures (including complaints mechanisms) relating to daily life inside the detention facilities, multilingual guidelines were prepared and made available to all detainees.
- To help detainees seek advice and assistance, some of the detention facilities drew up and distributed lists providing contact information for embassies, UNHCR, IOM, legal associations, etc.

These measures clearly represent improvements, and are to be commended. Meanwhile, there still remain some challenges.

Very high telephone charges and very limited hours when detainees are allowed to make phone calls hinder communications with families, friends, lawyers or other sources of assistance. There is no access to internet or mobile phone inside the detention facilities. While some detention facilities have started allowing detainees to make phone calls while in their detention cells, better communication methods are urgently needed.

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The Immigration Bureaus have arranged that detainees should have a wide variety of meal options but *halal* food is yet to be made available, which has posed problems for Muslim detainees. Continued efforts need to be made to resolve this.

There is a lack of qualified medical doctors who are willing to work inside detention facilities. Since this issue directly concerns the health of detainees, an immediate solution needs to be sought, for instance by coordinating with local hospitals and by establishing a rotation system so that qualified medical doctors can be available for timely consultation.

It is difficult to secure qualified interpreters for languages which are uncommon in Japan, such as Persian, Turkish, Urdu, Pashtu and Hindi. As communication is the key to mutual understanding not only in Committee interviews but also for daily life within the detention facilities, more efforts need to be made to identify and train multilingual residents in Japan to be interpreters.

The mandate, roles and functions of the Committees were, at least initially, not adequately explained to detainees. While their role is introduced in the multilingual guidelines now available in all detention cells, information about this new system needs to be better disseminated.

Finally, the question of independence and autonomy of the Committees has been persistently raised by observers and critics. As a member of the West Japan Committee, the author herself has not experienced any pressure from the Immigration Bureau or the Ministry of Justice, and commends the transparency and frankness of discussions held between the detention facilities staff and the Committees. The Osaka Regional Immigration Bureau serves as the Secretariat to the West Japan Committee, arranging all visits and interviews. Since the Committee members serve on a part-time basis, and the budget allocated for the overall monitoring system is extremely limited, it seems

unrealistic at least at the current time to establish a secretariat totally independent from the Immigration Bureau. This issue may better be looked into together with an overview

of the reform of the government's ministerial structure, including the possible establishment of an independent Human Rights Commission in Japan.

Since Japan has yet to establish an independent Human Rights Commission and to sign the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Detention Facilities Monitoring Committees are the only organ with the authority to solicit improvements of detention facilities and treatment of detainees. Thus they carry heavy responsibilities and significance.

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1. Kumiko Niitsu 'Perspectives on the Immigration Detention Centers Visiting Committee: Consideration from the Viewpoint of Securing Transparency', *CDR Quarterly*, vol.4, pp38-51, January 2012. Center for Documentation of Refugees and Migrants, University of Tokyo.

2. More information is available on the Japanese Ministry of Justice official website (only in Japanese):

July 2010-June 2011: <http://tinyurl.com/JapanMOJ-10-11>

July 2011-June 2012: <http://tinyurl.com/JapanMOJ-11-12>



Osaka Immigration Bureau: part of it serves as detention facilities.

Be careful what you wish for

Michael Flynn

Can the promotion of liberal norms have an unintended – and damaging – impact on how states confront the challenges of irregular immigration?

The T Don Hutto Residential Centre is not a nursing home, as its name might imply. It is a privately run for-profit immigration detention facility near Austin, Texas, that confines undocumented female immigrants who are designated for deportation by the US Department of Homeland Security's Immigration and Customs Enforcement (ICE). Until 2009, Hutto was notorious for being one of only two US facilities that detained entire families. Named after a pioneer of prison privatisation, Hutto is located in a former prison that was converted to a family detention centre in 2006 at the behest of Congress.

Before 2006, apprehended migrant families tended either to be released to await the resolution of their immigration cases, or family members were placed in separate facilities; children were placed in the custody of the Office of Refugee Resettlement while parents were confined in detention facilities for men or women. According to one account, when "Congress discovered this, it took immediate action to rectify the situation to ensure that ICE's practices were in keeping with America's tradition of promoting family values".¹ In short, detaining families at Hutto was meant to protect an important human right – the right to family life.

However, almost overnight Hutto sparked heated debate about the treatment of undocumented immigrant children and families. In 2007, the American Civil Liberties Union successfully settled a lawsuit it had brought against ICE, which contended that conditions inside the detention centre violated standards for the treatment of minors in federal immigration custody. Two years later, in 2009, the Obama administration announced that it was officially ending the detention of children and families at Hutto, and converted the centre into an adult female-only detention

facility. By 2010, the facility had undergone an intense makeover, becoming a centrepiece in the government's efforts to put a kinder, gentler face on detention – transformed from derided jailer of children to purportedly friendly lock-up of immigrant women.

In early 2011, a UNHCR official described the Berks County Family Shelter – a misleadingly named detention facility which today is the only site in the US where families are detained – as the embodiment "of the best practices for a truly civil immigration detention model". The official explained that "UNHCR believes strongly that the vast majority of asylum seekers should not be detained" but that, in the event that families are detained, Berks is the model to follow. It is clearly important to applaud improvements in the treatment of detainees but is it a good idea for the international community's premier agency protecting asylum seekers to give its imprimatur to efforts to detain them?

Two key features of contemporary immigration detention are its gradual institutional entrenchment in the nation-state (as observed in the shift from prisons to dedicated detention facilities) and its global expansion. These developments appear to be driven by two processes: firstly the diffusion of normative regimes aimed at protecting non-nationals and secondly, the externalisation of interdiction practices from core states of the international system to the periphery. As a result, we are witnessing the emergence of dedicated immigration detention regimes even in countries where there is little evidence of systematic efforts to detain people as recently as ten to fifteen years ago.

Rights actors frequently focus their advocacy on detention by promoting the proper treatment of detainees and applauding efforts by states to differentiate between criminal incarceration

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and the administrative detention of irregular migrants and asylum seekers. However, there is cause for concern that the emergence of specialised immigration detention regimes can lead to an increased use of detention.

A case in point is Europe. In contrast to the US, most European countries ceased some time ago to use prisons for the purposes of immigration detention, in part due to pressure from rights-promoting bodies like the Council of Europe. The recent EU Returns Directive provides that member states must use specially planned facilities for confining people as they await deportation. But the process of shifting from informal to formal detention regimes, which has occurred over the last two decades, has paralleled the growth in immigration detention in this region.

Externalisation

At the same time that detention operations are becoming increasingly specialised in destination countries, these states are endeavouring to export to other countries their efforts to prevent undocumented migration, raising questions about the evasion of their responsibility to adhere to international standards. A case in point is the West African nation of Mauritania, which in 2006 opened its first dedicated detention centre for irregular migrants in the port city of Nouadhibou with assistance provided by the Spanish Agency for International Development Cooperation. Spain's involvement in establishing the detention centre has raised questions over which authority controls the facility and who guarantees the rights of the detainees. While the centre is officially managed by the Mauritanian National Security Service, Mauritanian officials "clearly and emphatically" stated in October 2008 that Mauritanian authorities perform their jobs at the express request of the Spanish government.²

As the Mauritania case demonstrates, efforts by core countries to deflect migratory pressures are leading to the externalisation of controls to states that are not considered main destinations of migrants and where the rule of law is often weak. This raises questions about the culpability of western liberal democracies in

a) the abuses detainees suffer when they are intercepted before reaching their destinations and b) circumventing – by externalising detention practices – the need to conform to international standards relating to a state's right to detain and deport, such as the right to liberty and the prohibition of *refoulement*.

Liberal states often betray a distinct discomfort when locking people up outside criminal processes, especially people protected by additional norms such as those contained in the UN Refugee Convention. States disguise the practice by using misleading terminology – calling detention facilities 'guesthouses' (Turkey), 'guarded shelters' (Hungary) or 'welcome centres' (Italy). They frequently limit access to detention statistics. They selectively apply only those human rights norms that do not call into question the 'sovereign right' to detain and deport. They export detention pressures to the exterior so as to avoid norm-based responsibilities such as admitting asylum seekers. And they endeavour to characterise many of the people subject to this form of detention in such a way as to provoke public fears, and thereby to justify locking up migrants.

Migrant rights advocates should consider de-emphasising discourses that focus only on improving the situation of non-citizens in state custody and re-emphasising the taboo against depriving anyone of his or her liberty without charge. Instead of spurring states to create special institutions – or standard operating procedures – for keeping migrants in their custody, advocates should work to ensure that limitations on freedom remain the exception to the rule.

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1. Women's Refugee Commission and Lutheran Immigration and Refugee Service, *Locking Up Family Values: The Detention of Immigrant Families*, February 2007, pp1-2. <http://tinyurl.com/WRC-LRIS-lockingup-2007>

2. European Social Watch, 'Spain: The Externalisation of Migration and Asylum Policies: The Nouadhibou Detention Center', 2009. <http://tinyurl.com/ESW-Spain-2009>

A return to the 'Pacific Solution'

Fiona McKay

Over the last 50 years, Australian governments have introduced a range of measures that seek to deter asylum seekers. Current practice sees asylum seekers once again detained in offshore detention in neighbouring countries.

According to the Australian government, Australia's response to refugees in need of formal resettlement is generous. Australia operates a formal UNHCR resettlement process, whereby after having complied with Australia's health and character requirements, refugees are offered protection in Australia. For most of the refugees resettled in this way, the journey to Australia is decades long, with many years spent waiting in refugee camps.

This 'generosity' to refugees is in stark contrast to Australia's response to the 'spontaneous' arrival of 'unauthorised' asylum seekers. Despite receiving relatively few asylum seekers compared to other industrialised nations, Australia has a well-developed punitive and restrictive approach to the arrival of asylum seekers by boat. In many cases, these asylum seekers have also waited in refugee camps for many years but for a variety of reasons have not been offered formal resettlement or have been unable to access the formal process. Both the Australian media and the government link these arrivals with illegal people-smuggling operations, with the individual asylum seekers characterised as 'illegal immigrants' who have 'jumped the queue' by arriving in Australia outside the formal UNHCR process.

The number of asylum seekers to arrive in Australian waters is increasing; in the first six months of 2013 Australia received almost 13,000 asylum seekers by boat. Due to the poor quality of the boats used by people smugglers to carry asylum seekers, the increase in boat arrivals is matched with an increase in the number of deaths at sea. Over the last 10 years there have been almost 1,000 deaths of asylum seekers in Australian waters. In response to both the increasing arrivals and the unacceptable number of

deaths at sea, the Australian government has expended much energy searching for a solution to the asylum seeker 'problem'.

Seeking asylum in Australia

In 1976, a small number of individuals made their way to Australia by boat to seek asylum. These asylum seekers, called 'boat people', mark the beginning of Australia's association with asylum seekers who arrive without prior authorisation. While these first arrivals were small in number and were accepted with little public concern, over the following four years asylum seeker numbers increased and so did public anxiety. In response, the Australian government introduced a policy of direct resettlement of refugees from camps in Southeast Asia. This resulted in a larger and more formal process for resettlement in Australia, also leading to a reduction in the need for asylum seekers to travel to Australia by boat. To the Australian public, this process appeared to be more ordered and was largely accepted as a legitimate response to the refugee situation in Southeast Asia.

By 1989, further instability in Southeast Asia resulted in a new wave of asylum seekers arriving by boat on Australia's shores. From this point forward, a system of mandatory detention, including detaining asylum seekers in centres located in isolated and remote areas of Australia with limited access to the legal system, was applied to all asylum seekers. Most of these asylum seekers were never resettled in Australia but instead were repatriated after a lengthy period of detention.

This system of mandatory detention coped well with the small number of asylum seekers arriving in the early 1990s. However, increased instability in the Middle East in the late 1990s resulted in a relatively large

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number of asylum seeker arrivals from Afghanistan and Iraq, increasing pressure on Australia's onshore detention facilities. These arrivals triggered negative public opinion and significant public concern about the strength of Australia's borders. The government sought to manage this perceived threat by detaining all asylum seekers, including women and children, behind razor wire in detention centres in remote areas of Australia.

The government minister responsible for immigration declared that all unauthorised boat arrivals were 'illegal immigrants' who were a threat to Australia's sovereignty, and that those who arrive without a visa were 'queue jumpers' who stole places from the world's most vulnerable (namely those waiting for resettlement in refugee camps). Once the applications of these asylum seekers had been processed, they were almost exclusively found to be refugees (around 90%). Despite the legitimacy of their claims, many politicians – in both government and opposition – continued to use language that characterised the arrivals as a national emergency or a serious threat to the security of the nation.

The situation became more strained in 2001 when a cargo vessel, the *Tampa*, rescued almost 450 asylum seekers from a sinking Indonesian fishing ship. The political deadlock that resulted from the arrival of the *Tampa* coupled with the terrorist attack on the US just weeks later resulted in a conflation of the threat of terrorism with the arrival and presence of asylum seekers. In response to the arrival of asylum seekers, the government adopted the stance that for asylum seekers to be resettled in Australia they must be 'deserving'. According to the government, a deserving asylum seeker was one who had waited in a refugee camp for the ordered UNHCR process. The government reaffirmed this message by introducing additional measures to deter asylum seekers arriving by boat, and to limit the rights of those who did arrive. These measures included a system of visas offering temporary protection, the introduction of offshore processing and changes to the migration zone.

This new immigration regime was designed to deter asylum seekers from making the journey to Australia. The system of temporary detention meant that if an asylum seeker did arrive they would be unable to work, access health care or English language classes, or apply for their families to join them. Migration zone changes meant that the islands around Australia's northern perimeter – i.e. the islands where most asylum-seeker boats arrive – would no longer be part of Australia's migration zone if you were an asylum seeker who arrived by boat. Upon unauthorised arrival to Australia, all asylum seekers were sent to, and detained in, an Australian-run immigration detention centre in a third county, namely Nauru and Papua New Guinea (Manus Island). This 'offshore' processing was what became known as the 'Pacific Solution', and was designed to ensure that any asylum seeker who did land on Australian territory would not gain an advantage over those 'deserving' refugees who were waiting in camps. With these changes introduced into Australia's immigration law, Australia's notion of 'good' and 'bad' refugees – those selected by the government from refugee camps versus those who come to Australia by boat – was translated into law.

In terms of deterring asylum seeker arrivals, the combination of offshore processing, temporary protection and mandatory detention was a 'success'. Between 1999 and 2001 (i.e. before the introduction of these measures), 180 boats carrying more than 12,000 asylum seekers arrived in Australian shores. In the five years after, 18 boats and fewer than 180 asylum seekers reached Australia.¹

In 2008, the newly elected Labour government abolished the system of temporary protection and closed the detention centres in Nauru and Papua New Guinea, citing the inhumane nature of the Australian immigration system for asylum seekers. These measures effectively ended the Pacific Solution. Seeking to maintain the low number of asylum seeker arrivals, however, the government supported the continued processing of asylum

seekers at the Christmas Island² detention centre and established a new procedure for offshore processing: one that was specifically intended to operate outside the domestic legal framework. This procedure was applied only to those asylum seekers who arrived by boat.

The current situation

In the years since the Pacific Solution was dismantled, arrivals of asylum seekers by boat increased one-hundred fold, outstripping the capacity of the immigration detention facilities at Christmas Island³ and leading to a public perception that the government had become 'soft' on asylum seekers and had compromised Australia's border security.

Responding to worsening polls and increasing asylum seeker arrivals, in 2010 the government began to publicly discuss other ways to deter arrivals. The key solution proposed at this time was the implementation of a 'regional processing centre'. Asylum seekers would be detained in a third country where they would be processed, effectively a return to the Pacific Solution. The government argued that the proposal would deter arrivals as the people smugglers would not be able to sell a boat journey to Australia if such a journey would only take the asylum seeker to an offshore detention centre for processing.

In mid-2012, the government appointed an Expert Panel which made a number of recommendations including increasing Australia's annual intake of refugees for resettlement, reviewing the process for determining refugee status, making it legal to remove asylum seekers to any country, a 'no advantage principle' whereby any asylum seeker arriving by boat would not gain an advantage over those waiting in camps, and reopening the detention facilities on Nauru and Manus Island (similar to the government's 'regional processing centre').

All of these recommendations have since been approved and are now in effect.

Changes to Australia's asylum policy are dictated by federal elections. The 2013 federal election saw both major political parties propose policies that would seek to deter the arrival of asylum seekers and punish those who do arrive. During the campaign, the new conservative government proposed a return to a previous policy that will see the Australian Navy engaged in returning boats carrying asylum seekers to Indonesia. The new

government will retain policies of the previous government whereby no asylum seeker who has arrived after July 2013 has the chance of being permanently resettled in Australia. All asylum seekers are now being transported to detention centres on Papua New Guinea and Nauru for health and security assessments. If found to be refugees, they will remain there permanently, be resettled in another third country, or be offered temporary protection in Australia.



Offshore processing is once again a component of Australia's response to asylum seekers. With an increasing number of people seeking asylum globally, Australia is receiving more asylum seekers than ever, leaving the government searching for any response to the 'problem' of asylum seeker arrivals, even if that response is damaging to individual asylum seekers.

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1. Phillips J & Spinks H *Boat arrivals in Australia since 1976 2012* <http://tinyurl.com/Phillips-Spinks-2012>

2. An Australian territory in the Indian Ocean.

3. In May 2013 the number of people held in a detention centre at Christmas Island reached 2,962. The detention capacity of the island's facilities is normally 1094 but can be stretched to 2078.

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My story: indefinite detention in the UK

William

When I fled civil war to come to the UK, I thought that I would be free but instead of helping me, the UK detained me for three years.

On 19 September 2001, I was sitting on a plane from Abidjan to the UK. As I looked out the window, I thought that nothing worse than fighting against Charles Taylor's army at home in Liberia could happen to me. I thought that the mental images from witnessing horrendous physically and morally degrading acts inflicted on others by the army would go away. I thought that I would now be safe from arrest for exposing wrong-doing by Taylor's government. I thought that the memory of my fiancée being raped and killed would be dulled.

But I did not know then that a dark shadow from the events in Liberia had followed me. I now know it to be post-traumatic stress disorder and bipolar disorder. If only I had known that I had PTSD, things I went through would have been different.

I claimed asylum in the UK. I did tell the UK Border Agency about my torture and experiences in Liberia but nothing was given to me, no assistance. I was refused asylum but given temporary leave to remain. I was left in the community with no-one to help me. And as my mental health declined, I turned to a world of drink and drugs. I lost my job and committed crimes to support my drug habit.

In 2006 I was sectioned under the Mental Health Act. I stayed three months in a mental institution in Salford. No-one had time to go into the reason why I was enduring psychotic episodes. After I was released, I had no care plan initiated.

I was then arrested again and sent to Durham prison. After the completion of my sentence in October 2008, I was detained by immigration in the prison, rather than a detention centre, for an additional three months. I was then taken to the Dungavel Immigration Removal Centre in Scotland. At this time my mother died. I was confused, I was under so much

pressure, so I just signed a disclaimer to go back, to see my mother's grave. They moved me to another detention centre – Oakington – which was even worse; they didn't have facilities for my mental health there either, so they sent me to Harmondsworth.

Even after I was finally diagnosed with mental health difficulties in 2010, proven to have gone through torture by an independent medical report, and my asylum claim was validated by a country expert report, I was still detained. By now I had been detained for almost three years. I gave up to the extent that I tried to commit suicide. I thought that was the easiest way out of my pain and misery.

Detention means no entry. The locked door is a normal thing that we have to endure. In detention, we are like a herd of sheep, being chased by a pack of wolves. One of the officers said to me "you either go to your country or you die in here."

I was released by the courts in 2011, because the Home Office had no grounds to keep me in detention any longer. I have now been given three years' leave to remain in the UK. The Home Office withdrew from the hearing on my unlawful detention case, and agreed to give me compensation.

Every country has a right to control its borders. But human rights law says that a person should only be detained when there is a legitimate reason, not just administrative convenience. There is a moral obligation to give the detainee the right to a free trial, with legal representation, to fully consider whether he or she must be detained.

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Closed detention in the Czech Republic: on what grounds?

Beáta Szakácsová

People who arrive by air in the Czech Republic claiming asylum are transferred to a 'reception centre' at Prague's Vaclav Havel Airport. Although they are deprived of their liberty, have limited access to fresh air and to the internet, and are only allowed to use a payphone, asylum seekers at the centre are not treated as criminals and detainees report that conditions in the reception centre are moderately good. However, there are some significant problems in the Czech Republic's current practice of detaining applicants for international protection.

Firstly, there is a marked lack of attention paid to individual circumstances. Leave to enter the territory must be granted if the applicant is a vulnerable person. The Czech Asylum Act defines applicants as vulnerable if a person is an unaccompanied minor, a parent or a family with minors or with disabled adult members, a seriously disabled person, pregnant woman or a person who has been tortured, raped or subjected to any other forms of mental, physical or sexual violence. However, since the decision to allow entry or not is in almost all cases issued prior to the Ministry of Interior hearing applicants' reasons for leaving their country of origin, it is hard to see how it could be judged whether or not, for example, they have suffered physical or mental violence; the measures to recognise vulnerable persons are limited to considering the age of the applicant – i.e. whether the asylum seeker is a minor or not. Nearly all applicants are therefore detained in the closed reception centre rather than admitted into the territory.

Secondly, in justifying refusal to enter (and therefore permitting detention in closed facilities) there is extensive application of the Czech Asylum Act's grounds of a well-founded assumption that the applicant would threaten 'public order'. The language of the law in this respect provides little clarity on the details, allowing for wide interpretation. It is interesting to note that the Ministry of Interior's decisions based on these grounds reveal an apparent predisposition to believe that applicants are misusing the refugee status determination procedure in order to try to enter the territory without proper documents or visa and that this constitutes a potential

threat to public order. This interpretation has been repeatedly backed up by the courts.

Thirdly, even after applicants have been admitted into the territory for further consideration of their claims, they are still detained in closed facilities. The Czech Asylum Act states that once granted leave to enter the territory, the applicant should be transferred to the reception centre on the territory – but this centre is also a closed facility. The legal basis for continued deprivation of their right to liberty is not at all clear. Article 5 para 1(f) of the European Convention on Human Rights⁴ allows for "the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country". It is highly questionable, therefore, whether further limitation of the right to freedom after a person has been granted entry is allowable or justifiable.

Recommendations

- In-depth personal interviews should be conducted with applicants before a decision about allowing or refusing access to the territory is made.
- If the applicant for international protection is granted leave to enter the territory, the applicant should be transferred to an open camp where applicants are allowed to leave for up to 24 hours.
- In cases of applications under the Dublin Regulation where the court needs to determine which member state is responsible for the application, the applicant should be transferred to an open camp.
- It should not be assumed that asylum seekers are unwilling to cooperate with the authorities on the refugee status determination process. The reception centre on the territory should not be a closed facility.

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1. <http://tinyurl.com/EConvHR>

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Threats to liberty in Germany

Jolie Chai

In January 2012 Mohamed Rahsepar, an Iranian asylum seeker, committed suicide after spending seven months in Würzburg reception centre for asylum seekers (a former military barracks in the southern state of Bavaria). His suicide ignited nationwide protests, hunger strikes and a refugee 'bus tour' which began a year-long campaign through the major cities of Germany, documenting the conditions of asylum seekers living on the fringes of society. In March 2013, thousands gathered in Berlin to demand changes to Germany's deterrent-based practices of asylum.

A new airport under construction in Berlin will include a 1,000 square metre complex with video surveillance surrounded by a three-metre-high fence. This facility will become a part of a wider 'extraterritorial' fast-track asylum procedure, already in place at five major airports throughout Germany; all asylum seekers entering Berlin by air will be detained here. The Federal Office for Migration and Refugees or the Administrative Court will complete a fast-track assessment of an asylum claim (including all subsequent hearings and appeals) within a 19-day period. If a claim is found to be 'manifestly unfounded',¹ a deportation order will be issued. According to Amnesty International, between 1993 and 2007 86% of the 4,113 appeals submitted in the airport procedure were rejected.

The government's aim is to minimise long procedures and reduce costs, and to prevent economic migrants from seeking asylum. However, many have argued that this procedure, with its swift assessment and automatic detention, amounts to arbitrary detention. Numerous organisations have urged the authorities to ensure that asylum seekers are not routinely detained and that their rights to a fair asylum procedure are guaranteed. In addition, they argue, persons with special needs, including unaccompanied minors and survivors of trauma and torture, should be identified, and their special circumstances taken into consideration. It has been reported that asylum seekers are often unable to secure legal representation and subsequently struggle to complete the procedures necessary to lodge an appeal or secure a suspension of deportation, or to access complaint mechanisms or medical care.

Risk of immediate detention and deportation, however, is not the only challenge faced upon arrival. Asylum seekers granted entry into Germany are immediately dispersed to separate federal states and are obliged to stay in one of Germany's 22 reception centres for three months prior to being transferred to a 'communal shelter'. The length of stay in communal shelters varies to a considerable degree but can amount to years.

A residence regulation (*Residenzpflicht*) imposes further restrictions, preventing asylum seekers from moving outside a designated federal state or district. In the north-eastern state of Mecklenburg-Western Pomerania, the resulting hardships are evident. Sheltered in old East German military barracks, connected only by a national highway and surrounded by forests, asylum seekers who are issued a deportation letter are granted two weeks to find an attorney and file an appeal. They wonder where they will find an attorney: "Travelling to a city like Hamburg, where assistance would be available... is prohibited... An independent lawyer comes to the camp twice a week: one woman for 450 residents."²

Germany has more recently positioned itself at the forefront of the European response to refugee displacement from the Arab region with the expansion of resettlement programmes, a welcome gesture of international solidarity and responsibility sharing. Improved reception conditions and further possibilities for the inclusion of family and community-based sponsorship programmes may very well be the next step. This would indeed present a positive alternative to the de facto detention system that is currently Germany's standard response to seeking asylum.

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1. Whether on the basis of lack of documents, a safe country of origin or having entered via a safe third country (under Dublin II).
2. Krahe D 'Purgatory in Provincial Germany: Life Behind Bars Drives Asylum Seekers to Desperation', *Der Spiegel*, 27 January 2011. <http://tinyurl.com/Spiegel-Krahe-27jan2011>

New European standards

Dersim Yabasun

In 2008 the European Commission presented its first proposal to amend the 2003 'receptions conditions directive' which laid down minimum standards for the reception of asylum seekers. The proposal was then modified in 2011 following difficult negotiations between co-legislators the European Parliament and the Council, and in light of earlier consultations with UNHCR and NGOs during which the prevention of widespread arbitrary use of detention was identified as one of the key issues to address.¹ Political agreement in the Council was finally reached in October 2012 and on 29 June 2013 the amended 'Directive of

- to decide on the right to enter the territory
- when the applicant is detained on the basis of the Returns Directive 2008/115/EC and when there are reasons to believe that he or she is applying for international protection solely in order to frustrate or delay the enforcement of the return decision
- to protect national security or public order
- in the case of a transfer to another Member State on the basis of the Dublin Regulation.³



Detention centre, Malta.

the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)' became law.²

The agreed measures concerning detention stipulate that an applicant for international protection may only be detained:

- in order to determine or verify his or her identity or nationality
- in order to determine the elements of his or her application for international protection

The Directive also stipulates new measures concerning the conditions of detention of applicants for international protection. These provide that detention shall take place as a rule in specialised detention facilities. If this is not possible and applicants have to be placed in prison accommodation, they shall be kept separately from prisoners. Furthermore, detained applicants shall have access to open-air spaces and they shall be informed on the rules and their rights in the detention facility in a language they understand or are reasonably supposed to understand. Unaccompanied minors shall only be detained in "exceptional circumstances" and shall not be put in prison accommodation.⁴

It is now up to the Member States to implement these new measures.

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1. See amended 2011 proposal: <http://tinyurl.com/n67qkwm>

2. Directive 2013/33/EU: <http://tinyurl.com/EUDirective2013-33>

3. See Article 8(3) Directive 2013/33/EU.

4. For further details see Directive 2013/33/EU Article 10 on the conditions of detention and Article 11 on the detention of vulnerable persons.

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Detention of women: principles of equality and non-discrimination

Ali McGinley

International principles of equality and non-discrimination must be applied to the UK's immigration detention system, which at present fails to meet even the minimum standards which apply in prisons.

Non-discrimination is a founding principle of international human rights law. It is enshrined in a range of international treaties including the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which states that discrimination against women is the "distinction, exclusion or restriction made on the basis of sex" that results in the curtailing of women's human rights and fundamental freedoms.

The UN Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules¹) recognise the distinct needs of women in the criminal justice system and also introduce safeguards to protect women from ill-treatment. Although immigration detention settings are not covered by the Bangkok Rules, these same principles are very relevant to them; the UNHCR Guidelines on Detention, for example, refer to the Bangkok Rules in their guidance on asylum seeking women in detention². Considering places of detention from a gender perspective, Penal Reform International and the Association for Prevention of Torture state that women face heightened vulnerability and risk, and that while the 'root causes' of both are often external to the physical environment of detention, vulnerability and risk become "intensified significantly in places of deprivation of liberty"³.

In the UK, the Equality Duty which came into force in April 2011 places a duty on public bodies to have 'due regard' for protected characteristics including gender. However, there is still no dedicated gender-sensitive policy for female detainees in the UK – unlike in the prison system – and in many areas the immigration detention operating standards fall short of prison standards. For example, in the UK's short-term holding facilities, men and women are held in the same facility, something which would not happen in the prison system. The prison system has a Prison Service Order on 'Establishing an appropriate staff gender mix in establishments' (PSO 8005) which outlines appropriate staffing considerations with due regard

to gender and particular tasks in the prison which are gender-specific. There is no equivalent published policy guidance in the UK's immigration removal centres which detain women, and the facilities do not make public the proportion of female staff they employ.



Asylum-seeking woman from Ukraine looking through the bars of the detention centre in Medvedov, Slovakia.

In light of international and domestic standards, it is of concern that the particular needs of detained women – in the UK and elsewhere – are not taken into account and that their daily realities often fall far short of these fundamental principles of equality and non-discrimination.

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1. www.penalreform.org/publications/bangkok+rules
2. UNHCR (2012) Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum seekers an Alternatives to Detention www.unhcr.org/refworld/docid/503489533b8.html
3. Penal Reform International and Association for Prevention of Torture (2013), *Women in Detention: a guide to gender-sensitive monitoring* <http://tinyurl.com/PenalReform-wid-2013>
4. In 2010 AVID secured an agreement for the UK Border Agency to carry out a comparison of the UK prison service policies concerning women, and to identify learning points which could be applied to women in the detention system. Publication of the results has been put on hold as a result, according to the UKBA, of pressures of competing priorities and workloads.

Security rhetoric and detention in South Africa

Roni Amit

The South Africa example is instructive in demonstrating both the limits and the dangers of the increasing reliance on detention as a migration management tool.

Around the globe, government policymakers have characterised detention as an effective way to keep track of migrants seen as potential security risks as well as to make migration less appealing. There is little evidence, however, that this strategy – although generally popular with the public – is achieving its stated security and deterrence goals.

discretion. Instead, ‘illegal foreigners’ are held at the Lindela Repatriation Centre¹ as a matter of course. Immigration officials do not give due consideration to the factors that may weigh against detention prior to the decision to detain (although bribery remains a viable option for avoiding detention); the result is an over-zealous reliance on detention that sweeps up in its net asylum seekers, refugees, documented migrants and others legally in the country. Many of these individuals are then illegally deported, some back to the dangers from which they fled.



Release of a group of illegally detained asylum seekers, Lindela Repatriation Centre.

At the same time, South Africa’s detention practices illustrate how rhetoric around the securitisation of migration as essential for upholding the integrity of the state can legitimise a range of illegal practices and give rise to many drawbacks; these include unlawful detentions and deportations, rights violations, financial costs, increased opportunities for corruption, and threats to the rule of law.

Presumption of illegality

Immigration detention is discretionary under South African law. The dominant rhetoric framing migration as a security issue, however, has encouraged a wide-ranging practice of detention. Rarely, if ever, do immigration officials apply any

Inside Lindela, the flawed presumption that all detainees are illegal and by virtue of this illegality are also a security risk has legitimised the routine violation of detainee rights and legal protections. In one example, in justifying its defiance of the law’s clear and absolute 120-day limit on immigration detention, the Department of Home Affairs (DHA)² argued that it had complied as far as was “reasonably possible” with the law but believed that “the best interests of justice” warranted continuing to detain the individual indefinitely, and that releasing him in accordance with the law would in fact be “perpetuating illegality” by sending the “wrong message” to “illegal foreigners” in the country. The fact that the detainee in question was an asylum seeker who had wrongly been sent to Lindela after being acquitted of non-related criminal charges was irrelevant to the government’s detention decision, which it automatically framed as a security issue. The Department further admitted that it had not applied to a magistrate’s court, as required by law, for a warrant extending the detention beyond 30 days because as “creatures of statute” magistrates would be bound to adhere to the statutory requirements that the DHA believed it was entitled to ignore. In other words, the

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state interest – defined in security terms – justified disregarding legal provisions in order to maintain a broader notion of legality understood through control over migrants, and the exercise of such control via detention.

In a 23-month period between 2009 and 2010, the legal NGO Lawyers for Human Rights brought more than 100 cases on behalf of individuals being detained illegally (and has continued to bring almost weekly cases since then). Because of limited capacity, these cases are likely to represent only a fraction of those illegally detained at Lindela.

The DHA maintains that an individual may remain an illegal foreigner even after applying for asylum and that asylum seekers may themselves be detained as illegal foreigners. Immigration officials also detain individuals at the border before they can apply for asylum, as well as individuals inside the country who state an intention to apply for asylum. These practices directly contravene the legal regime set up by South Africa's Refugees Act, which requires that all individuals be allowed to apply for asylum, bars the detention of asylum seekers as illegal foreigners, only allows for the detention of asylum seekers under a very narrowly defined set of circumstances, and sets out a stringent set of procedural guarantees.

The framing of migration as a security threat has created a perception that the legal demands of detainees lack legitimacy, encouraging immigration officials to deny detained individuals access to their legal rights to appeal and review.³ Access to legal rights is highly circumscribed in detention and individuals may be illegally deported without any review or appeal procedures and at great risk to their safety. The cases reveal a practice of detaining documented asylum seekers and refugees and actively denying individuals access to the legal protections of the asylum framework.⁴

Further costs and drawbacks

At the same time, there is little to suggest that these detentions have been effective in

achieving their goals; in fact, they may be undermining these goals. Many deportees subsequently return to South Africa but because they can no longer legally enter the country and obtain documentation, they either enter illegally or apply for documentation under a false name, calling into question the claim of increased security linked to the deportations. In recent comments calling for detention and deportation practices to be reassessed, the Home Affairs Minister noted that this failed policy was costing the country 70-90 million rand (US\$7-9 million) a year.

Widespread detentions have also given rise to a culture of corruption, as many individuals, even those illegally detained, have no recourse other than to pay a bribe in order to be released and avoid deportation. The ability to extract such payments has provided further incentives to officials to deny detainees access to legal, cost-free means of obtaining their freedom.

Perhaps the most far-reaching and fundamental effect of the over-zealous reliance on detention is its effect on the rule of law. The DHA has regularly defended legal violations on the basis of necessity, in outright defiance of judicial pronouncements. Because security is seen to trump other interests, it sets the stage for an ever-expanding reliance on detention, resulting in rights violations, corruption and, ultimately, disregard for the law by the government, a situation that threatens to undermine the underpinnings of constitutional democracy.

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1. Also known as the Lindela Holding Facility, located approximately 40 kilometres from Johannesburg.

2. The body responsible for immigration.

3. The experiences of detainees in Lindela are discussed in R Amit, 'Lost in the Vortex: Irregularities in the Detention and Deportation of Non-Nationals in South Africa', FMSP Research Report, June 2010 <http://tinyurl.com/Amit-June2010-Vortex>

4. For more details on the range of illegalities, see R Amit and R Zelada-Aprili, 'Breaking the Law, Breaking the Bank: The Cost of Home Affairs' Illegal Detention Practices', ACMS Research Report, September 2012 <http://tinyurl.com/Amit-Aprili-Sept2012-Breaking>

Detention in Kenya: risks for refugees and asylum seekers

Lucy Kiama and Dennis Likule

Refugees and asylum seekers detained in Kenya risk multiple convictions and protracted detention due to poor coordination between immigration officials, police and prison officers, coupled with lack of interpreters and low levels of knowledge among government officers.

Kenya plays host to large numbers of refugees, internally displaced persons (IDPs), stateless persons, economic migrants and victims of human trafficking and smuggling. The Refugee Consortium of Kenya (RCK) runs a detention monitoring scheme comprising ten detention monitors stationed in prisons along key migration routes and in urban centres hosting asylum seekers and other migrants. These detention monitors monitor refugee rights violations and asylum-related cases in prisons, police stations and courts of law and in this way play a core protection role in that they not only form a critical link with the criminal justice system but can also provide immediate intervention and assistance to migrants in detention. In 2012 alone, RCK provided legal representation to 727 asylum seekers and refugees held in various detention centres across the country.

One of the challenges in mixed migration and refugee protection in Kenya has been the failure by law enforcement officers and other actors to draw a distinction between criminals, illegal immigrants and asylum seekers. All categories of persons are detained in the same prisons and subjected to the same standards of confinement; asylum seekers end up being treated as criminals, an issue that clearly goes against the concept of asylum being of a civil character. Prison conditions expose asylum seekers and refugees to assault, sexual abuse, torture, ill-health, lack of counselling support, limited legal assistance and a poor diet. The situation is often made worse by lack of translation services in the prisons which means that asylum seekers are not able to talk about the challenges they are facing or report any violations to authorities.

Under Kenya's Refugee Act 2006, all asylum seekers have 30 days upon entering Kenya to travel to the nearest refugee authorities to register as refugees, regardless of how or where they entered the country. The law also stipulates that such a refugee be accorded a fair hearing and given the chance to defend himself/herself before a court of law. However, law enforcement officers routinely ignore these rights and more often than not refugees end up being prosecuted – wrongly – because law enforcement officers tend to lack proper knowledge of how to handle asylum seekers and because of language barriers and a shortage of interpreters.

Asylum seekers have been made more vulnerable since the issuance of a directive on 18 December 2012 by the Government of Kenya, through the Department of Refugee Affairs, requiring all refugees in urban centres to move to camps.¹ The directive also issued a notice to stop registration of all refugees and asylum seekers in urban areas and accordingly directed that all agencies including UNHCR should stop providing direct services to refugees. This clearly opened serious protection gaps, limiting access to services for refugees and exposing them to arrest, detention and deportation. It is worth noting that since the issuance of the directive, harassment of refugees by law-enforcement officers in Nairobi and other urban areas has dramatically increased. Instances of arbitrary arrests and illegal detention of refugees have been reported; furthermore, detainees are not arraigned in court within the constitutionally sanctioned time of 24 hours after arrest, thus denying them their rights.

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Mixed migration and detention

During one of its protection monitoring missions in the coastal region, RCK visited Voi prison in Taita Taveta County to follow up on detention cases.² The region is a transit route used for human trafficking of persons from the Horn of Africa through Tanzania to South Africa. At the prison, we met and interviewed eight Ethiopians who had served four-month sentences for unlawful presence and were being held as they awaited deportation. We also managed to interview the officers and listen to their concerns and were able to deduce certain of their challenges, namely that asylum seekers are often mixed in with those being trafficked and that the authorities are not always able to distinguish between the two groups and provide the necessary assistance to the asylum seekers. This is due to lack or limited knowledge with regard to asylum so that any person without a document is treated as an unlawful immigrant and detained. This is worsened by the officers' limited knowledge of and access to the Department of Refugee Affairs which could intervene or vet asylum seekers.

Of concern also is the uncoordinated way in which deportation of migrants is conducted across the region. Officers normally return migrants to the nearest point of entry, usually without handing them to the proper authorities at border points. This exposes migrants to multiple convictions and protracted periods of detention by authorities in each country where they are returned, which is clearly an abuse of their rights.

Recommendations

To address the challenges outlined above, we recommend the following:

- Reception centres should be set up on key migration routes or at border entry points. This would help in timely registration and vetting of all migrants, particularly asylum seekers.
- Government agencies dealing with detention and deportation need to work together better to reduce cases of detention



and protracted detention pending deportation.

- Detention should only be used as a measure of last resort after exploring all other available avenues.³
- Regional and international civil society networks need to do more to share information on best practices in working with refugees and asylum seekers who face detention and/or deportation; efforts such as those of the International Detention Coalition (IDC) should be supported and harnessed to help effective implementation of laws with regard to detention and deportation.
- Regional governments and judicial bodies should work together to share information on and to advocate for best practice, including establishing monitoring committees and Special Rapporteurs.

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1. The order came in the wake of persistent grenade attacks in Nairobi's Eastleigh Estate which is mostly inhabited by Somali and Oromo refugees.

2. 'Border monitoring mission of refugee protection: issues at the coast: A report by the Refugee Consortium of Kenya on a monitoring mission to Mombasa, Voi, Taveta, Kwale and Lunga Lungu', Nov 2012 <http://tinyurl.com/RCK-2012-Coast-monitoring>

3. See Alice Edwards 'Detention under scrutiny' p4-6. www.fmreview.org/detention/edwards

A last resort in cases of wrongful detention and deportation in Africa

Matthew C Kane and Susan F Kane

Esmaila Connateh was one of an estimated 126,247 foreigners deported en masse from Angola in 2004. No arrest warrants were issued, nor reason given for the arrests. Their official documents were confiscated. Property was confiscated or left behind. Most were held for weeks, some for months, in detention camps that had been used to house animals and remained filled with animal excrement. There was no medical attention, little food and poor sanitation. No one was afforded access to the court system to challenge their arrests, detention or conditions of confinement.

Without any viable alternative forum to address these human rights violations, the Institute for Human Rights and Development in Africa filed a complaint on their behalf with the African Commission on Human and Peoples' Rights. The Commission was established by the African Charter on Human and Peoples' Rights to address violations of the rights set out in the Charter.

In considering Esmaila Connateh's case, the Commission weighed the alleged violations of the Charter, reaching a decision on the merits as to each. With regard to Article 6 of the Charter (focusing on detention), the Commission found: "The prohibition of arbitrary detention includes prohibition of indefinite detention and arrests and detention 'based on ethnic grounds alone.'" As there was no evidence that "victims were shown a warrant or any other document relating to the charges under which the arrest were being carried out", the arrests and detentions were arbitrary, and Angola was in violation of Article 6. In other cases addressing arbitrary arrest and detention, the Commission has made it clear that "[a]rbitrariness is not to be equated with 'against the law' but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law." In short, the Commission recognises that the laws of a particular country may themselves be unreasonable and that they will look beyond local statutes to determine the propriety of an arrest.

The Commission also found that Angola's conduct violated Article 12 concerning freedom of movement and residence: "Although African States may expel non-nationals from their territories, the measures that they take in such circumstances should not be taken at the detriment of the enjoyment of human rights... deportations [should] take place in a manner consistent with the due process of law. ... the

situation as presented by the Complainant did not afford those expelled due process of law for protection of the rights that have been alleged to be violated by the Respondent State and that they were not allowed access to the remedies under domestic law to at least challenge, if not reverse, their expulsion." In broad terms, the Commission held that mass expulsion through a "government action specially directed at specific national, racial, ethnic or religious groups is generally qualified as discriminatory in the sense that none of its characteristics has any legal basis..." The Commission then explained the rationale for its decision: "African States in general and the Republic of Angola in particular are faced with many challenges, mainly economic. In the face of such difficulties, States often resort to radical measures aimed at protecting their nationals and their economies from non-nationals. Whatever the circumstances may be, however, such measures should not be taken at the detriment of the enjoyment of human rights."

Winning a case before the Commission often has the feel of a hollow victory as the Commission decisions are 'recommendations' only and are often simply ignored. The Angolan government not only ignored the Commission's findings but subsequently repeated the offence. However, the Commission option should not be ignored. Its recommendations provide NGOs and other states with opportunities to put pressure on an offending state to comply with human rights norms. They also provide some value as precedents for future Commission decisions, while contributing to the ever-growing body of international human rights law.

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For more information on the decisions discussed here, and all other Commission decisions, please see the African Human Rights Case Law Analyser at <http://caselaw.ihrda.org/acmhpr/>. See also two longer articles by the authors at www.ryanwhaley.com/attorneys/matthew-kane/

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Women: the invisible detainees

Michelle Brané and Lee Wang

Research by the Women's Refugee Commission into immigration detention of women in the US explores why and how differences in treatment between detained men and women matter.

After receiving desperate phone calls from immigrant women detained at the Baker County jail in rural Florida, attorneys from Americans for Immigrant Justice decided to visit the facility. When the team arrived, however, the warden insisted the jail held no women. Finally, the attorneys left. The next day they received another call from a woman at Baker County desperate for help. The women had been there all along but somehow the warden was unaware of their existence.

The Baker County warden's insistence that there were no women in his jail is symptomatic of women's invisibility in the United States' immigration detention system. According to US Immigration and Customs Enforcement (ICE), women have accounted for 9-10% of the immigration detention population since 2008. In 2012, women's average length of stay in detention was 10% longer than men's, and in the first half of 2013, it was 18% longer. Women in detention are five times more likely to be asylum seekers.¹

The majority of women are clustered in just six facilities while the rest are housed in small numbers in state and local jails around the country. The six facilities are located in the southeast and southwest of the US, with one facility in the northwest. This geographic distribution is significant because it means that a woman apprehended outside of those areas is likely to be transferred far from where she and her family live. Researchers at Human Rights Watch have documented the many negative impacts of transfer on family unity, access to counsel and the ability to win reprieve from deportation.

Women who are not detained in the six large facilities face a different set of problems. In half of the smaller facilities, they account for less than 3% of the detainee population. This

minority status significantly affects conditions of detention and limits women's 'freedom of movement' – as access to services is called. This is largely the result of the logistical challenges that result from ICE's policy forbidding the mingling of men and women. While ICE houses men and women in the same facilities, interaction between them is strictly prohibited. Staff shortages and facility layout, however, often result in less freedom of movement for women, who are limited to certain areas or require escorts to go from one area to another while men are able to come and go more freely. The result is that women often do not have the same access as men to law libraries, religious services, medical appointments, recreation and visitation rooms. This inequity can even affect access to court proceedings. For example, at the Glades County Prison in Florida, female detainees can only participate in hearings to determine whether they will be deported via video teleconference while male detainees can participate in person. This raises troubling concerns about due process.

The Women's Refugee Commission (WRC) has also found that women are more likely than men to be mixed in with criminals. This is because more than half of the facilities that detain women house fewer than ten on any given day, which is insufficient to fill an entire housing unit. Rather than waste bed space, these facilities lock up immigrant detainees alongside criminal inmates. This mixing not only violates ICE's standards but also causes emotional distress and renewed trauma.

Women's experiences and needs

Women's experiences in detention differ substantially from men's, not only because they are minorities in an overwhelmingly male system but also because they have particular experiences and needs that are unrecognised and unmet.

First, women in detention are vulnerable to sexual assault and exploitation, as evidenced by the 185 sexual abuse complaints filed by detainees since 2007.² ICE has begun to address this problem by releasing long-overdue draft regulations to comply with the 2002 Prison Rape Elimination Act. In addition, detained asylum seekers suffer from inordinately high rates of depression, anxiety and post-traumatic stress disorder, and large proportions of women in detention have also previously been victims of domestic violence, sexual assault, trafficking and other forms of gender-based harm. Identifying these vulnerable populations of women, with their particular mental and physical health requirements, is critical. However, ICE may fail to identify them because they rely on detainees to self-identify as vulnerable or traumatised and rely on untrained personnel (who are often men) to ask sensitive information.

Second, women have particular health care needs. At the Irwin County Detention Center in Alabama, women need a doctor's note to obtain more than 12 sanitary napkins a month. Other facilities provide women with only one sanitary napkin at a time, requiring women to ask male guards for napkins. Some of the most disturbing accounts of inappropriate detention and lack of care come from pregnant women. Female detainees in Georgia and Arizona told the WRC that they were denied requests for additional mattresses when their bedding was very thin, and were forced to give birth with only a nurse practitioner present. According to a report by the University of Arizona, women have miscarried after their pleas for medical attention for profuse bleeding were ignored.

ICE has taken some positive steps towards addressing inadequate health care by developing a women's medical standard with gender-specific guidelines. But they could and should do more to implement these new standards at all facilities and conduct proper oversight and accountability. Until recently, the strongest detention standards in use at most facilities contained only three references to gender differences in its chapter on medical care (re pre- and post-natal care,

adequate numbers of toilets, and annual gender-appropriate examinations). The newest standards, issued in 2011, provide stronger guarantees of appropriate and necessary medical care; however, to date only four of the 86 facilities that detain women have agreed to follow these standards.

Third, the separation of families that results from detention takes a particular toll on women. Women are more likely to be single parents, meaning that the detention of a mother is more likely to leave children with no carer. The mothers interviewed by WRC were often unable to arrange care for their children since ICE does not guarantee that detainees can make phone calls. The consequences of this policy can be dire, including endangerment of children's well-being, severe emotional trauma and termination of parental rights. Once in detention, it can be extremely difficult for mothers and fathers to maintain basic communication with children, the child welfare system and attorneys. Requirements that parents have in-person visits with their children or take parenting classes (which are unavailable in detention) can make it impossible to regain custody. Detention facilities also frequently deny parents' requests to participate, even by phone, in family court proceedings where their parental rights are at stake. All of these basic barriers to communication and participation are exacerbated for women because they are more likely than men to be transferred far from their children and the communities that can support them.

WRC's primary recommendations include:

- Improve screening and training for personnel to identify and respond appropriately to vulnerable populations.
- Hire detainee resource managers to act as points of contact on women's issues in each facility.
- Collect more comprehensive gender-specific data.

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- Extend alternatives to detention, especially for pregnant women, primary caretakers and other vulnerable populations.
- Reform immigration laws to include protection and due process for everyone.

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The Women's Refugee Commission's report on women in detention is forthcoming at <http://wrc.ms/162ur8f>. For more on the Women's Refugee Commission's work on detention, see <http://wrc.ms/1eoH8DE>

1. All data from ICE obtained by the Women's Refugee Commission on 28 March 2013.

2. www.aclu.org/sexual-abuse-immigration-detention

Do higher standards of detention promote well-being?

Soorej Jose Puthooppambal, Beth Maina-Ahlberg and Magdalena Bjerneld

Sweden is generally considered to have high standards of immigrant detention. However, a recent study conducted in Swedish detention centres suggests that irrespective of the high standards life in detention still poses a huge threat to the health and wellbeing of detained irregular migrants.¹

Sweden has a comparatively low detention capacity (235) and immigration detention occurs in specialised secure facilities rather than prisons. The maximum limit for detention is 12 months. Detention facilities are run by civil servants employed by the Swedish Migration Board. Detainees do not wear any uniform, can use mobile telephones and have access to the internet. Volunteers from different NGOs can visit to provide psychosocial support for detainees.

Initial results of the study indicate, however, that detainees still feel helpless, despite the comparatively better facilities. To date, the study has involved interviews with detainees, staff and nurses working at the detention centres and with volunteers visiting the detainees. Detainees expressed the futility of seeking help to meet their daily practical needs and resolve their legal cases, mainly because of the lack of or unhelpfulness of response from staff, lawyers and the police. They appreciated being able to go to the courtyard, use the gym, have food served four times a day and having access to the internet but were concerned about the restrictions imposed on the use of some of these facilities. According to the detainees, the services are still at the discretion of staff, who therefore play a major role in making the detention conditions bearable or unbearable. However, in the guidelines

issued by various international organisations such as IOM, UNHCR and the EU, training for staff in working with detainees often takes a back seat.

The health-care needs of the detainees are still not properly met. All except one detention centre has a nurse visiting just twice a week and no detention centre has mental health-care services available at the centre. Detainees sorely missed having someone to interact freely with, and their urge to talk and be listened to was evident during the interviews. Visits by NGO volunteers seemed to ease the stress for some but at the same time detainees were disappointed that the volunteers could not provide legal help. Physical features of the detention centres such as sleeping quarters situated close to noisy common areas and the high bare walls were cited as causes of stress.

Irrespective of the facilities provided, detainees considered detention centres to be similar to prison: "a prison with extra flavours", they say. Uncertainty about the duration of detention and its outcome is a major contributing factor to their stress; some said that detention is worse than prison because in prison at least the outcome and the time period are known.

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1. 2012-15 research project funded by the European Refugee Fund. This article focuses on the results of interviews conducted with the detainees.

Immigration detention: looking at the alternatives

Philip Amaral

Endangering the health and well-being of people by detaining them is unnecessary; governments can instead use community-based alternatives that are more dignified for migrants and more cost-effective for states.

Detention seriously harms virtually anyone who experiences it. Scientific studies of detained asylum seekers show that detention leads to the build-up of clinically significant symptoms of severe depression, anxiety, post-traumatic stress disorder and even self-harm. For nearly a decade JRS staff and volunteers have authenticated these findings by regularly visiting detention centres throughout Europe, coming face-to-face with the despair, uncertainty, fear and anger that detainees typically experience.¹ Detention is damaging and is also unnecessary because governments can resolve people's immigration cases in the community instead of exposing them to harm in a detention centre.

What governments and NGOs typically call 'alternatives to detention' is rather simple in its premise. Instead of migrants being placed in detention centres, they are accommodated in the community with little to no restriction on their movement. Putting this into practice, however, is more difficult. Governments worry that migrants will abscond if not placed in detention while NGOs may struggle to decide which particular alternative to detention to advocate for, and how to assess their suitability for migrants. This is why in 2011 the Jesuit Refugee Service undertook research examining alternatives to detention in Belgium, Germany and the United Kingdom.² We set out to understand what factors are needed – at a minimum – to ensure that alternatives to detention work and we did this primarily by interviewing the migrants themselves.

Twenty-five migrants were interviewed in three EU countries, each with its own type of alternative to detention:

Belgium: undocumented and asylum-seeking families placed in community housing and attached to case managers.

Germany: unaccompanied minors living in a home run by a Protestant church charity, which provides them with comprehensive services and access to legal support.

United Kingdom: people whose asylum applications had been refused and who were regularly reporting to the UK Border Agency; two of these persons had recently worn electronic surveillance tags on their ankles.

None of the measures we examined are inherently harmful to migrants. They pose few restrictions to physical movement and allow migrants to live in the community with a much greater degree of liberty than they would have in a detention centre. And although each country we investigated continues to detain on a large scale, it is a positive step that there are at least some measures that remove people from the detention centre into the open environment of a community.

The biggest problems that we observed are related to the wider systems of asylum and immigration. These are systems based on assumptions about expected migrant behaviour rather than on empirical evidence. Such systems assume the worst of people, rather than the best. This confrontational approach is underpinned by the stresses and burdens of the entire system. Many asylum seekers and migrants have led difficult lives and experienced events that have caused deep physical and mental trauma; as a consequence they are keen to protect themselves against further adversity. Alternatives to detention that do not take

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these factors into account are likely to falter or fail, either because migrants will be reluctant to participate for lack of trust, or because states give too short shrift to the issues that are of the deepest concern to migrants.

Yet from our research we could infer six specific characteristics that do seem to be important for the well-functioning of the alternatives to detention that we investigated. Each of these aspects is based on the understanding that it is not enough merely to release someone from detention. Though this is a good first step, migrants still need support from the state to ensure that their immigration cases are resolved in a timely, fair and efficient manner.

Firstly, it is important for migrants to have access to decent housing. If a person does not have an appropriate place to live, they will have difficulty focusing on and addressing the requirements of their immigration procedures and they will be at risk of destitution.

Secondly, alternatives that work well offer comprehensive support to migrants. Often this kind of support takes the form of

case management that provides a range of services – social support, legal assistance, medical support, child care if necessary – that focus on one-to-one care. If migrants can stop worrying about basic needs such as food, clothing, public transport and medical care, they are better able to focus on taking decisions on their immigration cases.

Thirdly, migrants must have regular up-to-date information that is presented as clearly as possible. A lack of information, or even misinformation, can lead to feelings of distrust and discourage migrants from cooperating with state authorities. The provision of regular information can enable more efficient procedures, fairer and quicker outcomes and higher rates of migrant compliance.

Fourthly, governments must ensure that migrants have access to qualified legal assistance. This is a crucial element that is missing in detention centres, making it very important to provide it in a community-based alternative.

Fifthly, there should be an emphasis on all possible outcomes. Alternatives to



Building used to accommodate families in private apartments, plus office for a case worker. Tubize, Belgium.

detention that only have a focus on return tend to perform poorly compared to those that explore all the ways in which a person's immigration case could be resolved.³ Even if in reality certain options are closed off, such as legal residence, it is still important for migrants to have every option thoroughly explained and explored so they can be assured that every step has been taken. This is how trust can be built between migrants and governments.

Finally, all the above factors would work well if they were provided at the onset of a person's asylum or immigration case. There should be as little delay as possible. Governments that are frank and transparent with migrants, inform them of all conditions, procedures and opportunities, and offer comprehensive support may find that rates of compliance increase as migrants develop trust towards the authorities. Frontloading support does not mean accelerating immigration procedures but rather making sure that migrants are well-equipped from the start.

Empirical research continues to show rather convincingly that people are harmed by being put into detention. Virtually anyone who is detained experiences high levels of stress and symptoms related to severe

anxiety and depression. Despite this, states continue to use detention as they remain convinced that it is the best way to manage asylum and migration flows. Research done by ourselves and others, however, shows that government fears that migrants will abscond if not detained are largely unfounded. Furthermore, community-based alternatives are far more cost-effective than detention; the alternative in Belgium not only achieves high compliance rates⁴ but is also half the cost of detaining one person per day. In addition to cost savings, resolving people's immigration cases in the community is much less stressful for migrants and states alike than doing the same in a detention centre. Above all, alternatives preserve people's human dignity, which is what immigration procedures ought to do in the first place.

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1. See JRS Europe, *Becoming Vulnerable in Detention*, 2010 <http://tinyurl.com/JRS-Vulnerable-in-Detention>

2. JRS Europe, *From Deprivation to Liberty*, 2011 <http://tinyurl.com/JRS-Deprivation-of-Liberty>

3. See evaluations of pilot projects in Glasgow and Millbank in the UK: <http://tinyurl.com/JRS-UKpilots-evaluation>

4. 75-80% compliance: i.e. 20-25% rate of absconding.

Thinking outside the fence

Robyn Sampson

The way in which we think about detention can shape our ability to consider the alternatives. What is needed is a shift in thinking away from place-based control and towards risk assessment, management and targeted enforcement.

High walls, fences, locks, guards. These are the things that come to mind when we think about immigration detention, and justifiably so. The incarceration of migrants in jail-like facilities is a growing phenomenon worldwide and a serious concern due to its terrible consequences for people's health and wellbeing. More and more forced migrants are being held in closed facilities at some point during their journeys of flight and displacement.

Although there is no single definition of detention, at its core is a deprivation of liberty. This deprivation limits the area in which people can move about freely, often restricting their movements to the confines of a single room, building or site. The places in which migrants are detained take many forms, including immigration detention centres built to purpose, airport transit zones, closed screening facilities, prisons or police stations, hotel rooms and retro-fitted

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structures such as cargo containers. This place-based concept has specific implications for those working to introduce alternatives to detention. In particular, this focus on the place at which detention occurs can constrain our understanding of alternatives to detention, as they do not rely on a particular location but rather involve a set of tools or strategies that can be applied to an individual wherever they might be located in the community.

In my research into alternatives to detention with the International Detention Coalition,¹ we identified a range of mechanisms that can assist in successfully managing migration cases without detention. Such alternatives to detention rely on a range of strategies to keep individuals engaged in immigration procedures while living amongst the local community.² Although such programmes sometimes make use of residential facilities as part of a management system, the location of the individual is not of primary concern. Instead, the focus is on assessing each case and ensuring that the local setting contains the necessary structures and conditions that will best enable that person to work towards a resolution of their migration status with authorities. This relies on five steps, which we developed in our Community Assessment and Placement model (CAP model). These steps are:

- Presume detention is not necessary.
- Screen and assess the individual case.
- Assess the community setting.
- Apply conditions in the community as needed.
- Detain only as a last resort in exceptional circumstances.

For instance, as seen in programmes in countries like Australia and Canada, someone facing deportation after reaching the end of their application process may be appropriately and effectively managed in the community if their individual circumstances

are assessed; if they are supported in the community with case management, legal advice and an ability to meet their basic needs; and if they undertake to participate in preparations for their departure, to report regularly and to be supervised with more scrutiny if required.

In these situations, it may be necessary for two things to happen. Firstly, the concept of control through confinement in a particular location needs to be replaced with one of management through appropriate supervision. This entails a shift in thinking away from place-based control and towards risk-assessment, management and targeted enforcement. Secondly, the success of community-based programmes must be highlighted. Our research shows that cost-effective and reliable alternatives to detention are available and achievable. Community management programmes maintain compliance rates of 80-99.9% with a range of groups (including those facing return), deliver significant cost benefits on operational and systemic measures, and protect the health and wellbeing of migrants subject to these measures. Through stronger alternative to detention programmes, governments are learning that they can effectively manage the vast majority of migration cases outside the walls of detention.

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1. See report *There are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention*, 2011 www.idcoalition.org/cap

2. I use the word 'community' to refer to the wider society found in that local area and not to a group of peers with the same cultural background (as in 'ethnic community').



Predisposed to cooperate

Cathryn Costello and Esra Kaytaz

Recent research in Toronto and Geneva indicates that asylum seekers and refugees are predisposed to be cooperative with the refugee status determination system and other immigration procedures, and that the design of alternatives to detention can create, foster and support this cooperative predisposition – or can undermine or even demolish it.

Alternatives to detention (ATDs) 'work' from the point of view of asylum seekers and refugees if they prevent unnecessary detention and other excessive restrictions, support individuals in seeking protection and achieving a swift resolution of their claims, and – if allowed to stay – accelerate their integration into the host society. And ATDs work from the state's perspective if they encourage asylum seekers to cooperate with RSD system and immigration law more generally, or if they facilitate the removal of those who have no protection needs.

The key factor motivating asylum seekers to cooperate with RSD and other legal processes is the perceived fairness of such processes. Our research into asylum seekers and refugees in Toronto and Geneva¹ supports the finding that detention impedes access to the sorts of advice and support that create trust in and understanding of the RSD process; accordingly, alternatives 'work' better in this sense both for individuals and the system as a whole. The asylum seekers and refugees we interviewed tended to acknowledge the need for countries to run an RSD process in order to discern who was in need of international protection and there seemed to be remarkable consistency in their conception of fairness. For them, fairness included (i) being afforded a proper hearing; (ii) consistency of decision-making; and (iii) taking decisions promptly; however, the single most important institutional factor that fostered trust was (iv) access to trusted legal advice and assistance at an early stage.

Interesting insights into the importance of legal and holistic advice may be gleaned from the refused asylum seekers in Toronto. We encountered some rejected asylum

seekers who felt that the RSD process had not reached a correct finding in their cases but yet did not deem the entire system to be unfair, and seemed to remain cooperative with the authorities. In contrast, in Geneva, the lack of information and advice seemed to contribute significantly to the interviewees' overwhelming perceptions of the RSD process as fundamentally unfair.

Legal assistance in Toronto

Asylum seekers resident in the Toronto Shelter System (which we considered as a form of ATD) reported receiving lists of experienced refugee lawyers from the outset. Although not all asylum seekers receive legal aid, most interviewees had. The shelters often provided legal orientations and general legal information on the process but left it to private lawyers to represent clients; this division of labour seemed beneficial, in that having various sources of information and advice seemed to reinforce trust in the system. Interviewees generally received advice early on, including on how to complete their 'personal information form' (PIF), either from their own lawyer or from caseworkers in the shelter. There appeared to be a good understanding of the importance of fully explaining the reasons for their flight in the PIF form, and that findings at their first hearing were crucial.

"It is crazy but, yeah, I do have trust in the system because I understand it."

(East African asylum seeker in Toronto)

Legal assistance in Geneva

We formed the impression that the interviewees who remained cooperative with the RSD process in Geneva did so out of a sense that they had no other option, and that

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they were simply at the mercy of the Swiss authorities. There is no formal legal aid for refugee claims in Switzerland, so asylum seekers who lack private financial resources have to rely on NGOs for legal representation – if they can find out about them and get access to them. With only one exception, the Geneva interviewees stated they had not received any legal advice or even legal information before either the registration interview or the main interview. In the absence of proper legal advice, asylum seekers had to rely on social workers, and each other, to navigate the asylum process. There was a widespread belief among them that lawyers should only be consulted for the appeal stage, if at all. Consequently, the interviewees frequently misunderstood the RSD process, and seemed ill-equipped to explain their claims.

The interviews revealed that at the outset of their asylum process asylum seekers generally seemed to have a disposition to cooperate with RSD and other procedures in light of four key subjective factors: firstly, the refugee predicament and fear of return; secondly, an existing inclination towards law-abidingness; thirdly, the desire to avoid the hardship and vulnerability of irregular residence; and lastly, trust and perceptions of fairness of the host state, in particular its RSD process.

“I heard about Switzerland, especially about Geneva. It is the country of human rights so I thought they would treat me as human.”
(Asian asylum seeker in Geneva)

However, whether they retain that cooperative predisposition depends on their treatment. There seems to be little justification for detention of asylum seekers, provided that reception conditions are suitable; that RSD is perceived to be fair; and that holistic support is provided to navigate legal processes and life in the host country.

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For more information see Costello C and Kaytaz E *Building Empirical Research into Alternatives to Detention: Perceptions of Asylum-Seekers and Refugees in Toronto and Geneva*, UNHCR Legal and Protection Policy Research series, June 2013 www.refworld.org/docid/51a6fec84.html

1. Research commissioned by UNHCR.

Alternatives to detention in the UK: from enforcement to engagement?

Jerome Phelps

The UK detains migrants on a large scale, and has had limited success in developing alternatives. The British experience highlights the need for a cultural shift towards engagement with migrants in place of reliance on enforcement.

The development of alternatives to detention has become a significant global counter-trend to the normalisation of detaining migrants. Where alternatives have worked, they have relied on the engagement and participation of migrants themselves in immigration processes. Yet they have not worked everywhere, and the failures of states like the UK highlight important lessons.

Both Sweden and Australia have successfully developed alternatives to detention based on case management in the community.¹ A single trusted individual is responsible for working with the migrant to ensure that his or her practical needs are met: housing, information about the migration process, legal advice. This case manager also spends time with the migrant to build a relationship of



Asylum seeker awaiting deportation from Tinsley House immigration detention centre in the UK

trust, taking time throughout the immigration process to explore all potential long-term options, including leave to remain, assisted return and possibilities in third countries. These programmes have largely met the needs of governments as well as migrants, since very few migrants absconded and large proportions of those refused leave to remain decided to take up assisted return.

The origins of these case-management programmes are significant. Both were introduced as responses to systemic crises. In Sweden, change followed a public and media outcry over detention conditions in the late 1990s. In Australia, international condemnation of the mandatory indefinite detention of children and adults combined with flagrant errors such as the repeated deportations of Australian citizens led the government to introduce radical community-based programmes for irregular migrants on the territory.² Of course, off shore processing, in appalling conditions, of migrants arriving by boat has continued, and has intensified with the reopening of detention facilities on Nauru and Manus Island. Nevertheless, in Australia as in

Sweden case management has become an established part of the immigration system.

In Britain, the European Union's biggest detainer of migrants, no such change has taken place. Detention is heavily used in the asylum process, with around 22% of asylum seekers detained at some stage, not just for removal but throughout the asylum process, on the controversial Detained Fast Track.³

Despite financial incentives offered through assisted returns programmes, the UK has exceptionally low levels of take-up of assisted return: only around 16% of refused migrants arrange their own return (with assistance), compared to 82% in Sweden.⁴ The various mechanisms for managing migrants in the community, including bail, reporting requirements, electronic monitoring and requirements to live at a designated residence, make little apparent contribution to the take-up of assisted return.

Many migrants subjected to long-term detention cannot be returned to their countries, often because of the difficulties of obtaining travel documents from countries

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of origin such as Iran, Algeria and Palestine. As a result, 57% of migrants leaving detention after a year or more are released back into the UK, rather than deported.⁵ Recent independent research has found that £70 million per year is wasted on the long-term detention of migrants who are ultimately released.⁶ This figure includes large pay-outs for unlawful detention, a rare phenomenon before 2009. Since then, the courts have repeatedly found long-term detention without prospect of deportation to be unlawful. Long-term detention has been even more catastrophic for migrants with serious pre-existing mental health conditions; the High Court has found on four occasions since 2011 that the prolonged detention of migrants who are experiencing psychological collapse breached their Article 3 rights against inhuman and degrading treatment.⁷

Only one crisis has shaken the UK's approach to immigration control in recent years, and it has unfortunately not generated much progress on alternatives. Sustained campaigning against the routine detention of children and families forced the government into piloting two half-hearted alternatives programmes at Millbank and Glasgow in 2007-08 and 2009-10. Both involved moving families into different accommodation, where they would be prepared for return. Neither succeeded in building trust with migrants; the families were at the end of the process, and the overriding objective was to persuade them to return. However, in 2010, under continued political pressure, the new government announced that it would end the detention of children for immigration purposes.

The subsequent Family Returns Process substantially reduces, but does not end, the detention of families, who are now held for short periods in conditions that do not resemble the prison model of detention centres. However, while refused families now have meetings with the UKBA to discuss their options, and an independent Panel considers returns options, there is little real dialogue or case management. Families are given

more information and time, and protracted detention is usually avoided, but the fundamental reasons why they might distrust the process go unaddressed. The Family Returns Process does, however, show that even the UK government can be persuaded to change direction – that detention can become accepted as a bad thing, at least for children – and could yet be a first step towards a more substantial change in culture in the treatment of families and ultimately migrants in general.

The shift to engagement

Why has there been so little substantial progress on alternatives to detention in the UK? All of the British alternatives to detention to date, from bail and reporting to Glasgow and the Family Returns Process, operate at the end of the process: for migrants who have already been refused. They focus only on returns; all other migration outcomes are already excluded. As a result, they both manifest and perpetuate a total absence of trust between migrants and the UKBA, where asylum seekers and irregular migrants feel that their cases have not been carefully and fairly considered. NGOs and legal advisers largely agree.

The UK needs a systemic shift away from enforcement towards engagement with migrants. It is this shift that alternatives to detention can instigate and realise. The question is whether such a shift can be achieved without a precipitating crisis. Britain's child detention crisis was limited to children, and any resulting shift has so far also been limited to children. How can wider change be initiated without the will in government to make a genuinely fresh start?

In 2010, with an International Detention Coalition delegation, I visited a housing unit for families in Belgium.⁸ The families were legally detained but actually lived a relatively normal life in a block of flats outside Brussels. A small team of returns 'coaches' (employees of the government authorities) worked in the flats every day with them. This was a clear example of a limited pilot project, with little investment or commitment from the authorities, within an overall context of

enforcement. Families were at the end of the process, and the purpose of the project was to persuade them to go home 'voluntarily'. We asked the coaches about their work with the families, and they told us that they tell the families to go home. But it became clear that what they actually did was very different. They went shopping with the families. They talked through their problems with them, and did what they could to assist. They found them lawyers, and even got their cases reopened and helped them to apply for leave to remain when the opportunity presented: unexpected elements of case management. As a result, there seemed to be a certain level of trust between the families and the coaches.

The suspension of the detention of families and the piloting of open housing units preceded a European Court of Human Rights ruling that Belgium's detention conditions were unsuitable for children. Three years later, further housing units have opened. Belgium has by no means an engagement-based migration system but the housing units have become established, generating considerable international interest and equally considerable government pride. The hope for alternatives may lie in similar small steps. If they can be shown to work, for governments as well as migrants, engagement approaches might catch on.

The learning from alternatives to detention shows clearly that support, legal advice and dialogue benefit migrants and improve case resolution for governments. Could initiatives be developed that build on the strengths of existing community-based service providers, which already help migrants to play more active and informed roles in the systems in which they find themselves? After all, talking to migrants about their problems and building trust are what NGOs do every day.

This is the aim of a new project of the Lutheran Immigration and Refugee Service and Presbyterian Disaster Assistance in the US.⁹ Since 2012, LIRS has been coordinating a network of community projects that provide support to migrants released from

detention in a way that supports both their needs and their compliance with the requirements of release. The hope is both to get individuals out of detention and to gather evidence that undermines the case for detention. The similarities with the UK – a strong enforcement culture with an active civil society – mean that the learning should be valuable.

Restoring trust in migration systems requires more than NGO pilots. In the UK, distrust goes deep. Alongside improved communication there also need to be improvements in decision-making to ensure that migrants with other compelling fears of persecution or other strong reasons to stay are not forced into return – and whose circumstances make cooperation with return inconceivable.

Such a change in strategy today seems implausible but immigration control priorities and tactics have changed fast in recent years, so the actual should not be confused with the inevitable. The model of dialogue and engagement is better, on every level, than the current approach of detention and enforcement. There is an urgent need to gather more evidence for this, and to persuade governments of its merit.

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1. IDC, *Case management as an alternative to immigration detention: The Australian Experience*, 2009 <http://tinyurl.com/IDC-Australia2009>
2. See McKay pp25-7.
3. UK Border Agency, Asylum Data Tables Immigration Statistics April to June 2012, Vol 4, tables 11 and 13 <http://tinyurl.com/UKBA-stats-april-june-2012>
4. IDC, op cit, p35
5. UKBA, op cit, table dt.05
6. Matrix Evidence, *An economic analysis of alternatives to long-term detention*, January 2012 See <http://detentionaction.org.uk/timelimit/publications> for this and other publications.
7. <http://tinyurl.com/bhattmurphy-feb2013>
8. See Schockaert p53-5.
9. See Bremer et al pp51-2.



New models for alternatives to detention in the US

Megan Bremer, Kimberly Haynes, Nicholas Kang, Michael D Lynch and Kerri Socha

While there is growing recognition of the value of community-based alternatives to detention in the US, shortfalls in funding and political will are hindering implementation of improved services and best practice.

The United States' immigration enforcement system sees deterrence as the most sustainable means of maintaining control of migrant populations, regardless of push/pull factors. Within this framework, forced migrants may face federal criminal prosecution, prison sentences, and deportation for being in the US without authorisation. While the sole purpose of immigration detention is to ensure compliance with immigration court proceedings and judicial orders, its overuse demonstrates how the philosophy of deterrence has permeated the system by shifting towards the most restrictive and seemingly punitive enforcement mechanisms. While deterrence holds little value in the context of forced migrants who flee their countries of origin to survive or who are desperate to reunite with family, the US government does not distinguish forced migrants from other migrants when making decisions regarding detention.

Detention of children

Since 2002, the US Office of Refugee Resettlement (ORR) has had responsibility for the care and custody of unaccompanied children apprehended by immigration enforcement agencies. Previously, such children were detained in adult detention facilities and were not treated according to child welfare standards. Now they are placed in child-specific immigration detention facilities where they are screened for risk of absconding and danger to the community if released from custody, as well as their need for protection. These screenings guide ORR's decisions to keep the child in detention or refer him/her to a community-based alternative – as they do with the majority of children – vis-à-vis foster care or release to a sponsor, commonly a family member. An estimated 70% are released to a family

member or other sponsor, such as a family friend, and about 20% are placed in a foster-care system managed by a network of NGOs.

While the treatment of children in ORR custody has made great strides by recognising the value of community-based alternatives to detention, the emerging models overlook the need to build capacity for community-based services. The 'Post-Release Services' programme, funded by ORR and implemented by NGOs, is intended to facilitate access to legal, medical, mental health, educational and other social services for the minor and the caregiver. Unfortunately, only 20% of the children released to a family member or other sponsor are matched with a case worker to facilitate these 'wraparound' services, and there is also a lack of low-cost or free counselling and legal services. Many children struggle to adjust to their new US lifestyle and family circumstances; the long-term cost of the outcomes that can result – such as abuse, homelessness or crime – are likely to exceed what communities would pay up-front for the wraparound services and alternatives to detention that would promote protection and family unity, and improve compliance and integration outcomes.

With funds in short supply, new policies implemented from April 2013 permit the expedited release of children to a parent or legal guardian without requiring a fingerprint check on the sponsor or verifying that the sponsor has a stable income, home address or ability and willingness to care for the child. This same push to expedite the release of children also puts detention staff and case managers under additional pressure, squeezing the time available in which to make critical recommendations for each child's care.

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Detention of adults

Immigration and Customs Enforcement (ICE), the agency charged with managing custody of adults, reported an all-time high of 429,000 individuals detained for immigration purposes in 2011 at a cost of nearly \$166 per person per day. The government maintains 34,000 adult detention beds on a daily basis. This overreliance on detention has fuelled the for-profit private prison industry, which now lobbies legislators to maintain strict immigration enforcement laws to fill more detention beds.

Individual assessments are critical for determining who needs to be detained, who would be better off placed in an alternative to detention, and what assistance an individual needs while detained or to comply with conditions of release. Historically, the US has failed to conduct assessments but in early 2013 the government launched a new risk assessment classification tool nationwide that will – for the first time – require ICE to conduct individual assessments based on a number of factors, including a history of trauma. However, the classification assessment is designed to recommend either detention or release but not to determine the type and level of services an adult needs to navigate the courts, comply with conditions of release (especially reporting requirements) and integrate into the community. This lack of information will continue to undermine outcomes for forced migrants who are not sufficiently connected to the appropriate wraparound services post-release. Like those for children, the alternatives to detention for adults fail to build capacity for community-based services.

Community-based alternatives

US NGOs have been advocating for and piloting community-based alternatives to detention since the 1990s. The most recent model is coordinated by Lutheran Immigration and Refugee Service (LIRS)¹ and implemented by more than 20 local NGOs in seven communities nationwide. It aims to build infrastructures of available, accessible, acceptable and high-quality community-based

interventions to support compliance with conditions of release (e.g., appearances at removal hearings) in a manner that is more cost-effective than detention, respects human rights, improves integration and improves client health and welfare.



Eloy Detention Center, Arizona, US.

It has faced challenges in three main areas: conducting both fundraising and community outreach to garner funds and volunteers to assist with service delivery; collecting data to measure the impact of the community-based approach and to inform recommendations; and connecting clients with scarce services for legal, medical and mental health care, visitation, housing, education and employment. These challenges could be overcome with increased funding, especially from the US government which currently offers no funding for civil-society-led alternatives. However, the political will to shift resources away from detention is being undercut by the drive to deter future migration – a formidable barrier to expanding effective and humane community-based alternatives to detention.

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1. See LIRS *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy*, October 2011 <http://tinyurl.com/LIRS-unlocking-liberty-2011>

Alternatives to detention: open family units in Belgium

Liesbeth Schockaert

Preliminary outcomes of an alternative to detention programme in Belgium, based on case management and individual 'coaches' for families, are positive and merit consideration by other countries.

Detention can lead to violations of the entire spectrum of human rights – from civil and political rights to economic, social and cultural rights. Prolonged detention can cause severe psychological and physical health problems which have long-term costs both for the individuals and for societies. These consequences and costs compel investigation, study and implementation of alternatives to detention.

'Alternatives to detention' is not a legal term but is used [...] as short-hand to refer to any legislation, policy or practice that allows asylum seekers to reside in the community subject to a number of conditions or restrictions on their freedom of movement. As some alternatives to detention also involve various restrictions on movement or liberty [...], they are also subject to human rights standards.' (UNHCR 2012 Detention Guidelines)

Alternatives to detention thus need to comply with the principles of legality, necessity and proportionality and should be applied without discrimination and with due regard to the dignity of each individual.

While asylum seekers are generally accommodated in open reception centres which allow full freedom of movement¹ during the processing of their asylum claim, a number of asylum seekers continue to be held in closed detention centres (6,799 people in 2012). Those held in closed detention include people (except for families with children) applying for asylum at the external borders (airports, train stations and ports), people whom the Belgian state is intending to transfer to another European state as part of the implementation of the Dublin regulation,² and people whose asylum applications have been rejected and who have been ordered to leave the territory.

According to international law, detention should remain a measure of last resort and not be done systematically as it is currently for asylum seekers arriving at Belgium's borders.³ No account is taken of special circumstances and, in particular, of any vulnerability. Hence vulnerable people often detained in closed centres include older people, pregnant women, people with disabilities, victims of torture or trafficking, and people with psychiatric disorders, including war-trauma/PTSD. The stress of being confined exacerbates the mental suffering of these individuals, while the context of detention is often not conducive to the right kind of care.

Moving towards the use of alternatives

For years NGOs, the Federal Ombudsman and others had raised concerns about detention in Belgium and more particularly about the detention of children. In October 2006, the Belgian government responded by commissioning a study on alternatives to detention. The results were presented to Parliament in April 2007 and the different models for alternatives were furthered investigated through a feasibility study. The Belgian authorities subsequently chose to implement a model based on case management.

Each asylum seeker is assigned a case manager – more often referred to as a 'coach' – who is responsible for their entire case throughout the status determination process, including providing clear and consistent information and advice about the asylum process (including other migration and/or return processes, as applicable) and about any conditions on their release and the consequences of non-cooperation. The

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focus is on informed decision-making, timely and fair status determination, and improved support for coping mechanisms for the individuals themselves.

On 1 October 2008 a pilot project was launched in which families with children, who are already present on the territory and are required to leave the territory, should no longer be detained in closed centres. In October 2009 the project was enlarged to include asylum-seeking families who are not allowed to enter the territory but who may need to stay for more than 48 hours before being returned.

The families live in 'open family units' which consist of individual houses and apartments. People have freedom of movement with certain restrictions and rules. They can leave their accommodation in order, for example, to take their children to school, buy groceries, visit their lawyer and participate in religious ceremonies. Visitors are allowed in the family units. The family units help to ensure continuity of reasonably normal life for children.

Each family receives weekly coupons to buy food from a local supermarket in order to prepare their own meals. Every family member is also entitled to medical, social and legal assistance. All educational, medical, logistical, administrative and nutritional costs are covered by the Aliens Office. However, the cost of visiting a doctor is only reimbursed when the appointment has been made by a coach. All families can apply for a pro bono lawyer. NGO staff visit the family units regularly and can have discussions involving coaches and families together. The families can also contact NGOs on their own initiative. In order to protect family privacy, the number of accredited visitors is limited.

Case managers/coaches are appointed by the Immigration Office to support families during their residence in the family units pending a permanent solution – either right of residence or return with dignity – and act as official intermediaries between the Belgian

authorities and all other stakeholders. For rejected asylum seekers and other families for whom return is the only outcome possible,⁴ the coach collects all necessary information (for example, organising meetings with diplomatic and consular representations, in cooperation with the Immigration Office) and assists the families in preparing to return to their country. The coach will first of all propose a voluntary (assisted) return scheme to the families in collaboration with the International Organization for Migration (IOM) and will help in surmounting any barriers which could impede the return. They also inform the families that the Immigration Office can decide – as measure of last resort – to detain the family in a closed centre if the family refuses to cooperate or if the rules of the family units are not respected or if the family absconds.

The principal objective of this case management model is to prepare families and individuals for all possible immigration outcomes, whether return or legal stay. The system is based on the trust that families place in the procedures and in the role of the coach. Thus the skill-sets and personalities of case managers can contribute to the success or failure of alternatives. Recruitment and training of staff need to be well managed, including through tailored training and/or certification. Codes of conduct or other regulations relating to staff behaviour may be important.

Practical experience has shown that a family will invest more trust in a coach who clearly identifies and discusses all possibilities. People who have no entitlement to stay in Belgium choose then to return not as a result of being pressured by the authorities but as a conscious decision, provided that they believe that the asylum procedure has been fair.

Evaluation of the model

From October 2008 to December 2012, 423 families with 754 children lived in the different family units for an average period of 23.5 days. Of the total, 201 were families who had arrived at the border, 88 families

were in a Dublin procedure and 134 were in irregular stay. More than half the families were single mothers with children. The main countries of origin included Iraq, Afghanistan, Russia, Serbia and Kosovo.

406 families have left the units:

- 185 families departed to their country of origin or a third country (of these, 33 families departed with IOM assistance).
- 105 families absconded. Most families abscond within hours or a couple of days after arrival in the family unit or just after having been informed that a removal will take place. Most absconders were families for whom a transfer under the Dublin regulation was being organised.
- 115 families were released to live freely in the community (20 families were regularised,⁵ 39 families were recognised as refugees, 13 families received subsidiary protection and 18 families still had their asylum procedure pending but had stayed the maximum period).
- One family was a specific case where the child turned out not to be related to the family.

The preliminary outcomes of the programme are positive. The majority of the families did not abscond and remain in contact with their case manager, suggesting that there is no need to detain the people in question. Appointing individual coaches enables a more in-depth analysis of each family's case and can help identify cases where it is obvious that residence permits (whether temporary or permanent) should be granted.⁶

Individual case management, screening, trust and transparent communication are key components for the successful use of alternatives to detention, as well as collaboration with local authorities, social services, health services, police, NGOs and the community. The Belgian initiative appears to be a workable alternative to detention but

one could ask whether the transfer to special family units is necessary at all. Could not the same process take place wherever the families are staying? Would not families who apply for asylum at the border be better off staying at an open reception centre (rather than closed), where conditions are better adapted to the specific needs of asylum seekers, including legal and social accompaniment?

Alternatives to detention should be clearly established in law, and subject to judicial review as well as to independent monitoring and evaluation. UNHCR is actively promoting further use of alternatives to detention, and in November 2011 its Regional Representation in Western Europe organised a conference on alternatives to detention, examining the different models to be found in Western Europe.⁷ However, there is a need for more research into alternatives to detention in order, for instance, to assess how alternatives to detention which exist in law are being implemented in practice and how many people are able to benefit from them.

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1. If they are absent for more than ten consecutive nights then they may lose their place but they can re-apply for another place.
2. Asylum seekers are in particular detained throughout the Dublin procedure, even when it has not yet been decided whether a transfer to a 'Dublin' country will and should actually take place.
3. When a person makes an asylum application at the border, the person is refused permission to enter the territory and the Aliens Office takes a decision to detain the person while the asylum application at the border is being investigated.
4. Because they are either inadmissible or their asylum request is rejected or they are irregularly residing on the territory.
5. Enabled to legalise their status in the country on humanitarian or medical grounds.
6. The decision on the residence permit rests with the Immigration Office.
7. The conference gave an overview of the existing international legal framework concerning the detention of asylum seekers, refugees and stateless persons and examined specific practices regarding alternatives to detention in Belgium, the Netherlands, and the UK. A 'Roadmap on Alternatives to the Detention of Asylum-seekers in Belgium' was presented. For details and key messages of the conference, see <http://tinyurl.com/UNHCR-WE-conf-alternatives>

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Community detention in Australia

Catherine Marshall, Suma Pillai and Louise Stack

Moved by the plight of vulnerable asylum-seeking minors being held in detention centres, a group of Australian advocates lobbied successfully for the implementation of community detention as a viable, humane alternative, giving asylum seekers an opportunity to engage in a more meaningful existence while awaiting the outcome of their asylum application.

The experience of being held in detention centres – ‘held detention’ – has had a negative and long-lasting impact on the mental health and well-being of many of the men, women and children seeking asylum in Australia. Factors such as the deprivation of freedom, a sense of injustice, isolation from the broader community, growing feelings of demoralisation and hopelessness, increased refugee status determination processing times, risk of deportation and bewildering legal processes have all contributed to mental health problems and increasing anxiety and depression in detainees.¹ These conditions have led to suicides, self-harm, protests and behavioural breakdowns.

Detention has also been found to have an independent and adverse effect on mental health by exacerbating the impact of previous traumas, and is in itself an ongoing trauma; unaccompanied minors have been found to be particularly susceptible to a breakdown in mental health and well-being.

In early 2010, a group of advocates set about exploring appropriate models for the community detention of unaccompanied asylum-seeking minors. Consultations were held with a wide variety of stakeholders and providers of youth services; once a model was agreed upon and accommodation and service providers identified, a proposal was



Rally organised by the Refugee Action Collective (Victoria) outside Broadmeadows Melbourne Immigration Transit Accommodation Centre, April 2013.

put to the Department of Immigration and Citizenship that it change its detention regime for unaccompanied minors. The Australian government was receptive to the proposal and has transferred significant numbers of unaccompanied minors and families out of closed immigration detention facilities since the first policy announcements in 2010. Unaccompanied minors are moved into houses with four to five rooms, which can accommodate an office space and a spare room for a youth worker to stay overnight.

In addition, the urgent and deteriorating mental health crisis in immigration detention facilities prompted the Department of Immigration and Citizenship to increase the number of contracts with selected agencies to provide accommodation and support to vulnerable adult men in detention as well. Since March 2012 the Jesuit Refugee Service, in partnership with Marist Youth Care, has implemented a community detention programme for vulnerable adult men (the Vulnerable Adult Men Residence Determination Project). The project initially incorporated a hostel and five houses, accommodating up to 40 adult men with multiple and complex needs, including mental and physical health issues. This service was later extended to families and provides health, welfare, residential and intensive casework support to asylum seekers released into community care. As of August 2013, available accommodation comprises a hostel and eight houses, and services have been provided to 83 clients (vulnerable adult men and families).

In mid-2010 the Australian government signalled a policy shift towards offshore processing in third countries. However, this policy collapsed in the face of the Timor Leste government's refusal to cooperate, and a High Court decision disallowing the transfer of asylum seekers to Malaysia. In October 2011, it was announced that all asylum seekers would therefore be subject to onshore processing; after an initial period of detention for identity, health and security checks, most were to be released into the Australian community on bridging visas

with the right to work, and those assessed as too vulnerable to live independently would be released into community detention, which does not give work rights.

Why community detention?

In Australia, community and church-based organisations have been contracted to provide community detention services. Upon release from detention, vulnerable asylum seekers, unaccompanied minors and families are placed with these services and provided with residential, health and welfare services as well as intensive casework support.

Although community detention is a form of detention, asylum seekers are not monitored by detention guards as they would be in held detention. They have the opportunity to move around in the community, engage in activities and social events in the community, and experience some semblance of normality in their lives. Clients speak of the increased level of independence they experience through, for example, being able to shop for their own groceries, plan and cook their own meals, and organise their own transportation to appointments. It gives them the ability to stay in closer contact with friends, family members and support networks. Families have reported that their children fared much better in community arrangements than they did in closed detention.

Community detention costs less than the management of high-security detention centres (which incur high building and capital costs as well as more intangible costs from issues such as mental health deterioration). In contrast, community detention reduces costs on all these levels.² Community processing also reduces future funding pressures on health and welfare systems that asylum seekers in prolonged detention invariably require.

"Community detention is different. I am appreciative of the fact that we are not escorted by ... guards 24 hours a day every week. We have more freedom."

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Community detention affords people a better understanding of life in Australia and better opportunities to learn English and make connections in the community, which will enhance their prospects for settlement should they eventually be granted a permanent visa. Those who are not granted refugee status have been shown to be more willing to return to their countries of origin when they have been living in the community. There are lower rates of suicide and self-harm and very low rates of absconding from community arrangements.

Challenges

As of 31 May 2013, 2,820 asylum seekers have been placed in community detention and 8,521 in Immigration Detention Facilities and Alternative Places Of Detention.³ Although the community detention programme has been extremely successful, it has not been without its challenges. While the programme is fully funded by government, there remains a shortfall in services that the people in community detention would like to access but cannot, such as disability services and travel concessions. Asylum seekers in community detention live on a very basic allowance which they have to use to pay for their own food, travel, utilities and day-to-day expenses. They are not allowed to work and so are reliant on this small income alone.

"Yes, we have no wire fences around us and we can move in the community but there are still so many restrictions to our movement. There still is a curfew. Money is very limited and the wait for our visa to be processed seems endless. Our life is still in limbo." (Hazara asylum seeker who has been in community detention for over a year)

However, clients have permission to engage in unpaid, voluntary work, as a way to interact with their local community, build relationships, improve their English language skills and obtain new skills. This, combined with their experience of community detention, may help facilitate a quicker entry to the workforce once a visa is granted.

It is often difficult for organisations like JRS to locate appropriate accommodation and

to deliver the required level of service to these people. Furthermore, communication shortcomings can mean, for example, that the outflow of asylum seekers from detention into the community is not always seamless, and asylum seekers may be kept in held detention longer than necessary.

Most recently, the programme has been complicated by a New Model of Care introduced under the government's No Advantage Policy in 2012. Under this policy asylum seekers who arrived after 13 August 2012 receive a smaller living allowance, have no work rights, face a claims processing wait of up to five years and can potentially be moved without notice to any of the regional processing centres at any time during their stay in community detention.

Human rights and church-based groups need to continue to robustly advocate for improvements in community detention programmes. Unlike people held in closed detention facilities, asylum seekers and refugees in community detention are able to live in a relatively normal environment despite their abnormal circumstances and to personalise the space they reside in. Community arrangements appear to help people cope with the stresses associated with undergoing often lengthy and sometimes traumatic refugee status assessment procedures and, when underpinned by appropriate opportunities and support, comprise a far more humane and effective model than closed detention.

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1. Silove D, McIntosh P, Becker R 'Risk of retraumatisation of asylum-seekers in Australia', *Australian and New Zealand Journal of Psychiatry*, 1993, Vol 27, No 4, pp606-612 <http://tinyurl.com/Silove-McIntosh-Becker-1993>

2. Senate Estimates, Legal and Constitutional Affairs (13 February 2012) <http://tinyurl.com/Aus-Senate-13Feb2012>

3. IDF is a purpose-built detention facility. APOD is a place such as a hotel or hospital used as detention facility where detainees are kept under guard.

Flawed assessment process leads to under-use of alternatives in Sweden

Maite Zamacona

Sweden is often held up as following ‘best practice’ in legislation with regard to detention and alternatives to detention but research by the Swedish Red Cross highlights a number of flaws.

Detainees in Sweden’s detention centres often express a lack of understanding of why they are being detained. In light of this, the Swedish Red Cross recently examined the implementation of detention legislation, focusing on the justification of the grounds for detention and the preference for detention over supervision.

The majority of the decisions analysed by the Swedish Red Cross pertain to detention pending enforcement of deportation. It is evident from the research that assessment of the risk of absconding has been a key element in determining whether there are grounds for detention – but the findings show that a comprehensive assessment of the various criteria involved in the risk of absconding is often lacking.

Individuals who, through their behaviour,¹ clearly show that they do not intend to comply with the enforcement of a refusal-of-entry or removal order are detained. But in addition there is a significant number of examples of decisions and resolutions in which asylum seekers’ statements alone about their reluctance to return to their home country in ‘return interviews’ (deportation interviews) with the Swedish Police or the Swedish Migration Board are the determining factor in the assessment. At the return interview, information is provided about the various alternatives available regarding return, both voluntary and forced, but as a rule the individual is not informed that a negative response to the question about their willingness to return could lead to them being held in detention.

There may be many reasons why individuals express reluctance to return to their home country in these interviews. Many asylum seekers live under tremendous psychological pressure and an expulsion order can trigger feelings of anxiety, shock or powerlessness.

This does not automatically mean that the person will not be willing to comply with the enforcement of the expulsion order. It seems unreasonable that statements expressed under emotional stress can eventually result in the deprivation of liberty, when insufficient information has been provided. Furthermore, in many of the decisions analysed by the Swedish Red Cross, the individual in question had submitted a subsequent application as new circumstances had arisen that could be considered as ‘impediments to enforcement’ of a removal order; in such cases, it would have been highly contradictory for him/her to express a willingness to return to his or her home country and comply with the enforcement of the expulsion order.

Supervision as a viable alternative

The study also looked at whether adjudicators systematically consider alternatives before ordering detention. The preferred alternative to detention in Sweden is supervision which, according to Sweden’s Aliens Act, may be used instead of detention when deemed sufficient to achieve the stated purpose. However, many more detention orders than supervision orders are issued.

The Aliens Act states that the Act shall be applied in such a way that people’s liberty is not restricted more than is necessary in each individual case. It furthermore states that an assessment should always be performed in order to determine whether the mildest measure – i.e. supervision – can be employed instead of detention. However, although the Swedish Migration Board and the migration courts often refer to supervision in their decisions and resolutions regarding detention, evidence shows that often no individual assessment is conducted into whether supervision could achieve the same purpose

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as detention. The police authorities do not refer to supervision in any of their decisions, which suggests that they do not consider supervision at all. The law is not being applied as intended.

There should be stringent requirements on due process in terms of decisions regarding deprivation or limitation of liberty. It should not suffice solely to state that there is reason to assume that the alien will abscond, and detention should not automatically be preferred over supervision. The legal and

factual grounds for an authority to deprive a person of liberty should be carefully justified and clearly stated in the decision.

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1. For example, having previously gone into hiding, submitted false information, previously violated a re-entry ban, declared intention not to leave, etc.

Questions over alternatives to detention programmes

Stephanie J Silverman

An alternative to detention programme is generally understood as a means for government bodies to track non-citizens without incurring all of the costs and rights violations associated with immigration detention. These programmes are by and large less expensive than formal custodial supervision in immigration detention centres. People enrolled in these programmes may enjoy more rights and freedoms while simultaneously meeting the state's primary interest in ensuring that non-citizens are available should they be issued with removal orders.

House arrest plus a combination of electronic surveillance, daily or weekly reporting requirements and/or curfews can be substituted for formal, custodial detention.¹ Individuals may be fitted ('tagged') with electronic ankle bracelets connected to a satellite surveillance system. Although the system does not track a wearer's movements as precisely as a homing device can, it can determine if the wearer is at home as expected. If visible, however, the ankle bracelet can be socially stigmatising. Even if not visible, it may cause physical distress through its chafing, and emotional distress through its association with prisons and potential deportation.

Community supervision represents a much less intrusive programme than custodial detention or house arrest plus monitoring. Such programmes usually include the key elements of provision of competent legal advice, closer case management, and awareness (among those enrolled) of the consequences of non-compliance. People enrolled in community supervision programmes are

permitted to live with family members and/or fellow church members or other community organisation members; they may be allowed to work, and their children can usually attend school and medical appointments. As such, it makes use of community trust and kinship and faith networks, as opposed to ankle bracelets and reporting requirements.

Most observers see the provision of competent legal advice as key to the low rates of absconding generally associated with 'alternatives to detention' because people enrolled in these programmes are able to develop confidence in the asylum and immigration adjudication system. The essential role of the provision of competent legal advice makes it difficult to assess the roles of other aspects of house arrest or community supervision. In other words, are people not absconding because they are resigned to being monitored? Or because their monitoring prevents absconding? Or because they have a sense of being watched, even in the community? Or because their deeper understanding of their legal situation provides an assurance of fair adjudication and an incentive to see their cases through to a conclusion?

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1. Crawley H 'Ending the detention of children: developing an alternative approach to family returns', 2011 <http://tinyurl.com/Crawley-familyreturns-2010>

State reluctance to use alternatives to detention

Clément de Senarclens

States continue to show a marked reluctance to implement alternatives to immigration detention. The reason for this may well be because such alternatives ignore the disciplinary function of detention by which states coerce people into cooperation.

There has been a proliferation of reports in recent years emphasising the need to only use immigration detention as a last resort and highlighting the advantages that alternatives to detention represent for states, in terms of respecting people's fundamental rights but also in terms of the cost of dealing with removals. Why then do states show so little interest in using alternatives to detention, in spite of the unquestionable advantages they appear to offer? The answer to this question may lie in the fact that the alternatives proposed ignore the disciplinary function of immigration detention.

Immigration detention is usually thought of as a way to facilitate the removal of irregularly staying foreign nationals.¹ I would argue, however, that it is necessary to distinguish between two different ways in which states try to fulfill this objective. The first – and the most generally recognised – is what I term the 'administrative function' of immigration detention: a means purely to guarantee that individuals are present when it comes to removing them. But states are more and more relying on a second way to use immigration detention where it is thought of as an instrument of coercion designed to force people to cooperate for the purpose of their own removal: what I term the 'disciplinary function' of detention.

This evolution from the administrative to a disciplinary function is particularly obvious in the case of Switzerland. Switzerland's 1986 law on aliens allowed for pre-removal detention for a maximum period of 30 days, once a decision on removal had been made and was about to be implemented and there was a clear presumption that the individual would seek to avoid removal. However, in 1995, the law on aliens was changed to provide grounds for detention based on a lack of cooperation (refusal to confirm one's identity, obey a summons

without valid reasons, etc). From then on, it became possible to order detention not only after an enforceable decision on removal had come into effect but after a decision at first instance and despite the fact that the asylum procedure was still underway. The maximum period of detention was increased to a year. This clearly suggests that detention is no longer solely intended to prevent individuals from absconding when their removal was imminent but also to force foreign nationals, whose removal is not directly enforceable, to cooperate by the threat of a long period of detention.

This disciplinary function of detention was explicitly expressed in the new Aliens Act (*Loi sur les étrangers*) of 2005 which included a new article entitled 'coercive detention', aimed specifically at any failure to cooperate. Detention could then be ordered on the grounds that removal could not be enforced because of the individual's behaviour – and the maximum period of detention was again extended, to 24 months². The increased maximum period of detention was explicitly justified in parliament by its supposed effectiveness in forcing even the most recalcitrant individuals to submit to the rulings of the authorities.

A Swiss phenomenon or a European trend?

Several factors suggest that the disciplinary function of immigration detention is not just a phenomenon restricted to the case of Switzerland but is well established at a European level. The first is that as a signatory of the European Convention on Human Rights (ECHR) and a member of the Schengen Area, Switzerland could not express in such explicit terms an objective that was incompatible with the European legal framework. Several judgements by the Swiss Federal Court stating the compatibility of 'coercive detention' with the ECHR appear to demonstrate the Court's belief

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that the disciplinary function of immigration detention does not contradict European law.

The second factor is the broad interpretation of ECHR Article 5.1(f) by the European Court of Human Rights (ECtHR) itself. Sub-paragraph f) of paragraph 1 stipulates that no-one may be deprived of their liberty, except in the case of detention of a person “against whom action is being taken with a view to deportation or extradition”. Several legal commentators concluded from this that the use of immigration detention had to be restricted to its ‘administrative function’.³ In 1996, however, in the case of *Chahal vs GB*, the ECtHR ruled that: “This provision [Article 5.1(f)] does not demand that the detention of a person against whom action is being taken with a view to deportation be reasonably considered necessary, for example to prevent his committing an offence or fleeing...”⁴ By explicitly stating that immigration detention need not be restricted to preventing individuals from absconding, and without delimiting how else it could be used, the Court opened up the possibility of its use for disciplinary purposes.

Thirdly, it is in the 2008 EU Return Directive⁵ that we find the most explicit confirmation of the use of a disciplinary approach to detention. Article 15.1(b), combined with Article 15.5, states that detention may be ordered in the case where the individual concerned obstructs the removal process for a period of six months. Article 15.6(a), moreover, states that in the event of a lack of cooperation by the person concerned, detention may be extended by a further 12 months. In other words, both the grounds for detention and the maximum period of detention provided for in the Return Directive corroborate the use of detention for disciplinary purposes, as in the case of Swiss legislation.

Dialogue, not coercion

If we recognise the disciplinary dimension of immigration detention, we might question the legitimacy of an administrative practice which has taken on a rationale usually restricted to the criminal justice system.

However, the disciplinary function of detention does help us to understand one of the fundamental reasons for governments’ lack of interest in implementing alternatives to detention. All the alternatives to pre-removal detention aim only to guarantee – by various means – that the person concerned is present when the decision to remove them is enforced. These measures range from release on bail to the use of electronic tags, house arrest or an obligation to report to the authorities at regular intervals. These are less restrictive and also less expensive ways of guaranteeing the individual’s presence when due for removal. But proponents of the disciplinary approach believe that it is the disciplinary nature of detention which is most significant in bringing about a successful removal. In their view, the less restrictive, more liberal measures are less effective in bringing about the desired final result. The prevalence of the disciplinary approach in the use of detention therefore helps to explain states’ reluctance to opt for alternatives.

The aim of this article is not, however, to reject alternatives to detention but, on the contrary, to highlight and question the disciplinary approach on which states’ return policy now seems to rest. This approach should be questioned not only from the point of view of its compliance with international law but also for its supposed effect on the enforcement of removal decisions. Numerous studies have questioned the effectiveness of the use of constraint as means of encouraging people to comply with the orders of the authorities. Contrary to governments’ current assumptions, which focus increasingly on repression and constraint, the evidence suggests that implementing a transparent policy that meets individuals’ need for dignity would seem most likely to ensure that people comply with the decisions made about them.

Starting an open debate on administrative detention would help enable governments to base their policies not on unfounded and morally questionable assumptions but rather on the results of empirical research. From this point of view, the role of human rights

organisations would be to lobby for a return policy based on dialogue and support for people forced to leave the territory, rather than on simple repression. This would be in the interests not only of the individuals concerned but also of those states that wish to find a solution to the difficulties associated with enforcing removal.

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1. I am confining myself here to the question of pre-removal detention and have ignored the question of pre-arrival detention, which aims to prevent aliens from arriving illegally.
2. This would be reduced two years later to 18 months following the transposition of the Return Directive (Directive 2008/115/EC) into national law.
3. For example, see Noll, G 'Rejected Asylum Seekers: The Problems of Return', *International Migration*, 37(1): 281. 1999. <http://onlinelibrary.wiley.com/doi/10.1111/1468-2435.00073/pdf>
4. Case of Chahal vs United Kingdom of 15 November 1996, Application no. 70/1995/576/662, paragraph 112.
5. <http://tinyurl.com/Return-Directive-2008>

No longer a child: from the UK to Afghanistan

Catherine Gladwell

Young Afghans forced to return to Kabul having spent formative years in the UK encounter particular risks and lack any tailored support on their return.

Muhibullah arrived in the UK as a 15-year-old unaccompanied asylum-seeking child, sent to the UK at just 13 by his family, who hoped he would be able to make a better future away from the conflict and poverty of Afghanistan.¹ After his eighteen-month-long journey, he arrived in the UK, made friends and started to build a future. But when he turned 18, Muhibullah was told he would not be allowed to stay, and was forcibly returned to Afghanistan. On arrival in Kabul, Muhibullah contacted one of our staff team who had supported him in the UK, sending a text saying: "I'm in Kabul. I don't know where to go. Who like you is here? Can you still help me?" So began Refugee Support Network's research into what happens after the forced removal of young people who have spent formative years in the UK care system as unaccompanied asylum-seeking children.²

In 2012, 1,168 unaccompanied minors claimed asylum in the UK, with Afghanistan being the most common country of origin. Under international and domestic law, the UK is prohibited from returning children to their countries of origin unless there are adequate reception facilities to return them to. The Committee on the Rights of the Child has

stated that a child should not be returned to the country of origin where there is a 'reasonable' risk that return would result in a violation of the child's fundamental human rights. Unaccompanied minors can be granted Discretionary Leave to Remain (DLR) for three years, or until the young person is 17½ years old, whichever is the shorter period. When their DLR expires, they have the right to apply for an extension of their leave to remain but few such applications are successful, meaning that the overwhelming majority face the possibility of detention and forced removal to their countries of origin when they reach 18 and are no longer considered children.

Over the last eighteen months, we have tracked young people sent back to Kabul against their will, interviewed professionals working with young returnees in Kabul, and supported young people facing the possibility of forced return to Afghanistan in the UK. Several key difficulties emerged for forcibly returned youth, including:

Difficulties re-connecting with family networks: All of the young people tracked returned to Afghanistan in debt. Their families had paid an average of \$10,000 per young

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person to people smugglers, and young people spoke of the fear of returning empty-handed, and the shame of being unable to repay this debt. One Afghan professional explained “I know one Afghan boy who arrived in the UK as a minor, who got returned. Before he left his father sold the house so he could leave, and now he comes back with nothing. It’s important to understand how this works in Afghanistan. In my country if a father has a house and he dies, they split the house between the sons. So when this father sold the house all because of one son so he can go to London, the other brothers and sisters have been waiting for the money to come back from London for their marriages, etc. If he comes back with nothing, they will be so angry that he has done nothing for his family.”

Psychosocial impact of insecurity and poverty in Afghanistan: The general insecurity and acute poverty prevalent in Afghanistan are well documented; less researched is the impact of being suddenly returned to such conditions having spent formative years in a peaceful, affluent society. The boys we tracked all suffered from anxiety and depression. One boy experienced panic attacks, and another had threatened suicide.

Lack of education and employment opportunities: Young asylum seekers in the UK often describe education as one of the most positive and important things in their lives, and worry about the lack of opportunity they will have to continue their education and find employment if forced to return to Afghanistan. In a context of high unemployment and few opportunities, returnees face two specific additional problems: lack of appropriate school records, and low literacy rates in Dari or Pashtu. One Afghan professional said: “[the boys] come back with some English (often fairly basic and with lots of slang)



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Kabul

but no good written Dari or Pashtu – so how can they work in a good place?”

‘Westernisation’ of returnees – actual and perceived: A quarter of the boys tracked had experienced harm or difficulties as a result of being viewed as ‘Westernised outsiders’. Some were mugged due to a perception that returning from Europe must mean returning with money. One boy was kidnapped and held to ransom until his family sold additional land to finance his release. Several boys encountered difficulties due to being seen as having lapsed in their practice of Islam.

Re-migration: Over half of the young people tracked had attempted to leave again, often by increasingly risky means, and some had reached Greece or Turkey and then been forced back to Afghanistan once again.

These challenges appear to be exacerbated by two over-arching issues. Firstly, in the UK unaccompanied minors are considered children to be looked after one day and failed adult asylum seekers with extremely limited rights the next. This abrupt transition has a negative impact on young people’s mental health, leaving them with little support at one of the most uncertain and frightening stages of their migration journey. Secondly, it is increasingly evident that there are not enough

functional connections between the UK-focused refugee and asylum support sector, and the international development sector. This means that the majority of staff with whom returned young people are remaining in contact in the UK have little knowledge of the contexts the young people now find themselves in or of the organisations that could help them. As a result, there is very little support provided to forced returnees once they have left the UK, and they are largely left to fend for themselves.

In response to these issues, and the ongoing requests of young people returned to Kabul, in February 2013 we launched a new programme, Youth on the Move³. We are drawing on our staff's experience in both the international development/emergency response and refugee support sectors to ensure that young people facing deportation are no longer cut adrift. We are working to help them to explore all possible means to remain in the UK, and to provide a safety net of support for the possible eventuality of forced return.

We also recognise that better, more reliable information about what happens to

forcibly removed young people is needed. Over the course of the coming years, we are committed to documenting real and nuanced outcomes for all the young people we work with, including examining the extent to which young people attempt to re-migrate. We hope that this information will contribute to creating an increasingly robust body of evidence enhancing collective understanding of the real risks and opportunities young people face if they are returned, and thus help to inform decision making and 'best interest determination' for young people applying to extend their Discretionary Leave to remain at 17½.

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1. Not his real name.
2. See Catherine Gladwell and Hannah Elwyn 'Broken Futures: Young Afghans in the UK and on return to their country of origin' <http://tinyurl.com/RSN-Broken-Futures-2012>
3. www.refugeesupportnetwork.org/content/youth-on-the-move

Shortcomings in assistance for deported Afghan youth

Nassim Majidi

Since 2008 the British government has been deporting young Afghans back to Afghanistan, supporting its forcible return programme with an assistance programme intended to facilitate sustainable reintegration. However, interviews with 50 deportees in 2008 and again in 2011¹ indicated a lack of understanding of the backgrounds of these young people, of the context of life in Afghanistan, and of the economic and psychosocial traumas of return on youth. The failure to incorporate the actual socio-economic profiles of youth and their experience of return (whether forced or voluntary) into the programme design and planning led to high drop-out rates and effectively undermined the impact of the assistance provided to returnees.

Specifically, the assistance programmes addressed only the material lives of deportees. Beneficiaries could enrol in a programme of training for a

qualification, vocational training or business start-up but no consideration was given to the social challenges of return, and the economic solutions have been, at best, temporary. The short duration of the vocational training courses did not allow for real skills learning or enhancement, and therefore they did not lead to paid employment. 16% of those interviewed took up the option of gaining qualifications but respondents were not able to continue paying after the initial six months. As for the start-up businesses, 40% failed within six months.

Of the youth forcibly returned and interviewed in 2008, only one third were still present in Afghanistan in 2011. The others had left the country, some within a year and others within two to three years of their return. The reintegration programmes did not prevent the same cycle of debt and migration from being repeated; at best, they only delayed its timing.

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Recommendations²

- Reduce the skills gap upon return by providing a salary plus support for transport, food and accommodation for one year to allow for at least a year of training.
- Increase the level of control and monitoring of the training provided to ensure that programmes achieve effective and appropriate vocational and educational goals; and go beyond the short-term financial support. This requires investing time in understanding returnees' skills, education levels and job interests, and linking them to the local labour market through tailored and youth-relevant responses.

- Create an informal network so that deportees can keep in touch and share their experiences. Networking opportunities among returnees could help provide a source of solidarity and local knowledge often missing in the lives of young returnees.

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1. Majidi, N 'Understanding the Return and Reintegration Process of Afghan returnees from the UK', <http://tinyurl.com/Majidi-2009>
2. Samuel Hall (2013 forthcoming), *Urban displaced youth in Kabul*, a representative survey of 2,000 displaced and returnee youth.

Assisted voluntary return schemes

Anne Koch

In recent years, 'assisted voluntary return' (AVR) or 'assisted voluntary return and reintegration' (AVRR) schemes have spread across Europe and the Western industrialised world – from five in 1995 to 35 in 2011. These schemes, the majority of which are administered by the International Organization for Migration (IOM), facilitate the return of rejected asylum seekers (and also, in some countries, irregular migrants) to their countries of origin. They typically provide return flights, offer cash allowances and in some cases also provide reintegration assistance upon return; they also usually entail a temporary re-entry ban. Such schemes allow for the 'orderly return' of unwanted migrants in that they avoid the use of outright coercion.

While AVR is clearly preferable to deportation, NGOs and academics alike have in the past criticised these schemes for being misleadingly labelled and lacking genuine voluntariness. IOM acknowledges that for many individuals the only alternative to AVR may be forced return – and some governments openly admit that the threat of deportation is used to increase participation in AVR schemes.

The UK first established an AVR scheme in 1999. Responsibility for 'enforced removals' and 'voluntary removals' now lies with the Returns Department of the UK Border Agency's Immigration Enforcement unit – and both channels are used to increase the overall number of returns per year. Despite AVR being implemented by another actor (currently the NGO Refugee Action), the central

oversight for both types of return measures is thus subsumed under one institutional umbrella.

When comparing voluntary return schemes in different countries in Europe and across the world, it becomes apparent that the UK's choice of institutional design reflects a broader development. Whereas in countries that established AVR schemes during the 1970s or 1980s (e.g. Germany and Belgium) assisted voluntary returns and enforced returns are administered by separate governmental departments, countries that have established similar schemes more recently (e.g. Canada, Australia and most Eastern European countries) tend to follow the British example and assign oversight responsibilities for both pathways to the same domestic authority.

AVR can constitute a welcome option for migrants wishing to return home but when 'forced' and 'voluntary' returns are pursued in combination, the notion of voluntariness becomes compromised. It follows that the only way to shield AVR from this and to realise its beneficial potential is to keep it institutionally separate from forced returns. Governments committed to the protection of vulnerable individuals against forced return would be well advised to bear this in mind when establishing new AVR schemes.

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Deportation of South Sudanese from Israel

Laurie Lijnders

Israel's aggressive campaign of arrest and deportation of South Sudanese asylum seekers contravenes the principle of *non-refoulement* and international standards for voluntary, dignified return.

On 17 June 2012, a plane carrying over 120 South Sudan nationals left Tel Aviv for Juba, the capital city of the new state of South Sudan. This was the first flight in what the Israeli government called 'Operation Returning Home'. In the months that followed, a further six flights would airlift a total of 1,038 South Sudanese to Juba.¹

Israel regards Sudan as a hostile state. Upon arrival in Israel, all Sudanese nationals, including those from Southern Sudan, were termed hostile nationals until the time when South Sudan became an independent state. However, until June 2012, individuals from any part of Sudan were covered by the policy of 'non-removal', allowing them to reside temporarily in Israel. Their residence was legal but their individual claims for asylum were not examined in accordance with the 1951 Convention to which Israel is a signatory. Hence, although many Southern Sudanese coming to Israel held a UNHCR refugee registration card issued in Egypt, Israel did not recognise them as refugees, and their need for protection under the Convention was never officially acknowledged.

On 31 January 2012, the Population, Immigration and Border Authority (PIBA) published 'A Call for the People of South Sudan' stating that "[N]ow that South Sudan has become an independent state, it is time for you to return to your homeland. ... the State of Israel is committed to helping those who wish to return voluntarily in the near future." Voluntary returnees would each receive a lump sum of 1,000 Euros while those who did not leave Israel voluntarily by 31 March 2012 would be arrested and deported.² It was also announced that Israeli employers of South Sudanese could be penalised; this resulted in immediate

dismissal for many, leaving South Sudanese communities in Eilat and Arad almost entirely without employment and increasingly unable to pay rent and utility bills.

South Sudanese nationals were left with three choices. They could apply for asylum but with no real prospect of having their applications processed; they could register for 'voluntary return'; or they could face detention. Those already in detention could either sign up for 'voluntary return' or remain in detention. Each 'choice' defied the notion of voluntary return. South Sudanese nationals lost their status in Israel; they also lost their jobs and were unable to find alternative employment. Uncertainty and the fear of detention pushed many to sign up for 'voluntary return'.

Arrest and detention

Only two days after the announcement on 7 June 2012 that South Sudanese nationals had one week to register for voluntary return, immigration police in the Eilat area arrested eleven South Sudanese and a national of North Sudan on their way to work. The next day, 105 South Sudanese, the majority living in Eilat, were arrested. On the third day PIBA arrested 73 African asylum seekers – not all South Sudanese – in Tel Aviv, Eilat and other cities. In the three weeks that followed, numerous South Sudanese were arrested and detained.

Families were split up, with women and children detained at Saharonim and Ketsiot and men at Givon, a high-risk prison centre with a detention section for asylum seekers. It was not clear if family members would be put on the same flight out of the country. Two mothers complained that their sons, both minors, had been taken away and were being held separately from their families. Even those who had registered for voluntary return

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before being detained were not spared arrest; some were escorted home by PIBA officials long enough to pack their belongings but most were given no time to collect personal property. Once in detention, they were unable to withdraw money from their bank accounts or close them, and were unable to collect final salaries and benefits from places of employment where some had worked for years.

The 'voluntary' deportation of South Sudanese nationals was part of a wider policy of deterrence and expulsion. In August 2012, one month after the seventh plane had airlifted South Sudanese nationals from Israel, Interior Minister Eli Yishai stated that from 15 October 2012 mass detention of North Sudanese nationals in Israel would also take place.

In the months after the deportations, there were reports from returnees to South Sudan alleging that a number of people died shortly after their return to South Sudan; Sudanese returnees were alleged to have been detained upon return and their belongings confiscated. It is difficult to confirm such reports but their persistence and frequency suggest a need for further investigation of the situation for returnees. In the first half of 2013, Israel's policies of 'voluntary return' and detention have met with growing criticism. In February 2013, UNHCR demanded an explanation from the State of Israel for the policy of deportation in breaching of the principle of *non-refoulement*. The government's response came in the form of a new 'Voluntary Returns Procedure' for Eritreans under which, in July 2013, fourteen Eritreans were returned to Eritrea after they had signed up – under pressure – for 'voluntary return' from detention. Voluntary return cannot be considered voluntary if it takes place from detention and when

lacking access to a fair asylum policy, and especially should not be applied in the case of countries like Eritrea and Sudan where returnees face a serious risk of persecution, or without inquiring as to whether the situation in the newly independent country of South

Activestills.org/Oren Ziv



Israeli activists block a bus taking South Sudanese refugees to Ben Gurion airport to be deported to South Sudan.

Sudan allows for a safe return. The current political atmosphere suggests that domestic interest is driving the policy-making agenda with regard to asylum seekers, rather than compliance with international norms.

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1. NGOs and governmental bodies estimated the number of South Sudanese to be between 700 and 3,000. Representatives of the South Sudanese community put the number at around 1,100.
2. Various appeals were lodged but eventually on 7 June 2012 the Court ruled in favour of the policy and South Sudanese were given one week to register for voluntary return.
3. This research is based on work by the African Refugee Development Center www.ardc-israel.org and the Hotline for Migrant Workers www.hotline.org.il in Tel Aviv, plus interviews with nationals of South Sudan, lawyers and human rights activists in Israel, and returnees to South Sudan. The full report is online at www.ardc-israel.org/sites/default/files/do_not_send_us.pdf Funded by the EU and the Netherlands Embassy in Israel. Research carried out with contributions by Yael Aberdam, Sigal Rozen, Asaf Weitzten and Hadas Yaron-Mesgena and with the assistance of Marie Kienast, Anna Maslyanskaya, Ben Wilson and David Jacobus.

Post-deportation monitoring: why, how and by whom?

Leana Podeszfa and Friederike Vetter

The monitoring of refused asylum seekers post-deportation is critical to effective protection.

A 2011 study by the European Commission shows that while the majority of EU member states who participated in the study monitor the pre-departure phases of a deportation, only 13% follow what happens post deportation.¹ Post-deportation monitoring can protect individuals and reveal flaws in national asylum systems. In the 2008 study *Safe Return* by the Independent Asylum Commission (IAC) the United Kingdom Border Agency (UKBA) states “We do not actively or routinely monitor individual returnees following removal: we believe that the best way to avoid ill-treatment is to make sure that we do not return those who are at real risk, not by monitoring them after they have returned.” Yet research shows that a quarter of negative asylum decisions are overturned on appeal.²

Post-deportation monitoring would highlight where applicants with a well-founded fear of persecution are wrongly rejected and returned; in addition, published reports of post-deportation human rights violations could also be used by lawyers for strategic litigation to set precedents, and by activists and organisations lobbying for improved asylum procedures. More importantly, organisations in receiving countries which monitor the arrival of refused asylum seekers would be better able to offer assistance and possibly save lives.

According to the study’s recommendations, monitors should: observe interactions between officials and returnees; be allowed to communicate with deportees; check conditions in detention and waiting areas; check returnees’ files; and report findings and highlight any mistreatment. The study reported that 61% of member states participating in the study either have a system in place or are planning to put one in place and that most of these systems “contain

elements that compare well to the standards [i.e. recommendations outlined above].”

In the absence, however, of systematic state-supported post-deportation monitoring mechanisms, civil society organisations in both deporting and receiving countries have taken on this responsibility. The School of Oriental and African Studies Detainee Support Group is one such organisation, set up in 2006 to visit and support detainees and to lobby for an end to the use of immigration detention.³ One example of their work to maintain contact with deported asylum seekers concerns a client deported on a charter flight from the UK to southeast Asia. The client belonged to a religious minority and had been attacked several times in his home country. He sought asylum in the UK but was refused. Being both detained and unrepresented during his appeal, he was unable to produce documents and evidence corroborating his claim. Subsequently, the client was refused asylum and removed. Upon arrival in his home country he was again attacked and lived in fear of attacks against his family. He was forced to leave his country once more.

While the Detainee Support Group was able to stay in contact in this instance, this is not always the case. As their spokesperson explains, staying in contact can be difficult: “The phones [the deportees] had in detention have been confiscated, or they have no credit or money for phoning upon return. Many are not adequately prepared for their deportations as they had not expected it would actually happen. Scribbled notes with phone numbers and email addresses get lost and we never hear of them again, and have no way of regaining contact.”

Catherine Ramos from Justice First travelled to the Democratic Republic of Congo to find

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out what happened to refused asylum seekers who had been deported from the UK. Her report, *Unsafe Return: Refoulement of Congolese Asylum Seekers*, documents how refused Congolese asylum seekers were arrested and tortured on their return. Often it was the very fact that they had applied for asylum which put the deportees at risk. One individual was told by security officials that they had to arrest him “on principle” because he had gone to another country and allegedly “said that we don’t respect human rights here [in the DRC]”.⁴

Some organisations in receiving countries attempt to monitor the situation of refused asylum seekers after deportation. The Refugee Law Project in Kampala hosts a programme to receive and support deported refused asylum seekers. In Cameroon, Rights for All tries to provide such assistance but has been facing difficulties; their spokesperson said that the last four attempts to pick up deportees at the airport had failed as Cameroonian authorities had simply denied that deportees were on the flights indicated by organisations in the deporting countries.⁵

The Post-Deportation Monitoring Network

The Post-Deportation Monitoring Network (PDMN) was established in 2012 by the Fahamu Refugee Programme to enable such organisations in deporting and receiving countries to link up with each other, and to improve information sharing and data gathering on post-deportation human rights violations.⁶

The PDMN has recently been used to alert the Refugee Law Project in Kampala to deportees arriving at Entebbe airport, enabling RLP employees to go to the airport to pick up the deportees, and provide legal advice and psychosocial counselling. Information on imminent deportations, however, is often communicated at the last minute, making it difficult for organisations in receiving countries to react. Moreover, assisting deported refused

asylum seekers in receiving countries can create security risks for local members of the network.

Yet evidence collected through monitoring can make a difference. Information about post-deportation abuse in Eritrea – made public in the 2009 Amnesty International report

Eritrea: Sent Home to Detention and Torture – contributed to all European countries suspending deportations to Eritrea.⁷ More recently, Catherine Ramos’ report prompted a fact-finding mission by the UKBA’s country of origin information service and has been used by lawyers seeking injunctions against deportations.

The Post-Deportation Human Rights Project at Boston College

in the US is developing a Convention on the Rights of Deportees, which will contribute to the protection of all immigration deportees, including refused asylum seekers.⁸ An independent and systematic monitoring system is necessary to ensure refugee protection in a flawed, under-staffed and under-funded adjudication system. Post-deportation monitoring is, meanwhile, still dependent on committed individuals and small civil society organisations.

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2. Refugee Council, ‘Between a rock and a hard place: the dilemma facing refused asylum seekers’, December 2012 <http://tinyurl.com/RC-2012-rock-and-hard-place>

3. <http://soasdetaineesupport.wordpress.com/>

4. <http://tinyurl.com/JusticeFirst-Ramos-Dec2011>

5. www.irinnews.org/Report/97637/New-network-monitors-deportee-abuses

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“When we arrived in Kinshasa we were arrested by the police and the Immigration officers. We were still in a wretched state after such a long journey of suffering. We were put in a place which was used for detention ... the children really could not stand it – they were dehydrated and in shock.” (Congolese returnee)

Humanitarian and medical challenges of assisting new refugees in Lebanon and Iraq

Caroline Abu Sa'Da and Micaela Serafini

The massive and continuing flows of Syrian and Palestinian refugees to Syria's neighbours have shown the limitations of humanitarian practice and present new challenges for medical and humanitarian interventions.

As the crisis in Syria continues, humanitarian needs inside and outside the country are escalating rapidly. Since the crisis began in March 2011, the ability of international organisations to provide aid inside Syria has been severely restricted. Most international agencies have therefore focused attention on the situation of those refugees who have crossed the border into Turkey, Lebanon, Jordan and Iraq. UNHCR estimates the total number of refugees – including further afield in Egypt and elsewhere – at two million people as of late August 2013.¹

The substantial impact that these two years of mass influx has had on neighbouring countries has not been addressed appropriately by the international community. Most of the present priorities and practices for health-care provision in conflict settings are still, unfortunately, based on those decades where conflict was usually synonymous with overcrowded refugee camps sheltering young populations from developing countries. Most contemporary wars, however, are taking place in higher income settings with better baseline health indicators and they are of protracted duration. These facts are profoundly changing the demography and disease profile of conflict-affected populations.

Northern Iraq

During 2012, many Syrian Kurds fled to neighbouring Iraq, to the region in the north governed by the Kurdish Regional Government (KRG). Doomiz Camp, near the Iraqi city of Dohuk, was opened in April 2012 while the central government in Baghdad opened two other camps in the southwestern part of Iraq. Eighteen

months later the assistance provided in Doomiz camp is far from acceptable. The investment in water and sanitation has never been enough, the different phases of the camp were not properly planned, very few international actors are present and there is a dramatic lack of mid- to long-term vision in anticipation of new arrivals in the camp. While the Kurdish authorities initially had a welcoming policy towards refugees, the lack of support from the international community eventually pushed them to restrict assistance in various ways, including, for example, closing the border in May 2013. The KRG has permitted refugees to access public services free of charge but these services are beginning to come under strain.

More recent clashes in eastern Syria caused the KRG authorities to reopen the border on 15 August 2013. More than 30,000 people poured into Iraqi Kurdistan over a few days, filling the newly-opened camp at Kawargost in Erbil to capacity. Two other camps are due to be opened in the area but they will only have the capacity to absorb the new influx, offering nothing to the overwhelming majority of refugees scattered in urban areas.

Lebanon

The influx of refugees to Lebanon has been in several phases. While in May 2012 there were 20,000 Syrian refugees mainly in the northern part of Lebanon, by early August 2013 there were 570,000 according to UNHCR – and around 1.3 million according to the government. In addition to the 425,000 Palestine refugees registered in Lebanon before the war, UNRWA estimates that 50,000 more have arrived from Palestinian refugee camps in Syria since the beginning

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of the war. With a total Lebanese population of an estimated 4.2 million, refugees in Lebanon now represent almost 25% of the total population. The Lebanese government, following an official policy of 'dissociation' from the Syrian conflict, has left its borders open and has refused to open camps to host refugees. Therefore, people are scattered all over the country, mainly in impoverished areas where services are already under severe strain. The response to their needs has been massively underfunded.

Health systems

Although its hospitals have been destroyed and its pharmaceutical industry damaged, Syria used to have one of the best health systems in the region before the crisis. The epidemiological profile of the population and its needs therefore differ substantially from the refugee settings which may be more familiar to humanitarian actors.

Iraq's health system was severely depleted by years of embargo followed by the US-led occupation and civil war. The Lebanese health system is based on private practice and is therefore difficult to access for the most vulnerable people. For example, a survey conducted by MSF found that almost 15% of the refugees interviewed could not access hospitals because they were unable to pay the fees (up to 25% of the costs, the rest being covered by UNHCR). Nine out of ten interviewees said that the price of prescribed drugs was the main barrier to their accessing medical care.² The continuing influx of refugees has put both health systems under severe strain. Health structures are overstretched and cannot cope with more patients. These difficulties also raise tensions between the host communities and the refugee populations and therefore need to be tackled urgently and effectively.

Middle-income 'disease burden'

Refugees from middle-income countries present a different demographic profile and disease burden than the classical refugee profile that humanitarians across the world are used to working with. In

the past in mass influx situations there was a high mortality rate during the acute phase of emergencies, mainly fuelled by epidemics, the exacerbation of endemic infectious diseases and acute malnutrition. In this situation today, however, much of the excess morbidity and mortality result from the exacerbation of existing chronic diseases (such as cardio-vascular, hypertension, diabetes, tuberculosis and HIV). In these cases, treatment continuation becomes essential. The complexity and long-term duration of chronic diseases call for different thinking and new strategies.

Most of the primary health-care consultations done by MSF in Lebanon and Iraq since early 2012 can be attributed to chronic diseases. Continuation of treatment – not just access to it – becomes essential. But when interviewing Syrian refugees in the Bekaa Valley and Saida in Lebanon, more than half of the respondents (52%) said that they could not afford treatment for chronic diseases, and nearly one-third (30%) had to suspend treatment because it was too expensive to continue. In Iraq, access to treatment is supposedly free but in reality, due to frequent breakdowns in supply, refugees have to buy their medicines in private pharmacies.

Outbreak-prone diseases too are still a threat to conflict-affected populations in middle-income countries. Iraq has experienced a measles outbreak that had to be controlled by mass vaccination in the refugee camp. Lebanon too suffers from outbreaks that, even though of lesser magnitude, are much more difficult to control due to the widespread distribution of the refugee population. The incidence of infectious diseases – even though lower than in other settings – is still considerable. In view of these realities, preventive and curative responses involving not only primary but also secondary and tertiary level health care with free service provision need to evolve substantially.

Health challenges in open settings and camps

One of the main issues is the link between the registration of people and access

to services, including health services.³ 41% of interviewees said they were not registered, mainly because they lacked information on how and where to register, because registration points were too far away, because of delays at registration facilities or because they were worried about not having the proper legal papers and therefore being sent back to Syria.

In Lebanon, and specifically in the Bekaa Valley, refugees are so scattered that access to hospitals is extremely difficult. Moreover, even though UNHCR is covering some of the hospital costs for refugees, they are not covering them all. Most of the refugees will ultimately have to pay to access secondary or tertiary health care.

The fact that the largest proportion of Syrian refugees is currently residing in urban environments rather than in camps poses major challenges for health interventions. According to UNHCR, 65% of refugees in the region are living outside camps. While Syrian refugees in Lebanon are scattered over 1,000 municipalities, mostly in impoverished urban areas, in Iraq they live both in camps and cities. This diversity of settings is a challenge for medical and health interventions.

In a camp a comprehensive and centralised system can be designed to ensure access to health, and a simple surveillance system for major outbreak-prone diseases might be enough. Unfortunately outbreaks are occurring among the refugees scattered in Lebanon and the surveillance system in place is incapable of predicting them early enough. Refugees in urban settings anyway face intermittent access to health services due to overstretched public systems in the hosting countries, which are unable to cope even with the demands of their own population. Urban refugees often live informally alongside residents. The fact that both have similar needs and vulnerabilities and that they share the same under-resourced health system will inevitably have an impact on local residents' attitude towards refugees, which will in

turn ultimately generate exclusion and inequities in the provision of services.

In Iraq, the majority of refugees are residing in urban settings. Access to primary and secondary health care seems to be free but the system appears to be facing an influx of consultations that is overwhelming their capacity. In Lebanon, as in Iraq, the unpredictable distribution of aid to Syrian refugees is leading to increased competition for scarce resources. The economic disparity created by this unequal distribution is generating resentment and ambivalence towards Syrian refugees. The living conditions of refugees in open settings remain inappropriate; the payment of rent represents an additional burden on their budget, and most of them live in inappropriate shelters such as schools, mosques and dilapidated buildings. Overall, assistance to Syrian refugees still falls short of their needs.

Conclusions

Health policies and interventions have not kept up with the profound global changes in conflict settings, and the Syrian conflict has been no exception. Humanitarian actors need to adapt their strategies to the reality of refugees today and their specific disease burdens. As the disease burden has shifted to chronic diseases, there is also a need for more complex interventions that take into consideration the continuation of care. Nevertheless, outbreak-prone diseases are still present, and this demands good surveillance systems that can anticipate and take action.

Barriers to access to secondary and tertiary health care – such as the cost of services, short opening hours and long distances – have to be taken into account when assisting Syrian refugees. There is a need for a systematic integration of affordable non-communicable diseases treatment in the health-care system. Moreover, all vulnerable refugees suffering from acute medical conditions should gain full and fast access to hospital care.

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Urban refugees scattered all over Iraqi Kurdistan and Lebanon face huge difficulties in accessing aid. This again raises the issue of how to best address the needs of people displaced in open settings.

In August 2013 UN High Commissioner for Refugees António Guterres talked of the urgent need to adopt a more generous and consistent approach to Syrians seeking shelter and asylum in Europe. Germany and Sweden have accepted nearly two-thirds of Syrians seeking protection in the EU; more countries need to help Syria's neighbours shoulder the burden by offering asylum or resettlement. The Syrian crisis has shown a huge gap between the need for assistance and actual response. This type of long-term crisis also needs long-term planning and commitment from donors, states and agencies. Syria's neighbours have most of the time welcomed, hosted and assisted refugees; without proper support for local authorities and structures, however, mass influxes will eventually only provoke rejection when local capacities falter and fail.

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“What is the most important thing you brought from home?”



Ahmed holds his cane without which, he says, he could not have made the two-hour crossing on foot to the Iraqi border. (Domiz refugee camp in the Kurdistan Region of Iraq)



Tamara brought her diploma so that she can continue her education. (Adiyaman refugee camp, Turkey)



Abdul holds the keys to his home in Damascus. “God willing, I will see you this time next year in Damascus,” he told the photographer. (Bekaa Valley, Lebanon)

Failure to adapt: aid in Jordan and Lebanon

Jon Bennett

Many aid agencies in Lebanon and Jordan find themselves stuck in a wholly inappropriate paradigm of assistance from which they cannot extricate themselves.

As the whole edifice of aid machinery descended on the world's latest emergency, it soon became apparent that it was ill-equipped to adequately address the needs of a displaced population from a middle-income country.

Although a majority of the refugees are either hosted or in rented accommodation, Za'atari camp in Jordan (now the world's largest refugee camp) stands out as the most visibly 'managed' Syrian population. It encompasses everything that is wrong about camps.

The Jordanian government confines the population, taking possession of their identity papers, and disallowing free movement to other parts of the country. The aid agencies collude by containing the crisis through provision of aid. Both parties are bewildered when stones are thrown at them by frustrated camp residents. This is a predominantly educated population with resources and a history of regional migration and ties across the Middle East. They are finding it difficult to be 'grateful' for having to queue for a loaf of bread and a food parcel while trapped in a dusty field on the Jordan/Syria border.

There are some stark examples of organisations with solutions looking for problems. In Lebanon the population's biggest burden is spiralling rents, made worse by reducing work opportunities. They are not generally food insecure, yet they receive cash vouchers (\$27 a month) from the World Food Programme (WFP) which cover only a part of the actual food consumption of people who are used to spending far more per month on essentials. Far from being a life-saving intervention, the voucher is just one of

several 'coping strategies' – resources they can draw on – and it is hardly surprising that up to 40% of these vouchers are sold rather than redeemed. The depletion of household resources is, at this stage in the crisis, a financial, not nutritional or food-related, crisis. To say that the \$27 per month voucher offsets other costs is a truism that does not justify such a costly venture, the administration of which drains both financial and human resources.

At least twice a month people queue up for their vouchers at warehouses or football stadiums in urban centres where a combination of 'non-food items' (from UNHCR), food vouchers (from WFP) and ad hoc gifts from Gulf states and philanthropic individuals are distributed. The registration process is meticulously designed to avoid fraud at an enormous cost of time and expense. The recipient then takes the voucher to a designated shop where agency staff 'monitor' the counter to ensure that the voucher is spent only on nutritious food items – no toothpaste, shampoo or chocolate.



Syrian refugees queue for relief items at Za'atari camp, Jordan.

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If the shop too often contravenes the rules, it is penalised or dropped from what shopkeepers acknowledge as a quite lucrative scheme.

Inevitably, the paper voucher has attracted its own micro-economy. The arithmetic is simple. The voucher is sold by the recipient for \$20 to the middle men (usually immediately outside the gate of the distribution site) who then sell it to the shopkeeper for \$23, who then redeems it for its face value of \$27. This is big business, representing about \$20 million dollars per month changing hands. In an effort to curtail nefarious transactions of this kind, the voucher will soon be replaced by an electronic e-card that will include a proportional contribution for non-food items. It is not yet known how the middle men will capitalise on this aid credit card but they will.

Meanwhile, the UN is preparing for a shift from general to targeted distribution in which they identify the 'most vulnerable' families. This is a shifting target, changing almost

daily as more people are evicted from rented accommodation that they did not anticipate staying in for more than a couple of months before returning home. Middle-class families who arrived in comfortable cars find that their savings are rapidly depleting, hence the seeming paradox of a family arriving for a food box or voucher in a Mercedes.

It is surely not necessary to go through the rigmarole and huge expense of itemised vouchers, food and non-food parcels, and distribution logistics in a country where supplies are plentiful. There seems to be as wilful blindness on the part of donors and aid agencies caught in a repetitive stereotype of refugee assistance. Without the redundant modalities of the aid 'industry' on the ground, Syrian refugees could probably have received at least twice as much money in a simple cash hand-out.

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Dimensions of gender-based violence against Syrian refugees in Lebanon

Ghida Anani

Assessments of the impact of the Syrian crisis indicate high levels of sexual and gender-based violence, with rape, assault, intimate partner violence and survival sex appearing increasingly common. Humanitarian agencies urgently need to work together to address this trend.

In times of conflict everyone is affected by violence; however, women and girls in particular are more at risk of facing different forms of violence including sexual and gender-based violence (SGBV) due to the lack of social protection and lack of safe access to services. There is wide recognition of sexual violence as a weapon of war but other forms of violence against women during conflict also exist, including domestic violence, sexual exploitation and early marriage.

In early September 2013 UNHCR estimated the number of Syrian refugees in Lebanon at 720,003 and the number of the displaced

is still rising. Several local and international organisations have conducted rapid assessments to better understand the magnitude and impact of the crisis on displaced Syrians in Lebanon. Some of the main issues identified by these assessments include overcrowding, inadequate access to basic services, rising rent and food prices, and competition for the limited work opportunities. The assessments also helped to identify women and children as among the most vulnerable groups, solely by virtue of belonging to a particular gender, a certain age group or social status. This in turn shed light on the increase in SGBV among the

refugees and the need for humanitarian agencies urgently to develop a tailored response to reduce this form of violence.

There is no quantitative data in respect to violence against women but many displaced Syrian women and girls report having experienced violence, in particular rape. A rapid assessment conducted in 2012 by the International Rescue Committee in collaboration with ABAAD-Resource Center for Gender Equality assessed the vulnerabilities of Syrian women and girls to increased exposure to GBV both prior to crossing the borders and in their new host communities, and concluded the following:

- Rape and sexual violence were identified by focus groups and key informants alike as the most extensive form of violence faced by women and girls while in Syria.
- Intimate partner violence (IPV), early marriage and survival sex were identified by adult women and adolescent girls as other forms of violence experienced since arriving in Lebanon. Adult female participants in several focus groups reported that IPV has increased since their arrival in Lebanon, while adolescent girls stated that early marriages have increased, most frequently framed as efforts by families to 'protect' girls from being raped or to ensure that they are 'under the protection of a man'. Survival sex, typically linked to women's and girls' desperate need to earn money to cover the cost of living since arriving in Lebanon, was also identified as a type of violence frequently experienced by Syrian women and girls.
- Many newly arrived women and girls are living in unplanned and overcrowded refugee settlements, with minimal privacy and compromised safety, particularly among those refugee populations inhabiting abandoned public buildings.
- Survivors are reluctant to report SGBV or seek support due to the shame, fear and 'dishonour' to their families. Women

risk further physical and sexual violence, including death, often from their own families, when reporting GBV, a pattern that exists in many contexts

- Minimal coordination and lack of adherence to international standards of humanitarian assistance have hindered women's and girls' ability to access services. Discrimination and mistreatment are key barriers to accessing services.
- Women and girls have restricted access to information about the availability of services and support, particularly those that are relevant to survivors of GBV. Key informants strongly agreed that there are few services currently in place specifically designed to meet the needs of survivors of GBV or that are accessible to Syrian refugees.¹

Sexual exploitation or non-consensual 'survival' sex occurs when women and girls exchange sexual favours for food or other goods, or money to help pay the rent, especially in Lebanon. *"And if you want other help from other NGOs you should send your daughter or your sister or sometimes your wife... with full make-up so you can get anything... I think you understand me."* (participant in focus group discussion)

Although early marriage of daughters was common practice in Syria before the conflict began, this is reportedly being resorted to more commonly as a new coping strategy, either as a way of protecting young women or of easing pressures on family finances.

Lower self-esteem among men because of what being a refugee means, in some cases, leads to a negative expression of masculinity. Violence towards women and children has increased as some men vent their frustration and abuse their power within the household. *"I don't feel that I am a real man after what has happened to me now, and to be honest, I can't handle it anymore." ... "When my wife asks me for vegetables or meat to prepare food, I hit her. She does not know why she was hit, neither do I."*

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Outside the household, there are also examples of women and girls who are vulnerable to physical and verbal harassment, including sexual harassment, and in many areas they fear kidnap, robbery and attacks. Widowed or other women on their own are particularly vulnerable, with some hiding the fact that their husbands have been killed or kidnapped and even pretending in public to receive phone calls from their former husbands to protect themselves from male harassment.

Information on the prevalence of GBV among men and boys – and its impact – has been markedly lacking but recent research conducted by ABAAD with the support of UNICEF² confirms that men and boys also have faced and/or are likely to face GBV and SGBV in Syria or in their new host communities. Interviews with displaced male youth and boys revealed they did not know the term ‘Gender-Based Violence’ but almost all the interviewees identified different forms of GBV – including domestic violence and harassment based on gender – as present within their communities after fleeing Syria, and had either witnessed such violence or were survivors of it. 10.8% of them had been exposed to sexual harm/harassment in the previous three months but tended to associate the forms of GBV they were exposed to with being Syrian and/or Palestinian/Syrian; thus racism and discrimination masked their ability to identify violence as GBV.

When interviewees were asked specifically about the impact of sexual harm/harassment on them, the majority reported ignoring it and trying to forget it; some thought it was their fault that it happened. Moreover, the very few who had told someone about it stated that nothing was done as a result. It was clear that the behaviour of the majority of those surveyed had changed drastically due to their displacement and what they had witnessed, resulting in constant conflict within households; they expressed feelings of insecurity, sadness, doubt, anger and loneliness, and were sometimes violent themselves. They have had little access to the resources and social support necessary

to help them. Young males and boys in particular are also highly susceptible to forced and early labour because they are seen from childhood as the economic provider for the family, which in itself is a form of GBV.

Response

Many national and international organisations have been working on reducing GBV against Syrian refugee women, focusing on prevention and protection programmes using a holistic multi-sectoral approach incorporating a range of services such as legal services, information provision and awareness raising, medical and psychological health services, etc. However, these services are decentralised and scattered throughout the different regions and are provided by different providers. Having to go to different access points to obtain services hinders – either because of financial or cultural restrictions – people’s ability to access all the services they need.

Some new initiatives are addressing this problem of scattered service-provision points by creating a clear referral system among providers to facilitate access by beneficiaries. One example is the opening (by ABAAD in collaboration with UNHCR, UNICEF and the Danish Refugee Council) of three Safe Shelters in three different areas within Lebanon where there are large concentrations of Syrian refugees. These houses provide a secure and confidential place for Syrian refugee women who are survivors of or are at high risk of being exposed to GBV, and their children. In addition to providing housing for up to 60 days, the centres also provide – in one venue – case management and crisis counselling, psychosocial and legal support, forensic and medical care and referrals for provision of social services (economic opportunities, longer-term shelter, medical services, etc).

Recommendations

The following recommendations are drawn from our recent study published with Oxfam which assesses the impact of the Syrian crisis from a gendered perspective, including an examination of the prevalence and impact of GBV:³

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- Increase the number of safe spaces for women, men, boys and girls.
- Organise mass distribution of educational protection messages for women and men.
- Build the capacity of care providers in clinical care for survivors of sexual assault, gender-based violence case management, and caring for child survivors.
- Conduct community safety audits to further assess the security situation in relevant areas. Establish community protection mechanisms on the basis of regular community safety audits, including support for women's groups and capacity-building protection programmes for women.
- Sensitise and engage relevant community stakeholders and actors in the security sector to install appropriate gender-sensitive security measures, including mechanisms to control the proliferation of small-arms.
- Work to ensure all actors engaged in the delivery of aid receive training on gender equity, the elimination of violence against women and minimum ethical standards in aid delivery, and aim to meet standard operating principles. All actors should systematically track sexual violence in conflict, and build their GBV documentation capacities.
- Ensure all aid agencies adhere to the principle of zero tolerance of sexual violence and exploitation, establish mechanisms for reporting such incidents, and act accordingly when incidents are observed or reported.
- Establish confidential and trusted mechanisms for tracking and reporting incidents of sexual exploitation and abuse during aid delivery, and inform Syrian women and girls about the existence of such mechanisms.
- Provide awareness sessions on GBV affecting male youth to staff of aid organisations and start support group sessions for male youth and boys.

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1. See Executive Summary, *Syrian Women & Girls: Fleeing death, facing ongoing threats and humiliation*, International Rescue Committee, August 2012
<http://tinyurl.com/IRC-Lebanon-August2012>

2. *Assessment of the Impact of GBV on Male Youth and Boys among Syrian and Syrian/Palestinian Refugees in Lebanon*, ABAAD-UNICEF, forthcoming September 2013.

3. Roula El Masri, Clare Harvey and Rosa Garwood, *Shifting Sands: Changing gender roles among refugees in Lebanon*, ABAAD-Resource Center for Gender Equality and OXFAM, September 2013
<http://tinyurl.com/Oxfam-ABAAD-ShiftingSands-2013>
Arabic: <http://tinyurl.com/Oxfam-ABAAD-ShiftingSands-ar>

Real-time evaluation of UNHCR's response to the Syrian refugee emergency

Earlier in 2013 UNHCR commissioned a real-time review of its response to the emergency, focusing on Jordan, Lebanon and Northern Iraq. The report was published in July and highlighted:

- the need to address the situation of refugees in urban contexts and in out-of-camp areas, while at the same time highlighting the risks associated with conventional camp responses
- a yawning gap in emergency response arrangements in terms of support for host communities
- that emergency response in middle income countries is expensive and complex
- the emergence of many new actors, working outside the established humanitarian coordination framework
- that the international refugee protection regime continues to function, even in countries which have not formally adhered to the basic instruments of international refugee law.

See 'From slow boil to breaking point: A real-time evaluation of UNHCR's response to the Syrian refugee emergency' online at <http://tinyurl.com/UNHCR-SyriaRTE-2013>

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Conflict in Syria compounds vulnerability of Palestine refugees

Gavin David White

Palestine refugees in Syria find themselves once more engulfed in a cycle of conflict and displacement that exacerbates their underlying vulnerability and highlights the ongoing need for durable solutions.

Before the outbreak of conflict, Syria was generally seen to afford the best conditions for Palestine refugees among the nations of the Middle East. Palestinians benefited from relative freedoms, including access to social services provided by the government. Nonetheless, development indicators reflect a socioeconomic frailty compared with the wider Syrian population.

Of the 12 long-established Palestine refugee camps in Syria supported by UNRWA (the UN Relief and Works Agency for Palestine Refugees in the Near East), seven of the camps – largely in and around Damascus in the south and Aleppo in the north – are now caught up in the conflict. The vast majority of the some 529,000 Palestine refugees registered in the country have been directly affected by the unfolding violence. Armed clashes and the use of heavy weapons in and around these camps have resulted in extensive damage to homes, schools, health centres and the administrative infrastructure, and scores of Palestine refugees, together with eight UNRWA staff, have lost their lives.

In response, UNRWA is providing cash assistance, food aid, non-food items, water and sanitation services, emergency health and education, shelter and protection for

Palestine refugees, safety and security for UNRWA staff, and emergency repair of existing infrastructure. Seeking to ensure continuity of education for the 67,000 students enrolled in UNRWA's school system in Syria, the Agency has designated alternative safe learning zones including the temporary use of state schools on a second-shift basis; employed distance learning materials; developed virtual classes for its digital television channel; and

integrated students fleeing Syria within its wider school system in neighbouring countries. And with the temporary closure of a number of its 23 primary health-care centres due to their proximity to conflict, UNRWA has established new health points, relocating health services to newly displaced Palestine refugee populations.



Internally displaced Palestine refugees, Jaramana refugee camp, Damascus Governorate, May 2013.

Displaced again

Palestine refugees in Syria have been widely displaced. One of the most serious single incidents occurred in late April 2013 in Ein el Tal Camp in Aleppo, with the forced displacement of all 6,000 camp residents in a single day following months of sporadic armed engagements. The population of Yarmouk Camp in southern Damascus, which once numbered some 160,000, has dwindled to a mere 30,000 inhabitants following mass displacements in December 2012.

A total of 235,000 Palestine refugees are now internally displaced within Syria. Of those, 18,000 have sought refuge in other Palestinian refugee camps that for now afford a greater level of safety. But here, as around the world, UNRWA and other agencies such as UNHCR are not able to provide physical security and are reliant on the state (and other actors) to ensure the security of refugee camps. Homs Camp in central Syria, with an original camp population of 22,000 and now hosting 6,500 Palestinian IDPs from Aleppo, Damascus and the Homs countryside, finds itself on an emerging frontline between government and opposition forces, making further mass displacement likely. Of those displaced beyond Syria's borders, of 93,000 Palestine refugees from Syria who made themselves known to UNRWA in Lebanon, over 45,000 were consistently relying on the Agency's humanitarian services. Meanwhile, some 8,500 individuals have reached Jordan. In addition, around 1,000 Palestine refugees have reached Gaza via Egypt while small numbers have fled as far afield as Malaysia, Indonesia and Thailand.

The majority of Palestinians from Syria in Lebanon have sought refuge within one of the 12 existing Palestine camps. Overcrowded, with ageing infrastructure and challenging environmental health issues, these camps and services in them are being stretched beyond capacity, while UNRWA remains chronically under-funded. The new refugees compete for both limited and unsuitable accommodation options, with families of up to ten persons sharing a single room at a monthly cost of US\$200-400. With the start of the 2013-14 academic year, an existing Palestine refugee student population of 32,213 pupils has been joined by over 5,000 additional students from Syria.

Newly arrived Palestine refugees find themselves competing not only with the existing Palestinian population for limited income-generation opportunities but also with some 677,000 newly arrived Syrian refugees. Unlike Syrian citizens, Palestine refugees from Syria do not have the right to

employment in Lebanon, nor do they have the decades-old experience of working as labour migrants, as many Syrian citizens do. With 40% of the Palestine refugee population having been engaged as unskilled labourers in Syria, they also lack transferable skills.

In Jordan, the government's public confirmation, in January 2013, of its decision to close Jordan's borders to Palestinians fleeing violence in Syria has limited the flow of arrivals to some 8,500 individuals. A few thousand Palestinians currently reside within communities in border areas in southern Syria, where conflict is still raging. Their precarious legal status means they face difficulties in relation to civil processes such as registration of births and in access to services, are often unable to work and are left extremely vulnerable to high-risk survival strategies, and are at constant risk of *refoulement*. Palestinians are entitled to equality of treatment and non-discrimination in the application of international law, including protection from *refoulement*. UNRWA continues to engage key stakeholders to intercede with authorities on individual cases and to appeal to the government to provide the same humanitarian consideration it has provided to other refugees and allow them to enter Jordan without discrimination.

This secondary forced displacement of Palestine refugees is a painful reminder of what they have endured for 65 years. While this remains the most protracted of displacement situations, the vulnerability of Palestine refugees within an increasingly unstable Middle East charges the international community more than ever with the duty to ensure their care and protection, and the responsibility to reach a just and durable solution to their plight.

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September 2013

UNHCR in Uganda: better than its reputation suggests

Will Jones

Mistrust and fear abound among Rwandan refugees in Uganda. The dearth of information available about cessation urgently needs to be addressed by UNHCR.

Nakivale Refugee Settlement on Uganda's border with Rwanda is one of Africa's oldest refugee camps. Rwandans first fled there following the 'Hutu Revolution' of 1957 and it now contains roughly 60,000 Rwandans, Congolese and Somalis along with many other nationalities (some of its residents like to say they live in the real Organisation of African Unity). This is not the choked ghetto usually evoked by media representations. Nakivale is a confederation of villages and contains enough farming and animal husbandry to feed itself and still produce surplus to export further afield. And though Nakivale is in the middle of nowhere, it is anything but isolated from cultural, social and economic activity; there are markets, several cinemas and plenty of smartphones in evidence taking advantage of the new mobile phone mast erected in the centre of the settlement.

Successive upheavals, pogroms and – of course – the genocide of 1994 and its aftermath have contributed to successive waves of Rwandans to Uganda. After the genocide and the coming to power of the Rwandan Patriotic Front, most of the old caseload of Rwandans returned and were gradually replaced by a new cadre of disgruntled military officers, human rights activists, journalists who had fallen foul of stringent new media regulations, and those who had simply fallen foul of the politics of land in post-genocide Rwanda, where the abrupt return of the old caseload created many vicious conflicts over who owned what, with the losers of those disputes often having to leave the country in a hurry.

Cessation

The current Rwandan government maintains that contemporary Rwanda is peaceful, that the refugees of Nakivale can return safely, and that the only Rwandans with anything to fear are perpetrators of the genocide who

must return to face the justice of the courts. It has made a sufficiently persuasive argument that the government of Uganda and UNHCR have agreed to invoke the Cessation Clause which states, broadly, that if the reasons why refugee status were originally granted no longer apply, a refugee "can no longer... continue to refuse to avail himself of the protection of the country of his nationality".

The Rwandans in the camps themselves have fiercely resisted the clause. They have argued that the Rwandan government remains, among other things, dictatorial and intolerant of views which diverge from its own. They have been trying for the best part of the last decade to convince international agencies, governments, NGOs and just about anyone else that they should not be forced to go home. They believe they now face forced deportation, arbitrary violence, extrajudicial assassination and worse.

In interviews with these Rwandans, I found a giant gap between what UNHCR staff had told me in Kampala and Mbarara (the regional capital) and what these refugees believed. UNHCR staff had patiently explained to me that the process had been delayed until capacity was in place to screen individuals to prevent mistakes, that safeguards were in place and that the government of Uganda had no interest in a politically embarrassing series of forced deportations. But Rwandans in the camp had no idea what UNHCR had done on their behalf, had secured for them, or was trying to do, despite their smartphones and internet access. Around the settlement you will encounter plenty of signs encouraging you to use a condom or a malaria net but you won't find much by way of public service announcements regarding the current advocacy or inter-governmental work of UNHCR. There is a UNHCR compound

behind barbed wire and concrete walls but even if you did get in, the staff who could give an informed answer are in Kampala or Mbarara. On the UNHCR website, information for the refugees in Nakivale is non-existent.

Consequences of silence

There are four problems with this. First, the information black hole left by UNHCR is fertile ground for rumour, misinformation and distortion of the facts. For example, it was repeated to me in my interviews that UNHCR had been bribed by the Government of Rwanda to delay the resettlement of at-risk refugees to safe countries or just not resettle them at all. The true part of this is that it does take longer to resettle a Rwandan refugee, because many states require that the International Criminal Tribunal for Rwanda in Arusha (set up to prosecute the organisers of the genocide) clear anyone they might resettle as not on the list of suspects. This takes a while. But any Rwandan living in the camps trying to find a clear and authoritative source explaining why her Congolese neighbours are being resettled to the West when she is not will look in vain. Instead, this vacuum is filled with conspiracy forums, fear, suspicion and paranoia.

Second, this silence materially harms the interests of legitimate refugees who merit resettlement outside Uganda. The process, which includes identifying a case for resettlement, verifying the facts and assisting the individuals or family through the often idiosyncratic procedures of specific countries, is an extremely long and stressful procedure. Many of the problems with the process are not unique to Rwandans; repeatedly interviewing trauma victims about the details of their abuse that occurred more than a decade earlier and using any inconsistency as grounds for rejection has more than a few obvious problems. But in this instance, with no reason to trust UNHCR, Rwandan refugees often omit details from their interviews with UNHCR which they are subsequently willing to discuss in their interviews with putative host governments. This means that there are disparities between

the initial UNHCR resettlement interviews and the later interviews with governments. In consequence legitimate cases fall apart due to inconsistencies in refugees' stories.

Thirdly, this makes it harder for UNHCR itself. The ability of UNHCR to act effectively, and to help the people it wishes to help, is increased hugely when the communities it works with understand and trust it and are willing to work with it. Indeed, communication is a first step to moving beyond thinking of sides and instead thinking of a set of problems about which UNHCR and refugees can collaborate in finding solutions.

Finally, and most simply, if individuals feel deprived of the most basic information about their fate this feeds into a deep and pervasive sense of hopelessness, abandonment and marginalisation. Many articulate and intelligent individuals had written letters, petitions and testimonies to UNHCR, to Amnesty and to Human Rights Watch. Nobody ever replied to them. Often these are individuals hanging on with their fingernails to a sense of themselves as more than a human cargo. To keep people informed about their futures is about more than utility; it is about dignity and respect.

Simple steps to improve communications

Overcoming the caustic legacy of mistrust which now pervades Nakivale will be difficult but UNHCR could make some simple moves in the right direction.

Nakivale is online. People who have internet access print out articles for those that do not. News can and does move round the settlement quite quickly. UNHCR could overcome several of the huge information deficits in Nakivale very quickly if it supported a simple, clear and authoritative news platform in the languages that people in the camps speak, giving them basic information about what is going on; even if it was only in English or French, translation would get it round the camps pretty quickly, albeit sometimes unreliably. For example: How does cessation work? Who is exempted? If they believe they are exempted, how

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should they go about demonstrating that? What rights are they currently guaranteed in Uganda? Who should they talk to for what? If they believe they are going to be forcibly deported illegally, whom should they call?

Refugees themselves possess much communications infrastructure. There are radio stations in the camps set up and owned by refugees. Such outlets could and should be used to promote UNHCR's message inside the camps.

And finally, a lot of the necessary infrastructure already exists. Local partner organisations, such as the Refugee Law Project, have excellent relationships with many refugee communities and could be a simple and effective conduit for information using many of the resources they already possess.

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Insights from the refugee response in Cameroon

Angela Butel

The integration of Central African refugees into existing Cameroonian communities has had far-reaching development impacts on the region and the state as a whole; this observation calls us to re-evaluate the significance of smaller-scale, less noticed refugee crises.

We miss an important opportunity if we ignore smaller, less geo-politically prominent situations such as that which has been unfolding in eastern Cameroon since 2005. Despite the lack of media attention it has received, this situation offers significant insights into how humanitarian responses are conducted today and possibilities for making them more effective. Rather than creating refugee camps to contain the influx, humanitarian organisations are assisting refugees to integrate into existing Cameroonian towns. Mbororo and Gbaya people fleeing violence in the Central African Republic (CAR) settle into Cameroonian Mbororo and Gbaya communities. Many refugees have pre-existing family ties with Cameroonians and others share languages and cultures with them. Humanitarian workers cite these shared social ties as a key factor behind the success of the integration process.

Assistance to meet the most urgent needs of the refugees (emergency food and hygiene distributions, water and sanitation, health care and education) centres around agriculture: distributing seeds and tools and training refugee communities in farming techniques. This focus on agriculture, however, is in

itself one of the potential drawbacks of an integration model of refugee assistance: that of conflict of interests between refugees and their host communities. Within Cameroon, there has been a long history of enmity



Amadou Hayatou used to be a diamond miner in CAR before fleeing violence. Now he works in the field he shares with a cooperative of other refugees in Cameroon: "Now my diamonds are my potatoes!"

and conflict between sedentary farming communities and nomadic pastoralist groups, and disputes over land-use rights are common. Many refugees were pastoralists in

the CAR but are now being asked to become sedentary farmers in Cameroon. This shift in modes of livelihood and the expectation that Cameroonian communities will share arable land with these newcomers are potential sources of conflict that need monitoring.

NGOs are attempting to mediate this problem by negotiating with local leaders to gain access to land for refugees to farm. These organisations have found, however, that the most effective way to maintain a cooperative relationship between refugees and host communities is to include the host communities in humanitarian programmes. The East region is notorious in Cameroon as the 'forgotten province', having received considerably fewer resources and less development assistance than other parts of the country. Now food, wells, latrines, health centres and classrooms built by NGOs to benefit refugees and Cameroonians alike help induce the communities to remain open to the displaced Central Africans.

Evidence of the effectiveness of these efforts at facilitating integration can be seen in the frustration expressed by the local delegation of the Ministry of National Security. To carry out their duties effectively, security personnel feel it is necessary to keep strict track of who is a refugee and who is a citizen. Now, though, they have trouble making this distinction. What these security personnel see as an obstacle, humanitarian organisations would count as a success: that Central African refugees have become autonomous, self-sufficient, nearly indistinguishable members of their Cameroonian host communities.

Capacity building and development

The influx of international resources also represents a significant opportunity for Cameroon to bolster its own national development. Aside from contributions to infrastructure, other impacts are less concrete. While capacity building for Cameroonian professionals, for instance, is not a planned outcome of a humanitarian response, the NGOs working in the East hire Cameroonian employees and provide them with professional development

opportunities ranging from résumé-building to regional and international travel.

Humanitarian NGOs also build human capital beyond their organisations. Many work closely with local government representatives to share information about the organisation's activities in their domain of responsibility. In the process, they train local government officials in the techniques they are bringing into communities (for example, hand-washing techniques or well maintenance) to better equip the officials to reinforce these techniques in their own programming. Similarly, when they disburse funds to a local traditional leader for community projects, NGOs train the leader in money management. International organisations also partner with local NGOs to develop sustainability in their programmes in anticipation of the international NGOs leaving the area.

In addition to benefitting their explicitly intended recipients (refugees and their host communities), international resources benefit Cameroonians at many levels. As we evaluate the effectiveness of an integration approach, we should keep these further reaching and often less acknowledged impacts in mind.

Looking at different kinds of crises can cause us to reframe our questions about responses to crisis. What kinds of approaches is the refugee regime taking to smaller-scale crises such as that in eastern Cameroon? What opportunities exist in these situations for innovation in models of refugee assistance? How can we understand the impacts of assistance models beyond the humanitarian space? By sparking such questions and new perspectives, the case of Cameroon can contribute to an understanding of modern humanitarian action. It would be worth considering where else such a model might also work.

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Freedom of movement of Afghan refugees in Iran

Farshid Farzin and Safinaz Jadali

Although legally justifiable, increasing restrictions on movement and work for refugees in Iran have detrimental effects for the refugees.

Following the revolution in Iran in 1979 that brought about the Islamic Republic, the new government had an open-arms policy towards Afghan refugees from its early days, a policy rooted in the religious values and principles of Islam.¹ As a result, millions of Afghan refugees crossed the borders and settled across Iran without any restriction. Afghan refugees were fairly easily integrated given the common language and culture.

They successfully entered the local job market although, due to the nature of the jobs they found, a significant number of Afghan refugees have been working in remote areas while their families stayed in the cities. Inevitably these refugees travelled back and forth between their workplaces and places of residence.

Afghans in Iran had no difficulty moving freely from one location to another until in 2000 the Iranian government decided to regularise Afghans' status and launched a comprehensive plan jointly with UNHCR to register them.² This preliminary plan was followed by other complementary measures including the issuance of temporary residence cards for these refugees. Although the residence cards issued by the Iranian government regularised and legalised the status of Afghans in Iran, they also led to significant restrictions in movement for them.

Iran acceded to the 1951 Convention and 1967 Protocol in 1976 but entered reservations to four Articles, including Article 26 which allows for free movement of refugees.

Hence the Government of Iran does not consider itself bound by the provisions of that Article. The last part of Article 26 requires the contracting party to provide freedom of movement to refugees subject to any regulations applicable to aliens generally in the same circumstances.

Since the issuance of the first series of residence cards in 2003, Afghan and other refugees have been authorised to move freely within their designated province of residence. However, for travelling to other provinces, refugees have been required to inform the authorities and to obtain a *Laissez-Passer* (travel permit) before they travel. Without this, refugees are not allowed to go outside their designated

province or city of residence. Breach of this requirement can lead to arrest, detention and even deportation at the discretion of the authorities. Although the request for a *Laissez-Passer* is not in itself a major issue for refugees, they may face difficulties in obtaining one, both for reasons of the bureaucracy involved and issuance fees.

Afghan refugees are also only allowed to work within their areas of residence. They cannot leave the designated areas for work without obtaining a *Laissez-Passer*. At times some designated areas of residence might be so limited that Afghans have difficulties finding employment within that area. In addition, Afghan refugees are only authorised to be hired for specific jobs, a provision which clearly limits their options for employment.



Afghan refugee girls in Torbate-Jam settlement, Iran.

No-Go Areas

In 2007 the Supreme National Security Council of Iran declared some provinces – or some cities of a specific province – as No-Go Areas (NGAs) for foreign nationals, including refugees. The legal basis for this was Article 13 of the Law on the Entry and Residence of Foreign Nationals in Iran, which states that the government can announce No-Go Areas on grounds of “national security”, “public interest” and “health”.³ At the time that the new policy was implemented, the majority of declared NGAs were located in border areas but they were broadened over time and now include provinces and cities throughout the country.

Under the NGA policy, Afghan refugees are allowed neither to reside within the NGAs nor to travel to such areas. Upon declaration and publication of the list of NGAs, refugees are granted a deadline to decide whether they will opt for relocation to other areas of Iran that are designated by the government or for repatriation to Afghanistan. If relocated, they continue enjoying some basic rights such as education, employment, health care and housing in a secure environment. Nevertheless, the relocation becomes problematic for Afghan refugees because they have often lived in their areas for years and have established social and emotional ties and economic networks.⁴

Those refugees who do not comply with the requirements of the NGA policy are not allowed to obtain new temporary residence cards, and are subsequently considered as irregular foreign nationals in the country; if they have this status, the police forces are authorised to arrest and deport them to Afghanistan.

Humanitarian considerations

Although the establishment and the implementation of the NGA policy is legally well-founded, it raises concerns from a humanitarian perspective. While refugees are granted a considerable period of time to prepare their move, nevertheless the impact of such movement remains significant.

Importantly, such relocation is costly for Afghans who are among the poorest and most vulnerable in Iranian society, and seeking jobs in their new living environment is an additional difficulty they face.

In order to alleviate the socio-economic impact of relocation of refugees, the following measures should be considered prior to, during and after relocation:

- Designate areas for relocation which are closer in terms of distance and socio-cultural and environmental factors to the refugees' previous places of residence. The closer the new place of residence is, the lower the cost of transportation and related relocation expenses. Socio-cultural and environmental similarities could ease the integration of refugees in their new area of residence which is of benefit to both host communities and refugees.
- Given the significant cost of relocation for refugees, the Iranian government and international organisations could jointly assist refugees with relocation, either through direct financial assistance or by providing appropriate logistical facilities.
- The importance of reintegration in the new area of residence should not be underestimated. Local NGOs could support refugees in housing, employment and schooling of refugee children.

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Community rejection following sexual assault as 'forced migration'

AJ Morgen

When women are banished from their communities following sexual assault, this rejection should be considered an act of forced migration by the administrators of truth commission reparations programmes.

Since the mid 1990s, in the Democratic Republic of Congo (DRC) rape and other forms of sexual assault have become common weapons of war as well as commonplace acts by non-combatants. The brutality with which these acts are performed often kills or severely disables for life. A survey of sexually assaulted women conducted in DRC by the Harvard Humanitarian Initiative found that approximately one in fifteen (6%) were subsequently rejected by their communities. However, 34% did not respond to the question of rejection by their communities, making it possible that instances of community rejection may be even more common than this survey indicates.¹

In DRC, as more widely too, the victimised woman is often seen as unclean, diseased and contaminated by the enemy, even more so if she is impregnated by her rapist; women who become pregnant as a result of rape are five times more likely to be rejected by their communities than women who do not become pregnant. Frequently these women have physical disabilities resulting from the brutal rapes which cause the women to be viewed as 'damaged goods'.² As a result, women are sometimes rejected by their spouses, family and/or their communities as a perceived safeguard against disease and because they have a lowered societal or marital value.

It is also well documented that rape when utilised as an act of war is not intended to be a private crime committed against an individual person. The woman's body is a symbolic representation of the male(s) under whose authority she resides and "thus perpetrators see women's bodies as part of the spoils of conquest, goods to be damaged

or seized, and territory to be occupied".³ At the same time, the woman is shamed for not being able to defend her purity/virtue/honour. When rape victims remain in their home communities, they are living reminders of the village men's inability to protect them.

These rejected survivors and their 'children of rape' are often consigned to a life without the social and economic support of their spouses, families and/or communities, and frequently without basic health care, job skills or a permanent place to live.

Community rejection as forced displacement?

The Commission for Reception, Truth and Reconciliation in Timor-Leste defined forced displacement simply as "a situation where people leave the place where they live either under some form of compulsion or because they themselves have decided that circumstances are such that it would be dangerous not to move." The Liberian Truth and Reconciliation Commission defined it as an act in which "the perpetrator deported or forcibly transferred or displaced, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts. Such person or persons were lawfully present in the area from which they were so deported or transferred." Sexually assaulted women such as those in eastern DRC are forced to leave their communities after being sexually assaulted during a period of conflict; the act is one which is imposed upon them and results in their removal from the community. Additionally, the truth commissions cited made no stipulations regarding the distance a person must be displaced from their home in order to be labelled a 'displaced person'; any

woman who has left her community – or even been banished to its margins – could meet the above definitions. If a similar definition for ‘forced displacement’ were utilised by future truth commissions in the DRC or elsewhere, banished women would be within their right to report themselves to the truth commission as victims of forced displacement.

This recognition of community rejection as forced displacement should be made for four main reasons. First, transitional justice mechanisms such as truth commissions and reparations policies most often fail to distinguish between and account for the differences between men’s and women’s experience of conflict. Historically, these post-conflict mechanisms have instead considered and accepted the daily experiences of men in conflict as accurate representations of the experiences of both men and women. This has often meant that women have been the least heard and the last to receive reparations for their experiences. Any means by which women’s experiences and needs could be better addressed during the reparation process would be a positive step.

Second, the same societal attitude that leads to the rejection of assaulted women makes it difficult for women to come forward and share their experiences with a truth commission or reparations committee, and there is a clear historical under-representation of women reporting sexual violence. The ability to register sexual assault victims rejected by their communities under the category of ‘forced displacement’ in addition to or in place of the category of ‘sexual assault’ could significantly increase the number of women willing to come forward as witnesses at a truth commission and to collect the reparations for which they qualify.

Third, this additional and more gender-neutral term could increase the accessibility of reparations benefits for victimised women as well as the amount or type of reparations for which they qualify. Reparative benefits have been largely correlative to the violations

suffered, meaning, for example, that in addition to monetary benefits, sexual assault victims were most often recommended therapy and physical health care. Women in many of the countries that have hosted truth commissions, such as Sierra Leone and Timor-Leste, do not or rarely have a legal title to land and were consequently disadvantaged in the formal restitution process. Since reparation for forced migrants has generally focused on the victims’ need of housing and restitution of property, the inclusion of banished women with the wider population of displaced victims could increase their chances of accessing reparative housing or property benefits and be a positive step towards societal gender equality.

Finally, prioritising bodily harm over other abuses can create a distorted account of women’s experiences during conflict. Even those truth commissions which have tended to be more aware of women’s and gender issues have largely equated gendered victimisation with sexual violence, presenting only a partial truth and in so doing reinforcing societal inequalities. Recognising community banishment following sexual assault as a form of forced displacement in reparations programmes is essential not only for the individual woman who will benefit from her increased access to reparations but also for society in general.

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1. Harvard Humanitarian Initiative ‘Characterizing Sexual Violence in the Democratic Republic of the Congo; Profiles of Violence, Community Responses, and Implications for the Protection of Women’ Open Society Institute <http://tinyurl.com/HHI-SexualViolenceinDRC>
2. See Jessica Keralis ‘Beyond the silence: sexual violence in eastern DRC’ in *Forced Migration Review* 36 and other articles in that issue www.fmreview.org/DRCongo/keralis.htm See also *Forced Migration Review* 27 ‘Sexual violence: weapon of war, impediment to peace’ www.fmreview.org/sexualviolence
3. InterPares ‘Women’s Struggles For Justice: A Roundtable on Confronting Sexual Violence in Armed Conflict’, February 2009 <http://tinyurl.com/InterPares-SVinArmedConflict>

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2013 UNHCR's Nansen Refugee Award for Sister Angélique Namaika

On 17 September, UNHCR announced that the winner of the 2013 Nansen Refugee Award is Sister Angélique Namaika, a Congolese nun who works with displaced women and girls in the northeastern region of the Democratic Republic of the Congo. Brutal attacks have forced hundreds of thousands to flee their homes and hundreds of others have been abducted and abused. On top of the trauma of what they have survived, many vulnerable displaced women and girls are ostracised by their own families and communities because of their experience. Sister Angélique – who has herself been displaced – has devoted her life to helping them be re-accepted by their communities and become self-sufficient. In naming her the 2013 Nansen Refugee Award laureate, UNHCR recognises her outstanding service to the cause of displaced people.

Forced Migration Review issue 46 (due out 2014) will include a major feature on 'Faith-based organisations and responses to displacement', reflecting a diverse range of opinions and perspectives about faith-based or faith-inspired humanitarian activities focusing on situations of forced displacement. Call for articles is online at www.fmreview.org/faith

Cash and vouchers: a good thing for the protection of beneficiaries?

Michelle Berg, Hanna Mattinen and Gina Pattugalan

The international humanitarian community has moved from the more traditional approach of providing in-kind assistance to the use of cash and vouchers. In situations of displacement they can work as a dignified, easily accessible form of assistance.

In late 2011 the World Food Programme (WFP) conducted a literature review of previous studies of cash and voucher transfers and a limited survey of their own programmes to investigate whether cash and voucher transfers were working towards improving protection of beneficiaries, or at least doing them no harm. WFP and UNHCR then designed a multi-country field study covering a range of scenarios (urban, rural, camp, non-camp, emergency and development) in eight countries; in five of these, cash and voucher transfers are used in displacement settings (Chad, Jordan, Ecuador, North Darfur and Pakistan).

The study examined the potential protection and gender impacts in terms of dignity and empowerment of beneficiaries, beneficiary safety, and whether and how beneficiaries' access to assistance was affected, as well as gender relations and community social cohesion, and beneficiary preferences. The research found that in most cases the protection and gender impacts identified were the result of programme design and how it addressed (or did not address) protection and gender considerations, rather than as a direct result of cash transfers and vouchers. An exception to this was that cash

and vouchers were felt to be a more dignified form of assistance for their recipients.

Promoting dignity: In situations of displacement individuals accustomed to supporting themselves and their families suddenly become dependent on aid and charity. While their sense of dignity cannot be easily and fully restored, cash and voucher transfers offer some choice and a small degree of control in a situation where many feel they have none. As one refugee in Jordan noted, unconditional cash transfers provided "some small scrap of dignity" in a difficult life filled with uncertainty. Beneficiaries consulted in Sudan and in Ecuador liked vouchers (for food and non-food items) because they offered some opportunity to choose, despite that choice being limited. Additionally, in Sudan the food vouchers allowed beneficiaries to choose goods that were locally and culturally preferred and appropriate to local diets and food preparation practices.

By design, however, vouchers limit purchases to pre-defined items in shops pre-selected by the assistance agency. In some cases agencies placed conditions on what cash could be spent on too fearing that beneficiaries would make

'bad choices' or choices that did not correspond to the agencies' mandate, or would engage in 'anti-social spending', (for example, on alcohol, cigarettes or visits to beauty parlours). However, the research revealed very little evidence of anti-social spending (although admittedly hard to track) and in those cases where it was found the communities had mechanisms to address it. Moreover, in certain circumstances, what agencies deemed anti-social spending had positive psychosocial impacts – including increasing the feeling of belonging in the community, and gaining goodwill from others for future times of need.

Conditions were also attached to cash to promote behavioural change. In Chad, UNHCR's conditions included requiring recipients' children to attend school and get health check-ups. While these created some positive results, there were concerns about their longer-term sustainability. Some beneficiaries noted that the behaviours would stop when the cash stopped. Moreover, one community leader noted that, although taking children for check-ups was certainly a good thing given the poor sanitary and housing conditions in the camp, she had not noticed an improvement in the health of the children. This suggests that the conditions applied to cash transfers – in the absence of other improvements that led to better health for children – did not have the desired or intended effect.

Overwhelmingly the study indicated that increased dignity was positively linked by beneficiaries to the degree of choice provided, raising the important question of whether the attachment of conditions to cash or vouchers enabled them to achieve all potential positive outcomes, including providing a sense of dignity.

Empowerment: The research found that programmes using cash and vouchers often claimed to empower beneficiaries without defining what that meant. In cases where the population interviewed had been displaced, the use of cash and vouchers provided little or no evidence of empowerment. In Chad, refugees received limited amounts of cash with conditions attached and had enormous needs, having lost their homes,

their possessions and their livelihoods. In Pakistan, interviewees had experienced devastating floods and receiving cash did little to empower them – the needs were great and the programmes there were short-term.

In Sudan, one of the stated programme goals of the voucher transfers was "to empower beneficiaries, particularly women, through ownership of their food security needs and the opportunity to purchase locally preferred food". While giving a choice of 14 food items through the voucher scheme was preferable to having no choice at all, it was not found to contribute to significant levels of control over decision-making and resources that determine the quality of life, and economic, social and political decision-making (i.e. empowerment). Such programmes are a reminder that agencies should not be overly ambitious about what a single intervention can achieve, since many other factors are necessary for the achievement of empowerment. Moreover, displacement situations can often be inherently disempowering, and short-term assistance, in whatever form, is unlikely to resolve such fundamental vulnerability. In addition, while giving cash and vouchers to women undoubtedly had positive effects, it did not follow necessarily that because women received or earned cash and vouchers, gender relations, roles or perceptions had changed, or that the women were empowered.

The women did not need to be the direct recipients of the cash in order for it to have a positive impact on their lives. In Jordan, cash was given to men because it was culturally more appropriate. Interviewees there stated that if cash had been given to women it would have had the effect of 'disempowering' the men and therefore risked causing resentment towards the women for co-opting men's traditional role as providers. Both women and men reported that women were nevertheless consistently involved in decision-making about spending the cash at the household level. This finding challenges conventional thinking that women should be given the entitlement in order to increase the odds that it will benefit them and the entire household, or because it will empower them or shift gender dynamics.

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Safety and access: None of the beneficiaries interviewed raised concerns about the safety of cash and vouchers, even in precarious security situations. In all cases, agencies had considered beneficiary safety while collecting and spending the cash or vouchers a priority. For example, in Darfur traders set up markets near the camps to enable beneficiaries to spend vouchers without fear. In both Chad and Pakistan, police ensured security of cash, although in both countries beneficiaries felt that the police were not needed. Technology as well greatly assisted security concerns in Jordan, where refugees used automated teller machines (ATMs) using bankcards or iris scans, enabling withdrawal of cash discreetly and in limited amounts.

Identification was required in Pakistan for example, where banks were used for distribution of cash, but this provided an opportunity to work with the government to enable beneficiaries to obtain documentation — potentially enabling longer-term protection benefits and access to other resources.

Unfortunately, cash and vouchers did not remove all opportunities for cheating or corruption. Some individuals reported that traders participating in voucher schemes charged higher prices than in stores in the market or other traders, or that some local leaders demanded families under their control redeem their vouchers only from certain traders for a ‘commission’. However, with robust monitoring and effective complaints mechanisms, such challenges were overcome at an early stage.

Community relations: Despite the fact that food and non-food items purchased with cash and vouchers were shared less than with in-kind distributions, social tensions in displaced communities for the most part did not arise, whether within the displaced community itself or between the displaced community and the host community. In some instances, there were positive effects, such as in Sudan where vouchers caused interaction between different ethnic groups (traders and beneficiaries) which some interviewees felt brought more community cohesion.

Beneficiary preference: Overwhelmingly, beneficiaries stated that they preferred cash to other forms of assistance. The most common reason was that they preferred the flexibility that cash offered them and the choice it offered them to prioritise their own needs.

Conclusions

The loss of control over decision-making in a crisis is a significant part of the suffering experienced by displaced populations, and particularly cash as a mode of assistance delivery can have a positive impact on restoring a sense of dignity and choice. The shift in modalities of aid from in-kind assistance to cash and vouchers does provide an opportunity for agencies to more fully incorporate protection and gender issues into their programming — not only new issues but also to address longer-standing protection and gender issues.

Aid agencies with sector-specific mandates should not be afraid to embrace the advantages of cash because of concern that cash provided to cover needs in one sector may be used by beneficiaries to cover need in another that they find more important. Viewing cash and voucher transfers as tools in a broader assistance strategy could enhance their protective impact.

Although cash and vouchers were generally viewed positively by beneficiaries and other interviewees, they are not always appropriate. As the ODI Good Practice Review ‘Cash Transfer Programmes in Emergencies’ notes, “cash transfers are not a panacea.... The appropriateness of cash transfers depends on needs, markets and other key factors, all of which vary from context to context.”¹

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1. Harvey, P and Bailey, S ‘Cash Transfer Programming in Emergencies’, Good Practice Review, No.11, June 2011 www.odihpn.org/download/gpr11pdf

Refugees' rights to work

Emily E Arnold-Fernández and Stewart Pollock

Host economies benefit when refugees work. Nations seeking economic growth and political stability should allow refugees to access employment and to enjoy employment-related rights.

Although refugee employment rights are, for the most part, clearly articulated in international legal instruments, efforts to implement these rights in domestic law and government practice have been minimal in most countries that host significant refugee populations. Evidence from the few nations that have allowed refugees to access employment lawfully, as well as from contexts where refugees work without legal authorisation, powerfully suggests that allowing refugees both employment and self-employment is beneficial to refugee-hosting nations. These benefits accrue to host nations regardless of whether refugees integrate into their host nations, return home (repatriate) or are resettled to a third country. Further research is needed in order to understand the most effective way of transitioning from camps or other work-restricting environments to approaches that allow refugees to participate in a national economy.

Advantages of allowing refugees to work

Around 50% of the world's refugees are of working age (age 18 to 59).¹ Allowing this population to access lawful employment would fill gaps in the host country's labour market; given the opportunity, most refugees will work in any geographic location and any field that provides them with a livelihood.

Thailand, for example, has benefited from the employment of Burmese refugees as migrant workers in rural areas. While Burmese have long worked in the informal

sector in Thailand, the government also created a formal migrant labour scheme that today employs around 1.3 million Burmese migrant workers, a substantial percentage of whom probably fit international definitions of a refugee. An estimated 1-1.5 million additional unregistered Burmese refugees and other migrants continue to work without formal permission. The consequence has been a reduction in local poverty in communities around Thailand and the encouragement of regional growth. On the negative side, Thailand does not acknowledge the refugee status of Burmese employed through the formal migrant labour scheme; this means that workers' families may lack legal status and protection, and a worker's legal status lasts only while he or she is employed.



A self-employed refugee in Ecuador.

The impact of the Burmese population filling labour market gaps was starkly demonstrated in 1997 when Thailand deported large numbers of Burmese refugees in response to the financial crisis in Asia. The deportations were immediately followed by a dramatic rise in the number of bankruptcies in areas that lost significant numbers of Burmese, evidence that many industries relied on them.

Ecuador too has taken advantage of its refugee population as an influx of human capital. Since 2008, Ecuador's Constitution has allowed refugees to access both wage-earning and self-employment on an equal basis with Ecuadorian nationals. Ecuador has experienced steady economic growth from September 2008 to now.

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Vietnamese refugees who fled to Australia have contributed significantly to the growth of trade between Australia and Vietnam, in the same way that Thailand has benefited from cross-border trade by Burmese refugees. Although refugee repatriation rates will vary with circumstances, the presence of common language and culture between refugees who return home and those who remain in the host country promotes international trade between the two groups, irrespective of government relations. Even in the face of hostile relations between the US and Cuba, for example, trade between the two countries occurred as a result of Cuban refugees interacting with their compatriots who repatriated or stayed behind.

Refugees also bring knowledge, skills and training that can increase available resources in the economies of their host communities. For example, refugees have introduced swampland rice in Guinea, making use of land previously considered uncultivable. Refugees in Nepal have introduced new techniques of cultivating cardamom, an important cash crop there. Beyond agriculture, some refugees bring professional or trade skills. Policies that forbid refugee employment force skilled individuals into idleness; policies that permit refugee employment allow those individuals to maintain their skills and contribute the fruits of their training to their host nation. Moreover, because the host nation has not paid for the training of these individuals, it reaps benefits that outweigh its investment.

The human capital ‘windfall’ that refugees offer is maximised when refugees are able to travel to urban centres where jobs are more readily available. Host communities reap economic benefits in the form of new jobs and increased tax revenue that significantly outweigh the costs of additional social services and environmental protection measures.² Refugees who work purchase goods and services, re-circulating money and benefitting host economies by increasing local demand.

Overcoming resistance

Yet allowing refugees to work – and granting them the mobility needed to secure

employment – remains controversial. Host governments may fear that permitting employment and mobility will lead refugees to remain permanently, potentially changing the host country’s culture and/or absorbing resources. Governments may also face pressure from nationals who fear increased competition for available jobs, particularly in countries where unemployment already is high.

In practice, refugees are more likely than nationals to start new businesses, increasing rather than reducing the number of available jobs. Refugees who work also are more likely voluntarily to return home, to have the financial ability to return home when that becomes possible and to do so sooner than they would otherwise.³ They are less likely to depend on economic assistance from host governments or donor nations to repatriate, and they are more likely to have the means to sustain themselves as they settle back into life at home. This, in turn, increases the country of origin’s capacity to accommodate returnees.

Legal and moral arguments for refugee rights can be compelling. Faced with a wide array of competing political, economic and social pressures, however, host governments need to be able to show their citizens that granting refugees their rights will benefit, not harm, the nation. In the case of refugee work rights, the evidence is mounting of the benefits that accrue when refugees are allowed to access safe, lawful employment.

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1. www.unhcr.org/statistics/populationdatabase.

2. Refugee Council of Australia, ‘Economic, Civic and Social Contributions of Refugees and Humanitarian Entrants – literature review’, p9, available at <http://tinyurl.com/RefCouncilofAus-Contribution>

3. See, for example, Paulo Sérgio Pinheiro ‘The Return of Refugees’ or Displaced Persons’ Property’, 12 June 2002, E/CN.4/Sub.2/2002/17, discussing the experience of Bosnian refugees attempting to return and the importance of property www.refworld.org/docid/3d52953c4.html

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In memoriam: Belinda Allan

Belinda Allan, who played an influential role in the establishment of FMR's predecessor the RPN, died on 28th June 2013.

Belinda was the Refugee Studies Centre's first Development Officer and worked closely with the RSC's founder, Barbara Harrell-Bond, to secure funding to launch the Refugee Participation Network Newsletter (later to be relaunched as Forced Migration Review) in 1987. She continued fundraising for the RPN and to provide support and advice to the RPN Editor until – and even after – her retirement in 1999. We will miss her unflinching enthusiasm and humour as well as her passionate commitment to the rights of refugees.

Marion Couldrey, RPN/FMR Editor



Refugee rights: beyond the 1951 Convention 20 November 2013, 5pm, Oxford

Professor Yakin Ertürk, member of the Council of Europe's Committee for the Prevention of Torture and former UN Special Rapporteur on Violence against Women, will give the 2013 Annual Harrell-Bond Lecture. Details at www.rsc.ox.ac.uk/events/harrell-bond-2013

Refugee voices

24-25 March 2014, Oxford

This international conference will explore the voices and aesthetic expressions of those dispossessed, displaced and marginalised by the pre-eminence of the nation state. The conference will bring together scholars from across the social sciences and researchers in cultural studies, literature and the humanities to look beyond the nation state and international relations in order to give new attention to the voices and aspirations of refugees and other forced migrants themselves. Among the themes to be explored are historical and cultural sources and meanings of flight, exile and forced migration, as well as the significance of encampment, enclosures and forced settlement. Details at www.rsc.ox.ac.uk/events/rsc-international-conference-2014

New appointment – Lecturer in International Human Rights and Refugee Law

Dr Cathryn Costello has been appointed as the Andrew W Mellon University Lecturer in International Human Rights and Refugee Law at the Refugee Studies Centre, beginning October 2013. Dr Costello has been a Fellow and Tutor in EU and Public Law at Worcester College, Oxford, for the past ten years. She has published widely on many aspects of EU and human rights law, including asylum and refugee law, immigration, EU Citizenship and third country national family members, family reunification and immigration detention. www.rsc.ox.ac.uk/people/academic-staff/cathryn-costello

New Working Papers

The two worlds of humanitarian innovation
(Working Paper 94)

Louise Bloom and Dr Alexander Betts, August 2013

Writing the 'Other' into humanitarian discourse: Framing theory and practice in South-South humanitarian responses to forced displacement
(Working Paper 93)

Julia Pacitto and Dr Elena Fiddian-Qasmiyeh, August 2013

Access these and other RSC Working Papers at www.rsc.ox.ac.uk/publications/working-papers

Article: 'The fetishism of humanitarian objects and the management of malnutrition in emergencies'

RSC researcher Tom Scott-Smith's article, published in the latest issue of *Third World Quarterly*, examines two common objects in humanitarian assistance: a therapeutic food called Plumpy'nut, and a tape for measuring malnutrition known as the muac band. It argues that humanitarian relief has become a standardised package reliant on such objects, which receive excessive commitment from aid workers and are ascribed with almost magical powers. Online at <http://tinyurl.com/TWQ-Scott-Smith-2013>

International Summer School in Forced Migration

7-25 July 2014, Oxford

The RSC's three-week International Summer School enables people working with refugees and other forced migrants to reflect critically on the forces and institutions that dominate the world of the displaced. Aimed at mid-career or senior policymakers and practitioners involved with humanitarian assistance and policy making for forced migrants, plus researchers in forced migration. Details at www.rsc.ox.ac.uk/study/international-summer-school

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Deportation-related research at the RSC

Dr Matthew Gibney, Reader in Politics and Forced Migration at the RSC, is currently conducting research on aspects of deportation focusing in particular on the relationship between deportation power and the development of modern citizenship. More information can be found at www.rsc.ox.ac.uk/people/academic-staff/gibney See also:

M J Gibney (2013) 'Is Deportation a Form of Forced Migration?' *Refugee Survey Quarterly*, Vol 32, No 2, pp116-129. <http://rsq.oxfordjournals.org/content/32/2/116.abstract>

M J Gibney (2013) 'Deportation, Crime and the Changing Character of Membership in the United Kingdom' in K Aas & M Bosworth (Eds) *The Borders of Punishment*, Oxford University Press.

M J Gibney (2013) 'Should citizenship be conditional? Denationalization and Liberal Principles', *Journal of Politics*, Vol 75, No 3, pp646-658.

M J Gibney (2011) 'Citizenship, Deportation and the Boundaries of Belonging', *Citizenship Studies*, September 2011 (with Bridget Anderson and Emanuela Paoletti), Vol 15, No 5, pp547-563.

Forthcoming issues of FMR www.fmreview.org/forthcoming**Crisis migration (FMR 45)**

Due out February 2014.

More details at www.fmreview.org/crisis

Faith-based organisations and responses to displacement (FMR 46)

Due out June 2014.

Call for articles online at www.fmreview.org/faith

Deadline for submissions 13 January 2014.

Climate change, displacement and the Nansen Initiative (FMR 47)

Due out November 2014.

25th Anniversary issue

Articles published to date look back over 25 years discussing subjects including the environment, disability, reproductive health, humanitarian action, internal displacement, accountability and logistics.

See:

www.fmreview.org/25th-anniversary

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Detention Guidelines

UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention

- Guideline 1: The right to seek asylum must be respected.
- Guideline 2: The rights to liberty and security of person and to freedom of movement apply to asylum-seekers.
- Guideline 3: Detention must be in accordance with and authorised by law.
- Guideline 4: Detention must not be arbitrary, and any decision to detain must be based on an assessment of the individual's particular circumstances, according to the following:
- 4.1: Detention is an exceptional measure and can only be justified for a legitimate purpose.
 - 4.2: Detention can only be resorted to when it is determined to be necessary, reasonable in all the circumstances and proportionate to a legitimate purpose.
 - 4.3: Alternatives to detention need to be considered.
- Guideline 5: Detention must not be discriminatory.
- Guideline 6: Indefinite detention is arbitrary and maximum limits on detention should be established in law.
- Guideline 7: Decisions to detain or to extend detention must be subject to minimum procedural safeguards.
- Guideline 8: Conditions of detention must be humane and dignified.
- Guideline 9: The special circumstances and needs of particular asylum-seekers must be taken into account.
- Guideline 10: Detention should be subject to independent monitoring and inspection.

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Online at www.unhcr.org/refworld/docid/503489533b8.html

