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OXMO

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EDITORIAL

Welcome to the second issue in Volume 4 of the Oxford Monitor of Forced Migration (OxMo), a student-run monitor publishing the work of students and recent graduates.

Immediately after the last issue of OxMo was published in May 2014, the United Nations Refugee Agency announced that the global number of displaced people has reached over 50 million for the first time since WWII. This is a result of a series of unsolved refugee and humanitarian crises, and speaks to the ongoing need to address root problems, protracted situations of displacement, and provide emergency assistance to the displaced. Such actions, however necessary, often remain politically contentious. We were disturbed by the UK Foreign Office's announcement that they will not support search and rescue operations for vulnerable migrants and refugees attempting to reach asylum across the Mediterranean. This decision was made despite the fact that these operations have saved an estimated 150,000 migrants from drowning. Such developments, as well as the ongoing Syria crisis, have led a growing set of global voices that have sought to question and critique the role and responsibility of countries in the 'Global North'. OxMo has contributed to this debate, as well.

As rich countries are urged to accept more Syrian refugees through resettlement process, questions about 'Fortress Europe'shave become even more salient. In September 2014, we were pleased to host the **'Fortress Europe Project'** on the OxMo website. This blog provided a platform for the various voices from the 'border', and opened space for dialogue between Lampedusa and Brussels, migrants and border guards, and Italian and German students. We are proud that both the OxMo website and articles within this issue seek to address perceived injustices and bring to light the ongoing struggle of forced migrants around the globe.

This issue opens with an academic article exploring structures of refugee governance in Kakuma Refugee Camp through a case study and the concept of Foucauldian governmentality. Drawing on her experiences as a researcher in Kakuma, author Mandy Jam compellingly argues that local practices of refugee governance resemble colonial structures of domination. Through the concept of governmentality as well as post-colonial theory, Jam creates an acerbic and convincing argument regarding the similarities between contemporary humanitarianism and colonialism, as enacted in the refugee context.

The Policy Monitor section addresses the Syrian displacement crisis and explores future durable solutions. Author Catherine Tyson outlines the evolution of the crisis and evaluates future options for solutions. She analyses both domestic policies of neighbouring states and international policies regarding resettlement. After analysing both resettlement and local integration options, she concludes that eventual repatriation represents the most viable option for Syrian refugees. This article relays some of the complexities of the crisis as well as the challenges faced by not only refugees but policymakers and practitioners when assessing safe and durable options during situations of violence and social upheaval.

In the Law Monitor, Meltem Ineli-Ciger discusses the uncertain status of Syrians seeking refuge in Turkey and the implications of a 2013 Law on Foreigners and International Protection. The article argues that although the law creates a fairer and more credible asylum system for asylum seekers and refugees, the 2013 Law does not contribute much to the legal protection regime of Syrians since they are granted temporary protection status, rather than being governed under national asylum seeker or refugee processes. In the second Law Monitor article, Nathan Van Wees challenges popular public and media assumptions a recent

court case in Australia—the *Plaintiff S4* case—will have a significant legal impact on limiting the length of mandatory immigration detention in Australia. The ruling requires that the 'purpose' of detention must be achieved 'as soon as reasonably practicable'; however, the article argues that this condition is inherently difficult to apply.

The Field Monitor submission in this issue visually explores the Saharawi refugee camps in the Western Sahara. Photographer and journalist Juan Joséo Pfeifauf engages with the striking scenery of the desert camps through a short photo series from 2012, offering readers visual insights into life in the camps with informative captions from interviews with producers Alvaro Longoria and Javier Bardem of the Spanish documentary "Sons of the Clouds".

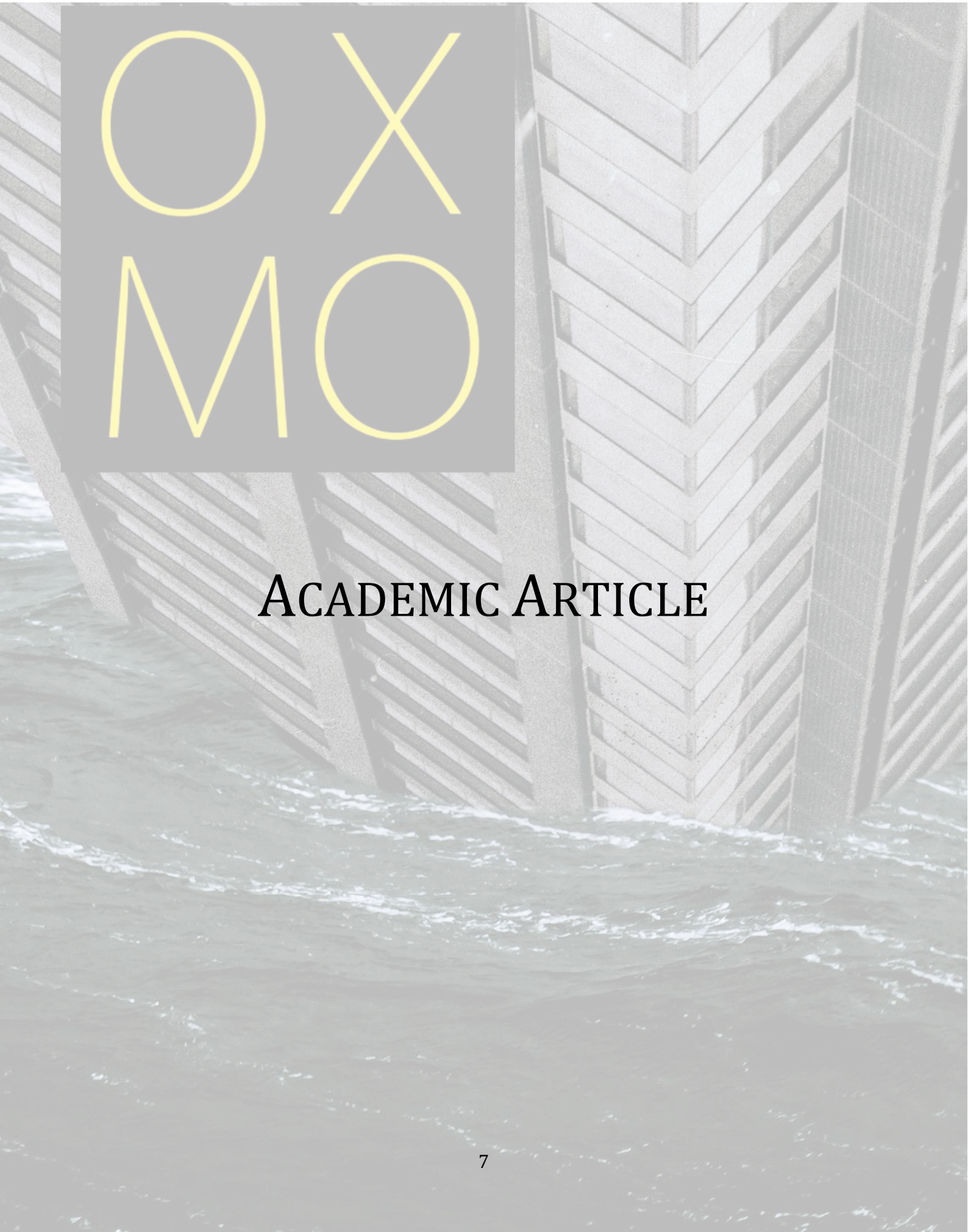
The Firsthand article of this issue offers an historical insight into the mass displacement from Pakistan to India following the Partition of Punjab in August 1947. The author, Sonali Narang, captures the day-to-day narratives of individuals who were among the millions displaced and ultimately found refuge and sought to build new lives in the city of Panipat. These accounts convey some of the successes and ongoing challenges surrounding the government's settlement programme while also revealing the personal impacts of displacement.

This issue marks the last publication under the current editorial team. We would like to thank the team for all of their hard work this year, as well as the upcoming editorial board who served as shadow editors for this edition. It has been a privilege to work with such a talented and committed body of editors, and we have been delighted by the diverse numbers of articles and issues presented by authors who submitted articles for Volume 4 of OxMo.

As preparations for the 2016 World Humanitarian Summit continue to focus on building 'a more inclusive and diverse humanitarian system' through consultations and dialogue, it remains critical that the voices of students and young academics worldwide are heard. We hope that OxMo will continue to serve as a unique platform for international young academics to share research and engage in transnational dialogues on forced migration.

Evan Easton-Calabria & Nina Elizabeth Weaver
Co-Editors-in-Chief
Oxford, December 2014

The next volume of OxMo will be published by the new 2014-2015 editorial team, with the first issue to be published in Spring 2015. Please see the Call for Papers at the end of this issue for submission details.



ACADEMIC ARTICLE

Boundaries of Civility Transgressed? Studying Practices of Humanitarian Government, Difference, and Power in Kakuma Refugee Camp

By Mandy Jam

This article draws on ethnographic observations of structures of refugee governance in Kenya's Kakuma Refugee Camp. It revisits the continued relevance and functionality of the concept of governmentality in the analysis of forms of authority and power dynamics in settings of humanitarian and camp government. By means of a case study analysis, the article aims to demonstrate how, in the socio-politically remote and geographically isolated setting of Kakuma, locally enacted practices of refugee governance cause tension and relationships characterised by a simmering animosity between agency staff and camp residents. It is argued that the camp's day-to-day governance structures bear a compelling resemblance to the pseudoscientific, essentialist, stereotypical bodies of imagery that informed and directed previous colonial relationships of domination. In doing so, the article aims to contribute to the ongoing exploration of historically constituted connections between the project of colonialism and that of contemporary humanitarianism in the context of refugee assistance.

INTRODUCTION

At the Kakuma Refugee Camp, just above the entrance of the camp-managers' offices at the compound of the regional Department of Refugee Affairs (DRA), a signboard reads, 'Kakuma Camp. Office of the Vice President. Ministry of State for Immigration & Registration. Department of Refugee Affairs.' Displayed at the centre of the board, surrounded by text, one can identify Kenya's familiar national Coat of Arms: an image of two lions holding two crossed spears and shield with a white cockerel in the middle. The shield has colours similar to those of the Kenyan national flag. The unified parts of this image are historically understood to signify protection, unity, and – the defence of – freedom. Underneath the picture is written: *'Refugees are real people'* [quotation marks in original, italics added] (Al Jazeera 2013).[1] This phrase, which is, indeed, a quotation, is easy to miss upon first glance. It is displayed in a smaller font than the remaining text and situated at the bottom of the board. What does it mean; 'refugees are real people'? If the phrase is a quotation, whose is it? Why was it considered to be important enough to be re-cited here, at this particular spot?

In most first formal encounters, the compound of the camp manager – constituting the official representative of the Government of Kenya (GoK) in Kakuma's administration – is logically the first place visitors will be introduced to when arriving in the town of Kakuma. Before entering the physical camp itself, this phrase is one of the first things the – observant – visitor may read. Newly arriving asylum seekers may, in some cases, also report or be delivered here, in anticipation of registration. I had seldom seen a phrase like this, referring to the basic fact of humanity, the essential 'realness' of refugees, and thought it compelling.

In the field of refugee assistance and advocacy, one is used to seeing banners and posters with slogans referring to human rights and rights-based approaches in the corridors and offices of respective agencies. However, most of these messages directly or indirectly point to the importance of specific rights or related concerns, such as education, health, sex and gender based violence. If the camp administration considered this phrase important enough to

[1] For a moving image of this signboard, see the video at 01:05 minutes. [Last accessed on 25 November 2014].

be quoted, did that mean the – to me self-evident information conveyed by it – was not equally self-evident to others? If refugees' 'real peoplehood' needed to be emphasised in such a form, upon entering a refugee camp, what did that mean? If one would assume the message, this classification of real peoplehood, indicates a lack of consensus on the matter, what is the alternative? Less peoplehood, non-peoplehood?

During my fieldwork in Kakuma, these and other questions concerning representational objects and practices, encounters and dialogues, text- and non-text based, came to be a central focus of inquiry. This article examines questions related to mechanisms of governmentality, the regulatory mechanisms and official discourses through which subjects are governed, and practices of representation in the camp and in the area of refugee protection. It is an effort to contribute to the ongoing exploration of historically constituted connections between colonial structures of control, on the one hand, and the contemporary political economy of humanitarianism and 'Aidland's' social life-worlds, on the other (Mosse 2013).

The multiplicity of ways in which international refugee assistance policies are translated into everyday practice by regional representatives and staff of UNHCR and implementing partners varies greatly on the local level. These local 'cultures' may readily elude the sustained attention of external observers and monitoring bodies, as these are commonly intent on observing grave and visible rights violations. However, the ethnographic study of refugee spaces' daily workings can nuance our understanding about complex forms of sociopolitical organisation, their distinct, on-the-ground variations, and related and continuous processes of future imagination and present negotiation, as expressed and enacted by *all* actors, including refugees (see also Sigona 2014). I believe such scholarship to be of relevance in the case of refugee camps, which are often located close to porous state borders and in climatologically challenging areas. Scholarly attention has been paid to the fact that camps, due to their relative isolation, are prone to a multitude of security problems and arbitrary conduct (e.g., Crisp 2000; Verdirame 2011). However, such humanitarian spaces have been, at times, subject to rather uniform, depoliticised media portrayals which tend to foreground news of climatological, environmental, and seasonal challenges to refugee livelihoods and health. In Kenya, reports on the consequences of droughts or floods, rather than, for example, events of sociopolitical association, membership, and conflict, contribute to a singular representation of camps that, in turn, runs the risk of perpetuating the dominant equation of refugees with apolitical beings, and the camp as a site providing shelter to 'bare life' in the Agamben-esque understanding.

Alternatively, a body of literature has emerged that appears to celebrate contemporary refugee camps as progressive places of (educational) opportunity and development, in which urban features can be discerned and alternative economies are thriving. Although efforts that positively approach encampment and promote refugees' resilience should be appreciated, they cannot easily be reconciled with constricting realities of denied rights to refugee employment, movement and other forms of participation and association in host societies. Such representations tend to overlook, for instance, power-abusing practices by state actors. To illustrate this, during my fieldwork in Kakuma refugees reported that Kenyan police officers demand unofficial 'taxes' from refugee owners of informal businesses, confusing their role to enforce stability in the camp with that of tax-collectors. Moreover, the representation of the camp as a city – albeit without citizenship rights bearing inhabitants – effectively conceals the failure of encampment as a temporary, and not a durable solution to forced migration crises. Recently, the discussion surrounding camp legitimacy has seen recurred attention on both scholarly and public platforms (e.g., Hovil 2014; Kagan 2013; Pobjoy & Verdirame 2013). A noteworthy highlight in this regard is the newly released and UNHCR approved 'Policy on Alternatives to Camps' (2014), which provides a long awaited

addition and response to UNHCR's 2009 'Policy on Refugee Protection and Solutions in Urban Areas'.

The purpose of this article is to demonstrate how, in the case of Kakuma, a camp which has been in place for over two decades, locally enacted practices, and expressions of refugee protection and camp governance can lead to tension and relationships characterised by a simmering animosity between nongovernmental agency staff, state actors, and refugees. Based on ethnographic observation and subsequent analysis, I argue that particular manifestations of tension bear a compelling resemblance to the pseudoscientific, reductionist, stereotypical rhetoric and bodies of imagery which informed and directed relationships of domination between 'native' populations and colonial administrators in 19th and 20th century African colonial territories (Berman 1990, Cooper 1996, Mangan 2012, Spurr 1993).

The article will be structured as follows: first I will provide a brief contextualisation of Kakuma as a fieldwork setting, wherein access restrictions and barriers are put up by different actors comprising the refugee regime. As the negotiation of access to regulated refugee spaces and programming activities influences processes and outcomes of ethnographic knowledge production in profound ways, I consider it an epistemological obligation to deconstruct and reflect on access limitations experienced. This will be followed by a theoretical framework in which I make an effort to revisit the continued relevance and functionality of the concept of governmentality in the analysis of forms of authority and power dynamics in settings of humanitarian and camp government. I then introduce the case study central to subsequent analysis; an event which was announced as a legal awareness training in Kenyan law, intended for refugee incentive workers and facilitated by Kenyan UNHCR employed lawyers. The remainder of the article will be dedicated to a deconstructive discourse analysis of this event, and employs the post-structural approach of governmentality, as well as a set of notions derived from postcolonial theory and cultural studies to do so. I will suggest that, to understand on a more comprehensive level the day-to-day realities of camp governance and its associated representational practices, opaque forms of authority division need to be interrogated in a wider context of historically formed relationships of colonial domination and rule. Ethnographic research can be of value in illuminating persistent remnants of colonial structures of domination by identifying and dissecting the more subtle and concealed, that is, less obvious and visible, mechanisms of control and governance.

CONTEXT - Putting into perspective the refugee camp as a field of ethnographic inquiry

The ethnographic research on which this article is built took place between January and June 2012. The bulk of this time was spent in Kakuma, with little interruptions, and extended data-collection in Cairo, Nairobi, and Addis Ababa. During this fieldwork period, I concentrated observation efforts on identifying modes of governmentality in the camp, that is, the ways in which an inconclusive spectrum of regulatory mechanisms and supporting official discourses pertaining to, for example, camp security, basic needs, or environmental hazards, translated into encounters between local representatives of Kakuma's refugee regime, and refugees residing in the camp. However, when speaking of 'encounters', I do not merely refer to verbal, face-to-face interaction. I also include that kind of interaction belonging to a more subtle, inconspicuous non-verbal domain, where messages can be conveyed both symbolically and metaphorically and where meaning is constructed – and fixed – both 'dialogically' and 'intertextually' (Hall 1997a: 233, 235). Here, one of the parties, most often 'the humanitarian actor', may be physically absent or otherwise inaccessible to 'the refugee',

and his or her contribution to the dialogue and the production of meaning may be substituted by material objects signifying physical distance and spatial segregation, in the form of barbed-wire fences, guarded gates, or sign- and notification boards. The voices of UNHCR and NGO staff may be effectively mediated by these objects and other instructed voices, belonging to security guards hired to protect their workplaces or living quarters.

The distinction between verbal and non-verbal encounters, and between official/formal and unofficial/informal interaction and spaces, has defined the experience and possibility of doing ethnographic research in this setting to a great extent. Over the course of this research project I learnt that being present in a refugee camp as a researcher for an extended period of time was considered odd and perhaps unsettling both by refugees and humanitarian actors. When not in the capacity of either UNHCR or NGO staff, an 'extended period of time' – as opposed to brief, officially scheduled visits expected from journalists, donor representatives and occasionally invited consultants – seemed to mean anything more than a few days. Indeed, the fact that camps are invariably securitised spaces means 'access to them is supervised' and researchers' activities restricted, if not regulated entirely (Agier 2011: 53, see also Harrell-Bond & Verdirame 2005; Hyndman 2000; Verdirame 1999). Independent researchers are subjected to a form of control and surveillance that is different, albeit not unlike, that exercised on refugees in that same space. In other words, modes of governmentality work on everyone, in more or less subtle ways. I contend that investigative efforts concentrating on other issues in camps whilst remaining unaware of or otherwise disregarding governmentality's workings on the researcher and the research being conducted would run a serious risk of flawed findings and biased interpretations of the information yielded. 'Doing' ethnography in Kakuma, for me, continuously meant asking myself why I spoke with whom and how and by whom that particular communication had been established.

CONCEPTUALISATION – Governmentality & Humanitarian Government

Governmentality, within Foucauldian scholarship, is often quite neutrally understood as a range of practices which take the conduct of people as object of scrutiny (Bröckling et al. 2011, Fassin 2011a, Mitchell 1990). In an essay written just after his lectures at the Collège de France of 1978-79, wherein he first used the term *gouvernementalité*, Foucault nuanced his preoccupation with 'the question of power' by stating he was not so much concerned with power as with the ways in which human beings are made subjects by the power relationships they are immersed in (1982: 778). The novelty of this emphasis on the production of 'the subject' at the time, was the recognition of the relational workings of power, as operating in a complex domain of 'relations of force, strategic developments and tactics' (Hall 1997b: 43). Didier Fassin speaks of governmentality as the myriad of 'institutions, procedures, actions, and reflections that have populations as object' (2011a: 214). Contrary to the closely related concept of biopolitics – strictly speaking a 'politics of life', of biological existence and sociopolitical living, of *zoë* and *bios* – Fassin argues governmentality not to be about forms of life, but only about the political economy regulating populations, and producing 'human collectivities' (2011b: 186).

The concept of governmentality emerged as an analytical instrument – not as a theory – to be put to use in efforts to understand that complex domain where the relational exercise of power directs, regulates, and modifies the conduct of both governing actors and governed populations. Foucault speaks in this respect about the ways in which certain actions modify others. He writes: 'It [the exercise of power] is a total structure of actions brought to bear upon possible actions; it incites, it induces, it seduces, it makes easier or more difficult; in the extreme it constrains or forbids absolutely; it is nevertheless always a way of acting upon an

acting subject.... A set of actions upon other actions' (Foucault 1982: 789). This sounds rather oblique and inarticulate, as if every human activity can, and should in fact be interpreted within the realm of a governing regime's authority, reach, and effects. Foucault has directed his attention mainly to the discontinuities between technologies within the spheres of law, discipline and security techniques, created by the state and executed by state-directed institutions like the police (Bröckling et. al. 2011: 4). However, it should be noted that it is likely that he indeed meant *all* action within predetermined parameters as defined by a regime, which leaves room for a certain degree of personal autonomy and choice; not just action that *coerces* individuals and groups into certain behaviour. As Tanya Li has eloquently summarised, the practice of governing populations then entails: 'setting conditions so that people will be inclined to behave as they should … yet not attempting to dictate actions or coerce the population' (Li 2005: 387).

In settings of humanitarian government, similar regulatory conditions and boundaries are set by a more diverse set of governing actors, complicating structures of authority and control. When we employ governmentality as an analytical tool in the study of humanitarian government, we ought to take into account the context-dependent composition of such regimes, which usually include the presence of both state and non-state actors. In most definitions however, emphasis is placed on underlying ethical, legitimising principles. Humanitarian government is defined as 'the administration of human collectivities in the name of a higher moral principle that sees the preservation of life and the alleviation of suffering as the highest moral value of action' (Fassin 2007: 151; 2011b: 194). Verdirame, problematising how humanitarianism 'escapes easy definitions', asserts an overall consensus of it being a normative 'set of ethical principles' employed to 'alleviate suffering' (2011: 36-37). Such definitions do not do much to clarify the role of different governing actors in situations of humanitarian assistance, and moreover, fail to address the complexity and shifting markers of state sovereignty, due to the blurring of boundaries between state and non-state administrative forms. Indeed, the binary opposition between what belongs to the realm of the governmental and nongovernmental is not that self-evident (Fassin 2007: 50-51) nor easily dissectible in humanitarian regimes – or, by extension, in refugee camp spaces.

Kakuma's day-to-day administration is still, for a large part, in the hands of UNHCR. UNHCR continues to conduct Refugee Status Determination (RSD) procedures, despite reforms and the now greater involvement of the Government of Kenya (GoK) in other domains of governance, predominantly in the areas of security, dispute settlement, and crime prosecution. Whilst recognising considerable efforts made in the last fifteen years, it can still be argued that the camp exhibits extraterritorial characteristics, in which administrative sovereignty is, at best, arbitrarily shared between UNHCR and GoK. This results in an omnipresent and perpetual confusion amongst all actors concerning the boundaries and scope of responsibility (Griek I. 2007; Pobjoy & Verdirame 2013; Verdirame 1999). In Kakuma, a space of humanitarian government, boundaries are thus blurred between what is governmental and nongovernmental action. According to Fassin, this is further complicated by humanitarianism's underlying 'moral logic' – the alleviation of suffering – which is claimed as the rationale driving both state and non-state actors to intervening in humanitarian crises (2007: 50-51). Since humanitarian government is grounded in this form of (moral) reason, humanitarian settings have long been represented as depoliticised. Like Verdirame (1999; 2011), Fassin does not question the political character of humanitarian spaces. This is important, perhaps especially so for non-statist research like much anthropological refugee related research, for non-state – e.g., humanitarian – parties are increasingly recognised as *de facto* governing actors, and in some instances entirely take over states' responsibilities concerning refugee protection. Here, too, we ought to remember the significance of the

'range of possibilities' Foucault refers to when he, over and over, reiterates this notion of 'an action upon an action', through which 'a whole field of responses, reactions, results, and possible inventions may open up' (Foucault 1982: 789). I find this significant, firstly, because it does not perpetuate the agency/passivity dualism that all too often resurfaces in forced migration studies discourse. It also acknowledges the possibility of resistance against structures of power by forcibly displaced groups and individuals inhabiting regulated (camp) spaces, such as Kakuma. Secondly, and more importantly, I argue that the richness of Foucault's thinking about the subject and power when it comes to studying modes of government in these 'other spaces' like refugee camps (Foucault & Miskowiec 1986), redirects the researcher's attention to that type of action, that type of behaviour, which may not be so very visible, and typically takes place in the 'interstices of the state, International Organisations (IOs) and Non-Governmental Organisations (NGOs)' (Elyachar 2003:598; Li 2005). It is in these 'interstices', in these intermediate – that is, informal – spaces, that the ethnographic researcher is likely to move around, perhaps by choice, perhaps by default. Whether because of the former, or as a result of the limited access to official spaces, the unique strength of ethnography may very well be to make use of this hybrid position to study precisely the invisible domain of activity where subtle struggles take place and where seemingly fixed power relations are contested. Not in overt protest and resistance by the 'underprivileged', but by responding to the unplanned byproducts of policies, that is, the governing parties' actions (Elyachar 2003; Tsing 2000).

To illustrate this rather abstract description of ethnography's function, I will elaborate briefly on the consequences of my hybrid position in Kakuma. By conducting research independently – that is, by not being a (staff) member of UNHCR or any of its implementing agencies, and by not being invited to conduct research on a consultancy basis – my access was limited and sometimes subjected to a rather arbitrary logic. Whereas I was warmly received in the camp's reception centre and new arrivals area, for example, on some occasions I was denied access to refugee field posts, and at other times invited. Several fieldposts, three at the time of my research, have been constructed in different parts of the camp. Here, asylum seekers and refugees can make inquiries concerning the status of their RSD process (commonly referred to as 'refugee mandate') or resettlement profile. However, visiting hours are organised according to a rather non-efficient, bureaucratic system of appointment slots, and backlogs are common. As a result, the guarded, busy waiting areas have functioned as a central fieldwork site. Officially the field posts are meant to facilitate easier access and communication between refugees and UNHCR officials. However, refugee participants reported the field posts to be understaffed, and suspected UNHCR to have built them deep into the camp not to facilitate easier access, but to keep dissatisfied refugees from sprawling its compound, and away from the public eye.

On another level, I did not manage to formally arrange interviews with UNHCR officials through official channels, whilst being invited to its compound on an informal basis. I could be both offered and denied lifts by NGO vehicles around the camp. Despite having been granted official permission by the Kenya Department of Refugee Affairs (DRA) and having been welcomed by the Kakuma camp manager upon arrival, my presence regularly seemed to evoke suspicion and rumour amongst agency staff.

In the next section I will proceed to the introduction of the selected event and subsequent unit of analysis: a training facilitated by Kenyan, UNHCR-employed lawyers, officially held for the purpose of deepening incentive psychosocial staff's knowledge about Kenyan law.

SPECTACLES OF DIFFERENCE – Competing discourses in interaction/confrontation

During the first half of my stay in Kakuma I attended what was announced as a 'legal awareness training', facilitated by three UNHCR lawyers. The announced purpose of the training was to update incentive psychosocial staff on Kenyan law in several domains. Sexual offences and general 'civil' dispute cases were noted as separate main themes to be discussed during this afternoon. Although incentive staff members – refugees employed by one of the agencies, receiving a small payment in return – are hired in all kinds of positions, it was explained to me that the training targeted psychosocial workers because of their 'intense immersion in refugee communities'. The following observations were taken from my field notes, partly jotted down on the spot, compiled into a more coherent entry later that day:

'I had looked forward to it [attending the training], as I had hoped it to be a gathering and exchange on the basis of equality between UNHCR and NGO employees, as colleagues....It turned out differently. The [relatively young] lawyers facilitating the training were Kenyan nationals. They informally told me they had just started working for UNHCR. From the beginning of the training – I sat amongst the psychosocial caseworkers in the audience; the trainers stood at the other end of the room, in a classroom type of setting – the atmosphere is tense. The caseworkers whisper amongst each other, the trainers do not seem comfortable talking before this group; they have trouble capturing the attention of the attendees. When addressing the topic of sexual offence, the Congolese and Somali refugee communities are specifically named as prone to rape 'their women'. Not at any point during the training is the occurrence of rape being contextualised as having been employed as a strategy of war in certain conflicts. One lawyer says: 'In Kenya, we will not accept you, Somali and Congolese communities, just to continue solving matters as rape amongst yourselves. In Kenya, rape is a criminal act for which you will be arrested.' Whispering can be heard in the audience. Simultaneously [also referring to rape], a lawyer states: 'I know that now, within Kakuma camp, women are often exaggerating things.' I assume she means to indicate previous situations in which refugee women reported rape, but where later was discovered they had fabricated the story in the hope of being found eligible for resettlement due to being 'at risk'. The lawyer however, does not elaborate on her statement. Many of the lawyers' following statements start with: 'In our civilised country of Kenya, we have laws that…and we expect you all to abide by these laws, and to let go of the customary habits that you might be used to within your homelands, because you should know that here you will be imprisoned for life for acts that you might just get away with in these places where you come from'. Sudanese participants in the training are addressed personally when the topic of child abduction comes up, and Somalis are spoken of as if they would all circumcise their girls, deny their children primary education and perceive religious 'madrassas' as a substitute. The atmosphere grows tense. There is one highlight in discussing the role of police officers, when some caseworkers raise the issue of bribery and open drunkenness of officers and their misbehaviour towards refugee girls, saying that Kenyan police officers do as they please and act as if they are above the law, whereupon one lawyer simply states that it would be refugees' own mistake if they would pay bribes, because after all is it not their own responsibility to know their rights and behave accordingly?

The general atmosphere within the meeting, and the tone of speech by which the lawyers address attendees is a condescending one, which leads me to wonder whether it is a training meant for caseworkers or for refugees. What is the intended audience here? The

> *refugee population as a whole or people in the capacity of being NGO staff members as well as colleagues within the Kakuma refugee regime? When talking about 'rights' and 'laws', there seems to be an opposition between the attendees – who are indeed, as incentive staff, both employees and refugees – and UNHCR lawyers conducting the training, supposed to explain Kenyan law. There seems to have arisen a confusion between what is, in fact, the law of the Kenyan nation state and that what is perceived as moral, normative, or cultural behaviour. International humanitarian law or international conventions related to refugees are not mentioned. The laws of Kenya are presented as civilised laws that are, by extension, communicated as different and superior to laws to which refugees, according to the lawyers, would be accustomed. Following this reasoning, Kenyan representatives of the law are thus expected to teach refugees on their rights and obligations in its territories.'*

I selected this particular event for analysis because it was one of the first I witnessed in which reductionist, stereotypical remarks about refugees and their respective nationalities were openly, publicly expressed in a professional context.The event, instead of a training in which particular components of Kenyan law were given special attention, and psychosocial caseworkers were provided with the tools to integrate certain legal principles in their work, can be interpreted as an attempt to regulate a population's behaviour within the purview of Kenyan law and state interest. It was a confusing event for all actors, mostly so because both parties seemed inclined to alternate, or were forced to alternate, between roles, statuses, and loyalties. The lawyers appeared caught between state and non-state positions, and their presentation offers a typical example of how boundaries are blurred between state and non-state actors and roles in humanitarian government. Although a motivation to reassert Kenyan judicial authority and national sovereignty appeared to direct their behaviour and attitude, the lawyers worked for UNHCR, a non-state governing actor, and were supposed to officially represent UNHCR on this occasion. However, it seemed it was their national identity as Kenyans, as well as their occupational status as upholders of Kenyan law, that inspired their conduct during the training. The lawyers spoke from a prejudiced position about refugees, and engaged in an active process of othering; reducing caseworkers to refugees, and refugees to uncivilised, violent strangers on Kenyan sovereign territory. In response, the caseworkers were compelled to shift from their professional roles to their status as refugees, and a governed population in a humanitarian setting. The analytical focus on human conduct and relational workings of power in governmentality, alongside an overall Foucauldian perspective that foregrounds the formation of discursive subject positioning, proves instrumental in the effort to interpret and signify this event. To further analyse the role reversion and interpersonal antagonistic tension that emerged as a result, I suggest it is useful to deconstruct the event by means of placing it in a wider (post)colonial context of historical domination.

Randy Lippert returns to the early postcolonial period and the rise of nationalism in newly independent African states when arguing that humanitarian intervention in the context of refugee crises was framed as non-political, yet founded on colonial preconceptions of 'moral deficiency':

> Since decolonization, Western authorities have assumed that these new nations (along with their rulers and citizens) are morally deficient. … Postcolonial African nations and their populations have been assumed to require aid and development of one kind or other to be brought into line with the requirements of liberal nationhood, ways of ruling, and conduct. Refugeeness allowed Western "non-political" intervention through the UNHCR and NGOs in these regions where "political" interference would have been impossible, first through emergency refugee aid, and then [through] additional programs of refugee

> development. Refugeeness became a tactic in which such intervention was both made possible and justified. Since something or someone forced refugees in these sociopolitical spaces to flee, it could be assumed that "something or someone'' was morally lacking and needed enhancement through specialized intervention (1999: 305-306).

During the 'law training', ample suggestive reference was made to the supposed decency and degree of civilisation of refugee communities and their respective countries of origin. The compelling frequency of the word 'civilised', being uttered by the lawyers during their talk forced me to remember its previous politicised connotation in British colonialism. Indeed, as Lippert (1999) postulates, its ideological heritage and accompanying discourses penetrated into later hegemonic projects of developmentalism and humanitarianism (see also Barnett & Weiss 2008; Chimni 2009; Macrae 1998). Although the critique of humanitarianism as a mere continuation of imperial domination is not one I wish to reproduce, I do tend to agree with Verdirame when he notes that we need to be observant of 'the hegemonic side of humanitarianism', as 'humanitarians might become the unwitting executors of a hegemonic strategy' (2011: 37,49). Precisely because of the overall lack of extended external presence in, and the scrutiny of camp regimes, I would add to Verdirame's remark that this awareness becomes particularly important in the context of researching refugee regimes located in remote places; the very regions where refugee camps are (still) created and maintained.

My recorded observations led me to ask what function discrimination occupies within relationships of domination and the overall mechanisms of power structuring Kakuma. What could have been the reason for these lawyers to choose to continue reiterating this particular word – 'civilised' – to convey the validity of Kenyan law in the context of exceptionality that, to a certain extent characterises all humanitarian settings? What are the odds that, in contemporary Kenya, a nation-state burdened by a pervasive legacy of British colonial rule, Kenyan humanitarian staff come to grips with the collective memory of this colonial past by means of the continuous, albeit unofficial, assertion that the morally deficient 'something or someone' (Lippert 1999) is not, or no longer, them, but the refugees they are meant to assist?

In the training, there seemed to be confusion between *the law,* understood here as obligations and rights within Kenya and *perception* of what is perceived as moral, cultural or 'normal'. A clear effort was made to represent Kenya as a democratic state, following the rule of law; a 'civilised' country in which there is no place for rape or abuse, kidnapping, murder, or other types of crime 'that refugees might be used to as normal and allowed' in their respective countries of origin. What this event conveys is that the (a)historical invention of 'the refugee' as immoral, impure and uncivilised – as 'other' – is still prevalent. It is being reproduced in Kakuma, and as a result smears and, indeed, pollutes daily interaction between (local) humanitarian staff and refugees (Malkki 1995). What happened within this encounter was an active reproduction of stereotypes – if not racial, then along national, ethnic, moral lines – and difference being actively (re)asserted and perpetuated (Hall 1997a). It did not matter that the people called to attend the training were not 'just' refugees, but incentive NGO staff members who participated in a professional capacity. What is most interesting here is that one would expect there to be less of a hierarchy, less of a distance between training-givers and training-receivers, so to speak, because both groups were staff operating within, and representing, a single refugee regime. There is a certain similarity, a 'sameness' (Bhabha 1984, Mcleod 2000: 53). Compellingly, however, it seems that the lawyers felt they had to demonstrate their authority/superiority by establishing a difference, and reminding training participants of their ultimate refugee status.

The work of Homi Bhabha on mimicry, stereotypes, and ambivalence in colonial discourse provides valuable insights in the dynamics at work within contemporary encounters between

refugee incentive staff and the national refugee regime, embodied by – predominantly – Kenyan personnel in Kakuma. Mimicry first, points to a created resemblance and imitation as one side of its 'double movement'; it is about reducing the difference between those who govern and those who find themselves governed (Bhabha 1984: 127) In colonial discourse, these are 'the coloniser' and 'the colonised', and could be translated – however in a simplified, dualistic form – to 'the humanitarian' and 'the refugee', for analytical purposes. The governed are taught, trained, and educated according to hegemonic – Western – standards and bodies of knowledge, and as a result start to more and more resemble those who govern. In Kakuma, as in other refugee camps, refugee jobs are framed as serving as an 'incentive'. Conventionally, 'incentive' can mean motivation, encouragement, but also concession. Apart from being trained and thus adopting a humanitarian idiom, incentive staff begin to look similar to other – Kenyan and ex-pat – agency staff. They can be seen to wear T-shirts indicating the NGO that employs them, often accompanied by a key cord and a cap portraying the logo of the respective agency. Attire may grant (former) incentive staff highly desired privileges, such as access to the agencies' compounds and proximity to UNHCR officials. These are otherwise difficult, if not impossible, to attain for refugees. Elements that are not similar, but divergent and largely invisible, include locally enacted interpersonal attitudes and treatment, as well as remuneration. 'Incentive' for refugees in Kakuma means a salary ranging between 3000-4000 Ksh a month, which amounts to approximately 50 U.S. Dollars. The camp administration can justify this by claiming they adhere to Kenya's reservations to the 1951 Refugee Convention – refugees are not permitted employment in Kenya – but what it represents for refugees workers is discriminatory difference, and the impossibility to be valued in ways similar to national and local staff, regardless of professional experience.

Bhabha introduces the notion of 'ambivalence' to point out the polarity between sameness and difference, and the kind of 'double movement' this entails; those governed are continuously in motion, 'sliding between' the two polarities. He argues that stereotypes' primary function is to 'fixate' subjects, that is, the governed, but since this fixation can never be stable, and ambivalence could potentially culminate in the mockery of established authority and even in – petty – resistance against the status quo, authority needs to be continuously reasserted by the reiteration of 'repertoires' featuring stereotypical imagery (Bhabha 1984:130; Hall 1997a: 232). Particular stereotypes invoked in the event of the training implicitly sent an ideological, polarising message: refugees originate from chaotic countries where lawlessness reigns. Therefore 'they' [refugees] are not civilised, like 'us' [Kenyans].

In conclusion, it ought to be remarked that the 'humanitarian conscience'; the process of empathising with survivors who fled situations of protracted conflict and persecution, was absent from this training. Instead of the promotion of mutual understanding and fruitful collaboration, a divisive difference was reasserted by the lawyers' resorting to a distancing, denigrating language; an idiom strikingly similar to that of the previous colonial project's civilising mission. Moreover, what was equally absent from the training was a genuine rights-based approach to law (Verdirame 2011: 48, 51), as well as adequate references to legal principles in both human rights law and international refugee law. Whilst the 'real peoplehood' of refugees is affirmed on the signboard at the camp manager's compound, it is cause for concern that this same peoplehood is insufficiently acknowledged by some of those humanitarian professionals tasked with the day-to-day representation of the local camp regime.

CONCLUDING REMARKS

Theoretical and analytical instruments provided by governmentality, cultural analysis and postcolonial theory can prove insightful in understanding the daily workings of remote refugee regimes as being historically constituted. When studying camps ethnographically, paying attention to 'systems of representation' may assist researchers in interpreting struggles of power, whether latent or manifest, as the circulation of official and unofficial discourses and repertoires – speech and action, visual images, material objects – carry ideological, not always unambiguous messages. As demonstrated in the introduction of this article with the example of the signboard, we ought to ask ourselves: Who sees this? What may be the 'preferred message' here? What is the viewer supposed to think? What else does this object/text/image signify? (Hall 1997a: 228; 1997b) In the case of material objects, their undisputed physical presence does not ensure an evenly fixed, stable, singular meaning (Lidchi 1997:162). Meanings are ever-changing and disputable, yet by making the event of the training the focus of inquiry in this article I have attempted to demonstrate that discriminatory patterns within interaction in Kakuma, when understood as remnants of those ideological structures that previously legitimised colonial rule, may go a long way in explaining current governmental practices and struggles of contested authority in camps. Confronted with such historically defined relationships of domination, anthropologists continue to be faced with the responsibility to evaluate structures of colonialism not as past, but as the ongoing and 'unfinished business of struggle and negotiation' (Pels 1997:164; Cooper & Stoler 1989).

Mandy Jam is an M.A. candidate in Cultural Anthropology at Leiden University. This article has emerged from ethnographic fieldwork conducted in Kakuma Refugee Camp, Kenya, which was part of a research project in partial fulfilment of the M.A. requirements. Mandy holds a B.A. degree in Cultural Anthropology & Development Sociology from the same university as well as a postgraduate diploma in Forced Migration and Refugee Issues from York University, Toronto. She was a former intern at Africa and Middle East Refugee Assistance (AMERA), Cairo. Currently she serves as a co-editor for the International Refugee Rights Initiative's (IRRI) Rights in Exile Refugee Legal Aid Newsletter (formerly the Fahamu Refugee Legal Aid Newsletter). For suggestions and comments, she can be contacted via email at mandyjam@hotmail.com.

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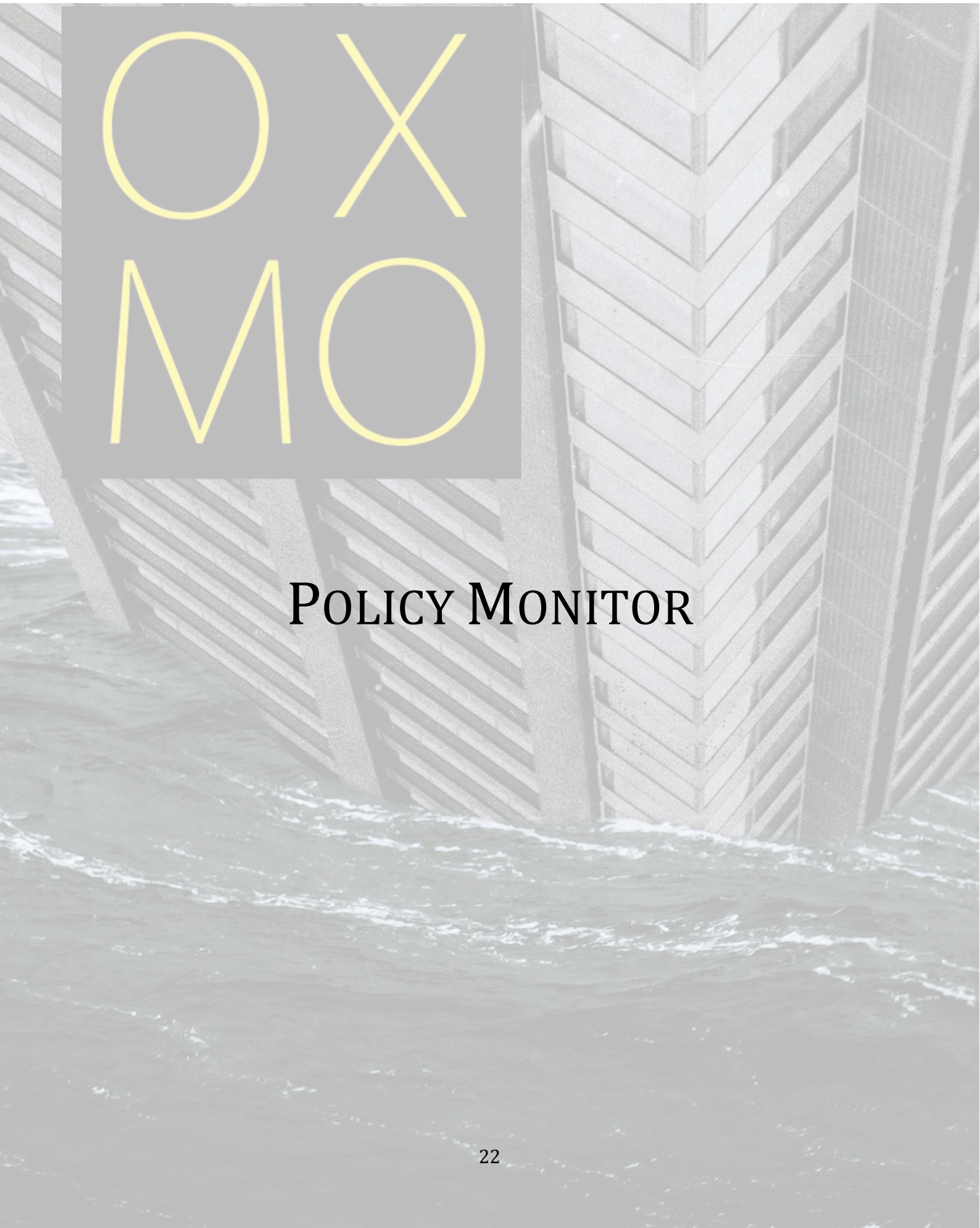
OXMO
POLICY MONITOR

The Syrian Displacement Crisis: Future Durable Solutions

By Catherine Tyson

The Syrian refugee crisis, a result of the violence of the several military groups sweeping the country during the prolonged civil war, is escalating each day as more people flee their homes and seek refuge in neighbouring nations. As the crisis has already become protracted, it is now more necessary to evaluate the access to the durable solutions – resettlement, integration, and repatriation - promoted by UNHCR once the conflict ceases. I argue that currently, from a governmental viewpoint, repatriation is the most likely solution to the Syrian refugee crisis due more to the unlikelihood of integration and the small scale of resettlement rather than any potentially quick reconstruction and stabilisation of Syria after the conflict ends.

The Syrian conflict began as one of many protests against authoritarian rule that swept the Middle East during the so-called 'Arab Spring', and erupted into a fully-fledged civil war on 15 March 2011 when government forces killed demonstrators in the southern city of Deraa (Global News 2013). During the ensuing violence between the Syrian military and several opposition forces and among the opposition forces, the death toll has exceeded 191,000 and is predicted to be much higher (USA Today 2014). As of 30 August 2014, it is estimated that more than 3 million Syrians have become refugees with an additional 6.5 million displaced within Syria (Martin 2014). Syrian refugees have primarily fled to Turkey, Jordan, Lebanon, and Iraq, with a smaller group fleeing to Egypt. According to its mandate, UNHCR extends protection to international refugees, including the 'search for and implementation of durable solutions for refugees from the available choices of voluntary repatriation, resettlement, or host-country absorption' (Akram 2002). In the case of host-country integration, or 'absorption,' Syrian refugees would remain in their countries of refuge and continue their lives and livelihoods there. In the case of resettlement, Syrian refugees would be relocated to third countries in which they would obtain legal status to pursue education, seek employment, and access public services. In sustainable repatriation to Syria, refugees would ultimately return home once safe return is possible and Syria's infrastructure is rebuilt.

In evaluating the likelihood of integration as a solution to the Syrian crisis, it is necessary to consider the domestic policies of regional states of refuge, and the stability and resources of host countries. Neither Jordan, Lebanon nor Iraq are signatories to the 1951 Convention, meaning that the refugees within their borders may not receive treatment according to international standards. Although these countries have historically been welcoming of refugees from neighboring Arab states, the protracted nature of past refugee crises has also had a part in shaping more restrictive refugee policies. In terms of domestic policy, Turkey, Jordan, and Lebanon resist offering full legal rights to Syrian refugees and, as a result, the refugees would likely struggle to obtain access to employment, healthcare, housing and education (Krajeski 2012). Additionally, Jordan and Lebanon have decreased the public aid available to most refugees and denied access to citizenship for the majority of refugees. These restrictive practices have not been amended to allow integration of past refugee groups; most Palestinian and Iraqi refugees in Jordan and Lebanon have not been able to attain legal status.

Regarding physical stability, Iraq continues to struggle with sectarian violence and a weak infrastructure, Egypt is undergoing acute political changes, and Lebanon is grappling with increased sectarian tensions and increased economic strife as a result of the Syrian refugee

presence (Reuters 2012; Almeida 2014). A country of 5 million currently supporting over 1 million Syrian refugees, Lebanon has recently declared that they will only accept Syrian refugees of 'exceptional circumstances' in the future (Holmes 2014). Additionally, Jordan is one of the poorest countries on earth in terms of water resources and, even if its current policies allowed for integration, would struggle to absorb its refugee population. There is currently nothing to suggest that the domestic policies, resources, or stability will change in order to provide a different situation for Syrian refugees. Due to these highly prohibitive factors that are unlikely to change, integration will be unavailable as a durable solution to the vast majority of Syrian refugees.

In terms of resettlement, a key element that must be remembered is that resettlement spaces are distributed among various refugee groups worldwide, not concentrated on a single population. According to UNHCR, there were 16.7 million refugees worldwide as of 20 June 2014 (UNHCR 2014a). However, the files of only 93,226 refugees were submitted by UNHCR in 2013 for consideration by resettlement countries and just 71,411 refugees were actually resettled (UNHCR 2014b). These numbers demonstrate that resettlement will prove woefully inadequate for the 2 million strong – and growing - Syrian refugee population. Indeed, UNHCR notes that the numbers of resettled refugees have steadily decreased over the past few years, indicating a disheartening trend. Between 2009, 2010 and 2011, resettlement submissions and departures dropped an average of 22 and 15 percent respectively (UNHCR 2012).

If this trend persists, there will only be fewer chances for resettlement in the near future, not more. Although twelve resettlement countries are currently offering emergency resettlement response mechanisms for Syrian refugees, including additional resettlement spaces and expedited resettlement processing, only 1,700 additional resettlement spaces were offered with an open-ended number of places from the United States (UNHCR 2012). However, as of April 2014, the U.S. had only accepted 121 Syrian refuges (Acer 2014). Germany has offered 4,000 temporary spaces for Syrian refugees that are not intended for permanent resettlement (Donkin 2013). Due to these severe limits of resettlement, it is unlikely that resettlement will be an accessible solution for most Syrian refugees.

There are several factors to consider in evaluating the likelihood of repatriation. According to UNHCR policy, certain conditions must be met that allow refugees to exercise their 'social, economic, civil, political and cultural rights' and enjoy 'peaceful, productive and dignified lives' (UNHCR 2008). In order for repatriation to occur, refugees must be able to return home without fear for their lives and domestic infrastructure must be strong enough to protect returning refugees' rights. The speed with which these criteria are met hinges largely upon the outcome of the conflict itself. Although talks between rebel leaders in November 2012 yielded a unified 'National Coalition of the Syrian Revolution and Opposition Forces' (Gordon 2012), rebel forces then began fighting against each other in addition to fighting against Assad's forces (Khaleej Times 2013), creating greater conflict within Syria and diminishing the chances of a peaceful transition to a unified government. Additionally, more Syrian infrastructure is destroyed with each day of the conflict, reducing the likelihood of a strong infrastructure at the conflict's end.

However, the diminished capacity for immediate peace and infrastructure strength does not mean that it will never be safe or feasible to return to Syria. While safety and stability likely will not occur immediately at the conflict's end, several war-torn countries have become safe and stable enough to support repatriation according to UNHCR standards in the past. These cases lend support to a scenario of eventual peace and stability in Syria. Currently, UNHCR is ready to officially announce that it is safe for Iraqi refugees to return to their home country.

Although UNHCR's standards may remain in dispute amongst leading human rights organisations, they are far more likely to be given weight in a governmental viewpoint than the objections of activist organisations. Additionally, many refugees have voluntarily returned home in past conflicts and, therefore, seem likely do so in this case. But the largest factor in favour of repatriation as the most likely eventual solution to the Syrian refugee crisis is the fact that it is more likely to be realised than either resettlement or integration. The state policies and national issues precluding integration and the minimal international response to resettlement are highly unlikely to change anytime in the near future, as previously outlined. Because there presently remains a better chance that conditions for repatriation will occur at some point in the future, repatriation is the most likely durable solution available to Syrian refugees, even if it is still a long way off.

Catherine Tyson is a recent Magna cum Laude and Phi Beta Kappa graduate of Northwestern University. She studied Anthropology and International Studies and received the Frank B. Safford prize for her honors thesis in which she proposed a new framework for U.S. resettlement policy informed by her fieldwork with Iraqi and Bhutanese refugees in Chicago, IL. During her undergraduate tenure, Ms. Tyson worked extensively with the Center for Forced Migration Studies and Heartland Alliance. Ms. Tyson is currently gaining expertise in various technologies and organizational solutions as a Global Business Services Consultant at IBM.

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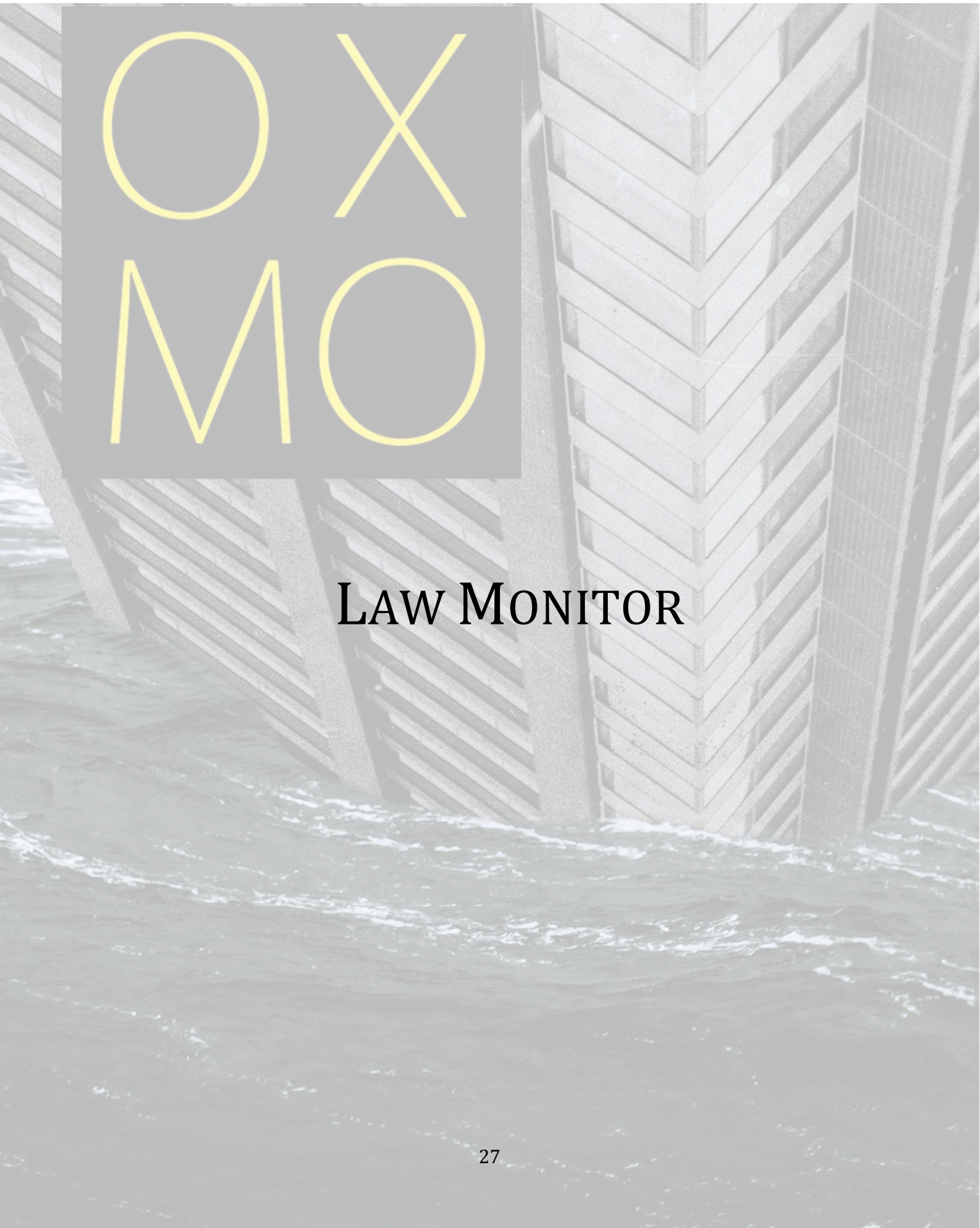
OXMO
LAW MONITOR

Implications of the New Turkish Law on Foreigners and International Protection and Regulation no. 29153 on Temporary Protection for Syrians Seeking Protection in Turkey

By Meltem Ineli-Ciger

More than 800,000 Syrians registered in Turkey have now been protected under a temporary protection regime, being addressed as 'guests' or 'temporary protection beneficiaries' by the Turkish authorities. Implementation of the temporary protection policy for Syrians means that Syrians are neither refugees nor asylum seekers under Turkish domestic law. In 2013 Turkey adopted its first law that regulates asylum, namely the Law on Foreigners and International Protection (the 2013 Law), which entered into force in April 2014. The 2013 Law promises better protection standards and more safeguards for asylum seekers and refugees, but how about Syrians in Turkey? In view of recent legal developments on asylum namely, adoption of the 2013 Law and Regulation no. 29153 on Temporary protection (the 2014 Regulation), this article examines the current legal protection regime of Syrians in Turkey.

Introduction

Since March 2011, thousands of Syrians have fled their homes owing to the civil war and have sought refuge in a number of countries, most significantly Turkey, Jordan, Egypt, and Lebanon (Migration Policy Centre Research Report 2012). The number of Syrians registered in Turkey exceeded 869,000 in September 2014, with 160,000 more Syrians awaiting registration (UNHCR Syria Regional Refugee Response Inter-agency Information Sharing Portal 2014). So far, Syrians have been protected under a regime of temporary protection, which means that they are neither asylum seekers nor refugees under Turkish law.

The Turkish government adopted the Law on Foreigners and International Protection in 2013 and the new law promises to provide a better protection framework for refugees and asylum seekers. In October 2014, the Turkish Council of Ministers also adopted Regulation No. 29153 on Temporary protection (the 2014 Regulation), which clarified many aspects of the Turkish temporary protection regime implemented for the protection of Syrians. What are the implications of the entry in force of the 2013 Law and the recently adopted Regulation for the legal status and protection of Syrians in Turkey? This article explores this question, arguing that although the 2013 Law and the 2014 Regulation introduced a clear legal basis of temporary protection and provide safeguards against refoulement as well as a number of essential rights and entitlements for Syrians, there is still room for further improvement and clarification.

Arrivals from Syria to Turkey and Introduction of Temporary Protection

In October 2011, the Turkish government introduced a temporary protection regime for Syrians who arrived to Turkey in order to seek refuge (Turkey's Response Plan 2014). Under this regime, Turkey protects all Syrians, Palestinian refugees and stateless persons living in Syria (Syria Regional Response Plan Strategic Overview 2014). Initially, both the scope of the temporary protection regime and its legal basis were unclear. Upon a parliamentary inquiry, the Turkish Disaster Emergency Management Presidency (AFAD), an organisation of the Ministry of Interior, described the legal basis of the temporary protection regime as a "Guideline with regard to the reception and admission of stateless and Syrian nationals"

(AFAD Response to the Parliamentary Inquiry 2012). AFAD added in its statement that the Guideline could not be made public (AFAD Response to the Parliament Enquiry 2012). Even after the parliamentary inquiry, there was little information available on the temporary protection regime.

However, Turkish state practice on temporary protection at the time and the declarations of government officials suggested that Syrians crossing the border would not be subjected to individual refugee status determination processes, but would instead be automatically given temporary protected status (Helsinki Citizens Assembly Press Release 2012). This policy means that until the temporary protection regime ends, the refugee status claims of Syrians will not be processed (Turkish Parliament Human Rights Observation Commission Review Report 2012; UNHCR FAQ 2014).

Despite the controversies and lack of clarity surrounding the Turkish temporary protection regime, its implementation does not necessarily violate Turkish international obligations. In fact, although Turkey is party to the Convention relating to the status of refugees (the 1951 Convention), it maintains a geographical limitation: with the standing reservation to the 1951 Convention, Turkey is not obligated to grant refugee status to asylum seekers coming from outside of Europe (UNHCR Global Appeal 2013). On this basis, Turkey does not violate its international obligations, in particular the ones related to the principle of non-refoulement, as long as it admits Syrians to its territories and does not return them to Syria or any third state in a manner inconsistent with Article 33 of the 1951 Convention, Article 3 of the Convention against Torture (CAT), Article 3 of the European Convention on Human Rights (ECHR) or Article 9 of the International Covenant on Civil and Political Rights (ICCPR).

Adoption of Turkish Law on Foreigners and International Protection and Regulation No. 29153 on Temporary protection

In 2013, Turkey adopted the Law on Foreigners and International Protection (the 2013 Law) which entered in force in April 2014. Although the 2013 Law introduces a number of safeguards and promises better protection standards for asylum seekers and refugees, it does not lift Turkey's reservation to the 1951 Convention (Kirişçi Turkey's New Draft Law 2012). As such, Turkey can still choose to not process Syrians' asylum claims and this still would not violate its international obligations.

Article 91 of the 2013 Law introduces a legal basis to the temporary protection regime and defines temporary protection "as a measure to be provided to foreigners who, having been forced to leave their country and cannot return to the country they left, have arrived at or crossed the borders of Turkey in masses seeking emergency and temporary protection." Beside this provision, Article 91 of the 2013 Law provides that,

> "Proceedings to be followed on reception into, stay in, rights and obligations in, exit from Turkey of such persons, along with measures to be taken against mass movements […] shall be governed by a regulation to be issued by the Council of Ministers."

The Council of Ministers adopted the 2014 Regulation on 22 October 2014, and it entered into force the same day (UNHCR Operational Update, p. 4). The 2014 Regulation establishes rules on registration and documentation procedures to be followed by temporarily protected persons, introduces a clear right to stay in Turkey until temporary protection regime is over, and clarifies the set of rights and entitlements for the temporary protection beneficiaries. (UNHCR Operational Update, p. 4) As Syrians are currently protected under temporary protection regime in Turkey, all provisions of this Regulation apply to Syrians.

An Analysis of the Temporary Protection Regime Introduced by the 2013 Law and the 2014 Regulation

This section analyses the Turkish temporary protection regime established by the 2013 Law and 2014 Regulation in view of the UNHCR Guidelines on Temporary Protection or Stay Arrangements published in February 2014, the EU Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary protection (EU temporary protection directive), and relevant academic literature on temporary protection.

Eligibility

Arguably, the starting point of regulation temporary protection regimes is identifying the groups eligible for temporary protection; it is necessary for temporary protection regimes to first make clear who would be eligible for temporary protection (Fitzpatrick 2000, p. 305). Under Article 7 of the Regulation on Temporary protection, persons eligible for temporary protection are determined as,

> "foreigners who, having been forced to leave their country and cannot return to the country they left, have arrived at or crossed the borders of Turkey individually or in masses seeking emergency and temporary protection and to whom international protection status determination procedures do not apply."

The 2014 Regulation is capable of protecting a broad range of individuals coming to Turkey for the purpose of seeking refuge when a mass influx occurs. Eligibility for temporary protection is, however, subject to the implementation of the 2014 Regulation. In order for the Regulation to be implemented, the temporary protection regime must be initiated by a decision adopted by the Council of Ministers following a proposal from the Ministry of Interior (Article 9 of the 2014 Regulation). When this happens, the decision of the Council of Ministers has to include a description of the specific group(s) to which the temporary protection regime will apply and the date for the temporary protection regime to take effect (Article 10 of the 2014 Regulation). This means that the Council of Ministers is the sole authority capable of designating groups eligible for temporary protection.

Having outlined the eligibility criteria set out by the 2013 Law and 2014 Regulation, it should be noted that at present all Syrians, Palestinian refugees and stateless persons living in Syria and seeking refuge in Turkey are designated as eligible for temporary protection.

The Principle of Non-refoulement and Admission at the Frontier

A regulation on temporary protection should set out rules related to the principle of non-refoulement and admission at the frontier (Fitzpatrick 2000, p. 305). Article 4 of the 2013 Law provides that,

> "No one who falls under the scope of this Law shall be returned to a place where he or she may be subject to torture, inhuman or degrading punishment or treatment, or where his or her life or freedom may under threat on account of his or her race, religion, nationality, membership of a particular social group or political opinion."

Since temporary protection beneficiaries are included within the scope of the 2013 Law, this provision is applicable to all Syrians who have been granted temporary protected status. In addition to this, Article 6 of the 2014 Regulation introduces a deportation ban and a non-

refoulement clause. Incorporation of the principle of non-refoulement to the 2013 Law and the 2014 Regulation increases the safeguards provided to temporary protection beneficiaries.

In addition to refoulement-related clauses, temporary protection regimes should make clear the rules on admission of persons seeking refuge in mass influx situations. The UNHCR Guidelines provide useful guidance on how to introduce such a clause, requiring states to permit the affected populations or persons entry to the host states and further note that "they should be provided access to territory and protection from direct or indirect refoulement." (UNHCR Guidelines on Temporary protection 2014, p. 4). Although Article 17 of the 2014 Regulation outlines procedures related to the admission of persons eligible for temporary protection to the Turkish territories, it falls short of establishing an obligation for the Turkish authorities to enable admission of persons designated as eligible for temporary protection to the Turkish territories. Despite absence of such an explicit obligation in the 2013 Law and the 2014 Regulation, in practice Turkey still continues its 'open door policy' and admits all persons fleeing Syria to its territories in practice. (UNHCR 'Revised Syria Regional Response Plan', p. 83) The fact that so far Turkey has admitted all Syrians to its territories and designated them as eligible for temporary and incorporated non-refoulement related provisions to its national laws is a positive practice that is in line with the UNHCR Guidelines.

Maximum Time-limit and Access to Refugee Status Determination Procedures

It is essential for a regulation on temporary protection to set a maximum time limit for temporary protection. Not doing so may lead to an indefinite temporary protection regime that would also undermine the 1951 Refugee Convention by suggesting an alternative to it for the protection of refugees instead of being an emergency response in mass influx situations (Fitzpatrick 2000, p. 299, 305; Hathaway and Neve 1997, p. 182). Hathaway and Neve suggest that there are two main elements for determining how long temporary protection should last: "the duration should allow revitalization of asylum capacity of states thus be long enough to allow many, if not most refuge-producing phenomena to come to an end […] and it should respect the physiological needs of refugees." (Hathaway and Neve 1997, p. 182). A number of commentators and instruments argue that the optimum maximum time limit to temporary protection can be determined as three years. (Hathaway and Castillo 1997, p. 17; EU temporary protection directive 2001; ILA proposal on temporary protection 2002). In another article, Hathaway and Castillo (1997, p. 18) suggest a period of five years as the maximum time limit for temporary protection. Given that the Syrian armed conflict has been ongoing for more than three years, and shows no sign of any durable solutions for the displaced Syrian community, the five years maximum time limit seems more appropriate to the context.

Unfortunately the 2014 Regulation does not provide such a maximum time limit. According to Article 10 of the 2014 Regulation, the Council of Ministers is entitled to set a maximum time limit, yet it is not obliged to do so. So far, the Council of Ministers has not introduced such a time limit to the temporary protection regime implemented for Syrians.

It is also essential for a regulation on temporary protection to clarify when temporary protection beneficiaries can access to individual refugee status determination (RSD) mechanisms. On this matter, Article 16 of the 2014 Regulation establishes that Turkey will not process asylum applications of the temporary protection beneficiaries until the temporary protection regime ends. In addition to this, according to Article 11 of the 2014 Regulation, the Council of Ministers can deprive temporary protection beneficiaries of access to RSD

mechanisms even after the temporary protection ends. Unlike the European Union's temporary protection directive, the 2014 Regulation does not introduce a right of access to individual RSD mechanisms following termination of temporary protection or clarify when this access will be granted, which is problematic for the rights and protection offered to the beneficiaries of temporary protection.

Rights and Entitlements of the Temporary Protection Beneficiaries

Furthermore, it is essential for a regulation on temporary protection to specify which rights are to be offered to the temporary protection beneficiaries. The following rights and entitlements should be guaranteed to temporarily protected persons: a) access to emergency care including access to shelter, food, water, medical treatment and physical security; b) access to identity and travel documents, c) access to referral, identification, screening, registration mechanisms and family tracing; and d) access to education (UNHCR Guidelines on Temporary protection 2014, p. 4, 5; EU temporary protection directive; ExCom Conclusion no 22). In addition to these rights, the following entitlements can be offered gradually to the temporary protection beneficiaries depending on the duration of their stay in the host states: access to housing, medical care, higher education, the labour market, and social security mechanisms. (UNHCR Guidelines on Temporary protection 2014, p. 4, 5; EU temporary protection directive; ExCom Conclusion no 22). Furthermore, the right to freedom of movement, provisions on non-discrimination, humane and dignified treatment, and guarantees against prolonged and arbitrary detention may be offered. (UNHCR Guidelines on Temporary protection 2014 p. 4, 5; EU temporary protection directive 2001; ExCom Conclusion no 22).

The 2014 Regulation improved the protection standards afforded to Syrians in Turkey by clarifying rights and entitlements of temporary protection beneficiaries. However, the 2014 Regulation falls short of providing an explicit right to work, education and social assistance to Syrians. According to the 2014 Regulation, persons eligible for temporary protection will be registered upon their arrival to Turkey following identification and a process intended to differentiate between combatants and civilians (Article 14, 18, and 19 of the 2014 Regulation). As a positive aspect, temporary protection beneficiaries are entitled to information and advice concerning the temporary protection regime in their own language (Article 19 (5) of the 2014 Regulation) and free access to emergency health care (Article 27 of the 2014 Regulation). Following the registration, they are provided with temporary protection beneficiary identity cards without any charge, which give them a right to stay in Turkey as long as the temporary protection regime continues. Once registered, they are referred to designated 'accommodation sites' (Article 22 of the 2014 Regulation). Within these temporary accommodation centres, temporary protection beneficiaries are provided with access to shelter, food, health care, social assistance, education and other services (Article 38 of the 2014 Regulation). In addition to these rights, the 2014 Regulation introduces the right not to be detained for the sole reason of irregular entry (Article 5 of the 2014 Regulation), right to access to family unification mechanisms (Article 49 of the 2014 Regulation), right to legal consultation and free access to translation services (Article 31 and 53 of the 2014 Regulation), and access to rehabilitation and other health services (Article 48 of the 2014 Regulation).

The 2014 Regulation does not guarantee an explicit and unlimited right to work, education, and social assistance for temporary protection beneficiaries. The 2014 Regulation indicates that access to primary and higher levels of education and other language and vocational training, access to labour market and social assistance *may be* provided to temporary

protection beneficiaries (Article 28, 29 and 30 of the 2014 Regulation), but the Council of Ministers is free to decide whether these rights will be provided or not. For example, Syrians who hold temporary protection beneficiary identity cards can now apply for work permits under Article 29(2) of the 2014 Regulation; however, there is no guarantee that the government authorities will grant such a work permit. Article 29 of the 2014 Regulation makes clear that the Council of Ministers can limit access of temporary protection beneficiaries to certain sectors, professions or geographical areas (UNHCR Operational Update, p.4).

End of the Temporary Protection

Finally, it is imperative to consider when and how the temporary protection regime will end. Temporary protection regimes are usually terminated when the time limit is reached or when certain requirements are satisfied; the UNHCR Guidelines on Temporary Protection state that temporary protection may end when on the "basis of an objective assessment based on clear indications – that the situation causing the displacement has ended, and voluntary return is reasonable and can be carried out in safety and dignity." (UNHCR Guidelines on Temporary protection 2014, p. 5). Similarly, Article 6 of the EU temporary protection directive requires the EU Council to consider whether "the situation in the country of origin is such as to permit the safe and durable return of temporary protection with due respect for human rights and fundamental freedoms and Member States" before terminating the temporary protection. In view of the outlined guidance, termination of temporary protection regimes and access of temporary protection beneficiaries to durable solutions should be regulated clearly.

According to Article 11 of the 2014 Regulation, the Council of Ministers is entitled to decide when temporary protection ends. Unfortunately, the 2014 Regulation does not refer to safe and durable return as prescribed by the UNHCR or outline which criteria should be considered by the Council of Ministers before terminating the temporary protection regime. As for access to durable solutions, Article 14 of the 2014 Regulation notes that, repatriation is the ultimate solution for the temporary protection beneficiaries. Article 42 of the 2014 Regulation provides, Turkish authorities may facilitate and support voluntary repatriation of the temporary protection beneficiaries in cooperation with international organisations and NGO's. In addition to this, Article 11 of the 2014 Regulation establishes that once temporary protection regime ends, the Council of Ministers *may* decide,

> a) To terminate temporary protection for all of the protected groups and order their return,
>
> b) To grant temporarily protected groups a group protection status or to process individual international protection claims of the protected persons,
>
> c) To allow temporarily protected groups to stay in Turkey under conditions that will be determined by the 2013 Law.

This article indicates that the Council of Ministers has the authority to prescribe which durable solutions will be available to temporary protection beneficiaries once temporary protection regime ends. Inclusion of local integration as one of the durable solutions in the 2014 Regulation is an improvement compared to previous legal ambiguity regarding the access of Syrians to durable solutions. However, the fact that the Council of Ministers can order the return of the all Syrians without considering cessation clauses provided in the 1951 Refugee Convention or the availability of return in safety and dignity is problematic.

Conclusion

In conclusion, although the 2013 Law and the 2014 Regulation introduced a clear legal basis of temporary protection, provided safeguards against refoulement as well as a number of essential rights and entitlements for Syrians, there is still room for further improvement and clarification. Introduction of a maximum time limit to temporary protection and unlimited right to work, education, and social assistance to the temporary protection beneficiaries can substantially improve the viability of the temporary protection regime set out by the 2013 Law and the 2014 Regulation. Once the temporary protection ends, it is essential to provide temporary protection beneficiaries access to individual RSD procedures and to limit the discretion of the Council of Ministers to order the return of temporarily protected groups. With additional legal clarification on these issues, it is possible for the Turkish temporary protection regime to become a more open, credible, and viable temporary protection system that is in accordance with Turkey's international obligations and the UNHCR Guidelines on Temporary Protection.

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Disclaimer: As there is no official translation of the 2014 Regulation on Temporary protection available at the time of writing, the translation of the 2014 Regulation provisions belongs to the author.

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Australian Immigration Detention after Plaintiff S4: New Limits, Little Change

By Nathan Van Wees

Mandatory detention of asylum-seekers has been a constant feature of Australia's immigration policy since 1992. With indefinite detention considered lawful and the average length of detention exceeding one year, a recent case ('Plaintiff S4') in the High Court of Australia was reported to be 'the end of Australian immigration detention as we know it,' potentially limiting the availability of lengthy (and indefinite) detention. This article assesses the likely extent of this change. The court's new temporal limitations on detention are (unfortunately) unlikely to add much to existing purposive limitations, meaning that reality will be unlikely to match the media's expectations.

Introduction

Mandatory immigration detention of asylum-seekers has been a constant feature of Australian law and practice since 1992. The average length of detention exceeds one year (DIBP 2014) and indefinite detention is lawful. In September 2014 however, the High Court of Australia delivered a unanimous judgment (in a case known as '*Plaintiff S4*') which was reported by media to spell 'the end for Australian immigration detention as we know it' (Chia 2014). It was hoped that the Court's decision would require asylum-seekers' claims to be processed in a more timely fashion, leading to a significant reduction in the average length of detention for asylum-seekers.

This article considers whether *Plaintiff S4* will result in meaningful legal and practical change. Legally, the judgment does incorporate a temporal limitation on detention for the first time: it must end 'as soon as reasonably practicable'. Practically, however, this is unlikely to add much to existing purposive limits in curbing lengthy immigration detention.

The facts of *Plaintiff S4*

The detainee in *Plaintiff S4* was a stateless person from Myanmar, who arrived in Australia by boat in December 2011 and was detained. Under Australia's *Migration Act* ('the Act'), such a person cannot apply for a permanent protection visa unless the Minister 'lifts the bar'; that is, exercises a power to allow that application to be made. The Minister does not have to consider doing so in any given case; the matter is one of complete discretion (*Migration Act* ss 46A, 189).

The plaintiff remained in detention for over two years, while the Department of Immigration assessed whether he was owed protection under the Refugee Convention or international human rights law. The plaintiff was found to be eligible for a permanent visa (*Plaintiff S4*: [14]-[20]).

Rather than a permanent visa however, the Minister granted two *temporary* visas (with three years' validity), without consulting the detainee. Importantly, these visas include conditions which prevent the holder from making any future application for a permanent visa (*Migration Act* s 91K). In the High Court, the plaintiff sought to invalidate the temporary visas, in an attempt to force the Minister to grant a permanent visa.

In finding the visas invalid, the Court assessed whether the plaintiff's detention had been lawful. The Court found (at [41]) that where a person was detained for the purpose of assessing eligibility for a permanent visa, the Minister could not then grant a different visa which would preclude the permanent visa ever being available – the detention would have been unnecessary.

The purposive limitations on immigration detention

The Court's judgment contains no novel pronouncements on what constitutes a valid purpose for detention. Detention is valid under the Act where exercised for the purpose of:

1) removing a person from Australia;
2) deporting a person for criminal conduct;
3) considering an application for a visa; or
4) determining whether to allow a visa application to be made (*Plaintiff S4*: [26]; *Migration Act* ss 189, 196, 198, 200).

These purposive limits on immigration detention are not new. These limits on detention stem from the fundamental principle that any governmental power is conferred for a purpose, and can only be exercised *for that purpose* (*Koon Wing Lau v Calwell* (1949): 556). For example, the government cannot detain someone under the deportation power, simply to ensure that they are available to give evidence in an unrelated criminal trial (*Park Oh Hoh v Minister for Immigration* (1989): 643). In *Chu Kheng Lim* (1992: 21-22, 63), a person could not be detained in order to be put back on their vessel, where that vessel had in fact been destroyed. The purposive limits reiterated in *Plaintiff S4* are therefore not novel restrictions on detention.

A new temporal limitation on detention

The legal novelty of the Court's judgment lies, rather, in the new temporal limit placed upon achieving these purposes. The provision of the Act which outlines the 'purposes' of detention (section 196) does not include any temporal limitation: it states only that a person must be held in immigration detention 'until' one of the purposes is achieved. It does not say how long that may take.

The power to remove a person from Australia (the first purpose listed above) *is* bounded by a temporal limitation, however. Section 198 of the Act provides that this purpose must be effected 'as soon as reasonably practicable'. The judgment in *Plaintiff S4* is important because it is the first time that this temporal limitation has also been applied to the *other three* purposes of immigration detention.

Removal from Australia is the only one of the purposes which must necessarily occur. The others may or may not happen, depending on the facts of each case. If these others fail however, a person *must* be removed under section 198 (*Plaintiff S4*: [32]). The Court therefore held (at [30], [35]) that all other purposes (which may or may not occur) must fit within that 'outer limit.' The Court thereby extended the application of the limitation from one purpose to all four.

The temporal limitation has only been applied in this way once before, and that was quickly overruled. In 2002, a single Federal Court judge held that the detention provisions 'introduce implicit purposive *and* temporal limitations' (*Al-Masri* (2002): 619 [40]). This decision did not survive an appeal, however. The Full Federal Court held that the provisions should not be

read together in that way (*Al-Masri* (2003): 88 [134]). The only limitations were the well-established purposive criteria.

This rejection of temporal limitations was confirmed in the High Court case of *Al-Kateb* (2004). In that case, two judges (in the majority) held that detention was not limited by the requirement to remove a person 'as soon as reasonably practicable'. Justice Hayne held (at 641 [237]) that the temporal limitation 'is not simply transferred from one section [of the Act] to others.'

Plaintiff S4 therefore sets a new direction. For the first time, the High Court recognised that there are both purposive *and* temporal limits on immigration detention. The temporal limitation ('as soon as reasonably practicable') was welcomed by those who wish to see an end to lengthy immigration detention in Australia. But will it yield substantial practical change?

The practical ineffectiveness of the new limitation

Unfortunately, the new legal ruling is unlikely to bring real change. The requirement to achieve a purpose 'as soon as reasonably practicable' is inherently difficult to apply. The *Al-Kateb* case (2004) is a perfect example. There, a stateless Palestinian had asked to be removed to Gaza (his birthplace) and the Act explicitly required that this take place 'as soon as reasonably practicable.' Nevertheless, a majority of the Court found that detention could extend *indefinitely*, so long as some attempt was being made to effect Al-Kateb's return. Applying the limitation to other detention provisions is therefore also unlikely to yield a useful dividend.

The problem here is that there are many things which can obstruct the achievement of a goal, such that the time it takes for that achievement to become 'practicable' grows longer. In *Al-Kateb*, negotiations with foreign governments for the return of a stateless person could not be swiftly concluded. In an earlier High Court case, Justice McHugh held that the sheer volume of visa applications meant that release could not be promptly realised, as there were limited resources to process those applications (*Chu Kheng Lim* (1992): 71-72). As Justice Hayne stated in *Al-Kateb* (at 638 [225] and 642 [239]), 'as soon as reasonably practicable' does not mean 'soon' and nor does it mean within a 'reasonable time.'

In reality, the only way to show that an aim could have been achieved sooner is to show that nothing was being done in pursuit of it. If the aim was not being actively pursued however, it also means that the detention could not be for the *purpose* of pursuing that aim. Therefore, the *temporal* limitation can only be shown to be breached if the *purposive* limitation is breached.

The facts of *Plaintiff S4* itself demonstrate this well. The plaintiff was detained for two years to assess eligibility for a permanent visa. He was then granted a different (temporary) visa which did not require the two-year assessment (or, therefore, two years of detention). He was therefore not released 'as soon as reasonably practicable,' breaching the temporal limitation. However, the *purpose* of his detention had also fallen away: detention to assess the permanent visa was made irrelevant by the temporary visa. What is ultimately persuasive, therefore, is that the *purpose* of detention shifted. It is only once the purpose of detention falls away that one can see that measures are not being effected 'as soon as reasonably practicable.'

Conclusion

Perhaps the clearest indication that the new temporal limitation on detention will prove ineffective is that the asylum-seeker in *Plaintiff S4* was re-detained as a result of that very judgment (*Plaintiff S4*: [9]). Practically, the temporal limitation in law will only be breached where the existing purposive limitations were *already* breached. The legacy of *Plaintiff S4* is therefore mixed. The judgment does signify an acceptance of legal temporal limitations rejected in previous cases; on the other hand, it is certainly not a practical end to 'immigration detention as we know it.'

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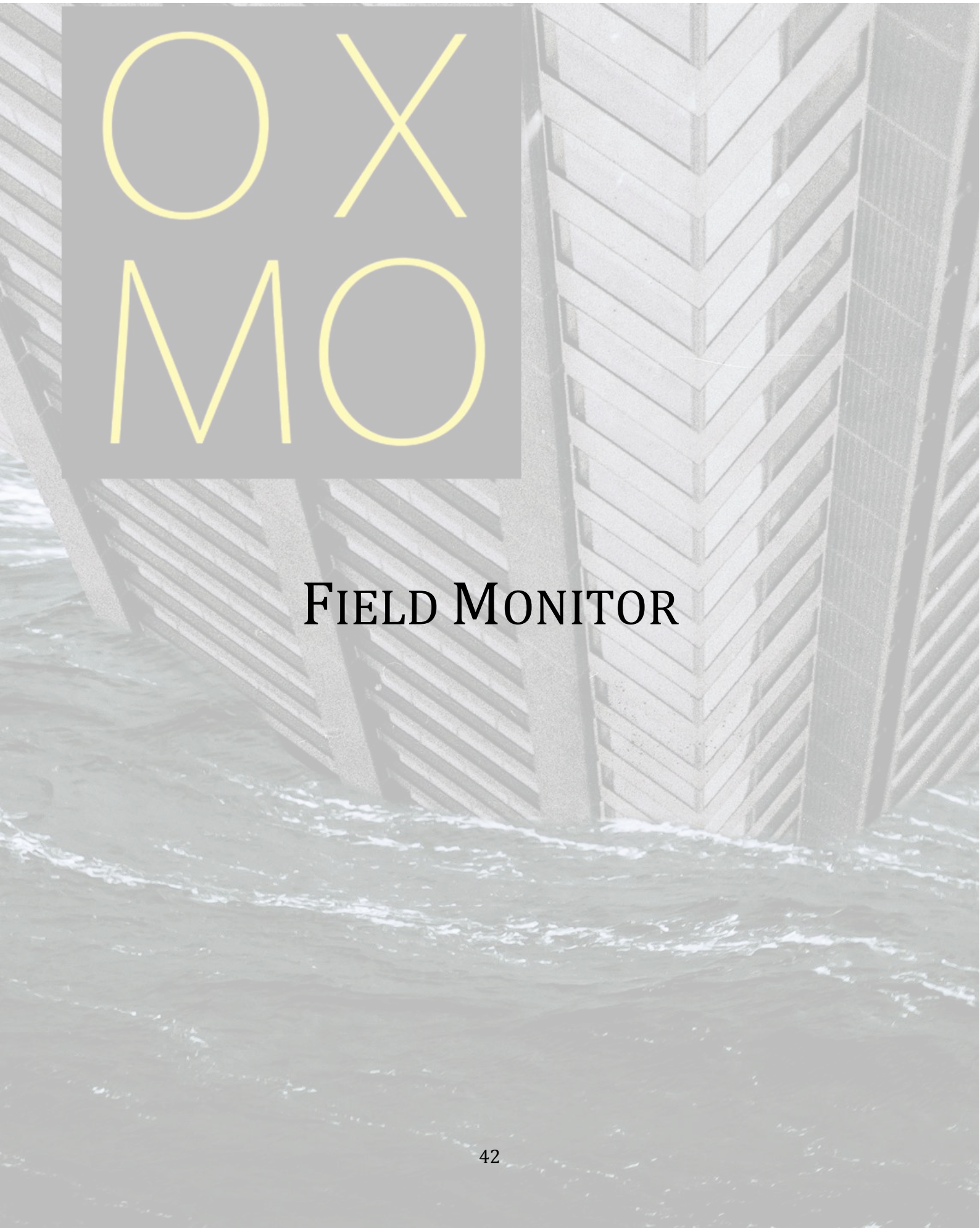


FIELD MONITOR

Sahrawi: A people abandoned by Spain and the UN

By Juan José Pfeifauf

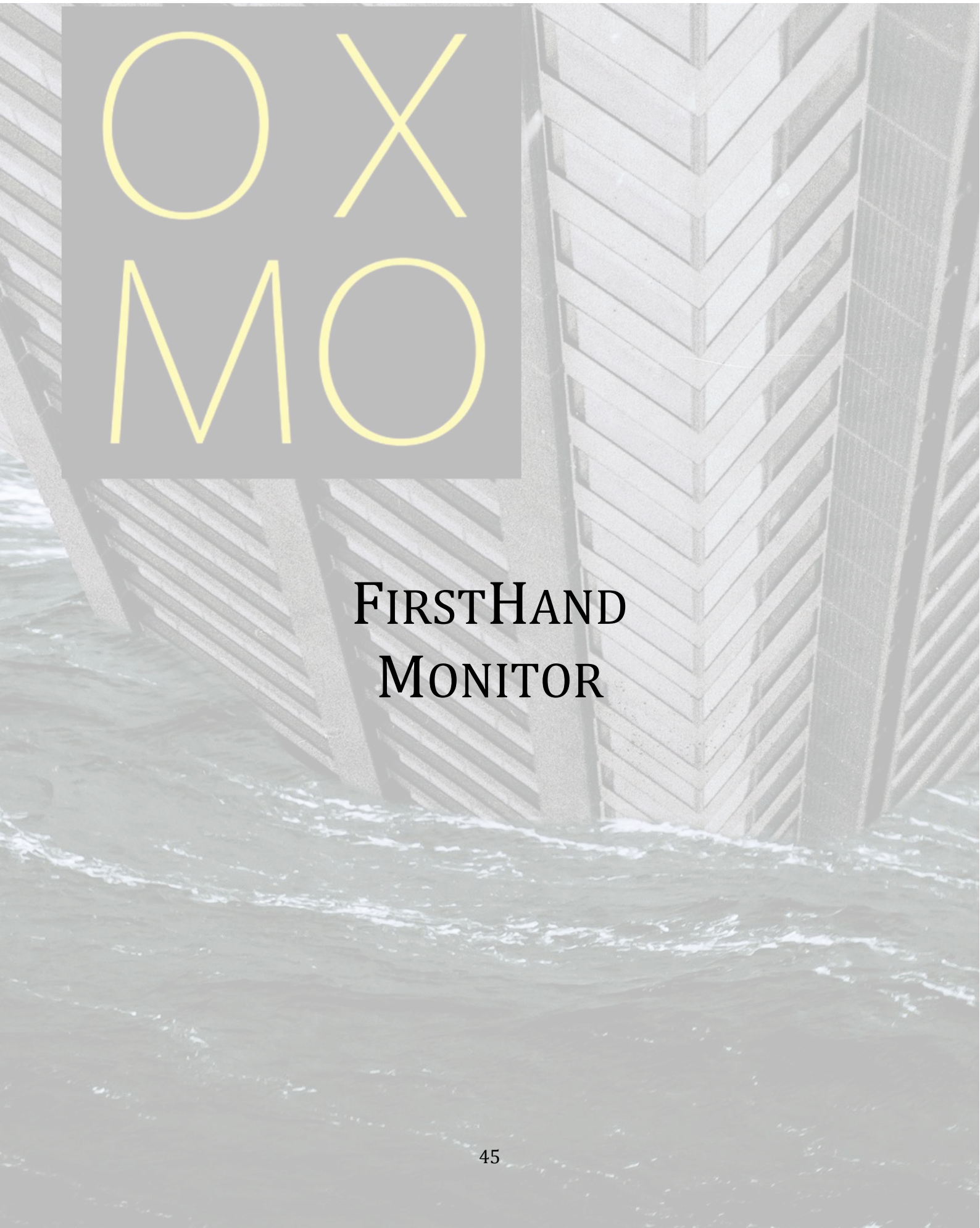
Juan Josè Pfeifauf was born in Argentina in 1981. He graduated with a degree in Social Communication and also studied three years of Economy and German. He has written articles in newspapers, magazines and news agencies, and is part of a non-governmental organization working in slums with doctors, dentists and journalists. As a journalist he aims to write alternative news not included in the mass media´s agenda. Juan can be reached via email at juanjosepfeifauf@hotmail.com.

His interest in the problem of the Saharawi refugee camps in the Western Sahara began after watching the Spanish film "Sons of the Clouds" produced by Alvaro Longoria and Javier Bardem. After that, as a journalist, he interviewed Alvaro, who gave him all the information about the situation and the details of the film. These photographs were taken in 2012.

The Western Sahara was under Spanish rule between 1885 and 1975, when, under pressure from the United Nations, Spain left the territory. Immediately afterwards, this African region was occupied by the Moroccan army. Thousands of Sahrawis fled to the border with Algeria and built Refugee Camps. Today, about 200,000 survive in one of the most inhospitable areas of the planet, waiting for the UN to help find solutions for their plight.

The Spanish Alvaro Longoria documentary "Sons of the Clouds" provided some insight into the situation of the Saharawi People in the desert, forgotten by much of the world. They live in makeshift tents with no running water or electricity and camels remain the main means of transportation. Meat and vegetables are scarce and the most important food is goat milk. Some of them received money from the Spanish Government, as a small salary for having served in the military during the years of occupation.

The Western Sahara is divided by a 2600-mile-long wall. On one side are the Sahrawis who could not escape in 1975 and remain under Moroccan control. On the other side, near Algeria, are the refugee camps with no more protection than the Polisario Front, a nationalist guerrilla group fighting to regain territory usurped by Morocco.



FIRSTHAND MONITOR

Overcoming the Partition Trauma

By Sonali Narang

The political partition of Punjab in August 1947 caused one of the largest migrations in human history. Within a short span of four years, an estimated number of 14.5 million people migrated from Pakistan to India. Many Sikhs and Hindu families settled in the Indian parts of Punjab, Haryana and Delhi. In Haryana, they were settled in various parts like Panipat, Yamunanagar, Gurgaon, Faridabad, Jhajjar, Sonipat, Rohtak etc. I have tried to capture voices and day-to-day narratives of elderly people who lived during the period of partition, including my own grandparents who were among those millions of people who were forced to migrate from Pakistan. They have left everything behind and initially stayed in camps. Later, in compensation for their land in Pakistan, they received a plot of land in the Indian state of Haryana by the then-Prime Minister Jawaharlal Nehru.

SHELTER IN YAMUNANAGAR

Before independence, Yamunanagar was a small village with the population concentrated around the railway station. After the partition of India, many refugees from Punjab in Pakistan were given Yamunanagar as their new home. Faridabad was yet another city of Haryana where a Pakistani Refugee Resettlement Project was started after the Partition, especially for displaced persons who came from the North-West Frontier District (now in Pakistan). It remained a small town until 1947 when it was developed as a planned city primarily to rehabilitate the refugees from the N.W.F.P. Pakistan.

The main factor that encouraged the refugees to put down their roots in Faridabad was affordability. The high real estate values in the National Capital restrained the refugees from settling in Delhi. Faridabad developed as a resettlement project through self-help groups and labour cooperatives for generating employment.

Second reason was the desire for their own community. There was a lot of insecurity among the people as a result of the violent and disturbing division of India into two separate countries of India and Pakistan. It generated, among the refugees, a desire for having their own closely-tied community with the least amount of intermingling with the native population. Faridabad was a small town where the refugees could live in such a community all by themselves. Thirdly, the idea was to develop an industrial town to provide employment to the people.

The Faridabad city comprises three towns namely: Old Faridabad, Ballabgarh and New Industrial Township (NIT) Faridabad. The NIT was set up in 1950. The city gained much of its present status during the industry-oriented Second Five-Year Plan (from 1956 to 1961).The Faridabad Development Board was set up in 1966 to provide employment to all the new settlers. Till 1971, all the three towns had their own municipalities. Faridabad Complex was constituted on January 15, 1972 under the Faridabad Complex Act 1971, which included these three towns along with 36 surrounding villages. Thus, the government formed new cities for settlement of the displaced people in Haryana.

Panipat was one such city where the government allotted land to many displaced people. Many new colonies and towns were established for refugees, like Model Town, Tehsil Camp, Kacha Camp, Nehar Vala Camp, Ath Vath etc. New schools and colleges were also constructed by the government for the settlement of these refugees in the cities.

Social reformers like Swami Omanand did a lot for the refugees who came from Pakistan on the division of India. He started the cancer hospital at Jhajjar and gave away free medicines to all the refugees.

SCARY MEMORIES

The Partition of 1947 resulted in massive forced migration and caused a lot of trauma to people who had to leave their homes and resettle in new places. They were brutally uprooted from their soil and had to struggle a lot to carve a niche for themselves in an unknown land.

Here is an account of harrowing experiences from those people who were displaced from their homeland as a result of the 1947 Partition and came to settle in Panipat.

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Septuagenerian Asha Saluja, living in Rohtak, came from the district of Mujjafar Nagar, Pakistan. She said that when they got the news of Pakistan being created, their whole family moved to Laiya in Pakistan. She told of women jumping into wells to drown themselves so as to avoid rape and save their honour. After a wait of three months in Laiya, they boarded a bus which was leaving for India. Despite problems, they somehow managed to reach Panipat where they stayed for about six months.

"Those scary memories are still vivid in my mind," recalls Asha. Then her family got involved in small activities in order to survive. After they moved to Rohtak where they set up their own hotel, they tasted success. She said that most of the people took the houses which were left by the Muslim people who migrated to Pakistan. She told Haryana Review that when her family was staying in a camp in Karnal, the government provided food and water to all the people who were staying there. In Rohtak, refugees were settled in Gandhi Camp, India Colony, Durga Colony.

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Krishnavati, my maternal grandmother aged 67, who belongs to Multan district of Pakistan, was among those who moved twice within the Punjab and has experienced the whole process of displacement and resettlement twice in her lifetime. The reason for the first migration was the construction of canals and rails by the colonial power, and later she was forced to migrate again as a result of the Partition in 1947. She said that the difference between the two types of migration was that the former was neither forced nor preceded by violence, while the latter saw a lot of violence, bloodshed, pain and misery. She said, "We were seven sisters. We sold corns, fruits and peanuts for our survival. Then somehow our father managed to start a business of fruits and dry fruits in Sonipat. After that, we moved to Delhi and started our own handloom business which was very successful." The journey from selling corn on the streets to establishing a handloom business was a hard one and cannot be ever forgotten by Krishnavati and her family.

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Om Prakash Taneja is a refugee who came from an area called Krishna Nagar in Pakistan. After coming to Panipat, he picked up various petty work in order to earn money. He sold peanuts, became a rickshaw puller, and ran power looms. He also taught khadiya (looms) to other labourers at free of cost. Today, he is successfully running his own handloom business, but he cannot forget the hard times he had to face at the time of Partition. Recalling the past, he said that he struggled a lot in order to survive then. Giving a piece of advice, Om Prakash

said, “we must not forget the path from where we have passed and from where we are passing, all the path carries our story of hardship, struggle and hope.”

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Octogenarian Lakhmi Chand Gulati came from Mujaffargarh district of Pakistan. During the Partition of 1947, he and his family first stayed at Kurushetra in a refugee camp. He told Haryana Review that in the camp he got all kinds of basic help from the government. From there, he moved to Karnal and then to Panipat where he got a job in the railways for two months on a monthly salary of Rs 45. After leaving this job, he moved to Madya Pardesh where he worked as a cloth merchant. Due to some problems, he came back to Panipat and worked as labourer in a Khadhi factory. He said that he got land from the government at a very low price for building his house. Presently he is running a shop in Tehsil camp. He has five children and all are well-settled. He said, “Though I have earned a lot in life after moving from my motherland to this place, yet I have left behind my peace of mind in Mujaffargarh.” He still hopes to go back to his motherland one day where he finds his identity.

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Master Hans Raj ji, a resident of Panipat, aged 70 years, is the retired principal of S.D Higher Seconday School. He recalled that there were 10,000 Hindus and 30,000 Muslims in Panipat and the whole town was divided into 12 vats. After this, the entire Muslim population was gone and only one person was left behind. Mahatma Gandhi and Maulana Abdul Kalam Azad also visited this place and asked people who came from Pakistan to settle down in this place. Later, government also helped these refugees in setting up handloom businesses and in building schools. He said that those people who came from Pakistan were really very hardworking, civilised and grateful and added “Great are those who are grateful”.

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THE ROLE OF GOVERNMENT

India is neither party to the 1951 Convention on Refugees nor to the 1967 Protocol, and the lack of specific refugee legislation in India has led the government to adopt an unplanned approach to different refugee influxes. Historically the status of refugees in India has been governed mainly by political and administrative decisions rather than any codified model of conduct. But still the government had to stretch itself to the maximum in order to give relief to and resettle and rehabilitate nearly six million refugees from Pakistan who had lost their homes.

The government granted a full range of benefits to partition refugees, including monetary compensation, residence, loans at lower interests, basic facilities, food and access to basic social resources. The problem of the rehabilitation of the refugees from West Pakistan was fully tackled in Punjab and Haryana. The mission took some time but it was accomplished. The 1954 Displaced Persons Compensation and Rehabilitation Act provide for the payment of compensation and rehabilitation grant to displaced persons. Although many plans and schemes were implemented to ensure the proper rehabilitation for displaced people, the pain of leaving their birthplace is still within the hearts of those who came from Pakistan to India. The trauma of leaving one’s home and native place still haunts the elderly people who left during the partition of India.

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Call for Papers

Oxford Monitor of Forced Migration, Vol. 5, No. 1
Spring 2015

Deadline: 31 March 2015

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

OxMo Monitors

Policy Monitor: critically examines policies and practices implemented by governments, (I)NGOs and UN agencies in all phases of forced migration. Please submit to policyeditor.oxmofm@googlemail.com

Law Monitor: critically analyses national and international laws, rulings and governmental policies as well as legal developments taking shape and their possible implications for the rights of forced migrants. Please submit to laweditor.oxmofm@googlemail.com

Field Monitor: critically explores direct experiences of working with forced migrants, including in field work or re-search in camps, or engagements with forced migrants in your local community. Please submit to fieldedi-tor.oxmofm@googlemail.com

Submissions to Monitor sections should be no longer than **1,500 words**.

Academic Articles

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

Please submit to articles.oxmofm@googlemail.com. Submissions to the Academic Articles must not exceed **6,000 words (including footnotes).**

First Hand

This section encourages individuals to share personal reflections on experience(s) of displacement, presenting the opportunity to those directly affected by the laws, policies and activities of governments and agencies we monitor to give expression to their insights and perspectives. We seek critical, balanced analyses that allow the reader to gain an understanding of the context in which the report is written and that engages with wider implications of the situation described.

Please submit to firsthand.oxmofm@googlemail.com. Articles for First Hand should be no longer than **1,500 words.**

Closing date for submissions is **31 March 2015**.

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