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Rosalie Capps

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**The American University in Cairo**  
**School of Global Affairs and Public Policy**

**PERMANENT EXILE, PERMANENT FEAR?  
GENDER-BASED VIOLENCE IN REFUGEE CAMPS**

**A Thesis Submitted to the**

**Department of Law**

**in partial fulfillment of the requirements for the  
Master of Arts in International Human Rights Law**

**By**

**Rosalie Capps**

**May 2014**

The American University in Cairo  
School of Global Affairs and Public Policy

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In partial fulfillment of the requirements for the Master of Arts  
in International Human Rights Law has been approved by the committee composed of

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The American University in Cairo  
School of Global Affairs and Public Policy  
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PERMANENT EXILE, PERMANENT FEAR?  
GENDER-BASED VIOLENCE IN REFUGEE CAMPS

Rosalie Capps

Supervised by Professor Usha Natarajan

ABSTRACT

This thesis explores the structure and maintenance policies of camps as forces driving gender-based violence. People in camps find themselves in a state of utter dependence on UNHCR or whatever state or NGO actor is providing for them. This experience deprives individuals of their identity and creates an environment that exacerbates gender-based violence. In order to effectively address this issue, perceptions of camps must change. While they are often considered temporary reactions to exceptional situations, they are in fact part of a larger policy implemented by developed countries to confine displaced people from the developing world to their own regions. Some form of camp is therefore a permanent reality, as there is no reason for them to vanish if the desire behind their creation never does. Once this policy of containment is recognized, ways of making its methods more humane can be explored. I propose an absolute right to work for all displaced people, promoted by both host states and UNHCR. By turning camp maintenance over to residents, UNHCR can better fulfill its mandate to protect refugees and reduce some of its financial burden. By allowing displaced people who cannot find work in camps to seek employment elsewhere, the host state will lessen its own financial burdens and benefit from displaced peoples' contributions to its economy. Such a policy will, most importantly, return a sense of agency and identity to displaced people, thereby reducing GBV and making camps safer places for women and children.

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## I. INTRODUCTION:

*Refugee women are more affected by violence than any other group of women in the world, and all refugee women are at risk of rape or other forms of sexual violence.*<sup>1</sup>

Since the Syrian civil war began in the Spring of 2011, over two million Syrians have fled their country and sought refuge in neighboring states and abroad.<sup>2</sup> Hundreds of thousands have wound up in camps in Jordan, Lebanon, Turkey, and Iraq. As the international media covers the conflict, horrendous pictures of the war have come streaming back, photos of children living out the winter in flimsy tents and horror stories about sexual assault and forced marriages have become the norm associated with the camps in which many Syrians find themselves. The deplorable conditions of camps in Jordan and Lebanon are no unique exception; poor living conditions, poverty, and high rates of violence are standard in many camps all over the world.<sup>3</sup> In situations of such hardship it is often the most vulnerable, generally women and children, who suffer the most. Gender-based violence (GBV) in particular, is a serious problem that pervades most camps worldwide.<sup>4</sup>

A natural inclination would be to blame high rates of GBV on a perceived lack of law and order and the resultant chaotic nature of camps. High crime rates, rampant abuses, and the lack of any justice system in place to protect camp residents, gives the perception that such zones fall outside the legal realm. However, camps are far more ordered than they often appear. While international refugee law (IRL) does not address camps, they are often provided for and legalized by the domestic law of the countries that create them. Additionally, residents' lives are tightly controlled and regulated by various laws and policies implemented by states, the United Nations High Commissioner on

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<sup>1</sup> LIZ REFUGEES MILLER, *THE IRONY OF REFUGE: GENDER-BASED VIOLENCE AGAINST FEMALE IN AFRICA*, AT 77.

<sup>2</sup> Syrian Regional Refugee Response, (2014), <http://data.unhcr.org/syrianrefugees/regional.php> (last visited Jan 18, 2014).

<sup>3</sup> Edward Rueda, *Photos Reveal Living Conditions within Refugee Camps*, AL JAZEERA AMERICA, February 4, 2014, <http://america.aljazeera.com/watch/shows/consider-this/Consider-This-blog/2014/2/4/photos-of-the-unknownrefugeecrisis.html>.

<sup>4</sup> RADHIKA COOMARASWAMY, *SEXUAL VIOLENCE AGAINST REFUGEES* (1995), at 1.

Refugees (UNHCR) and their various non-governmental organization (NGO) partners, all of whom contribute to the management of many camps.

Many researchers have pointed out the detrimental psychological consequences of confining people to camps. Additionally, extensive research has linked feelings of frustration, lack of agency, and loss of identity within the family, experienced by men to rising rates of GBV. Field research conducted in the Kanembwa camp in Tanzania links such experiences directly to the nature of life in the camp. It concluded that the forcing of camp residents, particularly men, into a state of utter dependence on UNHCR and NGOs, contributed to high rates of GBV within the camp. If such facts are the reality on the ground, an understanding of the phenomena of camps is needed to find ways of combating such a cycle.

This paper explores two alternative ways of understanding the existence and maintenance of camps, each of which points toward different solutions to the problem of GBV. Camps are often perceived as temporary havens – understaffed, underfunded places where people seek temporary refuge from the violence raging in their home countries. They are seen as safe places gone bad, that would be secure and livable if there were only enough funds and staff to properly maintain them.

An alternative way of understanding camps is to see them as walls: part of a deliberate policy to prevent large numbers of displaced people from making their way to the developed world. The implication of this analysis is that camps are anything but temporary. While individual camps may, on occasion, close, others will undoubtedly open. They are the solution that the international community has chosen to deal with situations of mass influx. In this scenario, camps are understood as permanent mechanisms of containment.

This paper argues that it is the latter description of camps that is, unfortunately, the more accurate, and realizing this can pave the way to crafting effective solutions to GBV. If the fact that Western States have an overwhelming desire to confine displaced people to their regions is recognized, then mechanisms can be explored to make the tools of such inevitable containment more humane. This paper advocates for a fundamental change in the creation and maintenance of camps, namely the absolute right to work for all camp residents in an effort to make camps largely self-sustainable. Such a process

requires actions on several fronts and I argue that both states and UNHCR have an obligation to promote the full realization of the right to work. There are also benefits to be gained, such as the growth of local economies and the reduction of the massive costs expended by UNHCR and states. More importantly, such a policy would enable camp residents to support themselves and their families, restoring some sense agency and identity that is being taken away by the current structure of camps. While not a complete answer to the problem of GBV, this process would help bring down such violence and make camps safer places for women and children.

No discussion of camps and international law should be had without first acknowledging the violations committed in the creation of camps themselves. While there are exceptions, most camps today are considered “closed camps”, meaning their residents are not allowed to leave and are arrested if they do.<sup>5</sup> The very creation of such a camp is a violation of freedom of movement. Furthermore, their location in remote areas with no access to integration or employment leads to a host of other human rights violations.<sup>6</sup> For these reasons, Guglielmo Verdirame has argued that camps are almost always illegal, with the rare exception being when they are truly a short-term emergency response, “if there is a refugee camp, there will be, inevitably, a human rights violation. Refugee camps are therefore always illegal because they can only be established and maintained in breach of human rights.”<sup>7</sup>

Even the so-called “open camps”, whose residents are legally permitted to leave, are less flexible than they sound, as humanitarian aid is usually concentrated in one area far from urban cities, thus encouraging displaced people to stay in a designated place.<sup>8</sup>

This paper is not meant to condone or promote the creation of camps. Nor is it meant to pardon developed states’ discriminatory policy of containment that has caused

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<sup>5</sup> MAJA JANMYR, *PROTECTING CIVILIANS IN REFUGEE CAMPS: UNABLE AND UNWILLING STATES, UNHCR AND INTERNATIONAL RESPONSIBILITY* (2014), at 113.

<sup>6</sup> *Id.*

<sup>7</sup> *Id. at 116*; GUGLIELMO VERDIRAME, *THE UN AND HUMAN RIGHTS: WHO GUARDS THE GUARDIANS?* (2011) at 240-241.

<sup>8</sup> JANMYR, *supra* note 5, at 114.

the creation of camps to begin with. It simply assumes that saying camps are illegal and immoral, while an important and laudable task, is not enough. While we all wish camps would simply disappear, they are nevertheless increasing in number by the year and the desires of wealthy, powerful states to keep displaced people as far away from their borders as possible is unlikely to change. In this context, this thesis merely seeks to shed light on this reality in the hopes of making it more tolerable for those most affected.

Before a discussion on camps, refugee law, and the right to work commences, a few definitions need to be provided. The term “refugee camp” is often used to describe the supposedly temporary settlements where displaced people find themselves. However this term is technically inaccurate as the vast majority of those in camps are not recognized refugees (this is explained in detail below). Therefore this thesis will refer to such settlements simply as “camps” to avoid any confusion.

There is no legal definition of a “camp”. Camps are not mentioned specifically in any of the four main IRL instruments: The 1951 Convention Relating to the Status of Refugees (1951 convention), its subsequent 1967 Protocol (1967 protocol), the 1969 Organization for African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU convention) or the Cartagena Declaration. This paper will use the definition developed by six international organizations, including UNHCR, which defines a camp as:

a variety of camps or camp-like settings – temporary settlements including planned or self-settled camps, collective centers and transit and return centers established for housing displaced persons. It applies to ongoing and new situations where due to conflict or natural disasters, displaced persons are compelled to find shelter in temporary places.<sup>9</sup>

Camps are established in many different ways in many different countries. Some camps are closed, while others allow their residents to come and go freely. Some countries hosting camps have signed the 1951 Refugee Convention and multiple international human rights instruments, such as the International Covenant on Economic, Social and Cultural Rights, while others have not. Additionally, some states run camps themselves, while others turn some or all control over to UNHCR. Since it is impossible to formulate

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<sup>9</sup> *Id.* pg. 103, (citing The Camp Management Toolkit, (2008), [http://www.nrc.no/arch/\\_img/9295458.pdf](http://www.nrc.no/arch/_img/9295458.pdf)).

one analysis that applies to all camps in all settings, this thesis focuses on closed camps, run (at least in part) by UNHCR, in countries that have signed the 1951 Convention.

Another term that must be clarified is “refugee”. “Refugee” in the legal sense is a status that entitles an individual to a particular type of international protection.<sup>10</sup> It was originally defined in the 1951 Convention, and the definition was then broadened by the 1967 protocol, the OAU convention, and the Cartagena Declaration.<sup>11</sup> The consequences of these various definitions will be explored later in this paper. At this point it is simply important to point out that the vast majority of those residing in camps are not recognized refugees and therefore are not protected by IRL. However UNHCR’s mandate is significantly larger and the organization concerns itself not only with recognized refugees, but also asylum seekers, internally displaced people (IDPs), stateless people, and returnees.<sup>12</sup> As this thesis is concerned with people in camps, regardless of whether they fall into any or none of these categories, for simplicity’s sake the term “displaced people” is used to refer to all those living in camps. Only those fulfilling the legal definition of “refugee” will be referred to in this thesis as refugees.

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<sup>10</sup> JANMYR, *supra* note 5, at 105.

<sup>11</sup> A state determines who does and does not qualify as a “refugee” depending on which of the international agreements it has signed.

<sup>12</sup> “Who We Help”, UNHCR, <http://www.unhcr.org/pages/49c3646c11c.html>.

## II. CAMPS AS ZONES OF EXCEPTION

I left early in the morning with about 20 other girls...we walked for some time. After about three hours we were at the bottom of the mountains and we started to collect the wood. We were near the village of Ablagulla, there are Arab fariks (temporary settlements) nearby. There were five men, they were armed, two of them had green uniforms and three had black or brown trousers. We saw them only when they came running toward us. They were shouting at us, saying that we were the wives of the Toro Boro (Sudanese armed group or Chadian self-defence groups operating in eastern Chad) Everybody started running in different directions. I was caught.<sup>13</sup>

### A. Sites of exceptional violence:

Camps are strange places. Sites of violence and suffering that seems uncontrollable, they are places of exception. Many have extraordinarily high rates of crime, including gender-based violence (GBV). Statistics of GBV in camps are notoriously difficult to come by. However, a few reports are worth mentioning.

Reports of sexual assault against Burundian displaced people in Tanzanian camps stated that over 25 per cent of women and girls experienced sexual violence while living in the camp.<sup>14</sup> In camps in Thailand, rape and domestic violence were the most common kind of criminal offence perpetrated in the camp.<sup>15</sup> UNHCR staff working in Sudan observed that female residents were subjected to more domestic violence in the camps than they would have experienced in their homes in Southern Sudan.<sup>16</sup> After a massive

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<sup>13</sup> CHAD: NO PROTECTION FROM RAPE AND VIOLENCE FOR DISPLACED WOMEN AND GIRLS IN EASTERN CHAD.

<sup>14</sup> SEEKING PROTECTION: ADDRESSING SEXUAL AND DOMESTIC VIOLENCE IN TANZANIA'S REFUGEE CAMPS, (2000), <http://www.hrw.org/reports/2000/tanzania/>.

<sup>15</sup> In Thailand, UN Agency opens first Legal Assistance center for Burmese Refugees, (2006), [http://www.un.org/apps/news/story.asp?NewsID=20697&Cr=unhcr&Cr1=thailand#.UyW\\_Sa2Sy-0](http://www.un.org/apps/news/story.asp?NewsID=20697&Cr=unhcr&Cr1=thailand#.UyW_Sa2Sy-0).

<sup>16</sup> Jeff Crisp, *A State of Insecurity: The Political Economy of Violence in Kenya's Refugee Camps*, AFR. AFF. 601–632 (2000), at 625.

earthquake hit Haiti in 2010, thousands fled to displacement camps in Port-au-Prince. The sexual assault rate in such camps was 20 times higher than it was in the rest of the city.<sup>17</sup>

While statistics may be hard to gather, there is no denying that women and girls in camps are extraordinarily vulnerable to GBV, and that sexual assault, harassment, and domestic violence are serious problems in most camps.<sup>18</sup>

The causes of the problem are generally identified as being linked to inherent factors of displacement and conflict. UNHCR has cited dependency, loss of security, disrupted roles within the family and community, breakdown of the family unit, cultural practices that place women on unequal footing to men, and drug and alcohol use.<sup>19</sup> There is merit in every one of these explanations, and various programs have been constructed to address the different factors. For example, in camps in Chad, many women were raped on their journeys outside the camp to collect firewood.<sup>20</sup> In camps in Somalia and Darfur, women were not only being raped when they left the camp to get supplies, but also when the camps were raided by armed men from the nearby war zones.<sup>21</sup> In response, security guards were added to the camp border to discourage the raids, and programs were implemented to bring the firewood to inhabitants in the camp. However despite these

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<sup>17</sup> Athena Kolbe & Robert Muggah, *Haiti's Silenced Victims*, NEW YORK TIMES, December 8, 2012, [http://www.nytimes.com/2012/12/09/opinion/sunday/haitis-silenced-victims.html?\\_r=0](http://www.nytimes.com/2012/12/09/opinion/sunday/haitis-silenced-victims.html?_r=0).

<sup>18</sup> SEEKING PROTECTION: ADDRESSING SEXUAL AND DOMESTIC VIOLENCE IN TANZANIA'S REFUGEE CAMPS, *supra* note 14; COOMARASWAMY, *supra* note 4; UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, SEXUAL AND GENDER-BASED VIOLENCE AGAINST REFUGEES, RETURNEES, AND INTERNALLY DISPLACED PERSONS (2003); Bill Varner, *Haiti Earthquake Camps Expose Women to Sex Violence*, BLOOMBERG NEWS, October 7, 2010; Michele Lent Hirsch, *The Safest Prey: When Refugee Camps become Sites of Violence*, WOMEN'S MEDIA CENTER, , <http://www.womenundersiegeproject.org/blog/entry/the-safest-prey-when-refugee-camps-become-sites-of-violence>; Julie Bindel, *Women Come Last in Syrian Refugee Camps*, STANDPOINT, April, 2013.

<sup>19</sup> UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 17.

<sup>20</sup> CHAD: NO PROTECTION FROM RAPE AND VIOLENCE FOR DISPLACED WOMEN AND GIRLS IN EASTERN CHAD.

<sup>21</sup> *Id.*



seemingly logical solutions, the number of reported sexual assaults remained largely unchanged.<sup>22</sup>

In another attempt to reduce GBV, UNHCR and NGOs have often introduced women's empowerment and educational programs to try to change cultural perceptions surrounding women, their traditional roles, and place in society. However just as in the case of the security solution, the GBV rate did not go down. In many cases the number of sexual assaults being reported actually went up.<sup>23</sup> This can partly be attributed to the fact that empowerment programs encouraged women to report incidents of GBV that they might not otherwise have. However there is still a consensus that actual rates of GBV rose after the implementation of such programs.<sup>24</sup>

At this point it is important to emphasize that attempts to analyze the root causes of GBV must not be construed as excuses or justifications for perpetrators' behavior. Furthermore, programs that alter cultural perceptions of women, such as women's empowerment or educational programs do not lose their importance and value because they have not significantly reduced GBV rates. Rather these are vitally important initiatives in creating a more egalitarian society in the future, where, in theory, GBV would be less common. However as an immediate response to GBV, they are not the ideal solution, largely because they are generally geared toward affecting the minds of women, not the traditional perpetrators of GBV. Therefore, there is a need to analyze some of the root causes driving GBV in an attempt to craft solutions that truly reduce its rate.

GBV is an incredibly complicated problem that does not have one simple solution. Furthermore, given that it is not limited to camps but rather prominent throughout most societies and across different living situations, it is impossible to identify one, or even several, "cures" that would eliminate the problem. The point here is to examine one of the many driving factors behind GBV in camps; namely the status of

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<sup>22</sup> Crisp, *supra* note 16, at 605.

<sup>23</sup> Barbra Lukunka, *New Big Men: Refugee Emasculation as a Human Security Issue*, 50 INT. MIGR. 130–141 (2012), at 135.

<sup>24</sup> *Id.*

dependency and resultant loss of agency and identity experienced by camp residents. While this factor is not the sole culprit, it is worth taking into account as it is inherent in most camp structures and is often overlooked by aid groups working to combat the GBV crisis.

It is important to note that, while this thesis does not directly address GBV committed by camp workers, it acknowledges that such a phenomenon is as pervasive as it is disturbing. Sexual assault and abuse committed by aid workers has a long, dark history and most certainly requires further investigation and preventative action.<sup>25</sup> This paper, however, focuses mainly on GBV committed by camp residents, particularly domestic violence.

There is a well-established link between men's loss of agency and identity and violence, particularly GBV and its most common form, domestic violence. GBV is described by feminists as, "violence which embodies the power imbalances inherent in patriarchal society."<sup>26</sup> Those power imbalances can be produced through a variety of things, but of particular relevance here are the issues of conflict and structure. The concept of structural violence was created by Johan Galtung, who maintained that, "violence exists whenever the potential development of an individual or group is held back by the conditions of a relationship, and in particular by the uneven distribution of power and resources."<sup>27</sup> According to Galtung:

The violence is built into the structure and shows up as unequal power and consequently as unequal life chances... Thus, when one husband beats his wife there is a clear case of personal violence, but when one million husbands keep one million wives in ignorance there is structural violence.<sup>28</sup>

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<sup>25</sup> SUSAN FORBES MARTIN, *REFUGEE WOMEN* (2nd edition ed. 2004), at 6.

<sup>26</sup> Caroline Moser & Clark Fiona, *Introduction*, in *VICTIMS, PERPETRATORS OR ACTORS? GENDER, ARMED CONFLICT AND POLITICAL VIOLENCE* (2001), at 6.

<sup>27</sup> Cynthia Cockburn, *The Gendered Dynamics of Armed Conflict and Political Violence*, in *VICTIMS, PERPETRATORS OR ACTORS? GENDER, ARMED CONFLICT AND POLITICAL VIOLENCE* (2001), at 17.

<sup>28</sup> Johan Galtung, *Violence, Peace, and Peace Research*, 6 *J. PEACE RES.* 167–191 (1969), at 171.

From a gendered perspective, “Depressed wages and high unemployment among male bread-winners destabilizes relations in the family.”<sup>29</sup>

A key to understanding this destabilization is in recognizing that, in most cultures, male identity is tied to the ability to work and provide for one’s family. A study conducted for the World Bank on masculinity in Africa describes how men’s identities are often dependent on their ability to earn money and provide for their families. Without being able to work and provide financial security for their future brides, men are not allowed to marry and are not considered men. Young men in an IDP camp interviewed for the study tied their identity as men directly to their ability to work as farmers. Without land to work, they said, they could not consider themselves men.<sup>30</sup> This is supported by the fact that hundreds of thousands of men travel miles across Africa every year in search of employment.<sup>31</sup>

This sense of male identity is seriously jeopardized in camps. The lives of displaced people in camps are ones of dependence. Deprived of their home, often having left most of their possessions behind, and living in places of temporary shelter where employment opportunities are few to none, displaced people are entirely dependent on UNHCR and other NGOs for every aspect of their lives. Men in a Tanzanian camp described UNHCR as a “better husband” to their wives because it was the organization, and not the men, providing food and shelter. In this way, the structure and maintenance of camps directly contributes to a loss of men’s agency and identity as breadwinners. This phenomenon contributes to heightened rates of GBV, particularly domestic violence:

It has been pointed out in studies in several camps that the day-to-day role of women often changes little while the same cannot be said for their husbands who no longer are able to cultivate fields or engage in outside employment. The frustrations experienced by men can result in increased family tension and potential for violence...Refugee men may have a difficult time in accepting either

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<sup>29</sup> Cockburn, *supra* note 26, at 17.

<sup>30</sup> GARY BAKER & CHRISTINE RICARDO, *YOUNG MEN AND THE CONSTRUCTION OF MASCULINITY IN SUB-SAHARAN AFRICA: IMPLICATIONS FOR HIV/AIDS, CONFLICT, AND VIOLENCE* (2005).

<sup>31</sup> *Id.*

the new role of women or their own inability to support fully their families. This loss of control may result in domestic violence, depression, and alcoholism.<sup>32</sup>

This theory is exemplified in a study conducted by Barbara Lukunka on GBV in the Kanembwa camp in Tanzania. She refers to the loss of male identity as “emasculatation” and directly links it to a high rate of GBV within the Kanembwa camp.

Kanembwa was a camp opened by Tanzania and run by UNHCR in response to the violence against Hutus in neighboring Burundi. Lukunka attributed the emasculatation of men in the camp, and by extension, the high rate of GBV in Kanembwa to four factors: 1) the restrictions of movement enforced by the Tanzanian government, 2) the fact that displaced people were entirely dependent on UNHCR assistance for every aspect of their survival, 3) the implementation of women’s empowerment programs, and 4) the loss of family and community.<sup>33</sup> The Tanzanian government viewed Burundian displaced people as a security risk and therefore kept them confined to the camp on the border and did not allow them to access Tanzania proper. UNHCR was responsible for providing for the basic survival of camp residents.

Before the camp refugees worked various jobs and many of them were farmers. In the camp setup, refugees were unable to farm or work other jobs they might have done prior to exile. Hence, men lost their identities as breadwinners to UNHCR.<sup>34</sup>

Women’s empowerment programs, while well-intentioned, often had unintended consequences.

protecting women seems to have led to violence against them because of their “empowerment,” which altered their traditional gender role. Because gender roles are mutually defined, such alteration to women’s roles then impacted men by undercutting their dominance over women. Refugee women experienced different forms of violence including rape, domestic violence, and forced marriage, among many others.<sup>35</sup>

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<sup>32</sup> MARTIN, *supra* note 25, at 150.

<sup>33</sup> Lukunka, *supra* note 22, at 133-144.

<sup>34</sup> *Id.*, at 134.

<sup>35</sup> *Id.*, at 135.

The emasculation of men in Kanembwa had a direct and damaging effect on women in the camp. With no work to do and feeling disempowered and deprived of agency, men often took up drinking, which led to a rise in domestic abuse. One interviewee remarked, “There was no domestic violence in Burundi. Men had things to do in Burundi. Men have nothing to do in the camps but drink and so they beat their wives.”<sup>36</sup> As the author of the study points out, it is unlikely that there was no domestic violence in Burundi. However, this statement points to the severity of the change in gender relations in the camp. It was clear to refugee women that men’s lack of activities and livelihoods led to a frustration that was then unleashed on women.<sup>37</sup>

GBV violence in camps is, in part, caused directly by the structure and maintenance policies of those very camps. Many proposed solutions to GBV problems are ineffective largely because they do not address such policies. In this way, camps are exceptional. While GBV is by no means limited to camps, there are few other places that place residents in a state of complete and utter dependence, thereby depriving them of agency and identity.<sup>38</sup>

## **B. Places of legal exception?**

Not only are camps exceptional in the way their structures contribute to high rates of GBV, they are also unique in their relationship to law. Camps can appear, at first glance, to sit in a legal void. While they are located in host states, the domestic judicial system is largely inaccessible to their residents. Due to a lack of financial resources, states often solicit the help of UNHCR in the running of the camps.<sup>39</sup> UNHCR and their partner

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<sup>36</sup> *Id.*, at 136.

<sup>37</sup> *Id.*

<sup>38</sup> The main exception to this would be detention centers and prisons, which also have very high rates of sexual violence.

<sup>39</sup> The delegation of many refugee-related tasks to UNHCR is a common practice, even among states that do not confine their refugees to camps. UNHCR often conducts refugee status determination and resettlement processes in states that do not have the financial resources or political will to do so themselves.

NGOs then often become de facto sovereigns of the camp, developing most policy that affects the day-to-day life of camp residents:

As most refugee movements occur in the developing world, and developed states increasingly adopt *non-entrée* measures, the legal burden of protecting the vast majority of the world's refugees is shouldered by developing countries who do not have the wherewithal to fulfill this legal obligation. As a result, these refugees invariably live in conditions of insecurity and deprivation, reliant on whatever protection and assistance is provided by agencies like UNHCR.<sup>40</sup>

Given this apparent legal muddle, it is important to clarify what laws do and do not apply to camps and their inhabitants. The legal situation of camps can be discussed on two levels: the creation of the camp, and the policies that govern life within the camp setting.

International refugee law (IRL) places the legal responsibility for displaced people squarely on the host state.<sup>41</sup> A particularly relevant responsibility enshrined in both IRL and International Human Rights Law is non-refoulement. Article 33 of the 1951 Convention states:

No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.<sup>42</sup>

This principle is also articulated in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and is arguably part of customary international law.<sup>43</sup>

In situations of mass influx states turn to camps as a way of coping with the massive numbers and addressing their own security concerns about large numbers of incoming arrivals. UNHCR, understanding that situations of mass influx created a problem for neighboring states, and wanting to ensure that those states did not resort to

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<sup>40</sup> Ralph Wilde, *Quis Custodiet Ipsos Custodes?: Why and How UNHCR Governance of “Development” Refugee Camps Should be Subject to International Human Rights Law*, 1 YALE HUM. RIGHTS DEV. LAW J. (1999), at 109.

<sup>41</sup> *Id.*

<sup>42</sup> 1951 Convention Relating to the Status of Refugees, G.A Res. 429(V), U.N Doc. A/Res/429(V) (July 1951).

<sup>43</sup> B.S. CHIMNI, INTERNATIONAL REFUGEE LAW (2000), at 109.

refoulement in response to such a crisis, acknowledged that camps might be the only way states could abide by their non-refoulement obligation under the Refugee Convention.<sup>44</sup>

The 1951 Convention outlines further duties of the state toward refugees in its territory. However the application of the Convention is problematic when it comes to camp residents because most of its protections only apply to legally recognized “refugees” – a category into which many camp residents may not fall. The term “refugee” only legally applies to someone who:

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>45</sup>

This definition is unlikely to include the vast majority of those in camps. Some states conduct their own refugee status determination (RSD) process, while others turn the task over to UNHCR. However regardless of who performs it, it is impossible for either actor to keep up in situations of mass influx. Furthermore, even if the state or UNHCR could conduct RSD fast enough, many camp residents would be denied refugee status. The 1951 Convention definition does not include those fleeing war and conflict, generalized human rights violations, and natural disasters unless the individual suffers discrimination of the very specific type described in the Convention. Thus, those in situations of mass displacement are usually outside the Convention’s protection. The intentionally limited nature of the 1951 convention will be analyzed in the next chapter.

Supplementing the 1951 convention are two regional IRL instruments: the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention) and the Cartagena Declaration. The OAU broadens the 1951 convention refugee definition by including in the term “refugee”:

every person who, owing to external aggression, occupation, foreign domination or evens seriously disturbing public order in either part or the whole of his

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<sup>44</sup> Keith Yundt, *International Law and the Latin American Political Refugee Crisis*, 19 UNIV. MIAMI INTER-AM. LAW REV. 137–154, at 130-140.

<sup>45</sup> G.A Res. 429(V), *supra* note 40.

country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.<sup>46</sup>

The Cartagena Declaration further broadens the definition to include:

persons who have fled their country because their lives, safety, or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”<sup>47</sup>

The OAU Convention and Cartagena Declaration are meant to work in tandem with the 1951 Convention, meaning that any state that had signed both the 1951 convention and a regional instrument, is obligated to afford the protections outlined in the 1951 convention to all refugees, regardless of the definition under which they qualify. While using either definition would increase the number of camp residents that qualified as recognized refugees, situations of mass influx still render timely status determination impracticable.

Articles 26 and 31 of the 1951 Convention are of particular importance to the confinement of displaced people to camps. Article 26 states:

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence to move freely within their territory, subject to any regulations applicable to aliens generally in the same circumstances.<sup>48</sup>

Article 26 seems to prohibit camps outright, as inhabitants are usually prohibited from leaving camps. However this right is awarded only to those “lawfully in its territory”, a phrase that, while still debated, is generally assumed to not to apply to most individuals in camps. Article 31 concerns “refugees unlawfully in the country of refuge” and states in paragraph one:

The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1 [which defines “refugee”], enter or are present in their territory without authorization, provided they present

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<sup>46</sup> *Cartagena Declaration on Refugees*, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984.

<sup>47</sup> *Id.*

<sup>48</sup> G.A Res. 429(V), *supra* note 40.



themselves without delay to the authorities and show good cause for their illegal entry or presence.<sup>49</sup>

Paragraph two of the same article reads:

The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.<sup>50</sup>

Article 31 is intended to ensure that asylum seekers are not punished for their often inevitable illegal entry.<sup>51</sup> Once an asylum seeker had either been determined to be a refugee, or awarded some kind of official protection (such as a humanitarian visa or temporary protection visa) they are considered “lawfully in the territory” of their country of refuge and cannot be confined to a camp. However as has previously been stated, the inability of states or UNHCR to register everyone in camps limits the applicability of protections enshrined in IRL. Furthermore, in many camps, states do not even attempt the process of registering all residents and prohibit UNHCR from doing so. This is a violation of Article 31. In such cases, camp inhabitants’ statuses are never determined, excluding them from any of the protections outlined in IRL.

While the applicability of IRL to camps is limited given that its protections are contingent on some form of status determination, the application of IHRL does not face the same obstacles.

### **1. Camps and International Human Rights Law:**

IHRL, by definition, applies to everyone, everywhere, and is contingent on no type of status recognition. The preamble of the International Covenant on Civil and Political Rights (ICCPR) states:

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Most people fleeing persecution in their home countries are unable to acquire valid travel documents and visas before they leave.

inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...recognizing that these rights derive from the inherent dignity of the human person...

Article 12 of the ICCPR states, “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.” Restrictions on the right are only allowed if they are “provided by law, necessary to protect national security, public order, public health or morals or the rights or freedoms of others.”

Furthermore, the African Charter on Human and People’s Rights (ACHPR) states, “Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.”

The standard of “lawfully within the territory” is slightly different in IHRL than it is in IRL. While IRL describes many different statuses, such as simply present, lawfully present, lawfully residing and habitually residing, IHRL simply distinguishes between lawfully present and unlawfully present. Technically, someone who crosses into a country illegally and is not granted asylum or some other type of visa is an illegal alien and states often use this fact to justify their restricting the freedom of movement of some displaced people. However, it is unjust to treat forcibly displaced people in the same way as other illegal aliens, as their entry is not voluntary. This is supported by the 1951 Refugee Convention’s prescription in article 31 that penalties must not be imposed on refugees for their illegal entry. This principle should be extended to other forcibly displaced peoples also.

States also often use the national security exception outlined in the ICCPR to justify camps by claiming that the flow of such large numbers of unknown people poses a threat to state security. However Maja Janmyr and Verdirame have pointed out that the threshold for the national security argument is set quite high and requires a “particularly serious threat to the security state.”<sup>52</sup> Furthermore, Janmyr notes, “...the concentration of

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<sup>52</sup> JANMYR, *supra* note 5, at 117.

refugees in vast protracted camp setting in volatile border areas, and particularly within reach of armed groups, rarely addresses these security concerns in practice.”<sup>53</sup>

Closed camps can also be considered places of detention,<sup>54</sup> and therefore violations of article 9 of the ICCPR, which reads, “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”<sup>55</sup> The Economic and Social Council’s *Guiding Principles on Internal Displacement* declare the confinement of IDP’s to camps to be a form of detention.<sup>56</sup> The European Court of Human Rights has also ruled that a situation where an individual was only allowed to leave a confined area with prior authorization and under supervision constituted one of detention.<sup>57</sup>

Based on these principles, the creation of camps that confine their residents for years on end with no means of acquiring formal status and leaving the camp is almost always a violation of IHRL in itself. As Verdirame has argued, the violation of IHRL committed in the creation of the camp contributes to a host of IHRL violations that occur within the camp itself.<sup>58</sup>

The delegation of camp management to UNHCR contributes to the lack of IHRL enforcement in camps. While states are responsible for adhering to their duties under IHRL (including, in theory, the protection of camp residents), it is often UNHCR who makes the majority of decisions regarding camp life. And given that UNHCR is a body of

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*, at 116-117.

<sup>55</sup> *International Covenant on Civil and Political Rights*, G.A Res. 2200(A), U.N. Doc. A/Res/2200(A) (16 December 1966).

<sup>56</sup> JANMYR, *supra* note 5, at 117; UNITED NATIONS, HUMAN RIGHTS, MASS EXODUSES AND DISPLACED PERSONS (1998).

<sup>57</sup> JANMYR, *supra* note 5, 117.

<sup>58</sup> VERDIRAME, *supra* note 7.

the UN, an organization intrinsically bound up with the promotion of IHRL,<sup>59</sup> the organization may seem to be in the best position to ensure rights articulated in IHRL are realized.<sup>60</sup>

However UNHCR was conceived as a monitoring organization; created to observe states' fulfillment of their obligations under the 1951 refugee convention. In order to operate in a country, it has to be invited by the state, and can be forced to leave at any time if the state withdraws its invitation.<sup>61</sup> It does not remotely resemble a sovereign with the authority to implement law in its territory. Additionally, the organization is notoriously under-resourced and struggles to provide even the basics for displaced people in camps.<sup>62</sup>

A further problem with expanding UNHCR's mandate to enforcing law in camps is that the displaced people it would be governing do not elect the organization's employees. The accountability of UNHCR is a serious problem that is beyond the scope of this thesis.<sup>63</sup> Suffice to say that significantly expanding its activities would mean giving more power to an unaccountable and unrepresentative international organization.

This is not to say that there is nothing UNHCR can or should do to promote IHRL in camps. Its obligations under IHRL and ability to fulfill them will be examined in chapter 3. The purpose here is merely to point out that the organization cannot shoulder the sovereign state's responsibility to respect human rights within its territory.

## **2. Camps and Domestic Law:**

Most countries that house camps do so under the laws of their domestic systems. In April 2014, Kenya mandated that all Somali displaced people living in Kenya proper return to

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<sup>59</sup> Wilde, *supra* note 40, at 116., G.A Res. 429(V), *supra* note 40, Universal Declaration on Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/Res/217(III) (Dec. 10, 1948).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*, at 119.

<sup>62</sup> *Id.*, at 117.

<sup>63</sup> For further exploration into this issue, see Maja Janmyr's "Protecting Civilians in Refugee Camps: Unable and Unwilling States, UNHCR and International Responsibility."

UNHCR-run camps through a legal decree.<sup>64</sup> Additionally, Kenya, Ethiopia, Tanzania, and many other countries have specific domestic laws allowing for the confinement of displaced people to camps. In another example, while Australia does not confine its incoming displaced people to camps, it does often confine them to detention centers for years at a time. This is not in violation of Australian law. Rather, it is legally prescribed. Australia's 1958 Migration Act allows all non-citizens without a valid visa to be detained until they either obtain a visa or leave the country. The law specifies no limit on the amount of time they can be held.<sup>65</sup> In this case, the unlimited confinement of migrants is neither prohibited nor ignored by domestic law; it is instead directly enabled by it.

The result of the interaction of these various legal spheres is a zone in which there is only one effectively implemented set of laws: domestic laws confining displaced people to camps. IRL's application to camp residents is difficult because of the regime's reliance on individual status determination to award protection and therefore inability to deal with situations of mass influx. While IHRL prohibits camps and, in theory, protects all displaced people, there is simply no mechanism to force states to adhere to their obligations. Additionally, states usually turn the management of camps over to UNHCR, an organization incapable of extending IHRL protection to camp residents. The result for displaced people in camps is that they remain in an exceptional zone, feeling only the effect of laws keeping them there, and lacking any form of meaningful legal protection. Not only are displaced people not protected in these places, but also the structure and maintenance of camps directly exposes them to GBV and other forms of violence. The recognition of these facets of camps is crucial to making any significant steps toward changing them.

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<sup>64</sup> Kenya Orders all Refugees Back into Camps, AL JAZEERA ENGLISH, March 26, 2014, <http://www.aljazeera.com/news/africa/2014/03/kenya-confines-all-refugees-two-camps-2014325211245266713.html>. <http://america.aljazeera.com/articles/2013/10/25/kenya-calls-for-emptyingofworldslargestrefugeecamp.html>.

<sup>65</sup> MANDATORY DETENTION, (2012), <https://www.refugeecouncil.org.au/f/as-det.php>. <https://www.refugeecouncil.org.au/f/as-det.php>.

### III. A POLICY OF CONTAINMENT

#### A. Camps as temporary safe havens:

It is important to examine the way camps are perceived by those who create and run them, as this perception greatly impacts the way they are generally perceived, and how problems inside them are addressed.

Camps, in fact refugee situations as a whole, are perceived to be temporary. Most people assume that refugees want to and will return to their home countries after whatever circumstances causing their flight have been resolved. Camps in particular are seen as temporary solutions to crisis situations of mass influx. States frequently describe them as “temporary housing”<sup>66</sup> and it is generally assumed that they will be dismantled and their residents will return home as soon as possible.

This sense of “temporariness” is exemplified in everything from the physical structure of camps to the maintenance policies surrounding them. The very creation of camps is often predicated on the assumption that their residents will only be there temporarily, as UNHCR often uses this argument to convince states to host incoming refugees.<sup>67</sup>

States’ obligations under international law have helped create this sense of temporariness. As has previously been stated, the protections outlined in the 1951 convention only apply to recognized refugees – a category into which many displaced people do not fall. States’ obligations under the principle of non-refoulement, however, are broader. While refugee status is awarded to individuals fleeing *persecution*, on the basis of race, nationality, religion, political opinion, or social group, non-refoulement prohibits the return of anyone to a place where their life or freedom would be *threatened* on one of the above grounds. The limitation of the application of non-refoulement to those fleeing a convention grounds means many fleeing civil war or international armed

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<sup>66</sup> Mac McClland, *How to Build a Perfect Refugee Camp*, THE NEW YORK TIMES, 2014, <http://www.nytimes.com/2014/02/16/magazine/how-to-build-a-perfect-refugee-camp.html>.

<sup>67</sup> Samantha Angwenyi, *Temporary Permanence: The Use of Refugee Camps in Protracted Refugees Situations and its Effect on Human Rights*, 2014, <https://dar.aucegypt.edu/handle/10526/3809>, at 4.

conflicts would not be protected. While “persecution” has been interpreted differently, it is generally considered a higher bar than the threatening of life or freedom. Additionally, while the 1951 convention applies only to those states that have signed it, the principle of non-refoulement is generally considered part of customary law<sup>68</sup>, meaning it is binding even on states that have not ratified the refugee convention. The net result is that many states are under an obligation to host or safely resettle many more people than those to whom they are obligated to grant asylum. This has led to a legal gap into which millions of displaced people (many of whom reside in camps) fall.

There are several other factors that contribute to this gap. For one thing, once an individual has stated that they are seeking asylum, the state cannot deport them unless their asylum claim has been investigated and found invalid. States cannot either seal their borders or simply deport displaced people en masse because they could very well be violating the non-refoulement principle. Another barrier to mass deportation is the impracticality of deporting hundreds of thousands of people back to countries that are experiencing violent armed conflict. When roads, trains, ports, or airports are inaccessible, there is often no practical way of returning people, even if states want to. States’ non-refoulement obligations and the sheer impracticality of deporting people in mass help contribute to the previously described gap.

This gap has led to the concept of “temporary” protection, which is recognized as part of customary law.<sup>69</sup> Different countries deal with people not covered by the refugee convention in different ways. Developed states with more financial resources and fewer displaced people to contend with often grant temporary protection visas to those who are not recognized refugees but cannot return to their home countries. Sometimes, such as in the case of Australia, developed states detain such people for indefinite periods of time. States in the Developing World, who have fewer financial resources and massive numbers of displaced people crossing their borders, often lack the financial resources or political

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<sup>69</sup> Deborah Perluss & Joan Hartman, *Temporary Refuge: Emergence of A Customary Norm*, 26 VA. J. INT. LAW 551–626 (1986).

will to grant protection visas. They therefore turn to camps, hoping that their residents will remain there, lacking any legal status, for a short period until they can return home.

The European Union statement on the *minimum standards for giving temporary protection* states:

This direction puts in place an exceptional scheme to deal with possible cases of mass arrivals in the European Union of foreign nationals who cannot return to their countries...the legislation puts in place immediate temporary protection for these displaced persons...<sup>70</sup>

The document further specifies a time period for the “temporariness” of such situations, stating, “the duration of temporary protection shall be one year and may be extended by a maximum of two years.”<sup>71</sup> In their 1981 Executive Committee Conclusions, UNHCR further distinguished between a state’s actions when responding to an emergency situation of mass influx and their actions when accommodating displaced people long-term:

For situations of mass influx of asylum seekers, states, at a minimum, are to grant temporary asylum...Temporary asylum allows the receiving state to admit refugees without granting asylum. In granting asylum a state could be understood as providing a durable, permanent, solution, requiring the acceptance of permanent responsibility for persons of mass influx. Additional minimum standards of granting asylum require: 1) non-discrimination; 2) access of temporary asylees to the legal system of the country of refuge; 3) location of camps at a “reasonable distance” from the frontier of the country origin; 4) promotion of voluntary repatriation; and 5) unrestricted UNHCR access to asylum seekers to ensure international legal protection.<sup>72</sup>

The concept of temporary protection has filled a gap left by the limited nature of the 1951 convention and the more expansive non-refoulement obligation. Through the acceptance and promotion of temporary protection as a solution for displaced people who do not qualify as recognized refugees, the understanding of refugee situations as temporary has

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<sup>70</sup> TEMPORARY PROTECTION IN THE EVENT OF A MASS INFLUX OF DISPLACED PERSONS, (2012), [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/133124\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/133124_en.htm).

<sup>71</sup> *Id.*

<sup>72</sup> Yundt, *supra* note 44, at. 140.



been reflected in the development of international and domestic laws and policies. This is further reflected on the ground in countries hosting displaced people.

Camp housing is often distinctly temporary, such as tents, and this is often a deliberate decision by states to enforce the camps' "temporariness". In 2012 UNHCR began building sturdy shelters for displaced people in the Daadab camp in Kenya because the situation there had been termed a "protracted refugee situation" by UNHCR. However a few months after construction began, Kenyan officials ordered UNHCR and its partners to stop, claiming that the housing "looked more like permanent dwellings than temporary shelters for refugees."<sup>73</sup> This is in line with Kenya's desire to prevent displaced people from integrating:

The Government of Kenya will not consider local integration for Somali refugees, or any other refugees for that matter...currently, their status is temporary and their mobility is constrained.<sup>74</sup>

The "temporariness" of mass influx situations is etched throughout international and domestic law, as well as UNHCR discourse and policy. While states that have signed the 1951 convention and/or the OAU Convention are obligated to provide recognized refugees with a durable solution, they are under no such obligations when it comes to other forcibly displaced people. These individuals may be expelled and, where this is not possible – whether for legal, moral or practical reasons – they may be awarded some form of temporary protection or detained or confined to camps.

This sense of temporariness greatly impacts the way camps are run and how the problems within them are approached. If the situation is short-term, it is easier for UNHCR and other NGOs to solicit funds from donors. Donors are far more likely to give to emergency situations of mass influx that make the front page of the newspaper, than to protracted situations about which the public has largely forgotten. UNHCR and NGOs can also tell donors that, while massive funds are needed at the present time, the situation

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<sup>73</sup> UNHCR photographs, available at: [https://www.facebook.com/photo.php?fbid=459071720834672&set=a.351965274878651.80173.351953844879794&type=1&relevant\\_count=1](https://www.facebook.com/photo.php?fbid=459071720834672&set=a.351965274878651.80173.351953844879794&type=1&relevant_count=1)

<sup>74</sup> Jennifer Hyndman, *A Refugee Camp Conundrum: Geopolitics, Liberal Democracy, and Protracted Refugee Situations*, 28 REFUGE 7–15 (2011), at 13.

is only temporary, a comforting assurance to those who would not want to be responsible for sustaining a more permanent installation. Large-scale funding is not only easier to acquire for termed “temporary situations” but its injection also makes more sense. Aid work can function as a band-aid – temporarily providing for people’s basic survival for the supposedly short period of time that they will need help. There is no need to take the extensive time required to investigate root causes or contributing structural factors of issues like GBV because the situation in which the problem is playing out will not last. Additionally, the diminution of male identity described in the first chapter does not occur overnight. When displaced people arrive in camps they are very often hungry, sick, and traumatized and may not be in a position to care for themselves. If these people are truly in camps for a few weeks or months, providing for them completely could be beneficial. However, over the long term such a state of dependence can become harmful.

In temporary situations, there is also no need to investigate ways of making the camps self-sustainable because they are meant to be the exact opposite. And yet despite the overwhelming assumption and desire that camps will end as soon as conflicts do, camps, and many of the larger refugee situations of which they are a part, are anything but temporary.

### **B. Camps as permanent walls:**

Two thirds of the world’s refugees are currently living in “protracted refugee situations” (PRS), most in the poorest regions of the world.<sup>75</sup> PRS are defined as situations in which refugees have remained for more than five years, and they apply to most refugee situations worldwide.<sup>76</sup> In line with PRS, many camps have been in place for years, often with entire generations living out their entire lives in them, “Refugees find themselves in a long-lasting and intractable state of limbo. Their lives may not be at

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<sup>75</sup> Gil Loescher & James Milner, *Understanding the Problem of Protracted Refugee Situations*, in PROTRACTED REFUGEE SITUATIONS: POLITICAL, HUMAN RIGHTS, AND SECURITY IMPLICATIONS (2008), at 20.

<sup>76</sup> *Id.*, at 21.

risk, but their basic rights and essential economic, social, and psychological needs remain unfulfilled after years in exile.”<sup>77</sup>

The misconception of the “temporariness” of camps comes from a misunderstanding of the cause of their creation. It is generally assumed that camps are created in response to certain conflicts (and will be dismantled as soon as those conflicts end). On a simplistic, purely practical level, this is true. Individual camps are created in response to individual conflicts. However on a broader, more systematic scale, the decision to create camps is not a result of an individual situation, but rather a deliberate policy initiated by Western countries to address Third World refugee situations as a whole. To illustrate this, camps must be explained as one aspect of the much larger picture of refugee law.

Despite its appearance as a noble attempt to protect the world’s most vulnerable populations, refugee law has always limited itself to protecting people who meet a certain criteria. Various regional instruments, such as the OAU convention, have broadened the original refugee definition. However only the countries that have signed such documents apply these expanded definitions. The U.S and Europe (not part of the African Union) continue to use only the limited definition provided in the 1951 refugee convention. Over time, such limitations have increased as Western states have been faced with different kinds of asylum seekers.<sup>78</sup> International Refugee Law (IRL) currently functions as a way to confine displaced people to their regions, and camps are simply very effective means to that end.

IRL, even in its infancy, long before the 1951 convention, has always been a European product:

The first international legal standards governing the protection of refugees were designed by European states after World War I for the protection of European refugees; therefore, the role of refugee law reflected the political norms of European society.<sup>79</sup>

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<sup>77</sup> *Id.*

<sup>78</sup> James Hathaway, *A Reconsideration of the Underlying Premise of Refugee Law*, HARV. INT. LAW J. 129–47 (1990).

<sup>79</sup> Hathaway, *supra* note 78, at 134.

The 1951 refugee convention was drafted as a response to a specific refugee crisis: the Second World War. For this reason the original convention only applied to European refugees fleeing their home countries prior to 1951.

The 1951 convention defines a refugee as someone who:

As a result of events occurring before 1 January 1951 and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country...owing to such a fear, is unwilling to return to it.<sup>80</sup>

This specific definition was a response to the political situation at the time. In the immediate aftermath of WWII, the majority of the displaced people the drafters were seeing were fleeing persecution on racial or religious grounds. Furthermore, the discussions were overshadowed by tension between the Western and Soviet blocs, ultimately leading to the withdrawal of the Soviet delegation from the drafting process.<sup>81</sup> The convention was, therefore, an entirely Western product and the states ensured that it promoted Western objectives, “This phraseology was clearly adequate to comprise the traditional preoccupations of racial and religious minorities and would moreover bolster the condemnation of Soviet bloc politics through international law...”<sup>82</sup>

While the 1967 additional protocol eliminated the textual geographical and chronological limitations of the 1951 convention, it did not change the type of person who qualified for status. Despite the geographical expansion in the protocol’s text, the international community’s primary concern regarding displaced people remained concerning those moving throughout Europe.<sup>83</sup> While the protocol on paper appeared to apply to displaced people moving throughout Africa and Asia, its limited definition ensured many of them would never qualify for protection. The protocol therefore functioned to condone and strengthen the limited application of refugee status.

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<sup>80</sup> G.A Res. 429(V), *supra* note 40.

<sup>81</sup> Hathaway, *supra* note 78, at 18.

<sup>82</sup> *Id.* at 179

<sup>83</sup> *Id.*, at 164.

The refugee definition established by the Protocol has enabled authorities in developed states to avoid the provision of adequate protection to Third World asylum claimants while escaping the political embarrassment entailed by use of an overtly Eurocentric refugee policy.<sup>84</sup>

The Convention and Protocol's focus on the violation of civil and political rights was further strategic in that it identified a type of migrant that was more likely to come from one region and less likely to come from another. "Unlike the victims of civil and political oppression, persons denied even such basic rights as food, health care, or education (where the Western states have a poor record) are excluded from the international refugee definition..."<sup>85</sup> The majority of Soviet refugees during the Cold War were fleeing government persecution on the basis of political opinion or imputed political opinion. However most displaced people moving throughout the Third World today flee for very different reasons.

While many flee political oppression from dictatorial regimes and thus may well fall under the convention, many more flee economic hardship.<sup>86</sup> Despite finding themselves in often life-threatening situations in their home countries, they do not qualify as refugees. They are instead relegated to the category of "economic migrants" that are admissible and resident solely at the discretion of the host state.

From the convention's drafting in 1951 until 1980, developed countries were largely unconcerned with Third World displaced people and focused primarily on victims of the Nazi and Soviet regimes. One reason for this was that these refugees were considered valuable to western countries. Many refugees from the former Soviet Union were intellectuals – professors, writers, artists, doctors, lawyers - who were fleeing persecution by the Soviet state. These refugees were highly educated, they had skills that could benefit any society into which they integrated and were therefore considered valuable to Western countries. Furthermore, the U.S and Western Europe had a particular political point to make regarding these refugees and the country from which they fled.

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<sup>84</sup> *Id.* at 165.

<sup>85</sup> *Id.*, at 150.

<sup>86</sup> *Id.*, at 183.

IRL has often functioned as a vessel by which states express their support for, or disapproval of, another country. If a country approves of the actions of another state, they are often less willing to grant refugee status to asylum seekers fleeing its policies. On the other hand, if a state is unhappy with another country, they can express that by taking a broad reading of the refugee definition in the convention and granting status to as many people as can be seen to fit the definition. The U.S and Europe had a vested interest in showing their disapproval of the Soviet Union, as the Cold War was one fought as much through propaganda as physical force:

As anxious as the Soviets had been to refuse international protection to social and ideological immigrants for fear of exposing their weak flank, so were the Western states anxious to underscore the plight of dissidents from Communist regimes by bringing them within the scope of an internationally recognized refugee regime.<sup>87</sup>

Western countries therefore deliberately took a liberal reading of the convention and recognized as many soviet refugees as they could, thus showing their disapproval of the Soviet Union. “In the receiving countries of the West, anyone arriving from the Soviet Union or one of its allies was automatically granted some form of asylum; no detailed scrutiny of their reasons for leaving was felt necessary...”<sup>88</sup>

Not only did the U.S and Europe actively seek to grant refugee status to Soviet asylum seekers, they also created a place for them in Western society. UNHCR has specified three “durable solutions” when it comes to refugees. That is, there are three possibilities for establishing permanent, lasting solutions for those who have fled their homes. The three options are voluntary repatriation (returning to one’s home country), local integration (integrating into their country of asylum) and resettlement (if a refugee cannot return to their home and is unable to integrate into their first host country, they may be relocated to a third country for a permanent solution). Up until the end of the Cold War, the most desirable durable solution, in the eyes of the U.S and Western Europe, was resettlement. Soviet refugees were welcomed into the U.S and Western Europe with little scrutiny and were offered permanent solutions.

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<sup>87</sup> *Id.*, at 148.

<sup>88</sup> B.S. Chimni, *The Geopolitics of Refugee Studies: A View from the South*, 11 J. REFUG. STUD. 350–373 (1998), at 8-9.

In the past, the industrialized countries have advocated resettlement as a solution...indeed, it was the West which, in the period after the Second World War preferred resettlement to repatriation as a solution. Even when the policy of repatriation was formally adopted by the International Refugee Organization at the insistence of the Soviet Union, the solution of resettlement prevailed in practice.<sup>89</sup>

The combined result of all these factors was that most Soviet asylum seekers were quickly granted refugee status, resettled to U.S and Western European cities, and encouraged to integrate. There were no camps, no delays in refugee status determination, and no multitudes of people caught in limbo for decades.

The end of the Cold War marked end of the flow of predominantly white, male, adult, educated, “valuable” refugees, and the beginning of the flow of predominantly black, poor, female, young, and low-skilled ones. The Cold War did not materialize as an armed conflict between the U.S and the Soviet Union, but rather as a series of proxy wars throughout Africa, Asia, the Middle East, and Latin America. As various African countries began gaining independence in the 1950s, the U.S and Western Europe provided military and financial support to friendly political leaders and initiated coups to dislodge unfriendly ones:<sup>90</sup>

Africa, seething with anticolonial nationalism while under Western European imperial control, was viewed by American political leaders as one of the volatile regions outside Europe which appeared ripe for Soviet ideological expansion... Hence, the prevention of ideological and political penetration of the region by communism became a major objective of the U.S policy towards post-colonial Africa.<sup>91</sup>

Throughout the Cold War the U.S and Europe promoted their ideological agenda in Africa by supporting various dictatorial, and oppressive regimes. However after the war was over and these areas were no longer of such strategic value, support of such governments was withdrawn and the countries, simmering with ethnic and political

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<sup>89</sup> *Id*, at 11.

<sup>90</sup> Coups and Proxy Wars, alphahistory.com, available at: <http://alphahistory.com/coldwar/coups-and-proxy-wars/>

<sup>91</sup> Ugboaja Ohaegbulam, *The United States and Africa after the Cold War*, 39 AFR. TODAY 19–34 (1992), at 19.

tensions, devolved into civil war. “After the collapse of the Berlin Wall, many Third World countries in Africa were left to fend for themselves, compelled to foot the bill for the West’s bloody extravagances and incompetence.”<sup>92</sup>

These conflicts sent surges of displaced people fleeing across international borders and into neighboring states. In the 1990s for example, Tanzania, the Democratic Republic of Congo, and Rwandan refugee numbers, which had been holding fairly steady at approximately 200,000 since 1985, skyrocketed to 800,000 over the course of two years.<sup>93</sup> Neighboring countries were not suited to receiving such massive numbers of displaced people. Many of them were already recovering from, or engaged in conflicts of their own, suffering from political instability, and did not have the financial resources to support their own populations, let alone thousands of newcomers. The fact that these host countries were not going to be able to provide desirable living situations for incoming displaced people meant that those people would not likely want to stay there and might seek lives elsewhere.

This created a dilemma for the U.S and Western Europe: their original policy of resettlement being the desirable durable solution would enable many of these refugees to be resettled in the West. However these new types of displaced people were not what the Western countries had envisioned when they devised the policy. They were, in general, poorer and less educated than their former Soviet counterparts. This meant that they were considered less valuable to Western society and the latter was less willing to take them in.

Additionally, after the Cold War was over, the West had less of a vested interest in publishing their disapproval (if there was any) of the actions of states from which displaced people were fleeing. In some cases, it would have been politically disadvantageous to Western states to recognize the actions of governments that were driving refugee flows:

The strong political and economic links that exist between the West and many Third World states of origin have led to a predisposition to question the likelihood

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<sup>92</sup> Fatmata Lovetta Sesay, *The Root Causes of Refugee Flows in a Global Context*, May, 2002, <http://motspluriels.arts.uwa.edu.au/MP2102fls.html>.

<sup>93</sup> PAUL COLLIER & NICHOLAS SAMBANIS, *1 UNDERSTANDING CIVIL WAR: AFRICA* (2005), at 46.



that those states could reasonably be expected to engage in persecutory behavior.<sup>94</sup>

There was therefore no more reason to interpret an expansive definition of refugee status or publicize integration of refugees into Western societies:

A common view was that the needs of European refugees were the proper object of a universal convention, while the needs of non-European refugees ought to be dealt with by adjacent states. While European refugees required guarantees of rights in states of asylum or resettlement, it was argued that non-European refugees did not need legal protection.<sup>95</sup>

As a solution, the West relied on an already established perception that these new displaced people were distinctly different than the ones who had fled Nazi Germany and the former Soviet Union:

Once the Cold War ended, and refugees were no longer welcome in the North, the myth of difference was invoked to justify the institutionalization of the non-entree regime. By producing the image of a ‘normal’ refugee – white, male, anti-communist – a clear message was sent to the population with regard to the ‘new asylum seeker’: that asylum seekers were here for no good reason, that they abused hospitality, and that their numbers were too large.<sup>96</sup>

They were economic migrants in disguise. This is illustrated perfectly in the rhetoric surrounding the creation of camps, as emergency responses to situations of exceptionally high influx. However this perception of difference, and extraordinarily high rates of movement is, exactly as Chimni describes, a myth:

The notion that the contemporary refugee crisis is unique lacks a historical perspective and neglects this important fact: mass refugee movements are neither new nor exclusive to specific regions. They have been an enduring and global issue throughout the twentieth century. Before the Second World War, the European continent experienced refugee flows similar to those taking place in Eastern Europe and the developing world today...the Second World War alone displaced a staggering number of people – more than thirty million. Even during the relatively peaceful Inter-war period, millions of people became refugees... in 1926, for instance, an estimated 9.5 million were considered refugees. While the number of refugees is approximately the same as that of the refugee population of

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<sup>94</sup> Hathaway, *supra* note 78, at 170.

<sup>95</sup> *Id.*, at 156.

<sup>96</sup> Chimni, *supra* note 88, at 6-7.

1980, it is a proportionally larger figure because the world's population doubled in the mean time.<sup>97</sup>

There is, in reality, nothing to support the claim that today's refugee flows are unprecedented or exceptional:

Popular European belief seems to be based on the conviction that the present rate of intercontinental movements of immigrants is unprecedented in history. This is completely wrong. Taking a 200-year perspective from 1800 to 2000, by far the peak of migration was reached during the years 1845-1924, when 50 million people, mainly Europeans, moved to the Western Hemisphere at a time when world population counted only somewhat more than one billion.<sup>98</sup>

Not only did Western states promote the "myth of difference" they also sought to portray the states from which displaced people in the south were fleeing as responsible for the circumstances that led to their flight. By ignoring the fact that the conflicts that caused much of the refugee flow in the South were, in part, effects of Europe's colonialist policies, and placing responsibility solely on the countries themselves, the West could promote the repatriation of displaced people. This encourages states to either attempt to adjust their internal policies so their citizens do not flee to begin with, or for neighboring states to take displaced people in.<sup>99</sup>

The durable solution policy then officially changed, with the UNHCR executive committee, on encouragement from western states, began promoting voluntary repatriation instead of resettlement as the ideal durable solution:

While between 1912 and 1969 nearly 50 million Europeans sought refuge abroad all of them were resettled, at present the solution of resettlement is proposed only in the context of refugees having special needs. It is today offered to less than one per cent of the world's refugees. Resettlement has, in other words, been replaced by voluntary repatriation as the ideal solution.<sup>100</sup>

The West's reaction to mass population displacement was to try to contain it to the local region, and this policy has been further promoted by the ever-increasing mandate of

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<sup>97</sup> *Id.*, at 7.

<sup>98</sup> *Id.*, at. 7-8.

<sup>99</sup> *Id.*, at 2.

<sup>100</sup> *Id.*, at 7.

UNHCR. While the organization was traditionally a monitoring one focused on individuals who fit the legal definition of a refugee, much of its current work is geared toward assisting “persons of concern”, many of whom are not refugees. UNHCR’s camp management activities fall under precisely this category. The expansion of UNHCR’s mandate has come with the incorporation and solidification of the two-tiered system differentiating refugees from other migrants. UNHCR’s acceptance of this distinction has meant that their assistance in the field varies greatly depending on who they are assisting:

Whereas the UNHCR routinely assists refugees (European and analogous groups) in securing asylum including third state resettlement, non-mandate (third world) persons of concern to UNHCR are typically assisted in ways that localize or confine their displacement. Such assistance may include, for example, food and shelter.<sup>101</sup>

UNHCR is also active in promoting voluntary repatriation as the most desirable durable solution, as it frequently encourages and assists refugees in returning to their homes and provides assistance for them when they do.<sup>102</sup> In this way UNHCR has been complicit in the two-tiered protection system helping to further the West’s policy of containment.

While the West wanted to prevent displaced people from getting to their shores, that desire was echoed in the desire of local states. Overwhelmed with their own security and financial problems, they had no desire to allow displaced people to integrate in large numbers. The promotion of voluntary repatriation is an important contributing factor to the way the refugee situation looks today, particularly with relation to the existence of camps.

Camps are merely a method that address to the concerns of the U.S and Europe, as well as those of host countries in the region of conflict. The host states’ decision to confine displaced people to camps prevents them from integrating into society and keeps them in a living environment unpleasant enough to encourage them to return home. It further appeases Western states and their desire to restrict resettlement. Camps are usually packed full of people, some of whom fit the convention refugee definition and some who don’t. But because of the sheer number of people residing in camps, it is usually

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<sup>101</sup> Hathaway, *supra* note 78, at 159.

<sup>102</sup> *Id.*, at 160.

impossible for UNHCR to conduct the RSD process in any kind of timely fashion. In the Kakuma camp for example, many asylum seekers who had arrived in 2003 had not had the chance to even begin the RSD process by 2009.<sup>103</sup> And because resettlement is only available to refugees recognized under the 1951 convention, very few have access to the process, and on the off chance that they do, it too is incredibly delayed. The result is that displaced people often spend years, sometimes lifetimes or even generations, in camps. A study found that the average time a refugee spent in a camp was 17 years,<sup>104</sup> “The strong emphasis on the return, local resettlement, or confinement in camps of displaced people in the less developed world contrasts markedly with the “exilic bias” of the Convention-based refugee law applicable to Europeans.”<sup>105</sup>

Camps function as walls. They are not temporary safe havens, but permanent barriers designed to confine Third World displaced people to the global south, preventing them from getting to the U.S and Europe. This fact ensures their permanence. While individual camps are created because of an individual conflict, the phenomena of camps and their increasing use has little to do with local circumstances that could change. They are not a response to an individual conflict that could end, but rather to the permanent desire of the U.S and Europe to confine displaced people within their own regions. And since the driving desire behind their creation shows no sign of disappearing in the near future, camps, the result of this desire will not end.

The recognition of this fact is important because it could change the way camps are maintained. UNHCR regularly sites lack of resources as a reason living situations in camps are so dire. The longer camps last, the less likely donors are to give money to support them.<sup>106</sup> Neither states nor UNHCR have the resources or the desire to sustain camps for an indefinite amount of time. If camps’ permanence is recognized, states and

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<sup>103</sup> Kenere, *Refugee Status Determination: Justice Delayed is... Typical?*, 1 KAKUMA NEWS REFLECT. - REFUG. FREE PRESS (2009), <http://kanere.org/2009/02/28/refugee-status-determination-justice-delayed-istypical/>.

<sup>104</sup> Angwenyi, *supra* note 87, at 1.

<sup>105</sup> Hathaway, *supra* note 78, at 160.

<sup>106</sup> Angwenyi, *supra* note 67, at 19.

UNHCR would have more of an incentive to make them self-sustainable. If camps were built to last long term, it would be in the host state's and UNHCR's best interest to make them as livable and sustainable as possible, as the worse their conditions, the harder it is to indefinitely confine their inhabitants. If livability and sustainability were the goals of states and UNHCR when establishing camps, discussions could be had on root causes of problems such as GBV, in an attempt to ensure that camps were as safe for their inhabitants as possible. The current perception of camps as temporary prevents UNHCR and states from devising effective ways of making them as tolerable as possible. Camps should be recognized for what they are: permanent, confining, and increasing in number.

#### IV. MAKING THE PERMANENT TOLERABLE

If UNHCR, their partner NGOs, and states recognize camps as permanent entities, then these actors can begin discussing ways to make the camps more self-sustainable and tolerable for their residents. A crucial step toward achieving this goal is recognizing and promoting an absolute right to work for all camp residents. This step needs to occur at multiple levels. Most obviously, states must stop imposing restrictions on displaced people's abilities to work. However the right to work issue is not merely a state problem. UNHCR, as the often default camp manager, needs to prioritize the right to work, particularly by allowing displaced people greater participation in the maintenance and running in camps. Despite an abundance of rhetoric to the contrary, UNHCR and partner NGOs have consistently been reluctant to incorporate displaced people into the maintenance and running of camps. Refugee participation, particularly refugee women participation, has historically been very low.<sup>107</sup> There are two factors that must be remembered when engaging in a discussion about refugee participation: 1) as has already been articulated, camps are perceived as temporary. Under these circumstances, it is harder and there is less incentive, to make camps self-sustainable; and 2) that UNHCR and NGOs have a vested financial interest in limiting displaced people's participation, as every job that is taken over by a camp resident is one that is taken away from a UN or NGO employee.

Many states, particularly in the developing world, restrict employment of asylum seekers and other displaced people, largely out of the fear that such large numbers will be perceived to have a detrimental effect on their economy, and desire to discourage local integration.<sup>108</sup> They justify such restrictions on a number of legal grounds. While the right to work is outlined in the 1951 convention, many states deny its provision to those in camps based on their lack of recognized refugee status.

The International Covenant on Economic Social and Cultural Rights (ICESCR) also grants the right to work, this time to a much larger category of individuals, as its

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<sup>107</sup> MARTIN, *supra* note 25, at 17.

<sup>108</sup> Alice Edwards, *Human Rights, Refugees, and the Right "To Enjoy" Asylum*, 17 INT. J. REFUG. LAW 293–308 (2005), at 320.

application is not limited to a recognized status. However there are several limitations to the ICESCR, that states use to justify employment limitations.

One such limitation is that most of the rights outlined in the ICESCR, including the right to work, are subject to progressive realization. This means that they need only be realized to the extent that the state in question is financially able. Many poor countries hosting camps argue that they do not have the financial resources to guarantee the right to work to their own citizens, let alone millions of others.

Another limitation on the applicability of the right to work to displaced people comes in article 2(3) of the ICESCR, which gives countries discretion regarding which economic rights they will extend to non-nationals. Developing states often invoke this article in defense of their denial of economic rights, including the right to work, to displaced people.

Another potential barrier to the implementation of the right to work is that states are allowed to make reservations to the ICESCR. However, surprisingly few countries, and even fewer countries that host camps, have made reservations in regards to the right to work.<sup>109</sup>

#### **A. The right to work in Refugee Law:**

Article 17 and 18 of the refugee convention are designed to extend employment rights to refugees, when such rights would otherwise be restricted to nationals. Article 17 states:

The Contracting State shall accord to refugees lawfully staying in their territory the most favorable treatment accorded to nationals of a foreign country in the same circumstances, as regards to the right to engage in wage-earning employment.<sup>110</sup>

It goes on to say that restrictive measures imposed on aliens and their employment cannot be applied to one who has resided in the country for more than three years, or has a spouse or child processing the nationality of the host country. Furthermore, states must,

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<sup>109</sup> The countries that do have reservations regarding the right to work are: Bangladesh, China, France, India, Monaco, Pakistan, and the United States.

<sup>110</sup> G.A Res. 429(V), *supra* note 40.

“give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals...”

Regarding self-employment, Article 18 states:

The contracting states shall accord to a refugee lawfully in their territory treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Most developed countries offer employment rights that are consistent with, or superior to those articulated in the convention for recognized refugees. Developing countries, however, are historically more likely to have reservations to the convention and implement restrictions of various severities on the right to work, even when it comes to recognized refugees.<sup>111</sup>

The drafters of the convention limited the right to work specifically to those “lawfully staying” in the territory of the host country. There is some debate about when an individual is “lawfully staying” in the country. The object and purpose of the convention would suggest that once an asylum seeker has been recognized, either as a convention refugee or granted some form of official temporary protection, their presence in the host country is lawful residence. However there is considerably more debate when it comes to unrecognized asylum seekers. Goodwin-Gill argues that asylum seekers must “have permanent, indefinite, or unrestricted or other residence status, recognition as a refugee, or issue of a travel document” to be considered “lawfully staying”. This is obviously quite restrictive and has been disputed by other scholars. Grahl-Madsen argues that “lawful stay” is the same as “lawful presence”, which applies to a stay lasting more than three months.<sup>112</sup> According to Hathaway, it is unreasonable to consider asylum seekers’ residence unlawful until their status has been determined, as this would enable states to deny them their rights simply by refusing to verify their status. He therefore

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<sup>111</sup> CHIMNI, *supra* note 43, at 180-183.

<sup>112</sup> Edwards, *supra* note 108, at 322.



suggests that “lawful status” is acquired once some form of recognition process has been initiated.<sup>113e</sup>

Determining which individuals in a camp are protected by articles 17 and 18 is difficult, largely because their status is not determined. While some in camps are recognized refugees, many are merely asylum seekers who have not begun the RSD process, and many more (particularly those fleeing natural disasters) stand no chance at being recognized as refugees under the convention. Goodwin-Gill describes four types of presence in a host country: simple presence, lawful presence, lawful residence, and habitual residence.<sup>114</sup> While some displaced people in camps may be considered lawfully present (if they have begun or completed the RSD process) all camp residents are considered “simply present”, a status granted to them independent of their legal situation.<sup>115</sup>

Despite its prominence, the 1951 convention is not the only source of refugee law. Many countries hosting camps have signed refugee conventions expanding the 1951 convention. By 1969 it had become clear to many African countries that the 1951 convention did not address most of the kinds of migrants moving throughout the continent and thus they decided to draft an additional treaty dealing with refugees.<sup>116</sup> The Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU convention) copies the 1951 convention refugee definition word for word, but then goes on to expand it:

The term ‘refugee’ shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part of the whole of his country of origin or nationality, is

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<sup>113</sup> *Id.*

<sup>114</sup>GUY GOODWIN-GILL & JANE MCADAM, *THE REFUGEE IN INTERNATIONAL LAW* (3rd ed. 2007), 524-526.

<sup>115</sup> *Id.*

<sup>116</sup> CHIMNI, *supra* note 43, at 62-63.

compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.<sup>117</sup>

This expanded definition was designed to deal with people fleeing their countries due to aggression by another state, something Africa had seen a lot of since decolonization.<sup>118</sup>

Central American states took an even broader approach to legally defining a “refugee” in the 1984 Cartagena Declaration on Refugees (Cartagena declaration), which states:

In view of the experience gained from the massive flows of refugees in the Central American area, it is necessary to consider enlarging the concept of a refugee...Hence the definition or concept of a refugee to be recommended for the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety, or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.<sup>119</sup>

While the Cartagena Declaration is not a legally binding treaty, its broad refugee definition is used by most Central American states when determining refugee status.<sup>120</sup>

While neither the OAU Convention nor the Cartagena Declaration outline a right to work for refugees, both are meant to supplement the 1951 convention. This is supported by the Cartagena Declaration’s preamble, which states, “To ensure that the countries of the region establish a minimum standard of treatment for refugees, on the basis of the provisions of the 1951 Convention and 1976 Protocol and the American Convention of Human Rights...”<sup>121</sup>

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<sup>117</sup> Organization for African Unity Refugee Convention, available at: [http://www.africa-union.org/Official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/Refugee\\_Convention.pdf](http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Refugee_Convention.pdf).

<sup>118</sup> CHIMNI, *supra* note 43, at 64-65.

<sup>119</sup> *Cartagena Declaration on Refugees*, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984.

<sup>120</sup> CHIMNI, *supra* note 43, at 66.

<sup>121</sup> *Cartagena Declaration on Refugees*, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984.

According to this model, states that had signed either regional instrument *and* the 1951 refugee convention should grant protections and rights outlined in the 1951 convention, specifically the right to work, to all recognized refugees, regardless of the convention under which they were recognized.

Regardless of their status under IRL instruments, camp residents are still protected by International Human Rights Law (IHRL), whose protection is not limited to status recognition, and contains a wealth of employment rights.

### **B. The right to work in International Human Rights Law:**

Article 23 of the Universal Declaration of Human Rights, widely considered to be part of customary law<sup>122</sup>, states, “Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.”<sup>123</sup>

The right to work was further fleshed out in Article 6 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR<sup>124</sup>). Article 6 is legally binding on states that have signed the ICESCR, which includes the majority of countries in the developed and developing worlds.

The state parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.<sup>125</sup>

Article 2(2) of the ICESCR states that all the rights contained therein must be applied without discrimination on any grounds, including national origin. A country can therefore not deny an individual their rights under the ICESCR simply because that person is an

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<sup>122</sup> OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, DIGITAL RECORD OF THE UDHR (2009), <http://www.ohchr.org/EN/NEWSEVENTS/Pages/DigitalrecordoftheUDHR.aspx>.

<sup>123</sup> G.A. Res. 217(III), *supra* note 58.

<sup>124</sup> This argument would not apply to states that had not signed the ICESCR. However UNCHR in such states would still be under an obligation to promote the right to work, as described below.

<sup>125</sup> *International Covenant on Economic, Social, and Cultural Rights*, G.A. Res. 2200(XXI), U.N. Doc. A/Res/2200(XXI) (16 December 1966).

alien. Additionally, article 26 of the ICCPR further prohibits discrimination on any grounds (again, including nationality) and insists that the law protect them from such discrimination. According to Edwards, “Article 26 of the ICCPR extends non-discrimination protection to socioeconomic rights of non-nationals.”<sup>126</sup> Thus, Edwards concludes:

It is well-established that these standards [ICESCR employment rights] apply to non-nationals on an equal footing as nationals, although given the particular vulnerability of refugees and asylum-seekers such standards are not always observed.<sup>127</sup>

While most of the rights outlined in the ICESCR, including the right to work, are subject to progressive realization, as states claim, the ICESCR committee has stated that states have an obligation to “move as expeditiously and effectively as possible towards the goal of the full realization of the rights in question.” Additionally, the committee recognized that, while most of the economic rights contained in the ICESCR may not be fully realized due to financial constraints, the protection against discrimination could be subject to no derogation. While poor states hosting camps might be able to defend low employment rates among displaced people on the basis of financial hardship, they would not be allowed to enact specific policies designed to limit the right to work when it came to displaced people in particular.

As stated above, another barrier to the implementation of the right to work comes in article 2(3) of the ICESCR, which states, “Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.”<sup>128</sup> While this statement appears to give states license to deny non-nationals an abundance of rights otherwise awarded to them in the covenant, it must be placed in context. According to Edwards, “while ambiguously worded, its [article 2(3)] purpose was to end the

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<sup>126</sup> Edwards, *supra* note 108, at 324.

<sup>127</sup> *Id.*

<sup>128</sup> *International Covenant on Economic, Social, and Cultural Rights*, G.A. Res. 2200(XXI), U.N. Doc. A/Res/2200(XXI) (16 December 1966).

domination of certain economic groups of non-nationals during colonial times. For this reason, it ought to be interpreted narrowly.”<sup>129</sup>

Edwards goes on to argue that if a distinction between a national and a non-national were to undermine the non-national’s basic rights, that distinction would not be legitimate. According to Fredriksson, “it can perhaps be argued that economic constraints may justify limiting some entitlements (such as welfare or health care) to citizens, but limiting employment-related benefits would not be supportable under this rationale”.

He goes on, “It is unreasonable to deny both the right to work and the right to access social security: this policy threatens to deter bona fide asylees with a well-founded fear of persecution from seeking protection...”<sup>130</sup>

Sometimes the 1951 refugee convention awards more rights to the displaced, and sometimes those people are better protected by IHRL. The right to work as outlined by the ICESCR applies to displaced people living in camps and the various limitations provided for in the convention do not justify state policy restricting camp residents’ right to work. Furthermore, those in camps have as much a need to work as do regular nationals of the host state. UNHCR has stated:

It has become clear that a significant proportion of the world’s refugees (and asylum seekers) is destined to remain in their countries of asylum for long periods of time, due to the protracted nature of the conflicts which have forced them to leave their homeland. It has become equally clear that confining refugees to camps for years on end, deprived of the right to freedom of movement and without access to educational and income generating opportunities, has many negative consequences...<sup>131</sup>

Edwards adds, “The right to work is particularly important to refugees and asylum seekers as a means of survival and as a contribution to their sense of dignity and self-worth.”<sup>132</sup>

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<sup>129</sup> Edwards, *supra* note 108, at 325.

<sup>130</sup> *Id.*, at 326.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*, at 320.

Displaced people residing in camps are legally entitled to a right to work. While not all camp residents are recognized refugees, those that are under the 1951 convention or regional instruments, are entitled to a right to work under the 1951 convention. Even those not recognized as refugees cannot be denied access to employment under IHRL, particularly the ICESCR. There is therefore no legal right for countries hosting camps to actively prevent camp residents from seeking employment. As has been pointed out, confining displaced people to camps often creates this exact situation, as there are few, if any, employment options in camps. However the government's decision to confine displaced people to camps cannot function as an excuse to deny them further rights.

State governments are obligated to, at the very least, allow camp residents to access employment. The realization of this process could take various shapes: states could choose to construct camps in more hospitable environments, where their residents would be able to farm the land. Alternatively states could invest in employment opportunities within the camp itself, such as facilitating small, refugee-created businesses (such as craft making) access to larger markets. Most extreme, as it would alter the way closed camps function, states could enable camp residents to seek employment outside the camp, in urban areas, while still requiring them to maintain their residence in the camp.

### **C. Benefits of allowing displaced people access to employment:**

It is in the best interest of states to allow camp residents to work and thus contribute to the state's economy. There is significant evidence from the few developing states that do allow displaced people to work that suggests that they benefit greatly. The Thai government, for example, created a formal migrant work program in the 1990s, that employed approximately 1.3 million Burmese migrants, many of whom were displaced people. Additionally, an estimated 1-1.5 million Burmese displaced people continued to work unofficially. The result was a sharp reduction in poverty in the rural communities in which the majority of the migrants worked. In 1997, when a financial crisis hit Asia and the government deported large numbers of Burmese displaced people, there was a sharp

increase in the number of bankruptcies in the areas where they had worked.<sup>133</sup> Such data shows that these migrants and refugees benefited the economy and that it suffered when they left the country.

In another example, since 2008 Ecuador has implemented a policy that allows refugees to work on an equal basis with nationals. Since that date, Ecuador has experienced steady economic growth. Similarly, Vietnamese refugees in Australia have contributed to a growth in trade between the two countries, boosting both economies.<sup>134</sup>

Displaced people also often bring with them knowledge and skills that can contribute to the economies of their countries of asylum. Displaced people in Guinea for example, knew how to grow swamp rice, and were thus able to make use of land that had previously been considered un-farmable. Displaced people in Nepal have introduced new techniques of growing Cardamom, increasing productivity of an already profitable crop.<sup>135</sup> In sum:

The human capital ‘windfall’ that refugees offer is maximized when refugees are able to travel to urban centers where jobs are more readily available. Host communities reap economic benefits in the form of new jobs and increased tax revenue that significantly outweigh the costs of additional social services and environmental protection measures. Refugees who work purchase goods and services, re-circulating money and benefitting host economies by increasing local demand.<sup>136</sup>

Furthermore, by allowing displaced people to work, the host state benefits from skills and training in which it did not invest (as the majority of displaced people would have received such training in their home countries).<sup>137</sup> Importantly, evidence shows that the

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<sup>133</sup> Emily Arnold-Fernandez & Stewart Pollock, *Refugees’ Rights to Work*, 44 FORCED MIGR. REV. 92–93 (2013), <http://asylumaccess.org/AsylumAccess/wp-content/uploads/2012/09/arnoldfernandez-pollock.pdf>.

<sup>134</sup> *Id.*, at 93.

<sup>135</sup> *Id.*, at 93.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

host state reaps these benefits whether or not the displaced people integrate locally, are resettled to a third country, or return to their homes.<sup>138</sup>

States often voice concern that allowing displaced people to work will detract from the local economy and encourage such individuals to remain in the country of asylum, however there is little evidence to support this. Displaced people are an entire labor force complete with skills in which the state did not have to invest. And given that those who do not work are completely reliant on aid, from the host state or UNHCR and partners, their unemployment can be extremely costly for states. Their contribution to the economy and self-sufficiency provides far more benefit than harm to the economies of host countries. Host countries' economies benefit and displaced people are able to use their skills and financially support themselves, "Policies that forbid refugee employment force skilled individuals into idleness; policies that permit refugee employment allow those individuals to maintain their skills and contribute the fruits of their training to their host nation."<sup>139</sup>

Furthermore, when it is possible to return home, displaced people are more likely to do so if they have some financial security. This is particularly true in cases where people have fled natural disasters (as in the case of many camp residents). Displaced people have often lost their homes and been forced to leave all their belongings behind. In the event their home countries stabilize they are less likely to return if they have spent years living on foreign aid and have a lot less than they had during their original flight.<sup>140</sup> They would be far more willing to return if they have spent their time in the host country working and saving enough money to rebuild their homes and lives upon their return.<sup>141</sup>

#### **D. UNHCR and International Law:**

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<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> Refugees often spend the majority of their savings trying to get out of their countries of origin or making ends meet while unemployed.

<sup>141</sup> Arnold-Fernandez and Pollock, *supra* note 133, at 92.



States are obligated to promote the realization of the right to work under IHRL and IRL. At the very least states who have signed the ICESCR, and not entered reservations to article 6, would be under an obligation not to deliberately prevent displaced people from working. However they are not the only players who have a duty and ability to promote the right to work in camps. Many states turn over the running and maintenance of camps to UNHCR when they are unwilling or financially unable to run them themselves. In situations like these, UNHCR functions as the de facto sovereign over the camp:<sup>142</sup>

UNHCR invariably functions as a surrogate state; not only does it act to ensure the population's well-being by engaging security, arranging food distribution, and organizing health and educational facilities, it also establishes camp bylaws and curfews, and controls entry to and exit from the camp. Indeed, UNHCR and its implementing partners assume public powers that would normally be exercised by the host state.<sup>143</sup>

While international law has historically applied only to states, it is now generally accepted that certain other entities, particularly international organizations, can be bound by international law.<sup>144</sup> Any state or international organization's obligations under international law stem from its possession of international personality. If a state or international organization possesses legal personality, they are responsible or liable for the non-fulfillment of their obligations.<sup>145</sup> "A legal person is 'a right-and-duty bearing unit' and legal personality is 'the capacity of being subject of legal duties and legal rights, of performing legal transactions and of suing and being sued at law'."<sup>146</sup> Ralph Wilde, Guglielmo Verdirame, and Maja Janmyr have all articulated arguments as to why UNHCR possesses international legal personality and therefore has duties and obligations under international law.

In the 1949 *Reparations for Injuries Suffered in the Service of the United Nations* case, the ICJ decided that the UN had international personality. It reached this decision

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<sup>142</sup> Wilde, *supra* note 40, at 110.

<sup>143</sup> JANMYR, *supra* note 5, at 228.

<sup>144</sup> *Id.*, at 229.

<sup>145</sup> *Id.*

<sup>146</sup> VERDIRAME, *supra* note 7, at 58-19.

based on the *raison d'être* and *modus operandi* of the UN.<sup>147</sup> The court stated that the UN was, “intended to exercise and enjoy, and is in fact exercising and enjoying, functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane”<sup>148</sup> and was therefore, “a subject of international law and capable of possessing international rights and duties and... has capacity to maintain its rights by bringing international claims.”<sup>149</sup>

The *Reparations* case made it clear that the UN possessed international personality. The next question is does that personality extend to UNHCR, either as a child organization of the UN or as an independent organization. If UNHCR is considered merely a subsidiary organ, than responsibility for violations of international law would not be attributed to it, but rather to the UN as a whole. However, if UNHCR is an independent international organization, then it incurs its own obligations and duties for which it is responsible.

The Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (VCLTSIO) defines an international organization as an “intergovernmental organization”, a definition that would preclude UNHCR from being considered an international organization. However in 2009 the International Law Commission (ILC), in their Articles on the Responsibility of International organizations (ARIO), defined an international organization as:

An organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to states, other entities.<sup>150</sup>

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<sup>147</sup> Wilde, *supra* note 40, at 114.

<sup>148</sup> VERDIRAME, *supra* note 7, at 63-64, citing *Reparations of injuries suffered in the service of the United Nations*.

<sup>149</sup> *Reparations for injuries suffered in the service of the United Nations*, Advisory Opinion: I.C.J. Reports 1949, p. 174, available at: <http://www.icj-cij.org/docket/files/4/1835.pdf>.

<sup>150</sup> Articles on the Responsibility of International Organizations, available at: [http://legal.un.org/ilc/guide/9\\_11.htm](http://legal.un.org/ilc/guide/9_11.htm).

This definition clearly includes UNHCR. Furthermore, Wilde, Verdirame, and Janmyr have all argued that UNHCR, while a subsidiary of the UN, operates independently of both its parent organization, and of its member states. According to Verdirame:

Autonomy is both a postulate and an effect of legal personality. In other words, international organizations deserve legal personality by virtue of being distinct from member states, but legal personality also becomes one of the ways in which they can maintain such distinction...<sup>151</sup>

Janmyr and Verdirame argue that UNHCR retains a large amount of independence from the General Assembly (GA). The ICJ's *Effect of Awards of Compensation Made by the UN Administrative Tribunal* advisory opinion implied that it was possible for the GA to create an organization so independent that it could actually bind the GA itself.<sup>152</sup>

Janmyr points out that UNHCR generally possesses complete control over its activities and that the GA's oversight, in reality, is extremely limited.<sup>153</sup> Furthermore, UNHCR's mandate to provide "international protection" requires the organization to be able to assert claims on behalf of those for whom it is responsible.<sup>154</sup> Thus, Janmyr concludes, "while UNHCR in theory is subordinated to the UN General Assembly, it also appears as if the General Assembly intended that UNHCR act relatively unassisted on the international plane."<sup>155</sup>

Another important point is that UNHCR is largely independent of its member states. According to Verdirame, "An autonomous institution is one that possesses a will distinct from that of its member states and can act independently of them."<sup>156</sup> Studies of UNHCR have demonstrated several instances where the organization has acted independently, even against the will, of its member states.<sup>157</sup> Additionally, while UNHCR

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<sup>151</sup> VERDIRAME, *supra* note 7, at 59.

<sup>152</sup> JANMYR, *supra* note 5, at 231.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> VERDIRAME, *supra* note 7, at 33.

<sup>157</sup> *Id.*

does receive the majority of its funding from a few wealthy member states, the European Court of Human Rights has nonetheless described UNHCR as a body “whose independence, reliability and objectivity are, in the court’s view, beyond doubt.” Based on its independence from the UN and its member states, UNCHR is an individual international organization. As such, it possesses international legal personality and is bound by international law.

Having established UNHCR’s legal personality, the next step is to determine what specific obligations they possess under international law. The advisory opinion in the *Interpretation of Agreement of March 1951 between the WHO and Egypt*, stated:

International organizations are subjects of international law, and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties.<sup>158</sup>

This means that UNHCR, as an international organization, is bound by customary international law, as well as principles of *jus cogens*, the UN charter, and its own mandate.<sup>159</sup>

“The European Court of Justice has explicitly found that customary international law binds the EU/EC. This would mean that a significant part of human rights law and international humanitarian law binds UNHCR through custom.”<sup>160</sup>

#### **E. UNHCR, the right to work, and displaced people’s participation:**

As has previously been outlined, the right to work is clearly embodied in the ICESCR. In UNHCR’s mission statement it lists, “encouraging respect for human rights and fundamental freedoms” as one part of its mandate. Additionally, UNHCR, as part of the UN, is legally bound by the UN charter.<sup>161</sup> Article 55 of the charter states, “...the United

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<sup>158</sup> JANMYR, *supra* note 5, at 235.

<sup>159</sup> VERDIRAME, *supra* note 7, at 72; JANMYR, *supra* note 5, at 236.

<sup>160</sup> JANMYR, *supra* note 5, at 236.

<sup>161</sup> *Id.*, at 237.

Nations shall promote... higher standards of living, full employment, and conditions of economic and social progress and development”<sup>162</sup>

Furthermore, UNHCR itself has made repeated statements emphasizing the importance of both refugee participation and self-sustainability when it comes to camps. Their handbook on emergencies, which lays out guidelines for the creation and maintenance of camps states:

Most refugee operations last much longer than initially anticipated, therefore cost-effective and sustainable infrastructure and shelter should be planned from the start...the refugees themselves must be involved as early as possible; ideally, the needs of the refugees should determine the location, size and layout of the site.<sup>163</sup>

Since 2006, UNHCR has actively pursued a policy of self-reliance regarding all displaced persons. Their handbook for self-reliance says in its introduction:

Self-reliant refugees are more likely to achieve durable solutions. This is why the promotion of self-reliance is an integral component of UNHCR’s Framework for Durable Solutions for Displaced Persons. The Framework is based on the realization that the protection provided to refugees and other displaced persons by UNHCR and its partners can be effective only if material assistance is directed towards enhancing self-reliance and empowering refugees<sup>164</sup>

UNHCR’s obligations under IHRL and the UN declaration, combined with their own statements about promoting self-reliance and sustainability create an obligation incumbent upon them to promote self-reliance, sustainability, and the right to work. Importantly, given UNHCR’s own statement and their extensive mandate applying to far more individuals than are legally considered refugees, this obligation extends to all those under UNHCR’s care, particularly those in camps.

However despite UNHCR’s obligation and self-stated intention to promote self-reliance and sustainability, refugee participation in camp maintenance and life has an abysmally poor history, “Refugee participation probably has the worst ratio of rhetoric to reality of any concept in the refugee field.”<sup>165</sup>

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<sup>162</sup> UN Charter, available at: <http://www.un.org/en/documents/charter/chapter1.shtml>,

<sup>163</sup> Handbook for Emergencies, (2007), <http://www.unhcr.org/472af2972.html>.

<sup>164</sup> UNHCR Handbook for Self-Reliance, (2005), <http://www.unhcr.org/44bf40cc2.html>.

<sup>165</sup> MARTIN, *supra* note 25, at 17.

Frederick Cuny, president of the Refugee Policy Group, has argued,

The principal reason why refugees are not more involved in meaningful participatory activities is that relief agencies and the international organizations do not view themselves as being accountable to the refugees but rather to their donors and to the host country. Because the agencies do not feel themselves accountable, there are no effective corrective mechanisms through which refugees can attain meaningful participation, nor councils wherein they can demand a greater say in their own affairs. In short, refugees are left at the mercy and whims of assisting agencies.<sup>166</sup>

Additionally, aid agencies often refuse to formally hire displaced people and pay them for their contributions to the camp, preferring to insist that their participation be on a voluntary basis. Thus, camp residents are unable to accumulate any currency that would enable them to provide for themselves and their families, and are therefore less likely to work in the long term.<sup>167</sup>

Admittedly another obstacle to the hiring of displaced people to maintain camps is that the host state often imposes limits on such participation. As part of their original agreements with UNHCR, states often require certain types of jobs be filled by either expatriate or local workers. UNHCR, faced with the dilemma of either employing local and expatriate staff and gaining entry to the country or insisting on employing displaced people (an idea they were never keen on to begin with) and not being allowed to operate in the country, almost always choose the former.<sup>168</sup>

While state opposition is a concern, there is another, less obvious barrier to refugee participation; and that is UNHCR itself. Aid organizations and UNHCR benefit from providing services in camps, as it is easier to solicit donations when they can present specific causes. Such opportunities enable them to publicize their work internationally, thereby increasing their prominence and soliciting further donations.<sup>169</sup> UNHCR is thus engaged in a business of development and camp maintenance. While

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<sup>166</sup> Frederick Cuny, REFUGEE PARTICIPATION IN EMERGENCY RELIEF OPERATIONS, AT 5.

<sup>167</sup> *Id.*, at 13-14.

<sup>168</sup> *Id.*, at 8-9.

<sup>169</sup> Christina Ruta, REFUGEE CAMPS NOT DESIGNED FOR REFUGEES (2012), <http://www.dw.de/refugee-camps-not-designed-for-refugees/a-16293384>.

they are not a for-profit company, they do have a vested interest in providing employment and growth for the humanitarian industry. And without people to save, there would be no need for the saviors. Taking on the running of camps means they need to solicit donations to complete the task. This also offers an opportunity to showcase their work as well as employ more staff and increases their operations. And the more activities they take on, the more donations they can require.

And yet despite this constant promotion and fundraising, UNHCR constantly cites limited resources as barriers to success. Therefore the question of how they spend the money they do receive must be raised. UNCHR has stated that the reason they cannot pay displaced people to work in camps is that they do not have the funds to do so.<sup>170</sup> And yet they do have funds to employ foreign staff.

UN salaries for entry-level UN field service employees range from \$31,000 to \$54,000 per year and salaries for senior level professionals reach up to \$90,000 per year. These salaries are also usually untaxed. Additionally, salaries are supplemented by a post adjustment, whose amount varies depending on cost of living at the duty station and exchange rate of the US dollar. For example, field service positions in Ethiopia would pay, with post adjustments included, total annual salaries range from \$45,182 to \$60,222 for entry-level positions, and reach \$105,691 senior positions. Staff members are often also awarded benefits, such as living allowances<sup>171</sup>, dependency allowances (for those traveling with families), health insurance, travel expenses covering travel to and from the duty station, and additional hazard pay (approx. \$1365/month for international staff) for working in conflict zones.<sup>172</sup> While such salaries may not seem exorbitantly high, they do amount to more money than UNHCR would have to spend were they employing displaced people to run the camps.

There is a disturbing irony to UNHCR paying foreign wages to foreign staff, flying such foreign staff into countries with camps, and paying living expenses for those

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<sup>170</sup> Cuny, *supra* note 157, at 9-10.

<sup>171</sup> For a list of living allowances by country, please see: [http://www.un.org/Depts/OHRM/salaries\\_allowances/allowances/msa.htm](http://www.un.org/Depts/OHRM/salaries_allowances/allowances/msa.htm).

<sup>172</sup> “Pay and Benefits”, UN Careers, available at: <https://careers.un.org/lbw/home.aspx?viewtype=SAL>.

staff, and then claiming they cannot pay local wages (which, when calculating exchange rates for foreign currencies in poor countries, would be minuscule) to those already living in local camp housing. While millions of dollars are funneled into UNHCR for the support of its “humanitarian” activities, much of that money goes to paying western wages and supporting western life styles of western staff. The result is that the organization appears constantly underfunded and unable to fulfill its goals with regard to its projects. This cycle needs to change, largely by reducing UNHCR activities and transferring jobs previously held by UNHCR staff to displaced people.

Making camps 100% self-sufficient, with no expatriate staff involvement, is not possible. Refugee communities may not bring certain specialized skills with them and certain positions, such as IRL/IHRL legal experts or experienced camp managers from abroad will still be needed. However such jobs are far fewer than the number of positions usually filled by foreign staff. There is no need for expatriates to be building shelters and running food stations when these tasks could be completed by camp residents.

Employing displaced people would have a large, positive impact on their psychological condition. Psychologists have pointed out that participation, “builds self-esteem, rebuilds self-confidence, reduces feelings of isolation and reduces lethargy, depression, and despondency.”<sup>173</sup> It would also return a sense of identity and agency to male camp residents, helping to reduce the rate of GBV.

Furthermore, participation is cost effective, for both UNHCR and host states. If camps were sustained by their inhabitants and UNHCR’s activities were reduced, the organization would not find itself in its seemingly permanent “under-funded” status. Furthermore, states would be less burdened financially because they would be expected to contribute less to camps. Participation also promotes a primary goal of UNCHR: protection:

Internal protection problems are usually due as much to people’s feelings of isolation, frustration, and lack of belonging to a structured society as they are to any other form of social problem...By giving people a sense of worth, a sense of control over their own lives, and by building a community to which people feel

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<sup>173</sup> Cuny, *supra* note 157, at 15.



responsible about community affairs, the groundwork is laid for a bonding of the community which will reduce protection incidents.<sup>174</sup>

Lastly, participation gives displaced people better opportunities in the future, regardless of what durable solution they eventually experience. Displaced people who have been able to work and accumulate some savings will be less dependent on financial assistance from resettlement countries, therefore increasing the chances that those countries will take them.<sup>175</sup> They will also have a greater chance at integrating into their host country if they have formed some sense of community and purpose. And, if their countries of origin do become safe for return, they will be more likely to go back if they have had the opportunity to work and possess the financial resources to rebuild their lives upon their return. It is therefore in the best interest of all parties involved: displaced people, UNHCR and partners, host states, and resettlement states, to encourage the overall right to work for displaced people.

States and UNHCR have obligations, prescribed by international law or individual mandate, to promote the right to work. Whilst active policy to promote this right may be financially unfeasible (particularly for states) they both must, at the very least, stop deliberately preventing displaced people from realizing their right to work. The exact details of the implementation of such a plan are beyond the scope of this thesis; however, on a general level, UNHCR and their NGO partners must actively reduce their activities and focus more on training displaced people and enabling them to maintain their camps. Displaced people who could not find work maintaining the camps should be encouraged to engage in other employment activities in the camp, such as crafts business, farming, and so on. And lastly, the host state must allow displaced people who cannot find work in either of the previously mentioned sectors to leave the camps and seek work in urban areas.

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<sup>174</sup> *Id.*, at 16.

<sup>175</sup> While financial security is not grounds for resettlement, many Western states are concerned with the taxes on welfare systems brought by incoming refugees. If such refugees were less dependent, states might be more willing to grant resettlement.

## V. CONCLUSION

Many camps are often notoriously inhumane places. Women and children in particular are in danger of being raped and/or physically abused. Sites of horrendous violence, camps often seem chaotic, lawless places in which exceptional violence is a result of such disorder. However much of the violence, particularly GBV, in camps is anything but disordered. Rather, it is, in part, the direct result of a network of laws and policies that control every aspect of camp residents' lives and reduce them to a state of utter dependence. Such laws and policies are no accident. Rather, they are direct tools implemented to keep Third World displaced people from the developed world.

Since the end of the Cold War, bloody conflicts in the Third World have continued to rage, driving millions from their homes and across international borders. Determined to confine these masses to their regions, Western states have constructed barriers, built from the bricks of restrictive visa policies, the promotion of voluntary repatriation, and camps. As a result, millions of displaced people are caught in a perpetual state of turmoil; prevented from returning to their homes and barred from accessing the West by a figurative, and often literal, wall.

The developed states' plan should not be condoned and should be constantly challenged. However, it must also be recognized as an unfortunate reality. If the confinement of displaced people to their regions is recognized as a permanent situation, then ways of making the means of confinement more humane should be explored. The method does not have to be closed camps that leave their residents languishing in permanent states of dependence and vulnerability.

Current camp structures usually prevent displaced people from leaving the camp, and providing for themselves, forcing them to rely entirely on UNHCR and their partner NGOs for every aspect of survival. While this may suit UNHCR and partners, it has a catastrophic effect on the physical and psychological welfare of the individuals such organizations are mandated to protect. Deprived of all sense of agency and their identity as breadwinners, male displaced people often resort to violence of all types, particularly victimizing women and children. Such policies also have a destructive effect on female

displaced people, who often find themselves unable to provide for themselves and their children and therefore dependent on abusive partners.

While such facts are the current reality, they do not have to be. If some form of camps is recognized as permanent phenomena, then there is an incentive to make them self-sustainable and tolerable. Both UNHCR and host states have obligations respectively under their personal mandate and international law to promote and facilitate the right to work for displaced people under their care. By turning over the majority of camp maintenance positions to displaced people, UNHCR would cut down on the massive expenses it never seems to be able to afford and could more effectively promote their mandate to protect the displaced. States, by facilitating the employment of displaced people inside and outside of camps, could benefit from their contributions to the local economy, and also save itself precious financial resources it cannot afford to spend on camp maintenance. And most importantly, such policies would serve as a large step toward improving the mental state of displaced people and reducing GBV. In this way, women and children could move out of their permanent place of peril and into a more humane environment.