Improving the Global Refugee Regime: From Theory to Practice?

6th Annual Conference

Refugee Law Initiative
University of London

29 June - 1 July 2022
RLI Annual Conference

The Refugee Law Initiative (RLI) annual conferences serve as a dedicated forum for bringing together decision-makers and practitioners, policy-makers, academics and students to share, discover and debate the latest thinking and developments in the refugee protection field. They provide a global platform for furthering research, dissemination and legal and policy impact in the refugee law field.

6th Annual Conference

Some speakers at the 5th RLI annual conference argued that the global refugee regime needs changing. Such proposals open topical debate around how a reconfigured refugee regime might look (e.g. new burden-sharing arrangements, a global oversight mechanism etc.). Yet they also raise difficult questions about the desirability and feasibility of such change.

At the 6th annual conference, the RLI challenges the refugee law/protection field to take this debate head on. We are interested in receiving well-developed proposals not only on what needs to be changed but also whether, why, where, how and by whom. Sample questions that paper/panel proposals addressing this year's theme might consider include:

- *Does* the regime need to change? If so, *why* does the regime need to change? Are existing processes of change, such as the Global Compact on Refugees, sufficient?
- *What* needs to be changed? We are keen on focused and detailed proposals of what to change, supported by evidence, rather than simply generic prescriptions.
- *Where* does the change need to happen? Within the refugee regime or in the wider structures around it? In which regions or institutions? At what levels?
- *Who* should be responsible for change? What role might governments, international organisations and agencies, civil society and refugees play in promoting change?
- *How* do we get from here to there? A key question. Lofty aspirations are important, but set against the reality of refugee responses and global politics what is feasible?

Keynote Speakers

- “The ‘Arc of Protection’ and the Future Shape of the Global Refugee Regime”
  **Professor Alex Aleinikoff**, Director, Zolberg Institute on Migration and Mobility
  The New School, New York, USA

- “Moving Beyond Refugee Law: Putting Principles on Climate Mobility into Practice”
  **Professor Jane McAdam**, Director, Andrew & Renata Kaldor Centre for Refugee Law
  University of New South Wales, Australia

- “Refugee Leadership and the Future of the Global Refugee Regime”
  **Sana Mustafa**, Director of Partnership and Engagement
  Asylum Access

2022 Panel Sessions

Across the three half-days of the conference, a fantastic range of current research will be presented across a total of 18 panel slots. Thematic panels address topics relevant to the chosen theme of this year’s conference, whilst Open panels address other topics relating to protection and assistance to refugees and other displaced persons.
INTERNAL DISPLACEMENT – 1st ONLINE PHOTOGRAPHY COMPETITION

The Researching Internal Displacement platform has selected the winner for its 1st online photo exhibition featuring artistic work relating to internal displacement.

“Artifacts of urban internal displacement”
July 2019, Sievierodonetsk, Ukraine
Melissa Weihmayer

Description: This photo was taken in the outskirts of a secondary city in the Donbas region of Ukraine heavily affected by internal displacement: Sievierodonetsk (or Severodonetsk in Russian). The board contains housing advertisements for short-term and long-term rentals of various sizes. Some come with a ‘warranty guarantee’ and others appear to be informal rental arrangements. Access to affordable and secure housing is one of the most important mechanisms for integration for those internally displaced. Over 70% of this city now destroyed by the ongoing Russian invasion, housing is sure to be a massive and urgent need in the months and years to come.

Artist biography: Melissa Weihmayer is a PhD Candidate in Regional and Urban Planning Studies at the London School of Economics and Political Science. She has been working on issues of migration and displacement in the legal, policy, and humanitarian sectors since 2010, most recently as an Information Management Officer at the Joint IDP Profiling Service (JIPS) in Geneva. Her current research explores how local governments respond to situations of urban internal displacement.
Day 1 – Wednesday 29 June 2022

12.30–12.45  Plenary- Opening Welcome

- Professor David Cantor (Director, Refugee Law Initiative)

12.45–13.15  Plenary- Launch of RLI Declaration on Externalisation and Asylum

- Dr Nikolas Tan, Dr Mariana Gkliati and Dr Elisabeth Mavropoulou

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13.20–14.40  Panel Session 1

Session 1A  Improving the Refugee Regime – Framing the Issues (THEMATIC)
Moderator: Dr Jeff Crisp (Refugee Law Initiative, UK)

- “Solutions are in the Eye of the Beholder: The Political-economy of State Interests and Global Humanitarian Response to Refugees” – Brian Gorlick (Refugee Law Initiative, UK)
- “From Policy back to Principles? Refugee Protection under International Law & State (Non)-Compliance” – Prof. Hannah R. Garry (University of Southern California, USA)
- “It’s Not All about Law: Questioning the Origin Story of the Global Refugee Regime” – Dr Philip Burton and Dr Kathryn Allinson (University of Bristol, UK)
- “Protecting by Origin? Origins, Causes and Impacts of Nationality-based Differentiation in Refugee Protection and Aid Policy” - Shaddin Almasri (University for Continuing Education Krems, Austria)

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Session 1B  Agents of Change in the International Refugee Regime (THEMATIC)
Moderator: Sophie Kanza (Refugee activist, South Africa)

- “Refugees as Agents of Development: the Case of Burmese Political Refugee Returnees” – Dr Jae Hyun Park (University of Sussex, UK)
- “Improving Responsibility-Sharing through Ground Up Approaches” - Brian Barbour (University of New South Wales, Australia)
- “The Council of Europe as a Change Factor for the Global Refugee Regime: From
Human Rights Theory to Refugee Protection” – Dr Christos Tsevas (Democritus University of Thrace, Greece)

- “Citizen Assemblies and the Evolving Psyche of Refugee Law in Europe and Globally” - Dr Magdalena Smieszek (Independent Researcher, Canada)

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Session 1C The Complementary Role of Other Legal Approaches in Protecting Refugees (THEMATIC)
Moderator: Dr Lilian Tsourdi (Maastricht University, Netherlands)

- “Humanitarian Visas in Latin America: Improving Refugee Protection?” – Prof. Liliana Lyra Jubilut and Catherine de Souza Santos (Universidade Católica de Santos, Brazil)
- “Enhancing Refugee Protection: Why We Need to Talk about Anti-Trafficking Law” – Dr Gillian Kane (Queen’s University Belfast, UK)
- “The War in Ukraine and the Temporary Protection Directive: Lex Specialis or a Surreptitious Innovation of Refugee Law?” - Francesca Romana Partipilo (Sant’Anna School of Advanced Studies, Italy)
- “Asylum, Return or Circular Migration: What’s Next when Labour Migration Fails to Provide a Durable Solution for Refugees?” - Dr Zvezda Vankova (Lund University, Sweden)

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14.40–15.00 Break
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15.00–16.20 Panel Session 2

Session 2A National Approaches to Refugee Law Implementation (OPEN)
Moderator: Sophie Capicchiano-Young (University of London, UK)

- “RSD Transition from UNHCR to Non-Party States: A Mirage of Enhanced Protection for Refugees?” - Jittawadee Chotinukul (Graduate Institute, Geneva, Switzerland)
- “Risk and the Reasonable Refugee: Exploring a Key Credibility Inference in Canadian Refugee Status Determination” - Hilary Evans Cameron (Toronto Metropolitan University, Canada)
- “Refugee Rights between National Sovereignty and International Standards: The
Situation in the German Speaking Countries” - Dr Constantin Hruschka (Max Planck Institute, Germany)
• “The Constitutionalization of Human Rights Law in the Global South: A New Means of Refugee Rights Protection” – Prof. Stephen Meili (University of Minnesota, USA)

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**Session 2B**  Reassessing Vulnerability in contexts of Displacement (OPEN)  Moderator: Lidia Kuzemska (Lancaster University, UK)

• “Incorporating the Accompanied Child in Child Protection: A Case Study on Returns” - Mackenzie Seaman and Dr Nassim Majidi (Samuel Hall, Kenya)
• “Addressing Stigmatisation: IDPs Who “Never had Shoes” Require Improved Protection” - Sarah Edgcumbe (St Andrews University, UK)
• “Addressing Sexual and Gender-Based Violence in the Third Phase of the Refugee Cycle from an Intersectional Standpoint: Rethinking Tensions which Reinforce Vulnerability” - Tatiana Morais (Universidade Nova de Lisboa, Portugal)

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**Session 2C**  “Surrogacy and the Refugee Definition – Key? Minor? Irrelevant? Distraction?” (OPEN)  Moderator: Prof. Kate Jastram (University of California Hastings, USA)

• “The Role of ‘Surrogacy’ in the Determination of Refugee Status” – Prof. Guy Goodwin-Gill (All Souls College Oxford, UK)
• “Surrogacy and the Refugee Definition” - Dr Madeline Garlick (UNHCR)
• “In Defence of Surrogacy” – Dr Hugo Storey (International Association of Refugee and Migration Judges, UK)

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**16.30–17.30**  Distinguished Keynote – Plenary Session

• “The ‘Arc of Protection’ and the Future Shape of the Global Refugee Regime”  Professor Alex Aleinikoff (Director of the Zolberg Institute on Migration and Mobility, The New School, New York, USA)

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All times are listed in British Standard Time (BST)
Day 2—Thursday 30 June 2022

09.00–09.05  Welcome back
• Professor David Cantor (Director, Refugee Law Initiative)

09.05–10.05  Distinguished Keynote – Plenary Session
• “Moving Beyond Refugee Law: Putting Principles on Climate Mobility into Practice”
  Professor Jane McAdam (Director of the Andrew & Renata Kaldor Centre for International Refugee Law, University of New South Wales, Australia)

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10.10–11.30  Panel Session 3
Session 3A  “‘External Processing’: Regional Approaches, Responsibility Sharing and Pathways to Protection” (THEMATIC)
Moderator: Dr Madeline Garlick (UNHCR)
• “Regional Processing: Pathways to Protection through International Cooperation and Responsibility Sharing” - Riona Moodley (University of New South Wales, Australia)
• “UNHCR View on Regional Processing” - Cameron Shilton (UNHCR)
• “Three Forms of ‘External Processing’ in Law and Practice” - Dr Nikolas Feith Tan (Danish Institute for Human Rights, Denmark)
• “Extraterritorial Asylum Processing: the Libya-Niger Emergency Transit Mechanism” - Laura Lambert (Max Planck Institute for Social Anthropology, Germany)

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Session 3B  “Improving the Global Refugee Regime with Feminist Theory” (THEMATIC)
Moderator: Natasha Yacoub (RLI Feminist Theory Working Group Chair)
• “An Intersectional Examination of Syrian Refugee Women’s Experiences with Intimate Partner Violence in Jordan” - Nour Daoud (University of Padova, Italy)
• “The Praxis of Human Rights: Deconstructing Legal Norms and Human Rights Knowledge from the Ground Up with Displaced Women in Colombia” - Claudia Blandon (University of Plymouth, UK)
• “It’s Complicated’: Unravelling the relationship between Human Rights and the Refugee Definition through a Queer Theory Lens” – Dr Janna Wessels (Free University Amsterdam, Netherlands)
• “Unprincipled and Un realised: CEDAW and Discrimination Experienced in the Context of Migration Control” – Dr Catherine Briddick (University of Oxford, UK)

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Session 3C “The Role of Community Sponsorship for Refugee Resettlement in Australia: Whither State Responsibility?” (THEMATIC)

Moderator: Dr Tamara Wood (University of New South Wales, Australia)

• “At What Cost? Private Sponsorship of Humanitarian Entrants in Australia” – Dr Anthea Vogl (University of Technology Sydney, Australia)
• “Lessons from history: The Community Refugee Settlement Scheme (CRSS)” – Khanh Hoang (University of New South Wales, Australia)
• “Alternative Framings of Community, Partnerships and Protection in Refugee Sponsorship Programs” – Prof. Susan Kneebone (Melbourne University, Australia)
• “Community Sponsorship Literature from the Perspective of Refugee Law Scholarship: What is Missing?” – Dr Kate Ogg (Australian National University, Australia)

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11.30–12.00 Break

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12.00–13.20 Panel Session 4

Session 4A Emerging Dynamics of Contemporary Internal Displacement Contexts (OPEN)

Moderator: Dr Deborah Casalin (University of Antwerp, Belgium)

• “Crossing Paths: New Prevention and Protection Challenges when Violence and Disasters Intersect to drive Internal Displacement?” - Dr Beatriz Eugenia Sánchez-Mojica (IE University, Spain)
• “Forced Displacement linked to Corruption and Impunity in Megaprojects: Conceptualising Emerging Characteristics of Development-induced Displacement in Honduras and Mexico” – Dr Vickie Knox (Independent researcher, UK)

• “Unpacking Human Mobility in the context of the Current Climate Regime” – Dr Ana Mosneaga (Ritsumeikan University, Japan) Prof. Carolien Jacobs (Leiden University, Netherlands) and Brian Aycock (International Christian University, Japan)

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Session 4B  “Rewriting Jurisprudence: Centring Refugee and Migrant Lived Experience” (OPEN)
Moderator: Dr Veronica Fynn Bruey (Athabasca University, USA)

• Rewrite 2018 Federal Court decision of EWR18 v Minister for Home Affairs – Dr Saba Vasefi (University of Sydney, Australia- with Sara Dehm)

• Rewrite two landmark relocation cases: Randhawa v. The Minister for Immigration Local Government and Ethnic Affairs and Januzi v Secretary of State for the Home Department & Ors to better reflect the lived experience of refugees in post-conflict situations - Sitarah Mohammadi (Monash University, Australia- with Maria O’Sullivan)

• Rewrite R (on the application of Begum) v Secretary of State for the Home Department - Ayesha Riaz (University of Greenwich, UK)

• Rewrite a judgment on the experience of women from Saudi who have sought asylum - K. Alhussain (Postdoctoral researcher, Australia- with Kate Ogg)

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Webinar ID: 884 5378 8958
Session 4C  “Climate, Disasters and Displacement: Asia-Pacific Perspectives” (OPEN)

Moderator: Dr. Christina Oelgemoller (Loughborough University, UK)

- “International Obligations and Regulating Displacement in Asia Pacific” – Prof. Cosmin Correndea (OP Jindal Global University, India)
- “Climate- or Disaster-induced Displacement: Knowledge and Empirical Gaps from South Asia” – Prof. Sneha Krishnan (OP Jindal Global University, India)
- “Planned Relocation in India: Critical Evaluation of the Existing Legal Framework” – Prof. Chhaya Bharadwaj (OP Jindal Global University, India)
- “Any Port in a Storm? Climate, Mobility and Choice in Pacific Small Island Developing States” – Dr Robert Oakes (UNU-EHS, Germany)

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Day 3– Friday 1 July 2022

13.00–13.05  Welcome back
•  Professor David Cantor (Director, Refugee Law Initiative)

13.05–14.05  Distinguished Keynote – Plenary Session
•  “Refugee Leadership and the Future of the Global Refugee Regime”
  Sana Mustafa (Director of Partnership and Engagement, Asylum Access)
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14.10–15.30  Panel Session 5
Session 5A  “Afghan Evacuations: Mixed Outcomes for the Global Refugee Regime?” (THEMATIC)
  Moderator: Jasmin Fritzsche-El Shewy (Ruhr-University Bochum, Germany)
  •  “Unregulated, Elitist, and Fragmented? Tentative Findings from Afghan Evacuations to Four Major Donor Countries” - Dr Naoko Hashimoto (Hitotsubashi University, Japan)
  •  “Paradoxes of Preventive Evacuation: Some Lessons from Afghanistan 2021” - Ahmad Shuja Jamal (Former Afghan civil servant now in exile) and Prof. William Maley (Australian National University, Australia)
  •  “A Shifting Geopolitics of Vulnerability. Is the Protection of Skilled Afghan Women a Turning Point in Resettlement?” - Prof. Adèle Garnier (Université Laval, Canada-with Prof Kristin Bergtora Sandvik, Dr Ingunn Bjørkhaug, and Dr Astrid Espegren)

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Session 5B  “Non-Penalisation as a Building Block for Reform of Refugee Protection” (THEMATIC)
  Moderator: Prof. Cathryn Costello (Hertie School, Germany)
  •  “Non-penalization of Refugees and other Migrants for Illegal Entry or Presence as a General Principle of Law?” - Dr Yulia Ioffe (UCL, UK)
  •  “UNHCR on Article 31 and Non-penalisation” - Dr Kees Wouters (UNHCR)
  •  “The Nationality and Borders Bill as Flagrant Penalisation of Refugees” - Raza Husain QC (Matrix Chambers, UK)

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All times are listed in British Standard Time (BST)
Session 5C  “The Future of Complementary Pathways” (THEMATIC)
Moderator: Dr Vladislava Stoyanova (Lund University, Sweden)
Discussant: Anna Gekht (Senior Resettlement and Complementary Pathways Officer, UNHCR)

• “Whose Pathways are They Anyway? The Top-down/Bottom-up Conundrum of Complementary Pathways for Refugees” - Dr Joanne van Selm (Eurasylum, UK)
• “Challenging the Concept of Complementary Pathways” - Prof. Marjoleine Zieck (University of Amsterdam, Netherlands)
• “Complementary Pathways as ‘Effective Access to Means of Legal Entry’ in the Reasoning of the ECtHR: Legal and Practical Implications” - Emiliya Bratanova van Harten (Lund University, Sweden)
• “Community-driven Humanitarian Corridors as Community Sponsorship Models: the Obligation to Protect the Vulnerable vs State Deterrence” - Prof. Carola Ricci (University of Pavia, Italy)

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15.30–16.00  Break

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16.00–17.20  Panel Session 6

Session 6A  “Asylum in a Late Sovereign World: The Application of Refugee Law in Overseas and Dependent Territories” (OPEN)
Moderator: Dr Sílvia Morgades Gil (Universitat Pompeu Fabra, Spain)

• “Arctic Asylum: The Legal Regulation of Asylum-Seekers and Refugees in Greenland and Svalbard” – Prof. Thomas Gammeltoft-Hansen (University of Copenhagen, Denmark)
• “The EU’s External Border with Gibraltar and Refugee Protection” – Prof. María-Teresa Gil-Bazo (University of Navarra, Spain)
• “Asylum in the Dutch Caribbean: The Legal Regulation of Venezuelan Refugees in Curaçao, Aruba and Bonaire” – Dr Maarten den Heijer (University of Amsterdam, Netherlands)
• “Quaint and marginal? Refugee law, sovereignty and British non-independent territories” – Prof. David Cantor (RLI, UK)

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Session 6B  “Chain-Externalisation of EU Migration Management Policies” (OPEN)
Moderator: Dr Emilie McDonnell (Human Rights Watch, UK)

- EU-Tunisia Cooperation on Border Management and Rescue at Sea: Assessing Tunisia as a ‘Place of Safety’ and a ‘Safe Country” – Dr Mariagiulia Giuffre (Edge Hill University, UK)
- “Chain-Externalisation of Migration Policies in the Context of EU-Turkey Relations” – Gamze Ovacık (University of Gothenburg, Sweden)
- “West Africa: The Missing Link of Chain Externalisation” – Dr Mariana Gkliati (Leiden University, Netherlands)
- “Chain-Externalisation within Libya: The Legal Responsibility of Local Armed Groups” – Adel-Naim Reyhani (Ludwig Boltzmann Institute of Fundamental and Human Rights, Austria)

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Session 6C  “Alternative Forms of Protection in Africa” (OPEN)
Moderator: Prof. Jo Vearey (University of Witwatersrand, South Africa)

- “Negotiating Pathways to Justice: Migrants, Asylum-Seekers, Refugees and Access to Justice in Johannesburg, South Africa” - Knowledge Mabhena (University of the Witwatersrand, South Africa)
- “The Search for Safe Spaces for Education within the Insecurity of the Urban: South Sudanese Refugees and Community Schools in Cairo” - Elena Habersky and Amira Hetaba (American University in Cairo, Egypt)
- “Borders and Boundaries in the Daily Urban Practices of Refugees from African Countries in Bellville, South Africa” - Tamuka Chekero (University of Cape Town, South Africa)
- “Alternative Forms of Protection In Africa: A Case Study of Mobility and Connectivity as Solutions to Protracted Refugee Situations in Tanzania” - Janemary Ruhundwa (DIGNITY Kwanza, Tanzania)

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17.20–17.30  Plenary – Closing
• Dr Sarah Singer (Refugee Law Initiative)

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Abstracts

Session 1A - Improving the Refugee Regime – Framing the Issues (THEMATIC)
Moderator: Dr Jeff Crisp (Refugee Law Initiative, UK)

This panel frames some of the big picture issues around improving the global refugee regime, addressing a selection of crucial principles that underpin refugee protection ideals. It brings together four separate papers submitted to the conference call for papers.

“‘Solutions are in the Eye of the Beholder’: The Political-economy of State Interests and Global Humanitarian response to Refugees”
Brian Gorlick (Refugee Law Initiative, UK)

This paper will review the many challenges between the largely northern-driven and funded global control regime to prevent movements of refugees and other forced migrants across international borders, and how asylum seekers attempt to manage these legal and related obstacles. Through the extensive use of deterrent and in some cases extraordinary measures such as offshore interception and processing, prolonged immigration detention, refoulement, engagement of criminal law, and limiting access to legal avenues to seek redress, states in the global north attempt to maintain an upper hand with respect to managing spontaneous arrivals.

Humanitarian exceptions such as third country resettlement and migration programmes, the use of temporary protection in case of mass influx, and refugee status determination processes, provide access for an important number of refugees. But globally, most refugees are destined to remain in prolonged encampment or other asylum situations without a long-term solution.

The tension between state interests and humanitarian response to refugees can be addressed through adherence to international legal and humanitarian principles and rebalancing our global priorities. However, that requires favourable political will and radical shifts in policy by state actors, courageous proactive engagement by international and domestic non-government and inter-governmental entities including United Nations, and the ability to access supportive communities, advocates, and humanitarian actors able and willing to provide assist while challenging restrictive measures. Viewing the ‘refugee’ or ‘migrant’ as a feared ‘other’ is another important element we all need to address to advance a more positive outlook for the future.
“From Policy back to Principles? Refugee Protection under International Law & State (Non)-Compliance”

Prof. Hannah R. Garry (University of Southern California, USA)

In the face of the world’s largest refugee numbers since World War II, this paper examines whether the international community should (re) consider establishing a specialized global court or mechanism with binding decision-making authority for: 1) providing authoritative interpretation of international legal norms for refugee protection; and/or 2) holding States accountable for violation of their obligations vis a vis refugees under international law. From 2001-2013, UNHCR and academics proposed different types of supervisory mechanisms for the 1951 Refugee Convention/1967 Protocol. While the proposals vary, they consistently fail to seriously assess the idea of a mechanism with authority to make binding decisions on refugee protection such as a court. Further, these proposals adopt a narrow definition of refugee protection limited to norms found in the 1951 Refugee Convention/1967 Protocol as opposed to other treaty or customary international law norms addressing refugee rights or root causes/accountability/compensation for refugee flows. Now, 70 years on from adoption of the 1951 Refugee Convention, emphasis has shifted to a global governance approach to refugee protection, with the adoption by States of the non-binding 2016 New York Declaration for Refugees and Migrants and 2018 Global Compact on Refugees. Given the limited success of such efforts to date in the face of rapid influx of refugees from Afghanistan and Ukraine for example, resulting in ad hoc, uneven responsibility-sharing; discriminatory protection for refugees depending on their origins; and increased violation of refugee rights, this paper queries whether now might be the time for a more legal approach to refugee protection under international law broadly understood, focused on enforcement of principles as a global public good. In addressing the question, this paper considers what the relationship might be to existing global governance strategies, proposing that co-existence, if well-designed, has potential to achieve more holistic protection for refugees that balances rule of law with humanitarian goals.

“It’s Not All about Law: Questioning the Origin Story of the Global Refugee Regime”

Dr Philip Burton and Dr Kathryn Allinson (University of Bristol, UK)

As we are asked to explore how the global refugee regime needs changing, we propose to look back to the origins of international refugee law. In so doing, we challenge assertions that improvements to the refugee regime necessarily require further codification. Such arguments look to moments of grave crisis when heroes stepped up and created profoundly humanitarian mechanisms: the Nansen Passport, the Intergovernmental Committee on Refugees and then the 1951 Refugee Convention and the United Nations High Commission for Refugees. In taking this reading of the discipline’s history, we challenge ourselves to develop new legal mechanisms that respond to the crises of our own time. However, this narrative
ignores the role of political cooperation, administrative processes and financial mechanisms that underpinned these early developments. We argue that these political mechanisms were as much to thank for the development of the refugee regime as the international conventions that solidified it. The discussion proceeds in three parts. First, is the critical evaluation the ‘origin story’ of international refugee law and the ways that this history is invoked in contemporary debates on reform. Second, is to re-historicise the ‘origin’ story of international refugee law. The final step in our argument examines how a more nuanced account of international refugee law’s history can contribute to a clearer grasp of the potential for renewal. In particular, suggesting that the Global Compact on Refugees represents a reinvigoration of these political mechanisms.

“Protecting by Origin? Origins, Causes and Impacts of Nationality-based Differentiation in Refugee Protection and Aid Policy”
Shaddin Almasri (University for Continuing Education Krems, Austria)

The article provides a recent historical overview is on discriminations faced by refugees when seeking aid and protection, specifically those that relate to nationality and country of origin. It argues that discriminatory and differentiated practice is enshrined in the very origins of the refugee regime and continues to manifest in the selective and ad hoc nature of refugee policy in host states. The argument is situated within a broader discussion on the global refugee regime and critique of its asymmetrical bias towards state security interests. This is placed at tension with the tactics employed by recipient states, who navigate humanitarian and development aid agendas imposed on them by re-orienting aid in line with interests dictated by local political realities. The article introduces the concept ‘nationality-based aid, protection and inclusion’ to refer to nationality-based bias, including. The article concludes that the origins of the refugee regime laid the groundwork for much of the nationality distinctions seen in refugee policy today, and that while discrimination exists in host state support structures, these are re-enforced by institutionalized discrimination in funding and protection structures available for refugees today.
This panel explores how a range of different kinds of actors may act as ‘agents of change’ in improving the quality of the international response to refugees. It brings together four separate papers submitted to the conference call for papers.

“Refugees as Agents of Development: the Case of Burmese Political Refugee Returnees”

Dr Jae Hyun Park (University of Sussex, UK)

This paper presents refugees as agents of development in their country of origin through Burmese political refugees who returned to Myanmar from South Korea from the 2010’s. Mostly of the dominant Bamar ethnicity, male, and in their 40’s to 50’s the refugees have been migrant laborers while engaging in diasporic activities in South Korea that became grounds for their refugee status. Once they returned, they contributed to development not as much through politics as they did in Korea but through business, education, and community organisation. Social, political, and economic remittances through transnational networks between the two countries facilitated these activities. Among the remittances, Korean language, education and personal relationships proved most influential.

This is based on a qualitative research which took place in Korea and in Myanmar in 2018, using life history interviews, observations and grounded theory methods, but infused with participatory ideas as collective co-analysis and researcher reflexivity, considering the researcher’s positionality as a government officer. The methods focused on the refugees’ agency to bring out their own conceptualisation of development and what they considered as development priorities of Myanmar.

A Refugee-Development Nexus is proposed, where refugees as transnational actors contribute to development in origin country through their social, political, and economic remittances, ultimately as a solution to displacement. What development is or what is prioritised in development are based on the refugees’ ideas and values, influenced by their experience in host countries. It also presents an alternative context to Western case studies on refugee and development where refugees’ host and origin countries have a historical relationship based on colonialism; Myanmar and South Korea on the other hand, share in common, experiences of being colonised and under military rule in different periods.

“Improving Responsibility-Sharing through Ground Up Approaches”

Brian Barbour (University of New South Wales, Australia)

This paper answers the questions: where change in the refugee regime needs to
The focus of proposals for global refugee regime change is often large scale, requiring the mobilization of massive political will, for example, by adopting an additional protocol on responsibility sharing, or establishing a treaty body empowered to receive periodic reports on implementation. While such initiatives would be welcome and could have a dramatic impact, this paper aims for a more modest change that could come incrementally through a process that seeks instead to support locally-owned protection capacity on the ground where refugees are located.

Systems for protection need to be context-specific and engage diverse stakeholders through a whole-of-society approach. Importantly they need to recognize the capacities of displaced persons and host communities themselves and support their work directly. This is already happening in practice, and examples will be shared from Indonesia, Bangladesh, and Malaysia where local protection among non-State actors has demonstrated that it can precede political will and pull political will along in its wake.

At a basic level, the problem is that the needs of refugees and host communities are not being met. Supporting and developing the capacities necessary to meet identified needs locally takes time. But the process of engaging locally on the basis of identified needs and existing capacities to address them, may also galvanise political will in the process, particularly if such efforts are designed to do so.

This paper will consider the roles and responsibilities of a diversity of actors across a whole-of-society approach. It will consider how protection in practice can be improved by greater acceptance of responsibility among an expanding network of actors, locally, regionally, and internationally.

“The Council of Europe as a Change Factor for the Global Refugee Regime: From Human Rights Theory to Refugee Protection”

Dr Christos Tsevas (Democritus University of Thrace, Greece)

The role of the Council of Europe mechanisms and instruments is a multi-faceted question on what needs to be changed, where and how the change needs to happen and who should be responsible.

The Special Representative on Migration and Refugees, the Parliamentary Assembly, the Commissioner for Human Rights, the adoption by the Committee of Ministers of the Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025) are some of the solutions that Council of Europe can offer to the discussion of improving the global refugee regime. The critical factors of the Action Plan based on the concept of vulnerability and the interaction between the pillars for international cooperation and their impact on the protection can
transform the European and global refugee regime.

The questions mentioned above shall find their answers as to the fact that the Council of Europe can be the institution to bring change in Europe, introduce well-established notions, human rights concepts and protection standards and mechanisms in the European refugee and asylum dialogue, fill any gaps of responsibility and cooperation with other international and European institutions. The change and improvement of the Global Refugee Regime pass through specific human rights standards in order to reach the appropriate levels of refugee protection.

“Citizen Assemblies and the Evolving Psyche of Refugee Law in Europe and Globally”
Dr Magdalena Smieszek (Independent Researcher, Canada)

Important calls for change in the refugee regime are coming from citizen assemblies in Europe and around the world, a bottom-up and direct expression of deliberative democracy, which politicians, European institutions, and UN agencies are beginning to take more seriously. The paper, therefore, will discuss the outcomes of citizen assemblies addressing refugee and migration policies – their progress, potential, and limitations – how these mechanisms can better inform law-making and how they can change the system altogether. A focus in particular will be on the citizen assemblies that are part of, and adjacent to, the EU’s Conference on the Future of Europe.

The discussion about deliberative democracy is especially important in the context of climate change, where historical injustices and current inequities are being called out. Some citizen assemblies are indeed calling for a new category of climate refugees, all while European countries are having to face their double standards when receiving Ukrainian refugees as opposed to persons coming from the global South. The international refugee regime began in Europe in the context of war, and it will now be forced to change in Europe in the context of war. However, the rest of the world is increasingly having to respond to climate displacement, and what some would say is the inability of the current refugee regime to respond to trans-border migration and asylum needs.

Therefore, global citizen assemblies will also be discussed, as the current refugee regime is not adequately responsive to social-economic realities of people and the drivers of migration and asylum. The current proposals for change – the Global Compact on Refugee and Migration or the EU’s New Pact on Migration and Asylum – have taken positive steps, but are fraught with limitations. A more conscious understanding of the complex mechanisms at play, many of them psychological that are embedded in the regime, through the lens of citizen assemblies, will need to be examined.
Session 1C - The Complementary Role of Other Legal Approaches in Protecting Refugees (THEMATIC)

Moderator: Dr Lilian Tsourdi (Maastricht University, Netherlands)

The global legal regime for refugee protection extends beyond just international refugee law in its strict sense. This panel explores the complementary role that other legal approaches can offer in improving the protection of refugees worldwide. It brings together four separate papers submitted to the conference call for papers.

“Humanitarian Visas in Latin America: Improving Refugee Protection?”

Prof. Liliana Lyra Jubilut and Catherine de Souza Santos (Universidade Católica de Santos, Brazil)

Latin America has been praised for avant-garde initiatives regarding refugees’ protection for years, most notably in the last three decades. The rise in the practice of humanitarian visas has gained relevance in this context, especially with the increase of both intra and extra-regional forced displacement. Even though there is no binding regional normative on the topic, several Latin American States have created either entry or stay visas based on humanitarian grounds. These humanitarian visas have been available sometimes for refugees and others for other forced migrants; sometimes for forced migrants from within the region (such as Haitians and Venezuelans) and others from outside it (as in the cases of Syrians, and more recently Afghans and Ukrainians), and can be seeing as enlarging the protective architecture in Latin America. If in some instances humanitarian visas facilitate access to safe territories and might allow for legal migratory status upon arrival, questions begin to arise on their ability to grant longer or more permanent protection, as well as on the political choices being made by States in preferring this migratory solution in lieu of granting refugee status. In light of this, and with both International Refugee Law and International Human Rights lenses, it is relevant to unpack the practice of humanitarian visas in Latin America so as to analyse their positive developments and their shortcomings in terms of protection for refugees, in order to assess if they are tools for improving refugee protection and whether they should/could be use as an instrument for the betterment of the future of the global refugee regime in general and of International Refugee Law in particular.

“Enhancing Refugee Protection: Why We Need to Talk about Anti-Trafficking Law”

Dr Gillian Kane (Queen’s University Belfast, UK)

Across the globe, the number of refugees and asylum seekers is continually on the rise, with new and protracted causes of displacement observable across diverse cultures and contexts. Against the backdrop of an ever-increasing number of persons seeking international protection, academics and activists alike continue to point to protection gaps and deficiencies in the global refugee regime. Among the protection
problems faced by refugees and asylum seekers is the risk and reality of human trafficking. In view of this, the pertinent question is: ‘what needs to be changed?’ This paper responds to such a question by arguing that a broader approach – one that more concretely embraces international anti-trafficking law – is needed. In so doing, the focus is not on reform as such. Rather, I call for a closer engagement with existing international obligations that have the capacity to enhance protection within the global refugee regime.

First, the paper outlines the key obligations within the anti-trafficking regime, noting what these obligations require in the asylum context. Then, it speaks to some areas of resonance and dissonance between the international anti-trafficking and refugee law frameworks, reflecting on how tensions may be best addressed. Finally, the paper points to some examples of promise, where the anti-trafficking framework has been operationalised in a way that has enhanced protection for refugees and asylum seekers. This is most pronounced in the work of the Council of Europe’s Group of Experts on Action against Trafficking in Persons. By demonstrating the possibilities within the anti-trafficking framework, the paper demonstrates that reform is not the only avenue for change in the global refugee regime. Instead, the potential within existing international obligations in the anti-trafficking regime should be maximised.

“The War in Ukraine and the Temporary Protection Directive: Lex Specialis or a Surreptitious Innovation of Refugee Law?”
Francesca Romana Partipilo (Sant’Anna School of Advanced Studies, Italy)

The Russian Federation’s invasion of Ukraine caused the biggest human displacement since WWII. On the 4th of March, addressing the rapidly deteriorating humanitarian situation at eastern European borders, the Council of the European Union unanimously adopted the decision to implement the Temporary Protection Directive. The directive provides a legal framework to tackle massive migratory movements, rapidly ensuring protection to displaced persons from a specific country or region. Whilst temporary protection departs from some of the rules and procedures embedded in the Geneva Convention, it is not meant to circumvent states’ obligations under international refugee law. Importantly, pursuant to Article 3 of the directive, temporary protection shall not prejudice the recognition of refugee status under the Geneva Convention. It should remain possible, for any displaced person from Ukraine, to apply for asylum in an EU Member State at any time, included during the enjoyment of temporary protection. Consequently, the interaction between temporary protection and the asylum status raises a number of interesting questions.

My paper examines whether the activation of the TPD in the EU suggests a perceived inadequacy of the global asylum regime in tackling massive displacement situations. More specifically, the question is whether the directive should be interpreted as a lex specialis, temporarily suspending the application of other international legal
instruments, or rather as a surreptitious attempt to radically innovate refugee law. My paper will argue that, notwithstanding the necessity to update the global asylum regime to promptly respond to massive migratory flows – not only as a consequence of armed conflicts but also as a result of climate change-induced displacement – EU asylum law cannot represent the means to integrate and revise international refugee law. Rather, a global, participative reflection is needed, in a spirit of shared responsibility amongst all the States of the international community.

“Asylum, Return or Circular Migration: What’s Next when Labour Migration Fails to Provide a Durable Solution for Refugees?”

**Dr Zvezda Vankova** (Lund University, Sweden)

The idea of facilitating labour migration for refugees as a complementary pathway for admission is back on the policy agenda and has been promoted amongst others by the United Nations Global Compact on Refugees and the EU Pact on Migration and Asylum. Yet, a significant shortcoming of such pathways in the EU context is that they will not lead directly to a durable solution by providing immediate access to permanent residence but rather offer ‘a journey to a durable solution’ on the basis of temporary residence permits. This begs the question of what will happen in cases where beneficiaries of such complementary pathways fail to extend their work contracts and thus loose residence rights. By comparing the cases of Syrian and Ukrainian refugees, this paper critically examines the options that unsuccessful beneficiaries of complementary pathways will be faced with: claiming asylum in the host Member States, returning to first countries of asylum or countries of origin, or engaging in circular migration. In so doing, this socio-legal research paper combines legal analysis with empirical data comprising of 40 semi-structured interviews (conducted between 2020-2021) with stakeholders at international, EU and national level in Sweden and Germany, which attracted most of the refugees in Europe as a result of the so-called 2015 “refugee crisis” whilst maintaining a “welcoming” approach to labour migration. This is complemented by literature review focusing on the circular migration patterns of Ukrainians to Poland after the annexation of Crimea to Russia.

**Session 2A – National Approaches to Refugee Law Implementation (OPEN)**

Moderator: **Sophie Capicchiano-Young** (University of London, UK)

The international regime for refugee protection is given effect primarily through its implementation at the national level. This panel explores different ways in which national approaches to refugee law implementation generate problems for refugee protection and examines potential solutions. It brings together four separate papers submitted to the conference call for papers.
“RSD Transition from UNHCR to Non-Party States: A Mirage of Enhanced Protection for Refugees?”

**Jittawadee Chotinukul** (Graduate Institute, Geneva, Switzerland)

Determination of refugee status is primarily undertaken by states. However, UNHCR, in accordance with its mandate, conducts refugee status determination (RSD) under certain circumstances. Over the past twenty years, UNHCR had handed over RSD to more than thirty countries, but it is significant to note that most of these countries are party to the 1951 Convention or the 1967 Protocol. RSD transition from UNHCR to non-party states remains rare. The situation nevertheless seems likely to change after the adoption of the New York Declaration, followed by the Global Compact on Refugees. States not party to the international refugee instruments voluntarily pledged to improve their national asylum systems, including through legislation. Thailand is a case in point.

This proposal aims to examine the ongoing RSD transition from UNHCR to the Thai Government subsequent to its enactment of the 2019 Regulation on the National Screening Mechanism, as promised at global forums. It seeks to address the questions: how to ensure that the national asylum systems, including eligibility criteria established by non-party states are in line with international standards, given that these states are not bound by the 1951 Convention/the 1967 Protocol, whether other legal frameworks and mechanisms, notably the international human rights regime, are adequate to guarantee the rights and protection of forcibly displaced people, and what is the role of UNHCR vis-à-vis its supervisory responsibility in this case.

By taking Thailand as a country study, the proposal reveals the risk of discrepancy between commitments made by non-party states under the GCR and their obligations under international law governing refugee protection. It contends that the fulfilment of pledges at global level does not necessarily reflect enhanced protection in local reality, if it goes unchecked. The proposal thus calls for cautious approach to a shift to government-led RSD procedures in non-party states.

“Risk and the Reasonable Refugee: Exploring a Key Credibility Inference in Canadian Refugee Status Determination”

**Hilary Evans Cameron** (Toronto Metropolitan University, Canada)

This paper explores the role that inferences about the claimant’s risk response play in the credibility decisions of Canadian refugee status adjudicators. It adds to the body of literature that documents the ongoing neglect of social scientific insights in credibility rejections in refugee claims and that shows why these insights are crucial.

The first part reports the results of a mixed-methods study that analyses a sample
of 303 decisions by Canadian adjudicators. ‘Risk response’ inferences – e.g. the assumption that a person facing a serious risk would flee right away, ask for protection right away in the first safe country that they reach, and never choose to return home to danger – are a fixture of the adjudicators’ negative credibility judgments: in the decisions with deception findings, nearly two out of three claimants were found to be lying, in part, because of how they allegedly responded to a risk. The adjudicators measure the claimant’s risk response against a predominantly normative standard: they conclude that the claimant “should” have acted differently, that the claimant’s actions were not “reasonable.” And they do not engage with social scientific evidence.

The second part evaluates these inferences in light of social scientific evidence. A large body of research makes clear that people respond in an extensive variety of ways to risky situations, including situations of life-threatening danger. Responses that fail to reduce and that may even increase exposure to deadly hazards are firmly within the range of non-pathological human behaviour. If the only reasonable risk responses are those that help to keep us safe, then we are not reliably reasonable. In particular, two key insights from the social scientific literature – about unrealistic optimism and about the complexity of risky decision-making – challenge the assumptions that underpin the adjudicators’ risk response reasoning.

“Refugee Rights between National Sovereignty and International Standards: The Situation in the German-Speaking Countries”

Dr Constantin Hruschka (Max Planck Institute, Germany)

Based on the concept of the newly published German language commentary on the 1951 Refugee Convention the paper examines the potential for a better implementation of refugee rights by addressing the negative effects of the distinction between refugee rights that are universal and therefore form a dogmatic point of view not open to national interpretation and refugee rights that allow for and sometimes require national transposition.

It is widely accepted that the refugee definition and principle of non-refoulement, which is closely linked to this definition, are not open to national interpretation. In this respect, even if the decision is taken at the national level, there can only be “one true meaning” of the refugee definition as Lord Steyn so aptly put it in Adan and Aitseguer (UKHL 2000). The national practice of the German speaking countries reflects this standard – at least in theory – as Article 1 A 2 and Article 33 (1) of the 1951 Convention are often cited by national authorities deciding on refugee status.

However, there are other provision of the 1951 Convention that offer at least a certain scope for national implementation or even a necessity for national implementation. This applies in particular to the rights of Articles 12-14, 16-19, 21-29 as well as Articles
31, 32 and 34 and to the implementation of the obligation of cooperation of the States Parties with UNHCR in accordance with Art. 35 of the 1951 Convention. The author shows that in these areas the respective national implementation situation in the German speaking countries is often very complex and the standards of the 1951 Convention are seldom referred to in the respective national context.

The paper holds that in the German speaking countries this imbalance between the awareness that there are binding international standards for non-refoulement on the one hand and the blind-eye turned to the international standards if it comes to other refugee rights contributes to a situation where providing for refugee rights beyond non-refoulement is partially regarded as discretionary (or at least less important) leads to a situation where refugees face significant barriers in accessing such rights. It calls for a push towards a uniform and internationalised interpretation of refugee rights in order to improve the situation of refugees on the ground.

“The Constitutionalization of Human Rights Law in the Global South: A New Means of Refugee Rights Protection”

Prof. Stephen Meili (University of Minnesota, USA)

This paper will explore how refugee lawyers in four countries of the Global South (Colombia, Mexico, South Africa, and Uganda) have utilized constitutionalized human rights law to expand the rights of asylum-seekers and refugees in those countries.

The constitutionalization of human rights law is on the rise throughout the world. The number of national constitutions that have borrowed human rights provisions from international treaties, as well as the number of human rights provisions within the typical national constitution, have grown exponentially over the past three decades. Moreover, numerous countries have fully incorporated human rights treaties and other instruments into their constitutions. This paper will analyze how refugee lawyers utilize such provisions to provide protections to asylum-seekers and refugees that are otherwise unavailable or ineffective under domestic statute or international law.

The paper, based on archival research and interviews with refugee lawyers in each country, will demonstrate how refugee lawyers adapt creatively to the social, political, and legal contexts within which they operate in order to bridge the gap between lofty human rights provisions on paper and the lived experience of refugees on the ground. Much of this involves overcoming barriers and taking advantage of opportunities for effective advocacy where they exist. Lawyers use a variety of tools, including strategic litigation, lobbying, educating and training governmental officials about the applicable law, and various forms of informal advocacy.
‘Vulnerability’ is a concept that appears to be gaining increasing traction in policy and scholarly engagement with refugees and other displaced persons. Drawing on diverse case studies, this panel interrogates the value-added by this concept to the refugee field from several distinctive standpoints. It brings together three separate papers submitted to the conference call for papers.

“Incorporating the Accompanied Child in Child Protection: A Case Study on Returns”
Mackenzie Seaman and Dr Nassim Majidi (Samuel Hall, Kenya)

The vulnerability of unaccompanied refugee minors (URMs) is a tenet in child refugee work, stemming from the belief that being both a child and unaccompanied produces a specific and pressing vulnerability. Following this logic, accompanied refugee minors (ARMs) are thus deemed less vulnerable. However, recent efforts emphasising the resiliency of URMs (see Keles et al. 2018; Wernesjö 2020); data indicating URMs are largely older minors (see EUROSTAT 2022 and U.S. Department of Health & Human Services 2021); and the lack of evidence supporting such claims of greater URM vulnerability vis-à-vis ARMs (beyond research on psychosocial well-being) (see Seaman and Stites, in press) necessitates taking a fresh look at vulnerability among child refugees.

Such a renewed exploration is even more pressing given the disproportionate focus on URMs has produced clear protection gaps for ARMs, where their needs, experiences, and voices are often ignored and largely unknown. For example, UNICEF has documented that accompanied children’s disempowerment in the return process begins with the return decision, where they are “invisible,” an “add-on” to their parents and caregivers, “denied the right to be heard” and “treated as a footnote,” (2019, 7, 15). Anecdotal evidence on child return supports these findings (see Guillaume and Majidi 2018). Based off key informant interviews and using return as a case study, this scoping paper would examine the disempowerment, vulnerability, and resiliency of ARMs in return processes and how this generates key protection gaps beginning from the return decision through ARMs’ long-term reintegration. Capitalising off an increasing interest in child return (see “Child Reintegration Monitoring Toolkit” 2021) and that national governments increasingly seek out voluntary repatriation as a durable solution for refugee children, this paper would provide key recommendations to child return actors for incorporating and valuing the needs, perspectives, rights, experiences, and wants of ARMs.
"Addressing Stigmatisation: IDPs Who “Never had Shoes” Require Improved Protection"

Sarah Edgcumbe (St Andrews University, UK)

Considering the questions of what needs to change within the sphere of IDP protection and how that change could be facilitated, this paper will highlight the humanitarian protection gaps experienced by internally displaced marginalised minorities. By mapping the causes and consequences of such alienation from humanitarian provision, this paper will make the case that improved protection for marginalised IDPs should be understood as a priority.

Lessons learned from systematic research into the current relationship between humanitarian organisations and marginalised IDPs represent a transferable opportunity for improvements to policy and programming across contexts of displacement and geographical regions. Primarily, this paper will argue that greater research is required among marginalised groups of IDPs in order to raise awareness of the unique protection challenges they face. Far from experiencing displacement in the same way as other minorities, stigmatised ethno-religious (or other) groups are rendered more vulnerable than most when forced to leave their community of origin, yet they often remain completely overlooked by humanitarian priorities and frameworks.

This paper will draw upon three distinct case studies in order to support its claim that there is a dire need for better evidence-based policy and programming in response to internal displacement. The situation of displaced Domari (Roma) in Iraq will be explored alongside the cases of displaced Jogi in Afghanistan and Muhamasheen in Yemen. Each group presents specific protection needs which are often overlooked by both national government and the humanitarian community in these contexts. This paper may raise more questions that can currently be answered, but by presenting an alternative lens through which to approach protection of minority IDPs, it is hoped that it can contribute towards a shift in the humanitarian praxis.

"Addressing Sexual and Gender-Based Violence in the Third Phase of the Refugee Cycle from an Intersectional Standpoint: Rethinking Tensions which Reinforce Vulnerability"

Tatiana Morais (Universidade Nova de Lisboa, Portugal)

Drawing from fieldwork in Greece (August - October 2017), and Israel (October 2018 - July 2019), with fifty-eight participants (refugee, asylum-seeking women, and key informants), this paper focuses on vulnerability, and the role of the law in reinforcing refugees and asylum seekers’ vulnerable situation instead of addressing refugees’ and asylum seekers’ vulnerability. This discrepancy between the legal principle to protect the most vulnerable segments of the population and the reality allows
us to identify tensions which emphasise refugees’ and asylum seekers’ vulnerable situation. Tensions may be rooted in a social-legal perceptions or may be rooted in personal and organizational dilemmas. In this paper we focus on tensions rooted in social-legal perceptions regarding refugees. As a result, from the data analysis, we have identified the following tensions: order v. disorder (Paz, 2011), permanent v. temporariness, and rejection acceptance (Morais & Gibbs, 2020). All these tensions are based in another tension based on the States international obligations v. national interests. These tensions identify an aggravated risk for refugee and asylum-seeking women to become survivors or victims of Sexual and Gender-Based Violence, due to structural patriarchal violence embedded and reinforced by the law. Considering European jurisprudence regarding refugees’ and asylum seekers’ vulnerability to the State (European Court of Human Rights (ECHR) decision M.S.S. v Belgium and Greece, application no. 30696/09, judgement 21 January 2011), we argue that Sexual and Gender-Based Violence targeting refugees and asylum seeker results from and reveals a structural and systematic symptom in the State which amplifies refugees’ and asylum seekers’ vulnerable situation.

Moderator: Prof. Kate Jastram (University of California Hastings, USA)

This panel explore the growing doubts in refugee law over whether the notion of surrogacy has a substantive role in interpreting the refugee definition. The essence of this notion is the idea that individuals are not in need of international protection if they can find protection in their home state.

In the case law and wider literature, the surrogacy notion has sometimes been seen to occupy a key role in the refugee definition, either within the ‘being persecuted,’ the ‘protection’/’availment’ or the ‘well-founded fear’ parts of the definition – or some mix of them. In the common law world, the high water mark for the notion has been the statement by LaForest, J in Ward and the opinions of the House of Lords in Horvath. In the civil law world the CJEU has also embraced it. Yet there are now those who argue it has no substantive role, or only a minor one. Critics include Kneebone, Goodwin-Gill and McAdam, Wilsher, Cantor, Schultz, Aleinikoff and Zamore and Lehmann. The main criticisms levelled are that it: is not supported by application of VCLT considerations (e.g. it potentially adds a requirement to the Article 1A(2) words); is an unnecessary distraction; inaccurately describes the relationship between the host and the home state; foists on to the definition misplaced concepts of state accountability, culpability and ‘due diligence’; turns refugees into objects rather than subjects and displaces the primary importance of the individual; imposes undue burdens on applicants, e.g. requiring them to show that they have exhausted local remedies for protection; and reduces standards of protection to minimal ones such as ‘reasonable willingness’ or a test of whether the state is ‘doing its best’.
It is envisaged that by featuring exchanges between three panellists (Professor Guy Goodwin-Gill, who is a leading critic; Madeline Garlick from UNHCR; Hugo Storey, who in his forthcoming book, defends use of the notion), this panel will seek to clarify the correct approach to interpretation of this notion.

“The Role of ‘Surrogacy’ in the Determination of Refugee Status”

Prof. Guy Goodwin-Gill (All Souls College Oxford, UK)

Surrogacy has no place in the determination of refugee status under the 1951 Convention/1967 Protocol. Whatever its merits in academic discussion of the regime of international protection, surrogacy does not belong in the reasoning of those called on actually to apply the refugee definition and to determine whether someone has a well-founded fear of being persecuted. Like other attempts to refine, replace or otherwise replicate the words of the refugee definition, such as the use of ‘nexus’, surrogacy gets in the way and can impose impossible additional burdens on the claimant – it is a gloss that serves no useful purpose.

In the Ward case in 1990, the Federal Court of Canada described it as a ‘fundamental principle’, which seems to have taken root. It was supported by the Supreme Court on appeal three years later and its potential limiting effect was clear even then, with the asylum seeker apparently taken one step farther away from their context and from protection itself. This was endorsed in the Horvath case in 2001, which arose out of minority fears of racial violence arising in a State newly emerging to a democratic system of representative and accountable government. Here, the UK House of Lords distanced itself from the fundamental question, which is the risk of relevant harm to the claimant, by giving undue emphasis to the State and to its efforts to provide a reasonably effective and competent police and judicial system that operates compatibly with international standards. ‘Surrogacy’, said the court, is ‘at the root of the whole matter’.

But is it? Or is it just an irrelevance? There are many good reasons to distrust the centrality of surrogacy in the context of refugee status determination. To paraphrase Andrew Clapham, the only criterion is whether the asylum seeker will be subject to a relevant risk of harm from either the State or a non-State actor. If there is such a risk, then the State should recognize refugee status. The dicta in a number of cases, however, reveal an apprehension that the claimant may benefit unreasonably, and that, just as the surrogate State cannot achieve complete protection against isolated and random attacks, so also complete protection against such attacks is not to be expected of the State of origin. In Horvath, the Court compounded concern by apparently endorsing a standard of protection other than one ‘which would eliminate all risk’, in favour of a ‘practical standard’. But here there is confusion regarding the nature of the attack (isolated and random), and the well-foundedness of fear.
In practice, courts in various jurisdictions have avoided dwelling on surrogacy as having any semantic reference and have accepted that what counts is risk assessment on a personalised basis, by reference to the facts and to the applicant considered in social and political context. There is nothing in the judgments of the Court of Justice of the European Union, for example, to suggest that surrogacy ‘permeates’ interpretation of the refugee definition, or that surrogacy is an underlying principle. Various Advocates General have touched briefly on the subject, or come at it through the EU principle of subsidiarity, but none has promoted it as a criterion. ‘Surrogacy’, and whether and how it is a ‘key principle’, inclines to distract the decision-maker from their principal task, which is to assess the likelihood of harm for a Convention reason; it may underlie the regime of international protection as a whole, but the refugee definition itself is adequate to its purpose and does not need the addition of superfluous elements.

“Surrogacy and the Refugee Definition”
Dr Madeline Garlick (UNHCR)

UNHCR has not pronounced itself in the form of an official position or detailed guidance on the issue of surrogacy in refugee law, encapsulating the idea that a person is not in need of international protection if she or he can claim the protection of the State (or a non-state actor) in her country of origin. This can be taken as an indication of the view that the notion does not assist in the determination of claims for international protection.

While some – limited and generally older – caselaw (exclusively from western anglophone jurisdictions) has been cited in support of the surrogacy concept, contemporary scholarship reveals widely differing perspectives on the issue. Among these, there are valid concerns, which UNHCR would share, that it distracts attention from the central question of whether a person faces a real risk of persecution linked to 1951 Convention grounds. It further shifts the focus from the individual as a rights-holder to the actions and capacity of the State.

This approach can result in an additional evidentiary burden being placed on the asylum-seeker to produce evidence to prove a negative, namely that there is not a State (or other) actor who can protect her in her country of origin. It also adds to the complexity of the assessment required of decision-makers and judges. Emphasis on the surrogacy concept also arguably leads to an excessively broad approach to and use of perceived ‘internal flight/protection alternatives’ as grounds for rejecting claims for international protection. It is furthermore used to underpin the idea that non-state agents can provide effective protection to people in ways that justify denial of international protection. UNHCR’s consistent position has been that non-state agents cannot be considered to have the attributes of the state for this purpose.
In addition, UNHCR draws attention to the legal and conceptual distinction between the role of a country of asylum on the one hand – which, according to the 1951 Convention, requires provision of international protection and enjoyment of specific Convention rights, only some of which are applicable on the same basis as nationals – and the relationship of a country of origin to its citizens on the other. This distinction renders arguments that the asylum country plays a ‘surrogate’ role for the country of origin highly questionable.

Against this background, the speaker will highlight the value of a risk-focussed approach to assessing international protection needs, which does not seek artificially complicate the process by reference to the potential capacity of the state or other actors or other surrogacy-related inquiries.

“In Defence of Surrogacy”
Dr Hugo Storey (International Association of Refugee and Migration Judges, UK)

Especially in the jurisprudence, surrogacy has come to play a key role both as an underlying principle and one that ‘permeates’ interpretation of key elements of the Convention’s definition of refugee. Against that backdrop, ongoing attempts to renounce or downplay it risk unpicking that case law. Being of a great generality, the principle does not prescribe particular outcomes, but it has been critical to preventing an ‘under-inclusive’ understanding of the definition – eg by ensuring primary focus on internal rather than external protection, by shaping recognition that actors of persecution can include non-state actors and that the nexus with a Convention reason can be established either by linkage with the state or non-state actors. It is true that the notion has also worked against an ‘over inclusive’ approach to the definition, but in this respect it only identifies an outer limit – in the words of the 1979 UNHCR Handbook, ‘[w]henever available, national protection takes precedence over international protection.’

Nevertheless, if the criticisms of surrogacy as a key principle hit home, refugee law would have to abandon or relegate it. But are they cogent? Not to see the notion as closely linked to the Convention’s object and purpose is artificial. It must be acknowledged that the same early case law that treated surrogacy as a key principle also sought to promote minimalistic criteria of ‘reasonable willingness’ and whether a state was ‘doing its best’. But the notion has no integral connection with these criteria, nor with the erroneous view that there is a presumption of state protection or that applicants must exhaust all domestic remedies. That is demonstrated by the fact that case law has heavily shifted towards understanding protection to be practical and effective in the individual case whilst still treating surrogacy as an underlying principle.
The concept of ‘external processing’ or ‘extraterritorial processing’ is a term that can be used to describe an array of practices where the protection claims of people seeking asylum are examined outside the destination state. While the term has become synonymous with deterrent practices, including ‘third country processing’ arrangements undertaken after arrival (such as those led by Australia and currently proposed by the United Kingdom and Denmark), external processing may also describe situations where ‘a protection claim is examined to some extent before the arrival in an asylum country’. In this way, the term may also be used to encompass practices that seek to expand refugee protection, such as ‘protected entry procedures’ or ‘humanitarian visas’ which allow an individual to approach a potential asylum state embassy and, if found to be in need of protection, be granted an entry permit to that country. In cases of multilateral co-operation to process asylum seekers in ‘transit’ countries or regions of origin, it might also encompass ‘regional processing’, and where processing takes place prior to arrival in a country of origin, such idea might include ‘in-country processing’.

While discussions around external processing date back to the 1980s, pressure on access to asylum in both the European Union and the United States, exacerbated pushbacks at the border, restrictions related to the COVID-19 pandemic, mixed movements and ineffective return of rejected asylum seekers have recently re-enlivened debate on different approaches to managing arrivals of asylum-seekers on both sides of the Atlantic. By limiting the concept of external processing to pre-arrival procedures that seek to expand refugee protection, the panel seeks to consider alternatives to past and more recent deterrence-driven approaches involving interdiction and forced transfers from destination countries to the territories of third countries.

This panel by the RLI Externalisation Working Group revisits the concept with a view to exploring whether and how external processing can play a protective role in addressing these contemporary challenges. The panel explores the conceptual boundaries and framing of external processing, challenges emerging from historical and current practice as well as ‘regional’ approaches and international law elements, including international cooperation, extraterritorial jurisdiction and responsibility sharing.

On the one hand, the processing of asylum applications prior to arrival may offer significant protection opportunities. If implemented in a protection-sensitive way, it may facilitate access to international protection to be provided closer to the regions of conflict, and responsibility to be shared at the international level. At the
same time, destination states can regulate the arrival of protection seekers, conduct security and health screenings and prepare local administrative structures before arrival. On the other hand, such practices raise risks related to safeguards in the asylum procedure, reception conditions, access to solutions for refugees, return of rejected asylum seekers and operational modalities between cooperating states.

“Regional Processing’: Pathways to Protection through International Cooperation and Responsibility Sharing”

Riona Moodley (University of New South Wales, Australia)

This paper considers what role ‘regional processing’ could play in expanding refugee protection and facilitating complementary pathways to protection to asylum seekers and irregular migrants before arrival in the destination state. In the European context, the paper will consider the reasons why past and current proposal to process asylum seekers outside the EU after arrival are unworkable. This will involve examining, amongst other matters, the deterrent nature of past and current proposals, including their non-compliance with key international and EU human rights law standards. Through the exploration of these limitations, the paper will conclude by setting out the reasons why, in contrast to deterrent efforts, ‘regional processing’, conceptualised as a multilateral arrangement to ‘process’ asylum seekers before arriving in the destination state, warrants further exploration in the EU and what this might look like in practice to create protection oriented pathways to protection.

“UNHCR View on Regional Processing”

Cameron Shilton (UNHCR)

Moves towards the ‘externalization’ of international protection responsibilities have crystallized in recent years in some widely criticized practices and proposals by global north ‘destination’ countries and regional groupings—including the EU, US, UK, Denmark, Australia, Hungary, and Israel among others—aimed at deterring, penalizing, or preventing access to asylum in their territories. UNHCR has continued to oppose practices and policies which shift burdens, frustrate access to international protection, or undermine the refugee protection regime. At the same time, UNHCR has sought to contribute to the conceptualisation of ‘externalization’ and related practices by issuing guidance on its understanding of that term, the ways in which externalization practices are inconsistent with refugee protection obligations and responsibilities, and what distinguishes externalization from practices which involve extraterritorial action by States that rather serve to increase access to international protection and responsibility sharing.

UNHCR has long emphasized that, while burden shifting and externalization are contrary to good faith implementation of the 1951 Convention, States ‘need to act, within and beyond their borders and regions, to share responsibilities with States
and communities hosting the large majority of the world’s refugees’. UNHCR has acknowledged that ‘extraterritorial processing’—which has hitherto been associated overwhelmingly with practices and proposals which either amount to impermissible externalization or face insuperable obstacles to real-world implementation—could in principle play a part in facilitating access to asylum and avoiding dangerous journeys for some people.

Indeed, in a world in which visas and carrier sanctions have become entrenched, many safe pathways to asylum—including potentially in-country mechanisms, third-country resettlement or admission of recognized refugees, or protected entry schemes for asylum-seekers—will necessarily involve some element of extraterritorial processing. The presentation will consider from the perspective of UNHCR whether, and under what conditions, models of pre-arrival ‘regional’ or ‘external’ processing, potentially located in ‘transit’ or host countries, could sufficiently address the wide range of concerns they elicit and become a legitimate complement to established forms of international protection.

“Three Forms of ‘External Processing’ in Law and Practice”

Dr Nikolas Feith Tan (Danish Institute for Human Rights, Denmark)

This paper reconsiders legal and practical considerations associated with external processing as a tool to expand protection, while learning lessons from deterrence-driven approaches that result in restricting access to protection. The paper addresses cross-cutting issues related to extraterritorial jurisdiction, the relationship between regional processing and territorial asylum, and responsibility sharing. The paper concludes that the external processing of asylum applications prior to arrival in a particular destination country or region can offer significant protection opportunities if implemented in a rights-based way as a mechanism to provide access to procedures closer to regions of conflict.

This paper addresses three models of external processing. First, emergency evacuations as rescue mechanism, either from the country of origin (‘in-country processing’) or from a transit site. A prominent recent example of a largescale emergency evacuation scheme is the evacuation of individuals from Afghanistan by several countries, including the US, since the takeover of the Taliban in August 2021. Second, humanitarian visas, which allow an individual to apply for protection to an asylum state outside its territory and, if in need of protection, granted entry to that country. Brazil’s humanitarian visa schemes, for example, provide protection for specific nationalities fleeing conflict. Finally, the concept of external processing centers is examined, drawing on lessons from US and Australia-led external processing models.
The international outcry about the forced detention, torture and extortion (forced) migrants experienced in Libya without access to a viable escape route led to the establishment of an Emergency Transit Mechanism (ETM) to Niger in 2017 and to Rwanda in 2019. Based on long-term ethnographic field research in Niger in 2018-2019, this paper discusses some of the problems related to extraterritorial asylum processing. While the ETM was initially planned as a joint eligibility processing between the Nigerien asylum administration and the UNHCR, local implementation issues facilitated the shifting of responsibility for the Refugee Status Determination (RSD) from Niger to the UNHCR. This disempowerment caused much frustration among Nigerien state officials. In the case of rejected applicants, however, Niger still remained responsible. These cases were relatively numerous because of the program’s central fault line. The ETM disconnected the logic of evacuation from Libya based on vulnerability criteria and the following RSD in Niger based on a perceived fear of return to the country of origin. As a result, protection seekers were evacuated to Niger who would later not be eligible for the refugee status and resettlement. At the time of research, local UNHCR and state officials grappled with finding solutions for them. Furthermore, while the ETM certainly saved thousands of lives, it contributed to legitimizing migration control measures that contained the majority of refugees in Libya.

**Session 3B - “Improving the Global Refugee Regime with Feminist Theory” (THEMATIC)**

**Moderator: Natasha Yacoub (RLI Feminist Theory Working Group Chair)**

Feminist work in refugee law appeared with a ‘burst of energy’ in the 1990s, according to Dauvergne, and has since then ‘stalled spectacularly’. This panel by the RLI Feminist Theory Working Group explores the contribution and challenges of feminist theory and methodology to international refugee law and qualitative displacement research. The presentations explain not only why the global refugee regime needs to change but they chart ways forward for this to happen.

On the one hand, the panel challenges the boundaries of international refugee law and international human rights institutions. A queer theory lens serves to unravel the relationship between human rights and the refugee definition. The relationship between refugees and human rights is further investigated through the analysis of CEDAW Committee’s General Recommendations and Views on individual complaints, showing its contribution to the elimination of discrimination against women experienced in context of migration control.

On the other hand, the panel contributions adopt feminist theory in country studies
to show practical ways to improving the refugee regime. A Feminist New Materialist approach to multi-disciplinary qualitative research in education and forced migration studies explores how women in Colombia are transforming legal and human rights knowledge to empower individuals and communities at grassroots levels. Intersectionality is central to a qualitative analysis that deconstructs how Syrian women's representation across gender, class, and refugee identity dimensions shapes their complex and divergent intimate partner violence experiences in Jordan.

“The Praxis of Human Rights: Deconstructing Legal Norms and Human Rights Knowledge from the Ground Up with Displaced Women in Colombia”

Claudia Blandon (University of Plymouth, UK)

Research has shown that in contexts of displacement, understanding and
respecting human rights related to women is fundamental in terms of employment, reproduction, healthcare, sexuality, education, family life and access to justice (Marcus, 2017). However, there is also evidence to suggest that human rights education programmes and legal infrastructures designed to empower women are not always having the intended effects of supporting agency (Bajaj et al., 2017).

Using a Feminist New Materialist (FNM) approach, this multi-disciplinary qualitative research in education and forced migration studies explores how women in Colombia are transforming legal and human rights knowledge to empower individuals and communities at grassroots levels. It documents the mechanisms and processes used by small grass roots organisations and individuals to appropriate and challenge legal constructs, universal notions of human rights, and perceptions of empowerment and vulnerability.

This study interrogates the outcomes of promotion of legal infrastructures enacted to protect women (specifically Law 1257 addressing sexual violence) by looking at how local processes may trigger acts of acceptance, rejection or resistance (Grobklaus, 2015). It also seeks to understand the conditions that favour either the adoption of international norm promotion, or local appropriation of human rights knowledge (Levitt & Merry, 2009, Bajaj et al., 2017). Emerging data from 12 in-depth interviews with women and virtual observations of human rights education courses show temporal forms of female sense of empowerment and vulnerability that could be valuable in theorising notions of empowerment in contexts of violence and displacement. Initial results shed light on contextual understandings of how women transform human rights knowledge into localised and meaningful notions of empowerment and agency.

“‘It’s Complicated’: Unravelling the relationship between Human Rights and the Refugee Definition through a Queer Theory Lens”
Dr Janna Wessels (Free University Amsterdam, Netherlands)

Since the 1990s, a human rights approach to the refugee definition has established itself as the dominant view. While the literature is overwhelmingly supportive of the human-based rights approach, more critical views have pointed to the ‘uneasy fit’ of the two bodies of law. The central issue is that refugee protection is granted when a certain level of severity is reached that cannot be found in any breach of any human right. Refugee protection is therefore necessarily lesser in scope. Accordingly, much depends on the way this inherent ‘distinction problem’ is addressed – how the difference in scope between the two fields is reconciled.

In line with queer theory, this paper conceives of the claimant’s identity and behaviour as a binary opposition that is inherently unstable. Through this lens, it shows that in response to the ‘distinction problem’, the human rights-based approach to the refugee definition conceptually conflates the elements of persecution and
Convention ground. As a result, the human rights framework is not used to assess which breaches of rights reach the threshold of persecution, but rather to the question of the extent to which a claimant is entitled to the characteristic described by the Convention ground, i.e., precisely the claimant’s persecuted identity and related acts. The focus shifts away from an applicant seeking protection from persecutory harm to an applicant who is ‘seeking to exercise a human right’, that is, asking for permission to act in a particular way, even though this would entail persecutory harm. This allows for situations where the answer is ‘no’ – the claimant cannot act in that way and must exercise ‘discretion’. Effectively, then, the human rights-based approach reduces the scope of protection. In order to prevent such conflation, clarity is required as to which human rights standards are applied to which elements of the definition, and with which effects.

“Unprincipled and Unrealised: CEDAW and Discrimination Experienced in the Context of Migration Control”
Dr Catherine Briddick (University of Oxford, UK)

This paper analyses the CEDAW Committee’s General Recommendations and Views on individual complaints, to evaluate its contribution to the elimination of discrimination against women experienced in context of migration control. The arguments advanced rest on three premises: first, that CEDAW, and its Committee, plays a significant role in the international protection of human rights. Second, that discrimination along multiple and intersecting axis, including against women, is ‘rife’ in the migration control context, but that third, CEDAW is uniquely placed to contest such disadvantageous treatment.

The paper makes two arguments. First, the Committee’s General Recommendations contain a range of doctrinal and empirical shortcomings. This opacity, and these omissions, significantly reduce the interpretative value of the Committee’s statements as a means by which States’ migration control practices might be contested. Second, the Committee’s decisions in communications that raise issues of discrimination experienced in the context of migration control are inconsistent with those standards that it has set, and with the decisions made in other types of cases. A detailed review of jurisprudence from over a nine year period grounds the conclusion that the Committee is, in practice, according States a margin of appreciation. The Committee should make explicit its adoption of the doctrine, and explain how it is calibrated in different types of cases. Without this, the Committee’s approach to States appears overly deferential, the Views it adopts without principle. An examination of the Committee’s decisions on cases concerned with asylum from gender-based violence is used to demonstrate how this deference exposes women to the risk of refoulement, and how the Committee is failing to hold States responsible for breaching the standards it has set on refugee recognition.
Session 3C – “The Role of Community Sponsorship for Refugee Resettlement in Australia: Whither State Responsibility?” (THEMATIC)
Moderator: Dr Tamara Wood (University of New South Wales, Australia)

Resettlement is one of three ‘durable’ solutions provided by state parties of the 1951 Refugee Convention, including Australia, in cooperation with the United Nations High Commissioner for Refugees. Currently, there is a vast deficit of resettlement places globally. In the Global Compact on Refugees the international community, agreed to create more resettlement places, and for the first time, promoted community sponsorship for better global responsibility-sharing. Community or private sponsorship of refugee resettlement, practised by Canada since 1979, has been introduced in different forms in a number of countries since 2014. Australia has a long history of resettling refugees with community support, and has experimented with two pilot community sponsorship programs since 2013 and is currently considering a third program. Whilst resettlement requires integration with permanent residence status, there is no agreed definition for ‘community sponsorship’ of refugees, but consensus that it involves a ‘public-private partnership’ between the state and private actors (IRiS 2020, 1).

In this panel we present the legal and policy background of past and current community refugee sponsorship programs in Australia and introduce our new Australian Research Council project on community sponsorship. We focus on how sponsorship partnerships have been conceived and implemented in Australia. We consider the opportunities for community sponsorship in Australia to contribute to the integrity of the global refugee regime by examining these questions:

1. What models of ‘public-private partnership’, past and present, including legal and policy framings, have been implemented and tested in Australia? What are the opportunities and barriers to effective partnerships between state and community in this context?
2. How is refugee protection conceived and enacted by community actors and sponsors under the Australian models and what theories of partnership and community participation underpin their actions? What are the broader implications of community sponsorship to refugee protection on the one hand and to state responsibility on the other?

“At What Cost? Private Sponsorship of Humanitarian Entrants in Australia”
Dr Anthea Vogl (University of Technology Sydney, Australia)

Since 2013, the Australian government has introduced several programs for the private sponsorship of refugees, including the Community Proposal Pilot (CPP), the Community Support Program (CSP) and a second ‘trial’ program that is still
under design, the Community Refugee Integration and Settlement Pilot (CRISP). Controversially, both the CPP (2013-2017) and CSP 2017-ongoing) privatise existing places within Australia's humanitarian resettlement program. Community-sponsored entrants are not resettled 'in addition' to existing humanitarian quotas and, due to exorbitant visa application fees borne by sponsors, the programs have been explicitly characterised as generating government revenue. Finally, eligibility under the CSP is determined according to language capability, age and employability rather than primarily humanitarian need or concern. This paper addresses the history, design and reception of Australia's private sponsorship programs. It considers questions of 'community' involvement in the programs, privatisation and principles of humanitarian resettlement under the current programs, as well as the role of concerted community and NGO advocacy in reforming and improving Australia's recent implementation of refugee sponsorship.

“Lessons from history: The Community Refugee Settlement Scheme (CRSS)”
Khanh Hoang (University of New South Wales, Australia)

While it may seem that community sponsorship is a relatively new in Australia, the opposite is true. Australia’s first community sponsorship model was the Community Refugee Settlement Scheme (CRSS), instituted as part of Australia’s response to the Indochinese refugee crisis. The program ran from 1979 until 1997 and helped to successfully settle and integrate over 30,000 refugees in Australia. Despite this, the CRSS remains relatively unknown within both policy and academia. Drawing upon archival and semi-structured interviews, this paper examines the lessons learned from the CRSS experience and its implications for current and future directions of community sponsorship in Australia.

“Alternative Framings of Community, Partnerships and Protection in Refugee Sponsorship Programs”
Prof. Susan Kneebone (Melbourne University, Australia)

In this paper Susan Kneebone evaluates competing claims about community sponsorship programs, their application to the Australian context, and their implications for international refugee protection. First, it is claimed that community sponsorship programs involve some transfer of state sovereign responsibility for resettlement and may lead to unwanted ‘responsibilising’ of the community. This may be seen as an attempt by the state to ‘privatise’ its responsibility, and can complicate the relationship between the state and the sponsor. Second, there is an oft-stated assumption that community sponsorship generates stronger commitment to refugee protection. Underlying these claims are different framings and visions of democracy, citizenship and community which are important to articulate in order to build effective sponsorship programs which lead to better refugee protection.
“Community Sponsorship Literature from the Perspective of Refugee Law Scholarship: What is Missing?”

Dr Kate Ogg (Australian National University, Australia)

While community sponsorship programs have existed since the 1970s, they traditionally have attracted little academic attention, particularly from refugee law scholars. However, there is now a burgeoning literature on community sponsorship, most of which focusses on Canada and Europe. In this paper, Kate Ogg provides a critical review of community sponsorship scholarship. She argues that, while the field is still emerging, there is a lack of focus on conceptualisations of protection, the gendered nature of community sponsorship, how the idea of ‘vulnerability’ is understood and deployed in community sponsorship programs and the links between community sponsorship and durable solutions in refugee law. These are themes that will be taken up in the Australian Research Council funded project on community sponsorship Kate will conduct with Susan Kneebone and Anthea Vogl.

Session 4A - Emerging Dynamics of Contemporary Internal Displacement Contexts (OPEN)

Moderator: Dr Deborah Casalin (University of Antwerp, Belgium)

A focus on cross-border displacement by refugees sometimes overlooks the fact that the majority of forced displacement takes places within countries. This panel explores the complexity of different drivers of internal displacement and their implications for the response to internally displaced persons (IDPs). It brings together four separate papers submitted to the conference call for papers.

“Crossing Paths: New Prevention and Protection Challenges when Violence and Disasters Intersect to drive Internal Displacement?”

Dr Beatriz Eugenia Sánchez-Mojica (IE University, Spain)

According to the Guiding Principles, forced internal displacement is a complex phenomenon, triggered by a vast array of situations. Nevertheless, the way this concept has been construed has led to its fragmentation into three separate categories, each one receiving a different type and level of attention. The first refers to internal displacement caused by armed conflict, generalized violence, and massive human rights violations. Population movements triggered by disasters belong to the second category, while those linked to development projects are included in the last one. This fragmented vision has hindered the understanding of the dynamics, factors, and actors that interact in any forced displacement scenario. It has also diminished the chances of devising adequate measures for providing adequate assistance and protection to all those affected, such as IDPs and host communities.
The limitations of this fractured understanding of internal displacement become even more evident when it comes to scenarios in which forced movement is the outcome of conflict and disaster interaction. In these cases devising adequate measures for prevention, humanitarian assistance, rights protection, and reaching durable solutions become an almost impossible task. This paper delves into the reasons that led to the current fragmented vision and identifies the challenges to overcome it.

“Forced Displacement linked to Corruption and Impunity in Megaprojects: Conceptualising Emerging Characteristics of Development-induced Displacement in Honduras and Mexico”

Dr Vickie Knox (Independent researcher, UK)

New research has been used to develop a conceptual framework that seeks to explain how specific acts of corruption related to megaprojects result in particular patterns of forced displacement. Honduras and Guerrero, Mexico have been convulsed by violence and significant levels of displacement for many years. While attention has recently been given to the role of violence perpetrated by criminal groups in driving human mobility in these regions, the role of megaprojects in provoking displacement has been largely overlooked. Notably, analysis of the impact of the involvement of both corrupt state actors and organised criminal groups in megaprojects and displacement is lacking, and comparative studies are entirely absent.

Based on qualitative interviews conducted in 2021 with key informants in Mexico and Honduras, this research generates insight about the dynamics of displacement related to corruption, impunity, state criminality and organised crime involvement in megaprojects. Displacement results from corruption that manifests in the development of unfavourable legislation, the bypassing of due process, the persecution and criminalisation of land defenders, and violent forced evictions.

Results show how diverse actors and dynamics in each region are generating different patterns of displacement and protection needs, but identifies some overarching commonalities between them. Aspects of corruption related to displacement are analysed as political, legislative, judicial and enforcement processes to develop the conceptual framework and explain this in a policy-relevant manner. Analysis of two regions, each with a distinct array of actors and interactions, enabled overarching conclusions that offer potential for application in these and other contexts. This analysis represents the first half of a BA/Leverhulme funded project, for which case studies will be developed through fieldwork with affected populations in late 2022.


Philomène Franssen (Researching Internal Displacement, Spain)
In our state-centric world, international borders unsurprisingly remain a predominant object of study of the field of forced migration. Border-crossing being the sole indicator against which policy categories are defined and ‘refugee’ or ‘IDP’ labels ascribed, it also serves to assess and measure the vulnerability of forcibly displaced persons. Largely understood as being more vulnerable on account of their alienage, refugees therefore tend to predominantly feature in scholarly debates about the impact and lived experiences of borders. However, in the literature the border is too seldom construed as anything other than a static sovereign line to be crossed and consequently, only rarely apprehended outside of the common dichotomy national/international.

Drawing on seminal literature from the field of Critical Border Studies, this paper argues that such a statist approach fails to acknowledge the existence and significant importance of contested (internal) borders such as those of the post-Soviet space for IDPs who live near or across them in bordering areas. Using the Georgian-Abkhaz internal border (ABL) as a case study, I draw on 10 qualitative expert interviews to offer an analysis of the complex, multi-faceted, pervasive and lingering impact of this seemingly invisible border on the daily lives of IDPs displaced within and from the de facto state of Abkhazia, who have been living in protracted displacement for nearly 30 years in Georgia. Noting that through “borderization practices”, this internal border increasingly takes on the traits of an international border, I conclude that borders need not be internationally recognised in order to be visible and relevant to the people who experience them in their everyday life.

“Unpacking Human Mobility in the context of the Current Climate Regime”
Dr Ana Mosneaga (Ritsumeikan University, Japan), Prof. Carolien Jacobs (Leiden University, Netherlands) and Brian Aycock (International Christian University, Japan)

Human mobility in the context of environmental change, including disasters and climate change, has been attracting increasing policy attention in recent years. Yet, the highly context-dependent nature of the different forms that this mobility takes, such as displacement, migration and planned relocation, as well as the intricate web of factors that affect both mobility and immobility decisions and their outcomes for the affected people and communities are often oversimplified in policy discussions.

This paper seeks to unpack and critique the conceptualisation of human mobility in the current climate regime, and thereby also to question the very notion of the climate regime itself. The current international climate change regime remains a rather specific normative system that is not designed to address phenomena that cut across several policy domains, and requires multi-scalar approaches, such as human mobility. In this regard, this paper argues for the need not only for an international, and transnational, but a translocal approach to human mobility in the context of climate change and to achieving climate justice for all.
By examining the dominant discourses on human mobility in the context of climate change, including existing framings of migration as adaptation and displacement as loss and damage, the analysis shows that issues of justice and equality need to come front and centre in realising a climate regime that truly serves global interests. Through analysing local realities of planned relocation schemes on the front-lines of the climate crisis in Fiji and Mozambique, this paper illustrates that top-down, one-size-fits-all, simplistic approaches to human mobility are ill-suited for addressing this issue. The conclusions discuss some of the key points of considerations that should guide the design of a more just climate regime and translate into more sustainable solutions for people who are affected by the adverse effects of climate change – whether they move or stay.

Session 4B – “Rewriting Jurisprudence: Centring Refugee and Migrant Lived Experience” (OPEN)
Moderator: Dr Veronica Fynn Bruey (Athabasca University, USA)

There is increasing acknowledgment that the field of forced migration studies has developed and is sustained by researchers without relevant lived experience writing about not with refugees, stateless people, internally displaced persons and migrants. Forced migration scholarship is an multidisciplinary field and, while there have been some initiatives in the social sciences that have responded to these concerns, legal research lags behind. Further, legal frameworks that govern forced displacement, migration and statelessness are most often created, administered and applied by individuals with no relevant lived experience.

‘Rewriting Jurisprudence: Centring Refugee and Migrant Lived Experience’ is a new project, the objective of which is to rethink, reframe and rewrite jurisprudence from the perspectives of scholars and lawyers with lived experience of forced displacement, statelessness and migration. The project is co-led by scholars with such lived experience. We deploy a ‘critical legal judgments’ methodology whereby judicial decisions are rewritten by scholars and lawyers with relevant lived experience, sometimes together with a co-author. In this panel we present work in progress by some of the contributing authors to the project.

Rewrite 2018 Federal Court decision of EWR18 v Minister for Home Affairs
Dr Saba Vasefi (University of Sydney, Australia- with Sara Dehm)

We propose to rewrite a 2018 Federal Court decision of EWR18 v Minister for Home Affairs, in which Justice Thawley ordered the Minister and his department to urgently evacuate a grieving refugee mother, her young daughter and her widowed daughter-in-law from Nauru to a place where they could receive specialist medical care. While the Court-ordered injunctive relief was in favour of the refugee applicant, much of
the judgment obscures her voice and experience of gendered-related harms arising from being subject to Australia’s extraterritorial asylum regime on Nauru. Instead, snippets of the refugee applicant’s story are glimpsed through the expert medical testimony relied upon and incorporated in the judgment, including the fact that her medical condition had been exacerbated through her adult son having suicided on Nauru and that the Australian government had denied the family’s request to come to Australia for his funeral. Drawing on Australia’s long settler colonial history of racial and gendered expulsions at ‘the border’, this rewritten judgment will recover some of the overlooked human dimensions to the judgment, while also making a stronger legal finding concerning the Australian government’s legal responsibility towards people subject to Australia’s extraterritorial asylum regime on Nauru. Unlike the clinical, medicalised tone of the FCA judgment, our rewritten judgment will instead incorporate poetry and creative writing in order to seek to give space to refugee voices and find different mediums for representing the harms of Australia’s extraterritorial asylum regime.

Rewrite two landmark relocation cases: Randhawa v. The Minister for Immigration Local Government and Ethnic Affairs and Januzi v Secretary of State for the Home Department & Ors to better reflect the lived experience of refugees in post-conflict situations

Sitarah Mohammadi (Monash University, Australia- with Maria O’Sullivan)

Internal relocation is a problematic and controversial principle of international refugee law as it provides that a refugee may be returned to their country of origin if they can relocate to a ‘safe’ part of that state where they would not have a well-founded fear of persecution. A ‘reasonableness’ factor is often (but not always) considered as part of relocation. The reasonableness principle aims to reflect that in some cases, it may not be possible to require a refugee to relocate to another part of their country of origin to avoid persecution. However, much of the relocation jurisprudence reflects assumptions about practicalities and life on the ground which do not reflect the lived experiences of refugees. This is particularly so in the context of conflict or post-conflict situations (such as Afghanistan) where the political and security of the country may be unpredictable and where non-state actors may be influential beyond their formal sphere of power. In this paper, the authors rewrite two landmark relocation cases: Randhawa v. The Minister for Immigration Local Government and Ethnic Affairs (1994) 124 ALR 265 and Januzi v Secretary of State for the Home Department & Ors [2006] UKHL 5 to better reflect the lived experience of refugees in post-conflict situations.

Rewrite R (on the application of Begum) v Secretary of State for the Home Department

Ayesha Ria (University of Greenwich, UK)
This paper will undertake a rewrite of R (on the application of Begum) v Secretary of State for the Home Department. In this case, Ms Shamima Begum (the first British woman to be deprived of her British citizenship) was deprived of her British citizenship by the Secretary of State for the Home Department for fleeing to Syria and aligning herself with ISIS. In 2021, the Supreme Court held that to safeguard the UK’s national security, Ms Begum can only participate in the proceedings from outside the UK, and so she cannot now enjoy a fair trial against the deprivation of her British citizenship. This case has set a disturbing precedent for deprivation of citizenship hearings as it has restricted the powers of appellate courts that hear deprivation appeals, thereby shifting the equilibria of power in favour of the executive and endangering the appellant’s right to a fair trial and diminishing access to justice. Ms Begum was just 15 when she fled to Syria, but the Supreme Court did not dwell on this factor. Moreover, the Bangladeshi authorities have repeatedly confirmed that Ms Begum is not a citizen of Bangladesh. So, she is currently a stateless 22-year-old, with no one to turn to, and is stuck in treacherous conditions in the Al-Roj camp in Syria, potentially in breach of her human rights. The national security concerns about Ms Begum could be addressed by imposing a Terrorism Prevention and Investigation Measure but this was ruled out by the Court. Anyone convicted of a crime should be given a fair trial which does not seem to be the case with Ms Begum. Ms Begum was groomed as a child in the UK to join ISIS, the system failed to protect her and thereafter labelled her as a terrorist; deemed her stateless because she is brown and a Muslim, despite being British.

Rewrite a judgment on the experience of women from Saudi who have sought asylum

K. Alhussain (Postdoctoral researcher, Australia- with Kate Ogg)

K. Alhussain is a post-doctoral researcher. Her research focusses on the experience of women from Saudi who have sought asylum. K. Alhussain will rewrite a judgment that addresses the themes explored in her research.

Session 4C - “Climate, Disasters and Displacement: Asia-Pacific Perspectives” (OPEN)

Moderator: Dr. Christina Oelgemoller (Loughborough University, UK)

Climate disruption affects populations across the globe. Growing climate risks threaten lives, physical and mental health, and food and economic security. They also exacerbate existing vulnerabilities and inequalities, and contribute to the rise in the number of disasters and displacement. Climate change’s negative effects can increase the intensity and affect the frequency and seasonal patterns of the hazard events that force millions to flee each year. Environmental degradation linked to climate change can also act as a threat multiplier, affecting already fragile natural resource bases, putting additional pressure on already exposed and vulnerable local and
regional economies and ecosystems. However, the interaction of social, economic and environmental drivers of displacement means that climate change must be understood as just one factor in a complex system where hazards, vulnerability and exposure combine to generate displacement risk.

In this proposed panel, “Climate, disasters and displacement: Asia-Pacific perspectives”, we invite the speakers to set the political framing for concepts such as climate and disasters-induced displacement, and discuss empirical case studies from Asia Pacific countries, who are facing the brunt of climate and conflict refugees, both internally displaced or from neighboring countries.

“International Obligations and Regulating Displacement in Asia Pacific”
Prof. Cosmin Correndea (OP Jindal Global University, India)

This talk will focus on the research conducted in the Asia-Pacific region, where the most affected people by the gaps of international law are the vulnerable ones whose adaptation options are limited or exhausted, and are facing displacement. This talk will analyse evidence based on the policy documents, relevant institutions and (political) actors supporting the legal analysis of the climate change impacts in Asia-Pacific. The 2015 Paris Agreement, by recognizing human rights and human mobility in the context of climate change, confirms the hybrid legal approach as one of the future solutions in identifying and addressing international legal gaps by placing the people affected by climate change in the center of the discussion.

“Climate- or Disaster-induced Displacement: Knowledge and Empirical Gaps from South Asia”
Prof. Sneha Krishnan (OP Jindal Global University, India)

The inequalities in climate-related disasters are exacerbated because the underlying dynamics of power are rarely addressed in climate programmes that aim to empower women, knowingly that it is a complex endeavour to examine underlying social and cultural structures in gender relations. Recurring floods and erosion result in displacement, which adversely impacts women who are “left behind” when men migrate. Policy and program measures for disaster response and climate adaptation often perceive women as homogenous, vulnerable groups, instead of addressing underlying structural and conceptual barriers and strengthening their adaptive capacities to disasters and displacement. This article draws upon a political ecology lens to understand gendered recovery processes following climate-induced disasters across Assam, northeastern India and Cox’s Bazaar, Bangladesh using empirical research. Although both India and Bangladesh have advanced and proactive disaster management policies, the impact of human mobilities and nuances of these discourse on disaster or climate induced displacement is rarely addressed in these policy measures.
“Planned Relocation in India: Critical Evaluation of the Existing Legal Framework”
Prof. Chhaya Bharadwaj (OP Jindal Global University, India)

There is an increasing phenomenon of relocation and resettlement of Indian communities due to sea level rise and other extreme weather events in India. In India, the responsibility to design planned relocation falls on the state and local government under the existing Disaster Management Law. In India, extreme weather events and slow on-set events like desertification, drought and sea-level rise have triggered forced migration in India since ages. While this practice of allowing a settlement or community to move voluntarily from one place to another existed even before the government started the planned relocation, the process was earlier known as resettlement of communities. In the context of forced migration triggered due to climate change and other slow-onset disaster, the need to develop specific relocation frameworks is arguably the need of the hour for India. Additionally, India has an opportunity to set bold and new climate change action plan to protect its citizens.

The author through this article will firstly map documented planned relocations, also known as resettlements for some communities, in the context of disasters, slow on-set events or sudden on-set events. The author will then, analyse the frameworks through which these relocations or resettlements occurred, while articulating the need to uniformize the process and learn from good practices of other countries.

“Any Port in a Storm? Climate, Mobility and Choice in Pacific Small Island Developing States”
Dr Robert Oakes (UNU-EHS, Germany)

The Pacific Small Island Developing States are often considered on the frontline of climate change due to high levels of exposure to climate-related hazards and limited adaptive capacity to respond. In this context, Pacific Islanders may be displaced, or choose to migrate to escape risk and find more secure livelihoods. On the other hand, Pacific political and community leaders stress that mobility can be a threat to sovereignty and culture and should only be considered as a last resort. This paper adopts a cultural ecology framing to gain a greater understanding of these contested local discourses on climate change and human mobility in Kiribati, Tuvalu and Nauru through the use of the Q method. The results reveal a range of shared subjective understandings of climate change and human mobility which show that reasons for, and perceived outcomes of moving are inextricably linked. These subjective understandings highlight that culture, and in particular how Islanders relate to land and religion can influence decision-making, promoting or hindering mobility. The findings therefore support the need for further engagement with communities to recognise and validate their positions on climate change and human mobility to
facilitate the planning and implementation of effective policy.

Session 5A - “Afghan Evacuations: Mixed Outcomes for the Global Refugee Regime?” (THEMATIC)
Moderator: Jasmin Fritzsche-El Shewy (Ruhr-University Bochum, Germany)

This topical panel explores the implications for the future of the global refugee regime of the sudden evacuations of large numbers of Afghan nationals from Afghanistan after the change of government in 2021.

“Unregulated, Elitist, and Fragmented? Tentative Findings from Afghan Evacuations to Four Major Donor Countries”
Dr Naoko Hashimoto (Hitotsubashi University, Japan)

Summer 2021 witnessed dramatic evacuations of some tens of thousands of Afghans. These evacuations were due to their imminent fear of persecution stemming from their affiliation with foreign entities such as ISAF troops, embassies, development agencies, civil-society organisations, among others. While such operations were not necessarily new, academic investigations of the operations are surprisingly scant, despite its serious implications for the global refugee regime. First, such evacuees fall outside the original mandates of UNHCR and the Global Compact on Refugees, since many of the evacuees remain inside their country of origin and thus fall outside the legal parameters of the 1951 Refugee Convention. Although IOM had managed the evacuation operations in Iraq and Afghanistan, the security conditions forced it to halt operations for the past several years. Consequently, the Afghan evacuation is an element left unaddressed by either Compacts or by these two major international institutions. Second, the proactive evacuations and admissions of (ex) local staff might, on the surface, appear to demonstrate a minimum moral obligation to protect vulnerable foreign nationals who otherwise would be persecuted due to their affiliations with the country of destination. However, the evacuation policy itself also risks exacerbating the ongoing trend to select the best and the brightest “refugees” who have some existing ties to the country of destination prior to arrival. This elitist pre-arrival ‘selectability’ needs to be examined critically as an extension of the recent trends in refugee resettlement and so-called “complementary pathways.” Third, the Afghan evacuations demonstrate diversification at best and fragmentation at worst of the global asylum regime. Not only so-called “Western” governments joined the evacuation efforts but also a wide variety of governments worldwide. This paper discusses these three elements by sharing its preliminary findings regarding the Afghan evacuation policies of the four countries which either used to send the large troops to ISAF and/or are the large donors to Afghanistan (i.e., Germany, the U.K., Canada, and Japan), leaving the U.S. and Australia to Paper 2.
“Paradoxes of Preventive Evacuation: Some Lessons from Afghanistan 2021”
Ahmad Shuja Jamal (Former Afghan civil servant now in exile) and
Prof. William Maley (Australian National University, Australia)

In a January 2022 article, George Packer reported that in June 2021, Afghan President Ashraf Ghani ‘came to the White House and asked [US President] Biden to hold off on evacuating Afghans, to avoid initiating mass panic. Afterward, Ghani met with a few members of Congress. Jason Crow used his time to make the case for evacuations. “I know what you’re trying to do, Mr. Crow,” Ghani replied with some heat. “It’s undermining what we’re trying to do in creating some stability and security.” (George Packer, ‘The Betrayal’, The Atlantic, 31 January 2022). Ironically, when the Taliban reached the gates of Kabul in August 2021, Ghani himself boarded a helicopter and fled the country. He took his reputation with him.

This particular case highlights a wider problem that deserves some attention. Ghani was almost certainly correct in his appreciation of the implications for mass psychology of a substantial evacuation of the political elite. But he either underestimated, or was indifferent to, the risks faced by those Afghans who had believed American promises that they would not be abandoned, and had taken strong stands in defence of human rights, liberty and democracy, all of them concepts that were anathema to Taliban hardliners. These risks accounted for the chaotic scenes at Kabul airport from 16-31 August as a vulnerable Afghan sought to escape, and for the revenge attacks that many Afghans associated with the Republican regime experienced thereafter.

Is there a way of overcoming this tension? There may be no magic solution, but the Afghan case suggests that better contingency planning, carried out very discreetly, may be an important part of the toolkit. Contingency planning in this sense involves not simply preparation for physical movement of people, but identification in advance of those who are most likely to face a well-founded fear of persecution if circumstances suddenly change, and the gathering of information about those persons’ families, contact details, and locations so that an evacuation does not turn into a rout. This presentation looks at some of the practical steps that could have been taken in Afghanistan, and that might be useful in other contexts in the future.

“A Shifting Geopolitics of Vulnerability. Is the Protection of Skilled Afghan Women a Turning Point in Resettlement?”
Prof. Adèle Garnier (Université Laval, Canada- with Prof Kristin Bergtora Sandvik, Dr Ingunn Bjørkhaug, and Dr Astrid Espegren)

In the literature on forced displacement and durable solutions, including the subfield of resettlement studies, women’s vulnerability arising from their achievement
of professional credentials, access to resources, personal capacity and talent or participation in the public sphere, is not much discussed. This paper seeks to provide an initial scoping of the shifting geopolitics of vulnerability arising from the Afghanistan transition and the possible implications for global resettlement policy. The paper draws on the authors previous scholarship on women-at-risk, vulnerability and resettlement, their practical engagement with UNHCR resettlement operations and host country resettlement policies as well as grey literature, scholarly interventions and media reporting on the Afghan political situation.

Our central argument is that the humanitarian evacuations from Afghanistan represent an important turning point in the geopolitics of vulnerability, with unclear consequences. We first show that during the evacuations from Afghanistan, much attention from various groups in major resettling countries, including the US, Canada and Australia, has been given to Afghan female professionals. We then investigate to what extent this attention challenges ‘women at risk’ as a normative category in international protection. Next, we introduce the concept of ‘brain save’. In contrast to brain drain, the concept of brain save implies more positive associations: this entails saving the competence, capacity and aspirations of Afghan women. We acknowledge that focusing on women’s skills as a source of vulnerability is a complex advocacy argument for resettlement – and one with possible recursive implications for other women’s access to protection – but that it is nevertheless useful as an analytical prism. In the final section, we make some preliminary observations about the potential instrumentalization of the resettlement of educated and professional women as soft power and as a foreign policy tool.

Session 5B – “Non-Penalisation as a Building Block for Reform of Refugee Protection” (THEMATIC)
Moderator: Prof. Cathryn Costello (Hertie School, Germany)

This panel will bring together key contributions on the legal status and effectiveness of the protection of refugees against penalisation. It will consider the effectiveness of Article 31 Refugee Convention, in light of diverse state practice, ranging from the UK’s determined legislative undermining to global judicial trends. The potential to establish a wider general principle of non-penalisation will be explored, in particular in order to alleviate the harms of the criminalisation of migration in general, as they bear down not only on refugees, but also other vulnerable migrations. In so doing, the panel will make a limited but decisive intervention on a legal approach the seeks to reconcile migration control and migration for protection, one grounded in international obligation, and consider its potential and limits as a tool for general reform in a global refugee regime characterised by containment.
“Non-penalization of Refugees and other Migrants for Illegal Entry or Presence as a General Principle of Law?”

Dr Yulia Ioffe (UCL, UK)

There is a persuasive argument that there is a general principle of law on non-penalization of refugees and other migrants for illegal entry or presence in the sense of article 38(1)(c) of the International Court of Justice Statute. This argument was recently endorsed in the report before the UN Human Rights Council by the Special Rapporteur on trafficking in persons, especially women and children, Professor Siobhán Mullally. To argue successfully that something is a general principle of law within the international legal system, the requirement of recognition must be met. This paper will address the question whether such recognition of non-penalization of refugees and other migrants for illegal entry or presence can be demonstrated through general acceptance by States. Although there has been a lot of recent research on general principles, there is still uncertainty about the content and functions of general principles. The paper will also analyse what function a general principle on non-penalization of refugees and other migrants for illegal entry or presence can fulfil.

“UNHCR on Article 31 and Non-penalisation”

Dr Kees Wouters (UNHCR)

States have a legitimate interest, as well as the authority and responsibility, to manage and control entry to and stay within their territory in accordance with international law, including international refugee and human rights law. States typically do so through measures including visa requirements and border controls, among others. Border and entry management processes do not always operate effectively in ways which enable people to seek asylum. As a result, some persons in need of international protection resort to irregular journeys to cross borders and enter a country without authorization. When apprehended at land, air or sea borders, or within the territory of a country, without proper documentation at variance with rules of entry or stay, such persons may be subjected to a range of punitive measures.

Article 31 of the 1951 Convention relating to the Status of Refugees is central to the protection of refugees and the management of refugee flows. Unfortunately, the article is not well understood, may be ineffective in domestic law and practice, and is often generally overlooked as a refugee protection principle and immigration management tool. With an increased focus of States on penalizing and even criminalizing refugees’ irregular entry and stay and detaining them, UNHCR seeks to clarify the meaning, scope and effect of Article 31 of the 1951 Convention.
“The Nationality and Borders Bill as Flagrant Penalisation of Refugees”
Raza Husain QC (Matrix Chambers, UK)

The Nationality and Borders Bill represents the biggest and most profound assault on the Refugee Convention ever seen in the UK. It also flagrantly violates Art 31. For the first time in UK history, it criminalises the act of arrival (rather than entry) without authorisation-in circumstances where it not possible to obtain such authorisation prior to arrival. That criminalisation is not subject to any Art 31 based statutory defence or analogue thereof. The animating concern of the Bill is that refugees should claim asylum in the first safe country they reach. This is of course contrary to the views of the drafters, of experts, of the UNHCR, and of the courts. It of course undermines principles of international co-operation on which the international refugee regime is based, as explicitly set out in the Preamble and as reaffirmed by the UN (and the UK) in 2018 in the Global Compact. Thus the Bill rewrites Art 31 to deprive refugees of its protection who, broadly, have stopped in a safe third county. Thereafter it renders their claims inadmissible, subjects them to the possibility of off-shoring, and relegates them to a second-tier refugee status with diminished rights, inconsistently with Arts 23, 32 and 34 of the Convention, and with a good faith implementation of the Convention itself. This paper explores the flagrant violation of Article 31 in light of the existing leading UK caselaw on the topic, and its implications for refugee protection and the rule of law in the UK.

Session 5C - “The Future of Complementary Pathways” (THEMATIC)
Moderator: Dr Vladislava Stoyanova (Lund University, Sweden)
Discussant: Anna Gekht (Senior Resettlement and Complementary Pathways Officer, UNHCR)

At the backdrop of a continuing trend of externalization of international protection in Europe leading to a shrinking asylum space (Mathew 2021; UNHCR 2021), there is a reinvigorated focus on complementary pathways as introduced by the New York Declaration of 2016 and further reinforced by the Global Compact on Refugees of 2018 (e.g. Tan 2021; van Selm 2020). The two processes can be seen as interlinked. However, whereas externalization is associated with heightened risks of human rights and asylum law violations, complementary pathways are promoted as opening up new spaces for solutions for people in need of international protection in addition to resettlement (UNHCR 2019). Protracted refugee situations and newly or rearising conflicts such as the current situation in Afghanistan and Ukraine call for stronger solidarity and responsibility sharing among European states. Despite the appeal of complementary pathways and their protection and solutions potential, it can be argued that the urge to promote their emergence on a European level (from a top-down perspective) can be seen not only as a migration control tool on the part of states, but also as a corollary to the externalization trend. From this perspective
complementary pathways may be (ab)used for the purposes of a political PR discourse which legitimizes a move towards the limitation of asylum-seekers’ and refugees’ rights as accorded to them under refugee and human rights law.

The panel therefore poses the question of whether and how complementary pathways may live up to the expectation to contribute to the objectives put forward by the Global Compact on Refugees (“to: (i) ease pressures on host countries; (ii) enhance refugee self-reliance; (iii) expand access to third country solutions,” GCR, Para. 7). Should and how could there be a legal responsibility of states to introduce complementary pathways and treat people in need of international protection arriving thereunder in particular ways? What are the current practices and are they in line with refugee and human rights law? Do these practices call for a change of the 1951 Refugee Convention and in what direction should it go if so?

“Whose Pathways are They Anyway? The Top-down/Bottom-up Conundrum of Complementary Pathways for Refugees”

Dr Joanne van Selm (Eurasylum, UK)

Complementary pathways offer significant potential in a number of areas. They can be used to provide at least short-term international protection to refugees. However, complementary pathways are not a fix-all: the numbers of refugees who can find a place is, to date, relatively small. The extent to which communities, including academic institutions, employers and sponsors can be involved requires careful development and is often more limited than the rhetoric suggests. Governments can reasonably be accused of a Janus-faced approach as they both restrict arrival and externalise asylum processing for hundreds of thousands, while admitting a few thousand refugees at most on complementary pathways. The focus on complementary pathways can distract from the immediate needs of current asylum seekers and existing resettlement programmes. Bringing the pathways to reasonable scale to achieve a significant measure of their promise requires careful and realistic management of expectations. One of the keys to working out a pragmatic, widespread and effective implementation of complementary pathways is to better understand the top-down and bottom-up aspects required for their full functioning.

This paper will explore the different practical aspects of Complementary Pathways from the perspectives of four main actors: refugees, communities, governments and the international protection regime. The main questions will focus on the interaction of the ‘bottom’ (refugees and communities) with the ‘top’ (governments and the international protection system) in generating places, programmes and real protection. The paper will lean on theoretical approaches to and understandings of ‘top-down/bottom-up’ systems in political and broader social science, but will be primarily an investigation and questioning of practice and goal setting to date, from the Global Compact for Refugees, through European Union communications on the
subject, to pathways established in individual European states (and beyond) to date.  
“Challenging the Concept of Complementary Pathways”  
Prof. Marjoleine Zieck (University of Amsterdam, Netherlands)

The designation ‘complementary pathways’ has the appealing ring of adding additional possibilities to the traditional solutions to the problem of refugees (in the terminology of the Statute of UNHCR), and is cast in terms of expanding access to one of them. For those who will be able to access one of the complementary pathways, the lucky ones, it may signify a way out of the misery of a (protracted) life in a refugee camp. This should not, however, detract from the fact that the concept of complementary pathways is obfuscated, and the pathways themselves are inherently problematic: they are not predicated on need for protection, they are discriminatory, they are not durable, they may threaten the availability of the classical third country solution of resettlement, and may contribute to the externalization of international protection. This contribution will substantiate those claims.

“Complementary Pathways as ‘Effective Access to Means of Legal Entry’ in the Reasoning of the ECtHR: Legal and Practical Implications” - Emiliya Bratanova van Harten, Lund University, Sweden

Complementary pathways are often viewed as an entirely political matter. While there is no legal obligation for states to introduce such, their presence or absence has a bearing on how the ECtHR assesses compliance with human rights law principles in protection from collective expulsion cases. The current contribution analyzes the concept of “effective access to means of legal entry” in the case law of the ECtHR from the perspective of complementary pathways. Such an analysis is of primary importance at the backdrop of European states’ impetus to introduce complementary pathways following the refugee influx of 2015 and the Afghan evacuations of 2021. More specifically, the paper shall look at the relationship between complementary pathways and the principle of non-refoulement from a human rights perspective and answer the question of whether complementary pathways can be conceived as a promoter or a hindrance to human rights protection.

“Community-driven Humanitarian Corridors as Community Sponsorship Models: the Obligation to Protect the Vulnerable vs State Deterrence”  
Prof. Carola Ricci (University of Pavia, Italy)

This contribution focuses on the ‘humanitarian corridors’ pioneered in Italy and aimed at admission and integration of vulnerable people as a separate legal pathway. The community-driven nature of these corridors distinguishes them from ‘sponsored resettlement’ models where the UNHCR and State resettlement channels prevail over the civil society engagement in supporting refugees in their integration. The peculiar nature of these corridors seems to justify their own success, even if limited to small numbers at present. The humanitarian corridors have been an object
of litigation before the Italian courts. In the course of this litigation, the national courts have reasoned that the corridors impose an international obligation to grant a humanitarian visa since the margin of discretion of States cannot be exercised without respect for the limits posed by obligations arising from international law. As a result of this interpretation, the Ministry of Foreign Affairs was obliged to grant a humanitarian visa as an urgent protective measure.

Despite these promising outcomes that will be described in the article, the regulation of humanitarian corridors in Italy still has left many questions open. One of them relates to the concretely applicable selection criteria and transparency of procedures that should be followed. Another issue that arises relates to concerns about discrimination at the moment of the selection of the beneficiaries and during the integration once in Italy. Finally, concerns can be also raised about the clear separation and delimitation of the duties (pre-departure and post-arrival) of the State, on the one hand, and of the civil society, on the other.

Session 6A – “Asylum in a Late Sovereign World: The Application of Refugee Law in Overseas and Dependent Territories” (OPEN)
Moderator: Dr Sílvia Morgades Gil (Universitat Pompeu Fabra, Spain)

This panel seeks to explore the challenges posed by the applicability of international refugee law in non-self-governing territories. Current developments suggest that overseas and dependent territories may play an increasing role in refugee protection and that there may be gaps in such protection. This panel will present research undertaken in relation Danish and Dutch dependent territories, as well as issues arising in relation to Gibraltar as an external border of the EU and its future role in EU-UK relations.

“Arctic Asylum: The Legal Regulation of Asylum-Seekers and Refugees in Greenland and Svalbard”
Prof. Thomas Gammeltoft-Hansen (University of Copenhagen, Denmark)

This paper examines the regulation and rights of refugees and other foreigners in independent, overseas and other not fully sovereign territories. It analyses two Nordic cases, Greenland and Svalbard. Greenland is an autonomous territory within the Kingdom of Denmark, and Svalbard an unincorporated area subject to Norwegian sovereignty through the 1920 Spitsbergen Treaty. Unlike their parent states, both territories remain outside the Schengen Area. As the paper highlights, both territories are subject to distinct regulatory frameworks in respect to asylum-seekers and refugees.

While the number of asylum-seekers or refugees in each place is so far very limited, the regulatory differences nonetheless raise principled questions both from a rights-
based perspective and at the more theoretical level. The paper argues that Greenland and Svalbard both exemplify how international law and late sovereign constructions may themselves provide for an unmooring of asylum and refugee rights within the ordinary statist framework. The effects in each case are multi-directional. On the one hand, the legal frameworks pertaining to these arctic territories provide for significantly more liberal rules in terms of access to asylum and immigration control. On the other hand, these legal bifurcations serve to upend the ordinary Nordic social contract and welfare rights owed to refugees and other aliens.

“The EU’s External Border with Gibraltar and Refugee Protection”
Prof. María-Teresa Gil-Bazo (University of Navarra, Spain)

The 1951 UN Refugee Convention provided for its application to non-self-governing territories in Article 40. This type of territorial clause, known as the colonial clause, was standard in League of Nations Treaties, but it lost relevance in UN instruments and was eventually abandoned. Article 40 allowed State Parties to the UN Refugee Convention to extend its application to territories for whose international relations they were responsible, thus expanding the territorial scope of refugee law.

The applicability of the UN Refugee Convention in non-self-governing territories has acquired renewed relevance in the context of policies and legal developments that see such territories playing a relevant role in refugee protection issues. This paper will examine the case of Gibraltar, a British Overseas Territory under British constitutional law that was part of the European Union’s territory until the withdrawal of the UK from the EU. The UK’s withdrawal from the EU means that Gibraltar is a non-self-governing territory with which the EU has an external border. Furthermore, it is a territory for which an international dispute exists between the UK and Spain (the bordering EU Member State). This poses a number of challenges, including on asylum matters, that are currently under negotiation between the EU and the UK. This paper will examine the implications of the new status of Gibraltar for refugee protection under international law and EU law.

“Asylum in the Dutch Caribbean: The Legal Regulation of Venezuelan Refugees in Curaçao, Aruba and Bonaire”
Dr Maarten den Heijer (University of Amsterdam, Netherlands)

Over the past five years, thousands of Venezuelans have fled to the islands of Curaçao, Aruba and Bonaire which are formally part of the Kingdom of the Netherlands. The large majority of them have not been formally recognized as refugees and receive little, if any, assistance of local authorities. Constitutionally, these islands enjoy varying forms of autonomy. Guaranteeing asylum forms the primary responsibility of the island governments. Yet the Kingdom as a whole should ensure respect for international obligations. The paper examines the regulation and rights of refugees
in Dutch overseas territories. It discusses the divergent constitutional frameworks between the islands and critically reflects on the division of responsibilities between the island governments and the central “metropolitan” government. It argues that the fate of Venezuelans on the islands is the product of unresolved discussions about self-determination and the protection of human rights. The intricate and often sensitive constitutional arrangements are instrumentalized by both local and central governments to deny full protection of refugee rights.

Quaint and marginal? Refugee law, sovereignty and British non-independent territories

Prof. David Cantor (RLI, UK)

Refugee law in so-called ‘non-independent territories’ may look like a quaint and marginal topic in today’s world, especially as compared with its historical importance for a major colonial power such as the United Kingdom. But I would like to make the case that these hard-to-research tiny non-independent territories have the capacity to shed light on several important legal debates about the nature of refugee law. I will advance this contention by reference to refugee law in the non-independent territories for which the United Kingdom is responsible. Certainly, with three Crown Dependencies and a further 14 British Overseas Territories spread across the world, the United Kingdom offers a revealing case study into refugee law in non-independent territories today.

Session 6B - “Chain-Externalisation of EU Migration Management Policies” (OPEN)

Moderator: Dr Emilie McDonnell (Human Rights Watch, UK)

The panel by the RLI Externalisation Working Group aims to focus on the dynamic of what we would conceptualize as “chain-externalisation” of EU migration policies to the third countries that the EU is in cooperation with. The phenomenon refers to situations where EU’s policies for externalisation are mirrored in the third countries that the EU is outsourcing migration control through such policies containing elements of externalisation such as safe country practices, outsourcing of refugee processing, carrier sanctions, restrictive visa policies and other forms of externalisation of border control. Our main proposition is that as the EU tries to externalize migration control, the countries affected by this, conduct further externalisation creating a chain-externalisation dynamic. Therewith the panel will strive to set forth a conceptual framework on chain externalisation by firstly setting the scene with a traditional view of externalisation including its risks through the example of EU-Tunisia relations. This will be followed by two contributions on Turkey and West Africa discussing the core idea of chain-externalisation and its consequences for refugees. The final paper then adds another link to the chain of externalisation, namely outsourcing to non-state actors in the context of Libya.
“EU-Tunisia Cooperation on Border Management and Rescue at Sea: Assessing Tunisia as a ‘Place of Safety’ and a ‘Safe Country’”
Dr Mariagiulia Giuffre (Edge Hill University, UK)

The EU “National Strategy on Migration” includes, among its priorities, supporting Tunisia in the development of an Integrated Border Management (IBM) system (€ 34.5 M) - funded under the EUTF and having the Italian Ministry of Interior and the ICMPD as implementing partners. While over the past two decades, EU and Italy efforts went mainly in the direction of quickly repatriating Tunisian nationals, and preventing them from applying for asylum, since 2017 we started to observe more structured efforts by the EU to support Tunisian authorities with the aim of preventing boat departures. The European Commission has indeed adopted a number of additional measures to strengthen the work along the Central Mediterranean migration corridor through a comprehensive approach. Even if the main target country was Libya, a number of short and medium terms actions concerned Tunisia – as well as Algeria and Egypt – with the aim of preventing the development of new routes in neighboring countries. These actions included increasing the cooperation with Tunisia, encouraging its participation in the Seahorse Mediterranean Network, and deepening dialogue and cooperation on migration flows management. An increasing number of nationals and third country nationals are indeed intercepted/rescued by Tunisian authorities and pulled-back to Tunisia on their way to Europe.

The EU-Tunisia relationships are therefore a meaningful context to look at the intersections between those policy domains and to question whether the implementation of externalisation and migration management policies – including cooperative search and rescue policies – is compliant with the duty to disembark a person in a place of safety. In determining what a ‘place of safety’ means for migrants and refugees involved in the containment web woven by European States with their non-European partners, law of the sea and human rights law will be appraised. The safety of Tunisia as a country of origin and as a third country will also be analyzed in light of the internal human rights situation and the most recent political developments.

“Chain-Externalisation of Migration Policies in the Context of EU-Turkey Relations”
Gamze Ovacık (University of Gothenburg, Sweden)

In the context of Turkey, chain-externalisation comes across as both a coping mechanism of Turkey to ease the pressure arising from the externalisation policies of the EU but also, adoption of externalisation tools by Turkey is often the demand of the EU in an attempt to ensure containment of asylum and migration flows to the furthest extent possible.

As for the appearance of chain-externalisation of migration management policies
in EU-Turkey relations, the traces begin with the comprehensive legislative reform conducted in Turkey in 2014 with extensive support from the EU. EU-Turkey cooperation surrounding legislative works influenced the progress of the legislation substantially. The resulting legislation that is a typical example of norm diffusion with the near transposition of EU acquis on asylum and migration, contains most of the EU externalisation tools such as carrier sanctions and safe country practices. Another appearance of chain-externalisation in Turkey is execution of numerous readmission agreements with source countries increasingly after the execution of the EU-Turkey Readmission Agreement in 2013. Apparently, in view of potential returns from EU based on EU-Turkey Readmission Agreement, this is an effort on Turkey’s part to shift the burden away to source countries. Final example with a less formal tone is visible at the EU’s efforts to get Turkey to abandon its current liberal visa policy. EU demands Turkey to adopt its “black list” and align in general its visa policies with that of the EU as a pre-condition of more favorable visa practices towards Turkish citizens.

All of these examples showcase the chain-externalisation phenomenon related to migration management where externalisation tools adopted by EU towards Turkey triggers Turkey’s mirroring of EU’s externalisation policies.

“West Africa: The Missing Link of Chain Externalisation”

Dr Mariana Gkliati (Leiden University, Netherlands)

Much of the focus on EU externalisation has been placed on the EU’s neighbouring countries in the Balkans, Turkey and North Africa, while the emphasis on the external relations of the EU with West Africa is quite limited. However, the EU’s externalisation agenda aims to move EU border policies further south. West Africa is one of the main target areas of outsourcing EU migration management aims, policies and tasks.

The externalisation of the EU migration policy to West Africa has influenced the law, policies and practices in the region. Regional policy moves towards stricter migration control, including criminalization of migrants and those facilitating their irregular entry, but also further outsourcing and offshoring. This contribution examines the above context of outsourcing not only of migration management, but also of the EU’s policy priorities, and focuses on a less examined element of externalisation, namely that of chain externalisation in this region.

It studies the implementation of EU required policies through chain externalisation. Some of the manifestations of this phenomenon studied here are the evacuation programs from Libya to Niger under the EU-funded Emergency Transit Mechanism (ETM) and the frequent returns to Nigeria from its neighbouring countries organised with the support of the International Organization for Migration and the EU. Attention is also paid to the policy intention of making Niger a “backward transit migration hub’ by assisting repatriation from Niger to countries of origin. Moreover,
the current and future role of Frontex is examined regarding its status agreements, its upcoming operation in Senegal, and a future expanded returns mandate. Finally, the carrier sanctions implemented in Niger through an EU-imposed change in national legislation are examined under the lens of chain externalisation.

“Chain-Externalisation within Libya: The Legal Responsibility of Local Armed Groups”

Adel-Naim Reyhani (Ludwig Boltzmann Institute of Fundamental and Human Rights, Austria)

The cooperation of the EU and its member states, particularly Italy, with Libyan actors to obstruct North-bound movements via the Central Mediterranean, resulting in massive ill-treatment of refugees contained in the country, has been the subject of thorough academic assessments in the past years. Scholars have predominantly argued for the responsibility of European states for the treatment and return to Libya of refugees who attempt to reach Italy, inter alia focusing on questions of extraterritorial jurisdiction.

This contribution will build upon this scholarship to offer an assessment of the underexplored phenomenon that, prior or upon such return, the internationally recognized administration in Tripolis, to which Europe has externalized its migration control efforts, can further outsource or externalize this regime to local armed groups and other actors only nominally affiliated with the government.

It has already been demonstrated that, from a perspective of a state-based human rights law, for refugees trapped in Libya spaces of (de jure) rightlessness can emerge in ungoverned areas under militia control. This contribution will not only view this dynamic from the novel lens of ‘chain externalisation’, addressing the European as well as Libyan legal responsibility for the ill-treatment of refugees in such areas, but also extend the legal assessment to the responsibility of non-state actors.

Session 6C – “Alternative Forms of Protection in Africa” (OPEN)
Moderator: Prof. Jo Vearey (University of Witwatersrand, South Africa)

The African Centre for Migration & Society (ACMS) is interested in organising a panel on alternative forms of protection found by refugees, asylum-seekers, and other forced migrants in Africa. Specifically, the panel will examine ways migrants navigate barriers to access and a perceived lack of support by host states and the global refugee regime (GRR), to find ways to survive and achieve personal and economic goals. This event will build on ACMS’s successful panel at last year’s RLI conference which questioned the contemporary role of the GRR for refugees and forced migrants in Africa. Ultimately the aim of the panel is to start drawing together potential ways the GRR can learn from, utilise, and harmonise responses with these ground-level actions to improve protection for forced migrants in Africa.
“Negotiating Pathways to Justice: Migrants, Asylum-Seekers, Refugees and Access to Justice in Johannesburg, South Africa”

Knowledge Mabhena (University of the Witwatersrand, South Africa)

Citizens and non-citizens alike are guaranteed the rights enshrined in South Africa’s Bill of Rights. Since 1994, South Africa has had an inflow of migrants, asylum seekers, and refugees, which has created considerable problems to the post-apartheid legal order. This paper examines the state’s fulfilment of its constitutional duty to defend and guarantee the constitutional rights of everyone within South Africa’s boundaries. The paper finds that while these fundamental commitments remain as ideals, they have not become realities to most persons residing in the state.

Rather, most non-citizens or migrants in South Africa are left alone to confront various obstacles when it comes to obtaining justice and the processes that may help them realize their rights. This study investigated strategies through which migrants, asylum seekers and refugees negotiate barriers to access to justice in Johannesburg. Through a quasi-ethnographic approach, relying on in-depth interviews and participant observation, the paper highlights how migrants are a heterogeneous group who deploy their agency differently when navigating access to justice. Indeed, international migrants engage in various performative acts as they deal with different barriers to justice. These performances include identity switching and extra-legal activities particularly when they are dealing with actors such as the police and the Department of Home Affairs officials. Finally, it also emerged that different urban spaces present different challenges and opportunities for migrants. These findings suggest that while the South African Constitution promotes equality of access to justice, there is a need to monitor activities of street level bureaucracies, which are responsible for implementing these constitutional obligations.

The significant lesson drawn from these findings highlight the interface between law and society in the sense that not only do migration process influence legal practice, but also actions of various actors in migration and its governance determine the practical applicability of the law. In other words, justice seeking for migrants, asylum seekers and refugees is perpetual.

“The Search for Safe Spaces for Education within the Insecurity of the Urban: South Sudanese Refugees and Community Schools in Cairo”

Elena Habersky and Amira Hetaba (American University in Cairo, Egypt)

Cairo is host to a substantial number of migrants and refugees from Sub-Saharan Africa. As of January 2022, a little under 275,000 refugees and asylum-seekers were registered with UNHCR in Egypt, with Sudanese (52,446) and South Sudanese (20,970) forming the second and third biggest communities (UNHCR 2022). This paper will analyze one of the most essential struggles faced by these communities
in Egypt: providing their children with good quality education. Many families face difficulties in accessing the Egyptian education system and sending their children to public schools. Under international conventions and agreements, Egypt is obliged to provide all children with free access to primary schools regardless of nationality. In practice, however, this obligation is unfortunately not fully implemented. Under Egyptian law, most foreign children may not attend Egyptian public schools and their access to education is limited to private schools which impose very high tuition fees.

In addition, due to racial and class divides with the host community that manifest as targeted harassment and bullying, parents are more likely to send their children to local community-based schools, which often organically develop within their own social networks. In this way, parents and caregivers provide a safe space apart from students’ homes, and children have minimized exposure to the safety concerns they encounter whenever they enter the public space. Not surprisingly, Egypt’s government does not formally recognize these schools, leading to fears of shut downs and a future of uncertainty. However, as a family apartment can provide safety from the chaotic and oftentimes violent urban space, the classroom apartment can, too, provide safety to learn, develop, and grow away from the harassment of the streets, leading to an alternative form of protection.

“Borders and Boundaries in the Daily Urban Practices of Refugees from African Countries in Bellville, South Africa”

Tamuka Chekero (University of Cape Town, South Africa)

This ethnographic study examines the ways in which the ‘refugee’ category affects the ways in which refugees from African Countries are able to negotiate space in Belville, South Africa. It explores the ways in which being a refugee produces and reinforces particular kinds of boundaries and borders that can limit the kind of mobility one can exercise. It further investigates the dynamics and influences of local institutions and social networks outside of national legal frameworks and the global refugee regime, in addressing refugees’ everyday experiences of structural violence and the socio-spatial politics of exclusion (borders and boundaries).

The paper is anchored in the theory of conviviality (Nyamnjoh, 2015) and the concept of social capital (Putnam, 2000) which embraces notions of agency, social networks, and connections as invaluable adaptive capitals. While refugees are accommodated in policy frameworks and the South African Constitution, their daily practices are impeded by social boundaries and borders. Refugees are rarely considered within the political agenda (Balbo and Marconi, 2005), are principally considered to be intruders rather than an ‘opportunity’ (Crush, 2005). They are perceived to be responsible for precipitating urban social fissures. Thus, their everyday challenges are seldom addressed through formal institutional structures and coherent immigration policy frameworks but rather through haphazard, informal migrant social networks.
Yet equally, refugees are not blank slates, they are innovative individuals who invest in collectivism to negotiate their everyday experiences of structural violence and exclusion. This paper argues that the most significant spaces for social support and security lie in people's everyday associations. Ordinary associations such as spaces of worship, marriages, and local institutions are significant alternative forms of protection. In getting by and surviving among refugees, the convergence of social networks and local institutions can be instrumental in navigating their everyday experiences of structural violence and the socio-spatial politics of exclusion.

“In Alternative Forms of Protection In Africa: A Case Study of Mobility and Connectivity as Solutions to Protracted Refugee Situations in Tanzania”

Janemary Ruhundwa (DIGNITY Kwanza, Tanzania)

In many instances, refugee protection is guided by the legal and policy frameworks adopted by refugeehosting states, among other factors. At the minimum, the legal frameworks set protection standards by providing procedures for the asylum processes, and refugee rights and obligations. However, like other legal frameworks, there are always gaps and limitations, leaving those they seek protection feeling unprotected. As refugee situations continue to evolve into protracted ones and other challenges surrounding the asylum institution increase, laws, policies, and practices on the ground become increasingly restrictive and offer less and less protection.

In response, refugees have progressively demonstrated resilience and innovation in circumnavigating the limitations and challenging circumstances they find themselves in. They are active in finding solutions to their protection challenges where the laws and practices have not been able to do so. By using their networks within the country of asylum and beyond, refugees are inconspicuously expanding their protection options.

This paper will unpack alternatives that refugees in Tanzania employ to fill the protection void created by the law or its absence. From running businesses to enrolling children in school, refugees use unconventional approaches to access rights that would otherwise be impossible. The paper will draw on key examples from a recent study in Dar es Salaam that was conducted by the team of researchers and practitioners under the TRAFIG Project. This project has explored mobility and connectivity as solutions to protracted refugee situations and examined various coping mechanisms that urban refugees employ to fill in the protection gaps in the laws and practice. Ultimately the paper argues that refugees in Tanzania continue to show that what is often considered impossible is in fact possible. If policy makers, academics and host states focus more attention on what refugees can achieve through their agency, and finding ways of facilitating these achievements, we are likely to learn new and more robust ways to further improve protection in Africa.