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EDITORIAL

100 Million Forcibly Displaced: An Obligation to Act[1]

Ralf Roßkopf[2]

Another devastating record: 100 million forcibly displaced human beings in 2022! A steady increase over the past decade. No end in sight (see Section *News & Notes*). This is not a law of nature, however. It is human made. Thus, humans can solve it. Humans can make a change and humans must turn the tide. Humanity owes those affected to strive for it at least. There is a call, an obligation to act. Everyone able to is morally obliged to make a difference with his or her individual background, capacities, networks.

The Association for the Study of the World Refugee Problem (AWR) has heard this call. Being a scientific society and close witness of this disastrous development since 1950, AWR revives its official journal as a contribution to seek, collect and make accessible international and cross-disciplinary expertise for possible solutions. To increase its impact, it becomes open access, under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License, with no author fees charged. The inclusive global outreach to the community of scientists and practitioners beyond the members of AWR is further expressed in swapping the previous title and subtitle into *Quarterly on Refugee Problems – AWR Bulletin (QRP)*.

QRP looks back to a publishing tradition starting 1954 under the title "Integration" (1954-1962), later renamed "AWR Bulletin - Vierteljahresschrift für Flüchtlingsfragen/Revue triestrielle des problèmes des réfugiés/Quarterly on Refugee Problems/Rivista trimestrale sui problemi die rifugiati" (1963-2003). Since its establishment, it has been uniting scholars and practitioners from all fields. It is this international and interdisciplinary approach and the recognition that motives of forced and voluntary migration are all too often intertwined in migratory decisions that is needed to solve one of the most pressing topics on the humanitarian and political agendas. To be a platform for related discourses remains *QRP*'s mission.

While the editorial team and authorship are already diverse, interdisciplinary and international, the editors would like to see a further increase and invite scholars and practitioners globally to join and submit research articles, scientific reviews, practitioner or political reports as well as conference reviews for peer review or to volunteer as peer reviewers. The editors would like to overcome the mainly Western centered coverage of many journals as well as the Western dominance of relevant discourses in the international arena. Steps were taken to bridge the gaps between the discourses of

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scientists and practitioners as well as of the Global North and Global South. More will follow. You are invited to strengthen this initiative.

Are we doing injustice to those forcibly displaced by speaking of a "refugee problem", by showing the term in the title of the association and the journal? Are we confusing responsibilities of perpetrators and States on the one hand and of victims on the other? We are strongly convinced, we do not. Suspecting the oldest international scientific association in the field to do so would be somewhat odd. To make it clear once and for all: It is not the individual refugee who is to be seen as a problem. At the same time, if solutions ought to be honestly found, the multitude of problems related to the root causes, confronting the refugees in their countries of origin, transit and refuge have to be clearly identified and addressed. AWR is strongly favoring positive, resource-oriented approaches. However, even if in the individual case, neither the displaced had resources nor the States had an interest to protect, the moral and legal positions would remain. To neglect this would shift the burden of responsibilities to the displaced and put their fate at the discretion of the States. Negligence and violations of these moral and legal positions are actually the true root causes for the problems leading to and accompanying displacement as well as resulting from them.

A selection of these problems are addressed in the current issue from a variety of perspectives. *Ebimgbo et al.* analyze challenges for and perceptions of elderly family members left behind in Nigeria as a country of origin. Turning toward receiving societies, *McCarty et al.* study attitudes towards immigration and refugee policies, while *Franz* highlights reflective solidarity and inclusion work as mechanisms of social transformation in the U.S.A. *Negozio et al.* analyze and compare national responses by Italy and France to environmental and climate-related displacement. The COVID-19 pandemic and its effects on the Schengen border regime are evaluated by *Friedery*. Also from a legal perspective, *Manca* introduces to the mandate and practice of the Special Rapporteur on the Human Rights of Migrants. The current war in the Ukraine, resulting displacement, and huge solidarity but also discriminatory tendencies in receiving States were covered by a symposium and are reviewed by *Kleibl et al*. *Hoffmann*, is providing an overview of and linking to relevant European case law for the period January to July 2022. Last but not least, *Roßkopf* is flagging selected recent developments in the field of forced migration.

AWR would like to thank the former publishers of the AWR Bulletin, namely, the Wilhelm-Braumüller Verlagsbuchhandlung (1963-2003) and the Berliner Wissenschaftsverlag (2004-2012). The Association and editors are extremely grateful for the fantastic support received and the hosting of the *QRP* through Public Knowledge Project's Open Journal Systems (OJS) by the University of Applied Sciences Würzburg-Schweinfurt (FHWS). Special thanks go to the Presidency, Faculty of Applied Sciences and the wonderful university library team.

From now on, *QRP* will be published on a regular basis as a quarterly on March 15, June 15, September 15 and December 15 of each year. Submissions for publications and books for reviews are highly welcome!

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RESEARCH ARTICLES

"They Have Better Opportunities over there": Rationalizing Emigration of Young Family Members by Left behind Older Adults in South-East Nigeria[1]

Samuel O. Ebimgbo[2], Ngozi E. Chukwu[3] & Uzoma O. Okoye[4]

Abstract

A significant trend in human mobility in recent times is an unbroken upward trend in the number of people that migrate to other countries daily. The increasing migration is as a result of globalization as well as technological improvement in recent times, especially in the areas of communication and transportation which have made movement easier, cheaper, and faster. International migration is therefore a reality of our contemporary world. About 272 million international migrants were recorded across the globe in the year 2019. In Nigeria also, the number of young persons living outside the shores of the country has increased greatly in recent years. With the increasing number of young Nigerians migrating to other countries and given the supportive roles they play in the life of older adults, one expects a more challenging future for the left-behind. Left-behind older family members are found to report cases of chronic diseases, presence of depressive symptoms, and self-perceived loneliness. The study therefore sought to ascertain the views of older adults on emigration of younger family members in South-east Nigeria. The New Economics of Labour Migration (NELM) Theory provided the theoretical framework for this study. In-depth interviews and focus group discussions were conducted to generate data on a sample of (N = 58), left-behind older adults aged 60 years or older. The generated data were subjected to thematic analysis and the findings revealed that the young family members have more opportunities abroad than in Nigeria. The left-behind older family members indicated that they fully support the migration of their young family members because of the economic conditions of the country. The study therefore recommends functional policies that address proper well-being of these older adults. Further we recommend social work interventions aimed at ensuring the strengthening of family ties and maintaining adequate social support to left-behind older adults.

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Key Words:

Migration, left-behind older parents, social policies, social workers, south-east Nigeria

1. Introduction

International migration is currently seen as an unbroken upward trend because the number of people that migrate to other countries increase daily (World Economic Forum [WEF], 2017). The report of United Nations Department of Economic and Social Affairs (UN DESA) (2017b) shows that about 272 million international migrants were recorded across the globe in the year 2019 which was roughly 3.5% of the world population. India was found to record the highest number of people residing abroad, followed by Mexico, Russia, and China. About 60% of the international migration is prevalent in more than 30 high income countries while the remaining 40% of migration experience occurs in 170 low and middle income countries including Nigeria (Population Reference Bureau, 2013). The population of Nigerians living outside the shores of the country increased greatly between the years 1990 and 2013 ranging from 465,932 to 1,030,322 (Isiugo-Abanihe et al., 2016). Also, a total of 48,725 Nigerian citizens of which 74% were between the ages of 18 and 34 applied for asylum in different countries across the globe in the year 2016 (Eurostat, 2017). With the increasing number of young Nigerians migrating to other countries and given the supportive roles of young family members to older adults especially in south-east Nigeria, the left-behind older adults are poised to live at life's edge, facing a wide range of difficulties unaided. International migration thus has overwhelming impacts on older adults in the absence of formal social security in Nigeria (Odo et al., 2022).

Scholars have queried whether migration is a source of blessing or a curse for family members left behind (Gassmann et al., 2017). In the views of Gassmann et al. (2013), international migration reduces household poverty especially in families whose source of income lies hugely on remittances. Waidler et al. (2018) aver that the receipt of remittances helps older adults to buffer old age depressive symptoms, and is also an indicator for improving well-being. However, McAuliffe et al. (2017) posit that international migration affects people's daily living and activities. The migration of working-age family members affects the traditional filial support systems which may result in a decline in the welfare of left-behind older adults (Böhme et al., 2013; Liu et al., 2018) which usually results in poor general health and well-being, higher levels of emotional distress, increases risk of illness, and higher mortality rates (Adhikari et al., 2011; Antman, 2012; Bailey et al., 2018; Khanal et al., 2018). International migration causes poor emotional/psychological well-being such as sleep disorder, depressive signs, insomnia, loneliness, sadness, and mood disorder on left-behind older adults (Ashfaq et al., 2018; Ashfaq et al., 2016; Evandrou et al., 2017; Ghimire et al., 2018; Khanal et al., 2018). Older adults with migrant children are found to report cases of chronic diseases such as hypertension, diabetes, and heart disease (Falkingham et al., 2017).

The study was structured on the New Economics of Labour Migration (NELM) Theory developed by Stark et al. (1985). The NELM Theory posits that migration decisions are usually made by members of the household for the well-being of the family as a whole especially as a means to improve the economic conditions of the family. Certainly, migration is always viewed to be mutually beneficial for both the migrants and the sending household as the household will shoulder the costs associated with migration expecting

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to be rewarded with remittances (Massey et al., 1993; Stark et al., 1985; Taylor, 1999). International migration has been a constant trend in human mobility across the world not just because of globalization (McAuliffe et al., 2017) or recent technological improvement in the areas of communication and transportation that has made migration easier and cheaper, but because people are beginning to respond to the global socio-economic and political stimuli (United Nations Department of Economic and Social Affairs [UN DESA], 2017a).

The origin and continuation of migration have been explained by inequalities, harsh socio-economic, socio-cultural and political conditions in African countries (Ogu, 2017). Among Nigerians, international migration is occasioned by some socio-economic conditions which are also situated within global trends. These include an increase in population, poverty (United Nations Conference on Trade and Development [UNCTAD], 2018) and unemployment. Nigeria is the world's seventh largest country in terms of population after China, India, United States, Indonesia, Pakistan, and Brazil, and remains first in Africa (Worldometer, 2020). According to the projection of UN DESA (2017a), the population of Nigeria will surpass that of United States to become the third most populated country in the world by 2050. Consequently, migration of younger ones will increase as one of the measures to ensure a better standard of living for many households in the nation (Deotti et al., 2016). Also, poverty is rife among Nigerians and has been identified as one of the propellers for the migration of younger family members. The World Bank (2021) report shows that in 2018, 83 million people Nigerians which was about 40% of the entire population lived below the poverty line, while about 53 million (approximately 25%) were found to be vulnerable. Also, Sasu (2022) revealed that in 2022, over 88 million Nigerians are living in extreme poverty as over 12 percent of the global population in extreme poverty were found in Nigeria as of 2022. The report of the National Bureau of Statistics as revealed by Adegboyega (2021) shows that one in every three able bodied Nigerians were unemployed in the fourth quarter of 2020 indicating that Nigeria's unemployment rate rose to 33.3 per cent or about 23.2 million people.

According to Odo et al. (2022), many older adults in Nigeria are separated from their adult children who they rely on for sustenance due to international migration. Most of these elderly persons are rural inhabitants and do not have access to pension benefits when they reach "retirement age" and thus must depend on their own earnings or the assistance of family members, especially their adult children. The absence of these children due to migration no doubt will challenge the life of their left-behind older parents given that Nigeria has no social security and protection system for these individuals. Migration increases children's economic assistance to their elderly parents, and enough remittance can be utilized to seek domestic help and associated support (Antman, 2012), however the quality of such caregiving of the elderly cannot be ascertained. These situations therefore have policy implications requiring the services of social workers. Migration is a global issue requiring the attention of social work professionals. These older family members have developed some self-support measures as a conventional way of ensuring their economic well-being due to dearth of government support (He & Ye, 2014). So, the professionals seek alternative ways of engaging these older adults by ensuring that they are socially connected for the receipt of care. Social workers equally ensure that left-behind older family members are safeguarded especially vulnerable ones who are self-neglecting, or who are victims of abuse (Cook, 2017). Also, they help left-behind older adults identify their self-strength and its utilization as well as developing good

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communication skills that can help them stay socially and economically connected (Mojoyinola & Ayangunna, 2012).

The need for changes in social work migration research to incorporate local, regional and international perspectives has been suggested in literature (Cox & Geisen, 2014). While a plethora of studies have addressed the issues of the migration in several other climes like India (Bailey et al., 2018; Falkingham et al., 2017); Moldova (Bo¨hme et al., 2015; Waidler et al., 2016) and China (Evandrou et al., 2017; Li et al., 2017). Other studies include that of (Ghimire et al., 2018; Thapa et al., 2018; Vanore et al., 2017), we observed a lacuna on the reasons for migration of young Nigerian family members from the views of left-behind older family members. The study becomes important because, migrating to other countries by young family members influence adequate care of their aged parents negatively. This is because adult children and youth who are supposed to provide care and support to older people are becoming unavoidably absent due to migration (Odo & Chukwu, 2022). Importantly, Nigeria has no functional social policies to assist these older adults to adjust to better-living conditions (Aiyede et al., 2015; Shofoyeke & Amosun, 2014). This to a great extent will quash the objectives of international development agenda such as Sustainable Development Goals and African Union Agenda 2063. Our study, therefore will ascertain the views of the left-behind older family members on the migration of their young family members. The study objectives were to: obtain the views of left-behind older adults on the migration of young family members; ascertain the supportive roles of left-behind older adults towards migration of their young family members; present reasons for supporting the emigration of the young family members by older adults with a view of proffering social work interventions.

2. Materials and Methods

2.1 Design, Setting, and Sampling

This study was developed from the mother project "Challenges and Adaptation Strategies of Left-behind Older Family Members of International Migrants" which was conducted in South-east Nigeria. The study adopted a qualitative design to ascertain the views of left-behind older adults on migration of their young family members. The study was carried out in the southeast geo-political zone of Nigeria. Southeast Nigeria is made up of five states namely, Abia, Anambra, Ebonyi, Enugu, and Imo. The choice of the zone as study location was due to the high involvement of southeasterners in international migration (Udenta et al., 2015). The people of eastern Nigeria are usually involved in education, commerce, industry, and philanthropic services. Some of these activities usually occasioned migration of more young southeastern people than young people from other geo-political zones (Isbell & Ojewale, 2018).

Purposive sampling procedures of snowballing and availability were used to select the study participants. Out of the five states in southeast Nigeria, Anambra and Enugu States were purposively selected because they had larger number of migrants in the geo-political zone than the other three states in the zone (IOM, 2017; Isiugo-Abanihe et al., 2016). The states also have airports of which one operates international airlines; the states have numerous commercial transportation companies which make migration easier and cheaper. The report of the National Bureau of Statistics (2017) shows that about 102,236 and 101,084 people considered migrating abroad between the years 2016 and 2017 are from Enugu and Anambra respectively. Two Local Government Areas (LGAs) were

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purposively selected from each of the two selected states. The LGAs are Nnewi-North and Idemili-South in Anambra State while Udenu and Udi were selected from Enugu State. In the same vein, two communities were selected from each of the LGAs selected across the states. Thus, Otolo and Umudim were selected from Nnewi-North LGA while Nnobi and Nnokwa were selected from Idemili-South. Imilike and Orba were selected from Udenu LGA while in Udi LGA, Eke and Ngwo were selected.

We adopted snowballing and availability sampling methods to recruit 58 (30 males and 28 females) participants for the study. Through snowballing method, the researchers were able to be linked to other participants who were available to participate in the study. In Anambra state, we selected 32 (18 males and 14 females) left-behind older adults from the four communities selected across the two LGAs. This implies that we selected 20 participants (13 males and seven females) in Nnewi-North LGA, while in Idemili-South LGA, 12 participants (five males and seven females) were also selected. In Enugu State, 26 left-behind older adults (12 males and 14 females) were selected from the four communities across two LGAs selected for the study.

In all, we selected 40 participants for the in-depth interviews (IDIs) and 18 participants for the focus group discussions (FGDs). In the FGD conducted in Anambra State, six left behind male older adults were selected from Otolo in Nnewi-North LGA while in the IDI seven left-behind male older adults and seven left-behind female older adults were selected from Umudim in Nnewi-North LGA. At Nnokwa and Nnobi in Idemili-South LGA, five left-behind male older adults and seven left-behind female older adults were selected respectively. In Enugu State, we selected 12 left-behind older adults (six males and six females) from Ngwo and Eke in Udi LGA for the FGD study while for the IDI, we selected 14 left-behind older family members (six males and eight females) from Imilike and Orba in Udenu LGA. We selected these older adults on the premise of their ages [must be 60 years or older], residence in the study areas, must have at least a son or daughter or both living abroad, and must be willing to participate in the study.

2.2. Data Collection

The IDIs and FGDs were our only data collection sources. We opted for semi-structured interview schedules and discussion guides as the instruments for collection of data. The instruments we prepared in semi-structured format enabled us to delve into further probing that were not initially included in the study but within the topic under study. We prepared the instruments in English and the researchers were fluent in the local language. This way we were able to administer the instrument to participants who chose to be interviewed in Igbo. However, when the participants opted to be interviewed in the English language, the researchers consented.

We recruited some of the participants with the help of community leaders in the selected communities. These assisted us in identifying initial left-behind older adults who subsequently linked us to other participants that met the study requirements. While recruiting them, the decision for their preferred date, time, and venue for the interviews and discussions was made and agreed upon. Also, other necessary information regarding the aims of the study, the expected risks, and benefits were related to them. We also sought their permission to use an electronic recorder to capture the verbal communication while the field notes were used to capture non-verbal communication. We assured them of their confidentiality and anonymity and as well as their right to withdraw from the study.

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Each of the interview sessions was structured to last between 25-40 minutes while 55-60 minutes were allotted for the FGD sessions. We approached 72 left-behind older adults for the study but 14 of them declined to participate due to their unavailability and for the insecurity in the south-east geo-political zone. Ethical approval for this study was granted by the Health Research Ethics Committee at the University of Nigeria, Teaching Hospital, Enugu (ref: NHREC/05/01/2008B-FWA00002458-1RB00002323).

2.3. Data Analysis

We adopted the inductive thematic analysis by Braun and Clarke (2006) to analyse the transcripts and field notes. We did a manual analysis without any assisted computer software to ensure we retain and present the original data as we obtained them from the field. The audio files that contained the participants' responses were transcribed first in Igbo language and later translated into English language to ensure similar meaning in both languages. We did an initial coding to generate many categories and codes without any reservation (Charmaz, 2006). At this stage, we identified opinions that emerged which were in line with the objectives of the study. We moved to the second stage to eliminate, combine, or subdivide the coding categories we initially identified in the first stage of our coding. We were able to achieve this by reading and re-reading the transcripts for familiarity with the recurring themes. We paid attention to the recurring thoughts, as well as the wider themes that were connected to the codes (Charmaz, 2006; Krueger, 1994; Ritchie & Spencer, 1994). Three themes that were central to the objectives of the study were identified and used for the reporting of the study findings.

Table 1. Guide of questions for FGD and IDI, emerged themes, and sub-themes

S/N	Key Questions	Themes	Sub-themes
1.	**What are your thoughts over the migration of young family members in the community?**	a. Feelings towards migration	• Necessity and good adventure • Development through hard work • Distinguished from others
2.	**Were you in support of the migration of young family members?**	a. Willing to support the migration	• Fully supported • Made the necessary arrangement
		b. Reasons for the support to migration of young family members	▪ Poor economy ▪ Better opportunities ▪ Hope over future

Source: Researchers' field work 2021

3. Results

3.1 Demographic Characteristics of Participants

The analysis as shown in Tables 2 and 3 revealed that 30 males and 28 females participated in the study. The ages of the participants ranged from 60 to 90 years, only one participant being a female indicated adherence to the African Traditional Religion (ATR) while others were Christians. A greater number of participants (36) were married while 22 were widowed at the time of the study. The analysis shows that 23 participants were traders. 16 participants were found to earn less than ₦30,000 [$72] monthly. While 13 participants had university education as highest level of educational attainment, 15 of them had no formal education and others have their primary and secondary education.

Table 2 shows the socio-demographic characteristics of the male participants by LGA, age, marital status, educational level, occupation, and monthly income

Participant	Pseudo Name	LGA	Age	Religion	Study	Marital status	Educational qualification	Occupation	Monthly income
1	*Mr. Ben*	*Udi*	*70*	*Christianity*	*FGD*	*Married*	*Primary*	*Trader*	*₦45,000 [$108]*
2	*Mr. Pat*	*Udi*	*68*	*Christianity*	*FGD*	*Married*	*Secondary*	*Trader*	*₦28,000 [$67]*
3	*Mr. Pet*	*Udi*	*72*	*Christianity*	*FGD*	*Widower*	*Secondary*	*Retiree*	*₦35,000 [$84]*
4	*Mr. Max*	*Udi*	*60*	*Christianity*	*FGD*	*Married*	*University*	*Civil servant*	*₦60,000 [$144]*
5	*Mr. Wil*	*Udi*	*78*	*Christianity*	*FGD*	*Married*	*Secondary*	*Trader*	*₦30,000 [$72]*
6	*Chief Joh*	*Udi*	*69*	*Christianity*	*FGD*	*Married*	*University*	*Trader*	*Undisclosed*
7	*Mr. Iku*	*Nnewi-North*	*82*	*Christianity*	*FGD*	*Married*	*No education*	*Unemployed*	*Undisclosed*
8	*Mr. Eme*	*Nnewi-North*	*80*	*Christianity*	*FGD*	*Widower*	*No education*	*Unemployed*	*Undisclosed*
9	*Mr. Emma*	*Nnewi-North*	*62*	*Christianity*	*FGD*	*Married*	*Secondary*	*Trader*	*Undisclosed*
10	*Mr. Mba*	*Nnewi-North*	*70*	*Christianity*	*FGD*	*Married*	*No education*	*Artisan*	*Undisclosed*
11	*Mr. Ben*	*Nnewi-North*	*72*	*Christianity*	*FGD*	*Widower*	*No education*	*Trader*	*Undisclosed*
12	*Mr. Geo*	*Nnewi-North*	*66*	*Christianity*	*FGD*	*Married*	*University*	*Retiree*	*Undisclosed*
13	*Mr. Gody*	*Nnewi-North*	*60*	*Christianity*	*IDI*	*Married*	*Secondary*	*Farmer*	*Undisclosed*
14	*Mr. Isa*	*Nnewi-North*	*69*	*Christianity*	*IDI*	*Married*	*No education*	*Trader*	*Undisclosed*
15	*Mr. Mik*	*Nnewi-North*	*65*	*Christianity*	*IDI*	*Married*	*University*	*Pastor*	*Undisclosed*
16	*Mr. Sim*	*Nnewi-North*	*79*	*Christianity*	*IDI*	*Widower*	*No education*	*Unemployed*	*Undisclosed*
17	*Mr. Lui*	*Nnewi-North*	*74*	*Christianity*	*IDI*	*Married*	*Secondary*	*Working*	*₦47,000 [$113]*
18	*Bar. Edo*	*Nnewi-North*	*61*	*Christianity*	*IDI*	*Married*	*University*	*Lawyer*	*Undisclosed*
19	*Mr. Sol*	*Nnewi-North*	*88*	*Christianity*	*IDI*	*Widower*	*Primary*	*Trader*	*₦25,000 [$60]*
20	*Mr. Uge*	*Udenu*	*82*	*Christianity*	*IDI*	*Widower*	*No education*	*Farmer*	*₦2,000 [$5]*
21	*Mr. Bon*	*Udenu*	*86*	*Christianity*	*IDI*	*Married*	*No education*	*Farmer*	*Undisclosed*
22	*Mr. Goda*	*Udenu*	*72*	*Christianity*	*IDI*	*Married*	*No education*	*Driver*	*Undisclosed*

23	*Mr. Igwe*	*Udenu*	*69*	*Christianity*	*IDI*	*Married*	*Primary*	*Farmer*	*₦25,000 [$60]*
24	*Mr. Geo*	*Udenu*	*61*	*Christianity*	*IDI*	*Married*	*Primary*	*Trader*	*₦100,000 [$240]*
25	*Mr. Sew*	*Udenu*	*60*	*Christianity*	*IDI*	*Married*	*University*	*Civil servant*	*₦40,000 [$96]*
26	*Mr. Nel*	*Idemili-South*	*79*	*Christianity*	*IDI*	*Married*	*Primary*	*Retiree*	*Un-disclosed*
27	*Mr. Pau*	*Idemili-South*	*61*	*Christianity*	*IDI*	*Widower*	*Primary*	*Trader*	*Un-disclosed*
28	*Mr. Jul*	*Idemili-South*	*72*	*Christianity*	*IDI*	*Married*	*Secondary*	*Unem-ployed*	*₦2,000 [$5]*
29	*Mr. Ken*	*Idemili-South*	*68*	*Christianity*	*IDI*	*Married*	*University*	*Retiree*	*Un-disclosed*
30	*Mr. Mel*	*Idemili-South*	*60*	*Christianity*	*IDI*	*Married*	*Primary*	*Trader*	*₦8,000 [$19]*

Source: Researchers' field work 2021.

Further analysis of the transcripts, though not contained in the tables showed that 31 participants were healthy while 25 participants indicated that they were unhealthy. A greater number of the participants (47) indicated that they had male migrant young family members while 11 participants indicated that they had female migrant family members. The analysis also shows that 18 participants indicated that their children migrated to Europe, 15 within Africa, 11 to Asia and seven to North America, respectively. A greater number of participants (34) indicated that their children have sojourned overseas less than 10 years.

Table 3 shows the socio-demographic characteristics of the female participants by LGA, age, marital status, educational level, occupation, and monthly income

Partici-pant	Pseudo Name	LGA	Age	Religion	Study	Marital status	Educa-tional qualifi-cation	Occu-pation	Monthly income
1	Mrs. Gin	Udenu	91	ATR	IDI	Widow	No edu.	Farmer	Un-disclosed
2	Mrs. Ngo	Udenu	62	Christianity	IDI	Married	University	Trader	Un-disclosed
3	Mrs. Jane	Udenu	66	Christianity	IDI	Married	Secondary	Trader	Un-disclosed
4	Mrs. Oge	Udenu	60	Christianity	IDI	Married	Secondary	Trader	₦20,000 [$48]
5	Mrs. Nke	Udenu	63	Christianity	IDI	Married	Primary	Trader	Un-disclosed
6	Mrs. Fide	Udenu	65	Christianity	IDI	Widow	Primary	Trader	₦4,000 [$40]
7	Mrs. Kate	Udenu	65	Christianity	IDI	Widow	No edu.	Farmer	₦10,000 [$28]
8	Mrs. Mar	Udenu	68	Christianity	IDI	Married	No edu.	Trader	₦20,000 [$48]
9	Mrs. Ndi	Udi	84	Christianity	FGD	Widow	Secondary	Retiree	₦25,000 [$60]

10	Mrs. Ije	Udi	80	Christianity	FGD	Widow	Secondary	Trader	₦15,000 [$36]
11	Mrs. Alli	Udi	65	Christianity	FGD	Married	University	Retiree	₦45,000 [$108]
12	Mrs. Reb	Udi	68	Christianity	FGD	Married	Secondary	Trader	₦22,000 [$53]
13	Mrs. Odi	Udi	71	Christianity	FGD	Married	No edu	Unem-ployed	₦20,000 [$48]
14	Mrs. Ebe	Udi	73	Christianity	FGD	Widow	No edu	Unem-ployed	₦25,000 [$60]
15	Mrs. Gra	Nnewi-North	85	Christianity	IDI	Widow	Primary	Unem-ployed	Undisclosed
16	Mrs. Luc	Nnewi-North	85	Christianity	IDI	Widow	Primary	Farmer	₦30,000 [$72]
17	Mrs. Mon	Nnewi-North	61	Christianity	IDI	Married	Primary	Unem-ployed	₦50,000 [$120]
18	Mrs. Ngoz	Nnewi-North	60	Christianity	IDI	Widow	Secondary	Trader	Un-disclosed
19	Mrs. Brig	Nnewi-North	62	Christianity	IDI	Widow	No edu	Trader	₦20,000 [$40]
20	Mrs. Joye	Nnewi-North	60	Christianity	IDI	Widow	Primary	Unem-ployed	Un-disclosed
21	Mrs. Anth	Nnewi-North	64	Christianity	IDI	Married	Secondary	Trader	Un-disclosed
22	Mrs. Vic	Idemili-South	62	Christianity	IDI	Married	University	Civil servant	₦45,000 [$108]
23	Mrs. Com	Idemili-South	79	Christianity	IDI	Married	University	Civil servant	Un-disclosed
24	Mrs. Roso	Idemili-South	76	Christianity	IDI	Widow	University	Retiree	Un-disclosed
25	Mrs. Graco	Idemili-South	70	Christianity	IDI	Widow	Primary	Unem-ployed	Undisclosed
26	Mrs. Fel	Idemili-South	73	Christianity	IDI	Widow	Primary	Trader	Un-disclosed
27	Mrs. Bene	Idemili-South	75	Christianity	IDI	Widow	Secondary	Unem-ployed	Un-disclosed
28	Mrs.Afor	Idemili-South	66	Christianity	IDI	Married	University	Retiree	Un-disclosed

Source: Researchers' field work 2021.

3.2 Views on Migration of Young Family Members

The analysis of transcripts revealed that almost all the participants expressed positive views and feelings towards international migration of young family members. All the participants in the FGDs conducted with both males and females in the study areas indicated that they perceived the migration of young family members to be a good adventure. While some of them indicated that migration of their children abroad have improved their well-being and life satisfaction, others revealed that it has changed the status of the family. Mrs. Mon, who is from Nnewi-North; aged 61, and had primary education said, *"my thought and feeling towards migration is that it ensured the well-*

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being of the children and the family". Some of the opinions of the participants are expressed in the quotes:

> "Personally, I like their migration to other countries because, there is no hope here. If not that one of my children is over there, we would have been suffering. He is the one we have as our God. So, I appreciate their move, and the government is not thinking about the society and the youths." (Mr. Pat; 68 years; secondary education; Udi LGA)

> "By the grace of God, three of my children are living abroad and they are all women. So, when they were leaving, they graduated here and finished their youth service, two of them, and the other one graduated there. So, it was painful at their initial exit but we are enjoying their exit. As elders, we depend on them. My children sometimes say »papa take this for your upkeep« and it gives joy." (Mr. Pet; 72 years; secondary education; Udi LGA).

Similar views were expressed among the IDI participants who indicated in affirmation that migration is a necessity for their children. Some of them noted that migration helps to improve their children by inculcating hardworking attributes in them. A female participant in an IDI conducted in Udenu LGA, Mrs. Fide, who is P6 and had primary school education, said, "*I see it as helping children to be more reasonable and hardworking because if they continue to stay at home, they may continue to depend on their parents and may not be serious with their lives"*. Other participants noted that migration distinguishes the migrants from other people in society. A participant in IDI said:

> "Yes, what I have to say is that there are some parents like the wealthy individuals in the society that would not want their children to stay within the locality. This is one way to ensure that they are different from their age mates as well as for the family to be different from other families within the community. When you look at some of the families in this community that have children living abroad, the difference is clear. This is one of the reasons for the migration of children." (Mr. Mel; 60 years; Idemili-South; primary education)

> "What happened is that they are seeking greener pasture because if you are staying where you are and those that migrated return and started making more exploits then you start making plans on how to migrate with them. Sometimes people think that in Nigeria you are earning in small portions but over there "they call it "ego mbute" (bulk money); although there are people who labour within the country to make earnings but those who migrate make it more. So, when these people that migrated come back with the kind of money they spend around, you will be tempted to join in traveling out." (Mr. Nel; 81 years; Idemili-South; primary education)

Other participants noted that the migration to other countries by young family members is hugely dependent on their desires to choose where they thrive in their quest to pursue life goals. A female participant in Udenu LGA said:

> "Children's traveling out depends on the condition. Some of them may not want to stay at home and you do not have to force them to stay back because they may have been destined to make it outside our country. It is fine wherever they travel to, provided they make it there." (Mrs. Nke; P5, primary education)

The view of another female participant corroborates the view initially expressed by Mrs. Nke but in a different dimension. According to Mrs. Ngoz, who is P17 from Nnewi-North, and had secondary education,

> "It is something good in my opinion because our people say that »Anaghị anọ ofu ebe enene mmanwụ.« (You don't watch or view masquerade while standing at a point). It is obvious, all of us cannot stay back home to make a living. Some people are destined to travel abroad

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before they make it while some can stay back and also make it. It is good that anyone who determines to travel abroad goes."

3.3 Willingness to Support the Migration of the Young Family Members

The researchers probed further to ascertain the willingness of the left-behind older family members to support their young family members to migrate to other countries. From the findings, many of the participants appear to support the migration of their children. With the exception of only three participants, all the other participants indicated that they will support any of their children who indicates interest to migrate to other countries. Some of the participants noted that migration is good for young ones and their families. Mrs. Gra, who is from Nnewi-North and had primary education, said, *"I am fully in support of their moving to other countries. It is good that they migrate because if they don't and all of us stay at home, it won't be nice".* Another female participant, Mrs. Joye, from Nnewi-North, who had primary education, said,

"Well, I support their migration because when they stay back, they tend to join the bad groups, especially as finding employment is very difficult in this country. But if the child is far, he will be more concentrated and have a better opportunity to be employed".

Other expressions of the participants are reflected in the following quotes:

"I support anyone that wants to migrate especially those that have nothing to do here in Nigeria, he or she is free to leave in search of greener pasture. My thought is that when he goes to another country and be able to make it, he will use the resources to care for the left-behind family members." (Mr. Ken; 68 years; university education; Idemili-South)

"I support their migration. In the case of my son, I made every necessary arrangement for his move because he was doing well here in Nigeria and at a certain time, he had some challenges. He moved to Abuja to do Okada business but it was not favourable because he complained about fever after the days' activities. So, I assisted in his leaving Nigeria to the country he is in right now." (Mr. Igwe; primary education; 61 years. Udenu LGA)

3.4 Reasons for Supporting Migration of Young Family Members

From the analysis it was revealed that the participants articulated several reasons for supporting the migration of their young family members. Greater number of the participants revealed that young migrants have more and better opportunities in other countries than remaining in Nigeria. Other participants also revealed that migration to other countries will give the younger ones the maximum concentration over the tasks ahead of them. Mrs. Jane ,who is P3 from Udenu LGA, and had secondary education, said, *"I think they have more opportunities there. I think so because they are not close to us, and they may not have hindrances in their business"*. Another participant stated that these children are happier and will make more progress while living abroad. Mrs. Afor from Idemili-South, who had university education, said,

"I saw that they are happier abroad than here, and the children have more opportunities there. So, they are better there. Yes, I supported it because life is better for them over there, and they progress".

The view of a female participant was captured in the quote:

"They have better opportunities there. That place they are gives them more edge over Nigeria. God blesses them over there more than in this country. I am always happy to see them migrating to other countries to discover their blessings from God. Also, I think that they have

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> more opportunities for employment over there than in this our Nigeria that has no employment opportunities for our young people. Even those who are employed are not well paid. Staying here is very frustrating to young people and their families." (Mrs. Mon; 61 years; Nnewi-North; primary education)

> "They leave because they have more opportunities there than in Nigeria because so many things that happen there no longer happen in Nigeria, like industries. Some of them study there and still work. Does this kind of thing happen in Nigeria? Some, at times, they choose to remain there which is very bad. Government should task each state to build at least one industry in two years' time. We need to have enough jobs in the country, look at the thousands of graduates trooping out of the universities every year without jobs. It is very bad. (Mr. Max; P4; Udi LGA; 60 years; university education)."

Equally, other participants opined that the economic situation of the country occasioned the migration of these younger ones. All the participants in the FGDs conducted across the study areas revealed that the economic condition of the nation cannot help the younger ones. Some of them revealed that with the current state of the nation, it will be difficult for the young ones to achieve great success. They noted that the nation's economy is so bad, unemployment is at increase, insecurity and other basic needs of life cannot be guaranteed in the nation. To them, these children will be more useful in foreign lands with better organized structures than in Nigeria. So, their leaving was for economic purposes. Also, they prefer their children to be different from others in terms of good life and quality education. Mrs. Reb, P12 from Udi LGA, who had secondary education, said, *"I feel many of them do well there because at least, my child in Israel for example works hard from morning till night but at least he is paid well"*. Another female participant, Mrs. Alli, who is P11 from Udi LGA, and had university education, said, *"I think it is the hardship in this country that pushed them to travel out, since there is nothing they can lay their hands on here"*.

The same views were expressed by the IDI participants. The participants also opined that children migrate to other countries because of poor economic conditions. They expressed the views that Nigeria has no better plans for the development of their young ones; thus they see migration to other countries as alternatives. Mr. Isa, who had no education, and from Nnewi LGA said, *"the reality is that they leave because there is no job in the country. So, they migrate to other countries with hope of securing a better job"*. Also, Mr. Lui, who had secondary education from Nnewi-North LGA said, *"well, my thought is that the situation of the country leads to our children to start seeking greener pastures in another country. It is for their fortune"*. All other opinions of the participants were captured in these quotes:

> "The main reason our children migrate to other countries is the poor economic situation of the country. For instance, my son in another country was going to school till I was unable to train him, and there is nothing he can do. So, he indicated interest in migrating to another country, I raised some money for his departure and when he got there, he started doing well to the extent that sometimes he sent something (money) for my feeding but when he got married and bear children, the children are still helping me because if the children are not around, I will be the one to fetch water and fire wood. But it was their leaving that enabled me to do things as I should." (Mr. Ken; 68 years; university education; Idemili-South)

> "That my children left the county to another county is for him to seek a better living condition because of the poor economic condition of the country. Their intention is to seek the good of the family especially their mother and I and to provide better care for us. That is why they

said that when they come back with power (made money), we, their parents, will be in a better living condition." (Mr. Emma; P9, Nnewi-North; 62 years; secondary education).

"It is because of bad economy that causes our children migrating to other countries. If Nigeria is good and habitable, what is the essence of our children migrating to other countries? I was once like them because I, too, have migrated at some stage in my life. I have visited so many countries. It is their time; it is the condition one finds him or herself. I was not shocked because I did it when I was their age." (Mr. Gody; P13; Nnewi-North; 60 years; secondary education).

4. Discussions

The study sought to ascertain the views of older adults regarding reasons for the migration of their young family members. It revealed that older adults demonstrated positive attitudes towards the migration of their children to other countries. They perceived international migration of young family members to be a good adventure and a measure to improve their well-being and life satisfaction. According to the findings, migration has given the young ones hope and had led to better means of livelihood, better employment opportunities and better income to care for their left-behind older adults. This may explain the increasing rate of migration of Nigerians which official records indicate has drastically increased between the years 1990 and 2013 (Isiugo-Abanihe et al., 2016). Over 48,000 citizens of Nigeria of which 74% were between the ages of 18 and 34 sought asylum in many different countries across the globe in the year 2016 (Eurostat, 2017). Similarly, Gassmann et al. (2013) found that international migration reduces household poverty especially in families whose source of income lies hugely on remittances. The receipt of remittances helps older adults to buffer old age depressive symptoms, and is also an indicator for improving well-being (Waidler et al., 2018).

The finding of the study revealed that the left-behind older family members are in support of the migration of their children. Some of the participants noted that migration is good for young ones and their families. They revealed that the children ought to migrate to seek greener pasture. This made some of them to make necessary arrangements for the migration of the children to other countries. The findings are in agreement with the New Economics of Labour Migration (NELM) Theory (Stark et al., 1985) where this study was anchored. The Theory posits that the migration of young family members are orchestrated by the members of the family who usually assimilate the costs and benefits of migration. The decision that a family member migrates is therefore a household one, made for the economic advancement of the entire family unit. International migration reduces household poverty especially in families whose source of income lies hugely on remittances (Gassmann et al., 2013).

A greater number of the participants revealed that young migrants have more and better opportunities in other countries than remaining in Nigeria. Also, migration of these children to other countries gives them the maximum concentration over the tasks ahead of them, caring for their old-adults and other family obligations. The economic condition of the country cannot help these children to attend to their desired height; hence, their migration becomes inevitable. According to the study, some parents were not surprised when their children decided to migrate due to the poor economy because they had also migrated during their productive years of life. This finding is in agreement with the NELM Theory (Stark & Bloom, 1985), that the decisions to migrate to other countries are made to boost the economic conditions of the family unit through remittances. These findings

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equally give credence to the push and pull factors of international migration as occasioned by socio-economic conditions such as poverty, over population, and unemployment (UNCTAD], 2018; UN DESA, 2017a). Migration is viewed as a family endeavor in certain Nigerian communities, with family members contributing their physical, spiritual, and financial resources to guarantee that their relatives make the trip to Europe (Odo et al., 2022). Some of the participants in support for the migration of the younger family members for the improvement of the economic situation of the family, indicated that they aided their children in resources for the journey. This has been found in a previous study that families sometimes sell their property and take out loans to ensure that they mobilize the financial resources to assist their children on their journey to Europe, hoping that the returns they would get would compensate for the difficulties they might have experienced (Effevottu, 2021). Migration of younger ones will increase as one of the measures to ensure a better standard of living for many households in the nation (Deotti et al., 2016).

5. Limitations of the Study

The study has some limitations as with other studies conducted across the globe. The study was carried out in south-east geo-political zone which may affect the broader generalizability of the findings to the entire country given that all the participants were mainly from one ethnic group, specifically Igbo. Their narratives may be seen to represent the views of a fraction of the Nigerian population. We suggest that similar studies should be carried out in other geo-political zones of the country. We also envisage that in the process of translation, transcription, and re-translation of data, we may lose meaning of some data because of some dialectical variations of the Igbo language. Hence, some of the statements of older adults may be difficult during translation as the study was conducted in two different states and different LGAs. Nevertheless, we were able to curtail this by making sure that indigenes of the study areas were incorporated during the data collection and analysis as research assistants. Also not captured were the opinions/views of older adults whose family economic situation did not compel their children to embark on the migration journey. Only those with a family history of migration were requested to participate in the study. These limitations, however, did not invalidate the study's findings.

6. Conclusion

The study ascertained the views of left-behind older family members of international migrants on the migration of their young family members. Over 270 million people were recorded migrating to other countries across the globe in the year 2019 (UN DESA, 2017b). Nigeria also experiences this increase in the number of individuals that migrate abroad despite the supportive roles they play in the life of older adults. The study which sought the views of 58 left-behind older adults on the emigration of younger family members in south-east Nigeria revealed that left-behind older family members support the migration of their young family members because of the economic conditions of the country and for the economic improvement of not only the migrant but that of the family as a unit. Migrating overseas held better employment and economic opportunities. The study revealed that some of these older adults were migrants during their productive years. This depicts a cycle of poverty among Nigerians, necessitating the implementation of social policies as the country loses young people who are the country's future. This is because adult children and youth who are supposed to provide care and support to older people are becoming unavoidably absent due to migration. To this end, the Nigerian

Government should implement the National Policy on Migration 2015 which proposed sesnsitisation of youths on migration, promotion of job opportunities and self-employment, among others (IOM, 2015). The policy seeks to deter Nigerian youth from further migration. Social workers are among the humanitarian agents pushing for the policy's implementation, as well as other policies addressing the economic well-being of young Nigerians. Also, functional policies that address proper well-being of these older adults are needed. These call for social workers in their advocacy role to see to the implementation of social policies that enhance the well-being of people. They are ethically bound to challenge unjust policies and social conditions that contribute to inequality, exclusion and discrimination (Nwanna et al., 2017). Social workers should also ensure that family ties and other support systems are maintained to guarantee adequate support for these left-behind older adults.

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Attitudes toward Immigration and Refugee Policy: A Global Study[1]

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Abstract

In recent years, several high-profile refugee crises highlighted the varied approaches and attitudes toward refugees both within and across countries. The ongoing Syrian refugee crisis due to the Syrian civil war, the Taliban takeover of Afghanistan in 2021, and the Russian invasion of Ukraine in 2022 each led millions of those countries' residents to seek asylum worldwide. Individuals' attitudes toward "outsiders" vary across countries, people groups, and often by individual characteristics. Individuals hold a range of knowledge and views about immigrants and refugees and the different reasons they migrate. In this study, we combine Gallup World Poll Data with United Nations refugee data to explore the relationship between attitudes toward immigrants and the number of refugees in a country relative to the population. We focus on a subset of countries available in the Gallup data which host or are geographically close to the majority of the world's refugees. We posit that the number of refugees in a country, relative to the population, correlates with attitudes toward immigrants in the individual's area. Using ordinary least squares regression and the Gallup-provided survey weights, we find that there is a negative correlation between the relative number of refugees in a country and individuals' reports that their area is a good place for immigrants. The negative correlation remains even with an extensive set of control variables. This suggests that a higher number of refugees within a country correlates with diminished views that the respondent's area is a good place for immigrants. While the sign of the coefficient is consistently negative, the size of the coefficient is tiny. Thus, while policymakers and leaders ought to be aware of this negative correlation, it does not appear to be a primary correlate with attitudes toward immigrants.

Key Words:

Immigration, refugees, policy, attitudes, Gullup

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1. Introduction

At the time of writing, two large refugee crises have been displayed prominently on the global stage over the past two years. Following the Taliban takeover of Afghanistan in 2021, millions of Afghan residents sought asylum worldwide. After Russia's invasion of Ukraine in 2022, millions of Ukraine residents fled to safety. At the same time, there have been ongoing crises in Syria, Myanmar, Venezuela, and Ethiopia. Understanding the potential relationship between refugee presence and attitudes toward immigration becomes ever more important.

Attitudes towards "outsiders" vary across countries, people groups, and often by individual characteristics. Individuals hold a range of knowledge and views about immigrants, asylees, and refugees, and the different reasons they may migrate. In this study, we combine Gallup World Poll Data with United Nations refugee data to explore the relationship between attitudes toward immigrants and the number of refugees in a country relative to the population. We focus on a subset of countries available in the Gallup data which host or are geographically close to the majority of the world's refugees. We posit that the number of refugees in a country, relative to the population, correlates with attitudes toward immigrants in the individual's area. Using ordinary least squares regression and the Gallup-provided survey weights, we find that there is a consistently negative correlation between the number of refugees in a country (relative to the population) and individuals' reports that their area is a good place for immigrants. The coefficient is consistently negative even with the addition of an extensive set of control variables. That said, the correlation is miniscule, inviting reservation about the importance of the relationship between the size of the refugee population in a country and individuals' attitudes toward immigrants.

2. Literature Review

2.1 Definition and Trends

In general, immigration includes the voluntary relocation of a person to a new nation state or political unit over recognized boundaries, typically with the goal of becoming a permanent resident (Anheier et al., 2012). However, this general definition belies what is often a complex and sometimes coercive combination of motivational factors, sometimes called "push and pull factors," that influence immigration decisions (Chang-Muy, 2018). Push factors are the forces that compel someone to leave their home – ranging from fear for their life, to famine, to lack of educational or employment opportunities in their home. These can often fall into the categories of fear of violence/lack of safety or more economic-oriented push factors (Chishti et al., 2015). Pull factors are the forces that draw someone into a new country – for example, safety, freedom, and the availability of more job or educational opportunities (Chang-Muy, 2018). Pull factors could also be the desire to reunite with family in the destination country or in particular more welcoming laws and policies for migrants (Chishti et al., 2015). Some countries are seen as transit countries due to the perception of them not being receptive to refugees or asylees; perhaps they have lower admittance rates or fewer opportunities for migrants to integrate. This is different from countries that have a reputation for being "destination countries", which have more appealing "pull factors" perhaps because of the type of protections that they offer or the types of benefits that are available (Valenta, Zuparic-Iljic et al., 2015).

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Residents of nations receiving immigrants often focus on the pull factors obvious to the established citizens, such as migration to seek a better life (economic migrants). Push factors, however, are becoming more important as crises due to war, persecution, or other dangers impact greater numbers of people. Usually, migrants will leave their home country and strive for a new destination country due to a complex combination of push and pull factors that often is outside of their control (Chishti et al., 2015). The second type of immigrant falls into the special category of refugees, defined under the Convention relating to the Status of Refugees (adopted 28/7/1951, entered into force 22/4/1954, 189 UNTS 137, 1951 Convention) and the Protocol relating to the Status of Refugees (adopted 31/1/1967, entered into force 4/10/1967, 606 UNTS 267, 1967 Protocol).

Refugees are internationally recognized as deserving of special protections and worthy of being granted asylum. In fact, the international community takes refugee status so seriously that, included in the 1951 Convention are important principles of non-discrimination, non-penalization, and non-refoulement. If a person meets the definition of a refugee, countries who are party to the 1951 Convention are not supposed to refuse them based on additional factors such as their sexuality, religion, or country of origin (non-discrimination). Non-penalization means that countries are not allowed to punish refugees for violating immigration laws such as illegal entry or stay. For example, countries are not supposed to arbitrarily detain someone who illegally entered to seek asylum. Finally, the principle of non-refoulement means that countries cannot deport or expulse refugees. Specifically, the 1951 Convention states:

> "The principle of non-refoulement is so fundamental that no reservations or derogations may be made to it. It provides that no one shall expel or return ("refouler") a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom." (Office of the United Nations Commissioner for Refugees, 2010, Introductory Note, para. 3)

According to World Population Review, the United States has the largest foreign-born population at 48.2 million, followed by Russia at 11.6 million (2021). However, the United Arab Emirates has the highest proportion of immigrants globally, with 87.3% of its total population being foreign-born (World Population Review, 2021). This is distinct from having the largest refugee population, which is a population that would have arrived after experiencing danger or persecution. Thirty-nine percent of the world's refugees are hosted in just five countries: Turkey, Colombia, Pakistan, Uganda, and Germany (UNHCR, 2021a). Lebanon and Jordan host the most refugees per capita (Statista, 2019). As of fall 2021, 68% of the world's refugees come from the following five countries: Syria, Venezuela, Afghanistan, South Sudan, and Myanmar (UNHCR, 2021a).

Just as there are reasons that compel immigrants or refugees to migrate (i.e., "push" factors that are most visible to migrants), there are also reasons that may motivate individuals to welcome (or not welcome) the migrants (i.e., "pull" factors most visible to residents of destination countries). We next explore the psychological and societal correlates of these attitudes toward immigrants.

2.2. Psychological Correlates of Attitudes toward Immigrants

Psychologically, variables related to immigration attitudes include political persuasion, with right-leaning individuals in the U.S. endorsing greater opposition to immigration. These individuals are more likely to endorse beliefs that society should conform to one

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standard, and to be tolerant of inequality. Education tends to amplify these beliefs, because more highly-educated individuals tend to develop a more coherent ideology that intensifies their political beliefs (Heijden et al., 2020).

Additionally, attitudes can be reinforced with the type of news that an individual consumes. For example, the way the news is visually framed (such as on social media or with a photograph) can impact the responses of the consumer. Negative emotional responses have been found to have been generated by messages that were framed politically, resulting in elevated perceptions of threat and support for more closed policy. However, when the article or news information elicited positive emotional responses, it was due to the information being framed from a human-interest frame, predicting attitudes that were less concerned about threats and more concerned about aiding and welcoming immigrants and migrants (Parrott et al., 2019).

Religiosity is not predictive of attitudes toward immigration, but people who report religious affiliation tend to have more negative views of immigration, particularly refugees (Deslandes et al., 2019). One meta-analysis of 37 studies found that Muslims tend to oppose immigration more than Christians (Deslandes & Anderson, 2019). A general willingness to help is associated with more openness toward refugees, but this connection between psychological trait and attitude toward immigration can be changed by exposure to various external influences (Czymara, 2021).

2.3. Societal Correlates of Immigration Attitudes

As one might expect, changes in immigration patterns and attitudes toward immigration are linked, but the relationship is complex. A longitudinal analysis of the 2015 spike in EU immigration revealed that negative attitudes toward immigration may increase during a surge, and these negative attitudes persist if immigration results in demographic shifts in a country's population.

We suggest that this persistent negative attitude may relate to a population's proportion of immigrants, due to a zero-sum or competitive view toward limited resources. Thus, as the proportion of the population affected by immigration increases, it diminishes the appeal of the country as a good place for immigrants. This model of immigration attitudes is reflective of recent work that found perceptions of the competitiveness of immigrants mediated attitudes toward immigrants, in line with classical group conflict theories (Verbena et al., 2021). Specifically, we hypothesize that more recent immigration patterns would be linked to attitudes toward immigrants revealed in the comprehensive Gallup World Data.

3. Sample Selection Criteria

In order to examine the relationship between refugees in a country and attitudes toward immigration, we focus our sample on countries with extensive exposure to refugees. Some of these countries historically welcomed refugees; these are countries that have actively resettled refugees. Refugee crises were often happening far enough away geographically from these countries that they had to actively invite refugees to resettle there. In this category we include Canada, Germany (due to their welcoming position under Angela Merkel), Uganda, and the United States. Since the passage of the Refugee Act in 1980, the U.S. has been one of the most welcoming countries in the world, however this more welcoming stance diminished during recent presidencies.

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Another set of countries we include has absorbed many refugees. Much of that has been due to their proximity to countries who were sending refugees, not because of a particularly open stance in terms of policy. This group includes Chad, Jordan, Lebanon, Pakistan, and Turkey. Chad, for example, did not have an asylum law until December of 2020. This new law ensures fundamental protections for refugees. For decades, refugees from Sudan, Central African Republic, Nigeria, and Cameroon fled to Chad. Chad also has a high number of internally displaced citizens (UNHCR, 2021b). Our sample ends in 2019, so Chad's law does not affect our study.

Jordan and Lebanon both received thousands of refugees from Syria since the conflict in Syria began in 2011. In fact, it is estimated that more than a million Syrian refugees have fled to each of these countries (Yaha et al., 2018). However, neither Jordan nor Lebanon ratified either the 1951 Convention or the 1967 Protocol, and thus do not recognize the rights the 1951 Convention establishes. Indeed, these countries view those fleeing as guests. They welcome international agencies to help care for refugees but as nations, they do not actively care for or recognize these people as refugees.

In addition, Pakistan is not a party to the 1951 Convention or the 1967 Protocol, though the country hosts many refugees due to the ongoing conflict in its neighboring country of Afghanistan. UNHCR works on behalf of the Pakistan government to determine refugee status of people fleeing to Pakistan, and the Government of Pakistan usually honors the UNHCR decision (UNHCR Pakistan, n.d.).

Finally, Turkey hosts the largest number of refugees globally; the country has at least 3.6 million Syrians registered as refugees alone. While Turkey is a party to the 1951 Convention and the 1967 Protocol, as a country it is committed to being an asylum country, but not a resettlement country. This means that Turkey will accept refugees and asylum seekers temporarily but would prefer that they permanently resettle in a third country (UNHCR Turkey, n.d.).

Our last group of countries include those which have not historically been welcoming to immigrants. These are countries who maintain or recently implemented closed polices towards refugees. Hungary, for example, passed a law in 2016 that allowed police to forcibly remove people who may have crossed the border whether or not they are seeking protection. Since that time, the authorities have removed more than 71,000 people (UNHCR, March 2021) in violation of the principle of non-refoulement. More recently, Lithuania's parliament approved mass detention of migrants, not allowing them to appeal (Sytas, 2021), in violation of the principle of non-penalization. However, these former Sovietbloc countries have shown that they are more willing to accept refugees that are close in proximity or hold similar cultures or backgrounds. Their response to Russia's February 2022 attack on Ukraine revealed a willingness to accept certain types of refugees fleeing Ukraine.

Finally, the Gulf States of Kuwait and United Arab Emirates (UAE), while close in proximity to the top refugee-making countries of Syria and Afghanistan, have not opened their doors to these refugees (UNHCR, 2021a). In fact, neither Kuwait nor the UAE have ratified the 1951 Convention or the 1967 Protocol. While each of these countries welcome a number of immigrants to benefit their economies, they do not have an asylee or refugee system, and the immigrants that they welcome are only allowed to stay on a temporary basis (Charles, 2020; UNHCR, 2013; UNHCR, 2019).

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In section 5 below, we provide detailed information on the source of our data.

4. Model

Our sample of countries includes widely varying refugee populations and policies toward refugees, as well as widely varying sociodemographic characteristics. As such, we devise a model to estimate the correlation between individuals' attitudes toward immigrants and the number of refugees in the country. Controlling for the differences in characteristics, we estimate the relationship between the number of refugees relative to the population of a country and attitudes toward immigration. We include the characteristics that may influence attitudes toward immigrants, including measures for religion, economic opportunity, and life stage of respondents.

We estimate the following model:

$$GoodPlace_{ijt} = \beta_0 + \beta_1 RefugeesPer100k_{jt-1} + \beta_2 Religion_{ijt} + \beta_3 Female_{ijt} + \beta_4 Education_{ijt} + \beta_5 MaritalStatus_{ijt} + \beta_6 Age_{ijt} + \beta_7 Age2_{ijt} + \beta_8 AgeMissing_{ijt} + \beta_9 \gamma_j + \beta_{10} \delta_t$$

where

$GoodPlace_{ijt}$	= 1 if respondent i in country j in year t answers "my area is a good place for immigrants"
$RefugeesPer100k_{jt-1}$	= the number of refugees recorded by the UN in country j in year t-1 per 100,000 residents
$Religion_{ijt}$	is a categorical variable indicating the religion of respondent i in country j in year t
$Female_{ijt}$	= 1 if respondent i in country j in year t is female
$Education_{ijt}$	is a categorical variable indicating the educational attainment of respondent i in country j in year t
$MaritalStatus_{ijt}$	is a categorical variable indicating the marital status of respondent i in country j in year t
Age_{ijt}	is a continuous variable of the age of respondent i in country j in year t
$AgeMissing_{ijt}$	= 1 if respondent i in country j in year t is missing age
γ_j	are country fixed effects
δt	are year fixed effects

In the above model, we hypothesize that β_1 will not be equal to zero, that is, that the number of refugees in a country in a given year (and its changes over time) will correlate with the attitudes of residents toward immigration in the following year. We do not have expectations on the sign. It could be that more refugees indicate to residents that their country is a good place for immigration, indicating that β_1 is positive. It could be that more refugees lead to hostility toward the immigrant population (the zero-sum view), leading respondents to reactively state that their area is not a good place for immigrants (β_1 is negative).

We also hypothesize that the respondent characteristics included in the model will help predict an individual respondent's answer to whether their area is a good place for

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immigrants. We do not have strong expectations on signs of most of the coefficients β_2 to β_8, only that they differ from zero.

However, for β_4 we have a directional expectation. Given the increased opportunity and knowledge about the world that comes with higher levels of education, we expect that β_4 is positive. The more highly educated the individual, the more likely the individual is to report their area is a good place for immigrants.

5. Data

In order to examine the correlation between residents' attitudes toward immigration, demographic characteristics, and a country's flow of refugees, we combine data from two sources. Our first dataset is a subset of the Gallup World Poll. The Gallup World Poll surveys individuals in nearly every country every year. Typically, Gallup achieves 1,000 respondents in each country each year, though the number can vary with the number of survey instances and response rates, as well as geopolitical complications. Each country's respondents are surveyed in their main languages. Gallup uses phone interviews, which last between 20 and 30 minutes, when at least 80% of households in a country have phone coverage. When phone coverage is less widespread, Gallup uses face-to-face interviews which last 30-60 minutes (Gallup "Getting Started", 2020).

While the Gallup World Poll includes nearly every country in the world over many years, we use a subset in this paper. We limit the dataset to countries with a high refugee flow or high potential refugee flow due to the nature of our research question. We provided an extended explanation for the countries included in section 3 above. Our sample includes Canada, Chad, Germany, Hungary, Jordan, Kuwait, Lebanon, Lithuania, Pakistan, Turkey, Uganda, United Arab Emirates, and the United States. Due to data availability for the countries in our selected sample, we use the survey years of 2013 to 2019. All demographic and attitude variables are derived from the Gallup surveys. All calculations included below use the appropriate weighting to generate adult resident population estimates within each country-year (Gallup "Getting Started" 2020).

In addition to the Gallup World Poll data, we use the United Nations High Commissioner for Refugees (UNHCR) Data Finder and UNRWA database to determine the number of refugees in each country for the sample years, as well as the population totals for those countries (https://www.unhcr.org/refugee-statistics/).

The primary variable of interest is from Gallup's World Poll. It asks, "Is the city or area where you live a good place or not a good place to live for immigrants from other countries?" The possible answers include: a good place; not a good place; I don't know; (refusal to answer). We consider two specifications of this outcome variable. The first, which we refer to as *GoodPlace* (broad), sets individuals who report "a good place" equal to 1, and all other answers are set to 0. The second, which we refer to as *GoodPlace* (narrow), also sets individuals who report "a good place" equal to 1, but only "not a good place" is set to 0, and those answering "don't know" or who refused to answer are excluded from the analysis. Our reasoning for this separation is that on the one hand, those who do not answer in the affirmative seem to be consistent with a non-positive view toward immigration. On the other hand, the "don't know" and refusal to answer options could indicate a lack of awareness or opinion on the matter, and coding them as negative toward immigration is inappropriate. We present results for both variables in our summary statistics in Tables 1, 2, and 3. The results for other variables with missing values differ

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substantially depending on the inclusion of the "don't know/refuse" group, though other variables' coefficients (those which are not coded as "don't know/refuse") have minimal differences. This influence of the "don't know/refuse" control variable is not surprising as individuals who are not answering one of the survey questions are more likely to fail to answer other questions in the survey. As such, the results for the broad measure are available upon request.

We provide summary statistics for our data in Tables 1 through 3 and Figures 1 through 4. In Table 1, we show the total number of respondents within each country in our sample for both the broad (Panel A) and narrow (Panel B) definitions of our variable of interest, *GoodPlace*. We observe that not all participants in the World Poll in a given year receive the immigration question of interest, leading to some variation in sample size. Our full sample includes 94,289 respondents for the broad definition (Panel A), and 87,986 for the narrow definition (Panel B).

Table 1: Gallup Sample Sizes by Country and Year

Panel A: *GoodPlace* (broad)					**Year**			
Country	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**Total**
Canada	586	1,021	672	525	1,005	1,009	1,031	5,849
Chad	1,000	1,000	1,000	1,000	1,000	1,000	1,111	7,111
Germany	751	1,002	1,000	1,000	1,000	1,000	1,025	6,778
Hungary	1,019	1,003	1,000	1,000	1,000	1,000	1,080	7,102
Jordan	1,000	1,000	1,000	1,000	1,012	1,002	1,001	7,015
Kuwait	1,008	1,000	1,000	1,000	1,000	1,000	1,023	7,031
Lebanon	1,000	1,000	1,000	1,000	1,000	1,000	1,040	7,040
Lithuania	1,000	1,000	1,000	1,000	1,000	1,000	1,080	7,080
Pakistan	1,000	1,000	1,000	1,000	1,600	1,000	1,091	7,691
Turkey	1,000	1,001	1,002	1,001	1,000	1,000	2,059	8,063
Uganda	1,000	1,000	1,000	1,000	1,000	1,000	1,000	7,000
United Arab Emirates	1,000	1,005	1,898	1,855	1,850	1,857	1,413	10,878
United States	506	1,027	609	540	939	1,004	1,026	5,651
Total	11,870	13,059	13,181	12,921	14,406	13,872	14,980	94,289
Panel B: *GoodPlace* (narrow)					**Year**			
	2013	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**Total**
Canada	575	1,008	656	512	987	987	1,010	5,735
Chad	965	986	983	966	903	908	1,055	6,766
Germany	708	951	967	948	953	928	955	6,410
Hungary	784	833	801	865	892	802	911	5,888
Jordan	967	953	987	984	990	983	987	6,851
Kuwait	992	959	972	993	973	966	989	6,844
Lebanon	964	928	935	932	974	982	970	6,685
Lithuania	738	708	779	748	794	708	725	5,200
Pakistan	958	916	1,000	1,000	1,457	904	1,043	7,278
Turkey	886	950	934	932	929	941	1,952	7,524
Uganda	970	944	935	983	966	935	948	6,681
United Arab Emirates	977	984	1,859	1,830	1,817	1,802	1,389	10,658
United States	492	990	591	506	908	964	1,015	5,466
Total	10,976	12,110	12,399	12,199	13,543	12,810	13,949	87,986

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Source: Authors' calculations of Gallup World Poll data 2013-2019

Table 2 shows the average refugee populations in each country for the sample period. Note that given the slightly smaller sample in the narrow definition of *GoodPlace*, the numbers differ slightly. There is wide variation in the refugee population in the countries in our sample. The group of countries with the highest number of refugees is the same as the group with the highest number of refugees per 100,000 in the host country. This surprised us, as the populations of the high-refugee countries also widely vary. The high-refugee countries are Chad, Germany, Jordan, Lebanon, Pakistan, Turkey, and Uganda. We also indicate on the table which countries are signatories of the 1951 Convention. This includes Canada, Chad, Germany, Hungary, Lithuania, Turkey, Uganda, and the United States.

Table 2

	GoodPlace (broad)				GoodPlace (narrow)			
	Avg # of Refugees over Sample Years		Avg # of Refugees per 100K		Avg # of Refugees over Sample Years		Avg # of Refugees per 100K	
	Mean	SE	Mean	SE	Mean	SE	Mean	SE
Canada ^	125,682	405	351	1.2	125,643	409	350	1.3
Chad *^	412,684	498	2926	3.8	413,068	516	2933	4.0
Germany *^	630,450	4743	767	5.7	627,153	4885	763	5.9
Hungary ^	4,321	17	44	0.2	4,334	19	44	0.2
Jordan *	2,763,997	2632	30193	12.7	2,765,433	2656	30187	12.8
Kuwait	701	2	18	0.0	701	2	18	0.0
Lebanon *	1,341,195	4545	20830	63.1	1,339,023	4704	20787	65.2
Lithuania ^	1,218	4	42	0.2	1,206	5	42	0.2
Pakistan *	1,483,633	1536	745	1.2	1,485,686	1564	746	1.2
Turkey *^	2,464,414	16229	3061	19.6	2,490,237	16611	3092	20.0
Uganda *^	676,868	6244	1695	14.4	675,199	6362	1691	14.7
United Arab Emirates	760	3	8	0.0	761	3	8	0.0
United States ^	281,147	314	87	0.1	281,295	320	87	0.1

*Countries with * rank in top half of most refugees, and most refugees per 100k (perfect overlap)*
Countries with ^ are signatories of the 1951 Convention

In Figures 1, 2 and 3 we display the number of refugees in each country in each year. We separate the countries into low-refugee, medium-refugee, and high-refugee groups according to the estimates from refugees per 100,000. There are natural breaks in the data which allows for this separation. Figure 1 provides the chart of low-refugee countries, Hungary, Kuwait, Lithuania, United Arab Emirates, and the United States. Figure 2 shows the medium-refugee countries, Canada, Chad, Germany, Pakistan, Turkey, and Uganda. Evident on the graph is the impact of the Syrian refugee crisis, which led to a dramatic rise in refugees in Turkey, as well as the South Sudan and Democratic Republic of the Congo refugee crises which contributed to the majority of Uganda's rising refugee levels. Figure 3 displays the trends for Jordan and Lebanon. Note the tremendous difference in refugee population per 100,000 in this chart compared to the previous two.

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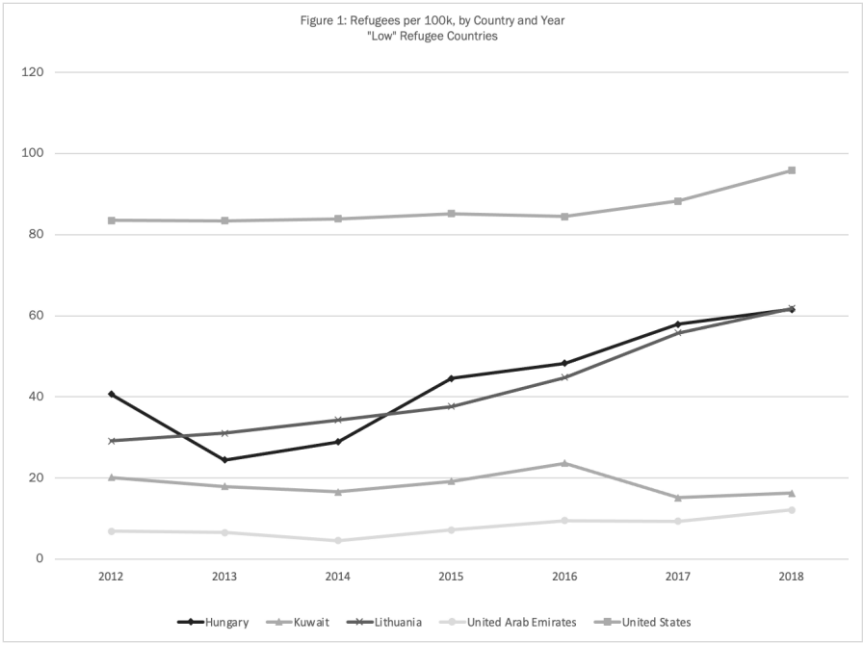
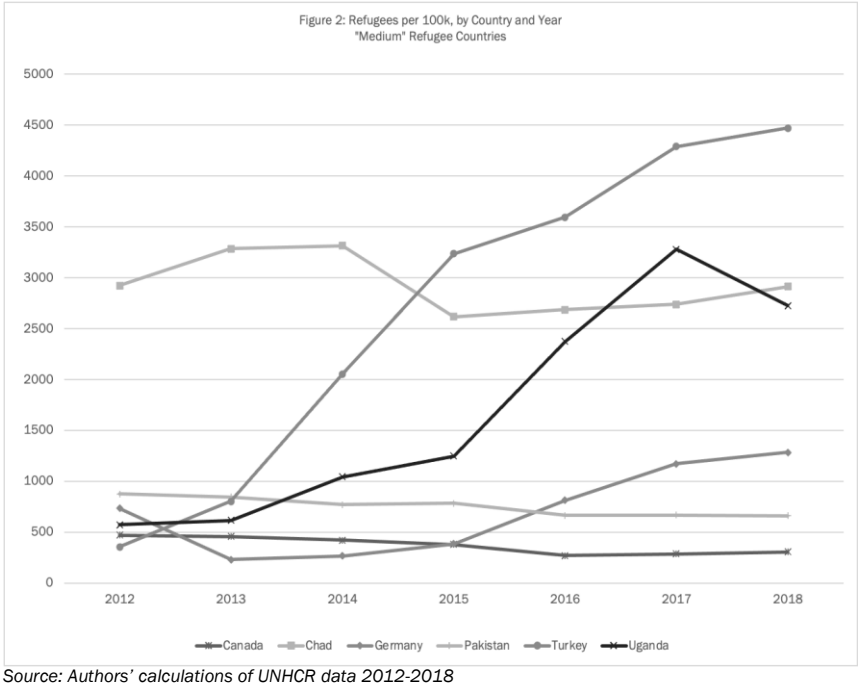
Figure 1



Source: Authors' calculations of UNHCR data 2012-2018

Figure 2



Source: Authors' calculations of UNHCR data 2012-2018

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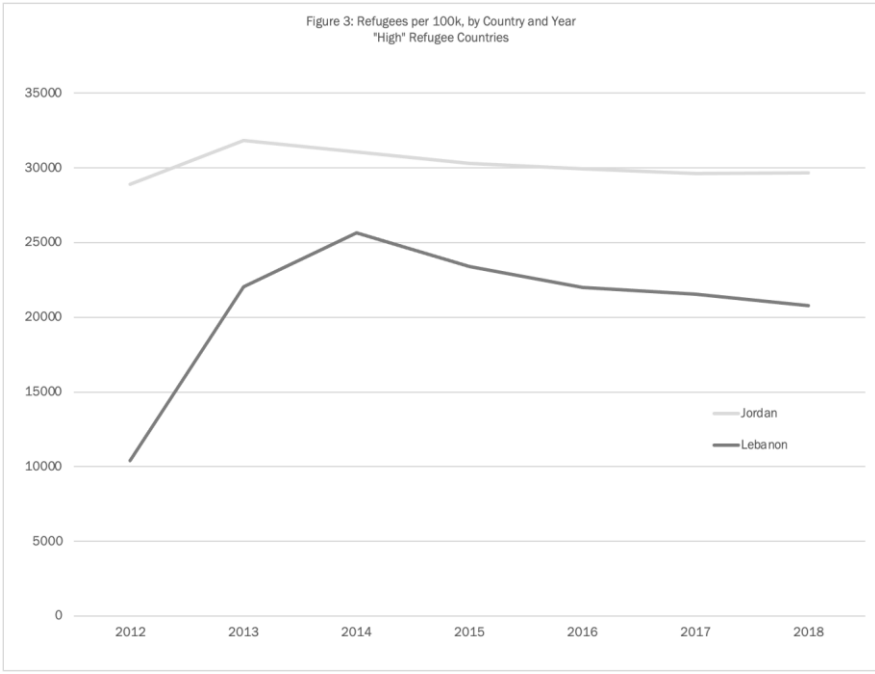
Figure 3



Source: Authors' calculations of UNHCR data 2012-2018

Table 3 provides the demographic characteristics of the countries for both the broad and narrow samples of *GoodPlace* in the full sample and those in the group with the most refugees. There are notable differences between the full sample and the subset of countries with the most refugees. By definition, the number of refugees is higher for the subset, nearly double the number and number per 100,000 as the full sample. Related to our research question, we see that the countries that take in the most refugees have a lower proportion of survey respondents who report their area is a good place for immigrants. Turning to religion, we see that respondents in high-refugee countries are predominantly Muslim, and slightly less Christian. There are also distinct differences by education. The high-refugee-country respondents have lower educational attainment, as they are substantially more likely to have completed elementary education or less, and less likely to have secondary or tertiary education. There are no notable differences by marital status, and the high-refugee-country respondents are slightly younger.

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Table 3: Sample Characteristics

	GoodPlace (broad)		GoodPlace (narrow)	
	Full Sample	Most Refugees	Full Sample	Most Refugees
	Mean SE	Mean SE	Mean SE	Mean SE
Asylum refugees per 100k population	4711	8627	4868	8759
	35.9	58.7	37.8	60.7
Asylum refugees total	797,201	1,426,809	816,264	1,434,169
	3978	5350	4157	5505
Proportion of respondents who report their country is a "good place" for immigrants	0.6012 0.0020	0.5503 0.0027	0.6459 0.0020	0.5808 0.0027
Religion				
Christian	0.3822	0.3371	0.367	0.3363
Islam	0.4324	0.5812	0.4448	0.583
Secular/Agnostic	0.0492	0.03	0.0489	0.0298
Other	0.021	0.0214	0.0215	0.0215
Don't know/refuse	0.0176	0.0099	0.0159	0.0092
Missing	0.0976	0.0203	0.1018	0.0201
Female	0.4749	0.5015	0.4686	0.4967
Educational attainment				
Completed elementary edu or less	0.2963	0.4586	0.2935	0.4549
Completed secondary to 3-yr tertiary	0.4952	0.4443	0.4943	0.448
Completed 4 yrs tertiary +	0.201	0.0932	0.2062	0.0937
Don't know/refuse	0.0075	0.0039	0.006	0.0034
Marital Status				
Single/never married	0.3107	0.3336	0.3158	0.3364
Married/domestic partner	0.5872	0.5817	0.5877	0.5811
Separated/divorced	0.0481	0.0359	0.0468	0.0355
Widowed	0.0500	0.0464	0.0461	0.0449
Don't know/refuse	0.0040	0.0025	0.0037	0.0021
Age	38.9 0.07	36.6 0.09	38.5 0.07	36.5 0.09
Age missing	0.0028	0.0015	0.0024	0.0013
Sample Size	94,289	50,698	87,986	48,195

Most refugees: Chad, Germany, Jordan, Lebanon, Pakistan, Turkey, Uganda
Data: World Bank data on refugees, population; Gallup survey data on attitudes, demographics
Authors' calculations using appropriate Gallup weighting procedures

In Figure 4 we show the countries in our sample ranked according to the proportion of survey respondents who respond their area is a good place for immigrants. Overlaying the bar chart is a plotted line indicating the number of refugees per 100,000. There appears to be no relationship between refugees and attitudes toward immigration as we measure in our study. However, regression analysis will allow us to control for differences in characteristics in these countries and will suggest that there is a relationship between the two. We omit Jordan and Lebanon from this chart due to their much-higher levels of refugees per 100,000. If we include them in the chart, the axis is distorted for the other countries in the sample, obscuring the variation we otherwise observe.

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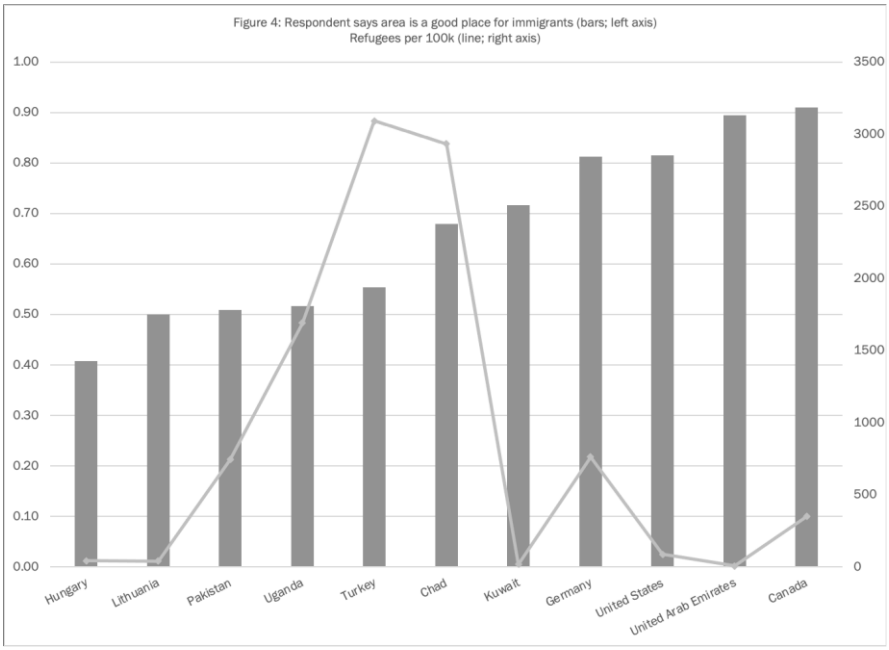
Figure 4



Source: Authors' calculations using UNHCR data and Gallup World Poll data.
This chart uses the narrow definition of GoodPlace.
Due to their extraordinarily high number of refugees per 100k, we omit Jordan and Lebanon from this chart. Jordan averages 30,187 refugees per 100,000, and 0.50 of respondents report their area is a good place for immigrants. The correlating numbers for Lebanon are 20,787 and 0.55.

6. Results

We use ordinary least squares to estimate the linear probability model implied by Equation 1. We present our results in Tables 4 through 6. When we compare the results for the broad and narrow definitions of *GoodPlace* for the full sample and the sample with the most refugees, we find minimal difference in coefficients.[5] Importantly, the coefficient on the number of refugees is unchanged across the two specifications.

We present our results for the full sample for the broad and narrow *GoodPlace* measures in Table 4. The coefficient of interest, refugees per 100,000, is statistically significant and negative, indicating that more refugees per 100,000 in a country correlates with a lower likelihood that a survey respondent in the country reports their area is a good place for immigrants. That said, the coefficient is tiny. The coefficient suggests that 1,000 new refugees per 100,000 in the country correlates with a 0.92 percentage point decrease in the proportion of respondents who report their area is a good place for immigrants. Given the base of around 55% of respondents saying their area is a good place, this is a very small effect. While we interpret the coefficient size, we suggest that the focus should be on the sign given the subjectivity of the measure.

[5] As mentioned previously, in some places we present results for the narrow measure, and the corresponding results for the broad measure are available upon request.

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Turning to the demographic characteristics included in the regression, we see that Muslim respondents are 6.5 percentage points less likely than Christian respondents to report their area is a good place for immigrants, and those of other religions (non-Christian, non-Muslim, but reporting a religion) are 2.9 percentage points less likely than Christian respondents to do so.

Our results for education also follow conventional expectations. We find that the higher the level of educational attainment, the more likely an individual is to report their area is a good place for immigrants. The effect for those completing secondary through three-year tertiary education is 1.2 percentage points higher than those with less than secondary. For those completing four years of tertiary education or more, the effect exceeds 6 percentage points, relative to those with less than a secondary education.

We find weak results for marital status. The strongest effect is for those who are separated or divorced, relative to single, never married individuals. Those who are separated or divorced are about 2 percentage points less likely to report their area is a good place for immigrants. We find no statistically important results for the age variables.

Table 4: Full Sample OLS Results: Is this country a good place for immigrants (Yes = 1/No = 0)

	Broad		Narrow	
	Coefficient	**t-stat**	**Coefficient**	**t-stat**
Asylum refugees per 100k	-0.0000092 0.0000015	-6.22	-0.0000092 0.0000015	-6.12
Religious affiliation (left-out: Christian)				
Islam	-0.0574 0.0077	-7.51	-0.0647 0.0077	-8.38
Secular/Non-religious	-0.0125 0.0084	-1.48	-0.0113 0.0085	-1.33
Other	-0.0242 0.0124	-1.94	-0.0289 0.0126	-2.29
Don't know/Refused	-0.0629 0.0134	-4.7	-0.0384 0.0142	-2.7
Missing	-0.0247 0.0091	2.71	-0.0248 0.0090	-2.75
Female	-0.0012 0.0037	- 0.32	0.0060 0.0038	1.56
Education (left-out: Less than secondary)				
Secondary - 3-yr Tertiary	0.0166 0.0054	3.04	0.0124 0.0057	2.18
Completed 4 yrs tert+	0.0654 0.0064	10.1	0.0614 0.0066	9.32
Don't know/Refused	-0.0225 0.0238	-0.95	0.0389 0.0274	1.42
Marital status (left-out: single/never married)				
Married/ Dom. Partner	0.0085 0.0052	1.64	0.0093 0.0053	1.76
Separated/ Divorced	-0.0220 0.0093	-2.37	-0.0206 0.0096	-2.16
Widowed	0.0130 0.0102	1.28	0.0254 0.0106	2.39
Don't know/Refused	-0.0570 0.0307	-1.86	-0.0336 0.0322	-1.04
Age	0.0004 0.0006	0.71	-0.0005 0.0006	-0.71
Age squared	0.0000 0.0000	-2.12	0.0000 0.0000	01

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Missing Age	-0.0425 0.0371	-1.15	-0.0204 0.0398	-0.51
Constant	0.8793 0.0168	52.31	0.8218 0.0168	48.97
N	94,289		87,896	
R-squared	0.1394		0.1238	
Includes Year Effects?	Y			
Includes Country Effects?	Y			

Data: World Bank data on refugees, population; Gallup survey data on attitudes, demographics
Authors' calculations using appropriate Gallup weighting procedures

In Table 5, we show results for the subsample of countries which welcome the most refugees (and, in this sample, the most refugees per 100,000). The coefficient on the variable of interest, asylum refugees per 100,000, is statistically significant and negative. We find that an additional 1,000 refugees per 100,000 in the country correlates with a 1.4 percentage point decline in the proportion of survey respondents who report their area is a good place for immigrants. Note that this coefficient is larger in size than that for the full sample. We address this further in the discussion.

We find similar results for Muslim respondents relative to Christian respondents, in that followers of Islam are about 5 percentage points less likely to report their area is a good place for immigrants. However, the results for "other" religions are not statistically distinguishable from zero with this subsample.

The results for educational attainment also mirror that found in the previous table. Higher levels of education correlate with the individual being more likely to report their area is a good place for immigrants. The effect is 1.4 percentage points for those with a completed secondary education relative to those who did not complete it, and about 4.4 percentage points for those who complete a tertiary education relative to those who did not complete a secondary education.

The coefficient on separated/divorced is not statistically significant. Age is not an important predictor of whether an individual will report their area is a good place for immigrants in this subsample.

Table 5: Most Refugees Sample OLS Results: Good place for immigrants (Yes = 1/No = 0)

	Broad		Narrow	
	Coefficient	**t-stat**	**Coefficient**	**t-stat**
Asylum refugees per 100k	-0.0000138 0.0000016	-8.6	-0.0000139 0.0000016	-8.53
Religious affiliation (left-out: Christian)				
Islam	-0.0495 0.0088	-5.64	-0.0576 0.0089	-6.48
Secular/Non-religious	-0.0303 0.0141	-2.14	-0.0297 0.0135	-2.19
Other	-0.0128 0.0185	-0.69	-0.0194 0.0188	-1.03
Don't know/Refused	-0.0682 0.0250	-2.72	-0.0377 0.0254	-1.48
Missing	0.0580 0.0233	2.49	0.0428 0.0238	1.8
Female	0.0076 0.0054	1.42	0.0178 0.0055	3.27
Education (left-out: Less than secondary)				
Secondary - 3-yr Tertiary	0.0191	2.9	0.0144	2.15

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	0.0066		0.0067	
Completed 4 yrs tert+	0.0464 0.0092	5.04	0.0435 0.0093	4.69
Don't know/Refused	-0.0823 0.0465	-1.77	-0.0385 0.0520	-0.74
Marital status (left-out: single/never married)				
Married/ Dom. Partner	-0.0073 0.0076	-0.95	-0.0049 0.0078	-0.63
Separated/ Divorced	-0.0300 0.0148	-2.02	-0.0240 0.0149	-1.61
Widowed	0.0117 0.0152	0.77	0.0245 0.0154	1.59
Don't know/Refused	-0.1907 0.0529	-3.61	-0.1537 0.0596	-2.58
Age	0.0007 0.0009	0.77	-0.0005 0.0009	-0.59
Age squared	0.0000 0.0000	-1.36	0.0000 0.0000	0.31
Missing Age	-0.1172 0.0753	-1.56	-0.0949 0.0780	-1.22
Constant	0.4787 0.0192	24.94	0.5187 0.0195	26.61
N	50,698		48,195	
R-squared	0.042		0.0485	
Includes Year Effects?	Y			
Includes Country Effects?	Y			

Data: World Bank data on refugees, population; Gallup survey data on attitudes, demographics
Authors' calculations using appropriate Gallup weighting procedures

We follow these regressions with a series of estimations on limited subsamples, reported in Table 6. We use the division presented in Figures 1 through 3, and show the results. Starting with the variable of interest, asylum refugees per 100,000, an interesting pattern emerges as we move from low to high refugee countries. We see that low-refugee countries have the largest coefficient (in absolute value). In low-refugee countries, the presence of 100 new refugees per 100,000 correlates with a 70 percentage point decrease in the proportion who report their area is a good place for immigrants. Compared to the full sample or most-refugees sample, this effect is enormous. Note that as we move across the table, the more refugees a country has per 100,000, the weaker the effect becomes. It remains negative and statistically significant throughout.

Table 6: OLS Results: Is this country a good place for immigrants (Yes = 1/No = 0, Narrow)

	Low Refugee		Medium Refugee		High Refugee	
	Coefficient	**t-stat**	**Coefficient**	**t-stat**	**Coefficient**	**t-stat**
Asylum refugees per 100k	-0.0069849 0.0005459	-12.8	-0.0000306 0.0000046	-6.7	-0.0000139 0.0000025	-5.48
Religious affiliation (left-out: Christian)						
Islam	-0.0784 0.0236	-3.32	-0.0688 0.0101	-6.83	-0.0439 0.0150	-2.93
Secular/Non-religious	0.0122 0.0151	0.81	-0.0334 0.0097	-3.44	0.1434 0.1020	1.41
Other	-0.0336 0.0220	-1.53	-0.0514 0.0185	-2.77	0.0304 0.0258	1.18
Don't know/Refused	-0.0496 0.0208	-2.39	-0.0325 0.0192	-1.7	0.0445 0.0733	0.61

Missing	-0.0460 0.0224	-2.05	0.0145 0.0158	0.92	0.0153 0.0101	1.5
Female	-0.0071 0.0059	-1.21	0.0180 0.0057	3.15	-0.0248 0.0129	-1.92
Education (left-out: Less than secondary)						
Secondary - 3-yr Tertiary	0.0090 0.0118	0.76	0.0353 0.0075	4.72	0.0166 0.0161	1.04
Completed 4 yrs tert+	0.0750 0.0124	6.04	0.0586 0.0096	6.09	-0.5783 0.0258	-22.4
Don't know/Refused	0.1133 0.0375	3.03	-0.0021 0.0405	-0.05	0.0134 0.0149	0.9
Marital status (left-out: single/never married)						
Married/ Dom. Partner	0.0326 0.0081	4.05	-0.0114 0.0079	-1.45	-0.0674 0.0358	-1.89
Separated/ Divorced	-0.0178 0.0144	-1.24	-0.0175 0.0136	-1.29	0.0419 0.0299	1.4
Widowed	0.0421 0.0163	2.58	0.0015 0.0157	0.1	0.0563 0.2169	0.26
Don't know/Refused	-0.0071 0.0432	-0.16	-0.0987 0.0483	-2.04	-0.0046 0.0018	-2.55
Age	-0.0008 0.0010	-0.73	0.0008 0.0009	0.84	-0.0000 0.0000	2.51
Age squared	0.0000 0.0000	-0.02	0.0000 0.0000	-1.05	-0.6060 0.0376	-16.1
Missing Age	0.0160 0.0602	0.27	-0.0002 0.0564	0		
Constant	1.4661 0.0522	28.06	0.5107 0.0210	24.31	0.9085 0.0537	16.93
N	34,056		40,394		13,536	
R-squared	0.1886		0.1015		0.015	
Year and Country Effects Included						

Data: World Bank data on refugees, population; Gallup survey data on attitudes, demographics
Authors' calculations using appropriate Gallup weighting procedures

One result that changes across the three samples is the coefficient on the highest education group, those who completed 4 or more years of tertiary education. While this coefficient is between 0.059 and 0.075 for the medium and low refugee groups, respectively, it is -0.578 for the high refugee group. Keeping in mind that the high refugee group includes only two countries, Jordan and Lebanon, it is still interesting to note that in these high-refugee countries, more highly educated individuals are less likely to report their area is a good place for immigrants.

7. Discussion and Implications

There are two notable aspects of our findings. First, we find a consistently negative correlation between the number of refugees per 100,000 in a country and the probability a survey respondent answers that their area is a good place for immigrants. This suggests that as more refugees live in a country, the general attitude about whether respondents' area is a good place for immigrants falls. Second, and perhaps more important, our results are statistically significant, but lack economic importance. The coefficients are so small in most specifications that we hesitate to make strong statements based on our results. Is it meaningful for policy makers to find a consistently negative, yet tiny correlation?

That said, the consistent negative sign hints at an important tie between the two measures (refugees per 100,000 and attitude toward the area's quality for immigrants), and one

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that ought to be further studied. It seems that as more refugees live in an area, the more the general population holds a negative opinion about their area being a good place for immigrants and, therefore, refugees. One potential implication is that people are viewing the question of immigration as primarily a resource-allocation problem. That is, if too many immigrants are here, then there is not enough <resource> to go around.

While our results on the religious identity of survey respondents were stable across specifications, we caution against the interpretation that Muslim individuals are anti-immigration. Our study uses the blunt measure of "is your area a good place for immigrants" as the outcome, which is not a measure of the welcoming posture of survey respondents. As much as it may measure an individual's thoughts toward immigration, it also captures respondents' view of government and perceptions of neighbors' attitudes toward immigrants.

This leads us to the primary weakness of the study. While we aim to examine the relationship between refugee flows and attitudes toward immigration, our survey instruments are not precise. We are unable to examine whether the respondent has a positive or negative view toward immigrants, a welcoming or hostile or indifferent posture. We are only able to measure their response to the question "is your area a good place." Individuals may answer no because they wish to limit their exposure to outsiders. They may answer no because they distrust the government's handling of immigration or because they feel like the government's rhetoric towards immigrants is hostile. They may answer no due to fears of economic or labor market effects, or cultural change brought by immigrants. Their answer may be incongruent with their feelings, as they could observe that immigrants would thrive in their area, yet resist the settlement of immigrants or vice versa, in that they wished that more immigrants would feel welcome, but they recognize that their area of the country is not hospitable.

One other weakness of the study is whether our focus on refugee flows and an attitude toward immigration overlap. We posit that most individuals are not well-informed on the difference between refugees and immigrants, but view both as outsiders moving in. There may be a vague understanding that refugees are in more dire situations, but we expect that most individuals would not be able to provide a cogent response to a question on the difference between the two. This lack of distinction in the public view supports our approach in this study.

8. Conclusion

The results of this study provide motivation for future work. Future work will consider a more finely-tuned measure of refugees within the country. It could be that refugee populations which are ethnically, culturally, and socioeconomically similar to the resident population of the country inspire different reactions in residents than those who are different. That is, Ukrainians fleeing to Poland may be treated differently than Afghanis fleeing to the United States. Evaluating the characteristics of the refugees relative to the characteristics of the resident population could help shed light on this potential variation.

The world continues to provide new refugee crises. As countries welcome refugees, or deny them entrance and protection, do the residents of the countries alter their attitude toward immigrants? Our study suggests that more refugees correlate with slightly lower views by individuals that their area is a good one for immigrants. In future studies, we aim to explore the cultural and religious differences between refugees and native residents in

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order to determine whether the negative relationship is driven by the "otherness" of the refugee, versus a more resource-based opposition to an immigration surge.

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Volunteering in Humanitarian Non-governmental Organizations: Reflective Solidarity and Inclusion Work as Mechanisms of Social Transformation[1]

Barbara Franz[2]

Abstract

In America, in the midst of a populist wave during Trump's presidency, activists who rejected the torrent of xenophobia, racism and Islamophobia volunteered to work with humanitarian NGOs that aid migrants, asylum seekers and refugees. These volunteers repeatedly engage in activities, such as driving refugees to their doctors' appointments or teaching migrants English, that cause the volunteers to be exposed to and interact with people whose backgrounds and daily experiences are much different than their own. Personal relationships are formed between the volunteers and those they are helping, and these relationships produce solidarity and change the volunteers. Both the volunteer and the refugee must adjust to each other, which is usually obvious to the refugee, who is in a state of transition often associated with post-traumatic stress, massive confusion, and status diminishment, but often less obvious to the volunteer. Their relationship needs to go beyond affective solidarity, which is based on emotions, and conventional solidarity, which is based on common interests, and become what Jodi Dean has called reflective solidarity (1999: 125), which is based on clear expectations and mutual respect. The volunteer and the refugee may have different political opinions and beliefs (for example, many refugees were exposed to and believed anti-vax conspiracies theories about COVID-19 vaccines) but, if they establish reflective solidarity, these differences do not pull them apart. The changes in consciousness produced in volunteers through working with refugees can create transformation in and a new reality for the volunteers, which can contribute towards a larger societal change.

Key Words:

U.S.A., Volunteer, NGO, transformation, inclusion

1. Introduction

How does social transformation take place in highly polarized societies? Through examining individuals who as activists and volunteers work with refugees and migrants in need, we can observe one way in which such transformation can occur. In America, a solid majority believes that extreme individualism drives one's life and one's success, and that society and community, outside of family and church, do not exist or are irrelevant (see, for example, Monbiot, 2016; Rosenbaum, 2018; Vargas et al., 2013, Fisher, 2008). Volunteer work grows out of the opposite assumption, that society does exist and that community is crucial and ought to be fostered in modern society by aiding those in need

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and by including outsiders. The paper's key proposition is that through volunteer work, activists develop solidarity with ostracized, marginalized individuals, and engage in a process that eventually can lead to a changed consciousness – antithetical to the prevailing xenophobic, extremist trends that have become so apparent in American political life today (see for example, Kobes, 2020; Finn, 2019; Belew, 2018; Newert, 2017; Pape, 2022). This article focuses on the motivations and experiences of volunteers who work with refugees and migrants in four humanitarian NGOs in New York and New Jersey.

2. Methodology

This paper is based on surveying the work of four regional community-based nonprofits, Neighbors for Refugees (NFR) and Hearts and Homes for Refugees (H&HR) in New York State and Welcome Home Jersey City (WHJC), and First Friends of New Jersey & New York (FFNJ&NY) located in New Jersey. The four NGOs focus on refugee resettlement and inclusion work. I engaged in participatory observation and semi-structured qualitative interviews with 8 activists who are involved in the four organizations and one interview with a refugee activist,[3] as well as the in-depth study of four hands-on projects, the COVID-19 Relief Funds, the Mask Making Initiative, the Lighthouse, and the Fun Club (Franz 2022). The projects in many respects represent the ingenuity and work of these NGOs in order to aid migrants, asylum seekers and refugees in need during the Trump administration, and during the COVID-19 crisis.

3. Society in Neoliberalism

Key promoters of the neoliberal ideology such as Margaret Thatcher and Ronald Reagan have long declared society and community as "none-exiting" and "dead" (Corbett-Batson, 2013). The average (white) American looks at community – with the exception of church and family communities – with suspicion and mistrust (Rosenbaum, 2018; Vargas et al., 2013; Fisher, 2008; Papa 2022). Neoliberalism depicts extreme individualism as natural and as a key feature for socioeconomic success. Individualism includes the notions of self-reliance and the fostering of an entrepreneurial spirit that long ago became part of American culture. But today, these values are accentuated. In neoliberalism, workers – especially the largely unprotected but essential workers in the service, food, and health sectors – found that safety nets had shrunk or disappeared, and uncertainty and isolation had grown even before the pandemic, but became the dominant feature of life when the COVID-19 pandemic ravaged the country.

Americans have been indoctrinated to dismiss European-style welfare policies and instead have internalized the trope of the self-made millionaire, believing that they as individuals, are solely responsible for their own fate. Rodrigo Nunes (2020) explains that by rendering invisible both the existing but often indiscernible "interdependencies that sustain individual trajectories and the structural constraints that hold [people] back" neoliberalism voids the notion of a social space beyond the immediate private sphere. Society, camaraderie, and solidarity do not exist in neoliberalism. Self-responsibility, hard work and, in case of failure, self-loathing are the main features of the model of man of

[3] I want to thank the Rider University Masters student Kristin Siegle for her help with transcribing the interviews.

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neoliberalism, whereas structural handicaps, social policies and class are not considered at all, when evaluating one's successes and failures.

Neoliberalism's ideological success lies exactly in that the ideology has eradicated community and solidarity from the minds of the majority of American citizens. Thus, life today is frequently experienced as extremely lonely, fragile and anxiety-producing. In addition, individuals hold the justified assumptions that "the system is rigged" and that their lives are in the hands of a corrupt elite and of technocrats who have no concern for common folk. Within neoliberalism and with the momentous popularity of social media, it is not surprising that community is understood as dead, and solidarity often misunderstood and misdirected toward managers and proprietors.

4. Community and Solidarity

Community is what you make of it! Many social scientists have predicted that one inevitable consequence of modernization of Western societies and the rise of new technology, such as social media, is the augmentation of individualism which poses "serious threats" to the "organic unity" of society, and produces atomization, unbounded egoism, and distrust (Allik, 2004; Etzioni, 1993; 1996; Lane, 1994). According to many of these critics, a universal sense of solidarity can only arise from traditional, small-scale, face-to-face communities – "Gemeinschaft" according to Ferdinand Tönnies (1957). For Tönnies, Gemeinschaft is organized around appreciation for personal ties and social interactions of a personal nature. On the other hand, "Gesellschaft" *(*society), is comprised of impersonal and indirect social ties and interactions that are not necessarily carried out face-to-face but often remotely. The mostly direct ties that link society in the Gemeinschaft are strong, personal, frequently built on kin and family relations, and usually paternalistic in nature. The ties and interactions that characterize Gesellschaft are guided by formal values and beliefs that are directed by rationality and efficiency, as well as by self-interest. These ties are indirect, weak, and usually connect individuals who are otherwise strangers to each other.

The Gemeinschafts-ethos and -solidarity of traditional communities such as the idyllic farming village are obviously romanticized and idealized (Putnam et al., 1993: 114). Over centuries, Gemeinschaft justified and reproduced highly hierarchical, patriarchal structures, that gave rise to extremely violent, dysfunctional and repressive societies in which anger, trauma and resentment drove generations of people. Local coercive regimes of control and conformity produced repressive authoritarianism. The patron-client type of relationship that is most typical for Gemeinschaft engenders privilege based on blood and family, systematic exclusion, public violence, mass trauma, indignation, and oppression. In the patron-client type of model, relations are constructed in a manner that produces a constant struggle, marked by continuous negotiations about specifics of social exchange (Eisenstadt et al., 1980). On the other hand, many scholars have argued that in the Gesellschaft social solidarity is doomed to disappear and to be replaced by a modern, rational, and impersonal form of community, civic passivity, and extreme individualism.[4] However, any argument implying that life in the Gemeinschaft was less suppressive and violent for the vast majority of people than in the Gesellschaft, should be challenged.

[4] To be sure these explanations of societal evolution are based on Western European and North American models of development.

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Scholars have found that social media use aggregates the atomization effect and diminishes solidarity. Scholars such as Zenk Özdák (2016) attest that in today's society, individuals are "anonymized and lost their own consciousness through being reconstructed within the web of interactions of conflicting group identities." However, people also use social media groups to obtain experiential knowledge from their peers, build connections, and organize collective action. With the diminishment of unionized work in neoliberalism, traditional class solidarity clearly has seen its challenges, but it is not dead. In addition, as this essay shows, new forms of solidarity, adapting to new patterns of suffering and humanitarian need, have become more prominent.

Laitinen and Pessi (2014) differentiate between solidarity that has been conceived either as a macro-level phenomenon of group and societal cohesion, integration and order, or as a micro-level behavior, emotions, and attitudes explaining such cohesion.[5] This paper ultimately focuses on micro-level behavior by analyzing the practice of volunteering as an act of solidarity that encourages individual introspection and change. However, macro and micro levels are linked and change on the micro-level, that is, on the emotional level that subsequently modifies the individual's attitudes about a specific issue, will also result in changes on the macro-level regarding group composition, cohesion and order. his eventually may lead to broad social change.

4.1. Practicing Solidarity through Volunteer Work: Two Case studies

Laitinen and Pessi (2014: 4) have conceptualized solidarity, when considered a micro-level phenomenon, as prosocial behavior across different situations, such as, helping and supporting others in situations of need, doing one's share in situations of cooperation, fairness in situations of distributing goods, avoiding breach in situations of trust, and moral repair when violations have taken place. Such solidarity is especially important in societies which single-out and discriminate against specific minority groups, e.g., the USA implementing Executive Order 13769, entitled Protecting the Nation from Foreign Terrorist Entry into the United States, commonly called the Muslim Travel Ban. This form of solidarity often produces motivated volunteers seeking to support individuals who are discriminated against and who are often in a subaltern position. For example, the current chair of the board of WHJC, Dina Rose explains the beginnings of the WHJC organization in the following way:[6]

> *"I was living in Jersey City at the time, but I had strong ties – my family had been living in Hoboken and then we moved to Jersey City, so we lived in that area for the last 20 years.*

[5] Émile Durkheim's (1947 [1893]) differentiate between the 'mechanic' solidarity of traditional communities and the 'organic' solidarity of modern societies. Mechanic solidarity is based on the similarity of the members and the dominance of collective consciousness over individuality. Organic solidarity is based on the interdependence of different individuals and on the social division of labour.

[6] WHJC started in 2016 as a loosely affiliated group of volunteers supporting resettled refugees mainly with apartment setups. In 2018 the group continued doing that as well as other basic aid such as, accompanying refugees to medical screenings, meeting new arrivals at the airport, and bringing meals. Within a year, the group began to transition more into education work, focusing on educational volunteer work, including at home tutoring, for those refugees who wanted that. In addition, the volunteers helped people with getting their transcripts evaluated for those who wanted to go back to school. By the end of 2018, the group became a 501(c)(3) non-profit organization.

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> *We're involved in the synagogue in Hoboken, the United Synagogue of Hoboken, and at the same time, it was sort of happening in parallel paths. At the synagogue we had a strong interest in doing something to help refugees and it was especially in regard to all of the Muslim ban-stuff rhetoric as well as actions. And so, we were getting mobilized at that time."*

Rose volunteered to work with immigrants and refugees following these realizations, and her motives were clearly in opposition to the administration's anti-Muslim policy. In this case, resistance is a decisive element in the decision-making process that heartened Rose's resolve and prompted her work with refugees and immigrants, people who were depicted by the Trump administration and some media outlets as menacing and not belonging in the United States. Rose's volunteer work qualifies as resistance. Not only do these acts and practices make a difference in the lives of deprived people, these material, economic, psychological, and educational practices also express the citizen activists' values that clearly oppose the party line of the dominant political power. Hollander and Einwohner (2004) define resistance as an act performed by someone acting on behalf of and/or in solidarity with someone in a subaltern position, if the action is taken in response to power. This is "solidarity resistance" in the terminology of Baaz et al. (2016: 142), in which an actor is motivated to support someone in a subaltern position in an act of solidarity. The COVID-19 Relief Funds and the Fun Club are two projects that exemplify this kind of solidarity work.

4.1.1. COVID-19 Relief Funds

COVID-19 Relief Funds were granted to urgent projects that arose during the spring 2020 when the desperation and dire situations of many refugees and immigrants living through the pandemic became indisputable. Many humanitarian NGOs including New York's Neighbors for Refugees (NFR) and Hearts and Homes for Refugees (H&HR) applied for and received COVIC-19 relief funds. Vice-President and Director of the NFR Board Jmel Wilson explains:

> "I think that we responded fairly quickly [...] realizing what the lay of the land was going to be, and realizing that we needed to broaden our focus, and not just work with new families coming in, and not just wait for that to happen. Instead, [we needed] to work with families who are already here, who needed more support. We got connected, through some great people, with a whole lot of Syrian families up in the New Haven area, who were floundering and really needed some help. It started with us helping a family who was about to be evicted by paying their rent for a year, and then it went on from that. We now have a very robust grant program, for people who have been here past that whole resettlement period, along with several other programs for folks who have already been here.[7]

The outreach efforts of small local NGOs like NFR brought relief to refugees living in other parts of the country. When COVID-19 hit, the group identified several organizations that worked directly with refugees in Westchester, New Jersey, Connecticut, and upstate New York. Grants from the COVID-19 Relief Fund were used to help families put food on the table, buy medicines, pay utilities, and pay rent. NFR's webpage explains that the organization "distributed $23,000 to 73 families, that's 265 people" through a number of local sister organizations. The robust grant program of the Westchester County NGO aided

[7] This interview was conducted on May 20, 2021. NFR has ramped up their preparations and is now ready to help resettle a number of Afghan families.

refugees in need elsewhere through an impressive network of aid and advocacy organizations.

Other groups also had COVID-19 relief funds. WHJC and H&HR also raised funds for COVID-19 relief. H&HR's webpage details the organization's support for refugees, asylees and asylum-seekers with $30,000 in cash assistance, including MasterCard gift cards, grocery and clothing store gift cards, and cash grants. Overall, 130 families, made up of 414 people, were assisted by H& HR between the months of March and July 2020 alone.

COVID-19 relief funds were often easily accessible entry points to volunteering for these NGOs. For example, in her interview, the Board Member of Welcome Home Jersey City (WHJC), Priti Christnis Gress explains: "My husband has been very supportive – he did a donation which his company matched." WHJC created another way for locals-turned-activists to get involved with refugee work - the Fun Club.

4.1.2. The Fun Club

In contrast to fundraising and giving financial aid to those in need, the Fun Club, initiated by WHJC in 2017, is based on weekly get-togethers and meals of volunteers with refugees. The Executive Director of WHJC, Alain Mentha, describes the Fun Club as a major success of WHJC:

> "So, probably our major accomplishment of the last few years has been the establishment of Fun Club, a family program where we provide academic coaching, homework help, ESL classes for the adults, and we provided meals, we had sort of a bazaar where people could get household goods. We drove the families from their homes and back from Fun Club. It really helped us deepen the sense of community that existed within these micro-communities, based on language and nationality of our clients or friends. And that was a great thing!"

The outbreak of the pandemic made it difficult to continue with the Fun Club as a live event. However, quickly the Fun Club also became a remote event. Dina Rose explains:

> "We ended up on Zoom like everyone else did, and we started out with just Fun Club on Thursday nights, and trying to figure out how to interact with our kids in Fun Club. It really became about the kids […] Fun Club itself in-person had an adult component and a volunteer component with creating friendships. Our Zoom efforts, when [we] started with Fun Club, it was really just 'How do we keep our clients engaged with us?' So Fun Club became about activity, it was not about tutoring anymore.[…] I think, [by] the first week we played Bingo."

The existence of these weekly activities that were often mundane and, in 2020 (until June 2021), remotely organized and held, aided the refugees and gave a means to citizen activists who sought to create stronger communities in order to resist state policies with which they disagreed.

4.2 NGOs as Connecting Platforms

The activities of humanitarian NGOs such as infrequent get-togethers, exhibitions, theater performances, other public events such as H&HR's Refugee Shabbat and Day of Action, as well as established programs such COVID-19 Relief Funds and the Fun Club provide platforms of interaction that allow for the refugees and activists to get to know each other. Rose explains the underlying social process:

> "We are trying to hook an individual person with a client [refugee] as their partner or their primary contact. I would say that maybe half of our clients already have that person who is

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> close to them, […] I work very closely with a family. And I don't know if that relationship would ever come to an end because it is now, my relationship with them [and] is less about Welcome Home, than it is about our relationship. […] Helping the kids get into better schools, and things like that."

All humanitarian NGOs discussed in this article, including First Friends of New Jersey & New York (FFNJ&NY), provide such platforms. For example, FFNJ&NY organizes campaigns in which volunteers visit and write letters to incarcerated asylum seekers. Through reoccurring activities, these NGOS allow individual refugees and volunteers to connect in order to begin relationships. Rose emphasizes that, in the end, a lasting personal relationship often arises from these connections:

> "So, I think that we would like to get everyone paired up that way. If we did that successfully, then the individual would take more of the responsibility, and then the core organization would take less of it. And then, they may or may not still come to [the NGO] for social reasons, let's say. The clients [refugees] themselves became friends [with the volunteers]."

This is what Schiertz and Schwenken (2020) call "doing solidarity."[8] Often arising from volunteering in NGOs, doing solidarity is a practice that both the activists and the refugees engage in, in order to look for and find points of connection (Vikki, 2010: 249). These points of connection are crucial for the promotion of acculturation and well-being of the refugee and the community. The creation of lasting personal relationships can be seen as a second step toward creating solidarity between citizen and refugee, that has the long-term aim of eventually including the refugee and her family into a larger community. Interestingly, very few of the activists I interviewed for this project spoke of the need to develop lasting friendships, affinity and camaraderie. Instead, they used the term "relationship." Relationship is a broad term and includes affinity relations, such as friendships, but also focuses on the way in which two or more people are connected, or the specific state of being connected, for example, an association, alliance, or bond. Indeed, for the volunteer-refugee relationship to work, what needs to develop is reflective solidarity rather than (and/or in addition to) friendship. Only with an understanding of the limitations and the specific quality of the relationship – that is with the acceptance of reflective solidarity as the overarching objective of the relationship between volunteer and newcomer – can people practice inclusive solidarity and can societal inclusivity occur.

4.3 Stepping-Stone to Inclusivity: Reflective Solidarity

Inclusive solidarity hardly ever arises automatically, but must be created. In order for the relationship between refugee and volunteers to work, both the refugee and the activist need to adjust to each other in various ways. This is usually very clear to the refugee because she is in a state of transition often associated with post-traumatic stress and massive confusion as well as a status diminishment. Adjustment is the name of the game for refugees. However, the notion that an adjustment will occur during this period is not always obvious (or easy) for the volunteer. The relationship between refugee and activist needs to go beyond affective solidarity, which is based on emotions, and conventional solidarity, which is based on common interests. Both the volunteer and the refugee need to reach what Jodi Dean has called reflective solidarity (1999: 125). Dean defines reflective solidarity as "the mutual expectation of a responsible orientation to

[8] Doing solidarity is a concept developed by Vikki Reynolds (2010) in the context of counseling and psychotherapy. I here adapt the concept to refugee and inclusion work.

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relationship." These relationships are not necessarily based on feelings of friendship or even sympathy, but on mutual respect and concern. They are essential in contributing to civil society, because these relationships combat othering and exclusion.

If the refugee-volunteer relationship reaches the point of reflective solidarity, the activist provides help and advice with certain issues, such as job searches and education. The volunteer and refugee sustain reflective solidarity despite the existence of issues that under different circumstances might pull these two people apart, for example, different political opinions or a different understanding of the importance of tolerance toward other minorities. This relationship endures, despite feelings of sympathy or antipathy that might arise. Reflective solidarity creates a lasting relationship between the refugee and the activist, and it facilitates the refugee's adjustment and inclusion process.

The concept of reflective solidarity draws from the intuition that the permanent risk of disagreement must itself become rationally transformed so as to provide a basis for solidarity (Dean 1995). In contrast to conventional solidarity in which dissent always carries with it the potential for disrupting the relationship, reflective solidarity builds dissent into its foundations. Dean (1995: 136) suggests that with reflective solidarity, "we have both the opportunity and the need to see differences of others as contributions to and aspects of the community of all of us." Mentha clearly illustrates how reflective solidarity works. Here he refers to the conspiracy theories that many refugees and migrants hold surrounding COVID-19-shots:

> "'It might make me infertile, it might cause me to contract COVID, change my DNA' - I've heard it all. That is sort of where we are now, in addition to providing continued educational and material support which is not getting any easier [...]"

Mentha realized that many of the refugees and immigrants he works with are exposed to conspiracy theories and misinformation campaigns through their friends, news outlets, and their social media, such as WhatsApp communities. He clearly recognized that his clients have a very different perception of the state, science, community, and public health than he does, but that did not discourage him. In contrast, recently, WHJC received a grant for a COVID-19 vaccine information campaign, and Mentha explains:

> "So what we are doing now [...] is first of all fast track to get all of our clients vaccinated who want it. Then after they're vaccinated, we ask them to be apart of our education system, where we can do a video recording of them talking about how they got the vaccine, and what the reasons are why they got the vaccine, and then encourage them to help us to dispel certain myths. [...] [There is] deep rooted skepticism about vaccinations in different parts of society."

Mentha's analysis shows that he sees the different perceptions of his refugee and immigrant clients and accepts these beliefs for what they are. But he is not discouraged about this. Mentha also realizes that he, as a non-immigrant American activist, will most likely not be able to convince those skeptics whose vaccine mistrust is driven by conspiracy theories that proliferate in their communities. WHJC attempts to overcome the mistrust and misinformation that their clients are exposed to and seeks to transform their understanding of the pandemic through the voices of fellow refugees and migrants.

With the COVID-19 vaccine information campaign, WHJC engenders what Dean (1995) means when she writes about mutual expectation, responsibility, and orientation toward the relationship by changing the boundaries of community from "us vs. them" to "we" and

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making possible a form of understanding of the other where the other is considered a part of the community despite her difference. Mentha sees the refugees and immigrants he is working with as different but has realized that they are part of the community. WHJC has begun to engage in the difficult task of educating the vaccine skeptic groups, the organization is working with. Mentha and other volunteers involved in this project demonstrate reflective solidarity in the sense that the existing differences in opinion are seen as part of Jersey City. Mentha's statement shows that the activists strongly disagree with the vaccine skepticism that many of his clients hold. However, WHJC's information campaign is in full swing, clearly demonstrating that dissent is seen as given within the framework of the NGO's public education drive but can be changed by involving pro-vaccine voices and advocates from the immigrant and refugee communities.

Dean's reflective solidarity suggests to focus on the generalized other and thus provide a way to conceive mutuality of expectations without hypostatizing the other into a restrictive set of norms. She (1995: 136-7) states:

> "What is expected is the recognition of our interdependency and shared vulnerability. The acknowledgement of our relationship to one another. At a time of increasing globalization, (im)migration and individualization, we have both the opportunity and the need to see differences of others as contributions to and aspects of the community of all of us."

Framing the actions of volunteers under the banner of shared vulnerability and reflection about one's own positionality in connection with others, provides a broader framework of understanding. The COVID-19 pandemic has made this recognition very obvious. However, to reach reflective solidarity is difficult for many volunteers especially if working with refugees or migrants who hold truly opposing beliefs regarding such diverse issues as child rearing, the roles of women in society, education, and environmental pollution, to name just a few. Frequently, the volunteer's realization that her relationship to the refugee needs to go beyond these differences, is a difficult step to make. This is the case, because both the volunteer and the refugee will need to change their consciousness in order to reach reflective solidarity.

4.4 The Volunteer's Changes of Consciousness: An Attempted Explanation

Some volunteers can pinpoint to the exact activity that changed their perceptions and consciousness. For example, in her interview, Priti Christnis Gress explains her friendship with Doha, a Syrian refugee and mother of four living in Jersey City, who was separated from her two older children:[9] Christnis Gress explains: "[Doha] and I became particularly close,… she has a very warm spirit and a gregarious personality. She is one of my favorites,

[9] Welcome Home Jersey City's webpage solicits donations for Doha, who is a refugee from Syria and single mother of four. Her family initially fled to Thailand as the war in Syria escalated. Doha and her two minor children were offered resettlement in the USA, but her two older children were excluded because of their age. Eventually Doha's son and daughter in Thailand, who had been working to support themselves, were rounded up in an immigration raid and spent nearly a year at the notorious Immigration Detention Center in Bangkok for violation of their visa rules. WHJC was able to secure their release, and they are awaiting the papers needed to immigrate and re-join their family in New Jersey. Thailand unfortunately does not recognize refugee status, so Doha's children are in the difficult position of not being able to work anymore. Her daughter also has ongoing medical needs from being sick in the detention center. WHJC is fundraising for their upkeep until they are able to leave Thailand. https://welcomehomerefugees.org/campaigns/dohas-family-support-fund/

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she is just so open and talkative." Many volunteers began to involve family members. Christnis Gress explains how she mobilized her entire family with her efforts to support Doha—whose two oldest children were stranded in Thailand—and how the members of her family eventually turned into activists, volunteering in various projects at WHJC:

> "My daughter who is a teenager organized a benefit concert and had all of her friends perform, and Doha came and spoke and we raised $3,000—which was enough to keep them for 6 months in Thailand. In so many different ways, my whole family has been involved. My son also goes. He's been going since [he was] 11 or 10 [years old]. He doesn't go to volunteer as much, but really just is near the kids and does things with them. Now he's big and strong, and moved a bunch of furniture into a place, you know, that we are setting up for asylees and refugees, so it has become a group effort in our family."

Including family and friends cultivates and expands the awareness of one's own involvement. With these activities, Christnis Gress and her family began to practice solidarity. Christnis Gress emphasizes:

> "I am motivated and actually feel empowered. Getting Doha's children out of detention [in Thailand], I would tell you, is the single most important work I have done in my entire life."

For Christnis Gress, the relationship she developed with Doha, that led to substantial improvements of the lives of Doha's children who are stuck in Thailand, switched her perspective and changed her consciousness. Today, Christnis Gress and Doha's have a very close relationship.

In another context, the queer Chicana poet, writer, and feminist theorist Gloria Anzaldúa explains the shift in activists' consciousness that is necessary to reach reflective solidarity in the following way: Meditating about changes in one's consciousness through the experience of differences, Anzaldúa calls for a new arising awareness, a "consciousness of the Borderlands." In "La Conciecia de la Mestiza" (1987: 101), Anzaldúa emphasizes that this new consciousness can only emerge by developing "a tolerance for contradictions, a tolerance for ambiguity." She writes that one ought to develop a "plural personality and operate in a pluralistic mode - nothing is thrust out - the good, the bad, and the ugly - nothing rejected, nothing abandoned." Consequentially volunteers need to adopt new perspectives because they are willing to share and to make themselves vulnerable to foreign and strange ways of seeing and thinking. However, at the end of this process, a new reality will be created. Anazlúda (1987: 100) agues:

> "It is not enough to stand on the opposite river bank, shouting questions, challenging patriarchal white conventions. A counter stance locks one into a duel of oppressor and oppressed… All reaction is limited by, and dependent on, what it is reacting against. Because the counter-stance stems from a problem with authority - outer as well as inner - it is a step toward liberation from cultural domination. But it is not a way of life. At some point, on our way to a new consciousness, we will have to leave the opposite bank, the split between the two mortal combats somehow healed, so that we are on both shores at once and at once we see through the serpent and the eagle eyes."

Anazlúda stresses that these changes in perspectives lead to a transcending of boundaries. She emphasizes that solidarity cannot be achieved conclusively, but rather demands an infinite process of "solidary practices" and inclusive ways of relating to one another.

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Similarly, Schwiertz and Schwenken (2020) see solidarity arising "through the mediation of differences" with respect to legal status, class, race, and gender, and political ideologies. While these categories are broad and might not get to the crux of the matter when it comes to the volunteer's daily interactions with the refugee, the authors also note the emergence of "new, transversal subjectivities." With the practice of reflective solidarity, volunteers learn to create these transversal subjectivities by standing at both sides of the border at the same time. By doing so, they can create a new reality with their work and the development of a new understanding of difference and how this difference can aid us in conceptualizing an inclusive society.

5. Conclusion

The paper situates volunteer work with refugees and migrants as a practice that engages individual volunteers in activities that are outside of their daily routines. By working with refugees and other strangers, activists are exposed to different ways of thinking and doing things. They learn about what others experience in their daily lives and how they respond to these experiences. Engaging in repeated practices of doing volunteer work fosters solidarity with newcomers who are frequently living in marginalized communities. The second part of the paper centers on reflective and inclusive solidarity as key features that often lead to the transformed consciousness of individual activists.

Not all volunteers become friends with individual refugees, but very frequently the act of volunteering leads to new feelings of solidarity based on the development of personal relationships with refugees, who usually are individuals the activist would not have met before becoming involved in humanitarian work. Sometimes these relationships create psychological challenges for the volunteers. However, this paper has argued that the development of reflective solidarity between migrants and refugees on the one hand and citizen activists on the other, can overcome these issues. Frequently, volunteers in pro-immigrant and pro-refugee organizations are actively remaking their relationship with individual immigrants and refugees and in the process changing their role within and understanding of the wider community and the state. This, I speculate, could eventually result in large-scale social change.

However, only by imagining and creating new models of communality, for example by combining elements of Gemeinschaft and Gesellschaft, and by developing new methods of inclusion will we be able to overcome the ideological and political limiters that neoliberalism has so successfully placed upon our lives in America today. We need new ideas of society and community in order to change the reality that many define as extremely lonely, fragile, and anxiety-producing and what is often defined as a "rigged system" that works against the interests of the common folk.

Reflective solidarity is one of the elements that is necessary to build an inclusive society independently of structures of power. Ideally, inclusive society contains elements of Gesellschaft, especially the significance of meritocracy and networks of horizontally connected individuals, and Gemeinschaft, specifically the significance of solidarity and appreciation for personal ties and social interactions. It is time to begin to imagine possible new future societies with all their key features. Only then can we begin working toward a new society that include initiatives which not only criticize, "protest, object, and undermine what is considered undesirable and wrong," but simultaneously "acquire, create, built, cultivate and experiment with what people need in the present moment, or

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what they would like to see replacing dominant structures or power relations" (Sørenson 2016: 57). Thus, only by changing our perspectives and transcending the existing borders and limitations will we be able to form new kinds of communities. Volunteers and activists have been changing their consciousness, and therewith creating and practicing new ways about thinking of community.

In terms of future research, the concepts of reflective and inclusive solidarity need more analysis but should be included in the theorizing surrounding the conceptualization of community and society and the position of the citizen (and the asylee/refugee/migrant) as an agent of relevance vis-a-vis and within the state.

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QRP

Analysing National Responses to Environmental and Climate-Related Displacement: A Comparative Assessment of Italian and French Legal Frameworks [1]

Francesco Negozio[2] & Francesca Rondine[3]

Abstract

Interlinkages between climate change, environmental degradation and displacement have been widely recognized by academics and States. However, unlike other categories of forced migrants, environmental and climate-displaced people crossing an international border are not entitled to any ad hoc protection regime under current conventional law. Nevertheless, it has been argued that International Human Rights Law and, to a minor extent, International Refugee Law forbid the expulsion of those migrants who are unable to return to their country in dignity and safety due to environmental reasons.

While the role of International Law in dealing with environmental and climate-related displacement has been widely investigated by legal researchers, national immigration and asylum systems could be further examined. This paper aims at examining the existing legal options for the protection of environmental and climate-related displaced persons under the Italian and French legal frameworks.

The Italian legal framework has been selected since it is characterized by two distinct kinds of complementary protection, both potentially addressing displacement induced by environmental hazards: the 'special protection' – which substituted the 'humanitarian protection' – and the 'residence permit for calamity'. While no explicit reference is made to climate and environmental reasons in the French legal framework concerning the residence of third-country nationals, a recent judgement issued by the Bordeaux Appeal Court could pave the way for a gradual inclusion of such phenomena under the umbrella of the possible reasons justifying the issuance of a residence permit to those at risk of displacement for environmental and climate-related reasons.

Such a comparative analysis has the objective of giving more practical thickness to the legal issues arising from environmental and climate-related displacement with the aim of identifying legal solutions to the new challenges posed by climate change and environmental degradation.

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Key Words:

Disaster displacement, climate refugees, environmental migration, non-refoulement, complementary protection

1. Introduction

Environmental and climate-related displacement has been defined as one of the biggest humanitarian challenges of the 21st century (The Nansen Initiative, 2015: 6). The Internal Displacement Monitoring Centre estimates that, in 2020 alone, about 30 million people have been internally displaced as a result of disasters caused by natural hazards such as floods, tropical storms, earthquakes, landslides, droughts, saltwater intrusion, glacial melting, glacial lake outburst floods, and melting permafrost (IDMC, 2021: 7). While the vast majority of environmental and climate-related displaced persons remain in their country of origin, some are forced to cross an international border (The Nansen Initiative, 2015: 14; Apap, 2021).[4] Unlike other categories of forced migrants, environmental and climate-displaced people crossing an international border are not entitled to any ad hoc protection regime under current conventional law.

Over the last few years, a growing body of legal literature and research has dealt with the issue of the protection of those displaced as a result of environment and climate-related phenomena. While the role of international law is well investigated, the solutions offered by national legal frameworks seem, to date, to be still overlooked in the field of legal scholarship (Cantor, 2021). For this reason, this paper aims at examining the existing legal options for the protection of environmental and climate-related displaced persons under the Italian and French legal immigration and asylum frameworks in a comparative fashion. Such an analysis has the objective of giving more practical thickness to the legal issues arising from environmental and climate-displacement from the particular angle of France and Italy. The comparison between these two countries is relevant in the light of their membership in the EU – including the Common European Asylum System – and their geographical proximity, but also to the substantial differences between the two countries, namely their legal framework with regard to international protection and complementary protection regimes.

In this light, the paper will be structured as follows. The first section will deal briefly with this issue in international law, in order to frame the topic within a more general context. The second section will examine the core topic of this paper, that is, the protection provided at the national level by Italy and France. Finally, the last section will summarise the main findings of the contribution and outline a number of conclusions in the light of the aforementioned, with the aim of fostering the debate on the issue and the role of national policies to provide protection to those displaced as a result of climate and environmental hazards.

2. A Brief Outline of the Issue in International Law

The debate in international law has revolved around various kinds of questions. Firstly, one main issue is related to the link between climate change and displacement. A body of

[4] Due to a lack of systematic monitoring of cross-border displacement and in the absence of consensus on their definition it is impossible to determine how many people are displaced out of their country of origin in environmental and climate-related disaster contexts.

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literature embraces the idea that climate change is to be seen as the main cause of the displacement, and that this would entail a growing number of displaced people around the globe (Myers, 1993; Mokhnacheva et al. 2017; Christian Aid, 2007; Kraler et al., 2020; Government Office for Science, 2011). On the other hand, many argue that climate change and environmental hazards are not the main factors pushing people to cross an international border, and in this light, they do not foresee an augmentation of the number of displaced people around the world (Piguet, 2008; Morrisey, 2009). However, in the recent past interlinkages between climate change, environmental degradation and displacement have been widely recognized by the international community.[5]

The causal relationship linking climate change to migration has an impact on the possibility of applying existing instruments in international human rights law and international refugee law to address this phenomenon.

While the 1951 Refugee Convention[6] mentions quite strict requirements in order for a person to fulfil the refugee definition, academics argued that it could prove useful in certain situations where climate change and environmental issues were not the direct cause of displacement but one factor within the general situation of persecution (UNHCR, 2020), that could be embedded within the different elements of the refugee definition within Article 1(A)(2) of the Refugee Convention.[7] As an example, New Zealand granted refugee status to a woman who had a well-founded fear of being persecuted for having helped people hit by cyclone Niagara with humanitarian actions through money given to her by the opposition party in Myanmar.[8] However, very few refugee claims based predominantly or exclusively on the impacts resulting from climate change or environmental degradation have been successful to date.[9]

[5] UN General Assembly, Resolution No. 1 (LXXI), New York Declaration for Refugees and Migrants, adopted 3 October 2016; UN General Assembly, Resolution No. 151 (LXXXIII), Office of the United Nations High Commissioner for Refugees, adopted 10 January 2019; UN General Assembly, Resolution No. 195 (LXXIII), Global Compact for Safe, Orderly and Regular Migration, adopted 11 January 2019.

[6] Convention relating to the Status of Refugees (adopted 28/7/1951 in Geneva, entered into force 22/4/1954, Geneva Convention or Refugee Convention).

[7] "(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well founded fear, he has not availed himself of the protection of one of the countries of which he is a national."

[8] Refugee Appeal No 76374, Decision of 28 October 2009: https://forms.justice.govt.nz/search/IPT/Documents/RefugeeProtection/pdf/ref_20091028_76374.pdf.

[9] A comprehensive review of Australia's and New Zealand's case laws has been provided by Scott, 2020. However, Scott contends that most refugee status determination (RSD) decisions are "based on an interpretation of the refugee definition that appears to cast the temporal scope too narrowly and the personal scope too widely." According to the author, a recalibrated interpretation of 'discrimination' should be consolidated by adequately taking into account the effect of climate change as a multiplier of threats and vulnerability.

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In this regard, according to a part of the literature, forcing such a new category of migrants within the international protection regime could also lower protection standards, as it would not be sufficient, alone, to address the specificity of climate-related displacement (UNHCR, 2012).

With regards to international human rights law, despite the fact that it does not provide for a structured protection regime, it does impose on States a negative obligation not to expel, remove or extradite a person to a country where the latter would face torture or cruel, inhuman or degrading punishment or treatment. Indeed, environmental and climate-related disasters might reach the threshold required under such an obligation, as it might cause 'intense suffering' and harsh living conditions in the country of origin treatment (Borges, 2019: 45-115; McAdam, 2012: 39-98; McAdam, 2021; Ragheboom, 2017: 293-398).[10]

This interpretation has been confirmed by the pivotal views of the Human Rights Committee in the Teitiota v. New Zealand case, where it is affirmed that: "Both sudden-onset events (such as intense storms and flooding) and slow-onset processes (such as sea-level rise, salinization, and land degradation) can propel the cross-border movement of individuals seeking protection from climate change-related harm. The Committee is of the view that without robust national and international efforts, the effects of climate change in receiving states may expose individuals to a violation of their rights under articles 6[11] or 7[12] of the Covenant,[13] thereby triggering the non-refoulement obligations of

[10] As an example, the Austrian Constitutional Court in 2011 annulled a decision by the Asylum Tribunal concerning the return of a rejected asylum-seeker, to Pakistan, his country of origin, on the basis that the Tribunal had failed to examine the claim under Article 3 ECHR that the person concerned would have to go back to areas affected by the floods of 2010 or would have been able to find a reasonable relocation alternative. Bundesverfassungsgericht (Österreich), Decision U84/11 of 19 September 2011. www.ris.bka.gv.at/Dokumente/Vfgh/JFT_09889081_11U00084_00/JFT_09889081_11U00084_00.pdf.

[11] "1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant."

[12] "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

[13] International Covenant on Civil and Political Rights (adopted by the UN General Assembly 16/12/1966, entered into force 23/3/1976, ICCPR).

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sending states. Furthermore, given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realised."[14] It has also been argued that, in "very exceptional cases" (McAdam, 2021: 81), other rights – including the right to respect for private and family life (Scott, 2014: 417-420, 424-427) – could also protect environmental and climate-related migrants from forced repatriation, giving rise to complementary protection.

In this light, it can be argued that the principle of non-refoulement, being a wide encompassing concept covering a wide range of situations, might prove useful to address the phenomenon of climate-related displacement for two reasons. Firstly, it is an obligation incumbent on States that need to apply it within their legal framework. Secondly, its flexibility allows different situations to be brought within its scope. For this reason, the following sections will analyse national responses to environmental and climate-related displacement.

3. The Italian Legal Framework on Immigration and Asylum

The Italian legal framework consists of a number of protection regimes for third-country nationals: the refugee status, within the meaning of the 1951 Geneva Convention; the subsidiary protection, complying with the EU 'Qualification Directive';[15] and other national forms of complementary protection, such as the 'humanitarian protection', pursuant to Article 5.6 of the Consolidated Immigration Act (Legislative Decree no. 286/1998),[16] recently replaced by the 'special protection' under Art. 19 of the Consolidated Immigration Act, the 'residence permit for calamity' (Art. 20 bis), the 'residence permit for health care' (Art. 19 para. 2, d-bis, and Art. 36), and others.

As previously mentioned, the refugee definition provided by Art. 1(A)(2) of the 1951 Convention is rarely met in the event of displacement induced by climate change and environmental degradation. This is confirmed by the Italian practice, given that no case of refugee recognition as a direct consequence of environmental or climate-related hazards in the country of origin is known.

Similarly, the applicability of the subsidiary protection under the EU legal framework appears to be excluded in this context. The EU Qualification Directive, in fact, lays down that "a person eligible for subsidiary protection" means "a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former

[14] UN Human Rights Committee (UN HRC), views of 7/1/2020, Ioane Teitiota v. New Zealand, CCPR/C/127/D/2728/2016: https://www.refworld.org/cases,HRC,5e26f7134.html (see further McAdam, 2020).
[15] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on Standards for the Qualification of Third-country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted (Recast), OJ L 337 of 20 December 2011.
[16] Legislative Decree of 25 July 1998, No. 286, *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero* (G.U. No. 191 of 18 August 1998), D. Lgs. 286/1998 or 'Consolidated Immigration Act'.

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habitual residence, would face a real risk of suffering serious harm as defined in Article 15 (…) and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country". Article 15 provides an exhaustive definition of 'serious harm', which includes "(a) the death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict".

Although it is arguable that in certain cases the negative effects resulting from climate change could constitute inhuman or degrading treatment (McAdam, 2012: 63-79; Scott, 2014: 412-417, 420-424), the Italian Supreme Court of Cassation[17] has so far excluded that vulnerability caused by environmental and climate-related hazards should be included within the definition of 'serious harm' under the EU and the Italian Law.[18]

3.1 The Applicability of Humanitarian Protection and Special Protection in the Event of Environmental and Climate-related Disasters

Those situations of vulnerability, however, are not irrelevant to the Italian legal framework. According to the Supreme Court of Cassation, environmental disasters, either man-made or not, may give rise to the prohibition of the expulsion of an individual coming from the affected areas. Therefore, the Court of Cassation affirmed that, in the event of an environmental disaster, humanitarian protection under Art. 5 para. 6 of the Italian Consolidated Immigration Act could be granted to the foreigner.[19]

This legal provision, however, has to be referred only to asylum applications submitted before 4 October 2018, since, during the current Legislature of the Italian Parliament (XVIII), it has been subject to two distinct amendments. The original Art. 5 para. 6, applicable until the entry into force of Decree-Law No. 113/2018,[20] was intended to comply with any international obligations (especially the *non-refoulement* principle) and constitutional rules (particularly, Art. 2 of the Italian Constitution on fundamental human

[17] Supreme Court of Cassation, 1st Civil Section, Order of 20 March 2019, No. 7832.
[18] See Art. 14 of the Italian transposition law of the EU Qualification Directive, Legislative Decree of 19 November 2007, No. 251, *Attuazione della direttiva 2004/83/CE recante norme minime sull'attribuzione, a cittadini di Paesi terzi o apolidi, della qualifica del rifugiato o di persona altrimenti bisognosa di protezione internazionale, nonche' norme minime sul contenuto della protezione riconosciuta* (G.U. No. 3 of 4 January 2008), D. Lgs. 251/2007 or 'Qualification Decree'.
[19] Supreme Court of Cassation, 1st Civil Section, Order of 20 March 2019, No. 7832. The case dealt with a Bangladeshi asylum seeker who complained that the catastrophic situation caused by the flood in his region of origin had not been adequately taken into consideration by the Territorial Commission for the Recognition of the International Protection and by the Appeal Judge. The Cassation confirmed that the environmental disaster occurred in the region could have given rise to the application of the humanitarian protection, but it refused to grant the applicant any form of protection since he was not able to demonstrate any direct link between the catastrophe and his individual situation in the event of return to his country of origin.
[20] Decree-Law of 4 October 2018, No. 113, *Disposizioni urgenti in materia di protezione internazionale e immigrazione, sicurezza pubblica, nonché misure per la funzionalità del Ministero dell'interno e l'organizzazione e il funzionamento dell'Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata* (G.U. No. 231 of 4 October 2018), converted into Law of 1 December 2018, No. 132 (G.U. No. 281 of 3 December 2018), Decree-Law No.113/2018 or 'Salvini Decree'.

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rights[21] and Art. 10 para. 3 dealing with political asylum)[22], which would forbid the expulsion of the alien.[23] The application of Art. 5 para. 6 automatically led to the recognition of a 'humanitarian protection' to the asylum seeker, usually as an outcome of a refugee status determination procedure.

Humanitarian protection represented, therefore, a typical example of complementary protection (McAdam, 2007), aiming at protecting migrants, who could not be qualified as refugees or subsidiary protection beneficiaries, but in respect of whom a removal order would have violated other international and constitutional obligations. Both the administrative practice and the jurisprudence gradually included environmental and climate-related hazards within the meaning of humanitarian protection because of the application of the *non-refoulement* principle under international human rights law.

In 2015, the National Commission for the Right to Asylum, the highest administrative body in the context of refugee status determination (RSD) procedures, delivered to the Territorial Commissions for the Recognition of the International Protection an internal circular that examined in which cases humanitarian protection should have been recognized (National Commission for the Right to Asylum, 2015). The document, by directly recalling Articles 3[24] and 8[25] of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)[26] and Article 7 of the International Covenant on Civil and Political Rights (ICCPR), included "serious natural calamities or any other local factor that hampers a safe and dignified repatriation" [27] (*Ivi*, p. 2) among the conditions leading to the application of Art. 5 para. 6 of the Legislative Decree No. 286/1998.

The applicability of humanitarian protection in the event of environmental disasters was later confirmed by a verdict of the Supreme Court of Cassation (Perrini, 2021). The Court

[21] "The Republic recognises and guarantees the inviolable rights of the person, as an individual and in the social groups where human personality is expressed, and expects that the fundamental duties of political, economic and social solidarity be fulfilled" (translated into English by the author).
[22] "The foreigner who is denied the effective exercise of the democratic liberties guaranteed by the Italian Constitution in his or her own country has the right of asylum in the territory of the Italian Republic, in accordance with the conditions established by law" (translated into English by the author).
[23] Art. 5 para 6 laid down that "The refusal or the revocation of the residence permit can also be adopted on the basis of international agreements or conventions, made executive in Italy, when the alien does not satisfy the conditions of residence applicable in one of the contracting States, *unless there are serious reasons, in particular of humanitarian nature or resulting from constitutional or international obligations of the Italian State* [emphasis added]" (translated into English by the author).
[24] "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."
[25] "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others" (translated into English by the author).
[26] Convention for the Protection of Human Rights and Fundamental Freedoms (signed 4/11/1950 in Rome, entered into force 3/9/1953, ECHR).
[27] Translated into English by the author.

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ordered the release of a humanitarian residence permit in favour of a foreign citizen coming from the Niger Delta Region, whose area is characterized by a situation of serious environmental instability. The Cassation recalled in its decision the interpretation of Article 6 of the ICCPR provided by the Human Rights Committee in the Teitiota v. New Zealand case. As stated by the Court of Cassation, the judge, in addition to ascertaining the existence of an armed conflict in the country of origin, must assess whether the asylum seeker would be forcibly returned to "any context that is suitable for exposing his/her rights to life, freedom and self-determination to the risk of elimination or reduction below the minimum threshold, expressly included (…) the cases of environmental disaster, climate change and the unsustainable exploitation of natural resources"[28] (Supreme Court of Cassation, 1st Civil Section, Order of 12 November 2020, No. 5022).

Humanitarian protection was one of the main subjects of debate during the 2018 parliamentary election campaign, with right-wing parties heavily criticising its existence, which would have contributed to the 'invasion of illegal migrants'. As soon as a new government was established by the populist parties 'League' and 'Five Stars Movement' (M5S), the Minister of Interior Matteo Salvini put an end to this institution. Article 1 of Decree-Law No. 113/2018 (also known as 'Salvini Decree') repealed the humanitarian protection, removing any reference to serious humanitarian reasons and the constitutional and international obligations from Article 5 para. 6 of the Legislative Decree No. 286/1998. At the same time, the decree established a new 'special protection' (Art. 19)[29] only for victims of torture, persecution, and massive violations of human rights, narrowing the number of potential beneficiaries when compared to the previous humanitarian protection (Morandi, 2020).

In 2019, the government collapsed and was replaced by a new government with the participation of the M5S, the Democratic Party, and other left-wing parties. The new government – although chaired by the same Prime Minister, Giuseppe Conte – withdrew some of the provisions of the Salvini Decree. By enacting Decree-Law no. 130/2020 ('Lamorgese Decree')[30], a comprehensive form of complementary protection was reintroduced by substantially broadening the application and the content of special protection (Corsi, 2021; Rossi, 2021: 78-83).

[28] Translated into English by the author.

[29] "1. In no case whatsoever can the alien be expelled or rejected toward a State in which he or she can be object of persecution due to race, sex, language, citizenship, religion, political opinions, personal or social conditions, or can risk to be sent to another State in which he or she is not protected from persecution.
1.1. The rejection, expulsion or extradition of a person to a State is not permitted if there are reasonable grounds for believing that he or she would be in danger of being subjected to *torture* [emphasis added]. In assessing these reasons, the existence, in that State, of systematic and serious violations of human rights is also taken into account" (translated into English by the author).

[30] Decree-Law of 21 October 2020, No. 130, *Disposizioni urgenti in materia di immigrazione, protezione internazionale e complementare, modifiche agli articoli 131-bis, 391-bis, 391-ter e 588 del codice penale, nonché misure in materia di divieto di accesso agli esercizi pubblici ed ai locali di pubblico trattenimento, di contrasto all'utilizzo distorto del web e di disciplina del Garante nazionale dei diritti delle persone private della libertà personale* (G.U. of 21 October 2020, No. 261), converted into law of 18 December 2020, No. 173 (G.U. of 19 December 2020, No. 314), Decree-Law No. 130/2020 or 'Lamorgese Decree'.

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The modified special protection under the amended Art. 19 of the Consolidated Immigration Act[31] shall be granted to any individual whose return would contravene international and constitutional rules, including – but not limited to – prohibition of torture, inhuman or degrading treatment, prohibition of any form of discrimination and right to respect for private and family life (Carbone, 2021).

In the intention of the Legislator, special protection is likely to inherit at least the subjective applicability of humanitarian protection (Zorzella, 2021). Therefore, it can be assumed that protection of environmental and climate-displaced people, originally ensured by humanitarian protection, must similarly derive from the new provisions on special protection, as a direct consequence of the applicability of the *non-refoulement* principle to this category of displacement.[32]

Furthermore, the amended special protection grants a two-year residence permit and is convertible into a residence permit for work purposes, similarly to the previously in force humanitarian protection.

3.2. The New Residence Permit for Calamity

As previously outlined, the 'Salvini Decree' aimed at specifying and circumscribing exceptional cases of temporary residence permits for humanitarian needs, including by

[31] "1. In no case whatsoever can the alien be expelled or rejected toward a State in which he or she can be object of persecution due to race, sex, sexual orientation, gender identity, language, citizenship, religion, political opinions, personal or social conditions, or can risk to be sent to another State in which he or she is not protected from persecution.
1.1. The rejection, expulsion or extradition of a person to a State is not permitted if there are reasonable grounds for believing that he or she would be in danger of being subjected *to torture or to inhuman or degrading treatment or if the obligations referred to in Article 5, paragraph 6 are met* [emphasis added]. In assessing these reasons, the existence, in that State, of systematic and serious violations of human rights is also taken into account. The refoulement or expulsion of a person to a State is also not permitted if there are reasonable grounds for believing that removal from the national territory would involve a violation of the *right to respect for his or her private and family life* [emphasis adeded], unless it is necessary to reasons of national security, public order and security and health protection [...]. For the purposes of assessing the risk of violation referred to in the previous period, the nature and effectiveness of the family ties of the person concerned, his or her effective social integration in Italy, the duration of his or her stay in the national territory as well as the existence of family, cultural or social ties with his or her country of origin are taken into consideration.
1.2. In the event of rejection of the application for international protection, where the requisites referred to in paragraphs 1 and 1.1 are met, the Territorial Commission transmits the documents to the Quaestor for the issue of a residence permit for special protection. In the event that an application for the issue of a residence permit is submitted, where the requirements referred to in paragraphs 1 and 1.1 are met, the Quaestor, after consulting the Territorial Commission for the recognition of international protection, issues a residence permit for special protection *"* (translated into English by the author).

[32] To date no case-law has been registered on this regard. This is probably due to the brief period of time passed since the entry into force of the new provisions on special protection, since the previous legal framework on humanitarian protection has been applied to all cases related to international protection applications registered before 4 October 2018. See Supreme Court of Cassation, 1st Civil Section, No. 4890/2019.

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introducing a 'residence permit for calamity'.[33] The residence permit for calamity was issued "when the country to which the foreigner should return [was] in a situation of contingent and exceptional calamity that [did] not allow the return and stay in safe conditions", as laid out by the new Article 20 *bis* of the Consolidated Immigration Act.[34] The residence permit for calamity had a duration of six months, was renewable once, and was not convertible into a residence permit for work purposes.

Decree-Law No. 130/2020 intervened in the innovations made by Decree-Law no. 113/2018, without completely overturning its normative scheme (Biondi Dal Monte et al., 2021). The new government – similarly to what has been observed with regard to the special protection – maintained the residence permit for calamity but expanded its potential beneficiaries and increased its protection measures: Decree-Law no. 130/2020 replaced the formulation "contingent and exceptional" with "serious" calamity, removed the limitation referred to the renewal and introduced the possibility of conversion into a residence permit for work reasons.[35]

This intervention, although favourable in its aim, risks being counterproductive from the perspective of potentially affected migrants. As previously argued, the case of displaced people, for whom a calamitous situation (be it contingent or persistent, exceptional or serious) does not allow the return and stay in the country of origin, seems to be sufficiently covered by the new special protection, falling among those obligations of international law which lead to the application of the amended Art. 19. The application of Art. 20 *bis*, therefore, would result in unfair treatment, leading to the release of a six month-residence permit instead of a protection status with a duration of two years, severely reducing the possibility of integration of environmental and climate-displaced persons.[36] Paradoxically, the previous restrictive rule introduced by former Minister Salvini, limiting the scope of the residence permit for calamity to *contingent and exceptional* disasters, would seem to be

[33] It should be noted that the Government, both during the Parliamentary debate and within the legislative report, referred to the residence permit for calamity as permit for 'natural calamity'. However, it has been argued that Art. 20 bis of the Immigration Law could be applied both to natural and man-made disasters (Benvenuti, 2019: 27-28).

[34] "1. Without prejudice to the provisions of article 20, when the country to which the foreigner should return is in a situation of *contingent and exceptional calamity* [emphasis added] that does not allow the return and stay in safe conditions, the Quaestor issues a residence permit for calamity.
2. The residence permit issued pursuant to this article has a duration of six months, and is *renewable for a further period* [emphasis added] of six months if the conditions of exceptional calamity referred to in paragraph 1 remain; the permit is valid only in the national territory and allows to carry out work activities, *but cannot be converted into a residence permit for work reasons* [emphasis added]"

[35] "1. Without prejudice to the provisions of article 20, when the country to which the foreigner should return is in a situation of serious calamity [emphasis added] that does not allow the return and stay in safe conditions, the Quaestor issues a residence permit for calamity.
2. The residence permit issued pursuant to this article has a duration of six months, and is *renewable* [emphasis added] if the conditions of serious calamity referred to in paragraph 1 remain; the permit is valid only in the national territory and allows to carry out work activities" (translated into English by the author).

[36] In this regard, assuming the existence of two vulnerable applicants, one of which is affected by a serious calamity in his/her country of origin, any unfavourable treatment that would apply to the latter pursuant to Art. 20 bis would cause unfair discrimination between two similar situations.

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more adequate, applying only to provisional on-set disasters allowing repatriation in safety in the short run and, therefore, justifying a shorter duration of the residence permit.

Turning to procedural rules, the difference between the two residence permits is not negligible: both can be requested before the Quaestor or obtained as a result of a judicial appeal, but the special protection is usually recognized in the framework of a refugee status determination procedure, while the decision on the residence permit for calamity seems to be left to the discretion of the police authorities. In this regard, it is arguable that the Quaestor has neither the expertise nor the competence set by law to verify the condition in the country of origin and, therefore, it is unknown how the calamitous situation could be assessed. On the contrary, special protection is usually recognized at the end of a subjective evaluation of the applicant's vulnerability conducted by RSD experts.

The very little jurisprudence produced so far in the matter of residence permits for calamity has not clarified yet the innovative scope of Art. 20 bis and its difference from special protection. In the only related judicial decision known to date, a residence permit for calamity was granted to an Albanian national, taking into account that the applicant was "resident since 2018 in Italy together with her family (…) being integrated into the Italian social context" and "following the 2019 seismic event involving Albania, (…) lost her home". Therefore, "in the event of a return to her country of origin, she would [have been] exposed to a serious survival situation" [37] (Justice of the Peace of Bari, Order of 30 June 2021, No. 450). However, in line with the above, it can be argued that the Justice of the Peace of Bari could have reached another verdict, as this legal case likely met the requirements for the application of special protection provisions under Art. 19 of the Consolidated Immigration Act, including on the basis of her right to respect for private and family life pursuant to Art. 8 of the European Convention on Human Rights.

4. The French Legal Framework on International Protection and Residence of Third Country Nationals

4.1 General Legal Framework

The French legal system does not provide for a specific protection addressing climate-related displacement, nor does it mention any 'humanitarian protection' based on the non-refoulement or the prohibition of torture principle in general (Conte, 2021). It does provide for a number of residence permits dealing with specific grounds against expulsion.

The French doctrine and legal academy debated on the issue of climate-related displacement and the possibility of providing a specific form of protection to those displaced as a result of climate and environmental hazards. However, such a debate revolved mainly around international law and the possibility of conceiving an *ad hoc* status for this category of migrants, inspired by the structure of the 1951 Refugee Convention, namely the status of "réfugié climatique" (Cournil, 2007). However, the debate was confined to international law and did not affect the domestic legal framework, which has never seriously addressed the issue of climate and environmental displacement.

As none of the existing protection statuses would qualify for cases involving climate change and environmental disasters, the only possible route to encompass such phenomena under some forms of protection seems to establish grounds to ban

[37] Translated into English by the author.

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deportation of people facing the consequences of natural and climate disasters or atmospheric pollution (Cournil, 2005; Gonin et al., 2002; Gouget, 2006).

The French protection system is composed of four types of protection: first of all, the refugee status on the basis of the 1951 Refugee Convention;[38] secondly, the refugee status provided in the French Constitution, which, compared to the one based on the Refugee Convention, has a more political dimension and is oriented to protect those who take "an action to protect freedom" in their countries and are persecuted for this reason,[39] which means that concrete and proactive activity is required to have been taken from the applicant in order to fall within this status; there is the subsidiary protection, based on the relevant EU law provisions; and, finally, French law provides for a special status for those who fall within the mandate of the United Nation High Commissioner for Refugees (UNHCR). Under this status, the applicant is given a right to have full asylum status in France (based on articles 6 and 7 of the UNHCR Statute), like any other person recognised as a refugee by the Office Français de Protection des Réfugiés et des Apatrides (OPFRA) (Bourriez, 2022). To date, none of these statuses has been applied to cases involving climate and environmental disasters as a ground for their recognition (Cournil et al., 2015).

4.2 Residence permit for private and family life for health reasons: the decision of the Cour Administrative d'Appel de Bordeaux, 2ème chambre, of 18 December 2020

Beyond international protection, the French legal system provides a number of short-term/temporary residence permits covering specific situations.[40] Among these different residence permits, the relevant one for the object of this paper is the residence permit for 'private and family life'.[41] Such a permit is issued under a number of different conditions: third-country nationals in France for family reunification; third-country nationals living in France since the age of 13 with one or both parents; third-country nationals living in France or having completed at least one academic cycle; finally, third-country nationals whose state of health needs treatment.[42] In particular, the latter has revealed relevant for the topic of this paper.

Indeed, article 313-11 CESEDA states that "Unless their presence constitutes a threat to public order, the temporary residence permit bearing the mention 'private and family life' is issued automatically: To foreigners usually residing in France, if his/her state of health requires medical care, the failure of which could have exceptionally serious consequences for him/her and if, given the provision of care and the characteristics of the health system

[38] Art. L 511-1-L 511-9, Code de l'Entrée et du Séjour des Étrangers et du Droit d'Asile (CESEDA).
[39] Article L 711-1 CESEDA. The French National Court on Asylum has not provided a precise definition of the concept of 'action for freedom'. It includes different types of action made to protect rights and freedoms of people. However, it does have to include a personal, individual and proactive role of the applicant in order to fall under such a category (Lecoutre, p. 219).
[40] Such as, residence permit for study reasons; family reunification; internship; work reasons; professional activity; victims of human trafficking and smuggling (Morri, 2012; Pinto, Lamine, 2001).
[41] Article L 313-11 CESEDA, translated into English by the author.
[42] Article L 313-11- L 313-15 CESEDA; Articles R 313 -20 -R 313-34-4 CESEDA.

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in the country of origin, he/she could not effectively receive appropriate treatment there".[43]

The substantive requirements in order to obtain such a residence permit lie on the evaluation of the following criteria: a distress situation of exceptional gravity; the absence of treatments in the country of origin; having resided in France for at least one year.[44] The guidelines of the Ministry of public health indicate that the evaluation is based on individual analysis and the examination of different sources and documents related to the situation of the country of origin and takes into account the clinical state of the applicant together with the situation in the country of origin and the treatments available (Ministère des Affaires sociales et de la Santé, 2017).

The procedure to be followed in order to apply for this residence permit includes two levels of intervention: a medical one and an administrative one. The procedure starts with an application to the prefecture, which must include a medical certificate. The doctor having the applicant in charge shall then provide a medical opinion on the case, which has to be validated by the Ministerial Committee of Doctors (OFII) that has also to produce a medical opinion on the case. Eventually, the prefecture takes the final decision. The residence permit has a two year-duration, renewable according to the envisaged duration of the treatments for a maximum of 4 years (Veisse, 2006).

In December 2020, the administrative tribunal of Bordeaux examined a case that the media have defined "the first French climate refugee" (Bendasdon, 2021), even though the case might better fit the category of "environmentally-impacted migrant" (Tower, Plano, 2021), as the case related much more to environmental and pollution issues than on climate change strictly speaking.

The applicant, originally from Bangladesh, arrived in France in 2011 claiming he was fleeing persecution but stayed in the country as a rejected refugee, being able however to obtain a health residence permit on the ground of a respiratory disease requiring special treatment that was not available in his country of origin. In 2017, the Haute Garonne prefecture decided not to renew his residence permit and in 2019 issued him with a deportation order, as doctors following the applicant's case argued that adequate treatment was available in Bangladesh. The applicant appealed the decision and the tribunal of Bordeaux overturned it. The grounds for the tribunal's decision included an evaluation of the environmental conditions of the country of origin. In particular, the Bordeaux tribunal decided to renew the 'sick foreigner' residence permit that the applicant originally had as the pollution in Bangladesh would have worsened the applicant's respiratory disease and that the applicant would not have access to adequate treatment in his country of origin.

The case seems relevant in the light of a number of elements: first of all, it represents the first decision of this kind in France acknowledging the role of atmospheric and environmental elements against expulsion; secondly, for the first time in France, a tribunal

[43] Translated into English by the author.
[44] The lack of this requirement shall not constitute a ground for refusal, as article 313-24 CESEDA provides that the applicant may be issued a temporary renewable authorisation to reside on French territory for the duration of the treatments (*Ministère de l'Intérieur*, 2017).

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recognised that the environmental degradation may cause a violation of the right to health of the applicant and used it as a leading argument.

However, it must be acknowledged that the judgement reveals several limitations. As a number of lawyers and scholars observed, while the case is a step in the protection of environmental migrants, it is unlikely that this outcome will become frequent unless the criteria for asylum are broadened. Indeed, the requirements to fit in the residence permit of the case are quite strict and do not consider a broad spectrum of consequences on the life of the applicant, but only extreme consequences on his state of health (Bendasdon, 2021).

5. Conclusion

Decree-Law No. 113/2018 has radically changed the legislative landscape of international protection in Italy. The subsequent Decree-Law no. 130/2020 intervened to correct some of the distortions that had been created, in particular by re-establishing a comprehensive form of complementary protection (special protection). The residence permit for calamity was introduced in 2018 to fill the protection gap created by the repeal of humanitarian protection. However, by broadening the scope and content of the special protection under Article 19, the new government has removed that gap and the residence permit for calamity appears to be unnecessary or even dangerous. At a closer look, two different conceptions of protection for environmental and climate-related migrants could be identified: On the one hand, there is the evaluation of the objective cause considered as triggering displacement, responding to the need to typify protection, usually leading to a restrictive application (i.e. residence permit for calamity). On the other hand, we witness the assessment of the applicant's subjective condition through a human rights-based determination process, consisting of a comprehensive analysis of his/her vulnerability (i.e. humanitarian and special protection).

The French case is of a different nature. Indeed, beyond international protection statuses, the domestic legal framework does not provide for a broad non-refoulement-based protection, but rather offers a highly specific and typified list of residence permits protecting third-country nationals from expulsion. Because each of these residence permits is based on a narrow list of grounds, and none of them mentions climate or environmental reasons, there is little room for including the latter as reasons to issue such residence permits. This represents the main criticism with regards to the Bordeaux tribunal decision. It is indeed evident that the decision is based on a number of factors specific to the applicant's case, involving first and foremost the requirement that his or her health be involved and negatively affected in case of return to the country of origin. It is obvious that not all people fleeing their country as a result of climate and environmental phenomena would satisfy such a requirement, and that consequences on health represent only one aspect of the general issue. Eventually, this means that the decision will positively affect a minority of persons displaced for such reasons, showing all the limitations of the absence of a comprehensive and broad-spectrum protection.

The comparison between Italian and French approaches to the phenomenon of climate and environmental-related displacement suggests that complementary protection regimes having a broader spectrum, and complying with International Human Rights Law would likely prove more efficient for those displaced people.

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Protection regimes based on a comprehensive evaluation of individual vulnerability - rather than on the severity of the environmental or climate-related event (such as the Italian residence permit for calamity) or on certain specific adverse effects arising from it (including the French residence permit for private and family life) - seem to be more adequate to fill the protection gaps in International Law. This is due to several reasons.

Firstly, environmental and climate disasters function as a multiplier of pre-existing vulnerabilities, in addition to triggering new threats. This means that the same disaster is likely to have a different impact on involved individuals, depending on their pre-existing conditions (Ionesco et al., 2017: 90-91; Hunter et al., 2011), resilience and adaptive capacity (IPCC, 2014; McLeman et al., 2010). Therefore, a protection or deportation decision based exclusively on the severity of the event would not adequately take into account this differentiated impact.

Secondly, the decision to migrate is a complex choice, involving both economic and non-economic factors (Geddes et al. 2012). The distinction between voluntary and forced migration in the context of environmental and climate hazards is extremely difficult (Hugo, 1996). This evaluation must be carried out by considering pre-existing and arising individual vulnerabilities.

The need for protection, therefore, should be determined through a comprehensive and comparative assessment, taking into consideration all human rights potentially at risk in the event of repatriation. Any partial assessment would not reflect the indivisibility and interdependency of human rights.

The Italian special protection under Art. 19 of the Consolidated Immigration Act seems the most appropriate protection tool which has been examined as it explicitly takes into account the individual human rights of the asylum seekers (including, but not limited to, the right to respect for private and family life) as well as the level of integration in the host country.

This lesson can arguably be extended to additional national systems as well as to the international legal framework. Rather than proposing *ad hoc* protection regimes by adopting new international protocols, conventions or guidelines on environmental and climate-displacement, which could prove useless or counterproductive, an evolutive interpretation of current international legal tools and customary norms (in particular, the *non-refoulement* principle) through a human rights-based approach should be consolidated, extending their applicability to vulnerabilities emerging from climate change and environmental degradation.

Legal research might play a key role in this process by refocusing its efforts from the objective cause assumed as triggering displacement to the arising individual vulnerability. As a first result, this would entail the irrelevance and the overcoming of certain defining issues, which have characterised and partially congested the doctrinal debate on environmental migration and climate displacement to date. Furthermore, assessing immigration and asylum systems according to the level of protection afforded to environmental and climate-displaced people and promoting best practices would contribute to fostering a dynamic interpretation of existing legal tools.

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QRP

Hardening Borders during the pandemic in the European Union: The Shape of the Schengen Borders Code and the EU Digital COVID Certificate[1]

Réka Friedery[2]

Abstract

COVID-19 pandemic restricted mobility. Border controls, travel restrictions, bans on entry and exit influenced mobility with implications on EU citizens and third-country nationals. When Member States of the European Union were confronted with COVID-19, the first reaction was to turn to border policy, similarly to the migration crisis in 2015. At the beginning of the pandemic, when the articles of the Schengen Borders Code (SBC) were triggered, workers with certain occupations were exempted from the restrictions, and with the introduction of the EU Digital COVID Certificate, people's mobility was linked to the possession of the health Certificate. This paper presents the multiple layers of free movement and its restrictions. The main aim of the article is to define the scope of the SBC and the EU Digital COVID Certificate that have been used during the crises. The article helps to understand the shortcomings of the EU's crises management by emphasising the problematic points of the application of the Code and the Certificate with a critical analysis of these measures.

Key Words:

European Union, COVID-19, mobility, Schengen Border Code, EU Digital COVID Certificate

1. Introduction

A borderless European Union has been present from the very first moment of the discussions about the Schengen Agreement, but the viability of the principle of free movement was always questioned. While seeing – and wanting - the economic benefits of lifting border checks between Member States, countries were also wary about the security deficit this would create (van der Woude, 2020). By definition, crises should sooner or later come to an end and give space to a period of 'normality'. In the case of the EU this 'normality' did not last very long since the Covid-19 crisis erupted just a few years after the 'end' of the Euro area and migration crises and while the Brexit process has not yet been completed (Wolff et al., 2020). The idea of a borderless Europe was suddenly challenged by security procedures and national interests whose guardians seemed to be predominately States (Opilowska 2021). Member States adopted their own different,

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uncoordinated and at times competing national responses according to their distinctive risk analysis frameworks (Alemanno, 2020), and States' efforts to manage the crisis in some cases meant the revival of borders that had been long disregarded or made irrelevant, as well as the creation of new borders where they previously had not been meaningfully present (Radil et al., 2021).

Containing the spread of COVID-19 is an exercise of emergency risk regulation on an unprecedented scale (Pacces et al., 2020). Any decision-making is based on the principle of precaution (whether expressed or otherwise) and it becomes more challenging to identify clear pathways to address the pandemic effectively that also minimise countervailing risks – something that may in itself justify national rather than international approaches, even whilst benefiting from the centralisation and sharing of scientific data (Dobbs, 2020). One of the central pillars of the response to handle the virus was that public officials at national and international levels encouraged social distancing to reduce the infection rate among the population. This principle has been translated into public policy measures that have reduced citizens' mobility, both within and across borders (Zaiotti & Abdulhamid, 2021), whereby the special border corridors, which were set up by some Member States for thousands of seasonal workers significantly departed from the general idea that free movement of persons should be temporarily sacrificed for the benefit of public health (Ramji-Nogales & Goldner Lang, 2020).

The reasons that EU Member States used to justify the reintroduction or prolongation of temporary internal border controls after 2015 reflected a crisis-mode policy-making on migration, asylum and borders (Carrera et al., 2018), and this crisis mode policy-making reappeared when confronted with the pandemic.

This study presents the problematic points during the application of the Schengen Border Code and the EU Digital Certificate. This is realized by two different methodological approaches, namely policy analysis and content analysis. The selected documents, the legislative and policy documents of the EU, supplement the analysis of the legal and policy framework. Moreover, the EURLEX database and secondary sources such as academic literature and research reports complete the analysis.

After this introduction, the first part of the article covers the legal background of the measures, whereas the second part analyses the Schengen Border Code in practice. This is followed by the third part involving the analysis of the EU Digital COVID Certificate, which is succeeded by the conclusion.

2. The Legal Frame of Restrictions

Freedom to cross borders between Member States was an economic objective to promote the free movement of workers. The Treaty establishing the European Economic Community covered the free movement of workers and freedom of establishment, and thus individuals as employees or service providers. The Treaty of Maastricht introduced the EU citizenship enjoyed by every national of a Member State, and it included the right to move and reside freely within the territory of the Member States. Freedom of movement became a fundamental right too, contained in Article 45 of the Charter of Fundamental Rights. But the right to free movement can be subject to limitations and conditions, as stated in article 45 TFEU: public policy, public security or public health are grounds for restrictions on the right of free movement and residence. Secondary legislation addresses the issue of restrictions that need to meet certain requirements, namely, Directive

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2004/38/EC. This Directive contains the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, and according to it, EU citizens or members of their family may be expelled from the host Member State on grounds of public policy, public security or public health.

Member States maintain the freedom to determine the requirements of public policy and public security in accordance with their national needs through justification for a derogation from the fundamental principle of free movement of persons. But those requirements must be interpreted strictly, so that their scope cannot be determined unilaterally by each Member State without any control by the Community institutions.[3] Public policy and public security are Community concepts that cannot be defined solely by the various national systems.[4] Member States retain the freedom to determine the requirements of public policy and public security in accordance with their needs, which can vary from one Member State to another and from one period to another; but they have to interpret those requirements strictly.[5] Also, they are not free to interpret the concept of risk to public policy in Article 7(4) of Directive 2008/115 solely according to their national law.[6] The concept of risk to public policy is neither included in the concepts defined in Art. 3 of Directive 2008/115 nor defined by other provisions of that Directive.[7]

Directive 2004/38/EC also specifies the kind of disease that can justify restrictions. According to this, the only diseases justifying measures restricting freedom of movement shall be diseases with epidemic potential as defined by the relevant instruments of the World Health Organisation or other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the host Member State.

As for internal borders, Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (SBC) contains the rules that govern checks on persons on external borders, entry conditions and the conditions of temporary reintroduction of border controls at internal borders[8] in the Schengen Area[9]. Articles 25, 28 and 29 can be used by Member States for temporarily reintroducing border controls at the internal borders in the event of a serious threat to public policy or internal security but only as last resort for a strictly limited scope and period of time, based on specific objective criteria and on an assessment of its necessity which should be monitored at Union level. A Member State's

[3] See, e.g., European Court of Justice (EJU), Judgement of 28/10/1975, Rutili vs. France, 36/75,paras. 26 and 27.
[4] European Court of Justice (ECJ), Judgement of 11/6/2015, C-554/13, Z. Zh. and I.O., vs. Netherlands, paras 48 and 54.
[5] ECJ, Rutili, para. 27; Judgement of 27/10/1977, Bouchereau vs. United Kingdom, Case 30/77, para. 33; and Judgement of 10/7/2008, Romania vs. Jipa, C-33/07, para. 23.
[6] ECJ, Z. Zh. and I.O., para. 30.
[7] ECJ, Z. Zh. and I.O., para. 41.
[8] Common land borders, including river and lake borders, of the Member States; the airports of the Member States for internal flights and sea, river and lake ports of the Member States for regular internal ferry connections
[9] These are Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland.

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decision about the reintroduction of border control cannot be vetoed by the European Commission.

As for public health in the EU primary law, EU actions only complement national policies and support actions taken by Member States. Member States coordinate among themselves their policies and programs in the areas covered by Union action in the field of public health. During the pandemic, the Commission highlighted that short-term and strongly coordinated action to strengthen key areas of preparedness and response will require strong coordination and exchange of information in and between Member States and communities as well as commitment to implement these measures, which are a national competence (European Commission, 2020a).

The EU can adopt health legislation on the ground of protection of public health, e.g., serious cross-border threats to health. In this regard, an important step forward was Decision 1082/2013 on serious cross-border threats to health which applies among others on communicable disease, laying down rules on epidemiological surveillance, monitoring, early warning of, and combating serious cross-border threats to health, including preparedness and response planning related to those activities, in order to coordinate and complement national policies.

3. Restrictions via Schengen

Schengen States have frequently reintroduced temporary border controls with one another, usually under the normal procedure for the purposes of safeguarding international events taking place in their countries, or in attempts to restrict irregular immigration (Guild et al., 2015). Recently, politics producing border security as a suitable response to external threats have directed the COVID response in many States as well. Pandemics, no less than migration waves or terrorist attacks, involve border politics (Kenwick et al., 2020), and while many COVID-19 restrictions are in fact responses to the virus, it is now clear that plenty are being coupled with or use migration enforcement controls (Sanchez et al, 2020). To understand this, we shall analyse the practice of the States using SBC during the pandemic.

While 17 Schengen Countries[10] notified the European Commission the reintroduction of controls at internal borders due to threats related to the spread of Covid-19 in 2020, other Schengen Countries[11] introduced restrictions on movement of persons that affected internal borders, such as temporary bans on non-essential travel (Sabbati et al., 2020).

They used either article 25 or 28 SBC depending on their aim: The articles differ from each other in the entry into force, the time period and the obligation of notification. Article 25 contains provisions for foreseeable events and can be used to reintroduce border control, that is to say, border checks and border surveillance. This can be adopted in all or specific parts of internal borders up to 30 days or for the foreseeable duration of the serious threat if it exceeds 30 days. There is the possibility to prolong for renewable periods of up to 30 days with a total maximum period of six months. Article 28 contains provisions for cases requiring immediate border control for up to ten days with renewable periods of up to 20

[10] Belgium, Czechia, Denmark, Germany, Spain, France, Estonia, Hungary, Lithuania, Austria, Poland, Portugal, Slovakia, Finland, Iceland, Switzerland and Norway.
[11] Italy, Latvia, Malta, the Netherlands and Slovenia.

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days with an overall maximum period of two months.[12] Article 25 (and also Article 26) imposes an obligation for Member States to notify the European Commission and other Member States. This shall be fulfilled at least four weeks before the planned reintroduction except if the circumstances that lead to reintroduced border control become known less than four weeks before the planned reintroduction. Of course, Article 28 imposes no obligation for prior notification, thus it shall be realized parallel to the immediate measure. The notification contains several obligatory parts: a list of information including the reason for the proposed introduction; all relevant data detailing the events that constitute a serious threat to public policy or internal security; the scope of the proposed reintroduction specifying for which parts of the internal borders controls will be introduced; the names of the affected crossing points; as well as the date and duration of the planned reintroduction.

In our case, the States listed not only COVID-19 as the reason for border controls, but interestingly saw it in a broader context. Thus, Hungary linked the epidemic to property security with a declaration of a state of emergency throughout the territory of Hungary in order to protect the health and lives of the Hungarian citizens and to prevent the consequences of the mass epidemic threatening the security of life and property of Hungarian citizens (Council of the European Union, 2020a). Austria linked the reintroduction of border control to migration, namely, that the current measures to combat the COVID-19 crisis might cause migrants getting stranded in the countries of the Western Balkans and, once lifted, will lead to increasing migration pressure. France described the potential terrorist threats, as the vulnerability of States, whose security forces are heavily involved in combating the spread of the COVID-19 pandemic, was conducive to new terrorist plots (European Commission, 2022, September 6; 2022, July 15). All of this points to the fact that States still use migratory movements as base for these restrictions even during the pandemic. This is further strengthened by the notification list's data: Among the States, only France indicates COVID-19 as reason for border control between 01/05/2022- 31/10/2022 (European Commission, 2022, July 15). A further example is Germany, that alternately used pandemic and migratory movement for justifying border controls as can be seen in Table 1 below.

Table 1: Period and Reason for Temporary Reintroduction of Border Controls from the Start of the Pandemic: Germany

Period	Reason
12/11/2019 - 12/05/2020	Secondary movements, situation at the external borders
16/03/2020- 26/03/2020	Coronavirus COVID-19, land borders with Denmark, Luxembourg, France, Switzerland and Austria.
19/03/2020- 29/03/2020	Coronavirus COVID-19, air borders with Austria, Switzerland, France, Luxembourg, Denmark, Italy and Spain, sea borders with Denmark

[12] According to the Commission's proposal on 14 December 2021 for amending Regulation (EU) 2016/399 (Schengen Border Code - SBC) on the rules governing the movement of persons across borders, when prolonging controls, Member States should first consider using alternative measures and need to provide a risk assessment when prolongations exceed 6 months. If prolongations exceed 18 months, the Commission should issue an opinion on their proportionality and necessity. The maximum duration for internal border controls would be 2 years but with extensions in specific circumstances (see for more: Guillaume, 2022).

26/03/2020- 15/04/2020	Coronavirus COVID-19, internal land and air borders with Austria, Switzerland, France, Luxembourg, Denmark, Italy and Spain, sea border with Denmark
15/04/2020-05/05/2020 12/05/2020-11/11/2020	Coronavirus COVID-19, internal land and air borders with Austria, Switzerland, France, Luxembourg, Denmark, Italy and Spain, sea border with Denmark Secondary movements, situation at the external borders, land border with Austria
05/05/2020- 15/05/2020	Coronavirus COVID-19, land and air borders with Austria, Switzerland, France, Luxembourg, Denmark, Italy and Spain, sea border with Denmark
16/05/2020-15/06/2020	Coronavirus COVID-19, land and air borders with Austria, Switzerland, France, Denmark, Italy and Spain, sea border with Denmark
16/06/2020- 21/06/2020	Coronavirus COVID-19, air borders with Spain (lifting the controls reintroduced on the basis of coronavirus at the borders with Austria, Switzerland, France, Denmark and Italy as of 15 June 2020)
12/11/2020-11/05/2021	Secondary movements, situation at the external borders, land border with Austria
14/02/2021-13/02/2021	Coronavirus COVID-19, land and air border with the Czech Republic, air border with Austria
24/02/2021-03/03/2021	Coronavirus COVID-19, Coronavirus COVID-19, land and air border with the Czech Republic, air border with Austria
04/03/2021-17/03/2021	Coronavirus COVID-19, land and air border with the Czech Republic, air border with Austria
18/03/2021-31/03/2021	Coronavirus COVID-19, land and air border with the Czech Republic, air border with Austria
01/04/2021-14/04/2021	Coronavirus COVID-19, Coronavirus COVID-19, internal borders with the Czech Republic
12/05/2021-11/11/2021	Secondary movements, situation at the external borders, land border with Austria
12/11/2021-11/05/2022	Secondary movements, situation at the external borders, land border with Austria
12/05/2022-11/11/2022	Secondary movements, situation at the external borders, land border with Austria
13/06/2022-03/07/2022	G7 Summit in Elmau; all internal borders

Source: Author's own table, data compiled from the European Commission (2022, July 15).

We shall highlight two elements of the notification procedure that concerns the States' discretionary power because these questions the transparency of decision-making. In connection with the notification, the Member States may, where necessary and in accordance with national law, decide to classify parts of the information although such classification must not preclude making it available to the European Commission and the European Parliament (SCB, art. 27). Another aspect of the SBC that we shall highlight concerns a report that shall be made within four weeks of the lifting of border control by the concerned Member State which has carried out border control. This report has to be submitted to the European Parliament, the Council and the Commission, and contains particularly the initial assessment and the respect of the criteria referred to in Articles 26, 28 and 30, the operation of the checks, the practical cooperation with neighbouring Member States, the resulting impact on the free movement of persons, the effectiveness

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of the reintroduction of border control at internal borders, including an ex-post assessment of the proportionality of the reintroduction of border control (SCB, art. 33). These reports are not accessible to the public. For both reasons, the procedure is lacking transparency.

We shall point out that, even though the European Commission underlined that the measures used by the States must not discriminate between Member States' own nationals and resident EU-citizens, also they must not deny entry to EU citizens or third-country nationals residing on its territory and must facilitate transit of other EU citizens and residents that are returning home, these standards were not met, however, by several States' practices. This could be observed in Hungary's case where only Hungarian citizens and EEA nationals holding a permanent residence card were allowed to enter the territory (Governmental Decree no. 81/2020). This led to discrimination and breach of EU law, because the Government granted exemptions to Czech, Slovak and Polish citizens (citizens of the V4 countries) with a negative coronavirus test, but no exemption to other EU nationals with a negative test. Moreover, though entry travel bans are not expressly foreseen by the Code, Hungary's notification stated that persons arriving from the countries most affected by the infection, namely Italy, China, South Korea and Iran would not be allowed to enter at any border crossing point (Council of the European Union, 2020).

The reintroduction of inner border controls in the EU was considered by Member States a necessity to prevent the spread of COVID-19, though at first, the EU emphasised that an effective border management to protect health through health checks of all persons entering the territory of Member States does not require the formal introduction of internal border controls (European Commission, 2020b). Later on, this viewpoint changed, namely, any restrictions should be based on specific and limited public interest grounds, including the protection of public health (Council of the European Union, 2020b). But border policy affected as well the functioning of asylum and reception systems. This was demonstrated at the beginning of the pandemic when the Commission called for a temporary restriction on non-essential travel to the EU and the external EU borders had been closed in March (Schengenvisainfo.com, 2020). Member States added further steps. E.g., Hungary suspended the admission of illegal migrants to transit zones on 1 May 2020.

4. Restricting or Facilitating with a Digital Certificate?

Did the EU Digital COVID Certificate restrict or facilitate freedom of movement? The answer depends on the viewpoint. The proposal concerning a Digital Green Card aimed to facilitate free movement against States' harsh border policy (European Commission, 2021). However, a critical aspect concerned the timing because the Commission's proposal could be seen again as a step lagging after the States', as experienced already at the beginning of pandemic with States introducing separately border restrictions without an integrated, EU-wide approach. Several States had already launched or were planning to introduce national COVID certificates. Hence, Italy, which was the European centre of the pandemic, introduced a so-called green card, which made it possible for people to move between the red and orange regions and to take part in various events (Bassu, 2021). In Hungary, Government Decree no. 60/2021. (II. 12.) related to the certification of protection against the coronavirus introduced the Hungarian immunity certificate whose delivery to the holders began after 1 March 2021. However, for intra EU movements, for example, it was not sufficient to present the Hungarian immunity certificate, as it did not indicate the data required as a condition of entry (the name of the vaccine and the time of the second dose).

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According to the proposal, the digital card intended to facilitate the exercise of the right to free movement in the EU, while at the same time reducing the threat of the coronavirus spreading. The card enabled EU citizens and their family members exercising their right to free movement to certify that they met the public health requirements laid down by the destination country in accordance with Union law. According to this, vaccination, a negative test, and recovery from COVID-19 might de facto prevent or reduce the risk of transmission. Here, we shall point out the wording 'may', the use of the conditional tense, which may have been due to the fact that the World Health Organization opposed the criteria of a vaccination certificate at border crossings when entering another country. The WHO was of the opinion that there were still critical, unanswered questions related to the effectiveness of the vaccination in reducing the spread of the infection. Thus, it recommended that vaccinated individuals should not be exempted from other measures aiming to reduce the risks during travelling (WHO, 2021).

The Regulation (EU) 2021/953 on the European Digital COVID Certificate (EUDCC) entered into force on 1 July 2021 for 12 months with an initial expiry date of 30 June 2022. However, in line with the pandemic situation[13] the Commission proposed the extension of the Certificate, and it has been prolonged until 30 June 2023.[14] In this regard, we shall point out another concern related to the original Commission proposal on the Digital Green Card: The framework for the issuance, verification and acceptance of vaccination/test/ recovery certificates would have been suspended if the WHO Director-General had declared the end of SARS-CoV-2 epidemiological emergency. Thus, originally there was no final date set, and the end of the outbreak would have been linked to a WHO statement.

According to Regulation (EU) 2021/953, the card is valid until 30 June 2023[15] in the 27 EU Member States as well as in Iceland, Liechtenstein, Norway and Switzerland. As for the personal scope, it concerns EU citizens, their family members and third-country nationals who are legally residents or residents in the territory of a Member State and who fulfil one of the following conditions: have been vaccinated, recovered from an illness or have tested negative. Accordingly, the Regulation allows for the issuance, cross-border verification and acceptance of three types of digital certificates, the vaccination card, the test card and the recovery card[16]. The EU card contains the name and date of birth of the holder, the date of issue, information on vaccination/testing/recovery and a unique identifier. The certificate has a QR code that is used to verify the data, but no data is transferred or stored. All other health data shall be kept exclusively by the national authority issuing the EU Digital COVID Certificate.

[13] The European Parliament's Civil Liberties Committee (LIBE) has supported the European Commission's proposal to extend the frame for another year until June 2023. See Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2021/953 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic. Brussels, 3.2.2022, COM(2022) 50 final 2022/0031 (COD).

[14] By June 2022, over 1.8 billion Certificates had been issued see (Schengenvisainfo.com., 2022a)

[15] Art. 17.

[16] Ibid. Recovery certificates will be granted for travellers who have tested negative with rapid antigen tests, which has not been possible previously (Schengenvisainfo.com., 2022b).

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The regulation seeks to facilitate the application of the principles of proportionality and non-discrimination with regard to restrictions on freedom of movement during pandemics, and to facilitate the exercise of their right to free movement by cardholders. At the same time, it is important to emphasize that the EU Digital COVID Certificate prevents the discrimination of non-vaccinated people and allows them to exercise their right to free movement with a negative COVID test or proof of recovery from the disease. However, we shall point out that there can be also possible discriminations on the basis of nationality because Member States are at different rates of vaccination. As vaccinations become more widely available, vaccination certificates may continue to discriminate on the basis of age or vulnerability, for example, as certain individuals may still not be vaccinated (for example, young children or for health reasons).

The Regulation has a number of objectives, namely to facilitate cross-border free movement and to allow the lifting of stricter national measures, such as travel/entry bans and testing requirements. But the Regulation allows Member States to go beyond the three conditions for cross-border movement during the pandemic and to adopt more stringent measures; it only requires to refrain from imposing further restrictions on free movement. However, it adds that if a Member State imposes stricter conditions on holders of the EU Digital COVID Certificate, it must notify the other Member States and the Commission before introducing such a measure and must determine the reasons, the scope and the duration.

Although the creation of the EU Digital COVID Certificate had the aim to facilitate movements across the EU internal borders, we shall highlight the added advantage that Member States could use the Certificate for purposes other than that. In practice, they utilized it, for example, as a condition for participation in cultural, sporting and social events. Moreover, looking at Member States' practice, in Hungary the EU Certificate was also accepted for outsiders entering public education institutions (Decree 29/2021, IX. 19). Additionally, not only public but private companies, too, could choose to use the EU Digital COVID Certificate for purposes other purposes but only in accordance with national law, EU fundamental rights and the EU legislation on free movement, as well as in line with the principles of non-discrimination and proportionality.

The harmonization of restrictive measures on free movement is underlined by the new Regulation, as we have witnessed free movement restrictions were imposed mostly unilaterally by Member States, without the coordination among them or at EU level. But we shall emphasise that at the same time, we have seen coordination at the EU and Member State level on the issue of the Union's external borders, i.e., restrictions on third-country nationals as mentioned before. This picture is also reinforced by the fact that the European Commission acted extremely quickly in response to the COVID mutation in southern Africa as an emergency brake mechanism was introduced when flights from the concerned African region were stopped and travellers from the region had to stay in strict quarantine. Here, the emergency brake mechanism was used, which did not apply to EU citizens, long-term residents and certain categories of essential travellers. It is important to point out that their national COVID certificates were not taken into account: They were subject to testing and quarantine measures, regardless of whether they received full vaccination or not (The Council of the European Union, 2021).

As mentioned above, the still present Covid-19 virus and certain travel restrictions within the EU led the European Commission to propose to extend the EUDCC regulation with

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Regulation (EU) 2022/1034 (Niestadt, 2022) and also to introduce several amendments. First of all, it contained again an obligation for the Commission to submit a detailed report by 31 December 2022 as Regulation (EU) 2021/953 had already obliged the Commission to publish a report.[17] Moreover, it clarified that vaccination certificates should reflect all doses administered, regardless of the Member State where people received their vaccination. It also introduced the expansion of the range of authorised antigen tests used to qualify for a EU Digital COVID Certificate, the possibility to issue a certificate of recovery following an antigen test and the possibility to allow vaccination certificates to be issued to persons participating in clinical trials. A critical aspect of the extension is that no impact assessment had been made beforehand: An assessment would have highlighted the efficiency and proportionality of the measures that impact fundamental rights. This is particularly important as the Certificate requires the processing of personal data to fight COVID-19 (EDPB-EDPS, 1/2022).

5. Conclusion

Based on the analysis, a very complex picture emerges in the area of free movement, Schengen border and public health in the area of Member States' competences and the EU's action. At the beginning of the pandemic, when the articles of the Schengen Borders Code (SBC) were triggered, workers with certain occupations were exempted from the restrictions, and with the introduction of the EU Digital COVID Certificate, people's mobility was linked to the possession of the health Certificate.

On the one hand, the latest approach, the EU Digital COVID Certificate confirms and reinforces the EU's ability to divert States' interests towards an integrated solution. In the event of an epidemic, albeit slowly, a solution acceptable to all Member States has been found. The main advantage of the EU Digital COVID Certificate is that it can exempt from the restrictions on free movement, and generally Member States must refrain from introducing additional travel restrictions for those possessing such a Certificate. The EU allowed exemptions for certain categories of people on the condition that they hold an EU Digital COVID Certificate. In the case of the SBC, such exemptions from restrictions were limited to a narrower group of persons, to certain workers; but, in principal, the Digital Certificate granted all persons entitled the opportunity to exercise their right to free movement within the EU. In this way, the concept of freedom of movement has shifted first towards the free movement of workers with certain occupations and then of persons possessing a specific medical certificate.

On the other hand, in recent years, the European institutions and the major European governments have launched a debate on a possible reform of Schengen. This debate has been intensified by the migration crisis and accelerated by the pandemic, and the need to reforms has been demonstrated again. The closure, control of internal borders depends on the individual Member State, which could lead to the closure of the European borders, undermining one of the foundations of European integration. However, in the case of the pandemic, Member States were open to an integrated approach in order to overcome the crisis. Furthermore, we shall emphasise that some restrictions have been implemented

[17] The report gave an overview among others about the implementation of the Regulation, information on other developments regarding the EU Digital COVID Certificate or the Member States' use of the EU Digital COVID Certificate for domestic purposes (European Commission, 2021b).

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by countries with a history of anti-immigrant stance, furthering concerns about their fundamental objectives.

Finally, as almost all EU documents related to the pandemic contain references to the importance of the functioning of the internal market that turned out to be finite due to Member States' own approach to manage the pandemic, the EU Digital COVID Certificate contributes significantly to a more harmonized approach to free movement.

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QRP

The Mandate and Practice of the UN Special Rapporteur on the Human Rights of Migrants: Some Reflections in the Light of International Law[1]

Luigino Manca[2]

Abstract

The UN Special Rapporteur on the human rights of migrants is an independent body, created by the former Commission on Human Rights, and whose mandate has also been confirmed by the current Human Rights Council. The article explores the fundamental role of the Rapporteur in the promotion and protection of migrants, considering relevant and recent practice of the body. With specific reference to the monitoring task of the Rapporteur, in particular, more emphasis has been placed on the monitoring mechanism based on the country visits, which provides direct information about the real situation of migrants and the implementation of the international legal obligations relating to the human rights of migrants, also thanks to the direct dialogue with national human rights institutions (NHRIs), Non-governmental Organisations (NGOs) and other civil society actors. The practice analysed in this work showed that the Rapporteur has used this monitoring tool on several occasions. However, there are practical limitations that are strictly linked to the need to acquire the prior consent of the State concerned. Consequently, in order to reinforce the supervision role of the Rapporteur, the article concludes underlying the importance to develop further the standing invitation practice.

Key Words:

United Nations, Special Rapporteur, human rights, migrants, monitoring

1. Introduction

In recent years, both academics and human rights activists have increasingly focused on migration. This can be partly ascribed to growing fluxes of migrants, States' restrictive approaches towards migration, and the COVID-19 pandemic. The latter, as expected, has had a negative impact on the human rights of migrants. In this disheartening picture, it appears well suited to consider the contribution of the UN Human Rights Council in the promotion and protection of the human rights of migrants. More specifically, this article focuses on the role of the UN Special Rapporteur on the human rights of migrants, operating within the "Special Procedures" of the Council (for a general overview of the United Nations Special Procedures see, among others, Cook, 1993; Nifosi, 2005; Ramcharan. 2008; Tomuschat, 2008; Golay et al., 2012; Cantú Rivera, 2015; and more recently Nolan et al., 2017; Domínguez-Redondo, 2020). Accordingly, the first part of the paper briefly illustrates the contribution of the Human Rights Council in the field of migration, while the second concentrates on the mandate and practice of the Special Rapporteur. The main scope of

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this contribution is to examine the latter's potentials and limitations. From a methodological point of view, the study in its whole will be conducted taking into account the normative documents and the relevant practice of the Rapporteur, also using a comparative approach in order to better understand its *modus operandi*.

2. Brief Overview of the Contribution of the Human Rights Council in the Field of Migration

As it is well known, the UN Human Rights Council (HRC) is the intergovernmental body that replaced the former UN Human Rights Commission (created in 1946 by the Economic and Social Council). The General Assembly created The Human Rights Council via Resolution 60/251 of 15 March 2006 (the bibliography relating to the HRC is quite wide; among the most recent contributions see Freedman, 2013; Ramcharan, 2015; Gallen, 2016; Freedman et al., 2017; Tistounet, 2020). Questions relating to the human rights of migrants are continuously included within its agendas, and the body has intervened on the topic under consideration several times. It actively participates in the protection of the human rights of migrants through the adoption of non-binding acts, resolutions specifically.

These international acts usually also reaffirm some general principles. Among these, we can mention those according to which all States have a "duty to effectively promote, protect and respect the human rights and fundamental freedom of all persons", and "all migrants, regardless of their migration status, are human rights holders" (Human Rights Council, 2019; 2021).

The attention of the Council has also been systematically drawn to problems and needs of vulnerable groups, especially unaccompanied and separated migrant children. On this specific point, the reading of resolutions confirms, *inter alia*, the relevance of the well-known principle of the best interest of the child, in line with the Convention on the Rights of the Child (adopted 20/11/1989, entered into force 2/9/1990, 1989, 1577 UNTS 3, 1989 CRC).[3] This best interest must be ensured "in both the development and implementation of [national] legislation and policies" relating to minors, "including by facilitating family reunification" (Human Rights Council, 2021).

It comes as no surprise that, more recently, specific attention was also paid to the effects of the COVID-19 pandemic on migrants. In this respect, the Council called upon all States "to take a human rights-based approach in their responses to the COVID-19 pandemic, explicitly including all migrants […] with specific attention to those in vulnerable situations" (Human Rights Council, 2021).

Within the institutional context of the Council and with reference to its thematic mandates[4], specific mention should now be made of the Special Rapporteur on the human rights of migrants.

[3] Until now, the Convention is the human rights treaty that has received the highest number of ratification (196 parties) (UN, 2022).
[4] The practice of the "Thematic Mandates" was introduced by the former Commission on Human Rights (see generally Kamminga, 1987; Gutter, 2006).

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3. The UN Special Rapporteur on the Human Rights of Migrants: Institutional Aspects and Practice

From an institutional point of view, the UN Special Rapporteur on the Human Rights of Migrants is an independent body, created in 1999 by the former Commission on Human Rights. Its mandate has also been confirmed by the current Human Rights Council (2020). In general terms, this independent body's task is to promote and protect the rights of migrants in all States, regardless of their ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted 18/12/1990, entered into force 1/7/2003, 1990, 2220 UNTS 3, 1990 ICRMW) (Special Rapporteur on the Human Rights of Migrants, 2020a; generally on the ICRMW Cellamare, 1992; Eggers, 1992; Baratta, 2003; Cholewinski et. al. 2009; Bosniak, 2016; Western et al. 2019).

As regards promotion and prevention activities, the Special Rapporteur has the task to draft and submit reports or thematic studies to the Human Rights Council and the UN General Assembly. He or she may also participate in conferences, seminars or other meetings concerning the protection of migrants (UN Human Rights Office of the High Commissioner, 2022). With reference to the production of the thematic studies above, the activity of the Special Rapporteur can be considered intense and frequent. Among recent reports – drafted also upon reception of inputs by various actors, such as civil society and national human rights institutions (NHRIs) – one can include the following:

- Report on the impact of COVID-19 on the human rights of migrants (Special Rapporteur on the Human Rights of Migrants, 2021);
- Report on ending immigration detention of children and seeking adequate reception and care for them (Special Rapporteur on the Human Rights of Migrants, 2020b);
- Report on the right to freedom of association of migrants and their defenders (Special Rapporteur on the Human Rights of Migrants, 2020c);
- Report on access to justice for migrant persons (Special Rapporteur on the Human Rights of Migrants, 2018).

All reports have a consolidated structure; usually, they also contain recommendations to States or other entities, including civil society and migrants' associations (e.g., Special Rapporteur on the Human Rights of Migrants, 2016).

Most striking is the Special Rapporteur's monitoring function. The methodologies employed by the Special Rapporteur in this monitoring work are twofold. Briefly, the body is both entitled to receive and examine information relating to a violation of the human rights of migrants in a said State, as well as to organise an actual visit to the alleged place of violation.

As regards the first mechanism, the Special Rapporteur may send a State a communication aimed at obtaining information about alleged violations of international obligations linked to its mandate. More frequently, these communications are sent jointly with other thematic mandate-holders. Recently for instance, the Rapporteur, together with the Special Rapporteur on extrajudicial summery or arbitrary executions, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the

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promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on minority issues, sent a communication to Bangladesh relating to the killing of a human rights defender and the death of some refugees, members of the Rohingya minority (Special Rapporteur on the Human Rights of Migrants et al., 2021).

Looking at the practice, institutional co-operation with UN treaty bodies is also important. Recently, for instance, the Special Rapporteur and the UN Committee on the Protection of the rights of All Migrant Workers and Members of their Families adopted a Joint Guidance on the Impacts of the Pandemic on the Human Rights of Migrants (UN Committee on the Protection of the rights of All Migrant Workers and Members of their Families, 2020). Within this document, the two bodies expressed concern about the situation of migrants:

> "[…] the COVID-19 pandemic is having serious and disproportionate effects on migrants and their families globally. Migrants who are in an irregular situation or undocumented are in situation of even greater vulnerability. Migrants in many cases already do not have effective access to medical care, education and other social services, work in unstable jobs - usually without benefits or the right to unemployment benefits - and in some cases have been left out of the social assistance measures implemented by States […]" (p. 1)

They emphasised the need to ensure the exercise of the rights of the migrants (access to social services, education, health services) and to prevent any kind of discrimination (p. 1). The relevance of this institutional synergy is self-evident, and the practice of Joint Communications to be welcomed. Given that the Special Rapporteur is devoid of coercive powers, Joint Communications can represent a form of reinforced international pressure capable of persuading States to respect their international obligations.

As regards the second monitoring mechanism, the so-called "country visits", these are the most efficient way to gain direct and immediate information about the current state of migrants in a said country. Thus, this paper would like, lastly, to delve deeper in these.

During these visits, the Special Rapporteur may speak to governmental bodies, NGOs, national human rights institutions and, more importantly, migrants themselves. From a comparative analysis of the practice relating to country visits, it emerges that the Rapporteur has widely exercised this task. His first visit took place in Canada in 2000. Several other countries have since been visited, including Hungary, Japan, Malta, Mexico, South Africa, Turkey and Italy.

Country visits may be organised upon request of the Special Rapporteur, or at the invitation of a Government. Practically, most visits are undertaken at the invitation of the State. The Special Rapporteur, in line with the practice of the others UN Special Rapporteurs, may organise first visits and follow-up visits; this latter typology of visits is usually organised in order to evaluate the status of implementation of the previous recommendations made.

Again, a review of the practice indicates that visits have also been conducted to promote the ratification of international treaties. This is the case, for instance, for the mission organised in 2006 in the Republic of Korea. The final report explicitly asserted that one of the main purposes of the visit was "to promote the ratification of the 1990 International Convention on the Protection of the Rights of All Migrant Workers" (Special Rapporteur on the human rights of migrants, 2007, p. 4); unfortunately this was without success.

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There is no specific practice about mission duration, or places to visits; for instance, the Special Rapporteur has visited asylum reception centres (Special Rapporteur on the human rights of migrants, 2020a), police stations (2013a), transit zones at the airports (2013b) and removal centres (2010).

Upon conclusion of the visit, the Special Rapporteur drafts a report. From a methodological point of view, all reports are drafted following specific guidelines. In brief, they are detailed and contain general information about the mission, places visited, and the level of cooperation received from national authorities. Cooperation is an important feature of the mechanism under consideration; it is clear, indeed, that the full assistance of national authorities is essential for the success of the mission itself. This is confirmed by the fact that the report devotes a specific section to this issue. The final part of the report usually contains general or specific recommendations to the State.

4. Conclusive Remarks: The Need to Encourage the Standing Invitation Mechanism

In light of the above, some general conclusions can be drawn on the limitations and contributions of the mandate of the Special Rapporteur on the human rights of migrants.

It is clear that the Human Rights Council plays a critical role in the promotion and protection of migrants' rights. Within this context, the Special Rapporteur constitutes a key point of reference in terms of both policy setting and monitoring activity.

Remarkable are the Rapporteur's monitoring functions. The possibility of conducting country visits, especially, constitutes one of this mandate's main strengths, for two main reasons. Firstly, in this way, the Rapporteur can establish a direct dialogue with the Government; secondly, he or she may cooperate (in various ways) with local NGOs. On the one side, this cooperation can be considered the main target of the visits; on the other, this inclusive approach is in line with the working methods of other international monitoring bodies. True, the Special Rapporteur cannot adopt binding instruments (as a consequence of its legal status) but its Recommendations – and, more specifically, the publication of the results of its investigations – can generate some kind of "public pressure". Among others, all reports are published on the Special Rapporteur's website. This has the potential to influence the conduct of the State considered, inducing the latter to change its law or practice. To put it differently, we cannot underestimate the effects of the Special Rapporteur's mandate.

The main obstacle to country visits remains State consent. Although States are not obliged to give their consent (for more considerations see Nifosi, 2005, p. 65), in practice they are expected to do so, showing the international community that they are ready to cooperate with international bodies in protecting human rights. Actually, States should be encouraged to issue a "standing invitation" (for general considerations on this mechanism, see Marchesi, 2021, p. 159). This is an open invitation, by States, to all thematic procedures; civil society, including NGOs and NHRIs, may play a key role in this respect, prompting States to issue standing invitations.

As of January 2022, only 128 UN Member States (out of 193) have extended a standing invitation. This data confirms the reluctance of States to accept supervision mechanisms different from the well-known reporting procedure; mechanisms that, more probably, are regarded as intrusive. In the short-term, the wish is for more States to issue a standing

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invitation. As suggested on several occasions by the former UN Human Rights Commission and by the UN Human Rights Council, this may strengthen the reputation of States as upholders of protection for migrants and, more importantly, the monitoring role of the Rapporteur.

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CONFERENCE REVIEWS

Will the Welcome ever Run Dry?: Interrogating the Hierarchy of Human Categories - The Case of Ukrainian Refugees in Europe[1]

Ndangwa Noyoo[2]; Tanja Kleibl[3], Melinda Madew[4], Minenhle Matela[5], Ronald Lutz[6], and Marcin Boryczko[7]

1. Introduction

This review summarises and chronicles inputs from several speakers who attended a conference titled: *Will the Welcome ever Run Dry?: Interrogating the Hierarchy of Human Categories – The Case of Ukrainian Refugees in Europe*. The conference interrogated the refugee crisis which had been precipitated by Russia's unprovoked war against Ukraine. It was organised by Tanja Kleibl, Melinda Madew, Minenhle Matela, Ronald Lutz and Ndangwa Noyoo and held at the University of Applied Sciences Würzburg-Schweinfurt on 17 March 2022. The conference participants were social work academics, practitioners, students and activists, and it was delivered in a blended mode. Crucially, it was meant to be a call to action to the social work profession around the world, especially in Europe. Also, the organisers wanted to cast a sharp light on the refugee crisis from a social work perspective and highlight the discrimination which was associated with this phenomenon. Indeed, media reports and other accounts had identified this disturbing trend, whereby African and non-European students from developing countries, who were equally fleeing the war zone with Ukrainians, were ill-treated and discriminated against by Ukrainian and Polish security forces. These officials allegedly allowed only Ukrainians and European-looking people to cross the border (Chebil, 2022; Pronczuk et al., 2022).

2. The War in the Ukraine and Double Standards related to the Displaced

The conference was opened by two of the organisers, Tanja Kleibl and Melinda Madev. In her remarks, Kleibl noted that earlier she had participated in the drafting of a position

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paper titled "No war in Ukraine!" as a member of an Expert Group of International Social Work for the German Association of Social Work (DGSA, 2022), together with members from the Expert Group for Flight, Migration, Critique of Racism and Anti-Semitism within the German Association of Social Work (Deutsche Gesellschaft für Soziale Arbeit – DGSA). Kleibl noted that social work academics and practitioners needed to be cognisant of the fact that they were already part of this conflict because of its ramifications on global human security. Hence, there was no "neutral" way of meeting the needs of those fleeing the war. She pointed out that social workers needed to take a stance on various issues that affected the poor and vulnerable people of the world. While amplifying the statements of the International Federation of Social Work (IFSW) of 24 February 2022 and of the International Association of Schools of Social Work (IASSW) of 26 February 2022, the organisers of the conference agreed to stand in solidarity with the people of Ukraine and condemn the unjust and unprovoked attack on Ukraine by the Russian military forces (IASSW, 2022). It can be noted that all the conference participants were not only concerned about this perilous situation but they were equally horrified by the Russians' bombardment of civilian buildings, schools and hospitals and the extremely dangerous attack on the Chernobyl nuclear complex. Furthermore, they all condemned any form of imperialism, proxy wars and national populism, which were working against the peaceful cohabitation of all people in a diverse and globalised world. Kleibl drove her point home by asserting that Putin's justification of the war in Ukraine, ironically, subverted a language of "the responsibility to protect" that had become some kind of an exclusive property of the West (International Commission on Intervention and State Sovereignty [ICISS], 2001). However, the West, in reality, had lost some of its "protection status" through its ever-increasing participation in the international arms trade (Rose, 2019) and not at least as well, through violent pushbacks against refugees (Oxfam et. al., 2017) seeking asylum within the Europe Union (EU), Kleibl concluded.

Interestingly enough, Kleibl observed that many States in the Global South had abstained from voting on the first United Nations resolution on the war in the Ukraine (United Nations, 2022). She speculated that the reason some of them abstained from the vote is partly that they felt "it was not their war" and it may even have been based on a residual sense of loyalty for support received from the former Soviet Union (Union of Soviet Socialist Republics – USSR) during the struggle for freedom and after independence. Thus, this could also be some kind of "afterlife" of the Non-Alignment Movement (NAM) and a call for a way out of the "Big Power" political bullying and for a new focus on a consistent application of the international rule of law (Stubbs, 2020). Kleibl stated that she personally found the reference to the NAM particularly relevant, although in Europe, countries seemed far removed from a non-aligned position or what may also be referred to as "third way" – which in the past had advocated for a non-aligned "third world", that is, a world not dominated by the East or the West (Stubbs, 2020). According to Kleibl, Putin's current aggression might be partly traced back to the loss of an empire and the erosion of Russia's post-Soviet role as a global power in the shadow of the North Atlantic Treaty Organisation's (NATO's) expansion (and expansionist motives) (Liik, 2022).

Notwithstanding the war in Ukraine, it is also important to note that there are still some disastrous proxy wars which have not been overtly protested or loudly mobilised within Europe. Such wars have also not resulted in refugees from such conflict areas being granted asylum seamlessly (Hartung, 2022). It is within this refreshed Cold War scenario, that Germany announced a special budget of 100 billion Euro to strengthen its military

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forces (Hansen, 2022). Kleibl doubted if this would de-escalate or even end the conflict. In the same vein, she observed that while political rhetoric and ideologies clashed, it was doubtful if all refugees would be treated equally in Europe. And this was precisely the topic that the conference chose to tackle. Indeed, in the recent past, some refugees were welcomed with open arms while others were harassed. Some even froze to death or drowned at the borders of "Fortress Europe", in Polish forests (Neumeyer, 2021). Hence, the Russian military aggression against Ukraine has revealed a double standard and misplaced solidarity from European societies.

Concretely, racism and various forms of discrimination were exemplified in the following manner:

- *At the borders:* People of colour – most of them from the Global South – as well as Sinti and Roma, were threatened by right-wing groups and the military at the Ukrainian-Polish border (e.g., at Przemyśl and Lublin). Some of them were barred from entering the EU (Yakutenko, 2021; Jakil, 2022).
- *During refugees' movements* – Fleeing students from the Global South, for example, were excluded from the free trains to Germany provided by the German Railways. In the same period, fleeing African students faced further discrimination in Germany (Walker, 2022; Jakil, 2022).
- *In the context of receiving refugees* – Kleibl observed that while in the recent past Ukrainians had often been exploited in Germany as labourers in the meat and agriculture industry, as well as care work, they were now getting a lot of help from the citizens. While this positive change was welcomed, refugees from the Global South, however, had to stay in closed camps on the Greek islands (International Rescue Committee [IRC], 2022).

In concluding her opening remarks, Kleibl noted that many media outlets were further pushing the abovementioned issues and exclusionary patterns ("othering") by labelling and categorising people on the move in their news reports and television debates (Noyoo et al., 2022). Thus, in the conference, social work lecturers, researchers and practitioners were confronted with this critical question: Was there any guarantee that the overwhelming open and welcoming attitude in Western Europe towards Ukrainians would not one day run dry due to the aforementioned hierarchy of human categories?

3. The Unfolding Debate: Perspectives from Poland, and South Africa

In order to further contextualise the conference's debate, Marcin Boryczko (Marcin Boritschko), from the University of Gdánsk in Poland proffered a brief situational report and analysis of how things unfolded on the Polish side. After that, South African based scholars, namely, Minenhle Matela, a master's student at the School of Governance at the University of the Witwatersrand (Wits), and Ndangwa Noyoo, professor at the University of Cape Town (UCT), and at that time a guest professor at the Catholic University of Applied Sciences in Munich, presented an African perspective on the Ukraine crisis. This was followed by a debate with the audience and with conclusions drawn by Ronald Lutz, a retired professor from the University of Applied Sciences at Erfurt and lecturer at the University of Applied Sciences Würzburg-Schweinfurt.

Noyoo et. al. (2022). Will the Welcome Ever Run Dry?
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3.1 The situation in Poland

The presentation by Boryczko proffered a summary of the situation in Poland. He noted that there were over 5.9 million people who had crossed into Poland from Ukraine since 24 February 2022 (Sas, 2022). In the said period, Poland's parliament had passed a law to assist refugees. However, non-Ukrainians (e.g., Africans) who were residents in Ukraine before the war and had fled to Poland were excluded from State and non-State support (Wądołowska, 2022), as only Ukrainian citizens benefitted from the former (Bior et al., 2022). Boryczko concluded his presentation by warning that civil society in Poland would not solely cope with the refugee crisis. It may not be able to manage the process without systemic support and funding.

3.2 Perspectives from South Africa

In her presentation, Matela argued that from various international media accounts, it was discernible that there was an openness and willingness from European countries such as Poland, Moldova, and Hungary to accept and assist Ukrainian refugees fleeing their homeland. In addition, Ukrainian refugees were issued solidarity tickets and provided transport to exit the war zone, while their applications for asylum were fast-tracked (Carroll, 2022). According to the European Commission (EC) the European Union (EU) was even contemplating a three-year temporary residency permit for Ukrainian refugees to find work, and access benefits in EU countries (von der Leyen, 2022). Matela further noted that the EU Member States had publicly declared their willingness to accommodate as many Ukrainian refugees as possible (Buras et al. 2022). The Polish Member of the EU Commission had even offered to host a refugee family in his home. While these gestures of kindness, generosity and solidarity were extremely heart-warming, Matela found it hard to ignore the salient discrimination against other groups of refugees.

Matela noted that it seemed that such generosity and solidarity was only extended to a certain group of people, namely, Europeans. Incidentally, it had been not so long ago, when another humanitarian crisis unfolded which elicited an opposite response in Europe. In 2015, Syrian and North African refugees seeking asylum were rejected by Poland and Hungary because of so-called lack of *"space"* (Ekblom, 2019). The non-European refugees were sent from "pillar to post" while the Hungarian and Polish police forces were even instructed to shoot anyone who had tried to cross the border with rubber bullets (NEWS WIRES, 2015). In fact, Hungary went as far as to erect a four-metre-high razor fence (Associated Press, 2015) to keep out refugees from the country. Unsurprisingly, in 2022, in current affairs, the world is again witnessing discriminatory acts in a crisis that affects people of every race in the same way. However, it is very hard to ignore the discrimination pointed out earlier and the obvious "othering" of African and Indian students at the Ukrainian border (Bior, et al., 2022). This situation raises this question: Should the term "refugee" be applied in reference to skin pigmentation? On the contrary, this should not be the case. According to the United Nations High Commission for Refugees (UNHCR), *"[r]efugees are people who have fled war, violence, conflict or persecution and have crossed an international border to find safety in another country"* (UNHCR, n. d). This can be any person, of any race, religion, or culture. Quite the opposite, the Bulgarian Prime Minister went so far as to express the following view: "These are not the refugees we are used to […] these people are Europeans. These people are intelligent, they are educated people" (Brito, 2022).

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While these incidences were unfolding, Africans responded with dismay. In fact, some African leaders expressed dissatisfaction with the discrimination of Africans at the Ukrainian border, noted Matela. For instance, the Nigerian President Muhammadu Buhari made the following observation: *"All who flee a conflict situation have the same right to safe passage under the UN [United Nations] convention, and the colour of their passport or their skin should make no difference"* (Akinwotu et al., 2022). Many African students condemned the racist acts they had been subjected to while trying to escape the conflict in Ukraine. Nigerian, South African and Kenyan students had conveyed their frustration regarding the discrimination at the Ukraine-Poland border. For example, Korrine Sky, a medical student from Zimbabwe, stated that trying to leave Ukraine was like "*Squid Games*" with Ukrainians and Europeans at the top of the hierarchy, while people from India and the Middle East were in the middle, and Africans at the bottom (Ray, 2022). It must be stated nonetheless that most of these racist incidences transpired on the Ukrainian side of the border.

Noyoo concluded this section by pointing out that this was not the first time that this part of the world had seen African students. Being part of the old USSR, there were many Africans who were trained in Ukraine and other countries in the former Eastern Bloc, from the 1950s to present times. In fact, during the Cold War, more than 50,000 African students attended tertiary education in the Soviet Union, and tens of thousands studied in other Eastern Bloc countries (Katsakioris, 2021). Noyoo further argued that it was important not to conflate the situation of the African students in Ukraine today with that of Africans migrating to Europe via the Mediterranean Sea as it complicates the former's position in Europe. This is because, new political developments and social discourses fed by media hysteria, based on half-truths and stereotypes of African migrants, had emerged in many parts of Europe prior to the Ukraine crisis. In many European countries where African migrants arrived, the authorities and local populace were reluctant to receive and look after them (Noyoo et al., 2022; Kleibl et al., 2022). In some countries, such as Italy and Greece, Africans arriving via the Mediterranean Sea had been turned back and told to return to their countries (Kingsley et al., 2020). The rise in migration across the Mediterranean Sea had given birth to a particular narrative in the political and media arenas of European nations which had led to the tightening of immigration regulations and stringent border restrictions (Kozera et al., 2019; Noyoo et al., 2022, p. 208).

Noyoo further observed that it was important to contextualise the reluctance by some African countries to outrightly condemn Russia. This was mainly because when they were fighting for freedom against colonial regimes, which were always supported by Western powers, the USSR had provided moral, financial and military support to the African liberation movements, especially those in southern Africa. For instance, the ambivalent approach by South Africa in condemning Russia should be understood against this backdrop. Many *Umkhonto we Sizwe* (MK) combatants of the African National Congress (ANC) and other liberation movements of South Africa that fought against the apartheid regime were trained in the USSR, when Western countries were not willing to do so (Nolutshungu, 1975; Simpson, 2016).

4. Conclusion

The conference concluded with participants declaring that there was need for more concerted efforts to highlight the injustices wrought by the war and condemn them. This

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is even more important for social work because the profession is informed by social justice, which is one of its six main values (Reamer, 2006).

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QRP

JURISDICTION

European Jurisdiction on Refugee and Complementary Protection: January-July 2022[1]

Holger Hoffmann[2]

This compilation of case law samples, summarizes and refers to jurisdiction of international relevance for the application of legal standards in the field of refugee and complementary protection by the European Court of Human Rights (ECtHR) and the European Court of Justice (ECJ) in the period January to July 2022.

1. European Court of Human Rights

1.1 ECtHR, Judgement of 10/2/2022, Al Alo v. Slovakia (no 32084/19): Trial and conviction of a Syrian for human smuggling violated Article 6 paras. 1 and 3 European Convention of Human Rights (ECHR) (right to fair trial)

The defendant, Syrian, was sentenced to imprisonment in Slovakia for human smuggling. He had been intercepted with two other migrants at the Slovak-Austrian border in January 2017. The other two, of whom he was accused of smuggling, testified before their trial and were deported before the trial of the defendant. During the trial, recourse was made to their written statements, but no attempt was made to summon them and interrogate them in person. The complainant therefore considers Article 6 (1) and (3) c) and d) ECHR to have been violated.

The ECtHR rejected the government's argument that although the addresses and identification cards of the witnesses were known, it was the duty of the complainant to prove that the witnesses would come back to Slovakia. Slovakia had not made use of the possibility to summon the witnesses abroad. However, it was the State's duty to make all reasonable efforts to ensure the presence of absent witnesses at the trial. Since there was an opportunity to do so and no acceptable justification was given for this omission, there were no valid reasons for disposing of the pre-trial statements of the witnesses. It is true that the lack of a valid reason for the non-appearance of a witness is not in itself proof of unfair proceedings. The complainant had also waived his right to appear at the preliminary hearing and the examination of witnesses there. However, the information provided to him about the pre-trial proceedings had been neither extensive nor detailed and had not indicated the possibility that the statements made there could be used as evidence against him at trial. His decision not to be present at the pre-trial questioning and not to examine the statements on that occasion should therefore not be regarded as a complete waiver of his rights under Article 6.3(d). Rather, he had been deprived of the

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opportunity to examine witnesses at the court hearing whose statements were of considerable weight for his proceedings. Therefore, the proceedings violated Article 6 paras. 1 and 3 d ECHR.

1.2 ECtHR, Judgement of 24/4/2022, M.B.K and Others v. Hungary (no. 73860/17): Violation Article 3 and 5 ECHR for seven months of detention for Afghan family (parents and four children) in transit facility Röszke

The family arrived at the transit zone in March 2017 and remained there until refugee status was granted, and they were transferred to a reception center in October 2017. The ECtHR, referring to its decision on R.R. and others (no. 36037/17 - U. v. 02.05.2021 – a period of four months in the transit zone violated the rights of the minor applicant), the ECtHR once again found a violation of Article 3 ECHR with regard to the minor.

In contrast, he ruled that for the adults the living conditions in the transit zone had generally been acceptable. The fact that the family was not separated was a relief, even if the accommodation as a whole could have led to feelings of frustration, fear and powerlessness. Article 3 ECHR was therefore not violated in the case of the adult defendants.

As to Article 5 ECHR, the ECtHR, referring to the similarity of the facts in the present case and in R.R., found violations of Article 5 (1) and (4) ECHR. Although it held that the complaint under Article 3 ECHR was inadmissible with respect to the adult complainants with regard to Article 13 ECHR. The other complaints (Article 13 ECHR in conjunction with Article 3 ECHR with regard to the children and Article 34 ECHR) were, however, admissible. Referring to the considerations in R.R. et al. however, it was unnecessary to consider them separately. EUR 17,000 for non-material damages and EUR 1,500 for the legal proceedings were awarded.

1.3 ECtHR, Judgement of 3/3/2022, NikoGhosyan et al. v. Poland (no. 14743/17): Six-month detention of a family

The complainant, an Armenian family, had tried several times from 10/2016 to 11/2016 to enter Poland and to apply for asylum there. They were sent back to Ukraine. On 06/11/2016 they applied for asylum. The application was rejected in April 2017. During this time and until May 2017, the defendants were held in administrative detention in a guarded center in Biala Podlaska.

The ECtHR held on Article 5 para. 1 ECHR that to examine the information provided by the complainants on their reasons for entering Poland, had initially constituted sufficient cause for their detention. However, as no information had been obtained from them since December 2016, the relying on it was not sufficient for the extension of the detention. The statutory presumption that the defendants were at high risk of absconding had not been sufficiently or individually examined by the Polish court (e.g., a decision by the district court in which one of the defendants was given the wrong gender). The fact that three minor children were also affected had also not been taken into account when it was decided to detain the defendants. Detention of small children should be avoided. The authority would have to show that this measure was taken as a last resort if less restrictive ones were not available. The almost six-month detention of the defendant was not a "last resort"; an alternative was available.

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1.4 ECtHR, Judgement of 8/3/2022, Sabani v. Belgium (no. 53069/15): Violation of Article 8 ECHR by detention for deportation to dwelling without legal basis

The case concerns a national of the Albanian minority living in Serbia. She came to Belgium in 2009 and filed numerous applications for asylum and regularization (on medical and humanitarian grounds) until 2015, all of which were rejected. On March 19, 2015, she received an order to leave ("OQT") with a ban on entry. On 20 March 2015, Serbia responded positively to a readmission request from the Aliens Department ("AO"). A repatriation scheduled for 1 April 2015 was cancelled due to the filing of another asylum application. On 2 April 2015, the defendant received a TQV, which was associated with a custodial measure. She was arrested in her apartment and placed in a closed facility. On 15 April 2015, the Council Chamber of the Court of First Instance ("TPI") in Brussels decided to keep the complainant in custody because the reasoning of the OU's decision was sufficient and adequate and the OU had acted with due diligence. The Court of Appeal took the same view. The appeal was dismissed on 10 June 2015, on the grounds that it had become moot because a new TQV with an extension of the custodial measure was issued against the defendant on 25 May 2015. Another repatriation was planned for 27 May 2015, but this was also canceled due to the filing of an asylum application. The detention was maintained and the defendant was returned on 30 June 2015.

She claims that she did not have the right to have the lawfulness of her deprivation of liberty reviewed by the courts due to the extension of her detention and subsequent deportation in violation of Article 5 (4) ECHR. She also complains of a violation of Article 8 ECHR because the police entered her house to arrest her without a legal basis or a judicial order. The Belgian authorities invoked regulatory law, according to which the police may detain people who do not have valid residence documents.

The ECtHR did not see a clear and precise legal basis for entering a home for the purpose of arresting a foreigner who is obliged to leave the country and found a violation of Article 8 ECHR.

1.5 ECtHR, Judgement of 10/3/2022, Shenturk and Others v. Azerbaijan (no. 41326/17): Deportations of Turkish citizens from Azerbaijan to Turkey violated Article 3 and 5 ECHR

The case concerns four Turkish nationals who moved to Azerbaijan where they worked in private schools and companies affiliated with the Gülen movement. Their asylum applications in Azerbaijan were ignored and they were deported to Turkey, where they were taken into custody for alleged involvement in the so-called Fetullah terrorist organization/parallel state structure. The complainants allege that their detention and subsequent deportation from Azerbaijan to Turkey violates Articles 3, 5 and 13 of the Basic Law.

ECtHR on violation of Article 5 para. 1: The entire detention of the first defendant and the various periods of detention of the second, third and fourth defendants were not based on formal decisions and thus violated Article 5 para. 1. The deportation to Turkey violated the formal extradition procedure and the relevant international guarantees.

Violation of Article 3 ECHR: The authorities of Azerbaijan had at no time examined the fears of the complainant of being mistreated after deportation to Turkey. The decision to deport her from Azerbaijan, based on the cancellation of her passport or residence permit,

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was only a pretext to carry out a "disguised extradition". Effective guaranties of protection against arbitrary refoulement were denied. Azerbaijan had not fulfilled its obligation under Article 3 ECHR by failing to assess the risks of treating the defendants in violation of Article 3 ECHR.

1.6 ECtHR, Judgement of 22/3/2022, T.K. et al. v. Lithuania (no. 55978/20): Deportation of a Tajik family without a fresh examination of possible ill-treatment violates Article 3 ECHR

The asylum application of a Tajik family was rejected in Lithuania. They were to be deported to Tajikistan. T.K. was a member of the Tajik Islamist Renaissance Party (IRPT), a banned organization in Tajikistan, and claimed that his deportation violated Articles 3 and 13 ECHR.

The ECtHR held, the existence of a risk of ill-treatment must be assessed on the basis of the facts which were known or should have been known to Lithuania at the time of the proceedings. The general situation in Tajikistan did not indicate that deportation posed a real risk of treatment contrary to Article 3 ECHR, so that the personal circumstances should have been examined. The practice of ill-treatment of IRPT members was part of the asylum application. The information provided by the country of origin did not suggest that only leaders and high-ranking members of the IRPT were subject to persecution. The Lithuanian authorities had not made an adequate assessment of the practice of ill-treatment of persons in a similar situation to the complainants and had instead focused on the lack of previous threats and persecution of the complainants. Article 3 would therefore be violated if the defendants were deported to Tajikistan without a reassessment of whether they would be at risk of ill-treatment upon their return. (At the same time decision according to Article 39 of the Procedural Regulation until the judgment has become final or further decision of the ECtHR).

1.7 ECtHR, Judgement of 29/3/2022, N.K. v. Russia (no. 45761/18): Detention and deportation of a Tajik violate Articles 3 and 5 ECHR

A Tajik was charged in absence with membership in an extremist organization by Tajik authorities and later detained in Russia pending deportation. He invoked Articles 3, 5, and 34 in relation to the conditions of detention in Russia, the violation of the one-time measures against the deportation order, the lack of investigation into his abduction, and his mistreatment and fear of a long prison sentence in Tajikistan.

The ECtHR recalled, in previous cases with similar facts, it was held that persons whose extradition had been requested by the Tajik authorities on grounds of politically motivated crimes constituted a vulnerable group for whom there was a real risk of treatment contrary to Article 3 ECHR in the event of deportation. The Russian authorities knew that the complainant was threatened with forcible transfer to the country where he could be subjected to torture or ill-treatment and that relevant protective measures should have been taken. Nevertheless, they did not attempt to investigate the matter and thus to take into account the provisional measures under Article 39 of the Procedural Code or to take steps regarding the complainant's precarious situation. Rather, by ordering his deportation, the Russian authorities had exposed the complainant to the real risk of mistreatment in Tajikistan, were involved in his forcible return, and had not conducted an effective investigation into his abduction. Thus, they would have violated Article 3. They had also failed to comply with the ECtHR's interim measure, thereby violating their

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obligations under Article 34. The conditions of detention in Russia had violated Articles 3 and 5(4) ECHR.

1.8 ECtHR, Judgement of 5/4/2022, AA et al. v. North Macedonia (no. 55798/16 and 4 others): No violation of Article 4 Prot. No. 4 in case of "March of Hope"

The eight complainants, Afghan, Iraqi and Syrian nationals, crossed the border into northern Macedonia ("March of Hope") in March 2016 with a group of approximately 1,500 refugees coming from the Idomeni camp in Greece. They complaint, they were collectively deported without prior administrative identification procedure, examination of their personal situation or the possibility to apply for asylum, contrary to Article 4 Prot. No. 4 ECHR.

The ECtHR unanimously ruled that there were no reasons for not using the Bogorodica border crossing point or any other border crossing point to present grounds against expulsion. The complainants were not interested in applying for asylum, but only in transit, which was no longer possible. Northern Macedonia had provided effective access to procedures for legal entry, in particular by offering the possibility of applying for international protection at border crossing points, especially with regard to protection under Article 3 ECHR. The complainants had had no objective reasons for not making use of this procedure. Rather, they had endangered themselves by illegally entering the country and taking advantage of their numerical superiority. The lack of individual deportation decisions had been a consequence of their behavior.

1.9 ECtHR, Judgement of 26/4/2022, M.A.M./Switzerland (no. 29836/20): Deportation of a converted Christian to Pakistan would violate his rights under Articles 2 and 3 ECHR

The complainant, a Pakistani, converted to Christianity while his asylum application was being processed in Switzerland. After the application was rejected by the authorities, the Swiss Federal Administrative Court also rejected the appeal because the conversion was not taken into account.

The ECtHR held, the Swiss authorities knew of the complainant's activities in the Salvation Army and his worship activities without questioning him. With regard to Article 3 ECHR, however, the State has an obligation to assess the risk of ill-treatment in the event of deportation as soon as the authorities or the courts become aware of facts that could expose a person to such a risk. It was true that the court had examined the situation of Christians in Pakistan and had concluded that there was no risk of collective persecution. However, it should have additionally taken into account the special situation of converted Christians. With regard to Articles 2 and 3 ECHR, the court had not examined thoroughly enough the situation of converts and the complainant's personal situation with regard to his conversion, the seriousness of his convictions, the way in which he expressed his faith in Switzerland and wanted to express it in Pakistan, his family's knowledge of his conversion, and his vulnerability to expulsion and blasphemy charges. If the complainant was deported to Pakistan without the Swiss authorities having first conducted a thorough and rigorous ex nunc assessment of the general situation of Christian converts in Pakistan and of the complainant's personal situation as a Christian convert in the event of his return, Articles 2 and 3 ECHR would be violated.

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1.10 ECtHR, Judgement of 17/5/2022, Ali Reza v. Bulgaria (no. 35422/16): Due to detention for almost seven months pending the execution of the deportation order

The complainant, an Iraqi national, came to Bulgaria in 2000 and was initially granted subsidiary protection due to the war situation in Iraq, then a residence permit in 2003. In 2015, he was deported "for reasons of national security" and was placed in administrative detention between June 2015 and January 2016 while his appeal against the deportation was being considered. In December 2017 he married his Bulgarian partner. Since January 2016, he was subject to administrative surveillance. He had to report to a police station once a week. The detention had been ordered – according to the Bulgarian authorities – because the deportation could not be carried out due to the lack of required travel documents.

The ECtHR found, the failure of other States to issue travel documents cannot be blamed on Bulgarian authorities. However, they had not taken any active steps to remedy the situation or to examine the prospects for the complainant's deportation. Regarding Article 5 (4) ECHR, the complainant had a domestic remedy at his disposal, which he did not use. (Non-material damage: EUR 3,500, no application made in respect of costs and expenses.)

1.11 ECtHR, Judgement of 2/6/2022, H.M. et al. v. Hungary (no. 38967/17): Due to detention and treatment of a pregnant woman and her family in Tompa transit zone

The complainants, an Iraqi family of six, were detained in the Tompa transit zone between Hungary and Serbia for four months between 29 March and 11 August 2017. The father/husband was a victim of torture by the national security services in Iraq. In Tompa, they were housed in a container, which they were only allowed to leave for medical reasons. The mother's high-risk pregnancy resulted in several hospitalizations. During one of these, the husband accompanied her as an interpreter and was handcuffed in front of the children. The mother suffered from psychological and medical problems, the father was a torture survivor who needed psychiatric or psychological treatment but did not receive it. They alleged violations of Articles 3, 8, 5(1) and (4) and 13 ECHR.

Referring to R.R. and Others .v. Hungary (Judgement of 02/03/2021, no. 36037/17) and referring to the children, the ECtHR ruled that the conditions in the transit zone had not been adequate for them, Article 3 ECHR had therefore been violated.

In contrast, with regard to the adults, the conditions had not generally reached the threshold required for Article 3. Regarding the complaints about inadequate medical care for the mother and lack of psychological care for the father: In the case of the mother, the medical treatment was considered adequate; however, her severe anxiety and psychological suffering to which she was subjected at the end of the high-risk pregnancy reached the level of severity required for Article 3. With respect to the father, the general conditions of detention did not violate the Convention. However, the use of handcuffs to restrain him en route and in the hospital was not considered justified.

Regarding Article 5 par. 1 and 4 ECHR, the ECtHR ruled, the detention of the defendants was not lawful. They had no legal remedies available to them to have the lawfulness reviewed. It awarded the family compensation of EUR 12,500 for non-material damage and EUR 1,500 for procedural costs.

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1.12 ECtHR, Judgement of 14/6/2022, L.B. v. Lithuania (no. 38121/20): Violation of Article 2 Prot. No. 4 by refusing to issue a travel document to a permanent resident under subsidiary protection

The authorities in Lithuania had acknowledged that the complainant could not safely return to his country of origin (Russia). The ECtHR held that an alien who has been granted subsidiary protection and who states that he does not dare to approach the authorities of his country of origin as a beneficiary of subsidiary protection must be presumed to have an objective reason for not being able to obtain a travel document from those authorities. The Lithuanian authorities had not examined whether the complainant was able to obtain a passport from Russian authorities in view of his personal circumstances.

The ECtHR recognized that the right of the complainant to leave Lithuania under Article 2 Protocol No. 4 is practically ineffective without a travel document. The refusal to issue him an alien's passport was an interference with his right to freedom of movement. According to EU law, as a permanent resident of Lithuania, he had the right to cross the borders between EU Member States without a travel document. In addition, however, without a valid travel document, he was prevented from traveling to countries outside the Schengen area and outside the EU, including the UK, where his children lived.

The ECtHR considered that the refusal to issue the complainant an alien's passport was neither justified nor proportionate, as it was based only on formalistic grounds, was made without an adequate examination of the situation in his country of origin and without an adequate assessment of the complainant's possibilities to obtain a Russian passport; so also ECtHR, Judgement of 26/04/18, Hoti v. Croatia (no. 63311/14), paras. 119-123; Judgement of 12/1/2017, Abuhmaid v. Ukraine (no. 31183/13), para. 122. For these reasons, the ECtHR found a violation of Article 2 Protocol No. 4. Lithuania must pay the complainant EUR 5,000 as compensation for non-material damage within three months of the judgment becoming final pursuant to Article 44 para 2 ECHR.

1.13 ECtHR, Interim Measure of 14/6/2022, N.S.K. v. United Kingdom (no. 28774/22; formerly K.N. v. United Kingdom): Interim measures to stop threatened deportation to Rwanda

On April 13, 2022, the UK government entered into an agreement with the government of Rwanda on an "asylum partnership." Under this agreement, asylum seekers whose applications have not previously been assessed by the UK can be "resettled" in Rwanda.

K.N., an Iraqi national, left Iraq in April 2022, traveling to Turkey and then across Europe before crossing the English Channel by boat. Claiming that he was in danger in Iraq, he applied for asylum upon arrival in the UK on 17 May 2022. On 24 May 2022, he was served with a "Notice of Intent" that authorities were considering deeming his asylum claim inadmissible in the UK and "resettling" him in Rwanda. On 27.05.2022, a doctor at the Immigration Removal Centre prepared a report stating that K.N. was possibly a victim of torture.

On 6 June 2022, the immigration authorities declared the asylum application inadmissible. At the same time, a deportation order to Rwanda was issued for 14 June 2022. The High Court refused to grant his application for interim relief: Rwanda would comply with the agreement, even if it was not legally binding. The transitional period would be short, and the challenge before the High Court would probably be heard in July. If

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successful, it would be reinstated in the UK. The High Court acknowledged that the question of whether the decision to treat Rwanda as a safe third country may have been based on insufficient research and raised "serious questions" that would have to be considered by the court when it addressed the merits of the challenge.

On 13 June 2022, the ECtHR received an application for the issuance of an urgent interim measure against the UK government pursuant to Article 39 of the Procedural Code in order to stop the threatened deportation to Rwanda. The ECtHR issued the urgent interim measure. The decision of the ECtHR according to Article 39 of the Procedural Code provides that the defendant may be deported to Rwanda at the earliest three weeks after the final national decision in the judicial review procedure has been issued.

In particular, the ECtHR took into account concerns raised by UNHCR that asylum seekers transferred to Rwanda from the UK will not have access to fair and efficient refugee status determination procedures, as well as the High Court's finding that whether the decision to treat Rwanda as a safe third country was "irrational" or based on insufficient investigation and gave rise to "serious disputes." There was a risk of treatment contrary to the complainant's Convention rights and, since Rwanda was not bound by the ECHR, there was no legally enforceable mechanism for the complainant's return to the UK even in the event of a successful challenge in the domestic courts.

Following this decision, the ECtHR received five further applications for interim measures. On 15 June 2022, the ECtHR decided to also issue interim measures in two cases (R.M. v. UK, no. 29080/22, and H.N. v. UK, no. 29084/22) to suspend the deportation of the defendants until 20 June 2022 to allow their applications to be examined in more detail. Three other applications were rejected.

1.14 ECtHR, Judgment of 21/6/2022, Akad v. Turkey (no. 1557/19): Violation of Articles 3, 5 and 13 ECHR in case of deportation to Syria

The complainant, a Syrian national, had been living in Turkey with temporary protection status since 2014. When he attempted to enter Greece in 2018, he was caught by Turkish authorities and deported to Syria two days later, without being able to do anything about the return decision. He stated that he and the twelve other Syrians were handcuffed in pairs during the approximately twenty-hour bus ride. According to his account, he was picked up immediately after crossing the border by two armed fighters from the Al-Nusra organization, interrogated blindfolded and beaten.

At the Turkish border with Syria, he was forced to sign a number of documents without knowing their content; it later turned out that one of these documents was a form for voluntary return. He was not allowed to make phone calls, he was not provided with an interpreter, and he had no way to contact a lawyer or a complaints office. The Turkish government claimed that the defendant had been informed about the deportation and had wanted to return to Syria voluntarily.

The ECtHR ruled that the defendant had been subjected to forcible return and that there had been two violations of Article 3 ECHR. It was common knowledge that the area to which he was taken was a war zone. There was sufficient evidence of a real risk that the complainant would be subjected to treatment in violation of Article 3 if he was returned to Syria. Furthermore, Turkish legislation was also violated, which provides that an alien who has been granted temporary protection may only be expelled in exceptional

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circumstances, which was not the case here. Second, a violation of Article 3 ECHR was also found, as the applicant was handcuffed during his detention and transfer, which was not justified. Consequently, the ECtHR held that the complainant had been subjected to degrading treatment.

Regarding Article 13 in conjunction with Article 3 ECHR, the ECtHR ruled that the deportation to Syria did not comply with the expulsion procedure and the requirements of Turkish law. He had been deported without first having the opportunity to lodge a suspensive appeal or to challenge the decision before his deportation.

The ECtHR also found violations of Article 5 paras. 1, 2, 4 and 5 ECHR: The complainant was arbitrarily deprived of his liberty; the legal guarantees were not respected. He had not been informed of the reasons for his detention or of the possibility of challenging the lawfulness of the detention order. From the time of his arrest until his deportation to Syria, he had had no access to a lawyer or an outside person. As a result, a judicial review of the lawfulness of his detention had not been possible.

1.15 ECtHR, Judgement of 30/6/2022, A.B. et al. v. Poland (no. 42907/17) and A.I v. Poland (39028/17): Collective deportation of Chechen families at the Polish-Belarusian border violates Articles 3 and 13 ECHR as well as Article 4 of Prot. No. 4

The complainants are six Russian nationals from Chechnya who expressed their fear of persecution in their country of origin to Polish border guards on more than twenty occasions and applied for international protection in writing on another eight occasions. According to them, border guards had ignored all of their statements and written requests. Administrative decisions had been issued to turn them back at the Polish border because they did not have documents allowing them to enter Poland.

On Article 3 ECHR, the ECtHR accepted the applicants' claims that there was no guarantee that their asylum applications would be seriously examined by the Belarusian authorities and that their return to Chechnya might violate the Convention. The Polish authorities had accused the complainants of risk of chain deportation and treatment prohibited under Article 3 for failing to initiate a procedure for granting international protection in at least 33 cases in which they presented themselves at the border. The ECtHR emphasized that a State may not deny access to its territory to a person who presents himself at a border crossing and claims that he may be subjected to ill-treatment if he remains on the territory of the neighboring state, as long as no application for international protection has been filed, unless reasonable measures are taken to eliminate such a risk.

Referring to independent reports and previous case law, the ECtHR ruled that the decisions to refuse entry taken in the complainants' cases were not taken with due regard to the individual situation of each applicant, but rather were part of a broader policy by Poland to refuse to accept applications for international protection from persons who presented themselves at the Polish-Belarusian border and to send them back to Belarus in violation of international law. Therefore, there was a collective expulsion within the meaning of Article 4 of Protocol No. 4. Also, the defendants had no access to effective legal remedies with suspensive effect against their expulsion. Therefore a violation of Article 13 ECHR has been confirmed by the Court.

Violation Article 34 ECHR: The ECtHR's provisional measure of 16 June 2017 contained an order not to return the complainant to Belarus. However, the Polish government

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intentionally did not comply and turned the defendant away from the checkpoint on the day the measure was issued and on another occasion.

In A.I. and Others v. Poland, the ECtHR also found violations of Articles 3 and 13 ECHR as well as Article 4 of Prot. No. 4. The facts of both cases are similar, except for the ECtHR's decision to revoke the provisional measure in A.I. and Others because the defendants had been admitted in Poland in the meantime.

1.16 ECtHR, Judgment of 7/7/2022, Safi et al. v. Greece (no. 5418/15): Violations of Article 2 and Article 3 in pushback operation by Greek coast guard in 2014

The subject of the proceedings is a pushback operation by the Greek Coast Guard and a shipwreck on 20 January 2014, near the island of Farmakonisi, in which three women and eight children from Afghanistan died. The refugees were not taken aboard the Coast Guard vessel, nor were life jackets handed out. The refugee boat had been in tow with the Greek Coast Guard for at least 15 minutes, and two officers had boarded it to secure the tow. It was thus under Greek control before it sank. Sixteen surviving Syrian, Afghan, and Palestinian claimants rose violations of Articles 2, 3, and 13 ECHR for serious omissions by the Coast Guard.

The ECtHR ruled that both the procedural requirements and the positive obligations arising from the right to life under Article 2 ECHR had been violated. On the procedural aspect, the ECtHR pointed to serious problems of interpretation that were not addressed during the national proceedings, as well as the lack of access of the complainants to important evidence. He stated that it was highly doubtful whether the claimants were able to participate adequately in the proceedings. The National Prosecutor's Office had failed to pursue obvious avenues of inquiry, thereby undermining the possibility of clarifying the circumstances of the shipwreck. The lack of a thorough and effective investigation by the national authorities resulted in a violation of the procedural guarantees of Article 2 ECHR.

Regarding the violation of the positive obligations under Article 2 ECHR, the ECtHR held that the Greek authorities, when carrying out the operation, had not done everything that could reasonably be expected to ensure the level of protection for the defendants required by Article 2 ECHR. and her dependents, in particular that the Coast Guard did not request additional assistance or a more appropriate boat for the rescue operation when it realized that the boat was in a distress situation and that the authorities, such as the Coordination and Search Center, were informed of the incident very late. The failures and delays in the conduct and organization of the operation led the ECtHR to rule that the Greek government had violated its obligations under Article 2 ECHR.

He further found a violation of Article 3 ECHR with respect to twelve of the complainants, focusing on the strip search under the control of the Greek military. The individuals had been strip-searched in an open-air basketball court, forced to undress and assume embarrassing postures in front of at least thirteen other people. The government had presented neither a justification nor a legitimate objective for this strip search. The defendants had been in an extremely vulnerable situation, having just survived a shipwreck, exhausted and shocked by the events, and worried about the fate of their loved ones. The conditions of the strip search had led to a feeling of arbitrariness, inferiority and fear among the claimants that went beyond the inevitable humiliation of a strip search. Article 3 ECHR was violated with regard to these twelve defendants. Greece must pay a total of EUR 330,000 to the defendants as compensation for the non-material damage.

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1.17 Pending ("communicated") proceedings of significance under refugee law (as of July 2022)

1.17.1 ECtHR, Submission of 24/5/2022, A.D. v. Malta (no. 12427/22): Lawfulness of detention of a minor - Articles 3, 5, 13 and 14 ECHR

The complainant, an Ivorian national, arrived in Malta in November 2021 to apply for asylum as a minor. He was initially issued a document restricting his freedom of movement on public health grounds. He was later diagnosed with pulmonary tuberculosis and was treated in hospital before being transferred to a detention center with adult males. He was undergoing age determination proceedings at the time, the initial decision of which concluded that he was already an adult. An appeal against this is pending. He has challenged the lawfulness of his detention before the Court of Magistrates and the Immigration Appeals Board, complaining under Articles 3, 5, 13 and 14 ECHR about the unlawful arbitrariness of his detention, the poor living conditions associated with it and the lack of effective remedies.

1.17.2 ECtHR, Submission of 31/5/2022, Omarova v. Netherlands (no. 60074/21): Article 8 – Family Life

The case concerns a Kyrgyz national whose international protection was denied and who was married to a Uighur political activist. The Dutch authorities did not consider her asylum claims credible and found that her husband could move in with her and lead a family life in Kyrgyzstan. The complainant rose a violation of Article 8 ECHR (family life). The authorities had failed to provide a fair balance.

1.17.3 ECtHR, Submission of 1/6/2022, S.A. v. Greece (no. 51688/21): Article 3 due to inadequate living conditions and lack of adequate medical treatment of a child

A five-year-old Syrian national had applied for asylum in Greece (represented by guardians) and was accommodated at the Mavrovouni Reception and Identification Centre (RIC) on Lesvos. She complains of a violation of Article 3 due to inadequate living conditions and lack of appropriate medical treatment, taking into account her vulnerability as a child and her health problems.

1.17.4 ECtHR, Submission of 14/6/2022, Mohamed v. Serbia (no. 4662/22): Article 3 and Article 13 ECHR for unlawful extradition/risk of life imprisonment

The defendant is a citizen of Bahrain. He stated that he had fled his country out of fear of persecution. On 3 November 2021 he was arrested in Serbia on the basis of an international arrest warrant issued by Bahrain. The ECtHR granted a provisional measure pursuant to Article 39 Procedural Code in order to stop his extradition to Bahrain; however, Serbia extradited him anyway, disregarding this measure. The complainant argued that his extradition violated Article 3 ECHR, as he was facing a life sentence, and Article 13 ECHR, as he had no effective domestic remedy for his complaints under Article 3 ECHR and the Serbian authorities had refused to accept his asylum application.

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2. European Court of Justice

2.1 ECJ, Judgment of 20/1/2022, ZK (C-432/20): Austria's interpretation of the standards on loss of permanent residence in Directive 2003/109/EC is not in line with the objectives of the Directive

The case concerns a Kazakh national whose application for an extension of his long-term residence status in Austria was rejected. According to Article 9 para. 1c of Directive 2003/109/EC (status of third-country nationals who are long-term residents), long-term residents cannot maintain their residence status if they leave the territory of the EU for twelve consecutive months. The plaintiff did not leave the territory of the EU for a period of one year, but only stayed there for a few days each year. Therefore, the Administrative Court Vienna raised questions on the interpretation of Article 9 para. 1c of the Directive.

Although the term "absence" is interpreted differently in different language versions of the Directive, the ECJ held that the term, as used in the provision and in everyday language, means the physical "non-presence" of the long-term resident concerned in the territory of the Union, so that any physical presence is capable of interrupting an absence. The Directive does not require a presence of a certain duration or stability. The ECJ emphasized from Recitals 2, 4, 6 and 12 the objective of the Directive to ensure the integration of third-country nationals who have settled permanently and lawfully in the Member State and to approximate their rights to those of citizens of the Union. This objective supports an interpretation of Article 9 para. 1c, according to which third-country nationals who are long-term residents may move and reside freely outside the territory of the Union, like citizens of the Union, as long as they are not absent for the entire period of twelve consecutive months.

Article 9(1)(c) must therefore be interpreted as meaning that any physical presence of a long-term resident for a period of twelve consecutive months, even if not exceeding a few days, is sufficient to prevent the loss of long-term resident status.

2.2 ECJ, Judgement of 22/2/2022, XXXX v. Belgium (C-483/20): Member State may grant protection under the principle of family unity to a complainant already enjoying international protection in another Member State

The plaintiff was granted refugee status in Austria in December 2015. At the beginning of 2016, he moved to Belgium to live with his two daughters, one of whom was a minor. Both daughters were granted subsidiary protection in December 2016. In 2018, the complainant applied for international protection in Belgium. This was rejected by the Commissioner General for Refugees and Stateless Persons (CGRA) on the grounds that he was already granted protection by another MS.

He argued that this circumstance did not entitle Belgium to declare his application for international protection inadmissible because of the principles of family unity and the best interests of the child. Subsequently, the Council of State referred a question to the ECJ for a preliminary ruling on the interpretation of Article 33 para. 2 lit. a of Directive 2013/32 in light of Articles 7 and 24 para. 2 of the Charter of Fundamental Rights of the European Union.

The ECJ referred to the fundamental importance of the principle of mutual trust between Member States. A Member State need not (only exceptionally) make use of the possibility

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to consider an application for international protection inadmissible under Article 33 para. 2 of Directive 2013/32 if the person would risk being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter in the Member State where he or she already enjoys protection. The reason for the applicant to apply for international protection in Belgium was not the need for this protection, but to ensure the unity of his family.

The ECJ focused on Article 23 para. 2 of Directive 2011/95: Although this provision does not provide for the extension of refugee status or subsidiary protection to family members of beneficiaries of international protection, it obliges Member States to ensure that family members of beneficiaries of international protection are granted a number of benefits (listed in Article 24 to 35 of the Directive). It further recognized that the provisions of Directive 2011/95 are to be interpreted in light of Articles 7 and 24 paras. 2 and 3 of the Charter. Article 33 para. 2 lit. a of Directive 2013/32 was therefore to be interpreted as allowing a Member State to deny protection to a person already enjoying protection in another Member State, without prejudice to the application of Article 23 para. 2 of Directive 2011/95, which gives the person the right to receive benefits in that Member State under Articles 24 to 35 of Directive 2011/95.

2.3 ECJ, Judgement of 3/3/2022, UN v. Subdelegación del Gobierno en Pontevedra (C-409/20): On the interpretation of the Return Directive and the possibility for illegally staying third-country nationals to regularize their stay

Directive 2008/115/EC (Return Directive), in particular Article 6 para. 1 and Article 8 para. 1 in conjunction with Article 6 para. 4 and Article 7 paras. 1 and 2, must be interpreted as not precluding a provision of a Member State under which the illegal stay of a third-country national in the territory of that Member State, in the absence of aggravating circumstances, is initially punishable by a fine, which may be imposed with the imposition of a fine.

The third-country national may be ordered to leave the territory of the Member State within a certain period of time if his or her residence is not regularized before the expiry of that period. Only if the third-country national does not regularize his or her stay, the deportation may be ordered, provided that the mentioned time limit is set in accordance with the requirements provided for in Article 7 paras. 1 and 2 of the Directive.

2.4 ECJ, Judgement of 10/3/2022, K. v. Landkreis Gifhorn (C-519/20): Interpretation of Articles 16 and 18 of the Return Directive – Detention pending deportation and detention facilities for deportees in Germany

A Pakistani national was detained for three months in the Langenhagen section of Hanover Prison after his application for asylum was rejected. The department was physically separate from the rest of the JVA, but had common staff and common areas with the JVA. The questions referred by the AG Hannover focused on the interpretation of Articles 16 and 18 of the Return Directive 2008/115/EC, in particular the terms "specialized detention facility" and "emergency situation".

The ECJ clarified that the specific facility could in principle be a "special detention facility" within the meaning of Article 16 para. 1 of the Directive. When deciding on a detention in a correctional facility, the national courts must themselves examine whether the national legal provision on the basis of which the detention takes place is compatible with Union

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law, in particular with the requirements of Article 18 of the Directive. Detention in a regular correctional facility is only permissible if an exceptionally high number of persons are accommodated in special detention facilities. The measure had to be distinguished from the detention of criminals. An "emergency situation" as required by Article 18 of the Directive had not existed in Germany.

The ECJ further stated that the design of the premises as well as the qualifications and powers of the staff had to be taken into account and that the majority of the staff members entrusted with the supervision had special training and were exclusively assigned to the department in which the detention pending deportation takes place. This department of the correctional facility could therefore be considered a "specialized detention facility" within the meaning of Article 16 of the Return Directive, provided that the conditions of detention were not equivalent to deprivation of liberty in a prison and were designed in such a way that the fundamental rights guaranteed by the Charter of Fundamental Rights and enshrined in Article 16 paras 2 to 5 and Article 17 of the Return Directive were respected.

However, the "emergency situations" provided for in Article 18 of the Directive do not authorize the Member States to derogate from all appropriate measures. Rather, the obligations of the Directive and strict guarantees against arbitrariness must be ensured. Article 18 of the Directive in conjunction with Article 47 of the Charter must be interpreted in such a way that the national court must be able to examine whether the conditions of Article 18 of the Refugee Directive are met when ordering or extending detention in a correctional facility.

On the interpretation of Article 16 para. 1 of the Return Directive oon the application of legal provisions that permit detention in detention centers separately from prisoners and temporarily when the conditions of an "emergency situation" pursuant to Article 18 para. 1 of the Return Directive are not met, the ECJ stated: Article 16 Return Directive is to be interpreted both restrictively and in accordance with the scope of application of Article 18 Return Directive in such a way that detention outside a specialized institution is no longer justified if its overcrowding lasts longer than a few days or is systematically repeated. The ECJ referred to the El Dridi Judgment, which held that Articles 16 and 18 of the Return Directive are unconditional provisions and sufficiently precise to have direct effect. Article 16 para. 1 of the Return Directive must be interpreted in such a way that a national court must not apply legal provisions that permit the detention of third-country nationals in correctional facilities if the conditions of Article 18 para. 1 and 16 para. 1 cl. 2 of the Return Directive are not or are no longer met.

2.5 ECJ, Judgement of 26/4/2022, I.A. v. Austria (Bundesamt für Fremdenwesen und Asyl – BFA) (C-368/20 and C-369/20): Interpretation of Article 29 para. 2 of the Dublin III Regulation: Involuntary admission of an asylum seeker to a psychiatric hospital is not detention within the meaning of Article 29 para. 2 of the Dublin III Regulation

A Moroccan national applied for asylum in Austria after traveling through Italy. Austria issued a transfer request and a deportation order to Italy. The applicant was transferred to Italy one month after the expiration of the transfer deadline due to his court-ordered admission to a psychiatric department of a hospital. He brought an action before the Austrian courts, which then suspended the proceedings and referred questions to the ECJ

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in connection with the extension of the transfer deadline and the concept of "deprivation of liberty" under Article 29 of the Dublin III Regulation (EU) No. 604/2013.

The ECJ examined whether the term "deprivation of liberty" within the meaning of Article 29 para. 2 of the Dublin III Regulation could be understood to include an admission to a psychiatric department of a hospital pronounced by a court against the will of the person concerned. The language version of the norm could not serve as the sole basis for interpretation. Many language versions use the terms "deprivation of liberty" or "imprisonment," while a minority use broader terms (including arrest, detention, deprivation of liberty). The majority of language versions use the ordinary meaning, which denotes a custodial sentence imposed in the course of criminal proceedings. The court-ordered, involuntary confinement of a person in a psychiatric ward of a hospital could therefore not be classified as a "deprivation of liberty" within the meaning of Article 29 para. 2 of the Dublin III Regulation. The term was to be interpreted narrowly. It did not entail the risk that authorities would encounter difficulties or be unable to ensure the effective functioning of the Dublin system. The concept of "deprivation of liberty" was therefore not applicable to the involuntary admission of an asylum seeker to a psychiatric department of a hospital, authorized by a court decision on the grounds that he posed a danger to himself or to society because of his mental illness.

2.6 ECJ (Grand Chamber), Judgement of 26/4/2022, N.W. et al. v. Austria (Landespolizeidirektion Steiermark and Bezirkshauptmannschaft Leibnitz) (C-368/20 and C-369/20): Schengen Border Code precludes temporary introduction of border controls if they exceed the maximum duration of six months and there is no new threat

The plaintiff had twice refused to show his passport after the introduction of controls at the border with Austria. He received a fine of EUR 36 because of this. In his opinion, the controls violated EU law.

The first question of the Austrian Administrative Court was whether EU law precludes a national regulation that cumulatively permits the reintroduction of border controls for a period exceeding the two-year limit set out in Articles 25 and 29 of the Schengen Borders Code without a corresponding implementing decision by the Council.

The ECJ emphasized that the interpretation must take into account not only the wording but also the context and objectives of the relevant legislation. Recital 27 of the Code states that exceptions and derogations to the free movement of persons must be interpreted narrowly and that, in light of Recitals 21 and 23 and Article 3 TEU, the reintroduction of internal border controls should remain an exception and should only be implemented as a last resort should be. The Code fits into the general framework of an area of freedom, security and justice, which is intended to strike a proper balance between the free movement of persons and the need to protect public order and internal security in the territory. The concrete objective pursued by the maximum period of six months laid down in Article 25 para. 4 of the Code follows the general one. Austria had not demonstrated any new threat that would have justified triggering new time limits and enabling the control measures to which the branch was subjected.

Article 25 para. 4 of the Code must be interpreted as precluding the temporary reintroduction of border checks at internal borders if this exceeds the total maximum period of six months and there is no new threat which would justify a renewed application of the time limits laid down in Article 25. Article 25 para. 4 of the Code precludes a national

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rule which requires a person, under penalty of a fine, to present a passport or identity card at an internal border when entering the territory of that Member State if the reintroduction of the internal border is contrary to that provision. A sanction mechanism is not compatible with the provisions of the Schengen Borders Code. On the contrary, Article 25 para. 4 of the Code precludes a provision requiring a passport or identity card check under the above-mentioned conditions.

Comment Hoffmann: According to the argumentation of the judgment, the border controls with Austria, which have been repeatedly extended by Germany for years, could also be illegal. According to a document of the EU Commission, Germany justified them with so-called "secondary migration" from one Member State to another and with the situation at the EU's external borders. In the event of a serious threat to public order, border controls may be introduced for a limited period. However, Germany, Austria and other states have been regularly prolonging the measures for years. In its ruling, the ECJ now points out that the Schengen area is one of the EU's greatest achievements. "*The reintroduction of internal border controls must therefore remain an exception and should only be used as a last resort.*" The ECJ pointed out that states may only extend such controls in the event of "*a new serious threat to its public policy or internal security.*" "*In the present case, Austria (...) does not appear to have demonstrated that there is a new threat.*" However, a final decision rests with the competent court in Austria according to the Court.

2.7 ECJ, Judgement of 30/6/2022, M.A. v. Lithuania (C-72/22 PPU): Emergency regulations in Lithuania not in conformity with EU law – Reference for a preliminary ruling from the Lithuanian Superior Administrative Court

The third-country national M.A. had illegally crossed the border to Lithuania in 2021 with the massive influx of refugees from Belarus. Due to irregular entry and stay and on the grounds of "risk of absconding", the Lithuanian authorities took him into custody. M.A. attempted to apply for international protection. In Lithuania, due to the high number of refugees, a state of emergency was declared, prohibiting refugees who had entered illegally from applying for asylum. At the same time, the emergency regulations provided for the detention of refugees.

The ECJ emphasized that the asylum procedure must guarantee effective access to international protection – both in accordance with the Procedures Directive 2013/32/EU and through the right to asylum guaranteed in Article 18 of the Charter of Fundamental Rights. EU law does not permit the detention of asylum seekers solely on the grounds of illegal entry or residence. If a third-country national were deprived of the opportunity to apply for international protection on the grounds of an irregular stay, he would be prevented from actually exercising the right to asylum, as enshrined in the Charter. Even after a state of emergency has been declared due to a massive influx of refugees, it must remain possible to apply for international protection. The ECJ therefore sees in the Lithuanian regulation of 2021 a violation of the Procedures Directive, which in Article 7 para. 1 provides for the right to apply for international protection for each adult with legal capacity as well as a violation of the regulations on the detention of asylum seekers in the Reception Conditions Directive 2013/33/EU. Detention in the sense of EU law is limited to absolutely necessary situations in which a serious threat is established after an individual assessment. EU law does not allow detention of asylum seekers solely on the grounds of illegal entry or stay. The ruling referred to the seriousness of the interference with the right to liberty and thus limited detention under EU law to strictly necessary

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situations in which a serious threat is established after an individual assessment. Unlawful residence does not constitute such a threat to society

2.8. Opinions of the Advocate General in Pending Cases

2.8.1 Opinion of 24/3/2022, RO v. Germany (C-720/20): Germany is responsible for the asylum application of a minor child whose parents have already been granted refugee status in another Member State [Editor's Comment: meanwhile decided, see judgement)

The parents had moved to Germany after being granted refugee status in Poland, where they do not have a residence title. The child was born in Germany. In its questions for reference, the Administrative Court Cottbus wants to know whether an analogous application of Article 20 para. 3 of Dublin III Regulation (EU) No. 604/2013 and Article 33 para. 2 lit. a of Procedures Directive 2013/32/EU is possible. However, the Advocate General rejected the analogy because it contradicted the purpose of the regulations: From Article 3 para. 2 and 6 para. 1 Dublin III Regulation in conjunction with the principle of the best interests of the child it follows that Germany is responsible for the asylum application.

2.8.2 Opinion of 2/6/2022, Germany v. MA, PB (C-245/21) and LE (C-248/21): - Suspension of Dublin transfer due to COVID-19 preliminary ruling request of the Federal Administrative Court on the interpretation of the Dublin III Regulation and the legal consequences of a decision to suspend a transfer in the context of the COVID-19 pandemic

The administration of a Member State has the possibility, under certain conditions, to suspend the execution of a transfer decision under the Dublin III Regulation and thus interrupt the six-month transfer period, provided that this was done in connection with judicial protection directed against the transfer decision according to the Advocate General Pikamäe. However, the motive of preventing a transfer of responsibility to the requesting Member State after the expiry of the six-month period because the latter has difficulties in carrying out transfers of asylum applicants to other Member States in good time during a health crisis does not in itself constitute a legitimate reason to justify an interruption of the transfer period.

The case concerns the decision to transfer asylum seekers to Italy and the subsequent suspension of that transfer decision because implementation was not possible due to the pandemic.

According to the Dublin Regulation, the transfer shall be carried out "as soon as practically possible, but no later than six weeks after the tacit or express acceptance of the request by another Member State [...] or the date on which the appeal or review no longer has suspensive effect" (Article 27 para. 3). As a legal consequence of this deadline, the Regulation explicitly provides that if the deadline is not met, the asylum seeker may no longer be taken into custody and the Member State responsible is released from its obligation to take charge; responsibility then passes to the requesting Member State.

Advocate General Pikamäe held, that the competent national administrative authorities are empowered to suspend the implementation of the transfer decision ex officio pending the outcome of the appeal or review, and consequently to interrupt the expiry of the transfer period. However, this provision only refers to the suspension after an appeal has been lodged by the asylum seeker. The Dublin Regulation does not allow Member States to suspend and interrupt the transfer deadline due to practical difficulties. However, the

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motive to prevent a transfer of responsibility to the requesting Member State after the expiry of the six-month time limit because it has difficulties to carry out transfers of asylum seekers to other Member States in time during a health crisis does not in itself constitute a legitimate reason to justify an interruption of the transfer deadline. The clear deadlines are set in the interest of legal certainty and predictability of the CEAS procedures for all Member States. A deviation from the objective of a speedy procedure could therefore only be accepted exceptionally for legitimate reasons attributable to the applicant. However, the Dublin Regulation does not allow a Member State to suspend a transfer and interrupt the transfer period due to difficulties in timely implementation during the COVID-19 pandemic.

Regarding the appeal or review that allows for ex officio suspension and interruption of time limits, the Advocate General specified that this does not include litigation pending before a court and, therefore, a judicial review initiated by the administrative authorities themselves does not justify an interruption and cannot be used to invoke a suspension. It emphasizes that the decision to suspend cannot be "until further notice", as this would mean that the suspension of the enforcement of an administrative act would be at the sole discretion of the authority and asylum seekers would be kept in a situation of legal uncertainty for a long period of time.

2.8.3 Opinion of 2/6/2022, O.T.E. v. Netherlands (C-66/21): On the 'reflection period' for victims of trafficking in human beings (RL 2004/81) – Reference for a preliminary ruling from the District Court of The Hague.

The plaintiff, a Nigerian national, applied for international protection in the Netherlands in April 2019, having previously filed corresponding applications in Italy and Belgium. The Netherlands rejected his application as inadmissible and requested his readmission to Italy under the Dublin Regulation (EU) No. 604/2013. Before the application was granted, he expressed his wish to file a complaint that he had been trafficked in Italy. The complaint was rejected for lack of evidence. The plaintiff makes claims that the decision is unlawful because he should have been granted a reflection period pursuant to Article 6 of Directive 2004/81. The questions concern the connection between the reflection period for victims of trafficking in human beings stipulated in Article 6 of Directive 2004/81 and the Dublin III Regulation.

Advocate Generale de La Tour first examined whether an "expulsion order", which is excluded during a reflection period according to Article 6 para. 2 of the Directive, includes the transfer according to the Dublin III Regulation. The term "expulsion" was to be understood as an independent concept of EU law, since the Directive did not specify the geographical scope of expulsion or the national law of the Member States. Referring to the wording of the Return Directive, he clarified that the term "return" refers to the physical transfer of a third-country national from the Member State concerned and that a "return order" also includes the enforcement of a transfer decision under the Dublin III Regulation to another Member State.

The "reflection period" guaranteed in Article 6 para. 1 of Directive 2004/81 concerns the question whether Member States are prevented from issuing a transfer decision during this period and whether a transfer decision issued before the beginning of this period may be enforced or prepared. According to Article 6 para. 1, the EU legislator prohibits the enforcement of an expulsion order during the reflection period of a victim of trafficking in

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human beings. However, a Member State may issue a transfer decision or the preparatory measures for the execution of such transfer without the actual transfer of the third-country national concerned during the reflection period.

On the question of the beginning and end of the reflection period when a Member State does not establish it in national law, he considered that defining the beginning by the moment when the third-country national claims to the authorities that he is a victim of trafficking in human beings, without the authorities having any indication of the existence or the nature of the crime, would not be compatible with the personal scope of the Directive. The reflection period starts as soon as the authorities are informed and have reason to believe that the third-country national falls within the scope of the Directive and should be informed accordingly about the possibilities of the Directive and his/her obligations. The end of the reflection period is not left to the discretion of the Member States. The criteria in Article 6 para. 4 Directive 2004/81 are to be applied. The norm is to be interpreted narrowly. The Member State may not automatically terminate it, except in serious cases, which are explicitly mentioned in Article 6 para. 4.

2.8.4 Opinion of 21/6&2022, Netherlands (Staatssecretaris van Justitie en Veiligheid) v. C and B (C-704/20 und C-39/21):

The background to this Opinon are questions referred by the Dutch Council of State and the District Court of The Hague on the judicial duty of review in the context of the lawfulness of detention pending deportation. Advocate General de la Tour argues that all conditions for detention pending deportation must be examined, regardless of the reasons put forward by the person concerned. This comprehensive obligation to examine results from the interpretation of secondary Union law in the light of Articles 6 and 47 of the EU Charter. The prerequisites and conditions for the detention of third-country nationals are regulated in particular in the Return Directive 2008/115/EC, the Reception Directive 2013/33/EU and the Dublin III Regulation (EU) No. 604/2013. The essence of the right to liberty and the right to an effective remedy would be violated if a court were not allowed to examine all conditions and circumstances of detention ex officio and order release in the event of any violations. A restriction to the arguments asserted by the person concerned would not be compatible with this principle of effectiveness.

It is true that the EU legislator has not laid down common rules on the scope of a judicial review of the lawfulness of detention. Therefore, it was up to the respective Member State to establish procedural rules, provided that they did not violate the principles of equivalence and effectiveness. He stressed the importance of respecting the right to effective judicial protection guaranteed in Article 47 of the Charta of Fundamental Rights. It would violate this right if a court were prevented from releasing a person if it found that the detention was unlawful. Article 15 of the Return Directive, Article 9 of the Reception Conditions Directive and Article 28 of the Dublin III Regulation in conjunction with Articles 6 and 47 of the Charter of Fundamental Rights. Articles 6 and 47 of the Charta are therefore to be interpreted in such a way that a national court must examine whether the conditions for detention pending deportation exist on the basis of all factual and legal aspects that are considered relevant.

Subsequently, the Advocate Generale turned to the third question in C-39/21, whether the national legal and judicial practice of deciding on the lawfulness of a detention order in the second and last instance is compatible with Union law. He proposed the following

Hoffmann, H. (2022). European Jurisdiction on Refugee and Complementary Protection
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interpretation for Article 15 of the Return Directive in conjunction with Articles 6 and 47 of the Charter of Fundamental Rights that they do not preclude a rule according to which a national court deciding on an appeal at second and final instance against a first-instance judgment which had ruled on the lawfulness of detention may give abbreviated reasons for its judgment if it adheres to the reasoning and result of the first-instance judgment.

2.8.5 Opinion of 30/6/2022, Supreme Administrative Court of Lithuania (C-280/21): Filing a lawsuit against a person associated with the corrupt state may be considered political dissidence

P.I., a third-country national, complained to the courts of his country of origin about a delay in the execution of a commercial contract with a person who has good connections to an influential group. As a result, the State (with corrupt connections to this group and this person) initiated criminal proceedings against him. P.I. claimed that his actions were resistance to a corrupt system. The court held that refusal to cooperate with a corrupt system without explicit denunciation could be considered "political opinion" only if corruption was widespread in the country and legal action could not be considered a mere invitation to contract compliance.

The Court requested a preliminary ruling on the interpretation of the concept of political opinion. The applicant's political opinion, as defined in Article 10 of the Qualification Directive 2004/83/EC, is a reason for the recognition of refugee status, if this opinion is attributed to the applicant by the persecutor.

Can the oppression of the asylum seeker by the state apparatus, against which he cannot legally defend himself due to the widespread corruption in the state, constitute a "political opinion"? The Advocate General emphasizes that in the light of all the circumstances and taking into account the plausibility of this attribution of political opinion, it is necessary to examine and interpret Article 10 para. 1 lit. e) and para. 2 of the Qualification Directive in such a way that a person's action in defense of his or her property interests against non-state actors may be regarded as political opinion if there is a well-founded fear that this action may be perceived as resistance and may be perceived by state authorities as an act of political dissidence against which they may consider retaliatory measures.

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NEWS & NOTES

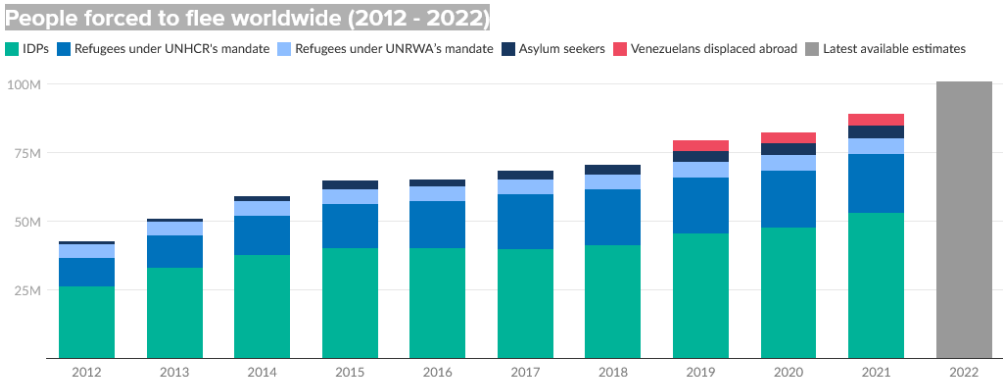
Selected Developments related to Forced Migration: January-July 2022[1]

Ralf Roßkopf[2]

This is a compilation of news and notes of relevance for the field of forced displacement.

1. UNHCR Global Trends Report

As in the previous years, again, the United Nation High Commissioner for Refugees (UNHCR) confirmed a new record number of 89.3 million forcibly displaced worldwide (UNHCR, 2022a: p. 2). Considering the developments of 2022, UNHCR expects a further increase to up to 100 million forcibly displaced for the current year (UNHCR, 2022a: p. 7).



Source: UNHCR (2022, September 9): Global Forced Displacement. *UNHCR: The UN Refugee Agency. https://www.unhcr.org/globaltrends.html.; also see UNHCR, 2022: 7).*

Compared to an increase in numbers from 2020 to 2021, when 89.3 million forcibly displaced were counted, the relative little number of 5.7 million displaced people who actually returned in 2021 (UNHCR, 2022a: p. 2; 6.4% when compared to the total) demonstrates the protracted character of many displacement situations. Defining protracted refugee situations "as those where more than 25,000 refugees from the same country of origin have been in exile in a given low- or middle-income host country for at least five consecutive years", according to UNHCR estimations "the probability in these situations of someone remaining a refugee for at least five years – i.e. the minimum

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duration that UNHCR defines as protracted – varies between 63 and 99 per cent" (UNHCR, 2022a: p20).

In 2021, the number of internally displaced (53.2 million) doubled the number of refugees (27.1 million). Different from the mainstream perception in the developed Global North, low- and middle-income countries (83%) and especially neighboring countries (72%) have borne an extraordinary share of the burden (UNHCR, 2022a: p. 2). Taken together with the addressed protracted character of displacement situations, the total of 57,500 resettled refugees in 2021 (UNHCR, 2022a: p.2; i.e. 1.7% of the total) proves limited international solidarity.

2. Displacement from Ukraine

Since the attack of Russian troops on Ukraine on 24 February 2022, the International Organization for Migration (IOM) estimates the number of internally displaced within Ukraine as of 23 August 2022 at 6,975,000 (IOM, 2022). Additionally, according to UNHCR figures, on 7 September 2022, 7,154,448 million refugees from Ukraine have been registered in Europe (UNHCR, 2022d). Of those, 2.490.480 have been recorded in Russia, 1.365.810 in Poland, 1.003.029 in Germany, 427.696 in Czech Republic, 159.968 in Italy and 145.000 in Turkey.

According to a survey conducted in Belarus, Bulgaria, Hungary, Republic of Moldova, Poland, Romania, and Slovakia (UNHCR, 2022c), 86% of the refugee respondents were female, 47% held a university degree. 80% of the families were separated with military conscription (58%) and unwillingness to leave (50%) being the most prominent reasons. 63% have the near future intention to stay in their current host country (51% for safety reasons), 13% each would like to return to Ukraine or do not know, 11% plan to move to another host country, of which 28% aim for Germany, 9% for Canada, and 4% each for Norway and France.

3. Temporary Protection Regulation implemented for the first time

Having been considered a painful learning outcome of mass influxes into the EU of displaced people related to the disintegration of and wars in former Yugoslavia in the 1990 decade, the Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof was meant to cope better and jointly with similar situations in the future. However, despite several influxes since, it was not until the outbreak of the Ukrainian war on 24 February 2022 that the Regulation was actually activated for the first time. Temporary protection is meant to be a form of protection for displaced people complementing refugee protection. It is

> a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection (Art. 2 lit. a).

Following the procedure outlined in Art. 5 of Council Directive 2001/55/EC, the European Commission proposed a Council Implementing Decision on 2 March 2022 (European

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Commission 2022), which the Council adopted by the respective Decision on 4 March 2022 (Council of the European Union, 2022), which is temporary for one year by nature (see Art. 4 para. 1 cl. 1; for extensions see Art. 4 para. 1 cl. 2 and para. 2 of Council Directive 2001/55/EC,).

According to its Art. 2, the Decision applies to Ukrainian nationals residing in Ukraine before 24 February 2022; stateless persons, and nationals of third countries other than Ukraine, who benefited from international protection or equivalent national protection in Ukraine before 24 February 2022; and, family members of the persons referred to in points (a) and (b). Member States shall apply it or adequate national protection in respect of stateless persons, and nationals of third countries other than Ukraine, who can prove that they were legally residing in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit issued in accordance with Ukrainian law, and who are unable to return in safe and durable conditions to their country or region of origin. Members States may apply it to other persons, including to stateless persons and to nationals of third countries other than Ukraine, who were residing legally in Ukraine and who are unable to return in safe and durable conditions to their country or region of origin. At least some Member States have extended the scope of temporary protection accordingly or in different ways (UNHCR Regional Bureau for Europe, 2022: pp. 2-3).

4. European Union Agency for Asylum established

As of 19 January 2022 Regulation (EU) 2021/2303 came into force, establishing a European Union Agency for Asylum (EUAA) replacing and succeeding the European Asylum Support Office (EASO), established by Regulation (EU) No. 439/2010. Compared to its predecessor, the EUAA has a broadened mandate:

Mandate of EASO, Art. 2 Regulation (EU) No. 439/2010	Mandate EUAA Art. 2 Regulation (EU) 2021/2303
1. The Support Office shall facilitate, coordinate and strengthen practical cooperation among Member States on the many aspects of asylum and help to improve the implementation of the CEAS. In this regard, the Support Office shall be fully involved in the external dimension of the CEAS. 2. The Support Office shall provide effective operational support to Member States subject to particular pressure on their asylum and reception systems, drawing upon all useful resources at its disposal which may include the coordination of resources provided for by Member States under the conditions laid down in this Regulation. 3. The Support Office shall provide scientific and technical assistance in regard to the policy and legislation of the Union in all areas having a direct or indirect impact on asylum so that it is in a position to lend its full support to practical cooperation on asylum and to carry out its duties effectively. It shall be an independent source of information on all issues in those areas. 4. -The Support Office shall fulfil its purpose in conditions which enable it to serve as a reference point by virtue of its independence, the scientific and technical quality of the assistance it provides and the information it disseminates, the transparency of its operating procedures and methods, its diligence in performing the duties assigned to it, and the information technology support needed to fulfil its mandate. 5. The Support Office shall work closely with the Member States' asylum authorities, with national immigration and asylum services and other national services and with the	1. For the purposes of Article 1, the Agency shall perform the following tasks: (a) facilitate, coordinate and strengthen practical cooperation and information exchange among Member States on their asylum and reception systems; (b) gather and analyse information of a qualitative and quantitative nature on the situation of asylum and on the implementation of the CEAS; (c) support Member States when carrying out their tasks and obligations in the framework of the CEAS; (d) assist Member States as regards training and, where appropriate, provide training to Member States' experts from all national administrations, courts and tribunals, and national authorities responsible for asylum matters, including through the development of a European asylum curriculum; (e) draw up and regularly update reports and other documents providing information on the situation in relevant third countries, including countries of origin, at Union level; (f) set up and coordinate European networks on third-country information; (g) organise activities and coordinate efforts among Member States to develop common analysis on the situation in countries of origin and guidance notes; (h) provide information and analysis on third countries regarding the concept of safe country of origin and

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Commission. The Support Office shall carry out its duties without prejudice to those assigned to other relevant bodies of the Union and shall work closely with those bodies and with the UNHCR. 6. The Support Office shall have no powers in relation to the taking of decisions by Member States' asylum authorities on individual applications for international protection.	the concept of safe third country (the 'safe country concepts'); (i) provide effective operational and technical assistance to Member States, in particular when their asylum and reception systems are subject to disproportionate pressure; (j) provide adequate support to Member States in carrying out their tasks and obligations under Regulation (EU) No 604/2013; (k) assist with the relocation or transfer of applicants for or beneficiaries of international protection within the Union; (l) set up and deploy asylum support teams; (m) set up an asylum reserve pool in accordance with Article 19(6) (the 'asylum reserve pool'); (n) acquire and deploy the necessary technical equipment for asylum support teams and deploy experts from the asylum reserve pool; (o) develop operational standards, indicators, guidelines and best practices in regard to the implementation of Union law on asylum; (p) deploy liaison officers to Member States; (q) monitor the operational and technical application of the CEAS with a view to assisting Member States to enhance the efficiency of their asylum and reception systems; (r) support Member States in their cooperation with third countries in matters related to the external dimension of the CEAS, including through the deployment of liaison officers to third countries; (s) assist Member States with their actions on resettlement. 2. The Agency shall, on its own initiative, engage in communication activities in the fields within its mandate. It shall provide the public with accurate and comprehensive information about its activities. The Agency shall not engage in communication activities that are detrimental to the tasks referred to in paragraph 1 of this Article. Communication activities shall be carried out without prejudice to Article 65 and in accordance with the relevant communication and dissemination plans adopted by the Management Board.

EUAA's Asylum Knowledge Website (2022) is a rich source of information and expertise with regard to "Asylum Reports"; "Information and Analysis on Developments in Asylum"; "Data Analysis and Research"; "Country of Origin Information"; "Country Guidance" on main countries of origin; "Asylum Processes"; "Dublin Procedure"; "Reception", "Vulnerability, and last but not least support for "Courts and Tribunals" including the "Case Law Database", the "Quarterly Overview of Asylum Case Law" and a compilation of "Practical Tools and Guides".

As is shown by Recital 5 of the Preamble Regulation (EU) 2021/2303, the intention was to further strengthen the role and function of the former EASO "so as to not only support practical cooperation among Member States but to reinforce and contribute to ensuring the efficient functioning of the asylum and reception systems of the Member States".

As of 31 December 2023, EUAA will also be in charge of a monitoring mechanism for the operational and technical application as well as the thematic or specific aspects of the Common European Asylum System (CEAS), Art. 14, 73 para. 2 Regulation (EU) 2021/2303, where serious concerns regarding the functioning of a Member State's asylum or reception system could lead to escalating measures, including EUAA monitoring

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exercises, recommendations by the EUAA and based on its own assessments or even on-site visits by the Commission. If the Member State concerned does not comply with recommendations by the Commission, the latter may make a proposal for a Council implementing act in accordance with Article 22(1), identifying one or more of the measures set out in Article 16(2) to be taken by the Agency, including deploying migration management support teams (Art. 21), asylum support teams (Art. 19-20), and technical equipment (Art. 23). In this regard, an asylum reserve pool of a minimum of 500 experts will be set up at the immediate disposal of EUAA (Art. 19 para. 6).

5. Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the Provision of an Asylum Partnership Arrangement

On 13 April 2022, the Government of the United Kingdom of Great Britain and Northern Ireland (UK) and the Government of the Republic of Rwanda signed a Memorandum of Understanding (MoU) for the Provision of an Asylum Partnership Arrangement (Home Office, 2022). It aims to prevent and combat illegaly facilitated and unlawful cross border migration by allowing the UK to reallocate asylum seekers whose claims are not being considered by the United Kingdom to Rwanda, which will process their claims and settle or remove (as appropriate) individuals after their claim is decided.

No limitations are mentioned in terms of numbers or further criteria for those to be relocted but the need for Rwanda's prior approval "taking into account Rwanda's capacity to receive them". Rwanda obliges itself to receive, accommodate and support the relocated individuals adequately to ensure their health, security and wellbeing as well as to

> process their claim for asylum, in accordance with the Refugee Convention, Rwandan immigration laws and international and Rwandan standards, including under international and Rwandan human rights law, and including, but not limited to ensuring their protection from inhuman and degrading treatment and refoulement. (Home Office, 2022: Item 2.1)

Recognized refugees would be granted refugee status in Rwanda. For those not recognized but in need for humanitarian protection as "return to their country of origin would result in a real risk of their being subject to inhuman, degrading treatment or torture or a real risk to their life" (Item 2.1), Rwanda would "provide treatment consistent with that offered to those recognised as refugees and permission to remain in Rwanda" (Item 2.1). A vague outlook is given for future arrangements "to resettle a portion of Rwanda's most vulnerable refugees in the United Kingdom" (Item 16).

UNHCR has critically assessed the arrangement and concluded:

> [T]he UK-Rwanda arrangement fails to meet the required standards relating to the legality and appropriateness of bilateral or multilateral transfers of asylum-seekers. This arrangement, which amongst other concerns seeks to shift responsibility and lacks necessary safeguards, is incompatible with the letter and spirit of the 1951 Convention.
>
> In UNHCR's view, the UK-Rwanda arrangement cannot be brought into line with international legal obligations through minor adjustments. The serious concerns outlined in the present analysis require urgent and appropriate consideration by the governments of the UK and

Roßkopf. (2022). Selected Developments related to Forced Migration
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> Rwanda in line with their obligations under well-established and binding norms of international refugee law. (UNHCR 2022d)

On 14 June 2022, the European Court of Human Rights (ECtHR) granted urgent interim measures in the case of N.S.K. v. the United Kingdom (application no. 28774/22, formerly K.N. v. the United Kingdom; also see the Jurisdiction Section in this issue) and indicated that the applicant should not be removed to Rwanda until three weeks after the delivery of the final domestic decision in his ongoing judicial review proceedings. The Court is quoted:

> The Court had regard to the concerns identified in the material before it, in particular by the United Nations High Commissioner for Refugees (UNHCR), that asylum-seekers transferred from the United Kingdom to Rwanda will not have access to fair and efficient procedures for the determination of refugee status as well as the finding by the High Court that the question whether the decision to treat Rwanda as a safe third country was irrational or based on insufficient enquiry gave rise to "serious triable issues". In light of the resulting risk of treatment contrary to the applicant's Convention rights as well as the fact that Rwanda is outside the Convention legal space (and is therefore not bound by the European Convention on Human Rights) and the absence of any legally enforceable mechanism for the applicant's return to the United Kingdom in the event of a successful merits challenge before the domestic courts, the Court has decided to grant this interim measure to prevent the applicant's removal until the domestic courts have had the opportunity to first consider those issues. (European Court of Human Rights, 2022a)

Further requests for interim measures where considered in the aftermath (European Court of Human Rights, 2022b).

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