

**BOSTON
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PROTECTING SYRIAN REFUGEES: Laws, Policies, and Global Responsibility Sharing

REPORT SUMMARY

Prepared by

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Protecting Syrian Refugees:

Laws, Policies, and Global Responsibility Sharing

Report Summary

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BADIL Introduction

BADIL has produced this summary of the Report ‘Protecting Syrian Refugees: Laws, Policies, and Global Responsibility Sharing’ written by the Boston University School of Law International Human Rights Clinic in order to translate it into Arabic to make it more accessible to an Arabic-speaking audience. This summary reproduces excerpts from the Report upon agreement with the authors. We would like to begin this summary by highlighting the importance of the Report, which sets out a framework for how states in and outside the Middle East region can implement genuine responsibility-sharing of the refugee population in this region through existing laws and policies, integrating Syrian and non-Syrian refugees through short-term and longer-term admissions. It also identifies the main protection gaps for both Syrian refugees and Palestinian refugees from Syria, followed by a list of recommendations for host states. The Report calls for international responsibility-sharing through a Comprehensive Plan of Action (CPA) to be launched on an urgent basis in cooperation with states and relevant actors from the UN and civil society.

We in BADIL believe this is a matter of extreme importance, as the number of refugees fleeing Syria increases day by day and the gaps in protection continue to widen. Syrian refugees are not receiving adequate protection in the host countries, and Palestinian refugees from Syria are particularly suffering from secondary displacement and discrimination.

Since Palestinians as nationals of the predecessor state (Palestine) have been denied their right of nationality/citizenship of the successor state (Israel)¹ as well as their right of return to their homes of origin in present-day Israel, they are displaced multiple times: first by Israel, now from Syria. This issue grows more important as instability increases in states hosting Palestinian refugees. Palestinians face new dangers in their host states that render them unable to remain in their present place of refuge or to return to their places of origin long since dispossessed by Israel. Because Israel is the only state from which Palestinian refugees originated, it is their only state of origin and thus is required under international law to allow these refugees to return.²

1 See: The 1948 Palestinian Refugees individual right of return, Badil Resource Center, available at: <http://www.badil.org/en/documents/category/35-publications?download=101%3Aindividualror-en>

2 <http://www.badil.org/en/documents/category/35-publications?download=101%3Aindividualror-en>.

The right of return would end the cycle of forced population transfer endured by Palestinians for 66 years.

Armed conflict, instability, and discriminatory policies result in multiple displacements of Palestinian refugees, displacements which would not occur if Israel respected Palestinians' internationally- recognized right of return. While Palestinian refugees who have remained in Syria face great risks, Jordan and Lebanon have closed their borders to Palestinians while leaving them open to Syrians. Unlike their Syrian counterparts, Palestinian refugees from Syria in Egypt, Lebanon and Jordan are not recognized as humanitarian refugees, and do not receive the same access to healthcare and other services. The denial of the right of return coupled with illegal or at least unfriendly policies have left Palestinians in limbo, sometimes unable to find even the temporary sanctuary that they must be afforded in cases of "massive refugee exodus," seen now out of Syria.³

For many reasons, most importantly the lack of political will, the mechanisms initially designed to provide Palestine refugees with special protection have become ineffective, especially the United Nations Conciliation Commission for Palestine (UNCCP) which was mandated, among other things, to search for and implement durable solutions that would end the plight of refugees— principally, their right of return.⁴ BADIL calls upon the international community to extend the fields of operations of UNRWA to fulfill the urgent needs of Palestinians in Egypt. Moreover, although UNRWA has enhanced its protection activities, there remains a lack of protection for Palestinian refugees, either for those living in UNRWA's area of operation (Lebanon, Syria, Jordan and the 1967 occupied Palestinian territory) or those living outside of UNRWA's areas. No international agency is searching for comprehensive durable solutions, including reparations, for Palestinian refugees, and UNRWA does not have the authority to advocate for the right of return of Palestinian refugees.

In light of the ineffectiveness of UNCCP, we also want to emphasize UNHCR's obligation to fill the protection gap resulting from the limited mandate of UNRWA. Moreover, UNHCR is the international agency responsible for providing both assistance and protection to Palestinian refugees outside UNRWA's area of operations. Palestinian refugees are often denied the rights guaranteed under the 1951 Refugee Convention when they seek asylum. National protection of 1948 and 1967 of Palestinian refugees in particular has been ineffective as a result of non-application or misinterpretation of Article 1D of the 1951 Refugee Convention by national authorities and courts.

3 <http://www.hrw.org/news/2013/03/21/jordan-obama-should-press-king-asylum-seeker-pushbacks>.

4 <http://www.badil.org/en/documents/category/51-bulletins-briefs?download=556%3Abrief-no.5-the-united-nations-conciliation-commission-for-palestine-protection-and-a-durable-solution-for-palestinian-refugees>

For the reasons stated above, BADIL decided to summarize and excerpt the Boston University Report, focusing on the protection gaps and on the recommendations for the international community and the Middle East. The Report highlights the existing gaps in the protection of refugees in four main host states in the Middle East, and the recommendations call for a CPA that would reinforce international solidarity and help lift the overwhelming burden from the host countries.

Editorial Notes

The audience for this summary Report differs from that reading the full Report (the latter more likely to be experts in international law and refugee issues). This summary is aimed towards the general public with little or no knowledge in international law and institutions. For this reason, the original structure and the order of the sections has been changed, and some sections have been merged. These changes have been made without interfering with the content, wording or analysis, and upon review and agreement with the authors. The structure has been changed as follows:

- The introduction of the Report and the protection gaps in each country have been comprehensively summarized in order to emphasize both the protection gaps and the recommendations;
- The recommendations from the beginning of the full Report, including specific recommendations for each country, were moved to a separate section at the end of the summary;
- Much of the detail of the laws, policies and legal analysis in the Report have been edited down for brevity, so readers are encouraged to refer to the original Report to fully understand the complexity of the legal issues involved;
- Finally, to make reading the Report easier and more accessible, there has been minimal use of acronyms.

Introduction from the Report

The Syrian Civil war has caused approximately 2.7 million Syrians to leave their country since 2011, and double that many are expected to have fled Syria by the end of 2014. The Syrian refugee crisis has brought tremendous challenges to the region, and this research attempts to map out one aspect of the crisis that has received very little attention: that is, the laws and policies at the international, regional and domestic level affecting the rights and status of the refugees flooding out of Syria.

The United Nations High Commissioner for Refugees' (UNHCR) 2014 Syria Regional Response Plan requests 4.2 billion U.S. dollars in financial aid. This Plan, like the majority of reports and requests to the international community of states and donors, focuses on funneling financial resources into the countries hosting the refugees from Syria. While this aid is certainly important, the authors of the Report believe that it illustrates a containment paradigm that is unsustainable and dangerous, rather than an approach that more equitably shares the responsibility towards the individual refugees among the wider community of states outside the current host region.

The Report makes an urgent call for a global Comprehensive Plan of Action (CPA) that builds on UNHCR's recommendation that "the international community ... show solidarity with countries hosting Syrian refugees in the region by offering resettlement opportunities, humanitarian admission places, and family reunification or other forms of admission for Syrian refugees."⁵ The recommendations in this Report differ somewhat from the humanitarian admissions proposal advanced by UNHCR. Currently, with three million refugees from Syria outside their home territory, resettlement can only be a partial solution – restricted as it is to only the most exceptional opportunities for the most vulnerable individuals. Countries outside the current host region must begin considering much more open policies to allow at least partial integration of Syrians into their states, both to alleviate the burden on current host countries, and to prevent the inevitable unfolding of an even greater humanitarian and security crisis than is already occurring.

⁵ UNHCR, Finding Solutions for Syrian Refugees: Resettlement, Humanitarian Admission, and Family Reunification, 1 (Oct. 18, 2013), available at <http://www.unhcr.org/5249282c6.pdf> (quoting António Guterres, UN High Commissioner for Refugees, Address at the 64th Session of the Executive Committee of UNHCR's Programme) (Sept. 30, 2013).

The Report addresses the key protection gaps between existing legal obligations and implementation on the ground, and makes recommendations for how the host states can address the gaps in protection.

The Report also shows how a CPA incorporating such recommendations allows the international community to use existing legal frameworks to both lift the unsustainable burden currently held by a few host states towards this huge refugee population, and to close the protection gaps for the refugees remaining in the region. Each of the laws, policies and existing protection gaps of Lebanon, Jordan, Egypt and Turkey are summarized below, before setting out the recommendations for both the international community and the host states.

LEBANON

Introduction

As of April 2014, the number of refugees from Syria in Lebanon exceeds one million, comprising around a quarter of Lebanon's population. As a result, Lebanon is facing a difficult trade-off between respecting the legal rights of the Syrian refugees in Lebanon and avoiding tensions with the competing rights of Lebanese nationals. Moreover, Lebanon, along with Jordan and Syria, has hosted the largest proportion of the Palestinian refugee populations since 1948 onwards outside Palestine. This pre-existing refugee problem affects every decision made in Lebanon towards current refugee flows, and the Syrian refugees are no exception.

Lebanon is not a party to the 1951 Refugee Convention or its 1967 Protocol, primarily because it opposes resettlement of Palestinians. Lebanon is, however, a party to a number of human rights treaties which incorporate some of the norms expressed in the 1951 Refugee Convention and which inform Lebanon's obligations to refugees from Syria.

Lebanon does not have a comprehensive domestic legal framework to guide the treatment of refugees by the authorities, and does not make a legal distinction between Syrian refugees in Lebanon and other types of immigrants. In the absence of any official written policy, the 1962 Entry and Exit Law has some limited reference on forcible returns, and Lebanon acknowledges the obligation of *non-refoulement*. Furthermore, the Lebanese government recognizes that individuals registered with UNHCR shall not be returned to the countries from which they fled. Despite these provisions and acknowledged obligations, the Government of Lebanon has asserted that the Syrian refugee crisis is not governed by the law, but by unpublished Council of Ministers' decisions.

UNHCR, which aids all non-Palestinian refugees in Lebanon and makes all refugee status determinations for non-Palestinian refugees, is one of the principal actors dealing with the Syrian refugees in Lebanon. The United

Nations Relief and Works Agency (UNRWA), on the other hand, is responsible for providing aid to Palestinian refugees and for monitoring the government's treatment of Palestinian refugees from Syria in Lebanon.

PROTECTION GAPS

Although Lebanon is treating Palestinians from Syria and Syrian nationals very differently, both groups are facing severe protection gaps due to lack of a clear and formal policy on entry, stay and legal process.

By far the biggest gap in the protection of Syrian refugees in Lebanon is their uncertain and time-limited legal status. Legal status encompasses these refugees' initial classification and the rights it affords: personal identification status, and the ability to record births, marriages and other major events. The Government of Lebanon officially terms the Syrian refugees in Lebanon "displaced individuals" and allows them to enter Lebanon under the conditions of the 1994 Bilateral Agreement between Lebanon and Syria. Thus, at least on paper, Syrian refugees in Lebanon are still treated as Syrian nationals were before the beginning of the conflict. The absence of a formalized policy of protection makes the application of *non-refoulement* highly ambiguous as the Government of Lebanon does not legally recognize the Syrians as refugees in need of protection.

Registration Generally

In Lebanon, "registration" refers to the procedure carried out by UNHCR or UNRWA upon a refugee's first encounter with them. In the case of Palestinian refugees from Syria, those who have been able to enter are merely recorded as assistance recipients by UNRWA, but not registered. This ensures that Palestinian refugees from Syria remain registered with UNRWA-Syria, but their assistance needs as displaced persons in Lebanon are covered by UNRWA-Lebanon.

For Syrian nationals, UNHCR performs an initial registration based on basic protection and assistance needs, and then provides each Syrian national with a UNHCR certificate of registration, which gives access to basic services. This certificate is not recognition of status as an asylum seeker, but is a pre-requisite for further assessment of protection needs by UNHCR.

Temporary Residence Permits

The Bilateral Agreement between Lebanon and Syria from 1994 governs the issuance of temporary residence permits for nationals of Syria entering Lebanon. Once they enter Lebanon, Syrian nationals possessing valid

identification receive a free residence permit valid for six months. This residence permit may be renewed at no charge for another six months. After one year, Syrian nationals have two options for extending their stay in Lebanon. First, they can return to Syria for a minimum of 24 hours, then reenter Lebanon, and apply for a new residence permit free of charge. Since the beginning of the conflict, security considerations have made returning to Syria a highly risky proposition for most Syrian refugees in Lebanon. As a result, the Government of Lebanon has permitted Syrians to extend their permits *without* leaving Lebanon, but for a fee of US \$200 per person. This policy of charging a permit renewal fee to refugees from Syria, which most are unable to pay, forces many of them to remain in Lebanon illegally or be forced to return to Syria.

As a result of these policies, as of March 2014, the Government of Lebanon estimates that almost half a million (or, effectively, about 50%) of the Syrian refugees population currently has expired residence permits. Expired residence permits create a range of protection and security concerns. Lack of valid status severely limits refugees' freedom of movement, puts them at risk of detention, limits their access to work, sows distrust in Lebanese authorities, and prevents recourse to the police in cases of need. Syrian refugees in Lebanon lacking valid residence permits may not obtain birth or marriage registration in Lebanon, which in some cases could result in statelessness. The consequences of falling out of status will become increasingly dire if the conflict in Syria is substantially prolonged.

There are two other groups of Syrian refugees in Lebanon. First are those in possession of valid identification but entering without border inspection. These people could submit a "petition for mercy" with the authorities and pay a penalty of over US\$600 per person over age 15 to try to regularize their status. The success of such petition is entirely uncertain and applicants cannot be represented by counsel in their proceedings. Second are those who do not possess any official identification, and their situation is even less clear. Despite the 2003 Memorandum of Understanding between Lebanon and UNHCR, which requires the issuance of temporary residence permits to *all* individuals seeking protection, the Government of Lebanon does not issue residence permits to people without personal identification.

Palestinians refugees from Syria reside in Lebanon under a distinct regime. When they were still able to enter, restrictions for them began before leaving Syria: Palestinians refugees from Syria must obtain a departure permit from Damascus in order to legally leave the country. Having gained access to Lebanon, they would receive a transit visa stamp at the border, costing approximately US \$12 and valid for two weeks. After the transit visa expired,

Palestinians refugees from Syria could obtain a residence permit valid for three months and renewable for up to one year at no charge. At the end of one year of residence in Lebanon, they were subject to the same renewal fees as Syrian nationals.

Non-Refoulement

One aspect of this gap in protection is the discriminatory treatment of Palestinians refugees from Syria as compared to Syrian nationals. In effect, they were, from the start, under greater threat of *refoulement* because their entry to Lebanon was subject to a number of restrictions, including a visa fee, the need to obtain a departure permit from Damascus and informal entry restrictions instituted by the General Security Office of the Ministry of the Interior in August 2013. As the number of Palestinian refugees from Syria seeking refuge in Lebanon continued to increase, admission at the border was subject to various *ad hoc* changes and discretionary applications over time. Finally, in April 2014, the Lebanese government completely closed the border to Palestinians from Syria, which means *refoulement* is now part of state policy.

Regarding Syrian refugees, Lebanon officially maintained an open-border policy from the start of the crisis, even though the influx of Syrian nationals could create a significant strain on Lebanon's society, economy and infrastructure. However, local administrators and government agencies have increasingly engaged in inconsistent and restrictive application of the official open border policy.

Recently, there does not appear to be evidence of *refoulement* back to Syria of Syrian refugees in Lebanon, even if they are caught with expired visas and residence permits, or if deportation orders have been issued against them. Both UNHCR and UNRWA reported receiving assurances that the Government of Lebanon will not engage in forced returns of Syrian refugees. Despite the assurances, however, this practice remains at the discretion of the Government of Lebanon and could change at any time. The 1962 Law on Entry and Exit from Lebanon contemplates penalties and deportation for lack of status. Article 32 of that law allows the assessment of criminal charges and penalties against individuals entering Lebanon without authorization, regardless of whether those individuals are asylum seekers.

Arbitrary Detention

Lebanon does not employ a uniform standard regarding detention of individuals who illegally enter the country. However, Lebanon has a history of arbitrarily detaining refugees and others for immigration violations. In

2013, Lebanon had only one detention facility that was dedicated solely to housing immigrants; detained immigrants who were not housed in the dedicated facility were housed in regular prisons. Human Rights Watch has reported recent incidents of torture and mistreatment in detention facilities, in violation of Lebanese obligations under international law. Typically, those who have completed their detention period are given the option of remaining in detention, or returning to their home country. They are generally released when UNHCR has prospects for resettlement – although this does not appear to be applied to refugees from Syria, with the possible (but unconfirmed) exception of Palestinians refugees from Syria returned to Lebanon from Egypt and other countries, and then forced to return to Syria.

Durable Solutions and Access to Status Determination

Because Lebanon’s law does not incorporate the 1951 Refugee Convention, refugees do not have a path to asylum, and are very rarely allowed to permanently settle in Lebanon. The 2003 Memorandum of Understanding between Lebanon and UNHCR grants refugees registered with UNHCR a temporary “circulation permit,” valid for up to one year, during which time UNHCR is expected to resettle the refugee to a third country. Instead of a circulation permit, Syrian nationals entering Lebanon obtain the temporary residence permit discussed earlier. Beyond the costly renewal of temporary residence permits, Syrian refugees in Lebanon may, in theory, obtain permanent residence in Lebanon if they meet any one of very limited criteria applicable to foreigners, which they can rarely fulfill.

Two forms of durable solutions are available to Syrian refugees in Lebanon at present: resettlement and repatriation. Neither, however, is a realistic option for the majority of the refugees. While return to Syria is likely the preferred option for most of the refugees, the continuing deterioration of the security situation in Syria forecloses it for the time being. Despite the repeated appeals of UNHCR and the Lebanese authorities to step up resettlement to third countries, resettlement initiatives are inadequate for the current numbers. The resettlement spots are reevaluated on an annual basis, and UNHCR, along with the relevant national authorities of the recipient states, administers the selection of Syrian refugees in Lebanon. In the case of Palestinian refugees from Syria, UNRWA has no mandate for durable solutions and does not negotiate for resettlement of Palestinians out of Lebanon.

JORDAN

Introduction

Historically, Jordan has been open to many refugee populations, particularly Iraqi and Palestinian refugees. Since the start of the war in Syria, there has been an open-border policy in effect for Syrian refugees, exempting them from visa requirements to enter and residence permits to stay. However, Jordan's financial constraints, infrastructure limitations and political tensions have negatively affected its traditionally welcoming attitude towards refugees, particularly towards Palestinians.

Jordan does not permit permanent integration of refugees. According to Jordan's Memorandum of Understanding with UNHCR, the refugee status determination process is tied to durable solutions for refugees to countries other than Jordan, whether voluntary repatriation or resettlement. The Memorandum of Understanding applies the same definition of "refugee" as the 1951 Convention Relating to the Status of Refugees without the geographic and temporal limits, even though Jordan is not a party to the treaty. In turn, the Government of Jordan has agreed to respect its non-*refoulement* and non-discrimination obligations. To this date, there has been limited resettlement of Syrians in other countries outside of Jordan.

Jordan is party to neither the 1951 Refugee Convention nor the 1967 Protocol Relating to the Status of Refugees. Similar to Lebanon, Jordan's decision not to be bound by the Refugee Convention or Protocol relates to its position towards Palestinian refugees. Jordan is, however, party to several other human rights treaties, many of which establish similar obligations as the 1951 Refugee Convention.

UNHCR uses the term "refugee" as a term of convenience, as there is no domestic law or governing treaty in Jordan that defines a 'refugee'. Under the 1998 Memorandum of Understanding, UNHCR can register 'persons of concern' including 'refugees,' who must then be resettled within six months. Successful applicants for status determination are legally considered "asylum-

seekers” in Jordan and become “refugees” only upon securing a resettlement space to a third country.

Jordan is within UNRWA’s geographic area of operation, thus, UNRWA is the primary agency responsible for addressing the needs of Palestinian refugees. UNRWA defines “Palestine refugees” as “persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict.” This definition was expanded to include those displaced as a result of the 1967 conflict as well. Registration with UNRWA entitles the individual to services, including health, education and housing based on need.

PROTECTION GAPS

Registration Generally

After the UNHCR registration process which takes place at a border facility at Raba’al-Sarhan, refugees must undergo a second interview by the government as well. The Government of Jordan does not have a refugee status determination process, and there is no specific criterion the government is seeking in these interviews. The interview includes a biometric scan, after which those refugees who will not be living in the camps can receive the Ministry of Interior Service Card, entitling them to education and health services. For the majority of refugees who will live in one of the camps, the cards serve only as documentation of government registration because most needs are met through the camp services. Although UNHCR and the Government of Jordan are discussing means to eliminate redundancy between the two registration processes, this has not materialized, and the current process is problematic and extremely burdensome, both for the refugees and the agencies involved.

UNRWA is responsible for registering all Palestinian refugees in Jordan. Palestinians who are registered with UNRWA in Syria are “recorded” by UNRWA as “Palestinian refugee-Syria” in order to maintain their right to return to Syria when the conflict ends. Palestinian refugees’ willingness to come forward to record their presence and obtain services is limited by their fear of exposure to authorities because of their uncertain status. There are only 12,500 Palestinian Syrian refugees recorded with UNRWA in Jordan, compared with the 455,000 registered in Syria. It is clear that a significant number are unrecorded and not receiving the benefits of the legal status recording process.

Non-Refoulement, Deportation

Jordan's Memorandum of Understanding with UNHCR establishes its obligation to respect *non-refoulement*, and the Arab Charter of Human Rights – which Jordan has ratified – sets out a more limited scope of the obligation. Article 33 of the 1951 Refugee Convention provides an exception to the principle of *non-refoulement* when there are “reasonable grounds for regarding [the refugee] as a danger to the security of the country... or [s/he] constitutes a danger to the community”. UNHCR has indicated that while some deportations are justified under this exception, it considers many deportations to be unlawful.

The Ministry of Interior retains the absolute right to deport foreigners, and can reject an application for residence or revoke a residence permit without specifying the reasons for that decision. The UNHCR has identified *refoulement* to the Human Rights Council as one of the most pressing of Jordan's legal violations. UNHCR categorically opposes rejection at the frontier as inconsistent with Jordan's *non-refoulement* obligation.

Syrian nationals are being deported in some instances for violating laws, such as working illegally. Others are deported for posing security problems, usually as a result of political actions, regardless of specific affiliation. UNHCR states that it has access to detained individuals, but such access is limited when the authorities claim national security is involved. Deportations of Syrian nationals, while a violation of international standards, does not prevent re-entry. Deported Syrians can re-enter immediately. This possibility for re-entry is not applicable to other refugee populations, for example, Palestinians who leave or are *refouled* cannot return.

Palestinians fleeing Syria have borne the brunt of new border policies. As of January 2013, Jordan has implemented a non-admission policy toward Palestinians. The ban on admission of Palestinians from Syria became official in January 2013 with the Prime Minister's declaration, but had been occurring for several months already.

As a result of the non-admission policy, all Palestinians who have entered since January 2013 have technically committed an immigration crime. Border control is a matter of national security, thus these people are viewed as criminals and a security threat. To date, over 100 Palestinian refugees have been returned, with an upsurge of cases in 2014. A significant number of deportees are children and the elderly, which suggests the claim that they are a security threat is not credible. Deportation is usually carried out within 24 hours, leaving very little time for intervention. Intelligence services often

come at night and execute the return without any option for judicial review. The fear of removal is pervasive for Palestinian refugees from Syria in Jordan. Palestinian aid organizations claim that deportation of Palestinian refugees from Syria can be initiated on virtually any encounter with authorities.

Under the 1951 Refugee Convention, *non-refoulement* applies where the individual's "life or freedom would be threatened". The present situation in Syria is such that one's political opinion, whether in favor of or in opposition to the government, could put life or freedom at risk. Thus, any returns to Syria would constitute a violation of *non-refoulement*. However, many sources report that conditions in Syria are more dangerous for Palestinians than Syrian nationals, including reports of starvation in the camps. Palestinians fear government retaliation based on the perception that Palestinians have tended to side with the opposition; however, the opposition is equally anti-Palestinian, and has forced Palestinians out as they take over regions of the country. Hence the removal of Palestinians to Syria falls clearly within the parameters of *refoulement*, as their life and freedom are at risk for both political opinion and nationality.

Arbitrary Detention

Syrian refugees are not subject to arbitrary detention. They may be detained in national prisons, just as Jordanians would be, for committing crimes. UNHCR conducts detention monitoring visits and provides legal representation for all children. It can also provide legal representation for adults based on a needs assessment.

Refugees living in the camps do not have freedom to leave unless they are able to "bail out." In order to bail out, a refugee or refugee family must obtain the sponsorship of a Jordanian family willing to be responsible for the refugees outside of the camp. As of 2012, Palestinians are no longer permitted to bail out of Cyber City camp, prompting some organizations to characterize it as a detention facility. Prolonged confinement has had a severely negative impact on the mental well-being of Palestinians living there; some have developed depression or aggressive behavior. Human Rights Watch reports that as of April 2012, the Government of Jordan has been automatically detaining Palestinian refugees from Syria.

Access to Status Determination and Durable Solutions

UNHCR is responsible for facilitating durable solutions, but Jordan does not permit permanent absorption of refugees within its borders. Thus, repatriation and third country resettlement are the only durable solutions available to

refugees. UNHCR does not promote or facilitate returns to Syria due to the dangers returnees could face, and it only pursues resettlement on a limited basis, to the extent available. The primary barrier is the lack of available resettlement slots in third countries. Lack of adequate documentation is also a problem for many refugees in seeking resettlement.

Resettlement of Syrian refugees is not occurring in significant numbers out of Jordan. Approximately 800 Syrians were resettled in 2013 and the UNHCR has set a resettlement goal in 2014 at 3,000. UNHCR's focus so far has been on resettlement to the European Union because of greater numbers of refugees with family ties in Europe.

Many Syrians have already opted to return to Syria, despite the ongoing conflict. Approximately 100,000 Syrians have returned, citing reasons including intolerable conditions in the host community; a desire to return to work, or to join the fighting; family reunification; or simply because they miss or want to check on their homes. Individuals wishing to return must make arrangements with the Ministry of Interior and UNHCR. UNHCR monitors returns to ensure voluntariness; returnees must sign a letter witnessed by UNHCR to prove that return is voluntary. Returns are arranged both through official and unofficial borders. Because of the serious risk to safety, organizations working with Syrian refugees do not consider repatriation a viable solution in the foreseeable future.

Durable solutions are even more limited for Palestinians because UNRWA cannot negotiate resettlement for fear of interfering with the Palestinian right of return. The Palestine Liberation Organization (PLO) in Jordan has stated that individual Palestinian refugees have the right to choose resettlement on an individual basis, and such a choice does not negate the right of return for Palestinians. However, the PLO's official position remains that resettlement as a collective option undermines the demand for Palestinian refugees to return to their homeland.

Palestinian refugees have essentially no durable solutions available to them at present; return to Syria is unsafe; resettlement is not negotiated by UNRWA in order to preserve the right of return; and Jordan's recent policies affirm that integration into the Jordanian population is not a viable option.

EGYPT

Introduction

Historically, Egypt has opened its doors to refugees of many different Middle Eastern and African nationalities, including Palestinians. Nevertheless, overpopulation, underemployment and transition to a new government have prompted the limitation of the rights of refugees.

July 2013 marked a shift in Egyptian migration policy that eventually prevented Syrian refugees from entering the country. Before July, Egypt did not require that Syrians obtain a visa prior to arrival. After July, the Government of Egypt began restricting visa renewals and requiring that all Syrians obtain a visa in order to enter Egypt and also to obtain a security clearance from the Egyptian National Security service. Syrians are not receiving security clearances, however, and, as a result, the flow of Syrian refugees to Egypt has essentially stopped.

There is no mechanism in Egypt to offer permanent status to Syrian refugees; the only durable solution the country affords is resettlement to a third country, or voluntary repatriation with the assistance of UNHCR. In Egypt, UNHCR manages all registration, documentation, and refugee status determination procedures for refugees under the 1954 Memorandum of Understanding.

Concerning Palestinians, the Government of Egypt takes a hard line against classifying them as refugees. As a result, it does not allow Palestinians fleeing to Egypt from Syria to register with UNHCR, and all proposals to the Government of Egypt for Palestinian registration with UNHCR have been denied. UNRWA has established a liaison office in Cairo, but the office cannot register refugees due to its lack of formal mandate in the country.

Because Egypt has not established domestic asylum procedures, the principal legal instrument governing refugee relations in the country is a Memorandum of Understanding between Egypt and UNHCR that was executed in 1954. Under the terms of the MOU, UNHCR is responsible for conducting refugee status determination pursuant to the refugee definition in UNHCR's original mandate. Since 1954, Egypt has acceded to the 1951 Refugee Convention, the 1967 Protocol, and the 1969 Organization of African Unity Convention,

the latter of which has significantly expanded the definition of a refugee. As a result, UNHCR adjudicates refugee status under the refugee definitions of its own mandate, the 1951 Refugee Convention, and the 1969 Organization of African Unity Convention.

The 1954 Memorandum of Understanding is a judicially enforceable agreement, and it limits durable solutions for refugees to voluntary repatriation and resettlement to third countries. Article 34 of the 1951 Refugee Convention imposes a qualified duty on states to facilitate the integration or naturalization of refugees. This naturalization provision, along with others in the convention that promote refugee integration, conflicts with the limited list of durable solutions provided for under Egypt's Memorandum of Understanding.

However, individuals who may only qualify for refugee status under the 1969 Organization of African Unity Convention, such as Palestinians, face unique problems in resettlement. Western countries – which do not adhere to the OAU Convention's expanded refugee definition – may refuse to resettle refugees that do not meet the 1951 Refugee Convention criterion.

Once a Syrian refugee registers with UNHCR, he or she receives a yellow card. The yellow card indicates to the Government of Egypt that the individual is awaiting *refugee status determination* in Egypt. Once a refugee becomes eligible for a specific resettlement slot, UNHCR issues them a blue card, which qualifies them for a residence permit in Egypt. UNHCR registration does, however, entail certain disadvantages. For instance, the Syrian embassy refuses consular services to individuals who have registered with UNHCR. Additionally, once an individual receives a UNHCR yellow card, he or she may not leave Egypt.

Palestinians in Egypt comprise one of the largest refugee populations in the country. The rights of Palestinians in Egypt have been subject to regional politics, which often disregard legal obligations. The Government of Egypt recognizes Palestinians merely as visitors or tourists – not refugees. Because Egypt does not allow for Palestinians to receive refugee status, Palestinian refugees from Syria have no access to UNHCR yellow cards or refugee status determination, much less the sought-after blue card. Without a yellow card, Palestinian refugees from Syria cannot receive a residency permit from the government, which places them in a particularly susceptible position for arrest and removal.

At the beginning of the Syrian conflict, Palestinian refugees from Syria were able to obtain a three-month tourist visa eligible for a single sixty-

day renewal – similar to the visas given to Syrians generally. After the visa expired, however, Palestinians had to choose between leaving the country or remaining in Egypt illegally, and being subject to arrest, detention, and deportation to Syria or Lebanon.

The Egyptian government’s prohibition of UNHCR registration and refugee status determination has resulted in a failure on the government’s part to extend Convention refugee protection to Palestinians from Syria.

PROTECTION GAPS

UNHCR Registration

From the outset of the Syrian refugee crisis, UNHCR has struggled to inform refugees of its registration procedure. To expand the number of registered Syrian refugees, UNHCR has established a “mobile registration process” and has increased efforts to inform Syrians of the benefits of UNHCR registration. Due to security concerns, however, mobile registration has maintained a slow pace, and many of the Syrians that live scattered throughout Egypt’s urban centers continue to be unaware of UNHCR’s registration initiatives. For these and other reasons, UNHCR has only been able to register under half of the estimated Syrians who have fled to Egypt. Apart from the information gap, many Syrians see their stay in Egypt as temporary, and feel uneasy about bypassing consular services by registering with UNHCR instead.

Syrians see little benefit in registering with UNHCR, and only a small percentage of those who have undergone registration are satisfied with the registration process. Registration does not necessarily prevent detention, and according to the U.S. embassy, between 20% and 30% of detained Syrian refugees were UNHCR-registered.

Arrest, Detention, and Non-Refoulement

Egypt has an obligation under regional and international law to recognize the principle of *non-refoulement*. While protection against *refoulement* should be applicable to all individuals who fall within the 1951 Refugee Convention and 1969 Organization of African Unity Convention refugee definitions, Egypt has deviated from this principle and has engaged in forcible return of refugees.

Arrest and detentions of Syrian refugees began in earnest in the weeks leading up to the clearing of Rabaa Square in August 2013. In Rabaa Square, Egyptian security forces attacked a gathering of pro-Morsi supporters, arresting

protesters and a few Syrian refugees who attended the demonstration. After the Rabaa Square events, police began detaining Syrians for allegedly supporting the Muslim Brotherhood in its push to reinstate the deposed President, Mohamed Morsi. The exact number of Syrians detained for political reasons, however, is difficult to ascertain.

Syrian refugees have also begun seeking the assistance of smugglers to undertake the treacherous journey to Europe by boat, which has resulted in a second major wave of refugee detentions. On 17 September 2013, Egyptian authorities opened fire on a boat carrying around 200 Syrian and Palestinian refugees. On 11 October 2013, another boat carrying refugees capsized off Alexandria and 12 perished. Fortunately, 74 Syrians and 100 Palestinians were rescued. Other reports indicate that defrauding smugglers have been taking money from predominantly Palestinian refugees for boat travel to Europe and then calling the authorities. So far, 10,000 Syrian, Palestinian refugees from Syria, and other refugees have arrived in Italy from Egypt's shores.

In November 2013, Human Rights Watch released an article documenting this second wave of detentions of refugees who had attempted to flee from Egypt to Europe.⁶ According to Human Rights Watch, the Government of Egypt detained approximately 1,500 refugees from Syria, which included "at least 400 Palestinians and 250 children as young as two months old."⁷ In "squalid and overcrowded" detention centers, Egyptian authorities either threatened to transfer Syrian refugees to regular prisons or flatly informed refugees that they would remain in detention until they "raised enough money to purchase plane tickets to leave Egypt."⁸ Human Rights Watch reported that, as a result of these practices, 1,200 of the second-wave refugees were "coerced to depart" from Egypt to nearby third countries such as Turkey and Lebanon, and "dozens" of refugees were returned to Syria. At least 35 Palestinian refugees detained during the second wave were also returned to Syria.

In December of 2013, Egypt's detention practices slightly shifted. According to a report by Reuters, a government spokesman stated that "[m]ore than 170 [of the remaining] Syrian and Palestinian refugees held since October were released . . . and granted temporary permits to stay in Egypt."⁹ According to the Government of Egypt, these temporary permits are valid

6 Egypt: Don't Force Palestinians Back to Syria, Human Rights Watch (Jan. 18, 2013), <http://www.hrw.org/news/2013/01/18/egypt-don-t-force-palestinians-back-syria>; U.S. Comm. for Refugees and Immigrants, *supra* note 670.

7 *Id.*

8 *Id.*

9 Maggie Fick, Most Syrian and Palestinian Refugees Held in Egypt Released, Reuters (Dec. 11, 2013, 12:16 PM), available at <http://www.reuters.com/article/2013/12/10/us-egypt-palestinians-idUSBRE9B90UG20131210>.

for three months. Still, 35 Syrians remain in detention “under review” by the Egyptian authorities. This group of refugees represents the last of the detained refugees charged with “immigration violations” for attempting to flee from Egypt to Europe. Finally, according to UNRWA, no Palestinians remain in Egyptian detention as of December 2013.

Access to Status Determination and Durable Solutions

UNHCR is responsible for facilitating durable solutions, but the 1954 Memorandum of Understanding effectively limits the durable solutions available for refugees to voluntary repatriation – which is impossible for Syrian refugees – and resettlement. Resettlement, however, has been anything but consistent in Egypt. The Government of Egypt protests UNHCR’s declining rates of both repatriation and resettlement, but has done little in facilitating the first step, refugee status determination, for Syrian refugees in Egypt.

UNCHR lists Syrian and Sudanese refugees as “people of concern” for refugee status determination in 2014, but owing to the political instability in Egypt, UNHCR’s main focus this year will be “providing protection by conducting registration on an individual basis and refugee status determination,” as well as pursuing “durable solutions where feasible.” As of yet, no updates are available regarding refugee status determination for Syrians in Egypt. Absent additional information, it is difficult to predict the effectiveness of Syrian registration, which was scheduled to begin in January 2014.

TURKEY

Introduction

Turkey has an open-border policy with Syria, and Syrians are given unrestricted access to cross the border at designated points. They usually find refuge on Turkish territory, either in cities or in one of 14 refugee camps constructed by the *Government of Turkey* in provinces on the Syrian border. Both governmental and non-governmental actors agree that there are many more refugees present in the country than the official reports claim, and most actors estimate that there are one million or more Syrian refugees in Turkey.

UNRWA does not operate in Turkey. UNHCR has worked in Turkey since 1960, pursuant to Turkey's ratification of the 1951 Refugee Convention. Under the 1994 Council of Ministers Regulation, UNHCR conducts refugee status determination for the populations the Government of Turkey recognizes as refugees, but will not resettle within its borders due to Turkey's limitation of the 1951 Refugee Convention to refugees from Europe. Unlike other host countries in the region, UNHCR provides its services *through* the Turkish government rather than doing so directly.

The authors of the Report were not able to find any record of a Memorandum of Understanding between the Turkish government and UNHCR. This is consistent with Turkey's historical tendency towards an opaque migration and refugee policy. The only publicly available document regarding the status of UNHCR in Turkey is a letter from 1960 through which the Turkish Prime Minister extends permission to UNHCR to establish representation in Turkey.

Turkey has acceded to the 1951 Convention relating to the Status of Refugees and to the 1967 Protocol. However, Turkey retained the "geographical limitation" from the 1951 Refugee Convention, whereby only persons seeking asylum and arriving from Europe are protected by the Convention.

Pursuant to the 1994 Council of Ministers Regulation, currently being replaced by the 2013 Law on Foreigners and International Protection, Turkey permits persons in need of international protection to remain in Turkey

on a temporary basis until they are resettled. This Regulation also gives UNHCR the authority to carry out refugee status determination and facilitate resettlement for non-European refugees.

In April 2012, the government issued a Directive explaining the substance and application of the Temporary Protection (TP) regime. Because the Directive is not promulgated as actual law, TP is administered and provided on an informal basis. Turkey's current policy is to grant TP, rather than refugee status, to all persons fleeing the situation in Syria.

Turkish officials have, to this point, refused to recognize Syrians as refugees, instead referring to them as "guests". Still, Turkey is providing Syrians with many of the services traditionally afforded to persons under international protection, including shelter, food, and healthcare. UNHCR supports the Government of Turkey's TP regime and considers it compatible with international standards. The regime has three main elements: an open door policy for all Syrians; no forced returns to Syria (*non-refoulement*); and unlimited duration of stay in Turkey.

Despite the "geographical limitation" to the 1951 Refugee Convention, Turkey's legal framework on international protection between 1994 and 2013 largely complied with its *non-refoulement* obligation. Non-European asylum seekers were not subject to *refoulement* if they registered with the government "without delay," provided valid identification, and qualified to receive resettlement assistance from UNHCR or a country of resettlement.

Various government officials, NGOs, and UNHCR staff persons have affirmed that Turkey has maintained a consistent practice of *non-refoulement* with regard to Syrians. However, Amnesty International reported that up to 600 Syrians were forcibly expelled by Turkey in early 2013.

As of now, there is no official or corroborated data on the detention of Syrian refugees in Turkey, apart from sporadic early reports, and the field research did not reveal a practice of arbitrary detention of refugees from Syria. It appears that individuals are detained in accordance with Turkish law, and held in foreigners' sections of police stations.

Unlike Jordan and Lebanon, Turkey has not hosted significant numbers of Palestinian refugees. Under the present TP regime, Palestinians arriving from Syria are entitled to registration and treatment on par with Syrian nationals, which includes the right to reside in the camps set up by the Government of Turkey. The overall impression is that Palestinian refugees from Syria receive the same status and treatment as Syrians themselves.

Turkey has incorporated Art. 1(D) of the 1951 Refugee Convention in the 2013 Law on Foreigners and International Protection's Art. 64(1) (a), regarding the application of international protection to Palestinian refugees. The provision states that persons receiving protection or assistance from an agency of the United Nations other than UNHCR are excluded from international protection. However, once such protection has "ceased for any reason without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations," such persons may receive protection in Turkey. It remains to be seen whether Turkey, in interpreting this provision of the 2013 Law on Foreigners and International Protection, will follow the European Court of Justice decision in *El Kareem, El Kott & Others* to extend international protection to Palestinians for whom UNRWA protection has ceased for reasons beyond their control. However, at the moment TP is applied equally to Palestinians out of Syria and Syrian nationals.

PROTECTION GAPS

Registration Generally

Registration does not occur uniformly, so there is "no systematic, reliable way to gather data about the Syrian refugees."¹⁰ Additionally, while registration within the camps by the Turkish Disaster and Emergency Agency, the state agency responsible for refugees, has been relatively straightforward, measuring the size and characteristics of the out-of-camp population has proven difficult.

UNHCR's work in providing protection and assistance to refugees – livelihood support, humanitarian assistance and durable solutions – is triggered by registration that covers information about ethnicity, religion, and vulnerabilities. Thus, unregistered refugees scattered throughout Turkey's cities and towns, have limited access to assistance and services. This is a particular problem in the major cities like Ankara and Istanbul, where refugees cannot find housing and are living in parks, community centers and mosques. Many are homeless and in desperate circumstances.

UNHCR has begun to address this gap in registration and official information about the size of the refugee population by setting up mobile registration units for the government to begin registering the refugees living in the cities. However, mobile registration has begun only recently, and until there is a more efficient and expansive process for registering refugees outside the

¹⁰ Interview with Zaid Hydari, Co-Coordinator, Helsinki Citizens Assembly Refugee Advocacy and Support Program's Refugee Status Determination Legal Assistance Unit, in Istanbul, Turk. (Nov. 19, 2013).

camps, there will be greater social problems with refugees visibly homeless, and friction with the local population.

Non-camp refugees are typically very mobile, and frequently relocate in search of affordable housing. In certain neighborhoods, the police respond to complaints about Syrians by asking them to leave the residences they have rented; Syrians are unsure of their legal rights, and often comply.

Refugee Status Determination

Syrian refugees do not have access to refugee status determination. There are reports that UNHCR is authorized to conduct refugee status determination for Palestinian refugees who have arrived from countries other than Syria, but Syrians and Palestinian refugees from Syria are not eligible for refugee status determination at this time. Under the 1994 Regulation, non-Europeans could obtain temporary asylum by registering with the police within ten days of arrival. Once registered, the applicant would then register at a local UNHCR office and undergo a UNHCR registration procedure. The TP status extended to individuals fleeing Syria is distinct from “temporary asylum” in that it does not allow UNHCR to perform a refugee status determination procedure. Under the new law, refugees eligible for “conditional refugee status” (the new term for “temporary asylum”) will be processed by the Directorate General on Migration Administration and local governorates, without direct reliance on UNHCR status determinations. Syrians are not eligible for this process because they are covered by the TP regime, and seen as a temporary mass influx. Both Turkish authorities and UNHCR have been silent as to if and how the people currently referred to as “guests” from Syria could eventually apply for formal refugee status.

RECOMMENDATIONS

1. International Community

After analyzing the existing laws and policies and the gaps in protection in each host country, the Report concludes that only a global CPA with the components of existing legal frameworks can prevent the Syrian conflict from spreading and becoming a protracted refugee crisis that could last a decade or more.

Resettlement of non-Syrian refugees

The recommendations for a CPA begin with urging states to simply make good on existing resettlement spaces and policies. The first request is for the EU and the Americas to operationalize permanent resettlement on an expedited basis for pre-existing (non-Syrian) refugee populations in the Middle East, whether by prioritizing refugees who have already been granted resettlement but whose movement has been delayed, through expanded resettlement slots for non-Syrian refugees, or by implementing new resettlement programs envisioned by existing laws for these populations. This will relieve the pressure on the host states of thousands of refugees who have been granted resettlement but have been trapped in the Middle East with minimal survival rights, waiting for years to leave due to lack of sufficient current slots or excessive and overly restrictive processing barriers by resettlement states. This recommendation is based on the strong urgent claim that pre-existing refugees eligible for resettlement should not have to lose their resettlement opportunities for the more recent Syrian refugees. Latin American countries should prioritize resettlement of non-Syrian refugees from Egypt, Jordan and Lebanon. Regarding refugees in Egypt, because the definition of the 1984 Cartagena Declaration adopted by most Latin American states is very similar to the Organization of African Unity refugee definition applied by UNHCR in Egypt, almost all refugees that UNHCR has recognized under the latter should also be recognized as such under the former. Because Jordan, Lebanon and Egypt are not refugee 'host countries' providing legal status and protection to refugees, pre-existing refugee populations (before the Syrian crisis) already languishing in these countries should have priority for resettlement outside

the region. Countries such as the Latin American countries with broader refugee definitions have the legal and operational capacity to resettle refugees falling under a much more generous category of refugees, and the Report authors recommend that they accept more resettlement for refugees from the Middle East than is occurring at present.

Temporary Protection for refugees from Syria and Palestinian refugees

The second theme of recommendations is for a TP program for refugees from Syria that includes both Syrian nationals and Palestinians, modeled on the Turkish temporary protection regime already in place. TP for mass or exigent refugee flows has an existing legal framework in the European Union and the United States, and can be readily institutionalized in the Americas and in the Middle East and North African region for both Syrians and Palestinians.

TP is a “short-term emergency response to a ‘mass influx’ of asylum seekers,”¹¹ and is “characterized by the principle of *non-refoulement* which is accorded a person and which is temporary pending the obtaining of a durable solution.”¹²

It addresses the basic “need to provide international protection to persons fleeing armed conflict and civil strife,” and “is generally accepted in practice by States as a humanitarian responsibility.”¹³ It also addresses the significant gap that occurs when “no international regional instruments exist specifically for the protection of refugees from conflict who do not otherwise come within the terms of the 1951 Convention and the 1967 Protocol” as well as in situations of mass influx when refugees cannot be afforded individual status determination as a practical matter.¹⁴

All of the conditions justifying a TP regime exist in the Syrian crisis: mass influx in host states, an absence of Refugee Convention criteria and norms in place, or persons displaced from Syria not necessarily meeting the Refugee

11 Alice Edwards, Temporary Protection, Derogation and the 1951 Refugee Convention, 13 *Melb. J. Int'l L.* 595, 599 (Nov. 2012).

12 G. J. L. Coles, Temporary Refuge and the Large Scale Influx of Refugees, 8 *Australian Year Book of Int'l L.* 189, 201–02 (1980), available at <http://www.austlii.edu.au/au/journals/AUyrbkIntLaw/1978/7.html>. See also Council Directive 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 (2001/55/EC), Art. 1, 2001 O.J. (L212/14) (EC), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF> [Council Directive].

13 See UN General Assembly, Note on International Protection, A/AC.96/830, 19-20 (Sept. 7, 1994) (“The protection accorded in these countries to persons who are not deemed to be refugees under the 1951 Convention is normally granted as a sovereign humanitarian act.”) [1994 Note on Protection].

14 1994 Note on Protection, *supra* note 13, at 24 (“Temporary protection arrangements offer a means of ensuring protection for so long as it is needed while continuing to favor repatriation as the preferred solution.”).

Convention criteria, but facing a humanitarian emergency triggering the obligation of *non-refoulement*. Refugees out of Syria readily fit the profile UNHCR envisioned as TP recipients.

Under the EU Temporary Protection Directive, a mass influx includes assisted evacuation from outside the state accepting admissions. This mechanism should be triggered to allow refugees from Syria to obtain this protection directly from EU country consular officers in the Middle East host states. An EU-wide TP regime will relieve not only the Middle East host states, but also the EU frontier territories, which should not be forced to shoulder the burden on their own of the refugees trying to get out of the Middle Eastern region.

Opening the EU's borders to provide Syrian refugees with TP addresses a number of critical issues. As shown earlier, there are serious protection gaps within the current aid provision system that are causing the refugees to take desperate measures. The regime should explicitly cover Palestinians out of Syria, in addition to ensuring that all EU states consider Palestinians from the Middle East and North African region for refugee protection under the recent European Court of Justice decision of *Abed El Kareem El Kott & Others*.

The Report authors recommend that TP status be available to Palestinians from Syria directly through EU consulates in the Middle East region, while the requirements of *El Kott* are obligatory once Palestinian refugees from Syria arrive in EU states and apply for recognition as refugees. *El Kott* requires an automatic grant of refugee status in EU member states to Palestinians who have left an area under the mandate of UNRWA due to reasons beyond the applicant's control. Since the *El Kott* decision is an interpretation of an EU-wide Council of Europe Directive, it is binding on all EU member states.

Temporary Protected Status, similar to European TP, is a US program that allows eligible individuals fleeing an “[o]ngoing armed conflict” to reside and work legally within the United States for a specific period of time.¹⁵ The authors of the Report propose a modified, exceptional program for refugees from Syria similar to the proposal for the EU TP regime: that the United States allow refugees from Syria to apply for multi-year TP slots directly through the US consulates in the Middle East host states.

The Report recommends Latin American countries to open resettlement slots for Palestinian refugees from Syria. Palestinian refugees in general and Palestinian refugees from Syria are the most vulnerable of refugee groups in terms of protection gaps in the Middle East host states. They

15 United States Citizenship and Immigration Services, What is TPS, available at <http://www.uscis.gov/humanitarian/temporary-protected-status-deferred-enforced-departure/temporary-protected-status>.

also face particular barriers to resettlement in Europe, North America and other resettlement regions. In contrast, the legal framework for temporary admission and resettlement for Palestinians in Latin America is particularly favorable for a number of reasons covered in the Report. Moreover, under the 2004 Mexico Declaration and Plan of Action, as adopted by many Latin American states, resettlement is not inconsistent with the right of return to state of origin – a critical position for Palestinian refugees.

Humanitarian, Family Unity and Other Special Admissions

The third theme of recommendations calls for an expansion of other temporary or permanent visa categories to accommodate those displaced from Syria. Specifically, the proposal is for humanitarian, family unity, emergency, student and visitor visas to be offered directly from foreign embassies in the host states.

2. To the Middle East region

The following recommendations for the host countries address the gaps in protection and violations of key norms that have been occurring, as outlined in the sections above. Lebanon, Jordan and Egypt have, as a consequence of being the main host states for Palestinian refugees for over sixty years, steadfastly refused to become parties to the Refugee Convention or Protocol, and the Convention on Stateless Persons.

The main Middle East states of refuge for Syrians are non-adherents to the key international refugee norms—with the exception of *non-refoulement*, whose contours are ill-defined. Thus, a region-wide TP program modeled on Turkey's, for both Syrians and Palestinians from Syria, is necessary. The basis for this program in the Arab states is set out for Palestinians in the 1965 Casablanca Protocol, and for Syrians in the Arab Charter.

The Organization of African Unity Convention provides a TP framework for Egypt. Accordingly, the Report authors recommend that Jordan, Lebanon and Egypt adopt a TP regime similar to that implemented by Turkey. The Arab states can implement a region-wide TP regime for all Palestinian refugees residing in their territories, including those from Syria, based exclusively on the Casablanca Protocol standards of treatment. TP is completely consistent, as a matter of international law, with the demand for Palestinian refugee right of return and property restitution *vis-à-vis* place and homes of origin.

Since the beginning of the conflict in Syria, all the host states except Turkey have practiced inconsistent and varying policies of admission, entry and stay. Particularly problematic is the discriminatory treatment towards Palestinian

refugees from Syria. This is why the Report strongly recommends TP status for all Palestinian refugees who have been residing in these host states, as well as those currently fleeing Syria, but at a minimum, all of the Middle East and North African host states must respect and fully implement their obligations of *non-refoulement* to all persons fleeing Syria, including Palestinians.

While Lebanon continues to maintain an open-border policy with regard to Syrian refugees, its policies and practices do not fully provide the necessary protection for all refugees arriving from Syria, especially for Palestinians. Palestinian refugees from Syria face even greater hardships in the new bar to entry; the risk of detention and *refoulement* upon discovery; and the far more serious consequences of falling out of status. Lebanon needs to adhere to its international obligation to keep its borders open to all refugees from Syria, regardless of national origin. It must respect the obligation to *non-refoulement* towards all persons fleeing Syria, and lift all fees and fines involved in obtaining or renewing permits to stay in the country so an open-border policy is effective and implemented across the board.

Lebanon should adopt a TP program for all refugees and persons displaced by war who cannot safely return. Such a program should grant status to refugees from Syria, including Palestinians, and the long-standing Palestinian population in Lebanon. The latter have already been receiving a *de facto* TP status, but without the basic standards of rights required under the Casablanca Protocol and international norms.

Jordan should fully adhere to the principle of *non-refoulement*. Jordan is bound by *non-refoulement* under several treaties and under the Memorandum of Understanding, it has agreed to the UNHCR definition as is found in the 1951 Refugee Convention. The widespread denial of entry and the deportations of persons fleeing Syria, particularly of Palestinians, is a clear violation of Jordan's international obligations. In the same way as for Lebanon, the Report calls on Jordan to maintain an open border for all persons fleeing for safety. Moreover, Jordan should reform its duplicative border registration process, which has become a serious hardship for refugees already suffering trauma.

Jordan must also cease its detentions and deportations of refugees, and revise its over-broad definitions of who is a security risk. Arbitrary detention includes restrictions on freedom of movement for camp-dwellers. The authors of the Report ask Jordan to revoke its policy of confining refugees to camps, including those in Cyber City. Either the Government of Jordan should institute a uniform and liberal 'bail out' policy with minimal sponsorship requirements without discrimination for all refugees, or it should allow free movement into and out of the camps.

As with Lebanon, the Report asks that Jordan codify into domestic law a refugee framework that covers refugee status; TP; and criteria for asylum and resettlement. It also urges Jordan to institute a formal TP program for all persons fleeing Syria, including Palestinians, and to consider granting all Palestinian refugees in the country TP status, modeled on Turkey's new law.

As for all the other main host states in the Middle East, the Report recommends that Egypt codify into domestic law a clear, formal refugee policy incorporating TP, asylum, and refugee criteria for resettlement. Although Egypt is a party to both the 1951 Refugee Convention and the Organization of African Unity Convention, Egypt is respecting its obligations under neither treaty *vis-à-vis* the refugees in its territory. Under the Organization of African Unity Convention, Egypt should be granting, at minimum, TP to all individuals meeting the broader 'refugee' definition of the Organization of African Unity. This would apply to all those fleeing Syria, including Palestinians. Egypt has a direct obligation to offer both TP under the Organization of African Unity criteria and asylum under 1951 Refugee Convention.

Egypt's new requirements for advance security clearance, for canceling visas upon registration with UNHCR, and other policies discussed above, have virtually stopped the entry of refugees from Syria and discouraged the vast majority in Egypt from registering with UNHCR.

The Egyptian government is urged to offer TP as well to Palestinian refugees who have been in Egypt from 1948, and with each subsequent wave of the Palestinian flight. Egypt is also a party to the Casablanca Protocol and a number of Arab League Resolutions, which explicitly guarantee core rights to Palestinian refugees in the Arab League states, including permitting dual citizenship. Nothing in the Casablanca Protocol undermines Palestinian refugees' right to return.

Moreover, the Report asks the Egyptian Government to legislate clear policies concerning detention and deportation that conform to its obligations under 1951 Refugee Convention. This requires detention of refugees in only narrowly-defined, exceptional security cases.

In the case of Turkey, the preceding overview of its legal obligations and policies toward refugees, describes a system marked by a high level of governmental control and a tradition of broad discretion for the executive branch in devising policies tailored to specific refugee crises. Turkey's new Law on Foreigners and International Protection, enacted in April 2013, comes at a time when Turkey is facing the greatest refugee influx in its already long history of refugee reception. The new law is a major positive development

in refugee protection for Turkey and the region; however, Turkey should implement this law in partnership with UN agencies and NGO's. Turkey should move from a completely government-controlled process to a better partnership with UN agencies and NGO's. It should give more space to humanitarian agencies to expand their service delivery and broaden the availability of protection and assistance to non-camp refugees. Turkey must increase efforts to register refugees, and to respond to future needs and vulnerabilities (rather than simply the immediate humanitarian needs of refugees). Further, resources should be invested in making the Government of Turkey registration procedure compatible with the UNHCR refugee status determination questionnaires so that potential candidates for refugee status could, at a later date, be transferred to UNHCR for processing without undue delay and complications.

Conclusion

Current host countries have communicated that “a token small resettlement effort would hardly make an impact and might even attract more refugees to their countries.” As such, countries offering resettlement must “commit to receiving a sizeable number of refugees,” making such efforts a “demonstration of actual support rather than a mere token gesture.” Providing only “token support” by the international community to host countries may, at this point, cause more harm than good.

At the same time, the huge refugee flow out of Syria can and must be shared by many more countries outside the Middle East region; TP provides an interim solution to allow that to happen, and ensures a response that is appropriate for the scope of the crisis. Refugees who have been waiting and are entitled to resettlement should be moved out of the region, while TP in the EU, the US and elsewhere would allow significant short-term movement of the displaced from Syria out of the region but create no obligation on third states to permanently absorb them. The combination of these two programs would lift the pressure of large numbers of refugees from the host states, and allow them the space and resources to grant standards of rights to those remaining that they will not—and perhaps cannot—contemplate under current conditions.

With meaningful responsibility-sharing through a multi-leveled CPA by the global community, it would be possible to advocate for a TP program within the Middle East region as well as for the refugees and displaced from Syria, including Palestinians; a program with guaranteed minimum standards for the right to work, to adequate shelter and housing, the right to legal status, truly open borders, and robust respect for *non-refoulement*.

In light of these concerns, it is in the interests of the global community to put a CPA in place now, while equitable responsibility-sharing is still possible in a planned program that builds on an existing framework of refugee, immigration and humanitarian laws and policies. Together, a concerted, worldwide effort can prevent the Syrian refugee crisis from turning into a protracted humanitarian disaster.

Moreover, this mass refugee crisis should be the impetus for robust refugee legislation in the Middle East, an opportunity to create comprehensive and harmonious refugee legislation. A legal framework that implements status—whether temporary or permanent—that also grants basic rights and benefits to refugees and others needing humanitarian protection does not have to be inconsistent with the demand (and rights) of Palestinian refugees to return. Rather than view the Syrian crisis as a reason to put this effort in abeyance, it is precisely this crisis that calls for enacting such legislation on an urgent basis.

