

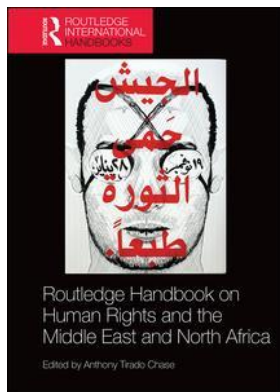
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RIGHTS, REFUGEES, AND THE CASE OF SYRIA

What do human rights offer?

Kathleen Hamill

Whether in camps or in urban areas, Syrian refugees in the region are steadily losing hope and becoming more desperate each day. Access to food, shelter, education, healthcare, and livelihoods are unreliable and uncertain. Abject poverty is becoming the norm, and refugees are becoming prisoners of their own fate. What we need is for refugees to be able to live and work in a decent environment. Children need to go to school. We need hope and a plan for the future. Syrian refugees need to be able to realize their human rights.

— Maha Kattaa, Syrian Refugee Response Coordinator,
International Labor Organization, October 2015¹

Introduction

The war in Syria has created one of the worst humanitarian and refugee crises in recent history, with far-reaching consequences for human security, economic development, public health, child protection, and sheer survival, both in the Middle East and beyond.² By the end of 2015, over 6.5 million Syrians were internally displaced, and more than 13.5 million people were in need of humanitarian assistance inside Syria.³ The crisis has reverberated far beyond Syria's borders, impacting Europe, the Americas, and the wider Middle East. Fierce debates continue to rage over host countries' refugee and immigration policies, as well as human rights and humanitarian protections.

The refugee crisis has been most acute for Syria's neighbors—Lebanon, Jordan, and Turkey—where more than 90 percent of the refugees have fled, but where international legal standards for refugee protection do not necessarily apply to displaced Syrians.⁴ By 2016, nearly 4.2 million Syrians were seeking refuge in these three countries; almost half a million Syrians had fled into Europe.⁵ Given the prolonged nature of the crisis, the limits of humanitarian aid and the prevailing conditions in neighboring countries, the vast majority of Syrian refugees have not had adequate means or resources to access appropriate education, shelter, food, health-care, water or sanitation in any long-term, sustainable way.

In this context, what do human rights offer: implementable minimum standards and tangible protections, or just illusory rhetoric? It is clear that human rights concerns are at stake, whether Syrian refugees are seeking to cross national borders, sheltering inside neighboring countries, or in transit back to Syria or to another country. This chapter will argue that human rights

remain largely unfulfilled both for reasons of internal inconsistencies and for reasons of national self-interest. Yet domestic and international human rights commitments offer the most realistic path toward taking into account the interests of states and Syrian refugees in addressing an enormous humanitarian crisis that can no longer simply be wished away.

Before entry: contested status, contested legal frameworks

One of the vexing problems that has undergirded the refugee crisis is that Syria's closest neighbors had no applicable refugee and asylum frameworks in place before 2011. This means they did not have policies or procedures governing the entry, stay, and protection of Syrian refugees and asylum seekers, instead reserving the right to treat displaced Syrians as irregular or illegal migrants. As a result, the terms 'refugee' and 'asylum seeker' have remained very much contested with respect to Syrians and their legal status in Jordan, Lebanon, and Turkey. From the outset, neighboring governments did not conceive of incoming Syrians as refugees *per se*. Instead, they were guests, migrants, displaced civilians, or, eventually—in the case of Turkey—persons under temporary protection. This reflected not only the ongoing absence of applicable domestic refugee frameworks, but also a set of misplaced assumptions that the conflict would end quickly and that Syrians would soon return home.

As in other situations of mass population movements, the influx of Syrians into Jordan, Lebanon, and Turkey has not fit neatly into narrow legal categories especially given the lack of applicable refugee frameworks under domestic law. The accepted definition of a refugee derives from the 1951 Refugee Convention. It encompasses people fleeing from individualized persecution in their home countries, or countries of habitual residence, on account of one of five protected grounds: race, religion, nationality, political opinion, or membership in a particular social group.⁶ As such, the 1951 Convention definition of a refugee neither explicitly includes protection for civilians fleeing war—as is the case for many Syrians—nor explicitly guarantees the right of entry or access to territory across borders, even to people seeking refuge from persecution.⁷

This Convention definition is relevant because it provides an authoritative point of reference and the baseline legal understanding of a refugee under international law, regardless of which states have signed onto the Convention. The definition of a refugee, however, has been interpreted more broadly by the United Nations Refugee Agency (UNHCR) and by a number of states. As a result, the application of the term 'refugee' has been disputed in the Syrian context on multiple levels. Unlike the 1951 Convention refugee definition, UNHCR has explicitly recognized war and violent conflict as causal factors driving people to seek refugee status and protection across borders.⁸ In neighboring countries, Lebanon, Jordan, and Turkey, the U.N. Refugee Agency has extended blanket recognition to displaced Syrians as refugees, doing so on a *prima facie* basis by virtue of their nationality. It is important to note that neighboring host governments have not officially registered displaced Syrians as refugees under their domestic legal systems. Official UNHCR and government positions have diverged on this matter, yet millions of displaced Syrian civilians have sought protection and refuge in the neighboring countries of Lebanon, Turkey and Jordan.

Key questions and debates

In response to the evolving situation and shifting refugee flows, policy debates have emerged around contentious issues related to protection, survival, development, and livelihood strategies for Syrian refugees. These debates have focused on appropriate responses to the refugee crisis

by governments, U.N. agencies, NGOs, and refugees. Neighboring governments have had to make a series of rapid judgment calls on myriad issues requiring short- and long-term planning. These government responses, in turn, have been informed by competing interests and by conflicting interpretations of applicable human rights standards. Among these have been decisions about open- or closed-door policies, camps or no camps, registration or no registration, integration or no integration, freedom of movement or no freedom of movement, and access or no access to public education, healthcare, and the formal labor market.

Likewise, U.N. agencies and NGOs have grappled with similar questions and decisions. Should they defer to host governments on controversial human rights issues or push back against host governments when human rights standards are compromised? Should they provide short-term aid and longer-term development assistance simultaneously. If so, then how? In addition, U.N. agencies and NGOs have sought to assess the vulnerability of Syrian refugee communities and individuals in order to ensure that local and international humanitarian assistance reaches those who need it most. These agencies and organizations have engaged in continuous dialogue about how to allocate limited resources in the most effective, efficient, and sustainable ways. Yet there have been no easy answers.

While host governments, U.N. agencies, and NGOs have debated appropriate responses, refugees have remained at the center of the crisis, left to make stark decisions about their own survival and the well-being of their families and communities. They have wondered what the future will hold if they stay in host countries, return home to Syria, or move somewhere else altogether. They have weighed the pros and cons of living inside or outside of refugee camps, and they have asked themselves about the possibility of surviving on humanitarian aid alone, or of working to supplement aid by seeking employment in the formal or informal sectors. They have pondered the impact and financial trade-offs of their children attending school versus working to help support the family or getting married at a young age.⁹ These and countless other dilemmas have become critical as so many lives have been upended and so much human insecurity and uncertainty has prevailed. Amid multifaceted and intertwining debates about these questions, human rights standards offer, if not a complete solution, a framework for thinking about refugee protection and for individual agency, even as the responses of governments, NGOs, U.N. agencies, and refugees remain contested and inconsistent in practice.

Rights, reliance, and self-reliance

With their personal security and human rights severely compromised, Syrian refugees have straddled an existential divide, relying for survival on their own resilience and tenacity while also relying on the promise of protection from U.N. agencies, foreign governments, NGOs, relief organizations, and host communities. One snapshot of two-year-old Alan Kurdi's lifeless body washed up on a Turkish beach in September 2015 was enough to show the utter desperation of the Syrian refugee crisis to the world. With such grim reality checks, it has become obvious that Syrians cannot easily realize their human rights. Syrians have not only suffered the compounded impact of years of political upheaval, violence, and persecution, they have also endured threats related to displacement, lack of access to basic necessities, and tenuous legal status often exacerbated by unmet requirements, insufficient documentation, and expired permissions, leading to the prospect of detention, deportation, and also death.

On paper, Syrian civilians seeking refuge in neighboring countries have numerous human rights, beginning with the customary international legal principle of *non-refoulement*, which protects refugees from being sent back into situations where their lives or freedom would be at risk whether through torture or otherwise.¹⁰ Beyond *non-refoulement*, numerous other protections are

set forth in multilateral treaties, domestic legislation, national constitutions, and memoranda of understanding (MOUs) between host governments and U.N. agencies.¹¹ In addition, there are refugee-specific rights as well as more general rights that apply to all human beings present within a state's jurisdiction, such as the right to education, to freedom of movement, to work, and to an adequate standard of living.

Refugees do not automatically have all of the same rights afforded to citizens, such as the right to vote. Nevertheless, they can make claims to human rights on the basis of human dignity, host country commitments, and their physical presence within host state jurisdiction.¹² According to international law, the 1951 Refugee Convention does not apply to Syrian refugees in Lebanon, Jordan, and Turkey, but *non-refoulement* does apply. Also applicable to displaced Syrians are the core U.N. human rights treaties, including the Convention on the Rights of the Child, the Convention Against Torture, the Convention on Civil and Political Rights, and the Covenant on Social, Economic and Cultural Rights—all of which Syria's neighbors have ratified. International labor law also offers protection to Syrian refugees under the auspices of relevant International Labor Organization (ILO) treaties such as the Convention on the Worst Forms of Child Labor (ILO No. 182) and the Convention on Minimum Age for Work (ILO No. 138).

At the national level, the legal guarantees—again, on paper—that apply to displaced Syrians vary by country. Constitutional provisions in host states, for example, make lofty commitments to respect the rights and dignity of nationals and non-nationals alike.¹³ MOUs, meanwhile, commit states to providing refugees with protection in cooperation with UNHCR. Relevant domestic legislation includes Turkey's 2013 Law on Foreigners and International Protection, Jordan's 1973 Residency and Foreigners Law, and Lebanon's 1962 Law of Entry and Stay. But Syrians in transit between different localities and countries confront legal and practical barriers that have affected the realization of their rights. Hence, the application of human rights standards to the predicament of Syrian refugees has been riddled with ambiguity and complexity. It is strikingly clear that refugees' rights on paper have often been unfulfilled in practice. Before approaching more detailed questions of application, however, it is expedient to examine several key policy debates that have embroiled the rights of Syrian refugees.

Right to access territory

A core controversy over the appropriate policy response to the crisis has related to access to territory. Do Syrians have the right to seek refuge in neighboring countries on a short-term, long-term, or permanent basis? Does it violate international law for neighboring governments to block them from entry and force them back into Syria? When displaced Syrians have managed to seek refuge across borders, neighboring governments and host communities have generally withheld official legal recognition of their status as refugees. As a result, geographic location (in Lebanon, Turkey, or Jordan) has been a significant factor in restricting the viability and realization of their human rights. To what extent was Jordan's Minister of Labor, Dr. Nidal Katamine, correct when he said, "Human rights should be based on needs and not on geographic location"?¹⁴

The debate about this question within the international community includes conflicting perspectives on the right to seek asylum, authority over sovereign borders, and the principle of *non-refoulement*. For the first several years of the refugee crisis, Syria's neighbors largely maintained open-door entry policies. However, neighboring governments have since implemented inconsistent policies, discriminating in particular against Palestinian refugees from Syria.¹⁵ On one hand, officials have referred to their 'open' or 'managed' border policies. At the same

time, neighboring governments have restricted entry at official border crossings and they have often blocked Syrians' access altogether,¹⁶ using physical barriers, administrative roadblocks, and the outright exclusion of Palestinian refugees from Syria by the governments of Jordan and Lebanon.¹⁷

Although the Universal Declaration of Human Rights sets out the right of every person "to seek and to enjoy in other countries asylum from persecution" (Article 14),¹⁸ this right actually has no corresponding legal guarantees under international law for civilian victims of war or persecution. For example, even the 1951 Refugee Convention and its 1967 Protocol do "not impose any obligation to allow refugees to enter and reside in the territory of a state party."¹⁹ Lebanon and Jordan are not signatories to the treaty in any case, and are not legally obliged by the 1951 Convention to open their doors to Syrian refugees.²⁰ Arguably, their open-door policies early in the crisis reflected a combined sense of moral responsibility, self-interest, and matter-of-fact convenience when the influx was still manageable and violence had not yet reached border areas. But Turkish, Jordanian, and Lebanese border policies have shifted considerably since mid-2014, with doors increasingly closed due to security concerns, limited resources, insufficient infrastructure to support refugees, and the perception of adverse pressure on host communities and local economies.²¹

Access to territory: the case of Lebanon

The Lebanese government implemented a new border policy with stricter entry requirements for Syrians starting in 2015.²² As directed by Lebanon's Cabinet of Ministers, this entry policy required all Syrians to provide clarification of their entry status and documentation to prove it. Those wishing to enter Lebanon had to demonstrate that they qualified for one of several categories, ranging from tourism to authorized employment to urgent medical needs. There was no category, however, for refugee or asylum seeker, but only for "displaced" Syrians who would be permitted to cross the border only in the very narrow exception of "extreme humanitarian" cases.

Lebanon's Ministry of Social Affairs retained the power to personally review these exceptional and extreme humanitarian cases on an *ad hoc* basis to determine compliance with one of the government's four entry criteria for displaced Syrians: (1) unaccompanied or separated children under 16 years with parents or legal guardians in Lebanon; (2) individuals with disabilities dependent upon family or relatives in Lebanon; (3) individuals needing life-saving medical treatment not available in Syria; and (4) individuals pursuing resettlement or transitioning through Lebanon to a third country with proof of travel (e.g. airline tickets).²³

Lebanon's border policy led to sharp public disagreements between the government and U.N. agencies about the right to seek refuge on Lebanese territory and who should qualify for protection. Prior to Lebanon's tighter border regulations, UNHCR registered all Syrians seeking protected refugee status on a *prima facie* basis as part of a broad group designation.²⁴ This meant that Syrians would qualify as refugees with UNHCR without going through an individual interview or refugee status determination procedure with the government or with UNHCR. As part of Lebanon's revised border policy, as of 2015 Syrians were no longer eligible for UNHCR registration on a *prima facie* basis. The government border policy barred UNHCR from registering any incoming Syrians as refugees in Lebanon, and it required any outgoing Syrians to automatically forfeit their UNHCR refugee status. No longer would Syrians be allowed to re-enter Lebanon under the auspices of their previous UNHCR-recognized refugee status, although the Lebanese government had never recognized displaced Syrians as refugees under domestic law anyway. But the revised policy and corresponding border regulations

marked a decisive effort to reduce the overall number of Syrians in Lebanon and to bring cross border transit of displaced Syrians to a halt. Presumably, those who faced genuine risk in Syria, would not dare to cross back and forth across the border.

For those exceptional cases among the new arrivals from Syria, the Lebanese government required UNHCR to petition the Minister of Social Affairs for explicit approval to permit registration of individual refugees on a case-by-case basis only. In April 2015, in fact, Lebanon's Minister of Social Affairs directed UNHCR to deregister all Syrian refugees who had entered Lebanon after January 5, 2015 but before strict implementation of the new regulations had begun, a move that affected 2,600 registered Syrian refugees and their families.²⁵ Lebanon's new rules denied these refugees UNHCR-registered status and also blocked access to territory for Syrian refugees more broadly.²⁶

Local NGOs, utilizing human rights arguments, also weighed in on the debate about Lebanon's border and entry policies. Beirut-based Frontiers-Ruwad Association, for example, consistently defended Syrian refugees and their right to seek asylum on the basis of human rights norms. It faulted the government for rejecting Syrian refugees and asylum seekers at the border and for denying them entry or re-entry to Lebanon. Not surprisingly, Frontiers-Ruwad opposed the Lebanese government's position and articulated objections in the NGO's March 2015 Universal Periodic Review stakeholder submission to the U.N. Human Rights Council.²⁷ In this submission, Frontiers-Ruwad decried fundamental human rights violations of Syrian refugees and asylum seekers, "most notably their right to seek asylum, and to liberty and security," occurring in Lebanon at the level of legislation, regulations, policies and practices.²⁸ Frontiers-Ruwad denounced the restrictive admission criteria for Syrian nationals, calling on the Lebanese government to grant displaced Syrians legal residency status on the basis of their valid UNHCR registration.

Frontiers-Ruwad cited the customary international legal norm of *non-refoulement* obliging Lebanon not to force individuals back into Syria if their lives or freedom would be at risk. At a minimum, Frontiers-Ruwad insisted that *non-refoulement* would require Lebanon to allow Syrians to enter the country in order to seek refuge from persecution. Meanwhile, this permission to enter would at least allow the government or UNHCR to investigate whether individuals fleeing Syria needed protection. However, Lebanon has largely ignored this obligation since January 2015.

All of this has raised a host of human rights questions related to the right of entry. Opinions diverge about whether Syrian refugees have the legal right to enter and to remain in neighboring countries in their flight from violence and persecution. Should displaced Syrians have the unqualified right to seek and enjoy asylum, or do sovereign states have absolute authority to restrict entry into their own territory? This debate became increasingly vivid as Syrian refugees pressed beyond neighboring countries and into Europe. Although it is beyond the scope of this chapter, the European dimension to the Syrian refugee crisis also speaks to the ability of refugees to take matters into their own hands and exercise their own agency in an effort to claim their human rights by seeking asylum outside of the region.

After entry: respect for refugee rights

Policy debates also have revolved around treatment of displaced Syrians once they enter neighboring countries. On many levels, these debates have concerned access to the means for basic survival and protection and the realization of subsistence rights such as shelter, food, water, clothing, and sanitation. How and to what extent should provisions be made available to refugees in order to meet their basic needs? Debates also concern access to public services, including education and healthcare, as well as access to the courts and to social services such as child

protection systems. It is a contested matter as to how refugees should avail themselves of these rights in practice and what public services should be available to them, at what cost, and by whom. In addition, host governments, U.N. agencies and NGOs have varying approaches to the provision of humanitarian aid and services, whether in the form of in-kind benefits, vouchers, cash assistance, or self-reliance. These approaches inevitably have significant impacts on the realization of refugees' human rights and their ability to live in dignity and on their own terms under displaced circumstances.

Camps or self-settlement?

Governments and U.N. agencies have put forward various proposals and criticisms about where refugees should live and how collective humanitarian responses should be organized.²⁹ What bearing do refugee camps have on the broader realization of refugees' rights including freedom of movement and right to work? What does it mean for Syrian refugees to realize the right to an adequate standard of living and to exercise their housing rights within or outside of refugee camps? Some government officials and U.N. or NGO representatives have supported the position that Syrian refugees are better off living in official camps, such as Nimis and Karkamis in Turkey. Others have contended that they have the right to move freely outside of refugee camps and self-settle in rural, village, or urban settings, as the vast majority of Syrian refugees already have across the region. Outside of camps, refugees have typically paid rent, in cash or on credit, while others have sought shelter in unfinished buildings, on unclaimed land, or in informal tented settlements, sometimes exchanging their labor for temporary plots of space. Palestinian refugees from Syria have tended to gravitate toward pre-existing Palestinian camps or gatherings, often forced to live in the shadows because of their lack of legal status in neighboring host countries.

Regardless of their exact location, self-settled Syrian refugees have encountered sub-standard and overcrowded dwellings with very little security of tenure and unsanitary surrounding conditions. This is especially true in Lebanon's roughly 1,500 informal tented settlements, where the government—as a matter of policy—has not developed adequate municipal infrastructure to extend sufficient pipes, sewage, sanitation facilities, and drainage systems to areas densely populated by refugees. Refugees living outside of camps have faced the prospect of moving from place to place on a continual basis because of rising rent prices and forced evictions. Yet, often they still prefer to self-settle in urban or rural areas because life in refugee camps is not necessarily sustainable or bearable, especially when remote camp locations can diminish prospects of finding work and generating income. Given the challenges of self-settlement, should host governments and aid agencies continue to operate and construct refugee camps? Encampment has represented a significant challenge to the protection of basic human rights of Syrian refugees in neighboring countries, especially freedom of movement. Yet official camps have also provided an organized and dignified way for many refugees to realize their rights, particularly the rights to housing and to an adequate standard of living. Open questions persist about encampment policies and how host governments, U.N. agencies and NGOs should prioritize certain human rights above others.

National camp policies for Syrian refugees have differed in Jordan, Lebanon, and Turkey. In all three countries, refugees have predominantly self-settled, but official refugee camps still have been home to significant numbers of refugees in Turkey and Jordan. In Lebanon, the government has opposed the building of official camps from the outset of the crisis and has also espoused a policy of non-integration of Syrian refugees in the country. A brief examination of the three neighboring countries' camp policies serves to contextualize the human rights questions at issue.

Jordan's camp policies

According to a December 2015 UNHCR–World Bank study, “Jordan opted early on to let refugees settle in urban areas and only later decided to establish camps when the number of refugee arrivals grew sharply.”³⁰ The government held off on establishing camps until 2013, after pressure had mounted from northern tribal leaders who insisted on camps in response to the growing influx. Jordan’s two primary official camps, Zaatari and Azraq, have been managed and administered by UNHCR, with operational support from partner NGOs and U.N. agencies, as well as Jordanian police forces.³¹ Until 2015, Syrians were able to ‘bail out’ of the camps provided they obtained sponsorship from a Jordanian national. As a result, the camps largely served as an initial entry point, and indeed, the Jordanian government’s 2015 urban verification process indicated that Syrians generally preferred to live outside of camp settings. However, government policy in 2015 became more restrictive, with ‘escape’ from camps through the sponsorship system becoming a formidable challenge. This raised questions about whether Jordan was essentially warehousing a significant number of Syrians in refugee camps and restricting their freedom of movement in the name of containing security threats while effectively denying these refugees their human rights.

Turkey's shifting policy: costly camps to self-settlement

Across Syria’s northeastern border, Turkey has constructed, funded, and operated 25 government-run camps housing approximately 280,000 people, comprising roughly 10–15 percent of the country’s total Syrian refugee population, as of early 2016.³² The camps were built in the three provinces contiguous to Syria, where most of Turkey’s 2 million Syrian refugees entered into the country. Construction of the camps was largely complete by the end of 2012; but, after initial enthusiasm for the establishment of camps, with operational costs mounting, the Turkish government shifted course. By rough estimates, initial costs amounted to nearly \$10 million for the government to construct each camp, followed by over \$2 million a month to keep each camp running.³³ With the Turkish government having spent an estimated \$6–8 billion on the refugee crisis by late 2015, the cost factor had a direct impact on policy decisions.³⁴ As Turkish political scientist, Cigdem Benam, explained,

Turkish camp policy was built on a number of inaccurate assumptions. The government clearly assumed that Assad would be gone within a short period of time (3–6 months) after the uprising in Syria started . . . and the government wanted to ensure that its Syrian “guests” lived comfortably in Turkish camps and had good memories of Turkey during their time in the southern part of the county. They even furnished camp dwellings with luxurious flat screen TVs. The camps, of course, were expensive to build and maintain. And once the government realized that it was not going to be just a short-term crisis they stopped building camps.³⁵

Gradually the Turkish government shifted policy, guided by its system of Temporary Protection, through which Syrian refugees were allowed to self-settle and live interspersed in communities throughout the country.³⁶

Lebanon's 'no camps' policy

By contrast, the Lebanese government established a policy against camps from the outset of the refugee crisis. Since then, the prospect of building official refugee camps has been highly

contested among cabinet ministers and U.N. agencies. In 2013–14, Minister of Social Affairs, Rashid Derbas, actively lobbied for the construction of refugee camps. He put forward a proposal for two camps—one in the north and one in the east—to be built in the no-man’s-land between Syria and Lebanon. This proposal won support from the Ministry of the Interior, but it was met with opposition from others who steadfastly supported Lebanon’s official “no camp” policy.³⁷

Throughout this policy debate, Minister of Social Affairs, Derbas, has argued that Lebanon should deal with the question of refugee camps from a humanitarian perspective, not a political one. Official refugee camps, according to Derbas, would ease tension between Lebanese and Syrians and provide refugees with decent and humane conditions—especially if prefabricated houses were used instead of tents. Besides, argued the Minister of Social Affairs to his fellow Lebanese cabinet ministers, eventually the camps would serve as border stations for refugees returning to their hometowns in Syria. Derbas also added a security-based component to his argument, contending “the (unofficial) presence of 1,400+ camps without any kind of security surveillance is a danger in and of itself.”³⁸ Derbas contended that the Lebanese government had neglected to address the issue due to expectations that only a few thousand Syrian refugees would be displaced into Lebanon for a few months. This was, as it turned out, a vast underestimate: by the year 2016, the number of Syrian refugees in Lebanon comprised one quarter of the country’s population.

In camps or self-settled, rights remain essential

Realizing rights for refugee communities goes well beyond the search for adequate living conditions and accommodations. It also entails the quest for freedom of movement, access to education, healthcare, and livelihoods, and protection from exploitation. UNHCR’s 2014 Policy on Alternatives to Camps built further on the Refugee Agency’s 2009 Policy on Urban Refugees.³⁹ In both policy statements, UNHCR has embraced a “rights-based approach” to refugee assistance, explicitly moving away from camps as the assumed foundation of refugee policy.⁴⁰ Under the 2014 Policy on Alternatives to Camps, notes legal scholar, Michael Kagan, “Refugees are now to be reconceived as people with autonomy. The focus is to be on their rights, their legal status, their ability to support themselves and to raise their families in dignity.”⁴¹ Indeed, as the 2014 policy explicitly states,

From the perspective of refugees, alternatives to camps means being able to exercise rights and freedoms, make meaningful choices regarding their lives and have the possibility to live with greater dignity, independence and normality as members of communities.⁴²

The question of how neighboring countries, aid agencies, host communities, and Syrian refugees can seek to realize these human rights guides the remainder of this chapter.

Freedom of movement

Under Article 13 of the Universal Declaration of Human Rights and Article 12 of the International Covenant on Civil and Political Rights, anyone lawfully present in a country has the right to freedom of movement. Only in exceptional circumstances—not generally present in the case of Syrian refugees—can governments enact restrictions on movement, which must be provided by law and must be necessary to protect national security, public order, public health, morals, or the rights and freedoms of others.⁴³ As the U.N. Human Rights Committee has noted, in order to be consistent with international human rights law, such restrictive measures on

freedom of movement must be proportionate to the narrow objective or purpose of the restrictions without casting an overly wide net over a geographic area, duration, or number of people.⁴⁴ In addition, discrimination on the basis of nationality is usually inconsistent with human rights protections on the right to freedom of movement.

While there have been restrictions on mobility in and out of camps in Jordan and Turkey, Syrian refugees have generally enjoyed freedom of mobility within urban and rural areas of neighboring countries. In Lebanon, however, dozens of municipalities have imposed curfews for Syrian refugees.⁴⁵ Ostensibly these curfews are meant to ensure public order and community safety, but effectively they serve to discriminate against Syrians in Lebanon on the basis of their nationality. In addition to the nighttime curfews, Syrians in Lebanon have faced additional restrictions on their freedom of movement. Many Syrians, especially those with expired residency permits, have lived in constant apprehension of being stopped by the police at checkpoints or in other public places. This has compounded an already precarious situation by hampering their ability to seek work or humanitarian assistance, often meaning that Syrian refugees cannot pay their rent or afford other basic necessities. In many regards, freedom of movement is critical to other concerns about refugees' human rights and overall policies around integration (or non-integration) of Syrian refugees. This entails recognizing refugees' legal right to work—or not—which has been under active scrutiny and consideration at various levels in neighboring countries.

Right to work

Distinct legal and administrative barriers, including work permit requirements, residency requirements, and border entry requirements, have deterred Syrian refugees from exercising the right to work, in both the informal and formal sectors, in neighboring host countries. Specific parameters have varied in Jordan, Lebanon, and Turkey. But these barriers have had significant bearing upon Syrian refugees' access to livelihoods and their ability to provide for themselves and their families.

Because the 1951 Refugee Convention and its 1967 Protocol do not apply to Syrian refugees in Jordan, Turkey, and Lebanon, the right to work is not ensured to them under international refugee law. The corresponding lack of formal asylum or refugee frameworks in Jordan, Lebanon, and Turkey has compounded the challenges already facing refugees in exercising this right, especially since none of the three neighboring governments under discussion have officially recognized Syrians as refugees under domestic law.

In Jordan, work permit requirements have been difficult for most Syrian refugees to meet, and they require considerable documentation.⁴⁶ Eligibility for work permits also has hinged on the point of entry into Jordan, excluding most Syrian refugees from eligibility depending on which border crossing they traversed. Meanwhile, employing Syrian refugees without work permits in Jordan has led to fines for employers, with strict consequences for the workers, who have faced the prospect of being sent back to a refugee camp, deported from the country and then barred from re-entry. Additionally, the Labor Ministry has maintained a list of 'closed' professions for which Syrian refugees are not eligible. The Ministry also has maintained quotas based on economic sectors for migrants, including Syrians, so that work opportunities are guaranteed to local communities. Fewer than 6,000 Syrians received formal authorization to work in Jordan in 2014, but in the meantime official measures have been under discussion to facilitate Syrian refugees' lawful access to the labor force, whether in camps, qualified industrial zones, or host communities. Assuming that Syrian refugees will eventually be allowed to work in certain zones and sectors, it remains to be seen if the Jordanian government will also allow these displaced Syrians to maintain their status as UNHCR-registered refugees.

Turkey's legal parameters for work permits have differed slightly from Jordan. The Turkish government's 2013 Law on Foreigners and International Protection recognized Syrians' need for protection—but not their full refugee status. In 2015, members of the Turkish Parliament drafted bylaws and implementing legislation specifically around the right to work. These legal measures pinpointed certain sectors and geographic zones for which Syrian refugees would be allowed to apply for work permits. This implementing legislation was slated to pass through the Turkish Parliament by the end of 2015, but turbulent political dynamics led Turkey's Minister of Labor to announce instead that the government would not "give refugees the right to work."⁴⁷ In 2016, however, the Turkish Council of Ministers, did adopt regulations authorizing work permits for Syrian refugees, representing a major development in the region.⁴⁸

In Lebanon, displaced Syrians have been discouraged from working in the formal and informal sectors even more so than in Turkey and Jordan. According to Ministry of Labor data, only about 1,500 work permits were issued to Syrians in 2014.⁴⁹ Since early 2015 the Lebanese government obliged UNHCR-registered refugees to sign a notarized pledge not to work. Refugees were prohibited from renewing their annual residence permits, authorizing their legal stay in Lebanon, without signing this 'no work' pledge, among other requirements, in addition to paying a \$200 yearly residency fee.⁵⁰ According to a 2014 Ministry of Labor decree, Syrians were eligible to work only in construction, agriculture, and cleaning sectors. Even those Syrians who managed to find employment in these areas also needed to have an official Lebanese sponsor to serve as their legal guarantor in the country. This situation was compounded in 2015 by Lebanon's updated border requirements, as explained above, which have since prohibited 'displaced' Syrians from traveling back and forth across the border and have made it difficult for them to enter Lebanon as migrant workers without ample documentation and advance proof of sponsorship.

Such policies are understandable when one considers that the host country governments are also concerned about the human rights of their own citizens. Lebanese citizens, facing competition from informal Syrian workers, have largely perceived Lebanon's 'no work' pledge as a positive policy decision.⁵¹ Key questions around the right to work, meanwhile, have hinged on the fairness and practicality of opening formal labor markets to Syrian refugees and on proving the net positive effects of opening labor markets in host countries. In this context, Western governments have pushed for right-to-work policies for refugees, seeking to contain the refugee crisis within the region. In practice, the situation has raised many questions about whether Syrians have the legal right to work in neighboring host countries, what law applies in this regard, and whether Syrians should be restricted to work in specific zones and sectors. The prospect of Syrian refugees gaining access to formal labor markets in neighboring countries has raised hope for some and apprehension for others. Neighboring host communities already employ significant numbers of migrant workers from Egypt and Southeast Asia, whose fate is unclear in this equation. It is also unclear whether displaced Syrians will have to forego their status as UNHCR-registered refugees in Jordan and Lebanon—or their status under temporary protection in Turkey—if they obtain official permission to work.

Regardless of these variables, the right to work is a contested and contentious one, and one that has been under active debate and consideration at the local level. It represents a potential source of self-reliance for refugees and relative independence from insufficient humanitarian aid and the limitations of the U.N. surrogate state. But realizing the right to work for displaced Syrians across the board in practice inevitably requires a significant amount of legal, political, bureaucratic, and diplomatic maneuvering. Trade-offs are necessary to benefit host communities, and negotiations will have to be guided by a deep understanding of the competing interests and rights at stake.

Economic, social, and cultural rights: food, health, and education

Under relevant international standards and applicable treaties, states have a duty to respect, protect, and fulfill basic human rights and to allow for an adequate standard of living for everyone within a state party's jurisdiction. These rights pertain to nationals and non-nationals alike, including refugees, migrants, and other vulnerable or marginalized groups. The rights to food, water, shelter and health are set forth in the Covenant on Economic, Social, and Cultural Rights (ESC Covenant) and in the Convention on the Rights of the Child (CRC). Jordan, Lebanon, and Turkey have each signed these treaties without significant reservations. The binding nature of these rights, however, is not fixed and is subject to progressive implementation. In addition Article 2(3) of the ESC Covenant, specifies that "developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present covenant to non-nationals."

The U.N. Committee on Economic, Social and Cultural Rights (ESC Committee) has nevertheless identified a minimum core content of fundamental rights as virtual obligations: minimum essential levels of foodstuffs, primary healthcare, basic shelter and housing, and the most basic forms of education.⁵² Regarding refugees and situations of humanitarian emergency, the ESC Committee has clarified that all states' parties have a joint and individual responsibility to "cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees."⁵³

The right to food

The ESC Covenant recognizes the right to food in Article 11 including "freedom from hunger and malnutrition."⁵⁴ Yet violations of the right to food occur among refugees when a state fails to ensure freedom from hunger or actively blocks access to food. For Syrian refugees, the dollar amounts, eligibility, and frequency of distribution of World Food Programme (WFP) vouchers—the primary source of 'income' for many refugee families—have shifted over time. Vulnerability assessments have indicated that WFP food assistance has been scaled back, leaving many Syrian refugees on the cusp of abject poverty and extreme food insecurity.⁵⁵ Among Syrian refugees in Jordan, food constituted an average of 51 percent of household expenditures according to Jordan's 2015 Comprehensive Food Security Monitoring Exercise.⁵⁶ Syrian refugees in all three primary host countries have reported self-monitored food rationing such as reducing food intake per meal, or eating one meal per day, due to cost.⁵⁷

The right to health

The ESC Covenant guarantees in Article 12 the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health."⁵⁸ However, realization of the right to health and to healthcare has been elusive for the vast majority of Syrian refugees. Responsibility for the realization of refugees' ESC rights may lie with different actors simultaneously, including host states, U.N. agencies and refugees themselves.

Syrian refugees' healthcare needs have been steady and acute. In contrast to the heavily subsidized healthcare system in Syria before the war, most refugees in host countries found themselves at a loss for how to sustain critical medical treatment and healthcare for themselves and their families over any length of time.⁵⁹ Medical care has been a universal challenge for Syrian refugees regardless of the condition: antenatal care, traumatic war injuries, communicable diseases, chronic conditions, and cancer.

As with other refugee rights, host government policies on healthcare differ. Lebanon's mostly private healthcare system offers public facilities. The Lebanon Crisis Response Plan 2015–16 identified healthcare as one of the most critical gaps in service delivery among refugee communities: "Health centers are overwhelmed by the increase in population . . . and persons displaced from Syria increasingly need subsidization and support to access basic healthcare."⁶⁰ In Jordan, more than half of the registered Syrian refugee population has experienced high or severe vulnerability in terms of access to healthcare.⁶¹ Jordan's Ministry of Health, according to the Jordan Response Plan (2016–18), predicted that the direct financial cost of providing healthcare to Syrian refugees would be roughly \$67 million annually for the coming years. In Turkey, Syrians under temporary protection have had the benefit of free medical services, which according to government officials has amounted to 9 million medical consultations, 280,000 surgical procedures, and 66,000 births since 2011.⁶²

Yet Syrian refugees have encountered countless obstacles in exercising the right to health in relation to the benchmarks of accessibility, availability, affordability, and quality. Questions abound as to whether Syrian refugees in neighboring countries should have access to free or subsidized emergency medical treatment, primary, secondary and tertiary healthcare. Public health ministries and U.N. agencies have conducted vaccination campaigns and have worked to contain outbreaks of contagious diseases, particularly among children, such as measles, polio, and cholera. They have attempted to counter outbreaks of Leishmaniasis, scabies, and watery diarrhea as well as help to manage the symptoms of chronic conditions such as cancer, leukemia, and hypertension.

In all three countries, realization of Syrian refugees' right to health depends on access to medical treatment, health clinics, medication, and hospitals. Access can be a function of proximity, local capacity, transportation, and quality. Public health clinics have been expanded and NGO medical services have been ramped up, but cost can still be a prohibitive factor for refugees. Access to emergency care and primary care—among myriad other healthcare services—all come at a price.

*The right to education*⁶³

Human rights principles seek to ensure access to education for refugee and non-refugee children alike. Although the 1951 Refugee Convention provisions on education do not directly apply to Syrian refugees in neighboring countries, the right to education is spelled out explicitly in two core U.N. human rights treaties that do directly apply: the ESC Covenant (Article 13) and the CRC (Articles 28 and 29). Both of these human rights treaties set forth the right to primary education for all children within a state's jurisdiction, without discrimination, and regardless of legal status.⁶⁴ The CRC in Article 22 goes a step further than the ESC Covenant with respect to refugees, also calling on states to ensure special protection and humanitarian assistance for refugee children or those seeking refugee status—although granting states significant discretion in the process.⁶⁵

Despite policies making public education legally accessible for Syrian refugees in all three countries regardless of their status, practical barriers have remained.⁶⁶ These have included differences in curriculum and language of instruction, discrimination and bullying, transportation costs, lack of adequate classroom space and teachers, and lack of familiarity with the registration process. Dilemmas have also arisen with regard to certification and remedial policies that restrict eligibility for any child who has already missed two or more years of formal education. Meanwhile, Ministries of Education have facilitated refugees' technical

eligibility for public schools by waiving fees, taking measures to open the enrollment process, and compelling local municipalities to comply. In addition, governments have worked with U.N. agencies and NGOs to introduce non-formal education options, offer double shifts in existing schools, construct new schools, hire new teachers, and launch multiple back-to-school campaigns.

Yet after years of crisis in the region, school enrollment rates among Syrian refugee children continue to fall severely short in Jordan, Lebanon, and Turkey. This raises questions about what the right to education means for Syrian refugees in practice. By UNHCR estimates, over half of all school-aged Syrian children in neighboring countries were not enrolled in formal education programs in 2015.⁶⁷ In Turkey, where language is an obstacle, less than 30 percent of school-aged refugee children (ages 5–17) in host communities had enrolled in school as of August 2015.⁶⁸ By comparison, school enrollment rates in Turkey's refugee camps reached almost 90 percent by mid-2015. In Lebanon, school enrollment rates for school-aged Syrian refugees have remained below 50 percent since 2011; enrollment rates in Jordan have been relatively higher, reaching closer to 80 percent by mid-2015 according to 3RP Country Education Sector Dashboards. But virtually all school-aged Syrian refugees in Jordan—as well as in Turkey and Lebanon—have been at high risk for non-attendance since the start of the conflict in Syria. Significant dropout rates in all three countries have meant increasing ineligibility for public education among Syrian refugee children; they are generally disqualified from enrollment after having missed more than two consecutive years of school. Remedial education programs alone have not accelerated progress for the vast numbers of refugee children who have fallen behind.

Wider barriers to education also exist in the form of financial pressures, access to livelihoods, and child labor. Human rights principles seek to ensure access to education and also to protect children from economic exploitation and to prevent them from engaging in work that is harmful to their health, safety, or morals. Legal standards to this effect have been agreed to by Syria's neighbors and are set out in the CRC, ILO Minimum Age Convention, and the ILO Worst Forms of Child Labor Convention. For Syrian refugee families, enrolling children in school can mean compromising income opportunities that would otherwise help meet the family's basic survival needs. Child labor rates in Jordan, Lebanon, and Turkey have indicated that many refugee families have been forced to prioritize work over education; in Jordan the ILO has documented child labor rates at 37 percent among Syrian refugee children between the ages of nine and sixteen.⁶⁹ Countless numbers of Syrian children in Lebanon and Turkey have also worked to support themselves and their families out of economic need while foregoing their education in the process.

The right to a nationality

Since the start of the crisis, more than 142,000 Syrian children have been born to refugee families in exile. Beyond questions of access to social services and livelihoods, this fact has raised human rights concerns about how these children will claim another fundamental right: the right to a nationality. According to Article 7 of the CRC, every “child shall be registered immediately after birth and shall have from birth the right to a name and to acquire a nationality.” The process of official birth registration can be a daunting prospect for refugees. But without birth registration and official documentation of their nationality, Syrian refugees face a lifetime of challenges in exercising their human rights, accessing public services, maintaining their legal status, and moving freely from place to place.

UNHCR estimates that since the refugee crisis began, more than 70 percent of Syrian refugee births in Lebanon have not been registered, and that this reflects the broader situation of newborn refugees throughout the region.⁷⁰ The pervasive lack of birth registration among children runs in parallel with an even broader lack of valid identity documents among Syrian refugee adults.⁷¹ In their unexpectedly abrupt departures from Syria, many refugees left behind national identity cards, marriage certificates, family books, and passports. The challenge of renewing expired identity documents also presents difficulties for most Syrian refugees.

When refugees cannot present required identity documents to civil registry authorities, birth registration becomes virtually impossible in most situations. This predicament may be exacerbated by a lack of familiarity with the registration process and requirements, especially if a child's father is not present. Because Syrian nationality is transferred only from the father, mothers on their own often struggle to register the births of their newborns.

Challenges in obtaining official birth certificates can translate directly into statelessness.⁷² Without documentation to prove nationality, stateless Syrian children will inevitably face difficulties in accessing healthcare and education, among other rights. They will face obstacles not only in exercising their freedom of movement, but also in the right to return to Syria when the war ends. Syrian refugee children who are listed in their parents' family booklets will need their own identity documentation when they turn fifteen, but they will not be able to go back to Syria to obtain it and face difficulties doing so in host countries.

Conclusion

The longer-term outlook for Syrian refugees, in the context of their inability to claim the full range of rights just discussed, is a lens on the larger crisis. As the situation continues to intensify and becomes increasingly complex, refugees are sometimes taking matters into their own hands. In a fraction of cases, this means seeking asylum outside of the region and beyond the boundaries of Lebanon, Turkey, and Jordan. In other cases, this means staying in the region while seeking human rights out of the ashes of human dignity.

It is now clear to the host governments, U.N. agencies, aid organizations, and the international community that the Syrian refugee crisis will persist, with no clear resolution and no immediate answers on the horizon. Governments, U.N. agencies, NGOs, and refugees that have continued to flee from Syria are forced to respond to the crisis in whatever way they are able or willing. Despite the desperation borne out of the situation, policies do not necessarily reflect humanitarian or human rights considerations. Questions, including heartbreaking decisions about whether to flee or to remain in a devastated country, and myriad other concerns and dilemmas will arise, again and again, in response to the shifting, and at times contradictory, policy positions in each country.

The key debates concerning human rights will continue to focus on access to territory, public services, and safe livelihoods. Given the lack of clearly applicable international standards, states, U.N. agencies, and aid organizations will continue to look to one another for guidance on how to proceed. Unfortunately, the complexity of the Syrian refugee crisis will not diminish in the foreseeable future. Answers will not suddenly emerge clearly, and outcomes will not become more predictable. Yet, amidst the human tragedy, positive work continues to be done—often based on human rights standards within legal frameworks.

Questions will arise from the rubble of politics, policies, and human life, as to whether hope remains for a better future. In the context of the Syrian refugee crisis, human rights norms and standards are inadequate and insufficient. But they can and do offer more than just the illusion of hope to refugees and their families. In incremental ways, these standards and norms can provide

a form of rough scaffolding for individuals to utilize as bridges, or even as tightropes. This can lead to the practical realization of human dignity and to a minimum of decent treatment for Syrian refugees who face innumerable dilemmas and challenges in neighboring countries.

Notes

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- 3 United Nations Office for the Coordination of Humanitarian Affairs data, available at: www.unocha.org/syria [accessed November 11, 2015].
- 4 The 1951 Refugee Convention and 1967 Protocol do not apply to displaced Syrians in neighboring host states of Lebanon, Jordan and Turkey. This is because Lebanon and Jordan have not ratified the treaty. And although Turkey has ratified the treaty, it filed a significant reservation stating that it would not be held to convention standards with respect to non-Europeans.
- 5 For breakdown of Syrian refugee population by host country, see U.N. Refugee Agency information available at: <http://data.unhcr.org/syrianrefugees/regional.php> [accessed November 11, 2015].
- 6 The international legal definition of a refugee is “a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it,” Convention Relating to the Status of Refugees, 189 UNTS 2545, done July 28, 1951, entered into force Apr. 22, 1954, supplemented by the Protocol relating to the Status of Refugees, 606 UNTS 8791, done Jan. 31, 1967, entered into force Oct. 24, 1967.
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- 13 See Preamble to Constitution of Lebanon.
- 14 N. Katamine, World Bank Conference Remarks, “Fragility in Middle Income Countries: New Ideas for Unique Challenges,” Lima, Peru, October 2, 2015, available at: www.worldbank.org/en/events/2015/09/28/fragility-in-middle-income-countries-new-ideas-for-unique-challenges.print [accessed October 11, 2015].
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 - 17 In early 2013, Jordan’s Prime Minister, Abdullah Ensour, announced the government’s official non-admission policy for Palestinian refugees from Syria. It was widely understood to reflect (1) the Jordanian Government’s reluctance to increase Jordan’s pre-existing Palestinian population of roughly 2 million and (2) the Jordan Government’s fear of becoming the long-term “alternative home” country for Palestinians. Nevertheless, Jordan’s strict no-entry policy generally excludes Palestine refugees from Syria who have a Jordanian national number. Other exceptions to the policy occur sometimes for those who (a) are eligible to receive a Jordanian national number (for example, those who possess a royal acquittal form issued after their ancestors’ expulsion from Jordan due to the events of September 1970) and (b) have applied for political asylum through the Jordanian embassy in Syria.
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