Upholding Refugee Rights: Cessation, Transnationalism and Law's Limitations in the Rwandan Case

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Abstract

The cessation clause epitomises the 1951 Refugee Convention's internal barriers to the full achievement of refugees' rights. By examining the controversial application of this provision in the case of Rwandan refugees, this paper demonstrates the resultant infringements on refugees' human rights, and signals a key obstacle in understanding refugee experiences: institutional insistence on subjugating refugee perspectives and knowledge. This top-heavy 'knowing what's best' for refugees must cede to alternative conceptualisations of refugee rights, especially in the well-worn durable solutions debate. A rights-based approach would see transnational mobility as a solution to challenges endured by camp-based refugees in particular. The Rwandan case study is grounded in theories of today's membership-based nation-state paradigm, and questions whether re-inscribing refugees as primary agents of their own repatriation (with or without return) can bridge the divide inherent in the exclusionary citizenship-centric logic which ultimately structures the refugee rights system, and can adequately address problems rooted in complex identity politics.

***Keywords*:** Cessation clause, refugees, repatriation, rights, Rwanda, UNHCR.

Introduction

Protection space for the displaced is increasingly beleaguered, globally. Upholding refugee rights in the era of 'Fortress Europe,' post-9/11 Islamophobia and multiplying, interconnected armed conflicts, is a Sisyphean pursuit. Against such a backdrop, this article focuses on a particular challenge found *within* the international legal regime governing refugee protection: the 'ceased circumstances' cessation clauses. This article discusses the global treaty enshrining specific refugee rights, the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol

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(hereafter referred to as the 'Refugee Convention'), in whose first article the cessation clauses feature. Here the understanding of 'refugee rights,' however, is more expansive: the term encompasses 'human rights.' That the Universal Declaration of Human Rights (UDHR) is referenced in the Refugee Convention's preamble underscores this aspiration, whilst the major international human rights instruments drafted afterwards also confer protections and freedoms on refugees.

Various limitations to refugee rights are inherent in the Refugee Convention; not in itself unusual, since most human rights are qualified. To conceptualise such limitations as internal challenges to refugee rights is no exaggeration: the lived experiences of those subject to such limitations often amount to rights violations. 'Challenge' is invoked to cover encroachments upon rights, practical impediments to exercising rights, and more outright breaches. Fundamental to the refugee rights regime is protection against *refoulement*, however the Refugee Convention wavers this for those merely suspected of having committed certain serious crimes (Article 1[f]), in contrast to the inviolability of non-*refoulement* in human rights treaties. Additionally, the Convention 'excludes all mention of civil and political rights once a person has attained refugee status' (Harris Rimmer, 2010, p. 1), again restricting protection standards beyond those of human rights regimes. Indeed the Refugee Convention's less than generous language ('burden,' the 'problem of refugees') characterises an entire system that circumscribes our understanding of refugees as primarily individuals and rights-bearers, rather than aid recipients requiring logistical management.

The 'ceased circumstances' cessation clauses, Articles 1(c)(5) and (6), epitomise the Refugee Convention's internal barriers to the full achievement of refugees' rights. They assert that a refugee (or person of no nationality) 'can no longer, because the circumstances with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality' (or former habitual residence). By examining the controversial application of this provision in the case of Rwandan refugees, the resultant infringements on refugees' human rights are demonstrated, and signal a key obstacle in understanding refugee experiences: institutional insistence on subjugating the perspectives and knowledge of refugees themselves. This top-heavy 'knowing what's best' for refugees must cede to alternative conceptualisations of refugee rights, especially in the well-worn durable

solutions debate: a rights-based approach could see transnational mobility as a solution to challenges endured by camp-based refugees in particular.

After analysing the cessation clauses and their application to Rwandans, the more systemic challenges to the human rights of refugees are considered, grounding this case study in theories of today's membership-based nation-state paradigm. The study examines this system's attendant rights challenges in the context of repatriation, and evaluates the search for solutions that uphold rights and re-inscribe refugees as primary agents in such responses. It is debatable whether this can bridge the divide inherent in the global refugee regime, between the heroic imaginary of the international community and humanitarian laws, and an abstract refugee Other, 'subjected to the law but… not law's subjects' (Douzinas, 2000, p. 104). However, recognition invites understanding: therefore such power hierarchies are critiqued throughout.

Cessation: On Paper and in Practice

The cessation clause (the articles are popularly conflated thus) is almost as divisive amongst scholars as it is for refugees. It is deemed a contravention of the freedom of choice, based on 'the outrageous proposition that "international law… requires that exile should not… be perpetuated forever particularly without a good cause"' (UNHCR Inter-Office Memorandum on cessation for pre-1991 Ethiopian refugees, cited in Verdirame & Harrell-Bond, 2005, p. 112), and through which refugees' supposed 'protector' Agency 'call[s] on states to do less' (Verdirame & Harrell-Bond, 2005, p. 113). Alternatively, it is promoted for solving protracted displacement, enabling 'a right not to be a refugee' (Aleinikoff & Poellot, 2012, p. 9), or even dismissed as an administrative formality which 'may not have any direct impact on the life of the individual(s) concerned' (Feller et al., 2003, p. 546). Its instrumentalisation as a means of limiting asylum applications by 'designat[ing] a country of origin as generally "safe" in the context of refugee status determination' (Feller et al., 2003, p. 546), also encourages violations of the right to seek asylum. Subsequent discussion of cessation in the Rwandan context eschews an overly legalistic approach, favouring socio-historical analysis, indispensable, for meaningful response to the rights challenges these refugees face. One questions whether legal rights frameworks can adequately address problems rooted in complex identity politics, particularly in the Great Lakes, where transnational ethnic

identities interact, often violently, with nationally-delineated citizenship, whose exclusionary logic ultimately structures the refugee rights system.

Countries of asylum may revoke refugee status following fundamental changes in the country of origin that end the circumstances which caused the status to be granted. This terminates those rights accompanying refugee status: refugees' rights hinge upon states' sovereign right to control access to the political community. Beyond ascertaining the change in circumstances (a resource-intensive exercise, readily compromised), and abiding by the *refoulement* prohibition (through individual status determination of those continuing to allege fear of persecution), the asylum state wishing to mandate repatriation has no further obligations. Therefore, UNHCR interprets this provision liberally, with a view to minimising violations of refugees' rights. Nonetheless, UNHCR's interpretation, albeit authoritative, does not bind states. Various guidelines on cessation have been issued since 1991, although this interest only arose once repatriation became northern states' preferred durable solution, suggesting that global power hierarchies, rather than refugees' needs, set protection priorities (Siddiqui, 2011, p. 7).

These guidelines emphasise that change must be fundamental, durable, and establish effective protection in the 'home' country (UNHCR, 1999). Timescales are proposed for assessing durability of change, and examining a country's human rights record is advised, particularly following a violent regime overthrow. The threshold for mandated repatriation is thus relatively high, in contrast to that required for voluntary repatriation (the only kind UNHCR may promote or facilitate, as per its Statute). When refugees opt to return, UNHCR can assist them without ascertaining whether fundamental change has occurred (indeed voluntary repatriation frequently happens soon after hostilities wane) before reconstruction or reconciliation processes; here the emphasis is on refugees' consent and agency. This adds to the conflation of the rules binding UNHCR and those binding states: the latter may invoke the fact that UNHCR assists return to insecure locations as justification for mandating repatriation to places perceived as safer. The complementary 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention) increases potential for confusion in African contexts: despite affirming 'the essentially voluntary character of repatriation [to be] …respected in all cases' (Article 5[1]), its own 'cessation clauses' (Articles 1[4][f] and [g]) 'functionally impose expulsion, because they apply without regard to the

cessation of the risks of persecution or violence in the State of origin' (Fitzpatrick and Bonoan, 2003, pp. 529-530). Additionally, given the OAU Convention's recognition of refugees *prima facie*, on grounds of generalised violence, 'an end to hostilities has typically been used as a key indicator that repatriation can take place' (Hovil, 2010, p. 2). This ignores the way war 'may profoundly reshape a polity and, in the process, create new threats to particular individuals who may continue to require protection as refugees' (Hovil, 2010, p. 2), signalling the need to foreground rights-based protection and 'durable solutions,' rather than perpetuating state-centric preferences for return.

UNHCR insists that the exemptions permitted to group status cessation under Articles 1(c)(5) and (6) of the Refugee Convention, which affirm that cessation shall not apply to a statutory refugee 'able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence,' are also applicable to Convention refugees (those forced to flee post-1951). Whilst literal interpretation is possible, state practice upholds the view that allowing exemptions to the cessation clause has become an international norm reflecting 'a general humanitarian principle that is now well-grounded' (UNHCR, 2003, para. 21). James Hathaway continues to denounce the extension of this provision, stating that 'UNHCR has regrettably invoked an unwieldy claim of customary international law' (Hathaway, 2005, p. 942), a view inferred from the decision not to formally extend exemption when drafters of the 1967 Protocol were considering the original Refugee Convention's temporal scope, and backed up with restrictive judgments in Australian and German litigation of cessation clause exemptions. This reiterates the malleability of treaty law, again hinting that rights-based legal regimes contingent on interpretation by states can themselves exacerbate refugees' problems. There is less consensus around guidelines elaborating the 'compelling reasons' for exemption. Although reasons such as persistent trauma, especially in the context of genocide, are widely accepted, it is improbable that in the Rwandan case, 'every person who feared the genocide or acts/threats of severe violence be exempted' (Cliche-Rivard, 2012). UNHCR also suggests that strong family or economic ties to host countries are justified under this provision. State practice, exemplified in the Rwandan situation, contradicts this, allowing third-generation refugees to be returned, despite cultivating land or running businesses in Uganda. This may violate numerous socio-economic rights, and also constitute a potentially traumatic second upheaval; additionally, if large numbers of

returnees are visited upon post-conflict societies with weak economies, there is a risk of reigniting conflict due to resource disputes.

All the aforementioned guidelines insist on the value of objective country of origin information from multiple sources being provided by UNHCR to states assessing whether conditions are ripe for a cessation declaration. This epitomises the marginalisation of refugees' own knowledge and understanding of the circumstances affecting the continuation of their exile. The objective and subjective components comprising the 'well-founded fear' from which refugee status stems, are theoretically given equal weight in status determination processes. Declarations of group cessation undermine the subjective element that constitutes refugeehood, through the homogenisation of individual experience and fears into an assumed group dynamic, deemed interpretable, or knowable by foreign states. UNHCR further assuages individual subjectivities in the Rwandan context, referring to 'reluctance' and 'apprehension' rather than 'fear' (UNHCR, 2011b, para. 2). This dilution of the refugee subjective opens up space for the subjectivities of the state; political and economic motives can easily displace individuals' personal concerns in the decision-making frame. The 'objectivistic interpretation of the cessation clause' belies an apparent legalistic neutrality, constructing an image of refugees as 'rational actors when they decide to return but moved by extraneous motives if they decide to stay' (Chimni, 2004, p. 62). Rwandan government comments that 'Rwandan refugees must not hide behind illogical arguments,' epitomise this rhetoric (*Réunion Tripartite*, 2013b). Deconstructing such representations is vital to understanding the disenfranchisement of refugees within the very regime designed to protect their rights.

Rwandan Reactions

According disproportionate weight to international institutional 'knowledge' of the political dynamics of displacement may backfire, as has historically been exemplified in the Rwandan context. After the 1994 genocide, UNHCR misjudged Rwandan refugees' fears and motivations, and encountered great difficulties managing camps in eastern Democratic Republic of Congo (DRC), resulting in their effective appropriation by *génocidaires* in exile. The Agency distributed hyperbolic repatriation propaganda (Pottier, 1999), and did not facilitate communication between the camps and returnees, cementing perceptions that 'UNHCR was aligning itself with Kigali' (Pottier, 1996, p. 420). Consequently, it was discredited

by Rwandans across the region, despite greater commitment to unmediated information through 'come-and-see, go-and-tell' visits and through sharing statistics on returnee integration with counterparts in host countries. UNHCR's recommendation in 2009 that asylum states apply the cessation clause to this population has thus sparked vociferous campaigns by refugees and advocacy groups. Many perceive UNHCR to be prematurely acquiescing to Rwanda's persistent lobbying for cessation, casting further doubts on its impartiality. Almost two decades on, the allegation that 'at no point has the international community sufficiently understood camp conditions and political processes to feel confident that it understood "the pulse" of the refugee mass' (Pottier, 1996, pp. 428-9) arguably remains valid. The Rwandan government has also mistrusted UNHCR given the *génocidaire* screening debacle in DRC. It is conceivable that willingness to regain governmental cooperation has driven the Agency's support for cessation, and dissuaded it from addressing other tensions that instil fear in Rwandan refugees abroad, namely the widespread belief that Kigali orchestrated the M23 forces in Congo.

After multiple postponements, contravening the principle that 'refugees should not be subjected to constant review of their… status' (UNHCR, 1999, para. 2), the clause came into effect on 30 June 2013 in Malawi, Zambia, Zimbabwe and the Republic of Congo for Rwandans displaced between 1959 and 31st December 1998. Other countries refrained from declaring cessation, citing legal and logistical considerations, amongst others (IRIN, 2013). The Government of Rwanda, however, has frequently used broad brush strokes to cloud over legal nuance, resulting in misinformation in the Kigali-aligned press. References to UNHCR itself 'implementing' or 'declaring' the cessation clause (rather than 'recommending' that it be invoked by states, the only entities with the capacity to do so), and unwieldy claims that this clause is now 'invoked' or 'declared' internationally, rather than on a country-by-country basis, pepper official discourse (MIDIMAR, 2011). Affirmations such as 'Rwandans who fled the country between 1959 and 1998 have lost their refugee status across the world' (Government of Rwanda, 2013), coupled with suggestions that non-implementing countries would be 'in flagrant violation of international rules for this status' (New Times, 2014a), and warnings to refugees themselves ('You never know what will happen on the day they will lose the status; what if their property is vandalized by nationals in host countries,' and 'help these people return when they can actually carry their belongings other [*sic*] than wait for a night raid where they may be thrown

on trucks and deported promptly' [Mukantabana, 2013]), illustrate how 'the deployment of international refugee law – in particular the concept of cessation – has become one framework for… manipulation: it has been used as a threat rather than a mechanism for generating protection… political manoeuvring with refugees caught somewhere in the middle' (Hovil, 2013).

This diverse demographic for which cessation has been invoked or recommended encompasses predominantly Tutsis who fled Rwanda around independence and under Hutu majority rule; those who fled during the 1994 genocide, and mostly Hutus who fled the invading forces that ended the genocide and remain in power. The inclusion of a cut-off point, implying persecution of a different nature persists, hints that change in Rwanda is not yet fundamental. While prospering economically, and visibly at peace, Rwanda curtails freedom of expression and opposition politics through discriminatory application of 'divisionism' laws banning 'genocide ideology,' and its human rights record attracts criticism. Dissidents continue to seek asylum abroad, in small numbers, where they have been pursued by government agents (BBC, 2010, 2011 and 2014). The *gacaca* community-courts which tried vast numbers of suspected *génocidaires* concluded mid-2012, removing what the international community deemed a significant cause of fear for refugees remaining abroad. However, the collective guilt they helped construct around Hutus persists; reconciliation is arguably cosmetic; suspicions run deep and assumptions prevail that those who fear return must be genocide perpetrators (Straus & Waldorf, 2011). Indeed the initial failure to distinguish *génocidaires* from Rwandan civilian refugees in DRC cemented this tarred-by-association perception early on. Returnees in recent years continued to receive assistance from UNHCR and its partners more than a year after their date of return, implying that sustainable livelihoods (and the host of economic and social rights these anchor) are not guaranteed, particularly in rural areas (Cwik, 2011).

These 'push factors' have led many Rwandan refugees to fear violations of their rights were they to return under the cessation clause. However, the choice of alternatives formally triggered by the cessation clause is problematic in practice. Resettlement prospects are negligible, and UNHCR admits the dearth of local integration opportunities regionally (UNHCR, 2011b). NGOs and refugees have reported aggressive official acts which appear to further preclude this option. Rwandans in eastern DRC are

subject to discrimination and targeted violence amid sporadic unrest which mobilises ethnic divisions. Rwandans encamped in Uganda have seen their plots reallocated to Congolese refugees (Hovil, 2010 p. 1), and some suffered forcible return to Rwanda by Ugandan authorities; others died in the process (UNHCR, 2010). Mass deportations of Rwandans also took place from Tanzania in 1996, and Burundi in 2009. By November 2013, only 26 Rwandan refugees in the Republic of Congo had requested to return voluntarily to Rwanda, and only 19 requests for local integration (remaining in the Republic of Congo but as a Rwandan immigrant, with a Rwandan passport) had been received, compared to 4026 requests for exemption from cessation (*Réunion Tripartite*, p. 6).

Many other Rwandans see no point in pursuing the final option of seeking exemption and retaining refugee status through individualised status determination (RSD). Indeed following the declaration of cessation in certain states in June 2013, it was noted that 'no proper system has been created for those with "compelling reasons" to be exempted' (Cacharani & Cliche-Rivard, 2013), and the potential for substandard mechanisms is real. NGOs reported in 2013 that 'Liberian refugees in Gambia applying for exemption from cessation, which came into force in June 2012, have not received documents verifying their request for exemption; they find themselves without valid documentation' (FAHAMU, 2013). In Uganda, rejection under some form of RSD aiming to allow exemption from the cessation clause, could be seen as a foregone conclusion. In 2010, 98% of asylum applications by Rwandans had reportedly been denied (Cwik, 2011), while in 2011, 95.5% were denied (UNHCR, 2011c), suggesting a climate in which the 'rebuttable presumption' that refugees no longer have well-founded fears of persecution is in fact unchallengeable (UNHCR, 1999, para. 32). Whilst recognition rates of Rwandans undergoing RSD by the Ugandan government rose to 41% in 2013 (UNHCR, 2013), this is a new development whose durability cannot yet be assessed; continued mistrust on the part of Rwandan refugees in Uganda is understandable. Similarly, in Malawi, the only country which did invoke the cessation clause for which UNHCR publishes recognition statistics of Rwandan refugees, acceptance rates decreased significantly, in the period just prior to cessation, from 46.5% in 2011 to 20.4% in 2012 (UNHCR, 2011 and 2012). This potentially fosters refugees' doubts about the 'rebuttable presumption' and the value of individualised exemption processes in this context too. However, the recognition rate of Rwandan refugees by the Malawian government, as reported by UNHCR, leaps to 100% in 2013, although the caseload statistics

upon which this is based are not published (UNHCR, 2013). Nonetheless, this high rate, whether it comprises new arrivals or individualised exemption proceedings for those subject to cessation, strongly signals the persistence of persecution in today's Rwanda, undermining the notion that change here is fundamental and durable.

Given that the population subject to cessation includes individuals who fled in 1994, it is important to note that UNHCR's Guidelines on Exemption Procedures specify genocide as a distinct act of persecution, a 'compelling' enough reason to trigger an exemption to status cessation (UNHCR, 2011, para. 27). Paragraph 28(b) of these Guidelines also identifies 'development of a deep-seated distrust of the country [of origin], even if it may at times seem irrational' as a plausible response to severe persecution. That they were issued while the Agency was advocating the cessation for a large group of refugees who experienced genocide further delegitimises UNHCR as incoherent and uncomprehending in the eyes of Rwandan refugees, fomenting resistance to its policies. These concerns are well known to UNHCR, through direct consultations and external advocacy (Hovil, 2010, p. 3). Refugees' perspectives have been knowingly side-lined, rather than merely overlooked unawares. The survival strategising that this disingenuous attitude and the climate of mistrust and uncertainty necessitate, such as 'disappearing from the official radar and pretending to be Ugandan or Congolese', amounts to the denial of 'not just effective national protection, but also most of the rights concomitant with refugee status, the international protective "citizenship" that is triggered in the absence of national capacity' (Hovil, 2010, p. 4).

Rights violations induced by cessation can take place both if the refugee remains in the country of refuge, as well as when they are returned. If an individual is not granted exemption to the cessation of their status, yet they have no intention of returning, unless an alternative migration status is accessible to them, they effectively remain undocumented, or even stateless, in the former country of asylum. Precarious migration status commonly exposes people to exploitative working conditions and attendant infringements of rights to dignity and security, located in the Preamble and Article (9) of the International Covenant on Civil and Political Rights (ICCPR), as well as to detention and deportation, which may amount in some cases to *refoulement*. The question of non-returning, non-exempted Rwandese refugees remains unresolved for countries such as the Republic of Congo, which nonetheless intends to pursue cessation regardless

(*Réunion Tripartite*, 2013a and 2013b). Potential rights violations abound also for those whose return is carried out under the application of the cessation clause. A Rwandese exile of the anti-Tutsi pogroms of the 1970s, who has built up a successful livelihood in Kampala would see many of their economic (and potentially property) rights violated if forced to repatriate under the cessation clause. A refugee child of the 1990s from Rwanda living in Zambia would have their ties to the only country they have really known cut when obliged to return, spelling clear infringements of social and cultural rights. A Francophone refugee schooled in the Republic of Congo could face discrimination at school, or when job-hunting back in Rwanda given the now-influential Anglophone communities who returned from their own, earlier exile after the genocide ended (Longman, 2011).

The right to non-discrimination, enshrined in its many guises in almost all international human rights treaties, most notably in ICCPR Articles (2), (3), (4)(1), and (26), may prove unevenly upheld in a context where some harbour beliefs about the background of those who only return twenty years after the genocide's conclusion. Although a collection of imputed characteristics and actions (i.e. assumptions that a returnee participated in the genocide) may not lead to outright persecution in the vast majority of cases, this should not preclude acknowledgement of rights violations, of non-discrimination and economic rights in particular, in a place where diverse groups of returnees, following profound social and demographic upheaval, compete for scarce resources. Indeed the existence of a small number of serious rights violations, such as the persecution of a returnee on account of anti-government activism, should not diminish the significance of widespread incidences of less egregious socio-economic rights violations, which can affect large groups of 'cessation returnees.' The potential for human rights violations, both for 'cessation returnees' and those who defy its invocation to stay in countries of asylum, is high. Declarations of cessation must be taken with the utmost caution.

Rights-Speak

It is debatable whether refugee rights differ from, or are supplementary to, the regular array of human rights that states agree to respect and protect. The Refugee Convention rights, rather than an additional protective layer, are more like stop-gap protections, directly complementing the human rights rendered most unattainable in situations of displacement. They form

a safety net, special protections that neither enhance existing rights regimes, nor are remedial, legally speaking. The Refugee Convention has no complaints mechanism by which to procure redress for violations of its provisions, unlike major human rights treaties such as the Convention Against Torture or the International Covenant on Civil and Political Rights. Practically, however, the formal response mechanisms these instruments prescribe are out of refugees' reach and forced displacement and its concurrent injustices are rarely addressed in national and international courts. Lofty ideals of 'access to justice' discourses are downscaled; in a forced migration context this is generally understood as relating to 'access to asylum' through legal aid in (often) northern states.

Whether this difficulty in securing legal rights amounts to the disenfranchisement of refugees is debatable. If refugees cannot exercise their human rights, do they still possess them? What does formal possession of rights mean in practice, if rights are not upheld? And does such a challenge to the very concept of 'refugee rights' even matter, when advocating for a less exclusively legalistic approach to rights in general? The prevalence of 'human rights' as a buzzword through which claims of unjust treatment, or community ideals, are expressed has arguably devalued the concept of human rights in the popular imagination. It is suggested that while 'rights-speak' is a useful idiom and advocacy tool uniting societies globally, it also crowds out other ways of voicing experiences of persecution and flight and requesting tolerance, respect and humane treatment. Adherence to legalistic methods of interpreting refugees' problems is risky, for 'law and rights… nominate what exists and condemn the rest to invisibility and marginality' (Douzinas, 2013, p. 66). To assert a claim to a right can distract from the foundations of that right, the moral justifications based on contested notions of what is right or wrong that both law and humanitarian actors shy away from in an attempt to assert neutrality.

The inclusive exclusion Giorgio Agamben diagnoses at the heart of the refugee rights paradigm, rights attached to membership as citizens, not deriving from bare humanity (Agamben, 1998), could thus be rendered a bypassable obstacle, affecting only one sphere of engagement (the legal). To activate alternative strategies for the protection of refugees' safety and dignity at all stages of flight would overcome his almost paralytically pessimistic critique that 'precisely the figure that should have incarnated the rights of man *par excellence*, the refugee, constitutes instead the radical

crisis of this concept' (Agamben, 1995, p. 116). This would render extra-legal, non-rights-based educational or collaborative economic ventures a potential response to what are traditionally expressed as rights violations. Far from utopian, UNHCR's 'Imagine Co-Existence' programmes following conflict in the Balkans illustrate these methods and ideals, as do initiatives targeting host communities more generally. A fresh conceptualisation of refugees' ordeals outside a rights-framework may also help address their restricted freedoms in countries where rights discourses are especially politicised and manipulated by right-wing governments *du jour* to exclude foreigners.

One does not seek to dismiss rights frameworks as a means of understanding the challenges refugees face. While political, historical and social complexities do get simplified into rights formulae, this is understandable, for human rights movements aim to place checks and balances on the exercise of political power. However, the flipside is also true, and to understand how 'rights have also become the main tool of identity politics' (Douzinas, 2009), it is necessary to examine how power and politics shape rights themselves. The distinction between citizen and alien is central to nation-building projects. Citizens are accorded certain rights; their collective identity is constituted in contradistinction to the Other. The refugee, by bursting into the nation-state space and claiming rights purely on account of their humanity, disrupts this fictional division: 'breaking up the identity between man and citizen, between nativity and nationality, the refugee throws into crisis the original fiction of sovereignty' (Agamben, 1995, p. 117). The refugee thus threatens the constitutive fabric of the nation, and in asking for recognition, reminds citizens of the Other within. The limitations of legal responses are self-evident: 'The law divides inside from outside and is then asked to heal the scar or bandage it by offering limited protection to its own creations' (Douzinas, 2000, p. 358).

The 'Right' Direction: Going Back or Moving Forwards?

In order to invigorate the sometimes dead-end discussions of durable solutions for Rwandan refugees, it may be helpful to re-examine concepts of repatriation and return. If exercising rights depends on officially 'belonging' to a state, the three idealised durable solutions essentially enact a 'right to have rights' (Hannah Arendt, cited in Long, 2010, para. 17). Repatriating involuntarily, however, under the cessation clause, is unlikely to re-construct the ruptured bond between state and citizen required for

national protection to have meaningful effect. Reducing repatriation to a physical act of border-crossing fails to capture the political nature of this process, and refugees' agency therein. To gain membership of a protective polity engenders some measure of influence towards shaping that community, generally through voting rights; political agency is central to protection (Long, 2011a). This reinstatement of rights and membership may well occur away from the 'home' state, separating citizenship from residency. Katy Long argues that 'return is not synonymous with repatriation: movement is not the cause of displacement but a symptom, and may in fact provide an important remedy to some refugees' needs' (Long, 2010, para. 238). Conversely, the international system's fixation with sending refugees 'home' idealises pre-flight conditions, which may be unwarranted, or even nonsensical in the case of refugee children born abroad. One answer would therefore be to leverage, rather than restrict, as per current tendencies, the very mobility that characterises refugees' lives. Also termed 'transnationalism' (Van Hear, 2006), this strategy offers clear advantages, at least on paper.

Facilitating refugees' continued stay in the country of asylum, without requiring their naturalisation, can be achieved by issuing country of origin passports, and activating alternative channels to regularise their presence as migrants. This is viable only for those who agree to be seen as voluntarily re-availing themselves of the 'home' country's protection through the acquisition of the national passport and use of the consular authorities. It implies the re-forging of the previously broken link with the country of origin, repatriation decoupled from physical return. This option respects multifaceted, internationalised identities, and is more realistic than waiting for other highly improbable 'traditional' durable solutions, such as third country resettlement or integration through naturalisation. Even if full naturalisation were on offer, which is rare, refugees may not wish to acquire the citizenship of the asylum state as it can preclude any eventual option of return, however unrealistic in the present, particularly as many states do not allow for dual citizenship. By relinquishing citizenship of the country of origin, refugees may risk a period of undocumented 'statelessness' in the not-unprecedented event that delays in issuing the 'new' citizenship arise. Foregoing one's original citizenship may also annul claims to land or property owned before flight, or bar participation in transitional justice initiatives, such as accessing reparations.

More immediately, transnationalism facilitates access to certain rights potentially compromised by return, especially if involuntary, as can be the case under the cessation clause. The right to freedom of movement, already inherently violated under encampment, a default experience for many refugee populations in Africa, would be protected, and the compromised autonomy that is so central to forced displacement would be restored. Sustainable livelihoods, particularly through cross-border trade, often off-limits to refugees, could be pursued, anchoring economic rights. This also permits refugees' gradual re-establishment in countries of origin, as to travel there at will, and for intermittent periods, avoids straining fragile post-conflict economies where community relations may be fraught, exiles resented by 'stayees,' and land disputes a risk. Transnational refugees may channel diaspora wealth, enriching countries of origin. Transnationalism loosens institutional frameworks predicated on simplistic, linear migration trajectories (flight, exile, home), corresponding more realistically to refugees' multi-directional displacement and travel histories. It may decongest resettlement routes, maximising their protective potential for those in need. Blending '*de facto* local integration with *de jure* repatriation' (Long, 2010, para. 146) creatively restructures the parameters of traditional humanitarian thinking and the citizenship-rights paradigm. This innovative approach helps re-examine 'the idea that the political connections that exist between nation and state, or the cultural connections that associate people and place, are "natural" rather than constructed' (Long, 2010, para. 27). To enable Rwandan refugees in this way, as proven generally successful with Sierra Leonean and Liberian refugees in ECOWAS countries (Economic Community of West African States), seems recommendable, particularly in the case of Rwandan refugees in Uganda, Burundi and some countries of asylum that have formally invoked cessation already.

The experience of the ECOWAS regional integration bloc, comprising 15 states in West Africa, is a positive example of the transnationalism model. Refugees, including large populations of Sierra Leoneans and Liberians, who fled during the 1990s, are explicitly entitled to make use of the bloc's freedom of movement, residence, settlement and employment instruments, much like other migrants travelling within the region (ECOWAS, 2007). Host countries Nigeria and the Gambia worked with UNHCR, Sierra Leone and Liberia to re-issue national passports and workers' visas to refugees from the latter two countries, allowing them to locally integrate, exercise their right to work and access regional labour markets (Adepoju et al.,

2007). 'Repatriating in situ' bypassed the struggle for lengthy and costly naturalisation procedures or resettlement, as individuals transitioned from refugees to migrant workers. Defining 'transnationalism' as 'regional citizenship' (a term gaining currency in discussions of the ECOWAS example [Long, 2011b, p. 35]) arguably does more to instil a sense of cooperation among Member States than it does to accurately capture refugees' realities. Indeed the citizenship that transnationalism envisages conferred on refugees is merely the formal restoration of the national citizenship once enjoyed in the country of origin, through a passport and a migrant visa.

No such theories are without complications, however, and transnationalism's applicability in the Rwanda-DRC context in particular should be studied, since movement of Rwandans to and from eastern DRC is highly politicised. Many Congolese fear Rwandan colonisation of eastern DRC (partly for mineral wealth), an opinion 'so deeply rooted that even normal cross-border movements are from time to time portrayed as "infiltration" or even planned large-scale migration of Rwandans to eastern DRC' (Lange, 2010, p. 49). Similarly, the rejection of Rwandan passports by refugees in Zambia (Chawe, 2013), citing fears of surveillance, illustrates that promoting transnationalism, or repatriation without return, would still be highly complex in this particular context. The mere 19 passports requested by Rwandan refugees in the Republic of Congo suggest a similar dynamic there. Independent investigation into individuals' amenability to acquiring passports (and the measure of citizenship this can be understood to confer) whilst remaining abroad is therefore highly recommended in other Rwandan refugee diasporas, both in the region and in Europe and North America.

On a more general scale, while supporting mobility as a route forward for protecting refugee rights, particularly in response to cessation clause-induced status loss, there is a fear that it is utopian against a backdrop of increasing border securitisation and anti-migration rhetoric. One disagrees with James Hathaway's critique that 'emphasis on solutions "pathologizes" refugees and may be used to undercut enforcement of rights' through rushing to 'de-refugee' people, reducing them to 'persons to be managed' (James Hathaway, cited in Aleinikoff & Poellot, 2012, p. 20). The opposite is true, that by paving another path refugees have another opportunity to 'manage' themselves in their chosen manner. It is precisely this transfer of autonomy that states seek, directly or indirectly, to resist: the borders are

where state sovereignty is most readily challenged. Therefore UNHCR Deputy High Commissioner Alexander Aleinikoff's attempt to couch a response to states' resistance in the discourse of human rights misfires. Hyperinflated rights speak, as discussed, does not speak to the deep-seated political motivations behind governments' and voters' aversion to refugees. Ironically, his project of constructing a 'moral fulcrum' to stimulate the protection of rights, contains no morality-based justifications, but is rather a legally positivist endeavour that rests exclusively on pinning down rights on paper.

Alexander Aleinikoff and Stephen Poellot posit that 'refugees have a right to a solution' (2012, p. 6) under international human rights law, deriving from the right to a nationality found in UDHR Article 15. This relies on acceptance of UDHR as customary international law (a widespread, but not universal, viewpoint), and is somewhat convoluted. They submit that since membership in a national community is vital for the effective protection of human rights, and since refugees by definition lack membership, states' legally binding commitment to human rights must necessitate that refugees be provided membership (Aleinikoff & Poellot, 2012, p. 8). They further this by marrying Article 35 of the Refugee Convention (states' duty to co-operate with UNHCR) with Article 1 of the UNHCR Statute ('seeking permanent solutions for the problem of refugees'), constructing a state duty to help solve protracted refugee situations. States, however, are unlikely to bow to inferred rights and duties in a legal framework they readily violate on other occasions. Although the limits of rights-speak are recognised and the proposal is thus extricated from a strictly legal framework and spun politically as a '*responsibility* to solve,' in an attempt to piggy-back the popular evolving 'responsibility to protect' concept, one remains wary of this effort to cajole states into addressing protection challenges. The R2P discourse should not be conflated with refugee protection, given its many flaws (and in particular its privileging of powerful northern states whose refugee response efforts are frequently minimal or in bad faith), which are beyond the scope of this article.

Inclusive Understanding

Reconceptualising the ways in which the international community can support refugees in upholding their own rights is therefore more necessary than ever, and at times even promising. Such thinking need not be radical: mobility-as-protection suggestions hark back to the Nansen passport era.

This identity document's aim was precisely to facilitate refugees' search for employment by travel across international borders (Long, 2010). Responses must have refugees' intensely political, persecution-generated subjectivities at their core; legal and institutional humility are needed. Human rights claims presented in alienating 'legalese' without concurrent efforts to speak to the prejudices and desires motivating harmful actions and policies on their own terms are unlikely to solve the challenges facing refugees. A focus on agency, not Agencies is needed, and strategies prioritised by refugees themselves must be taken on board by UN and other institutions. To excise refugees from their own management, particularly when rights violations arise from within the systems deployed for their protection, in well-meaning attempts to serve this diverse population group's best interests risks rendering them a 'transparent object of knowledge… abandoned to the discretions of public benevolence or private charity' (Douzinas, 2000, p. 361). The desire to comprehend refugees' perspectives by 'domesticating' such Other experiences into understandable frames of reference 'has catastrophic results for the knowing subject…. By refuting the exteriority of the absolute other,' Douzinas argues, they are rendered 'non-subjects, [with] …no rights or entitlements' (Douzinas, 2000, p. 362). This by no means implies that human rights are a superfluous explanatory framework for ordering and narrating traumatic personal experiences of dislocation; it merely requires that refugees be involved in shaping the discourse, and this is what troubles the gatekeepers of the international refugee governance regime.

To enable a forced migrant to 'represent the avant-garde of their people [and] …be considered for what he is… a border concept that radically calls into question the principles of the nation-state and, at the same time, helps clear the field for a no-longer-delayable renewal of categories' (Agamben, 1995, p. 117), would entail a drastic reshuffle of the international monopoly on knowledge and a reassessment of 'objective' received wisdom and its relation to refugees' subjective understanding of their own problems. It is doubtful that UN power hierarchies would loosen their grip on the hegemonic, international perspective that ultimately balances community sentiments (where researched) with operational and political factors, and translates the resulting compromise into actionable policies. 'We Refugees,' the article in which Agamben espouses this need for a reshuffle, remains too radically inclusive a prospect to effectively democratise the mainstream. Alternatively, failure to acknowledge refugees' views on how best to protect their rights may simply stem from

operational inexpertise or indeed, as in eastern DRC, a reluctance to engage with complex political sensitivities. Whether down to inertia or constraints imposed by maintaining a façade of impartial neutrality, this 'creates an environment in which widely expressed popular fears tend to become understood as established facts' (Lange, 2010, p. 49). 'Well-founded fear' does not lend itself as easily to objective interpretation as is often assumed.

Even admitting refugee voices into academic analysis of rights paradigms is hindered by the institutional need for credibility as demonstrated through peer-reviewed journals or INGO research. Consequently only mediated (and translated) refugee voices, with some few exceptions, enter the realm of refugee rights theorising. To ascribe discussions of repatriation without return through ECOWAS-style mobility solutions to non-traditional sources, such as Callixte Kanani's report on UNHCR consultations with Rwandan refugee organisations,[1] featured on the highly partial campaign website 'Rwandan Dialogue for Truth and Justice,' necessitates a plethora of caveats regarding bias, and the representational issues around bodies claiming to speak on behalf of 'civil society.' However, to view communications issues and the misunderstandings of refugees they engender, as the root of challenges to refugee rights is disingenuous.

As the controversy surrounding the application of the cessation clause to Rwandan refugees illustrates, institutional actors may be well aware of these challenges, but find themselves politically (or economically) constrained in responding. Such multifaceted pressures hamper conceptualisation of refugees as rights-holders, even within an entity born of a Convention establishing refugee rights. To expose these 'unsettling examples of [how] …an institution created to supervise and promote compliance with refugee law [is] prepared to distort that law in order to promote its own… priorities' (Verdirame & Harrell-Bond, 2005, p. 113) underscores a more general tension; rights, as legal constructs, harbour their toughest challenges within.

Interpretation of refugee rights laws is therefore crucial in order to engender policies that deliver effective protection. Recommending the invocation of the ceased circumstances cessation clauses for Rwandan

[1] *'…la solution qui sera proposée aux réfugiés intégrés est de solliciter un permis de séjour permanent qui suppose des démarches auprès des autorités de Kigali car un passeport rwandais est indispensable'* (Kanani, 2011, p. 2).

refugees is an example of the opposite. Agencies must first acknowledge, and then address, institutional biases against refugees' own perspectives and knowledge of their situation. Questioning received wisdom is therefore paramount, whether this is the accepted narrative of refugees' desires to 'go home,' or the comfortable inclination towards well-worn 'durable solutions' to the exclusion of mobility-centric innovations. In the Rwandan cessation debate it is not too late to reinvigorate such discussions, and push for an outcome that is more rights-centric. Where it might take us depends entirely on the views of those refugees affected; meaningfully admitting their voices into academic and other spheres can be considered but an overdue starting point.

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