An Examination of the Law, or Lack Thereof, in Refugee and Displacement Camps

Kelsey Kofford

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An Examination of the Law, or Lack Thereof, in Refugee and Displacement Camps

By KELSEY KOFFORD*

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* J.D. Candidate 2012, University of Hastings College of the Law; B.A., University of California, Davis, 2008. I would like to thank my close friends and wonderful editing team at HICLR for the editorial support and encouragement with this Note. Inspiration for this Note was made possible by the experiences I have shared with the incredible individuals at the Center for Gender and Refugee Studies (CGRS), Asylum Access, and the Organization for Refuge, Asylum, and Migration (ORAM). Lastly, I dedicate this Note to my mother, Lori Klossner, my sister, Sydney Kofford, and the late Michael Klossner, who was perhaps the most proud of all of my work leading up to the publication of this Note.
I. Introduction

[Though] scholars tend to focus primarily on refugee determinations as they play out in industrialized nations' domestic courts, millions of refugees never make it there. Instead, most remain in the developing world, living in refugee camps. Their problems involve camps, not courts.¹

Most people do not base their idea of a typical refugee or displacement camp on firsthand observation. Instead, many rely on images portrayed in fictional works such as movies and books and those in some nonfiction documentaries, news media, and online publications. Some of these images may be accurate; others are less so.² For example, people may envision enormous matrices of tattered tents blowing in the wind, or masses of huts in the midst of an arid plain.³ Perhaps some picture these camps as places where, after major crises, life simply goes on. Children receive a day's lesson under makeshift shade; they laugh and play games while rows of adults await their food rations, and people by and large go about their

daily activities. People probably see the colorful emblems of nongovernmental organizations (NGOs) appear here and there in the periphery; the blue of United Nations agencies and the crimson of the Red Cross create a constant reminder this is an environment unlike others. Many may also think of camps as compounds, with towering chain-link fences, guards, and other sentinel figures. Maybe there is some sense of palpable instability in the air: at any moment this makeshift community could come under attack from neighboring wars or conflicts, or crumble under the collapse of a host country’s helpless or hostile government. Rarely, however, does anyone imagine symbols of justice. There are no courthouses, no judges, no attorney offices, no jails, and no actual law enforcement in our virtual depictions – and with good reason. In reality, there is little to no access to justice in camplife. Refugee and displacement camps are essentially lawless.

This Note attempts to address why refugee and displacement camps are lawless. In recent years, reporting has increased about multiple problems occurring in camps, including forms of persecution anew for camp inhabitants, such as sexual and gender-based violence (SGBV). As refugees and displaced persons, nearly all camp inhabitants have already survived some form of persecution. Succumbing to further harm in the purportedly safe environment of a


6. See, e.g., Lankan military sexually abusing Tamil girls, GLOBAL TAMIL NEWS (Dec. 23, 2009), http://www.globaltamilnews.net/GTMNEditorial/tabid/71/article Type/ArticleView/articleId/47462/language/en-US/Lankan-military-sexually-abusing-Tamil-girls-a-story-on-Express-Buzz.aspx ("Vany Kumar, who herself was locked up behind barbed wire in the Menik Farm refugee camp for four months, told the Observer newspaper that guards gave food for sex.").

7. Id.
refugee camp is extremely traumatizing. These reports beg the question of why this is happening, but they rarely answer it in any meaningful way. Whereas in academia, some recent discourse has been dedicated to matters of physical security in camps, which is a primary first step in realizing the lawless nature of camps. But ultimately, silence has reigned supreme on the matter of the law and legal infrastructure in camps.

For the purposes of this Note, “law and legal infrastructure in camps” refers to an accessible and reliable system of rules, authorities, and guidelines meant to prevent criminal and civil violations. Robust systems enforce predetermined rules to penalize perpetrators and make victims whole when a victim’s rights have been violated. They also ensure the security of the community by preventing harms from recurring in the future. That being said, is there an accessible and dependable system of law and legal infrastructure in camps to serve these purposes? At present the general answer is, quite simply, no. Herein lies the gravitas behind this Note. And it proceeds as follows.

This Note endeavors to answer why there is no legal infrastructure in camps by examining the rise of the camp model, the law on the books versus the law in action in camps, and some on the ground problems that occur and inhibit the implementation of the law. To demonstrate the gravity of this issue, a brief and closer look is given to one camp-specific phenomenon plaguing women and girls known as transactional sex, or prostitution for food. Finally, this Note suggests two points. First, there must be a sea change to reevaluate the “temporary” nature of these camps. As the average time spent in a refugee camp is seventeen years, in reality camps tend not to be so temporary after all, so the standing solution is flawed. Next, accountability for practical recourse to justice in camps should be put in writing to bind a most appropriate actor or state on paper to the human rights standards that should be held in action. Because alternatives to the camp model remain infeasible in many parts of the world, necessitating that these camps (arising from life or death necessity themselves) be maintained with more dignity should become a priority for the international community.

8. See Cuéllar supra note 1; see also infra notes 35 and 85 and accompanying text.
A. Historical Overview of Refugee and Displacement Camps

Refugee camps... are a unique socio-political artefact of this century... [which remain] by and large understudied by social scientists.9

Chronicling the history of refugee and displacement camps, or the camp model as we contemplate it today, proves to be a surprisingly challenging endeavor. While refugee and displacement camps have existed in various forms since time immemorial,10 there is little documented evidence of their origins and development. Some of the first written references to a refugee camp trace back to as early as 1865,11 but official records in the League of Nations began emerging as late as 1935.12 This timing corresponds to the international community’s sudden awareness of the situation of refugees in the years between the World Wars. Soon thereafter, the Holocaust served as one of the most pivotal moments in refugee history, triggering enormous crises that forced unprecedented numbers of people to flee persecution and seek temporary shelter across and beyond the European continent.13 Thus began the modern iteration of the refugee camp model.14

In 1943 the United Nations Relief and Rehabilitation
Administration (UNRRA) became the origins of the camp model as we understand it now. The main purpose and function of UNRRA was to:

plan, coordinate, administer or arrange for the administration of measures for the relief of victims of war in any area under the control of any of the United Nations through the provision of food, fuel, clothing, shelter and other basic necessities, medical and other essential services . . . .

In executing these duties, the organization provided camps for millions of individuals displaced during the World Wars. Some of these camps were not “tent cities” as we tend to think of them, but makeshift communities formed in abandoned barracks, and even castles. UNRRA operations oversaw significant projects in these camps, including the administration of infirmaries, occupational training, and the care of unaccompanied children and the handicapped. Interestingly, UNRRA took a hands-off approach to legal matters, instead encouraging the “exercise in self-government.”

Camp residents themselves “created camp committees, police and fire control patrols.” Around this time, the formation of the United Nations in 1946 led to a more organized international effort to protect and support the tens of millions of persons whom the World Wars had displaced. So with the 1947 dismantling of UNRRA, other agencies assumed control of the organization’s dispersed undertakings.

While the short-lived UNRRA focused primarily on localized camp policies and procedures for all persons displaced by war, its institutional successor – the International Refugee Organization (IRO) founded in 1946 – worked more globally toward protecting

16. *Id.* at 29.
17. *See id.*
19. *See id.*
20. *Id.*
21. *Id.*
22. *Id.*
"in every way possible" refugees specifically. The IRO Constitution addressed the issue of establishing temporary residences for refugees when return to their countries of origin was not feasible, and explicitly mentioned "camps" as part of the field situation under its authority. And then the IRO met a destiny of dissolution similar to that of the League of Nations and UNRRA. In 1950 the United Nations High Commissioner for Refugees (UNHCR), also known as the UN Refugee Agency, replaced the IRO as the international institutional authority responsible for refugees.

Though UNHCR adopted a role substantively identical to the IRO in assisting and protecting refugees, the agency did not assume the duty to provide or oversee temporary housing such as camps. The 1950 Statute of the Office of the United Nations High Commissioner for Refugees, which defines the purpose and functions of UNHCR, contained no duty of establishing temporary residences for refugees or displaced populations. Instead, UNHCR proposed the 1951 Convention Relating to the Status of Refugees, which UNHCR then modified sixteen years later in the 1967 Protocol Relating to the Status of Refugees (together hereinafter the Convention), both of which allocated responsibilities regarding refugees to signatory states. Today, the Convention is a binding source of international law for the 147 states that have signed and ratified it (hereinafter the States Parties). The principle of non-refoulement found in Article 33(1) to the Convention has been widely

25. See id. pmbl., art. 2(1)(b)(i).
26. Id. art. 7, § 5.
29. See UNHCR Statute, supra note 27, at 11.
accepted as a peremptory legal norm (*jus cogens*).  

Within the Convention there is no explicit mention of the direct involvement of UNHCR or States Parties in providing and managing camps or other tangible forms of temporary shelter – such responsibility is implicit at best. The Convention merely allocated to States Parties the general responsibility for providing protection to refugees, temporary or otherwise (which may include camps). In practice, however, UNHCR itself oversees the establishment and maintenance of camps, akin to the work UNRRA conducted decades ago. To be clear, UNHCR is not responsible for administering Convention requirements within (host) States Parties, or for enforcing the law within camp environments. The Protection Mandate of UNHCR explains this, in noting:

> The protection of 36.4 million uprooted or stateless people is the core mandate of UNHCR. The agency does this in several ways: it ensures the basic human rights of uprooted or stateless people in their countries of asylum or habitual residence and that refugees will not be returned involuntarily to a country where they could

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33. *See, e.g.*, UNHCR, 1951 Refugee Convention Questions and Answers (Sept. 2007), http://www.unhcr.org.ua/main.php?article_id=8&view=full [hereinafter Convention Q&A] (“Nations sometimes offer ‘temporary protection’ when they experience a sudden mass influx of people, and their regular asylum systems face being overwhelmed . . . . In such circumstances people can be speedily admitted to safe countries, but without any guarantee of long-term asylum. Thus, ‘temporary protection’ can work to the advantage of both governments and asylum seekers in specific circumstances. But it only complements and does not substitute for the wider protection measures.”).


35. For a discussion on “UNHCR’s Assumption of a Quasi-State Role in the Camps” and how such a role of “state-like character gives it certain responsibilities” under international law, *see* Alice Farmer, *Refugee Responses, State-Like Behavior, and Accountability for Human Rights Violations: A Case Study of Sexual Violence in Guinea’s Refugee Camps*, 9 YALE HUM. RTS. & DEC. L.J. 44, 76-78 (2006). *See also infra* note 102 and accompanying text.
face persecution.\textsuperscript{36} This means UNHCR maintains a “watching brief” in which the agency intervenes only “if necessary” in granting asylum and upholding the principle of non-refoulement. Other international aid agencies take a comparable hands-off approach to camp management. In the Middle East, for example, the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) “is not responsible for security or law and order in the camps.”\textsuperscript{37} And oftentimes, neither UNHCR nor other UN agencies are involved or even present in many “off-the-grid” displacement camps.\textsuperscript{38}

With this background in mind, the current understanding of what constitutes a refugee camp is comparable to the definition provided by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), as follows:

Refugee Camp: A plot of land temporarily made available to host refugees fleeing from an armed conflict in temporary homes. UN Agencies, particularly UNHCR, and other humanitarian organizations provide essential services in refugee camps including food, sanitation, health, medicine, and education. These camps are ideally located at least 50km [about 31 miles] away from the nearest international border to deter camp raids and other attacks on its civilian occupants.\textsuperscript{39}

Thus, presently, only UNHCR bears the bulk of responsibility for managing camps and essential services within them, but no express written standard binds the agency to do so. This sets the stage for what has become a series of lawless plots of land where refugees and displaced persons reside in the otherwise lawful realm of international refugee law.


\textsuperscript{38} See Jackson-Han, infra note 66 and accompanying text.

\textsuperscript{39} United Nations Office for the Coordination of Humanitarian Affairs, Glossary of Humanitarian Terms, 22 (2003) [hereinafter OCHA Glossary].
B. A Distinction Between a Refugee and a Displaced Person

A refugee is a specific type of displaced person. By definition, a refugee owes his or her displacement to particular forms of persecution. Since 1951, the technical definition of a refugee, found in Article 1(A) of the Convention, is someone 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 to, or owing to such fear, is unwilling to avail himself of the protection of that country.\(^{40}\)

Once an individual has received refugee status, he or she becomes recognized as deserving of the protections under the Convention, as well as under the laws of the country of refuge. In practice, both the UN and host governments typically do not extend the full range of Convention rights to a person until his or her refugee status has been adjudicated and a positive determination has been made.\(^{41}\)

In addition to protection from future harm, the main benefit of legal recognition as a refugee is the right to lawful status in the new country (typically a temporary legal status with the prospect of permanency after time). Some have dubbed this as “the right to have rights.”\(^{42}\) Legal status is the gateway to the rights to access employment, social services, education, and more.\(^{43}\) Gaining such affirmative rights can place refugees in measurably better positions

\(^{40}\) See Convention, supra note 30, art. 1(A)(2).

\(^{41}\) An adjudication of refugee status is a declaratory proceeding; it simply declares something that is already a fact. That is to say, a person is a refugee from the moment he or she fulfills Convention criteria, but that individual is only legally recognized as such once a declaration of refugee status has been made.


\(^{43}\) See, e.g., Rachel Reyes, Asylum Access Provides the Tools to Fight for Refugee Rights, WOMEN’S CALENDAR (2007), http://www.womenscalendar.org/WCContent/AsylumAccess.htm (“Legal status is the key to all other rights. Without legal status, a refugee in a new country cannot work, enroll children in school, open a bank account, travel, or insist on protection from discrimination or violence – all rights that were mandated for refugees during the 1951 Geneva Convention.”).
This legalistic, restrictive definition of refugee excludes multitudes of people seeking refuge who do not meet the rigorous requirements of the definitional standard. Entire categories of vulnerable individuals fleeing dangers to life and limb – millions of people around the world – fall under the broad umbrella term of displaced persons but do not meet all the criteria for refugee status recognized under Article 1(A) of the Convention. Excludable displaced persons include, for example, individuals fleeing persecution on account of race, religion, nationality, political opinion, or membership in a particular social group (recognized forms under the Convention) who remain within their country of nationality or origin. These are known as internally displaced persons (IDPs) and people similarly situated in “refugee-like situations.” Another example are individuals who have fled their country of origin for reasons other than those listed in the Convention, such as natural disasters or general political turmoil. Growing numbers of

44. Asylum seekers who may have been denied refugee status, for example, may not enjoy such affirmative rights, but the Convention (under the principle of non-refoulement, or “no return”) prohibits the government from returning them to the country from which they fled if their life or freedom is threatened. See Convention, supra note 30, art. 33(1); see also supra note 32 and accompanying text.

45. As an example of the effects of this distinction, compare undocumented Cuban and Haitian refugees each arriving in the United States in different boats. The Cubans fleeing the Castro regime would likely qualify for refugee status as victims of political persecution, under United States statutes implementing the Convention, and would likely be permitted to remain legally in the United States. On the other hand, the Haitians fleeing the 2010 earthquake and generally disastrous conditions under the Préval regime, would likely not receive recognition as refugees based on one or more of the five enumerated Convention grounds, and would be deemed “displaced persons” not entitled to Convention protections, including non-refoulement. Generally speaking, Haitian refugees’ chances of gaining lawful entry into the United States are almost insignificant (some estimate that mere hundreds of some sixteen thousand Haitian refugees have qualified for asylum in the United States). The different outcomes are based in written statutes that have disparate effects and favor one category of displaced person over another. For an overview of this comparison, see Hendrik Hertzberg & Anna Husarska, The Same Boat, THE NEW YORKER, Jan. 10, 1994.


economic migrants and "climate change refugees" (persons fleeing environments that rising global temperatures have made uninhabitable) are two other classes of displaced persons who do not meet the Convention definition of a refugee. Additionally, Palestinian refugees and other individuals displaced by the Arab-Israeli conflict and several other political disruptions in the Middle East are not protected by the Convention per the terms of Article 1(D). Finally, asylum-seekers who have been procedurally denied refugee status but remain in dire need of humanitarian assistance also fall into the wider category of displaced persons.

UNHCR acknowledges “[m]illions of other civilians who have been made homeless by natural disasters are also classified as IDPs. [However,] UNHCR is only involved with this group in exceptional circumstances . . .” UNHCR, Internally Displaced People: On the Run in their Own Land (2011), http://www.unhcr.org/pages/49c3646c146.html [hereinafter On the Run].


49. See Convention Q&A, supra note 33 (“[E]conomic migrants should not be confused (as they often are) with refugees, who are fleeing persecution and war—rather than moving for financial or personal reasons . . . . Separating genuine refugees from various other groups through fair asylum procedures . . . can be a daunting task for governments.”); Bonnie Docherty & Tyler Giannini, Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees, 33 HARV. ENVTL. L. REV. 349, 349-50 (2009).

50. “This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.” Convention, supra note 30, at art. 1(D). Because UNRWA provides protection for millions of displaced people in the Middle East, those individuals are consequently disqualified from Convention protections. See UNHCR, Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian refugees, 14 INT’L J. REFUGEE L. 450 (2002). For more on UNRWA, see generally UNRWA, http://www.unrwa.org/ (accessed Oct. 25, 2011).

51. See, e.g., HUMAN RIGHTS WATCH, STUCK IN A REVOLVING DOOR: IRAQIS AND OTHER ASYLUM SEEKERS AND MIGRANTS AT THE GREECE/TURKEY ENTRANCE TO THE EUROPEAN UNION 103-04 (Nov. 26, 2008), available at http://www.hrw.org/sites/default/files/reports/greeceturkey1108web_0.pdf (“Others fall out of the procedure for missing the deadlines for renewal of the red [residency] card. A 56-year-old Iraqi from Baghdad told Human Rights Watch how his son fell out of the asylum procedure: ‘It was a Greek Christian holiday when he was denied. The government offices were closed,
Many countries adhere to a more inclusive refugee definition than that which the Convention sets forth.\textsuperscript{52} For example, two regional instruments – the Organization for African Unity (OAU) 1969 Refugee Convention\textsuperscript{53} and the 1984 Cartagena Declaration for Latin America – recognize a broader array of refugees, including those who flee “external aggression, occupation, foreign domination or events seriously disturbing public order” or “generalised violence, foreign aggression, [or] internal conflicts . . . .”\textsuperscript{54}

Because this Note aims to deal with matters of law and legal status, for its remainder the term \textit{refugee} refers for the most part to the Convention definition, and \textit{displaced persons} refers to all other categories of displaced persons not covered by the Convention definition.\textsuperscript{55} Due to the limitations inherent in the Convention definition – as well as the restrictions host governments may place on UNHCR – UNHCR may exclude similarly situated displaced persons from refugee protections,\textsuperscript{56} and sometimes have to deny them

\textsuperscript{54.} See Organization for African Unity [OAU] Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969, 1001 U.N.T.S. 45 (defining a \textit{refugee} to include those who flee “owing to external aggression, occupation, foreign domination or events seriously disturbing public order”); see also Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Nov. 22, 1984, O.A.S. Doc. OEA/Ser/L/V/II.66/doc.10 (defining a \textit{refugee} to include those “who flee their countries because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order”).
\textsuperscript{55.} Although UNHCR technically denies “refugee assistance” to those who do not meet the definition in the Convention, UNHCR does provide other forms of aid to other vulnerable populations and displaced persons, including survivors of natural disasters. See UNHCR, Protecting Refugees, available at http://www.unhcr.org/4aa641da6.html (accessed Oct. 25, 2011) (noting the secondary UNHCR mandate to reduce statelessness and collaborate with UN agencies to address the plight of IDPs).
\textsuperscript{56.} See, e.g., infra note 65 and accompanying text.
\textsuperscript{57.} See, e.g., MEDECINS SANS FRONTiÈRES, \textit{Refugee Health: An Approach to Emergency Situations} 9 (1997)
access to official refugee camps altogether, instead relegating them to so-called displacement camps or worse.

C. A Distinction between Refugee Camps and Displacement Camps?

In theory, UNHCR will make an initial refugee status determination (RSD) for an individual to gain access to a refugee camp and enjoy the purported security and protections provided therein. In a situation of a mass influx of people, individualized RSD processes become utterly and logistically unfeasible. This is what leads to prima facie recognition and camp admittance. In short, prima facie recognition bypasses the need for “individual scrutiny [such as individualized RSD] under cumbersome and restrictive eligibility procedures” and functions as an “emergency measure of short duration, to provide mass inflows of people . . . a more limited range of benefits.” Thus, many refugees, displaced persons, and those in their company who escape massive conflict or other crises and make it into established camps enjoy prima facie refugee status, allowing for easier admission to a refugee camp and allocation of the aid and services therein.

58. Protections should include the rights of refugees enumerated in the Convention. See Convention, supra note 30, arts. 3-34. However, camps do not give refugees the rights in the Convention – enumerated Convention rights include freedom of movement, freedom to travel, access to travel documents, the right to employment on an equal basis with other classes of non-nationals (which is not possible if movement is restricted), access to secondary and tertiary education (which is often not available in refugee camps), and more.

59. Interview with Emily Arnold-Fernandez, Executive Director, Asylum Access, in San Francisco, California (Feb. 3, 2010).


Often there are serious security issues related to *prima facie* recognition in refugee camps. One problem with *prima facie* refugee status is the possibility of admitting dangerous individuals such as persecutors or war criminals – people the Convention expressly excludes from obtaining protection as a refugee under Article 1(F). Refugees who have fled armed conflict may actually reencounter their persecutors in the very camp where they sought refuge. For example, in the aftermath of the Rwandan Genocide, according to a researcher who was studying refugees in Uganda at the time, an armed combatant entered a refugee camp in Uganda and resumed persecuting one woman and her child after having murdered her husband back in Rwanda. The woman reported the problem to camp authorities, who told her to stay in the camp. Not long thereafter, the woman and her child were killed by the alleged persecutor in or near the refugee camp.

Except under circumstances warranting temporary protection, displaced persons occasionally cannot gain access to refugee camps. Although UNHCR may try to admit all “persons of concern” into a camp, sometimes circumstances make that untenable. In Bangladesh, for example, UNHCR operates two camps housing some 28,000 officially registered Rohingya refugees in the country, yet UNHCR denies access to more than 41,000 other displaced persons who did not receive refugee status despite suffering similar persecution. Instead, they reside in the “precarious environment” of two unofficial camps. The reason for this differential protection is because the

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62. For more information on the Convention Article 1(F) exclusion clause, see PETER VAN KRIEKEN, THE REFUGEE LAW IN CONTEXT: THE EXCLUSION CLAUSE (1st ed. 1999).
63. Interview with Emily Arnold-Fernandez, supra note 59.
64. Id.
65. See, e.g., New York University Center for Global Affairs, *Inside the Trade for Human Flesh*, PERSPECTIVES ON GLOBAL ISSUES (Apr. 7, 2010), http://www.perspectivesonglobalissues.com/inside-the-trade-for-human-flesh/ (noting in countries “where there are no victim shelters, trafficked women are not considered refugees, and therefore are not admitted to refugee camps.”).
Bangladesh government “ceased conferring refugee status to any Rohingya fleeing Burma” after 1993. This example demonstrates the insecurity that displaced persons (in this case, many refugees simply denied status) may experience in some camp settings versus the assistance recognized refugees may experience in other camps. For both populations in Bangladesh the situation remains dire, but for refugees the Convention definition and acknowledgement of status by a host country can create an appreciable difference between a refugee camp and a displacement camp.

The mandate of UNHCR is to protect the rights of refugees, sometimes effectively to the exclusion of other displaced persons. However, with the help of host countries, UNHCR maintains camps for millions of non-refugee displaced persons and increasingly provides them with some form of assistance. In recent years UNHCR has assisted record numbers of IDPs. The fairly recent aftermath of the magnitude 7.0 earthquake that struck Haiti in 2010 highlighted UNHCR involvement in the wake of non-refugee displacement crises. While initial reports claimed nearly half a million people lost their homes in the earthquake, presently more than a million displaced persons reside in camps under “tents and tarpaulins.” As part of the new UN Cluster System (disaster response program), UNHCR has played a crucial role in helping displaced persons in Haiti secure temporary shelter, by taking responsibility “for Camp Coordination and Management, Emergency Shelter and Protection for... IDPs.” Since the earthquake,

68. Id. at 6, 12.
69. In its Global Report 2001, UNHCR noted under its Protection Mandate the agency’s international protection function has been steadily “evolving” in the past fifty years. The Mandate also addressed “[p]rotecting... IDPs whenever conditions for involvement according to policy guidelines on the subject are met.” UNHCR, UNHCR’s Protection Mandate, 51 (2001), http://www.unhcr.org/3dafdd0014.html.
70. In 2009, UNHCR helped a total of 15.6 million IDPs, including 129,000 people in “IDP-like situations.” See On the Run, supra note 47.
73. IDP Guiding Principles, supra note 46 (“Other agencies with cluster lead responsibilities include: World Health Organisation (Health), United Nations Development Programme (Early Recovery) and the United Nations Children’s Fund (Nutrition, Water/Sanitation). UNICEF shares the education cluster lead with the Save the Children Alliance.”).
UNHCR has been “actively supporting the protection and camp management programmes set up in Haiti . . . .” 74

Though displaced persons may receive some assistance and shelter, they lack many essential rights and protections granted by law to refugees. 75 This distinction may play out visibly when looking at refugee camps as opposed to displacement camps, as in the example of Rohingyas in Bangladeshi camps, but not always. Under international law, host states must respect the civil and economic rights of refugees, including those confined to camps within their territory (whose very civil and economic rights are being violated by virtue of confinement in itself). 76 It is a violation of refugee rights under the Convention, for example, for a host state to confine refugees to an enclosed camp and prevent them from accessing legal services. 77 Unfortunately, non-refugee displaced persons inside and outside their country of origin have no comparable rights under the Convention itself, although they are entitled to comparable rights under international law, 78 such as those enumerated in the International Covenant on Civil and Political Rights (ICCPR) 79 and the International Covenant on Economic, Social and Cultural Rights (ICESCR). 80 When host countries violate displaced persons’ rights, the states may not be in violation of the Convention and refugee rights per se; but they are still violating international law.

For the purposes of this Note, barring the exceptions noted above, there is little to no difference between a refugee camp and a displacement camp when it comes to interning displaced persons outside their country of origin. The Convention does not provide refugees with any greater protections or rights within camps than it

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75. See Convention Q&A, supra note 33 (“[The] act of crossing a border is one of the key triggers for setting the machinery of ‘international refugee protection’ into motion.”).

76. See infra note 88 and accompanying text.

77. See Convention, supra note 30, art. 16.


does beyond camps.

II. The Law, or Lack Thereof, in Refugee and Displacement Camps

A. The Law on the Books: What Law Should Apply?

1. International Law: Treaties and Customary International Law

Refugee law is the compilation of treaties and customary international law pertaining to matters of refugee protection. However, nowhere does the written body of international refugee law specifically reference refugee camps or displacement camps. Accordingly, the Convention is silent on actual law enforcement in displacement scenarios, and on refugees' physical security altogether. One could possibly argue a lacunae exists in international refugee law regarding the physical security of refugees in general and within the camp model in particular.

Refugee law expert James C. Hathaway, in The Rights of Refugees Under International Law, provides potential reasons as to why these crucial matters remained unresolved. First, during the drafting of the Convention, state representatives believed proposals to address refugees' physical security were “too ambitious.” Second, Hathaway hypothesizes because “standards of both refugee law and international human rights law were nearly exclusively drafted by men,” there was limited consideration and ultimately no need found to include anything on the issue of physical security. Hathaway

81. OCHA Glossary, supra note 39, at 22 (defining refugee law as “the body of customary international law and various international, regional, and national legal instruments that establish standards for refugee protection. The cornerstone of refugee law is the 1951 Convention... and its 1967 Optional Protocol. [UNHCR] is mandated by the UN to provide international protection to refugees and to seek permanent solutions to their problems through its Statute...”).

82. The Restatement defines international law as the “rules and principles of general application dealing with the conduct of states and of international organizations and with their relations inter se, as well as with some of their relations with persons, whether natural or juridical.” RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 101 (1987).

83. See JAMES C. HATHAWAY, THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW 430 (2005) (noting how the Convention was silent on issue of physical security, even though security is “fundamental to any notion of refugee protection”).

84. Id.
reasons that men have long presumed themselves capable of ensuring their own physical safety, so the drafters lacked the foresight to consider the dangers and insecurities vulnerable populations—men included—would face in the refugee context. The drafters also overlooked the security needs of displaced women, children, the elderly, disabled individuals, and minorities based on sexual orientation and gender identity. Since the Convention’s inception, this severe drafting oversight has manifested in camps and beyond to a sort of open season on these vulnerable groups.

While refugee law may be the most logical source of international law and legal infrastructure in the camps, it is not the only relevant type of international law. However, in camps the application of other areas of international law can be complex. For example, the applicability of international criminal or humanitarian law may depend on many different factors, such as where a camp in question is located. To trigger international humanitarian law, the location of the commission of a crime often trumps the circumstances of the crime itself. The Geneva Conventions, which codify crimes during international armed conflicts (i.e., conflict between two countries) and non-international armed conflicts (i.e., a civil war within a country), generally apply only if actionable crimes occur during an international armed conflict. Solely under Common Article 3 of the Geneva Convention are grave breaches actionable in non-international armed conflicts; yet crimes committed against refugees or displaced persons within camp settings have never been prosecuted under that Article. Thus, protection under international humanitarian law might apply only to certain violations in camps located in a state involved in an international armed conflict. For

85. Id. at 439.
those whose rights are violated within a camp located in a country at peace, some international law (at least, the Geneva Conventions) would not provide protection. The diversity of camp settings can drastically affect the applicability of laws, making the subject all the more complex to evaluate.

Other sources of international law pronounce some of the most important rights that all people enjoy, including refugees and displaced persons. The Universal Declaration of Human Rights, for example, promulgates the rights “to life, liberty and security of person” as well as “the right to seek and to enjoy in other countries asylum from persecution.”\textsuperscript{88} The ICCPR further support such rights protected under customary international law.\textsuperscript{89} These sources of international law, however, appear aspirational at best. Without enforcement mechanisms such treaties lack any real measure for effective prevention of and protection against violations in the international community in general, but especially so in a potentially chaotic environment such as camps.

2. Domestic Law: The Law of the Land

In theory, the law of refugee and displacement camps should be the law of the land: the domestic law of the host country. In the case of displacement camps housing IDPs, the application of national laws may seem clear: regardless of displacement scenarios, the jurisdiction of the law remains intact. “IDPs maybe fled for the same reasons as refugees, but remain inside their own countries and therefore still subject to its laws, rather than to international refugee law.”\textsuperscript{90}

For refugees, the jurisdiction of domestic law may seem less intuitive, but is largely parallel to that of IDPs: refugees in a camp located in a country other than their country of origin are subject to the laws of that host country.\textsuperscript{91} Indeed, the sole obligation of refugees as set forth in the Convention is to respect the laws and regulations of their host country.\textsuperscript{92} Article 2 reads, “[e]very refugee has duties to the

\begin{footnotes}
\item[89.] See ICCPR supra note 79, arts. 6 and 9.
\item[90.] See Convention Q&A, supra note 33.
\item[92.] See Convention, supra note 30, art. 2; see also Convention Q&A, supra note 33.
\end{footnotes}
country in which he finds himself, which require in particular that he
conform to its laws and regulations as well as to measures taken for
the maintenance of public order.”93 Host countries also have a
relatively reciprocal duty: to provide refugees with the same legal
protection as nationals.94 Furthermore, there is no basis in the
Convention to exclude refugees from domestic legal protections or to
create a separate legal regime applicable only in camps,95 particularly
because the Convention obligates States Parties to implement
national laws to “comply with the substantive provisions” of the
Convention.96

3. Camp Law? The Law of the People

The Fugees once sang, “it’s the natural la[w] that the refugees
bring.”97 Upon examining the existing albeit limited access to law in
camps, it would appear the Fugees were not too far off base.
 Numerous reports detail how camp inhabitants implement their own
systems of law and legal infrastructure, often in the absence of any
accessible or effective international or domestic law. Except for
reports stemming from the field, there is no law on the books
indicating camp residents’ responsibility for implementing the law
themselves. The law in action, however, is another story.

B. Law in Action: What Law Does Apply?

Not only is it unclear the type of law that actually applies in
camps given the fact both international and domestic law have long

93. Convention, supra note 30, art. 2.
94. See id. art. 16 (“A refugee shall have free access to the courts of law on the
territory of all Contracting States . . . shall enjoy in the Contracting State in which he
has his habitual residence, the same treatment as a national in matters pertaining to
access to Courts, including legal assistance and exemption from cautio judicaturn solvi
[payment of security for legal costs]”; see also the International Law Commission,
95. See Interview with Emily Arnold-Fernandez, supra note 59; see also
Convention, supra note 30, art. 16. Further, the Convention was set up so refugees
should be given some protection pertaining to domestic law – like access to courts –
based on the same rights as nationals, even though not afforded the same status as a
national. See id. art 16(2). Or going further, the same rights as the most favored class
of non-nationals, or the same as non-nationals generally put on par with other
immigrants or nationals. If the law of land applied, then refugees would have
relatively equal protection on this basis.
96. See Convention, supra note 30, at Introductory Note, 4.
97. THE FUGEES, Fugeela, on THE SCORE (Ruffhouse 1996).
overlooked camps, but enforcement of any type of law on the books is problematic. International law in action has been bleak. A most striking issue that arises regarding international law in action is the failure of accountability on the part of the elusive "international community." Reports from refugee camps formed in response to the Rwandan Genocide, for example, demonstrate the pattern of law enforcement failure by the international community. First, upon learning of the initial lawlessness in the camps, the international community "became timid." When the UN sought to deploy peacekeeping troops to protect the camps, member states avoided the issue and ignored the proposal to supply personnel to train local security forces. After "every possible option" had been exhausted, all that could be done "was to fall back on the last proposal – that is, to use local security forces." The international community defaulted and relied on notoriously incompetent local security forces. This was a most discouraging model of international law in action; member states failed to restore legal order in the camp environments, evincing a horrifying deficiency in international law enforcement. The consequences of this failure reverberate in refugee camps throughout the region an entire decade after the Rwandan Genocide. For example, in August 2004, rebel Rwandan and Congolese forces crossed the border into Burundi and entered a UNHCR camp to target ethnic minorities, killing 150 Tutsi refugees.

Even though domestic law may be the most applicable law on the books, it is often the least accessible and most inconsistently applied law. In some circumstances domestic law might produce undesirable results or conflict with fundamental human rights, in which customary international law and other peremptory norms may be favorable.

Refugees in particular tend to be skeptical of public authorities based on past persecution (and failed protection from persecution by

98. UNHCR, REFUGEE CAMP SECURITY IN THE GREAT LAKES REGION 2 (Apr. 1997), http://www.unhcr.org/3ae6bcfd0.html [hereinafter REFUGEE CAMP SECURITY].
99. Id.
100. Id.
102. For example, if a domestic law states only male children can access education, one could rely on the rights enumerated in the Convention on the Rights of the Child to trump the domestic law if it discriminated against female children seeking to access education. See, e.g., Convention on the Rights of the Child, art. 28, opened for signature Nov. 20, 1989, 1577 U.N.T.S. 3.
the state), and therefore may hesitate to avail themselves of the legal system of a new state. Moreover, camp inhabitants encounter a wide array of obstacles in accessing the domestic justice system and recourse to legal remedies: language and cultural barriers, physical distances, restrictions on freedom of movement, lack of legal representation, meager financial resources, lack of transportation, and poor understanding of the domestic legal system, among others. This creates a two-fold explanation for the void of application of domestic law in camps: state actors are not enforcing domestic law, and camp inhabitants subjected to it are not utilizing the law to their advantage.

Generally speaking, law enforcement in camps should be the responsibility of the host government: UNHCR notes the “physical protection of refugees in refugee camps and settlements remain primarily the responsibility of the host country,” and UNRWA explains the responsibility for law and order “has always remained with the relevant host and other authorities.” Further, the UN Guiding Principles on Internal Displacement set out tenets for states to follow when it comes to protecting and assisting displaced persons. While host states bear this responsibility, it is often the case they fail to abide by these guidelines and responsibilities. Field reports indicate as much. Even though domestic law should be applied, it is not actually enforced in many camps, if not most of them. NGOs aiming to improve states’ compliance with these obligations often experience crippling financial, logistical, and security limitations, which only further inhibit effective enforcement of domestic law.

Who then “owns” refugee security problems in the fluid environment that is so likely to produce such problems?

103. See da Costa, supra note 92, at 5.
104. Id. at 5-7.
107. Id.
108. See da Costa, supra note 92, at 61.
109. Cuéllar, supra note 1, at 628.
In recent studies, it appears the enforcement of law has been left up to camp inhabitants themselves. Based on the dearth of both international and domestic law in action in camps, refugees are left to their own devices when it comes to law enforcement. For many decades, camp inhabitants have been creating justice systems that work for them. What follows are some brief examples of this new notion of camp law.

I. Camp Dispute Resolution Systems

In many instances of displacement and subsequent camp confinement, camp inhabitants import their law, or some form of it, from their countries or regions of origin. Accordingly, they establish at their own initiative what are known as Camp Dispute Resolution Systems (CDRSs). Their processes and techniques may vary from camp to camp, but all CDRSs share a common bond of allowing camp inhabitants to solve disputes internally and autonomously. Many aid organizations, including UNHCR, not only acknowledge the CDRS programs, but also actively support them. State authorities'
reactions to CDRSs on the other hand have been mixed: some countries recognize and support the CDRSs; others do not.\textsuperscript{115} In some countries, communities made up of locals may have already established their own regional dispute resolution systems, with which CDRSs in neighboring camps may comply, adapt in part, or conflict.\textsuperscript{116}

CDRSs generally prove to be a positive legal development in camps despite some serious shortcomings, including their obvious limitations to remedy crimes committed by external actors such as corrupt aid workers or armed forces. They serve as a first step towards implementing a sense of lawfulness and eliminating cultures of impunity in camps, especially when it comes to disputes between camp inhabitants. CDRSs can empower camp inhabitants in a meaningful way. For a population that has been forced into such a vulnerable situation as displacement and camp life combined, regaining some autonomy within the structure of a CDRS can have significant positive effects.\textsuperscript{117}

2. Camp Peace Education Programs

As discussed, most academic literature on the lack of law in camp situations has focused on the matter of security, as camp settings all too quickly can become hostile and violent.\textsuperscript{118} Recently, however, innovative Peace Education Programs (PEP) have focused on implementing peace in camps. In a sense, these are comparable to crime prevention programs, except that their aim is to prevent camp disputes from occurring in the first place. The pilot PEP was launched in two Kenyan refugee camps in the late 1990s.\textsuperscript{119} The PEP mantra is as follows:

The programme allows the learners to practice [peace-related] skills and helps them discover the benefits for themselves so that they psychologically "own" the skills and behaviours. To ensure

\textsuperscript{115} Id. at 51.

\textsuperscript{116} In this case this could also be considered a form of domestic law.

\textsuperscript{117} For more on CDRSs, see da Costa, supra note 92, at 36-61.

\textsuperscript{118} See, e.g., Jeff Crisp, UNHCR, A State of Insecurity: The Political Economy of Violence in Refugee-Populated Areas of Kenya (1999), http://www.unhcr.org/3ae6a0e44.html.

that it is a viable programme, it is essential that peace education is not a "one-off" initiative but rather a well structured and sustained programme. None of us learns these behaviours instantly and if programmes to change or develop behaviours are to succeed, they must be both activity based and sustained through a structured and sustained programme.120

In 2002, Anna P. Obura conducted an evaluation for UNHCR of the results of these pilot PEPs by conducting interviews with camp inhabitants.121 When she asked, "[w]hose responsibility is it to maintain peace in the camps?" a majority of respondents claimed such a responsibility as their own.122

One of the most common trends found in reports about PEPs is that they call for camp inhabitants to take responsibility for all matters that occur in the camp. In fact, some claim PEPs discourage refugees from seeking police assistance in any matters, as it would tarnish the refugees' reputations in their host country.123 While much of the outcome surrounding PEP implementation in camps has been positive, this disincentive to access domestic law may be one problematic finding resulting from the PEPs.

3. Camp Legal Education and Assistance Programs

When non-governmental authorities run camps, it can create problems of camp conformity to international standards, rights, and laws. Generally, NGOs do not go far enough to create a mandate for their involvement with providing security or access to legal justice in camps. In reviewing the types of programs various aid organizations provide to refugee and displacement camps, NGO responsibilities include medical, sanitation, healthcare, and sometimes cultural programs, but fail to include or prioritize any legal or security programs.124 It was not until 2006 that one NGO first endeavored to

120. Id.
124. See Médecins Sans Frontières, supra note 57, at 17 ("The well-being of
address camp legal issues such as those raised in this Note.

For decades, remote Burmese refugee camps strung out along the Thai-Myanmar border have existed in "legal limbo," where camp authorities more or less administered justice on an *ad hoc* basis. Then, with the permission of the Thai government, the Legal Assistance Centre (LAC) began working on the ground in collaboration with the International Refugee Committee (IRC) to assess the legal process in these refugee camps. It was the first time that any sort of legal accountability project was ever enacted in a refugee camp anywhere in the world. Shane Scanlon, the LAC project coordinator, noted:

[It] is a global pilot project.... Huge barriers existed from the outset for refugees to access the justice system, including language barriers in understanding the legal system.... LAC has a team of five specially trained lawyers to guide and advise victims and defendants. Since it began operations, [LAC] has provided legal counsel and support to more than 700 camp residents in cases ranging from serious crimes - like murder, human trafficking and rape - to civil cases involving debt and money lending contract disputes and accident compensation.

Articles and reports on the LAC vanguard project showed recurring trends before the project was initiated: camp inhabitants were ill-informed about their rights and the means to access the legal system, camp justice was not up to international standards, the host country and camp authorities were not enforcing the law, and camp inhabitants were consequently forced to govern themselves. The LAC program sought to change much of this, first by informing refugees about their rights. After the LAC program was

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126. Id.

127. Id.

implemented, recourse to justice for camp inhabitants accelerated: more crimes were being reported, and more crimes were being prosecuted. According to UNHCR, for years prior to 2006 only a handful of serious crimes were referred from the three client camps LAC worked in to the Thai justice system. Between August 2007 (when the project became operational) and the end of 2008, LAC handled eighty serious cases in these camps and referred them to the appropriate Thai authorities, including forty-nine referrals to the Thai justice system.129

Further research should be conducted to follow up on the LAC program.130 Five years later, are the positive effects sustainable and enduring? Is this a program that could be implemented globally – perhaps even adopted as part of the UN Cluster System to apply to displacement scenarios as well as refugee-only settings?131

4. The Problems with Relying on Camp Law

Even if forms of camp law (such as CDRSs) and educational programs (such as PEPs and the LAC program) may in reality be the floor of law enforcement in camps, should they be the ceiling? As long as the law on the books calls for accountability by host countries, host governments must take responsibility to ensure that camp inhabitants' rights are respected. Host states should not disregard their responsibilities under treaties and customary international law, nor should they expect camp residents to bear the burden of upholding legal order in camps. Realistically, camp administrators could play a role in facilitating state maintenance of law and order, even if only as middlemen between the obligations of host governments and the actions of camp inhabitants, like the LAC has initiated in Thailand. Under UNHCR's Protection Mandate, the agency enumerates its own responsibility for "ensuring, together with host governments, the physical security of refugees and other persons

129. Id.
130. Most reporting on the LAC project in Thailand dropped off around mid-2009, where it was noted "LAC is hopeful that in 2010, with government authorisation, it will move into other camps, including Umpium and Nupo." See LAC in Burmese Refugee Camps, supra note 125. At the time of publication of this Note, there were no publicly available follow-up reports about the outcome of the LAC project or its execution of its earlier plans for the future.
131. The author of this Note would argue some form of a legal education program, such as one that provides camp inhabitants with "Know Your Rights" workshops, should be integrated into the UN Cluster System.
of concern." However, UNHCR has long been "deflecting responsibility for security in camps."

III. Analysis

A. Issues at Stake

1. Overview of Contemporary Legal and Practical Problems in Camps

In the camps, refugees have fled persecution, armed conflict, murder, rape, and mutilation. [But] being in a refugee camp doesn't mean you're finally safe. It doesn't mean you're sure to be fed. It means your odds are better. Maybe.

Certain trends emerge when one begins to consider general problems encountered in refugee and displacement camps alike. First, there is the initial problem of the immediacy of displacement, and the "suddenness and massive scale" of the influx of refugees and displaced populations. This compounds the primary problems displaced populations and aid organizations face, including that criminal activity becomes "inherent in any sizeable community living in precarious and impoverished circumstances." Furthermore, camp inhabitants are often left to their own devices when makeshift, de facto camps initially form in response to unforeseen emergencies, before - and even after - external aid or assistance arrives.

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133. See Tehila Sagy, Treating Peace as Knowledge: UNHCR's Peace Education as a Controlling Process, 21 J. REFUGEE STUD. 360, 360-61 (2008). See also Cuéllar, supra note 1, at 599 ("[V]irtually every refugee camp is an "instant city," forged in conditions that immediately give rise to severe law enforcement problems that only sometimes get successfully addressed by host countries or UNHCR.").


136. Id.

137. See MEDECINS SANS FRONTIÈRES, supra note 57, at 16
("Only rapid action by the international community makes it possible to deal with such floods of refugees into regions which are sometimes difficult to reach and where food, water, shelters, sanitary equipment, etc. must be urgently transported under very difficult conditions. International aid is all the more necessary when it is the only hope of survival of refugees arriving destitute and weakened by lengthy periods of travel in areas where nothing
Waterborne diseases can spread rapidly. Persecutors can follow refugees into the camps. Families can starve.

Those who enjoyed relative privilege and safety before becoming refugees usually find their security diminished as a result of the refugee experience itself. More commonly however, refugeehood simply exposes the already disenfranchised to even greater risks of physical harm. The greater the alienation and the poverty level, the more dangerous the camps.

Second, as Hathaway notes, “frequent overcrowding, failure to treat refugees with dignity, and the absence of meaningful opportunities to work, study, or otherwise occupy time set the stage for violence.” Evidence suggests that the greatest risk of physical abuse arises once refugees actually reach camps where they are in principle to be protected.

Much of the danger within refugee camps emanates not from authorities, but from fellow camp residents. Within the camp communities crime is rampant, including theft and other property crimes. Especially common is SGBV. Crimes of SGBV against women, girls, and even sexual minorities in camps can occur for several reasons, including but not limited to camp inhabitants’ diverse cultural mores and frustrations with the circumstances they find themselves in as brought on by their experience of displacement.

Sometimes, camp officials or employees are directly responsible.

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139. See Mayell, supra note 134 (“Every time refugees erected camps, others would come and destroy them.”).
140. Id.
141. HATHAWAY, supra note 83, at 439.
142. Id. at 430.
143. Id. at 441.
144. Id. at 443.
145. See da Costa, supra note 92, at 15 (noting theft may seem surprising given the fact that so many refugees and displaced people who are forced to flee subsequently enter camps with few possessions; in actuality this gives rise to the necessity or desire to steal).
146. HATHAWAY, supra note 83, at 441.
Beyond crimes committed by camp inhabitants are other violations against camp inhabitants, mostly by external actors. Often the most culpable criminals in camps (and those most immune from prosecution) are the camp authorities themselves, whose presence is supposed to aid refugees and displaced persons, not attack them. Nonetheless, numerous reports have documented the frequency with which camp authorities commit SGBV in particular, sometimes as a means to some other cruel and inhumane end.\textsuperscript{147}

The unusual environment of camps, in part due to the heavy reliance on external aid, places many residents in unfamiliar and dependent situations. Typical roles in the community and family disappear in the restructured setting of a camp. In some instances this can render male inhabitants from more patriarchal cultures nearly useless in camp culture, in turn causing them to turn to substance abuse, or become resentful or violent. (More on this follows in Part III. A. 2 below).

Third, the “violence and atmosphere of insecurity in and around the camps” severely compromises “the very basis of the humanitarian efforts.”\textsuperscript{148} The dangerous atmosphere of camps prevents aid agencies and the international community from effectively observing and remedying problems. This creates a culture of impunity.

Finally, “faulty design and management of the camps can exacerbate protection problems.”\textsuperscript{149} Camps continue to be designed and treated as temporary solutions, when in fact they often become long-lasting yet unstable fixtures for millions of refugees. “Over the years, camps have become the standard response,” a head of policy and development at UNHCR recently reported to \textit{The New York Times}.\textsuperscript{150} “But they should be a last resort.”\textsuperscript{151} Today, the average time spent in a refugee camp is seventeen years.\textsuperscript{152} Most people would probably agree seventeen years is anything but temporary.

What results from all of these factors combined is a dire outlook:

\begin{footnotesize}
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\item[147.] Id. at 447-49 (noting physical violence is a strategy sometimes used to force refugees to “voluntarily repatriate.” For example, camp officials in Bangladeshi camps have raped Rohingya refugee women to “terrorize them into returning” to their countries of origin).
\item[148.] Id.
\item[149.] Id.
\item[150.] See Rosenberg, supra note 14.
\item[151.] Id.
\item[152.] Id.
\end{enumerate}
\end{footnotesize}
camps are essentially lawless.

[R]efugees are obliged to remain in areas which have traditionally been insecure, where the rule of law is weak and where the perpetrators of violence can act with a high degree of impunity. The refugees themselves are obliged to live in very trying circumstances – circumstances [that] increase their propensity and vulnerability to violence. Originating from countries [that] have experienced protracted and very brutal forms of armed conflict, they find themselves without freedom of movement, with few economic or educational opportunities, and with almost no immediate prospect of finding a solution to their plight.\textsuperscript{153}

UNHCR presently claims thirty percent of global refugees are accommodated in camps, some in camps as large as 300,000 refugee inhabitants.\textsuperscript{154} While there are no statistics readily available about the number of refugee and displacement camps operational at any given time, estimates range in the upper hundreds, if not thousands.\textsuperscript{155} In Haiti alone there are (reportedly) approximately 1,300 displacement camps within the country, the majority of which were constructed in response to the 2010 earthquake.\textsuperscript{156} The lack of information regarding the global number of camps could be compounded by the fact that UNHCR often closes camps, which complicates reporting such figures and sheds doubt on the few and far between reported statistics.\textsuperscript{157} Further, even though UNHCR is affiliated in some capacity with most refugee camps, there are unofficial refugee camps, as well as displacement camps where UNHCR is not providing any aid, assistance, or documentation.\textsuperscript{158}


\textsuperscript{154} See generally OneWorld Refugees Guide, supra note 78.

\textsuperscript{155} In one UNHCR report the agency says it was able to collect information from “111 camp situations,” but this was merely a sample population survey. UNHCR, Identifying needs and indicators, 54 (2007) in UNHCR GLOBAL APPEAL 2007, available at www.unhcr.org/4565a6872.pdf.


\textsuperscript{157} Id.

\textsuperscript{158} UNRWA camps in the Middle East could fall under this category. See UNRWA FAQ, supra note 37.
In effect, a simple fact true in the 1960s remains at play: no matter how emphatically the law says that asylum should be "civilian and humanitarian" in character, the practice of channeling material resources into conflict zones without a workable security strategy invites combatants to take control of those resources and exploit refugees as they continue their struggle.159

Currently there are more practical challenges to the implementation of the law in refugee and displacement camps than this Note can identify in great detail. Some of these problems serve as severe barriers to camp inhabitants' access to legal justice, and need to be thoughtfully considered in conjunction with approaches to improve the lawfulness of camps. Take, for example, camp location. The majority of camps are located in remote regions throughout the developing world – some are so remote (many miles or many hours away from other towns or villages160) that they "face chronic threats to . . . physical security from crime and disorder, coercion, and military attacks."161

As an example of how camp location can be a practical problem with a negative effect on the legal infrastructure, we may turn to Tanzania. In many Tanzanian camps, legal disputes go before informal CDRSs. Graver, criminal matters, however, are sent to the capital, Dar es Salaam.162 In cases of rape committed within a camp, the victim and the accused must venture from the camp to the capital if indeed the case makes it into the Tanzanian legal system. As a result of poor logistical planning, both the rapist and his victim may have to ride together for hours in the same vehicle to arrive at the capital city courthouse where the case is to proceed.163

Like camp location, camp design also can create (preventable) problems. Whether camps are made to be open or closed, grids or cul-de-sacs, these are design decisions that can have direct and indirect impact on the safety and security in a camp. Poor design can lead to heightened crime in camps. Sometimes camps are closed, both to convenience camp authorities and (seemingly) ensure camp inhabitants' security.164

159. See Cuéllar, supra note 1, at 595.
160. See HATHAWAY, supra note 83, at 374 (noting the placement of "camps hundreds of kilometers away from towns and villages").
161. See Cuéllar, supra note 1, at 583.
162. Interview with Emily Arnold-Fernandez, supra note 59.
163. See id.
164. See HATHAWAY, supra note 83, at 381 (observing in Thailand, refugees found
In some cases, host governments insist on enclosing refugee camps with barbed wire fences so the refugees don’t mix in with the local population. In Thailand, for example, people are not allowed in or out of the camps without permission of the government. Other camps are open, allowing refugees to come and go as they please. Camps in Pakistan, for example, look no different from villages except that the residents are Afghan refugees. 165

While open camps may subject vulnerable inhabitants to external harms and crime, 166 they also promote access to external legal aid and judicial systems, as well as the exercise of the right to freedom of movement. Closed camps may create zones of heightened impunity for internal camp crimes, especially when committed by camp authorities who may be immune from CDRSs. Plus, in closed camps, details about camp crimes are increasingly less likely to get out, which may explain the dearth of information available about crimes committed within many closed camps.

Camp layout can also be crucial. For example, reports have shown that cul-de-sac arrangements of tents and shelters promote camaraderie amongst otherwise diverse or disconnected refugees and displaced persons. 167 Grid models, on the other hand, have been proven to obstruct camp fellowship, which can indirectly promote crime. 168

Further research is needed to catalog recurring, overlooked, and preventable problems in camp law enforcement; perhaps by cross-referencing how camp design, logistics, and more correlate with camps’ crime rates and access and recourse to justice. The findings may prove to be fruitful. Then if the practical problems regarding

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166. In an internal UNHCR meeting that the author attended in Winter 2007, one of the officers discussed how past practices of clearing the brush around refugee camps was found to be faulty, as it exposed the camps to harmful external elements, from attacks and raids to even severe temperature fluctuations sans natural insulation. UNHCR, Meeting on Lessons in Camp Design (Winter 2007) (on file with the author) [hereinafter UNHCR Camp Design Internal Meeting].


168. See UNHCR Camp Design Internal Meeting, supra note 166.
camp models are addressed, access to legal justice should become more convenient, more feasible, and more desirable.

2. The Phenomenon of Prostitution for Food in Haitian Displacement Camps

The pressing need for improved access to legal protection and justice can all too easily be found in Haitian displacement camps. After the 2010 earthquake that forced millions of people into camps, displaced Haitians found themselves at the mercy of external aid agencies for their survival. The situation in those camps remains dire today. Violence and SGBV in particular have intensified. “Conditions in the displacement camps . . . have exacerbated women’s vulnerability to rape.” Camp inhabitants have recounted incidents of armed men entering camps and shooting people at random, as well as multiple accounts of rapes and beatings. “[T]here is no end in sight for the dangerous conditions in which the [camp inhabitants] live.”

One issue particularly plaguing camp environments that has yet to be properly addressed in any legal context is forced prostitution for food, or transactional sex. To better understand the origins of this phenomenon one should first understand to some extent the context in which it occurs.

For decades, food distribution in camps has been an unsteady problem. Recent adaptations to UNHCR protocol for camp

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administration recommend that aid workers distribute food rations directly to women instead of men—not just in Haiti, but in camps around the world.173 Giving women direct responsibility for food rations helps ensure food will appropriately go toward nourishing children, women, and other vulnerable groups.174 Studies have shown men in camps are more likely to sell or trade food rations for items such as alcohol, or pastimes such as gambling.175 More and more, men have also been found to use food rations exploitatively, coercing women to prostitute their bodies in exchange for the rations to which they are already entitled.176 The frequency of this occurrence influenced a change in distribution methods.

But this new protocol, or method of distribution, is not without its flaws. In unstable camp environments, such as those throughout Haiti, well-intended changes of protocol—like changes to law—are useless when they cannot be executed properly. During distribution, male aid workers may use the food rations and their positions of power to achieve similar violations of women’s bodies and human rights.177 Aid workers can also be bribed or threatened by male camp inhabitants who wish to steal food rations and thereby gain such a bargaining chip. Additionally, third parties can easily intercept rations en route to camps, which places the food rations in hostile hands before it even makes it to the camps.178 When food rations are seized in this manner, it sets the stage for a horrifying ultimatum: permit those with the food to exploit women’s bodies, or everyone in the camps may starve and die. If there was even a semblance of law and order in the camps, this scenario should never present itself. And yet as recently as the last couple of years in Haiti, as well as elsewhere in camps around the world, the phenomenon of prostitution for food is rampant.179 Forcing females to have sex for food has been occurring for a long time,180 but the recent Haitian examples demonstrate just

174. Id.
175. Id. at 10.
176. Id.
177. Id.
178. See Summers, supra note 153.
179. See Our Bodies Are Still Trembling, supra note 170, at 12.
180. See, e.g., Hathaway, supra note 83, at 447 (“The sexual exploitation of
how corrupt, degrading, and lawless camp environments can be.\textsuperscript{181}

Last year, human rights reports began to surface acknowledging the problem in Haitian camps of prostitution for food and SGBV generally.\textsuperscript{182} More recently, Human Rights Watch (HRW) has reported on the phenomenon in great depth:

The extreme vulnerability and poverty in the camps — general food distribution stopped within two months of the earthquake and unemployment in the camps is very high — has led some women and girls interviewed by Human Rights Watch to form relationships with men for the sake of economic security, or to engage in transactional or survival sex. According to the women and girls we interviewed and recent surveys conducted by other human rights organizations, the exchange of sex for food is common. "You have to eat," Gheslaine, who lives in a camp in Croix-de-Bouquets, said simply. Without adequate access to contraception, women and girls face increased vulnerability when they survive by trading sex for food. Moreover, many engage in these practices in secret, making them vulnerable to violence because they lack what little protection may be available to them from social networks or the community.\textsuperscript{183}

With regard to the existing legal infrastructure in these camps, the findings of HRW were bleak. "Most women and girls interviewed by [HRW] did not know which organizations worked in and around their camps, when and where services were available, and to whom they should complain if there was a problem."\textsuperscript{184} An earlier report by MADRE and some other organizations demonstrated similar


\textsuperscript{182} \textit{See, e.g., OUR BODIES ARE STILL TREMBLING, supra note 170.}

\textsuperscript{183} \textit{HUMAN RIGHTS WATCH, NOBODY REMEMBERS Us: FAILURE TO PROTECT WOMEN’S AND GIRLS’ RIGHT TO HEALTH AND SECURITY IN POST EARTHQUAKE HAITI} 3 (Aug. 2011) [hereinafter NOBODY REMEMBERS Us].

\textsuperscript{184} Id.
findings.185 In sum, that report indicated domestic Haitian law had a poor track record of prosecuting crimes against women, such as rape or other forms of SGBV.186 Even where a recent law had acknowledged forms of SGBV as illegal, in action there was little to no recourse for crime survivors: “a woman’s word is more likely than not to be discounted or altogether ignored” and “Haitian judges, prosecutors and police routinely dismiss rape cases . . .”187

As a case study of implementing international law, Haiti serves as a typical example of a country housing vulnerable, displaced persons. Despite international obligations, the government either lacks the willingness or the capacity (in Haiti due largely to the destruction the earthquake wrought) to uphold them.188

The Haitian government is the primary guarantor of human rights in Haiti, and it retains its obligations to respect, protect, and fulfill the human rights of those in Haiti – even after an earthquake, and despite the fact that the measures it can take are limited in resources and capacity. It is obligated to take necessary measures to prevent sexual violence and [other rights violations] and to address the needs of the more than 300,000 women and girls still languishing in displaced person camps.189

Moreover, a state’s obligation to implement international law and order is through a standard of “due diligence . . . which must be implemented in good faith.”190 Above all else, states are the responsible parties for protecting human rights in displacement camps, including refugee camps. The multitude of human rights reports from Haiti regarding SGBV and transactional sex in displacement camps are all in accord: “the Haitian government has a duty to prevent, investigate, and prosecute such abuses.”191 Moreover, in recommendations to the Inter-American Commission on Human Rights, human rights groups recognized domestic law should be the legal authority in camps.192

As part of international advocacy efforts demanding accountability

185. See OUR BODIES ARE STILL TREMBLING, supra note 170, at 23-24.
186. Id. at 23. See also NOBODY REMEMBERS US, supra note 183, at 5.
187. OUR BODIES ARE STILL TREMBLING, supra note 170, at 23-24.
188. Id. at 24.
189. NOBODY REMEMBERS US, supra note 183, at 4.
190. OUR BODIES ARE STILL TREMBLING, supra note 170, at 23-24.
191. Id. See also NOBODY REMEMBERS US, supra note 183, at 5.
192. See generally Request to the IACHR, supra note 171.
and security for women living in the camps, the petitioners ... denounce the continuing and escalating threat of rape and calls for immediate security measures to be implemented to end the violence... 193

These reports and recommendations are commendable first steps in seeking justice in Haiti in response to the phenomenon of prostitution for food and other SGBV in displacement camps. Hopefully what will result are thorough follow up reports and measures on the issue, including both news media coverage, academic legal analysis, and human rights fact-finding reports to raise greater awareness, as well as prosecutions, remedies, and improvements to and through the legal infrastructures on the ground. The UN, for example, has recently conducted crime prevention exercises in the Haitian displacement camps, a somewhat atypical function for an intergovernmental organization as crime prevention normally is the purview of host governments. 194 The measure may demonstrate at a minimum that the UN is not standing by idly in the face of gross human rights violations occurring in its camps, especially when the crimes are finally gaining some iota of international attention. 195 More important than abstract light shining and theoretical posturing, however, would be law in action consistent with the law on the books.

B. Suggestions at Hand

"It depends where you are," says Judith Kumin, the Canadian representative for [UNHCR]. "If you're in a Rafha camp in Saudi Arabia where people have been for 10 years, the material conditions are very good. The problem is that they're just locked up. [There everybody] has enough to eat and everybody has healthcare, they just don't have a future." 196

1. Creating a Sea Change: From a Temporary Solution to a Permanent Priority

Camps are not a desirable solution to displacement problems. Yet until a better solution comes along, camps are going to remain solutions for displacement scenarios. So long as unforeseen disasters

195. Id.
196. Id.
remain unfortunate realities, displacement camps will emerge as a matter of fact. Refugees will be forced to flee to save their lives until persecution becomes a thing of the past. Many will flee to camps, particularly in the developing world where alternative solutions remain infeasible.

The problem is that the world still views camps as temporary solutions. Due to the perceived temporal nature of camps, camp authorities—or more likely host governments—will often deny any solutions that may resemble permanent remedies, such as repairing unsafe and unhealthy facilities or installing electricity, phone lines, or Internet access. Perhaps some camp authorities and host governments deprive camp residents of access to the law and justice systems for similar reasons. However, despite such intentions, many camps are not temporary at all—as discussed, the average time spent in a camp is seventeen years. This startling statistic raises imperative issues as to why lawless camps so desperately need to bring justice to both their short-term and long-term inhabitants.

If the average time spent in a refugee camp is just under two decades, clearly the term “temporary” becomes inapplicable and even misleading. Millions of people live a significant part of their lives in lawless environments. Even though refugees theoretically enjoy some of the most impressive rights within international legal frameworks, in practice refugees are rarely afforded these rights. Refugees and displaced people confined in camps perhaps have it the

197. The government of Bangladesh's poor approach toward and treatment of refugee camps serve as one telling example of this insistence on camps being treated as temporary in spite of facts showing otherwise. See, e.g., STATELESS AND STARVING, supra note 67, at 12 (“[T]he government blocked improvements to camp facilities to avoid giving these official camps a sense of permanence, though shelters had become more overcrowded, and latrine and water points have fallen intro disrepair. These conditions, combined with a limited and low-quality water supply, led to a typhoid outbreak . . . . Today, conditions still remain well below international standards.”).

198. MEDICINS SANS FRONTIÈRES, supra note 37, at 16-17 (“refugee camps that are set up as temporary structures have a tendency to stay”).

199. See Rosenberg, supra note 150 and accompanying text.
If camps are not temporary solutions, more permanent means of implementing justice should become a priority. First, there should be a cross-regional and cross-cultural systematic collection of data on how the law is being implemented or violated in camp environments. The results of this research should be widely distributed among aid agencies and human rights organizations, intergovernmental organizations, and host country governments, as well as to the general public. It has long been argued that to take official action on an issue, the public needs to be informed and able to respond to the issue, hopefully by putting pressure on the agents of change. By raising awareness about the truly non-temporary nature of camps, camp justice will simply have to become more of a priority for the international community and host countries.

2. Creating Accountability: Put Camp Law and Order in Writing

For the past twenty years, humanitarian agencies have become "increasingly aware of the importance of improving outcomes of programmatic activities through monitoring and enhancing institutional accountability." For example, the Independent Humanitarian Response Review (HRR) launched a project to "map the gaps" within the "global humanitarian system... [and recommend] the establishment and application of different sets of benchmarks." However, while benchmarks are notable points of reference, they lack any enforceability, a pivotal problem for much of the existing law on the books.

Academics have also failed to research and analyze "legal and policy questions raised by the refugee protection system's response to
Perhaps due to this lack of any written and binding source of enforcement of law and legal infrastructure (or investigative reporting about the flaws of current camp models’ law and order), UNHCR has easily avoided its own liability for certain wrongdoings and problems that occur in its camps. In addition, as there are no firm legal safeguards for IDPs, this may contribute to their gross mistreatment, as evidenced by the Haitian case study.

This Note also calls for greater transparency and reporting in the field. When legal measures are taken in refugee and displacement camps, there should be records and follow up to gauge how the legal infrastructures are working or failing. When legal measures are lacking in camps, records and follow up become even more necessary. Furthermore, measures to eliminate preventable crimes and improve practical problems in implementing justice in camps should be taken swiftly.

As one refugee remarked from within a camp, “it is better to die at home than die in [camp]... we are caught in a death trap here.”

It is upsetting to realize humans who are confined to camps through no fault of their own are being violated on so many levels; extremely distressing is the knowledge that human rights violations (such as the subjection of displaced women to daily rape as a means to feed their families) will continue for a very long time with impunity, unless something is done to change that.

IV. Conclusion

This Note has endeavored to address an issue that has never quite been addressed before. It has acknowledged the dearth of information available about refugee and displacement camps, the omissions the international legal community has gotten away with as a result, and the resulting nature of camps as essentially lawless. In camps, domestic law of host countries is the most applicable law, but several barriers exist that prevent its effective application. Workshops should be conducted on a regular basis within camps to educate inhabitants and aid workers on the domestic law, as well as on camp inhabitants’ legal rights under both domestic and international law. Where practical barriers or problems exist to

204. Cuéllar, supra note 1, at 605.
205. See HATHAWAY, supra note 83, at 446.
prevent camp inhabitants from accessing domestic legal systems, practical solutions should be implemented, so that, for example, a rape victim will not have to share a car seat with her rapist for hours en route to the legal proceeding for the crime.

When domestic law is just too far beyond the reach of the camp and practical barriers cannot be addressed, notions of camp law are promising substitute sources of peace, order, legal education, and even law itself, as camp law may improve overall camp safety, accountability, and crime prevention, as well as instill a sense of empowerment in an otherwise disempowered population. Because even if a camp inhabitant can not actually access domestic law, learning about his or her rights under the law and other measures to achieve justice would be a powerful improvement to the culture of uncertainty and impunity presently presiding over camps around the world. But camp law is no replacement for domestic law, and steps should be taken to ensure the (domestic, as well as international) law on the books is enforced in action.

Finally, this Note suggests some next steps to diminish the culture of impunity in camps. First, the international community needs to acknowledge camps: if not by their name, then by their reality. Camps are no longer temporary solutions to refugee and displacement problems; they have become homes and a way of life for many millions of people. This is not ideal, but it is real. Until the solutions to the core problems (that is, the causes of persecution and displacement) are achieved, the camps need to be maintained with more dignity. Therefore, security, legal education, and justice programs should become prioritized resources in camps. Second, the international community needs to put its obligation to camp inhabitants in writing to promote accountability and eliminate the current lawless nature of camps. Along with this, international scholars, news media, and aid agencies all should increase reporting on the status of law and order in camps to apply appropriate pressure on the international legal community to ensure improvements to camp justice are actual, thorough, and ultimately in the best interest of justice and human rights.