Localising migration governance in the Middle East region

Towards human rights based policies and interventions

Introduction

Migration is not a contemporary phenomenon in the Middle East region. It has long shaped it, with various countries, concomitantly character-ised as points of origin, transit, and final destination. The region has witnessed successive crises of economic nature,[01] but also conflicts, and war[02] leading to movements of populations and of forced migrants, whether Palestinian refugees since 1948, refugees from Iraq in 2003, and most recently, from Syria in 2011.

While globally, research has shown that migration policies since the 1940s have become less restrictive, specifically entry and integration policies,[03] countries in the region have had contrasting policy responses to inflows and outflows of refugees and migrants, specifically in the aftermath of the conflict in Syria as of 2011, and what has been iden-tified as one of the largest scale displacements in history. Population movements have forced states to deal with large-scale and unexpected migration of forced migrants, which has led to entailing multifaceted cultural, economic, political, social, and legal challenges, on both indi-viduals that are "on the move", but also on "host" communities.

Similarly to other contexts, migration governance has been highly politicised in the region, primarily focused on controlling borders and influxes. Migration legal frameworks in the region are generally char-acterized by their fragmentation, and hypertrophic nature:[04] Legislation is incoherent, fluid and *ad hoc*, relying on decrees rather than laws. In Lebanon, a relatively open-door policy to Syrian refugees in 2011 was halted by the restrictive 2014 October policies, with the aim of "reducing the numbers."[05] Similarly in Jordan, policies in response to the influx of Syrian refugees became more restrictive over time, driven by security concerns in response to militant activity at the borders.[06] In Turkey, as the number of Syrian refugees continued to rise, the government intro-duced a fragmented framework for "voluntary" return in 2016,[07] which has been criticised for jeopardising refugees' safety, and security.

This has rendered the interpretation, understanding, and navigation of these frameworks challenging for analysts, and refugees themselves, leaving the latter vulnerable and uncertain about their rights. This

fragmentation is also accompanied by the involvement of a myriad of actors "in the "multilevel" [...] management of migration flows: all tiers of government (from supra-national to local) are involved, with different, often overlapping, competences. Third sector actors are also part of national migration management mechanisms, making the picture even more complex and fluid."[08] The multiplicity of actors (state institutions, local and international NGOs, grassroot organisations), and fluidy of regulations, has also seen the emergence of more invisible middle-men, brokers, trafficking networks, sponsors (*kafeel*) that further dynamics of increased dependence and vulnerability.

Additionally, the seemingly permanent state of temporariness of refugees impacts their everyday life. For example, the Palestinian refugee crisis is considered as one of the most protracted crises, originating in 1948, with 5,6 million Palestinians[09] officially registered at UNRWA and their descendants being displaced.

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Lastly, various EU initiatives aiming at securitising its external borders through "support" via financial resources and equipment to national security apparatuses has contributed to externalise the borders of "fortress Europe" to countries in the Middle East, with the aim of halting migration to its member states.

These challenges combined lead to migration policies and practices that contribute to increased irregular migration, informality, and illegality, rather than further governing and controlling inflow of populations as research has shown for the case of Lebanon.[10]

This policy brief builds on Lebanon Support's transformative and interdisciplinary research on migration, mobility, and circulation in the region. It aims to build on comparative contextual research findings to propose targeted recommendations from a bottom-up perspective, including the perspective of grassroot organisations, practitioners, and those who are affected by migration policies: refugees themselves. It also endeavours to amplify local, national, and regional voices in global discussions on migration, to inform more humane and human rights based policy-making.

Labelling migrants

Practices of selection

Similarly to what research elsewhere shows,[11] the region witnesses increased profiling and selection of refugees at the border, with entry not granted on a rights-based basis, but rather guided by socio-economic, gender, racial, and religious determinants. These unwritten criteria pave the way for discriminatory practices, and unequal treatment of refugee and migrant populations.

In Jordan, racial profiling is apparent at the border, specifically in the reception of Palestinian Refugees from Syria (PRS), with the utlimate closure of the border to them in 2012. Although Jordan was still accepting refugees from Syria, PRS were turned away, and a non-admittance policy was formalised in January 2013.[12] Racial profiling is also apparent in Turkey in the distinction between Europeans[13] automatically considered as refugees, and non-European migrants that are granted limited protection, as well as between non-Europeans themselves depending on their country of origin.

While refugees from Syria are granted with temporary protection, those from Iraq, Afghanistan, and Iran currently have less legal protection, and without a genuine asylum system, their claims are rarely processed.[14]

In Lebanon, Syrians recounted class-based profiling and selection at the border, with those able to demonstrate economic capital more easily admitted than those most vulnerable economically.[15] Such practices are not only in breach of international reception standards, but also of safeguarding provisions included in international conventions to which Lebanon is party, specifically prohibiting discrimination.[16]

These discriminatory practices, legislations, and *ad hoc* decisions with regards to migrants is leading to an increase in informality, and illegality of migrants in the region, rather than governing migration flows as intended. By limiting opportunities for legal migration, these practices have led to the irregular entry and stay of refugees, ultimately putting them at greater risk of being arrested, detained, and deported, with limited legal redress (or lack thereof) and greater vulnerability to exploitation. With little to no access to livelihood opportunities, unregistered refugees in Lebanon and Jordan are being exploited by employers in the informal labour market, oftentimes with little pay, long hours, and dangerous working conditions.[17]

This labelling and de facto categorisation of people on the move results in unequal access to basic rights and services, and justify Middle East countries' circumventing of providing rights and obligations to these migrants, oftentimes behind a visible discourse of "brotherhood".[18] This primarily impacts the most disenfranchised and low-skilled migrants that fall under the *kafala* regime.

The Kafala system

The *Kafala* (sponsorship) system emerged in the 1950s to regulate the influx of low-skilled migrant workers, as well as their relationship with their employers in the Gulf Cooperation Council (GCC). It remains the routine practice in the GCC countries of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (UAE), as well as in Jordan, and Lebanon.[19]

The *kafala* system is a combination of administrative and legal requirements, tying a worker's residency to a kafeel (an employer or a national), who then serves as a bail. The *Kafala* system emphasises the temporary nature of a migrant worker's presence in the country, and externalises responsibilities to private citizens and companies. As it stands, migrant workers in the Middle East do not enjoy the same labour rights as nationals, nor the same access to basic rights, notably, those relating to social protection systems, and are explicitly excluded from the national labour law of almost all countries in the Middle East region, with the exception of partial coverage in Iraq, Bahrain, and Jordan.[20]

This system has inherently permitted various forms of migrant workers' exploitation, in constraining their mobility and access to basic services. Notably, and despite the enactment of laws[21] prohibiting employers from retaining their employee's passport, this practice is still widespread in both Lebanon and Jordan. Female migrant domestic workers face even more risks than their male counterparts, with increased gender-based violence against women migrant domestic workers in Middle East.[22]

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In spite of many critical voices denouncing the inhumane and discriminatory characteristics of the *Kafala* system, as well as the practices tied to it, countries in the region have extended its mandate to cover Syrian refugees seeking work in Lebanon from 2015 onwards. Specifically, to regularise their stay, they have to find a sponsor (*kafeel*).[23] Despite the Jordanian government's reforms aimed at integrating Syrian refugees in the sectors of agriculture and construction, in the frame of temporary work permits, they still have to pay a *kafeel* to get a work permit.[24]

The *kafala* system illustrates the fragmented nature of migration governance across the region.

Formalising the work of Syrian refugees in Jordan[25]

Following the signing of an agreement between the General Federation of Jordanian Trade Unions and the Ministry of Labour, the government of Jordan amended work permit procedures and regulations, and started to issue, as of 2016, time-bound work permits in construction for Syrian refugees, that are non-employer and non-position-specific, and with minimal fees.

Easing the application process has contributed to regulate the entry of Syrian refugees in the labour market, as well as securing better working conditions for them.

While the number of Syrian refugees with work permits in the construction sector has increased from 4,000 to 40,000 between December 2015 and December 2016, this is not indicative of the actual number of refugees actively working in Jordan.[26] Indeed, and in spite of this breakthrough, formal and informal barriers persist when it comes to ensuring access to Syrian refugees to livelihoods and the labour market in Jordan.[27]

Fragmented policies, politicisation, and securitisation

The patchwork of local responses has largely shaped refugees' predicament in the Middle East.[28] A commonality in the region, notably in Turkey, Lebanon, and Jordan, is the initial adoption of "indifference as policy", followed by restrictive, and controlling measures introduced in 2014 onwards. In the absence of national frameworks, *ad hoc* policies were enacted with no concern for their long term effects, in line with instilling a state of "permanent temporariness". These policies have further led to the sub-categorisation of refugees. In Lebanon, in 2014, the Lebanese government introduced seven visa[29] categories in an effort to regulate Syrian refugee's entry, and stay. Although a "humanitarian exception"[30] category was introduced, a specific one for refugees was still lacking. The most recurrent challenges encountered by Syrian refugees from then onwards is that they are unable to comply with any of the legal categories. It is noteworthy that Turkey, Jordan, and Lebanon crafted exclusionary practices, in addition to prematurely pushing for refugee returns, ultimately compromising principles governing repatriation.[31]

Government discourses throughout the region have framed refugee presence as a security concern and an economic burden. Arguments evoked by government officials tend to centre around the infrastructure costs associated with hosting refugees, in addition to the threat they pose to others. This scapegoating has recurrently fueled tensions between the refugee population and host communities, hindering local informal integration, and reinforcing the feeling of being "non-welcome". Populist and xenophonic rhetoric has served to further politicise and securitise the plight of refugees in the region, notably those from Syria and the Palestinian Territories. This polarisation has long contributed to a narrative that eschews facts in favour of political ends, relying on a security approach to migration governance, rather than a human rights based one. Coupled with the politicisation of their presence in national discourses, this has cyclically encouraged the enactment of fragmented *ad hoc* decisions, that are more reactive, than comprehensive policy frameworks. This situation has created a vacuum in terms of rights-based service provision, which has been more often than not delegated to non-state actors.

Cacophony of state and non-state actors and the predominance of security apparatuses

Migration flows in the region are hence, in reality, governed by decree, and sets of formal and informal policies that are formulated on an *ad hoc* basis and differentiate between nationalities. This patwork of migration governance also involves a variety of formal and informal actors with limited coordination mechanisms.

At the national level in the region, a recurring shortcoming has been to achieve effective governmental coordination and coherence among the key line ministries that are concerned with migration issues such as ministries of interior, labour, foreign affairs, justice, and social affairs, on the one hand,[32] and, on the other, ensure proper coordination with local authorities (such as municipalities). In Jordan, the problem is not merely one of coordination, but also that of working on their respective objectives, rather than on coordinated ones.[33] Additionally, there is an unclear division of responsibility between national and local state actors, and varying levels of capacity, ultimately prevents full participation in migration regulation.

State actors have yet to create participatory platforms for coordination with non-state actors on migration regulation, with current interactions deemed cosmetic by various stakeholders.

In this context, and in the absence of comprehensive refugee legislation and frameworks, UN agencies such as the UNRWA and UNHCR, notably, have fulfilled important roles, and share some state responsibilities. Indeed, established in 1948 following the Arab-Israeli conflict, UNRWA, a subsidiary organ of the United Nations General Assembly, is the main provider of human development and protection for Palestinain refugees in the region—including those from Syria. The UNHCR, a subsidiary organ of the United Nations General Assembly established in 1950, to address the refugee crisis following World War II, has been the main caretaker for non-Palestinian refugees in the region.

Additionally, service provision is systematically outsourced to non-state actors such as NGOs, grassroot initiatives, diaspora organisations, and international agencies, among others. In Jordan and Lebanon, non-governmental organisations have long been at the forefront of filling gaps and providing aid to refugees in various sectors including livelihoods, basic assistance, WASH, shelter, healthcare, food security, education, SGBV, child protection, as well as social cohesion.[34] However, state actors have yet to create participatory platforms for coordination with non-state actors on migration regulation, with current interactions deemed cosmetic by various stakeholders.

The fragmented legal regimes, and multiplicity of actors has aided in the emergence of an array of middle-men, brokers, trafficking networks, and sponsors, that further dynamics of increased dependence, and vulnerability of all categories of migrants, paving the way for exploitation and abuse. This, coupled with overarching security approach to migration governance, has given a predominant role to security apparatuses in each country of the migration phases: from entry at the borders, to stay, to exit, resettlement, or "voluntary" return. Syrian refugees in Jordan frequently reported security officials' discriminatory practices, such as randomly demanding identification documents beyond the official requirements at checkpoints, or during raids.[35] Indeed, Syrian refugees are constantly worried about being forcibly relocated or deported by the police. Across the region, Syrian refugees continuously reported in our research permanent feelings of fear.

Conclusion and recommendations

Research findings show the adverse impact of *ad hoc* and reactive policies, that, instead of governing migration flows in countries of the region, have rather pushed refugees and migrants in situations of precarity, vulnerability, exclusion, exploitation, and illegality.

These fragments of policy making, coupled with a security approach and, oftentime, othering narratives (if not xehnophobic), have contributed to furthering inequalities between vulnerable groups in the region. Against this background, this policy brief proposes the following policy recommendations to stakeholders.

To states and governments

→ **Consider themselves as duty bearers in developing comprehensive policy frameworks for migration, and taking into account the multidimensional nature of migration.**

→ **Consider themselves as duty bearers in coordinating comprehensive responses to migration influxes, and including all actors involved in the response or service provision.**

→ **Remove legal and practical barriers that hinder migrants and refugees to regularise their legal status.**

→ **Untie legal status from access to basic social services and rights and ensure all migrants, refugees, and asylum seekers enjoy access to basic social rights and services.**

→ **Ensure no refugee or migrant is forcibly returned to their homeland.**

→ **Streamline information sharing and coordination among key line ministries, government bodies, and non-state actors involved in migration governance, and policy formulation.**

→ **Abolish the *kafala* (sponsorship) system and all practices linked to it, and include migrant workers within national labour laws.**

To local and international civil society actors

→ Scale up their interventions going beyond mere service delivery, to focus on advocacy for the adoption of human rights based migration policies, and against xenophobic discourse.

→ Proactively share data, engage in organic networks, locally, nationally, and regionally, to advocate for human rights based responses and policies.

→ Proactively engage in advocacy efforts that address root causes of migration in the region.

→ Advocate and lobby the donor community to ensure funding agendas correspond to the identified needs and priorities of communities on the ground, and to inform interventions planning.

→ Ensure they keep their interventions, service provision, and advocacy efforts in line with local and contextual needs.

The donor community and United Nations agencies

→ Support local governments in enhancing their public services, and ensure that aid to local governments isn't only limited to short-term humanitarian assistance and encompasses sustainable and long-term development, addressing root causes of inequalities.

→ Ensure local organisations are actively involved in international migration fora, and participate in decision making processes.

01 | Such as the sharp drop in oil prices, the contraction in global demand and trade, as well as following the tightening of the international credit markets, reducing the capability of the Middle East countries to borrow. See: Priyanka Debnath, "The Impacts of the Global Economic Crisis on Migration in the Arab World," website, *Middle East Institute*, 2010, available at: https://www.mei.edu/publications/impacts-global-economic-crisis-migration-arab-world [last accessed 22 October 2020]

02 | Iraq in 2003, as well as Syria in 2011.

03 | Albeit with increased restrictions on "illegal" entry, and on the selection of certain migrant categories. See: Hein de Haas, Katharina Natter and Simona Vezzoli, "Growing Restrictiveness or Changing Selection? The Nature and Evolution of Migration Policies," *International Migration Review*, 2018, Vol.52 (2), p.324-367.

04 | Paola Pannia et.al, "Comparative Report Legal & Policy Framework of Migration Governance," *RESPOND*, 2018, available at: http://uu.diva-portal.org/smash/get/diva2:1255350/FULLTEXT01.pdf [last accessed 4 November 2020]

05 | Amreesha Jagarnathsingh, "Legal and Policy Framework of Migration Governance," *Civil Society Knowledge Center*, 2018, available at: https://civilsociety-centre.org/resource/legal-and-policy-framework-migration-governance [last accessed 11 November 2020].

06 | Maya Yahya, "Policy Framework for Refugees in Lebanon and Jordan," Website, *Carnegie Middle East*, 2018, available at: https://carnegie-mec.org/2018/04/16/policy-framework-for-refugees-in-lebanon-and-jordan-pub-76058 [last accessed 3 November 2020].

07 | Zeynep Sahin Mencutek, "Encouraging Syrian return: Turkey's fragmented approach," Website, *Forced Migration Review*, 2019, available at: https://www.fmreview.org/return/sahinmencutek [last accessed 3 November 2020].

08 | Paola Pannia et.al, *op.cit.*, 2018.

09 | UNRWA, "UNRWA highlights the needs of vulnerable palestine refugee families in the wake of the beirut explosion," Website, UNRWA, 2020, available at: https://www.unrwa.org/newsroom/press-releases/unrwa-highlights-needs-vulnerable-palestine-refugee-families-wake-beirut [last accessed 3 November 2020].

10 | Lebanon Support, "Formal Informality, Brokering Mechanisms, and Illegality. The Impact of the Lebanese State's Policies on Syrian Refugees' Daily Lives," *Civil Society Knowledge Centre*, 2016a, available at: https://civilsociety-centre.org/resource/formal-informality-brokering-mechanisms-and-illegality-impact-lebanese-state%E2%80%99s-policies [last accessed 3 November 2020]; Lebanon Support, "Syrian Refugees' Livelihoods. The Impact of Progressively Constrained Legislations and Increased Informality on Syrians' Daily Lives.," *Civil Society Knowledge Centre*, 2016b, available at: https://civilsociety-centre.org/resource/syrian-refugees-livelihoods-impact-progressively-constrained-legislations-and-increased [last accessed 3 November 2020]; Lebanon Support, "Security That Protects: Informing Policy on Local Security Provision in Lebanese Communities Hosting Syrian Refugees," Civil Society Knowledge Centre, 2016c, available at: https://civilsociety-centre.org/resource/security-protects-informing-policy-local-security-provision-lebanese-communities-hosting[last accessed 3 November 2020].

11 | Hein de Haas, Katharina Natter and Simona Vezzoli, *op.cit.*, 2018.

12 | Human Rights Watch, "Not Welcome: Jordan's Treatment of Palestinians Escaping Syria," Website, *Human Rights Watch*, 2014, available at: https://www.hrw.org/report/2014/08/07/not-welcome/jordans-treatment-palestinians-escaping-syria [last accessed 9 November 2020].

13 | Most European migrants are mostly from its Eastern part, this includes: Bulgaria, Moldova, North Macedonia, and Serbia and Montenegro.

14 | Human Rights Watch, "Q&A: The EU-Turkey Deal on Migration and Refugees," Website, Human Rights Watch, 2016, available at: https://www.hrw.org/news/2016/03/04/qa-eu-turkey-deal-migration-and-refugees [last accessed 9 November 2020].

15 | Requirements at the border include: a hotel reservation or lease agreement, and 2,000 USD in cash. See: Karen Rahme, "Refugee Protection: Lebanon Country Report," *Civil Society Knowledge Centre*, 2020a, available at: https://civilsociety-centre.org/resource/refugee-protection [last accessed 3 November 2020].

16 | Karen Rahme, *op.cit.*, 2020a.

17 | Karen Rahme, *op.cit.*, 2020b; Zeynep Sahin Mencutek and Ayat J. Nashwan, "Perceptions About the Labor Market Integration of Refugees: Evidences from Syrian Refugees in Jordan," *Journal of International Migration and Integration*, 2020, p.1-19.

18 | Lebanon Support, "A Shoulder to Lean On." Towards Rights-Based Interventions and Policies for Syrian Refugees in Lebanon," Civil Society Knowledge Centre, 2016d, available at: https://civilsociety-centre.org/resource/shoulder-lean-%E2%80%9D-towards-rights-based-interventions-and-policies-syrian-refugees-lebanon [last accessed 11 November 2020].

19 | Migrant Forum in Asia Secretariat, "Policy Brief No. 2: Reform of the Kafala (sponsorship) system," International Labour Organisation, 2012, available at: https://www.ilo.org/dyn/migpractice/docs/132/PB2.pdf [last accessed 8 November 2020].

20 | Sophia Kagan, "Domestic workers and employers in the Arab states: Promising practices and innovative models for a productive working relationship," *International Labour Organization - Regional Office for Arab States*, 2017, available at: http://www.oit.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_619661.pdf [last accessed 6 November 2020].

21 | The withholding of passports is a crime under Jordan's passport law, and leads to a penalty of six months' to three years' imprisonment; 4 In Lebanon, Order No. 142/1 of the Ministry of Labour dated 20 November 2003 makes it illegal for employers to confiscate workers' passports.

22 | Lebanon Support, "Map of Migrant Domestic Workers' Death," Civil Society Knowledge Center, 2010, available at: https://civilsociety-centre.org/gen/map/mdw-deaths [last accessed 10 November 2020]; *Namati*, "The Maid and the Madame: Rights for Migrant Workers in Jordan," Website, Namati, 2014, available at: https://namati.org/news-stories/the-maid-and-the-madame-rights-for-migrant-workers-in-jordan/ [last accessed 10 November 2020].

23 | Karen Rahme, *op.cit.* 2020a.

24 | Renad Amjad et al., "Examining Barriers to Workforce Inclusion of Syrian Refugees in Jordan," *Better Work*, 2017, available at: https://betterwork.org/wp-content/uploads/2017/08/Formatted-Final-SIPA-Capstone-1.pdf [last accessed 10 November 2020].

25 | ILO - Regional Office for Arab, "Work permits and employment of Syrian refugees in Jordan," *ILO - Regional Office for Arab*, 2017, available at: https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_559151.pdf [last accessed 3 November 2020].

26 | Tamkeen, "108,000 work permits issued for Syrian refugees since onset of crisis," Website, *Tamkeen*, 2018, available at: [last accessed 11 November 2020]

27 | Sarah Tobin and Maisam Alahmed, "Beyond the work permit quotas: Corruption and other barriers to labour integration for Syrian refugees in Jordan," Chr. Michelsen Institute (CMI), 2019, available at: https://www.u4.no/publications/beyond-the-work-permit-quotas.pdf [last accessed 11 November 2020].

28 | Tamirace Fakhoury, "Refugee return and fragmented governance in the host state: displaced Syrians in the face of Lebanon's divided politics," Website, *Third World Quarterly*, 2019, available at: https://www.tandfonline.com/doi/full/10.1080/01436597.2020.1762485 [last accessed 3 November 2020].

29 | Category 1: for tourism, shopping, business, landlords, and tenants; Category 2: for studying; Category 3: for transiting to a third country; Category 4: for those displaced; Category 5: for medical treatment; Category 6: for an embassy appointment; Category 7: for those entering with a pledge of responsibility (from a Lebanese sponsor).

30 | This refers to unaccompanied and/or separated children with a parent already registered in Lebanon, persons living with disabilities with a relative already registered in Lebanon, persons with urgent medical needs for whom treatment in Syria is unavailable, and persons who will be resettled in third countries.

31 | *Ibid.*

32 | IOM, "Inclusive and innovative partnerships for effective global governance of migration," *International Organisation for Migration*, 2018, available at: https://www.iom.int/sites/default/files/our_work/ICP/IDM/2018_IDM/idm_28_eng_final_web_11jan2019.pdf [last accessed 3 November 2020].

33 | Shelly Culbertson, Olga Oliker, Ben Baruch, and Ilana Blum, *Rethinking Coordination of Services to Refugees in Urban Areas: Managing the Crisis in Jordan and Lebanon*, California, Rand Corporation, 2016.

34 | Karen Rahme, *op. cit.*, 2010a.

35 | Jordan INGO Forum, "Syrian refugees in Jordan: A protection overview," Jordan INGO Forum, 2018, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/JIF-ProtectionBrief-2017-Final.pdf [last accessed 10 November 2020].