



## WORKING PAPER

### **EXCLUSIVE REFUGE:**

### **ORIGINS, CAUSES AND IMPACTS OF EXCLUSIONARY NATIONALITY-BASED TARGETING IN REFUGEE PROTECTION AND AID**

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*“A sense of obligation toward fellow Protestants in distress was undoubtedly a leading motive, and although this might be labelled humanitarianism, it should be understood that this humanitarianism was decidedly partisan.”*

Zolberg et al 1989 [author's emphasis]

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#### Abstract

The article provides a recent historical overview on discriminations faced by refugees when seeking aid and protection, specifically those that relate to nationality and country of origin. It argues that discriminatory and differentiated practice is enshrined in the very origins of the refugee regime and continues to manifest in the selective and ad hoc nature of refugee policy in host states. The argument is situated within a broader discussion on the global refugee regime and critique of its asymmetrical bias towards state security interests. This is placed at tension with the tactics employed by recipient states, who navigate humanitarian and development aid agendas imposed on them by re-orienting aid in line with interests dictated by local political realities. The article introduces the concept of 'nationality-based aid, protection and inclusion'. The article concludes that the origins of the refugee

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regime laid the groundwork for much of the nationality distinctions seen in refugee policy today, and that while discrimination exists in host state support structures, these are re-enforced by institutionalized discrimination in funding and protection structures available for refugees today.

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## Introduction

Defining refugees across time and space has been a challenge to the refugee regime since its inception, and even prior to it. The recognition of human beings that are entitled to global protection has been defined by persecution and threat to life with ever-changing conditions further defining and refining the recognition of refugees in accordance with shifting global realities. With the selectivity in definition and the award of protection, however, also comes distinctions in the way refugees are treated globally, with conditions also changing in line with the political and economic gains (or losses) to be made by receiving states in accepting refugees or turning them away. Accounts from refugee responses globally often indicate that some refugee groups feel marginalized by the aid system or host government in comparison to others. Media reports from mid-2015 have shown that some refugee nationalities were not considered genuine refugees in comparison to others and were blocked on their migration routes when moving through Europe (Kingsley, 2015), playing into their general social acceptance. In Jordan, in 2017, all American aid to the UNHCR in Jordan was earmarked for the Syrian refugee crisis response (Stephan, 2019) despite other refugee populations also requiring assistance. Most recently, the Government of India announced that they would admit Afghan refugees, but only of Sikh and Hindu faith. Systematically, refugees are treated differently within the same state depending on their nationalities and backgrounds. The different ways in which refugees are treated by their host states, whether in admission, protection or aid policy<sup>2</sup>, is visible in several of the widely accepted modalities by which refugees have been supported historically and in modern refugee responses.

Discrimination in refugee policy has been previously explored by those analyzing differentiated aid volume (Olsen et. al, 2003), refugee and migrant policies (Karatani, 2005) and gender discrimination in refugee policy and practices (Valji et al, 2003). More recently, work from scholars on differentiated state responses have gained relevance, where in state policy decision-making is theorized around diplomatic ties and ethnic affiliation (Abdelaaty, 2021) and strategic indifference (Norman, 2021). This paper contributes to this growing field and explains the phenomenon of differentiating aid and inclusion policies for refugees in host states based on *nationality*. To describe this, I use the terms 'nationality-based aid, protection and inclusion' and define these as the phenomenon of restricting aid responses, such as cash distribution, in-kind aid, registration and protection, labor access and others. This occurs in refugee responses wherein aid for refugees specifies

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<sup>2</sup> The author recognizes the similarities in routes and admission access challenges faced by both economic migrants and refugees. For the purpose of the paper, refugees will be focused on since they are the beneficiaries of protection and aid in refugee receiving contexts.



nationalities for which the aid is dedicated. piece questions this occurrence and looks to answer why and how this has developed as a constant in the refugee regime, its aid and support structures.

With reference to the institutionalization of inequality in the refugee regime, I situate the phenomenon of nationality-based aid and protection between in/exclusion and selectivity practices in refugee determination. I then demonstrate inconsistencies in refugee admissions and inclusion policy. This is re-enforced through two case studies on encampment in Kenya and Lebanon, which demonstrate how recipient states rely on using nationality restrictions as a tool to navigate their roles as refugee hosts while managing flows and appeasing local sociopolitical norms.

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## UNHCR and global refugee regime as re-enforcement of disparities

### Defining refugees

Prior to the founding of the UNHCR and the expansion of its role, approaches to refugee response at the inception were largely in response to specific crises, with origins rooted in the League of Nations' appointment of a High Commissioner for refugees in 1921. The Commissioner was tasked with supporting Russian, Greek, Turkish, Bulgarian, and Armenian refugees, forming what had later been dubbed as a 'group or category approach', defined as distinction and specification of particular refugee groups (Goodwin-Gill, [1998](#)). This approach relied on addressing the needs of broad categories of people, rather than a particular analysis of the situations surrounding the persecution of each claimant (Karatani, 2005). Recognition of groups as 'refugee groups' depended on the conditions of the country of origin and whether individuals could be exposed to danger if returned. This approach means that applicants do not have to substantiate their claims, as the country of origin was the standard by which refugees were recognized and was sufficient for asylum claim (Jackson, 1999).

Selective and country-based approaches continued well into later refugee crisis responses: following the foundation of the United Nations, a series of refugee relief agencies were formed under its auspices to provide assistance for selected mass displacements. For instance, formed in 1943 and largely backed by the United States, the United Nations Refugee and Relief Agency (UNRRA) was founded to oversee immediate relief and repatriation of refugees in Europe (Loescher, 1993, p. 51). While the UNRRA did not last long and much of its mandate is now carried forward by the United Nations High Commission for Refugees (UNHCR), a long-existing parallel agency for refugee registration and aid exists for Palestinians: the United Nations Relief and Works Agency (UNRWA). While UNRWA was founded prior to the UNHCR, its continuing existence as a parallel mode of assistance, while other UN refugee relief agencies have since disbanded, re-enforces disparities between refugee access to support within the same context. Perhaps more distinctive is that the UNHCR does not count Palestinian refugees in its mandate, meaning that discussions on refugees in contexts often discount millions of Palestinians residing in the Levant.



The 1951 convention defined refugees as those who, “owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”. Despite the broader definitions however, it appeared to follow the earlier path dependency that had set a geographic and temporal restriction under Article 3 (OHCHR, 1951). While the 1967 Convention removed geographic limitations, biases and priorities of crises were evident in the initial formation. Similarly, the 1951 Convention and its 1967 protocol transitioned refugee recognition from the aforementioned ‘group or category approach’ to an individualized one (Akram, 2002).

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### Prima facie, unintended discrimination, politics and aid

Individualized approaches do not reflect the reality of refugee crisis responses today and are utilized for the majority of refugee populations mostly in resettlement states (i.e. Europe and North America). However states facing mass influxes, normally countries that are neighboring major crises, are unable to utilize individualized methods to manage large influxes – they thus rely on issuing refugee status *prima facie*. Rather than determining individual eligibility for protection, entire groups are determined to encompass (or not) a ‘refugee character’ in accordance with the principles of the 1951 convention (Jackson, 1999).

Within the responses to refugee influxes, dubbed ‘emergency’ situations by aid agencies and other first responders, aid agreements and emergency support are structured around the response to one particular influx. In many of the situations that require emergency intervention from the UNHCR and the global aid bureaucracy, *prima facie* admission is relied on and its use during the Hungarian refugee crisis of 1956 set legal precedence for this (Zolberg et al, 1989, p. 26). This eases pressure and expedites refugee admissions in the context of an emergency or a crisis. Yet it is potentially a form of discrimination against existing refugee populations and other asylum seekers that often arrive in much smaller numbers, while being subjected to a more stringent recognition process. In the context of Jordan, during the Iraqi and Syrian refugee crises, in 2004 and 2013-15, respectively, refugees from each of these contexts<sup>3</sup> were awarded automatic recognition as refugees or asylum seekers through registration at the UNHCR. In the same period however, Jordan received much smaller numbers of refugees from Sudan and Somalia, yet these same policies did not apply and asylum seekers from these countries were instead subjected to refugee status determination procedures at the UNHCR. In both the cases of Iraqi and Syrian refugees however, significant political interest and financial support from the US and European Union, respectively, contributed to shaping lax admission and inclusion procedures largely tied to external support and shaping Jordan’s negotiation process with donors (Gibson,

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<sup>3</sup> Notable exception from this were Palestinian refugees from Syria, whose mandates remain under the auspices of UNRWA.



[2015](#); Kelberer, [2016](#)). Furthermore, Palestinian refugees from Syria were rejected altogether at the border, with some resorting to falsifying documents or using Syrian passports to enter Jordan (Abdelaaty, 2021).

Refugee admission *prima facie* in this situation for instance, is elicited to handle a large caseload from countries that are globally recognized to be experiencing dire conflict. However, this can inadvertently cause protection discrimination that, while not deliberately exclusive, places differing burdens of proof on asylum claimants wherein one case must only prove nationality/country of origin. In the case of status issued *prima facie*, migrants are immediately deemed as worthy or deserving of refuge, while in cases of refugee status determination (RSD) procedures, an asylum seeker must prove their worthiness. This distinction carries implications beyond protection with regards to access to basic services, mobility, and security in the host country and contributes to fostering inequalities between different groups. Those that do not have to undergo lengthy asylum procedures may access services and, in some instances, work opportunities, much sooner and with much more certainty than those who cannot.

Prima facie recognition exacerbates differentiation in treatment between refugees when seeking refuge or asylum in neighboring countries. The consideration of some populations and some forms of persecution as more worthy or automatically deserving of asylum influences broad mission and resettlement policies. Global recognition of many Syrian asylum seekers as refugees *prima facie* contributed to the EU's policies on admission and resettlement, including so-called 'EU-Turkey deal'. While the deal sought to curb the flow of all irregular migrants, the resettlement scheme embedded within was reserved for Syrians (Terry, 2021). The statewide launch of Germany's Humanitarian Admissions Program in 2015 also largely targeted Syrians. While it does not explicitly exclude refugees from other countries, the vast majority of those accepted under the scheme to date are of Syrian origin with occasional admissions of those from other countries including Ethiopia, Eritrea, Iraq, Sudan and Afghanistan (Resettlement.de, n.d.). Similarly, while a proposed EU relocation scheme for refugees does not specify nationalities, it instead specifies thresholds of refugee recognition over 75%. In 2014, only Eritrean and Syrian applicants met this threshold; in 2015, this also included Iraqis (European Commission, 2015). Interventions such as these carry implications on the experiences of refugees in the host country: in Germany, refugees with 'good prospects' for gaining recognition were given 'early intervention' in the form of early access to integration courses, prior to receiving the outcomes of their applications (Konle-Seidl, 2018).

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## Host state discrimination

Policy for refugee influxes may be restrictive for certain groups of refugees over others in the same contexts. Restrictive policy is considered as such when '... it excluded that group from the Refugee Convention's coverage' (Abdelaaty, 2021, p. 20), however this may occur on a spectrum of exclusion and may not be done



outright. Importantly, this reflects inconsistency in refugee management policy that are at least partially contingent upon identity of the refugees themselves, rendering analyses of broad 'refugee inclusion policy' largely incomplete as intrastate policy carries significant impacts. Considering that restrictive admission policies are thus dependent on the particular influx, it follows that treatment of refugees differs due to the changing policy environment surrounding their admission and inclusion.

Ethnic biases and political gain thus effect policies that realize inequalities between refugees in terms of protection, access to services and labor inclusion by way of differentiated documentation requirements and labor policies by refugee nationality. The reasons for this differ between the states and its primary drivers may range from historical tensions as in Lebanon (Haddad, 2004), ethnic and political affiliation, as in Ethiopia (UN News, [2010](#)), ethnic difference and marginalization in Kenya (Lindley, 2011), economic gain, as in Jordan (Almasri, 2021), and religious affiliation and political interest in Turkey (Samsek and Koser Akcapar, [2018](#)). While academic literature has not explicitly identified these policies as discriminatory, de facto differences in access to basic needs, protection and labor in each of these contexts between different refugee groups suggests that there is a prevalence of inequality in access.



## Differentiated refugee responses: Case studies of encampment in Lebanon and Kenya

### Kenya: Targeting of Somali refugees through the marginalization of Kenyan Somalis

Over half of refugee and asylum seekers in Kenya are from Somalia (54%) and roughly one quarter are from South Sudan (24.6%). Congolese refugees make up 9% of the refugee population and Ethiopians, 5.8%. The remaining 6.8% are made up of Sudanese, Rwandan, Eritrean, Ugandan and Burundian refugees and asylum seekers (UNHCR Kenya, n.d.). The protraction of the Somali refugee presence in Kenya has caused social tensions that have arguably shifted much public discourse against refugees towards Somalia, particularly as they relate to security (Lindley, 2011).

To understand the marginalization of Somali refugees in Kenya one must also consider local sociopolitical dynamics that have facilitated the marginalization of Somali Kenyans. Longstanding tensions over their 'ambiguous identity' and failure to ensure full citizenship and inclusion in Kenya has led to Somali refugees often being received with the same suspicion, placing obstacles in the way of local integration (Kirui, 2019). This is in line with assumptions that refugees fleeing to a country within which they are similar to their ethnic minority will generally face more restrictive policies (Abdelaaty, 2021, p. 27).

The marginalization of Somali Kenyans has presented political challenges to the provision of aid to Somali refugees. Dadaab camp was opened specifically to accommodate Somali refugees, and its location is no coincidence as the former North-East Province (NEP) is an economically and socially marginalized area populated by Somali Kenyans. Somali refugees were reportedly pushed to Dadaab through the use of aid provision by withholding aid to camps outside of the NEP (Lindley, 2011).

In 2012, the GoK made a formal transition to an encampment policy, following years of de facto policy, through the government-led shutdown of urban registrations. While this applied to all refugees, Somali refugees were specifically targeted in the discourse around this, as noted in a statement from the Interior Principal Secretary Mutea Iringo that singled out Somali refugees as perpetrators of insecurity and as violators of rules regarding encampment (Ombati, [2012](#)).

Aid discrimination in Kenya is mirrored in the encampment aid policies and the politicization of repatriation. In recent years, between 2014 and 2019, 85,000 Somali refugees in Kenya have been assisted in returning to Somalia under a tripartite agreement between UNHCR, Government of Kenya (GoK) and Government of Somalia (UNHCR, [2021](#)). This contrasts the open-door policy that Kenya is taking for asylum seekers from non-neighboring countries including Eritrea, Burundi, and the Central African Republic, as well as the issuance of refugee status *prima facie* for South Sudanese refugees (UNHCR, 2019). In this case, cooperation on refugee management was nationality-based, owing to the pre-existing tensions that the GoK has with Somali populations. However the agreement to their repatriation and exclusion from settlement options is a re-enforcement and complicity in these discriminations.





Most recently, the Kenyan government took this a step further and has turned to full-scale repatriation through the ordered closure of two camps that host 443,765 refugees, half of which are Somali (Reuters, [2021](#)). This was delayed until 2022 following UNHCR presentation of a roadmap for safe return, resettlement and local 'integration' through issuance of a free work permit. However, the last of these options will only be made available for refugees from the East African Community states, notably excluding Somalis (UNHCR, [2021](#)).

## Lebanon: Palestinian and Syrian refugee policies and practices

Politically and economically, the case of Lebanese hosting of refugees has been strongly influenced by maintaining a delicate sectarian balance between the country's Sunni Muslims and Maronite Christians. This reflects the role of religious affiliation in determining public support for refugees in Lebanon: a 2004 study showed that support for Palestinian resettlement in Lebanon directly linked to religious affiliation – Maronites and Shia Lebanese were, on average, not supportive of refugee presence while Druze and Sunni Muslim Lebanese were supportive (Haddad, 2004). These sociological phenomena shaped later attitudes towards Syrians, who, like Palestinians, were made up of a majority Sunni population and once again presented a disturbance to this balance.

Lebanon delegates Palestinian refugee management and assistance to UNRWA, which is maintained through the provision of foreign aid. This comes in the form of shelter provision in camps and primitive structures, and aid distributions in the form of cash and in-kind aid (El Masri, [2020](#)). Palestinian residence in Lebanon is largely restricted to camps, which have evolved into large sprawling settlements. Syrian arrivals shifted this encampment policy – while camps are associated with temporality, in Lebanon, they have become a symbol of longevity. Syrians were not built camps in Lebanon and have difficulty accessing identity documents; thus, they rely on informally renting from Lebanese landlords or reside in informal tented settlements in the Bekaa region, leaving Syrian refugees vulnerable for shelter (Andersen, 2016.).

However unlike Palestinian refugees, aid incentive and politicization of Syrian refugees contributed to starkly different inclusion policies. Palestinians' 'official' right to apply for work permits was issued in 2010, decades after Palestinian arrival to Lebanon (Muir, [2010](#)), although these are mostly inaccessible (ILO, 2014). However, in 2017 and one year after the Supporting Syria and the Region conference held in London in February 2016 and in negotiation with the UNHCR, Lebanon issued the right to work for Syrian refugees in three sectors: environment, construction and agriculture, although this was issued on the condition that they do not receive cash aid (The Daily Star, [2017](#)). While Syrians, like other refugee and migrant workers, mostly work informally in Lebanon, it is noteworthy that the change in approach to employment was offered within a few years of their arrival – this can be tied to the 2016 Lebanon Statement of Intent, which tied refugee inclusion and self-reliance to issuance of aid. Through negotiations with donors regarding Syrian inclusion, labor access was made (slightly) more flexible for Syrians as they were deemed at risk of migration to Europe.





While Palestinians in Lebanon have been marginalized for years, their exclusion from the UNHCR's mandate, especially as it relates to durable solutions, leaves them politically ignored by European donors since they do not have access to resettlement. Thus, when Syrian response was needed, it was in the mutual interest of both EU donors and the Lebanese government to restrict inclusion policies to a single group.

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## Conclusion

The origins of the refugee regime laid the groundwork for the politicization and preference for refugee influxes that are recognized *prima facie*, largely leaving other groups behind. Active intervention by the Global North in the Global South has been often linked to foreign policy and security interests, contributing to a differentiation in treatment and a stratification in aid access and inclusion policies across refugee hosting contexts. Simultaneously, host states have incentives to be restrictive or inclusive to refugees based on their nationalities and the political aid tied to them. While this may have different motivations across the majority of host states, it results in different kind of biases; ones that lean towards (or against) new influxes or majority groups, deeming the concept of inclusive refugee policy largely inapplicable in many of these contexts.

This difference in approaches to refugee support, one of which is solution oriented and the other of which resorts to maintenance of basic needs, can arguably be observed along nationality lines. The support to refugees and their selective inclusion indeed reflects state interests and political outcomes – and the selectivity with which it is enforced and upheld can also be a reflection of the same. Support for refugees, a global refugee regime and refugee aid do not mean support for refugees without selectivity bias – and a reflection on the origins of this dynamic demonstrate that this never was the case.



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