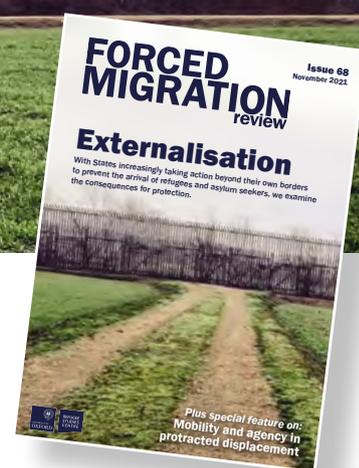


FORCED MIGRATION review

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FMR 68 Editors' briefing: Externalisation / Mobility and agency in protracted displacement

This **Editors' briefing** provides an overview of the content of *Forced Migration Review* issue 68, with links to the relevant articles, and a full contents listing of articles.

In the **Externalisation** feature, authors explore the concept of externalisation and the practical realities of policies which prevent or deter asylum seekers from reaching the territory of 'destination' States, and look at how groups seeking to challenge human rights abuses are advocating and holding governments to account.

Meanwhile, in the second feature, the everyday realities of **mobility and agency for those living in protracted displacement** are examined in a series of articles covering multiple settings including Greece, Syria and the Democratic Republic of the Congo.

Visit www.fmreview.org/externalisation to access this Editors' briefing, the full magazine and individual articles in a digital format.

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Details at www.fmreview.org/forthcoming

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EXTERNALISATION

Externalisation is a strategy whereby States instigate measures beyond their own borders in order to prevent or deter the entry of foreign nationals who lack the requisite legal entry permission and who are thought likely to apply for asylum. The articles in this feature discuss the concept of externalisation itself, explore its practical manifestations and its impact on people, and suggest ways in which externalisation might be challenged or alternatives developed and implemented.

Conceptualising externalisation

Externalisation is not easy to define, particularly given the proliferation of externalisation policies which have emerged over recent years. Several of the authors in this feature explore the concept of externalisation. In his article, Tan questions whether this umbrella term is still useful given the range of policies covered, including practices as diverse as visa controls, maritime pull and pushbacks, carrier sanctions and training of border officials in third countries ([Tan](#)). Some commentators expand the definition to include any measure related to asylum claims which are taken outside a country's own borders. Agreeing on the boundaries of the term is important to clarify the legality of externalisation practices and how we measure the effects of such approaches on both the international protection regime and refugees themselves. From her vantage point at UNHCR, Garlick picks up this question of legality and argues strongly that externalisation is "manifestly inconsistent with the spirit of international cooperation of embodied in the 1951 Refugee Convention". States must not avoid their obligations to those seeking asylum and must take responsibility rather than outsourcing to third States or reneging on commitments altogether through measures which do not uphold people's human rights ([Garlick](#)).

The need for complementary pathways to work alongside what Moreno-Lax calls safe and legal 'primary pathways' is explored by several authors in their articles ([Moreno-Lax](#), [Parusel](#)). Some States, particularly in Europe, are focusing on resettlement programmes, administered in countries of origin or third States to provide an alternative to asylum claims being made on their territory ([Parusel](#)). However, the existence of established resettlement programmes does not necessarily

reduce the number of irregular journeys made by those seeking asylum, as some proponents argue. States may be attracted to resettlement programmes because such programmes place the power to raise or lower quotas in the hands of State actors, but this does not necessarily lead to quotas reflecting the true protection needs associated with crises in refugee-sending regions. For these and other reasons, resettlement should be seen as an additional tool rather than a replacement for territorial asylum policies based in international law ([Parusel](#)). A 'right to flee', enshrined in international law and combining the normative force of the right to leave any country with the principle of *non-refoulement* and the right to asylum, requires that States move away from the prevailing discretion-based model for pathways to asylum towards a rights-based paradigm; this requires that any exercise of sovereign power that obstructs refugees' access to protection be replaced with mechanisms that establish the means of safe and regular admission for the purpose of seeking asylum ([Moreno-Lax](#)).

The many faces of externalisation

With the concept of externalisation being contested and its policies and practices taking many forms, concrete examples with analysis are particularly useful. Several authors focus on measures taken by higher-income countries to process applications and, in many cases, to prevent asylum seekers from reaching their territory ([Ellis-Atak-AbuAlrob](#), [LembergPedersen-Whyte-Chemlali](#), [FitzGerald](#)). There is historic precedent for remote health checks for migrants, conducted before travel or upon arrival. In the late 19th century the US federal government legislated to prevent people with contagious diseases from entering the country. This type of remote health screening has seen a resurgence within the context of the COVID-19 pandemic ([FitzGerald](#)).

Measures to discourage asylum seekers from spontaneous arrivals on a State's territory can be popular with electorates. In Denmark, the current administration has outpaced the traditional anti-immigration political parties and has actively used its externalisation policy to engineer a parliamentary majority and general public environment conducive to limiting asylum seeker arrivals and the integration of refugees on Danish territory. In June 2021, a legislative proposal was passed which reflected this hostile environment. However, the practical outworking of the proposal, with its emphasis on the externalisation of asylum processing, has been hampered by the absence of States willing to partner with Denmark as third-country processing sites ([LembergPederson-Whyte-Chemlali](#)). Canada, often seen as a desirable destination for asylum seekers, has also been engaging in a number of externalisation practices through border cooperation agreements, the use of technology to enhance data sharing, and diplomatic tactics to reduce access to protection on Canadian

territory. There has not been sufficient transparency, oversight or evaluation of these measures, with government providing little data, reporting or audit trails which civil society can scrutinise in order to hold them to account ([Ellis-Atak-AbuAlrob](#)).

Impact on the ground

The need for monitoring and accountability is a theme picked up by a number of authors who focus on the impact of externalisation measures on people on the move. The consequences of attempts to keep asylum seekers from reaching destination countries has, in many cases, resulted in alleged human rights abuses. Sub-Saharan Africa is the location of several initiatives by European States, such as the EU Horn of Africa Migration Route Initiative (also known as the Khartoum Process), the Emergency Transit Mechanism (ETM) and various activities carried out by Frontex, the EU Border and Coast Guard Agency. Intended to address the issue of human trafficking and smuggling in the Horn of Africa, the Khartoum Process ties development aid to States' successful curbing of flows of migrants on the northward route to Europe. However, first-hand testimony points to the presence of significant numbers of ex-Janjaweed militia members who have been engaged to implement border enforcement. Multiple human rights abuses, including sexual exploitation, predation and extortion, have been reported by survivors. Migrants need protection and the EU needs to investigate abuses which their funds may be indirectly supporting ([LumleySapanski-Schwarz-ValverdeCano](#)).

Abuse at borders, this time taking place in the Balkans and West Africa, is highlighted in an article on the work of Frontex ([Gkliati-Kilpatrick](#)). Safeguards and accountability are essential whenever border controls are outsourced, in order to ensure that the EU upholds its commitment to human rights. A lack of transparency about Frontex's work in these regions has meant that abuse has been allowed to continue and abusers have not been held to account, leaving many migrants at risk of arbitrary detention, racketeering and, in some cases, torture, by both State and non-State actors.

Niger has become central to several externalisation processes, particularly related to the route taken by many migrants across the Sahara to Libya and onward to Europe. Since 2017, about 3800 vulnerable refugees have been airlifted from Libyan detention centres to Niger in response to the well-documented human rights abuses they experienced in detention. The Emergency Transit Mechanism was supposed to enable processing by UNHCR and onwards resettlement of those whose claims were accepted. However, as a result of conflicting selection criteria, some claimants were rejected by the States who had been intended to receive them, leaving these rejected asylum seekers under the protection of Niger, a country where most had not planned to be ([Lambert](#)).

Advocacy and accountability

For those who reach the EU's external borders, illegal pushbacks and the use of violence make it increasingly impossible to continue their journey to a safe destination. Documented cases of unregulated cross-border expulsion of people on the move have been gathered by civil society organisations, such as Josoor, who have written an article sharing evidence and testimony from those directly impacted by these illegal practices ([Aulsebrook-Gruber-Pawson](#)).

Aerial surveillance is being used by European States to identify vessels carrying migrants across the Mediterranean in order to alert the Libyan Coast Guard (LCG) which can then intercept them and turn the boats back towards Libya. This partnership has meant that air and sea capabilities provided by Libya and the EU work closely together to such an extent that some argue that they are functioning as one entity – but without the necessary accountabilities and safeguards. Several NGOs are monitoring the activities of these State actors by taking to the skies themselves and reporting vessels in distress to the relevant European Coast Guards to ensure that they are not illegally pulled back by the LCG. Out of the 82 boats spotted in 2020, NGOs recorded 19 incidents of migrants being returned illegally to Libya ([Smith](#)).

Evidence gathered by advocates and other bodies charged with investigating human rights abuses is often the basis of legal challenges made against States practising various forms of externalisation. A number of authors explore the efficacy and risks of litigation in these circumstances. Australia's deterrence and detention policies (sometimes known as the 'Pacific Solution') need reform due to the high cost per detainee and the ineffectiveness of the deterrent. However, there is very limited political space for alternative thinking because of strong public support for externalisation policies. Changes to humanitarian quotas, increasing the speed of application processing and more investment in reducing the drivers of displacement in regions of conflict are some ways that the Australian model could be improved ([Prasad](#)).

The ways that Australia's externalisation policies have been implemented, particularly their use of extra-territorial sites for processing and resettlement in third countries, have left the government open to a range of legal challenges. One example of this is the series of applications for Medevac transfers from offshore processing centres in Papua New Guinea and Nauru to Australia, which were filed in order to enable the treatment of detainees with serious medical conditions. As a result of legal action, around 320 people were transferred onshore in 2018-19. Another example is a series of habeas corpus applications in 2020-21 seeking release of people transferred from offshore to onshore detention. However, such litigation carries a range of risks, including the passage of legislation to prevent further claims, unfavourable precedents being set, and confidentiality

agreements being required as part of settlements, resulting in a lack of information which might fuel public debate. Lessons learnt include the importance of cooperation within the legal sector on public interest litigation strategy and ensuring that potential litigants receive individualised legal advice on the risks involved, and the importance of complementing litigation with wider advocacy campaigns ([Marsh](#)).

The lack of success of legal challenges made against externalisation policies of various kinds is taken up in an article written by three authors focusing on three very different contexts: Oceania, Europe and South America. This comparative analysis highlights that externalisation practices are hard to challenge across the globe in the courts but for a variety of reasons. In Oceania, there is a lack of regional human rights agreements which means that decisions in Papua New Guinea or Nauru may be undermined by decisions made by courts in Australia, the country responsible for the externalisation policies in question. In Europe, an unwillingness by EU institutions to take responsibility for the Turkey-EU deal (which enables EU Member States to reject asylum claims on the basis that they could have sought protection in a safe 'non-EU country' en route to the EU) has meant that it is hard to identify whom to hold to account. In South America, Venezuelan asylum seekers are likewise being rejected if they do not have an acceptable explanation for why they have not applied for protection in one of the countries en route to Peru, such as Colombia or Ecuador. However, the ad hoc and informal way these policies are being implemented means they are hard to challenge on a legal basis ([Freier-Karageorgiou-Ogg](#)).

One potential approach to challenging externalisation policies comes from the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. This instrument has not been ratified in many States seeking to externalise their asylum systems but has been adopted by a number of third States with whom externalising States are seeking to partner as sites of detention and processing, such as Niger. The Convention represents an opportunity for civil society groups based in signatory States to put pressure on their governments and hold them to account for the treatment of migrants, including those seeking asylum, who are detained on their territory ([Flynn](#)).

MOBILITY AND AGENCY IN PROTRACTED DISPLACEMENT

The second feature in FMR 68 has been produced in collaboration with the Transnational Figurations of Displacement (TRAFIG) research project and explores mobility and agency in protracted displacement, challenging the notion that people who are awaiting a durable solution are 'stuck'. Although some experiencing long-lasting displacement without

resettlement or integration live in camps and do not have the ability to travel, many of those in protracted displacement do move in search of solutions to their situation. The authors in this feature shed light on the realities of this mobility, examining what kinds of strategies people employ to find ways to end their displacement, particularly how personal and family networks play an important, and sometimes hidden, role in enabling movement to occur ([Kraler-Etzold-Ferreira](#)).

Enabling movement through policy

Translocal and transnational networks are a key resource for refugees but policies that enable them to benefit from these resources are not always given priority by those designing the legal frameworks that govern displaced people's lives. However, some such policies do exist and are explored by authors in this feature. Humanitarian Admission Programmes (HAP) have been used in Germany at both a State and federal level in response to the Syrian refugee crisis ([Etzold-Christ](#)). With private or community sponsorship to cover resettlement and initial living costs, close family members could legally settle in Germany. Overall these programmes represented a positive complementary pathway during a significant refugee crisis however, the authors identified a number of limitations which need addressing. The schemes were time-limited and only Syrian nationals were eligible, despite there being significant need from other nationals. The sponsorship component meant that there was a bias towards refugees who had relatives with sufficient socio-economic resources and so did not necessarily serve the most vulnerable. Questions were also raised about whether the government was outsourcing the financial burden of protection to private citizens. Finally, the multiplicity of schemes across different states meant that benefits and legal rights varied for those arriving via HAPs.

A far earlier policy which had sought to enable refugees to benefit from mobility opportunity was the provision of 'Nansen passports' to refugees in the 1920s allowing nearly 60,000 people to travel to take up jobs, aided by an International Labour Organization job placement scheme. Reflecting on this historical precedent, the authors of this article emphasise the importance of supporting refugee agency and mobility in order to find concrete and sustainable durable solutions ([Kraler-Etzold-Ferreira](#)).

Realities on the ground

The complexity of the everyday realities of protracted displacement are examined in two articles focusing on different parts of the world. In Greece and Italy, countries which have been at the forefront of receiving asylum seekers entering the EU on its southern borders, asylum seekers frequently follow employment opportunities and move away from official hotspots or regions

where they initially arrived. The legal frameworks, bureaucratic requirements and national policies which govern and constrain mobility within the countries and within the wider EU, often conflict with asylum seekers' survival strategies, such as moving closer to family or working in order to live and/or save in order to undertake more costly routes to permanent solutions. As a result, these strategies remain largely unacknowledged and unregulated, leading to high levels of exploitation of these illegal workers. There is very limited political appetite for policies which would allow greater movement and legally sanctioned employment opportunities but global challenges like the COVID-19 pandemic highlight the risk of this kind of movement going 'under the radar' as invisible people cannot be integrated into important public health initiatives such as mass vaccination campaigns ([Hatziprokopiou-Papatzani-Pastore-Roman](#)).

Following a change in the law in Ethiopia, refugees are now allowed to live outside camp settings while still being able to access some of the provisions and services which they had while living there. This has led to successful integration for some, giving them new opportunities to pursue study and employment within the country. In the Democratic Republic of the Congo, many displaced people return to their regions of origin for economic reasons. One case-study looks at the case of a Congolese man who has set up a business in a regional capital to sell charcoal produced in his home village. He engages in 'backward mobility' in order to facilitate this trading and is also able to grow crops in his fields to help him support his family. However, for some this form of backward mobility is not possible, because of stigma or the loss of assets while displaced. The authors use these case-studies to illustrate the fact that mobility is often aided by informal connections but hampered by formal policies which force people into illegality when pursuing what may be effective survival strategies ([Jacobs-Rudolf](#)).

The role of family networks in shaping refugees' aspirations for onward mobility is explored in an article focusing on Syrian refugees in Jordan. Despite resettlement options being extremely limited, it is common for people living in protracted displacement situations to engage in what the authors call 'mobility aspirations' whereby refugees explore in their imaginations potential options for onward mobility, especially the option of joining family who have settled in other countries. Although the effect, positive or negative, of people imagining possible migration opportunities is yet to be studied in depth, these aspirations are ways that refugees exercise agency in settings where they may feel stuck. They also enable them to build or maintain connections with family abroad who may help them, whether or not they are eventually reunited in a third country ([Tobin-Momani-AlYakoub-AlMassad](#)).

EXTERNALISATION



Externalisation of international protection: UNHCR's perspective

Madeline Garlick (UNHCR)

In recent years, some States have pursued increasingly restrictive policies and practices in order to deter refugees and asylum seekers from reaching their borders. Such policies of 'externalisation' are manifestly inconsistent with the spirit of international cooperation embodied in the 1951 Refugee Convention.

www.fmreview.org/externalisation/garlick



Conceptualising externalisation: still fit for purpose?

Nikolas Feith Tan (Danish Institute for Human Rights)

Given the proliferation of externalisation policies in recent years, there needs to be greater clarity around the term 'externalisation': what it means, what it comprises, and implications under international law.

www.fmreview.org/externalisation/tan



Why resettlement quotas cannot replace asylum systems

Bernd Parusel (Swedish Migration Agency)

Resettlement is an important element of refugee protection worldwide. However, it is fundamentally different from territorial asylum systems. Resettlement should complement the reception of asylum seekers but should never replace it.

www.fmreview.org/externalisation/parusel



Pushbacks on the Balkan route: a hallmark of EU border externalisation

Gigi Aulsebrook, Natalie Gruber and Melissa Pawson (Josoor)

Illegal pushbacks – and the use of violence – on Europe's borders have increased to unprecedented levels, raising the alarm about abuses of fundamental human rights.

www.fmreview.org/externalisation/aulsebrook-gruber-pawson



Frontex cooperation with third countries: examining the human rights implications

Mariana Gkliati and Jane Kilpatrick (Radboud University / Statewatch)

While Frontex is currently under unprecedented examination for human rights violations at the EU's borders, its work beyond EU borders remains barely scrutinised.

www.fmreview.org/externalisation/gkliati-kilpatrick



Extraterritorial asylum processing: the Libya-Niger Emergency Transit Mechanism

Laura Lambert (Max Planck Institute for Social Anthropology)

The Libya-Niger Emergency Transit Mechanism launched in 2017 successfully evacuated a large number of asylum seekers detained in Libya. However, the outcomes for many of the asylum seekers, and indeed for the three main partners (UNHCR, the EU and Niger), were far from what they had hoped for.

www.fmreview.org/externalisation/lambert



Challenging the legality of externalisation in Oceania, Europe and South America: an impossible task?

Luisa Felina Freier, Eleni Karageorgiou and Kate Ogg (Universidad del Pacifico / Lund University / Australian National University)

Recent legal developments in different continents exemplify the near impossibility of using courts to challenge the legality of externalisation practices.

www.fmreview.org/externalisation/freier-karageorgiou-ogg



Lessons from Australia's Pacific Solution

Neha Prasad (Legal Practitioner in Refugee Law)

Nine years after it was first implemented, Australia's 'Pacific Solution' has not proven to be the promised panacea. Any country or region hoping to emulate the Australian offshore framework should be wary of its legal, ethical and operational failings.

www.fmreview.org/externalisation/prasad



Challenging externalisation: is litigation the answer?

Jessica Marsh (Asylum Seeker Resource Centre)

Litigation has achieved some positive results in challenging Australia's offshore processing framework but comes with risks.

www.fmreview.org/externalisation/marsh



Expanding Canada's borders

Claire Ellis, Idil Atak and Zainab Abu Alrob (Ryerson University)

Although Canada enjoys a good international reputation for its refugee resettlement programmes, it has also externalised refugee protection under the pretext of preserving the integrity of its asylum system and responsibility sharing.

www.fmreview.org/externalisation/ellis-atak-abualrob



Denmark's new externalisation law: motives and consequences

Martin Lemberg-Pedersen, Zachary Whyte and Ahlam Chemlali (University of Warwick / University of Copenhagen / Danish Institute for International Studies/Aalborg University)

A new law in Denmark, which could ultimately end the integration of refugees on Danish territory, offers important lessons about contemporary externalisation policies and the political motives behind them.

www.fmreview.org/externalisation/lebergpedersen-whyte-chemlali



Eyes in the sky: European aerial surveillance

Angela Smith (UNSW)

Since 2017, aerial surveillance has become central to EU attempts to identify, deter and return intercepted migrants to Libya. As a result, struggles between the EU and civil society rescue actors have also shifted from the seas to the skies.

www.fmreview.org/externalisation/smith



US remote health controls: the past and present of externalisation

David Scott FitzGerald (University of California San Diego)

Measures to control asylum seekers' entry to US territory during the COVID-19 pandemic reflect a long history of remote border controls.

www.fmreview.org/externalisation/fitzgerald



From complementary to 'primary' pathways to asylum: a word on the 'right to flee'

Violeta Moreno-Lax (Queen Mary University of London)

The international community needs to move away from the prevailing discretion-based model for pathways to asylum. The 'right to flee' must be taken seriously.

www.fmreview.org/externalisation/moreanolax

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Externalisation, immigration detention and the Committee on Migrant Workers

Michael Flynn (Global Detention Project)

Over the last two decades we have witnessed the emergence of new immigration detention systems across the globe, a direct result of the externalisation policies of wealthy destination countries.

www.fmreview.org/externalisation/flynn



The Khartoum Process and human trafficking

Audrey Lumley-Sapanski, Katarina Schwarz and Ana Valverde-Cano (University of Nottingham)

The Khartoum Process's emphasis on stopping northward migration comes at great cost to vulnerable refugees and asylum seekers.

www.fmreview.org/externalisation/lumleysapanski-schwarz-valverdecano

MOBILITY AND AGENCY IN PROTRACTED DISPLACEMENT



Understanding the dynamics of protracted displacement

Albert Kraller, Benjamin Etzold and Nuno Ferreira (Danube University Krems / Bonn International Centre for Conflict Studies / University of Sussex)

Displaced persons' mobility and their translocal networks can provide important resources in the search for durable solutions.

www.fmreview.org/externalisation/kraller-etzold-ferreira



Mobility dynamics in protracted displacement: Eritreans and Congolese on the move

Carolien Jacobs and Markus Rudolf (Leiden University / Bonn International Centre for Conflict Studies)

Millions of Eritreans and Congolese find themselves in situations of protracted displacement. A more nuanced understanding of how physical and social mobility affects their daily lives is crucial to developing more effective tailor-made interventions.

www.fmreview.org/externalisation/jacobs-rudolf



Family networks and Syrian refugees' mobility aspirations

Sarah A Tobin, Fawwaz Momani, Tamara Adel Al Yakoub and Rola Fares Saleem AlMassad (Chr. Michelsen Institute / Yarmouk University)

Syrian refugees' aspirations to move contradict the notion that those refugees who are 'stuck' in displacement are passive victims without agency. Rather, in the absence of viable options for physical mobility, refugees may still engage in aspirations to 'move on' even when they are not able to do so physically.

www.fmreview.org/externalisation/tobin-momani-alyakoub-almassad



'Constrained mobility': a feature of protracted displacement in Greece and Italy

Panos Hatziprokopiou, Evangelia Papatzani, Ferruccio Pastore and Emanuela Roman (Aristotle University of Thessaloniki / FIERI International and European Forum on Migration Research)

People living in protracted displacement in Italy and Greece are frequently more mobile than is generally recognised in public discourse and policy.

www.fmreview.org/externalisation/hatziprokopiou-papatzani-pastore-roman



Humanitarian Admission Programmes: how networks enable mobility in contexts of protracted displacement

Benjamin Etzold and Simone Christ (Bonn International Centre for Conflict Studies)

Recent research explored how refugees make use of their networks to escape from protracted displacement. Germany's Humanitarian Admission Programmes have been able to provide legal 'complementary' pathways for Syrian refugees who had transnational ties. The effectiveness and reach of these schemes, however, are constrained by various factors.

www.fmreview.org/externalisation/etzold-christ



Cover image: The Greek border fence near the Kastanies/Pazarkule land border crossing between Turkey and Greece was reinforced and extended in 2021. Photo credit: Josoor

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