

International Refugee Law and the Arab World

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Introduction

Amira is a 34-year old Iraqi woman. In 2005 a group of militants burst into her house in the Dora area of Baghdad. They told her husband to leave the house within 24 hours for sectarian reasons. He refused and was shot dead on the spot. One of the militants raped Amira in front of her two children. Afraid and ashamed, she fled Iraq with her children to a country in the region. She is still afraid in the country of asylum because many men are asking why she is alone and some are making unwanted advances. She is also afraid of being arrested because she entered the country illegally. She is afraid to return to Iraq because of her experience and the stigma associated with it.

Fatima is a 20-year old university student from country A. For her summer vacation, she visited another country in the Middle East. She fell in love with a man whom she met at the hotel where she was staying with her family. She ran away with him and they got married. Her father was furious. He felt that she had shamed his family name. He threatened to kill her to protect the family's honour. Fatima is afraid to go back to her home country: she knows that her father will kill her and the authorities will not stop him from doing so.

Both Amira and Fatima are refugees – as defined by international refugee law. Their stories are typical and found across the world. However, in many places in the Arab region Amira and Fatima would not be recognized as refugees. Though many governments and the general public show a general tolerance towards refugees, due to the lack of domestic legal frameworks, the authorities apply immigration laws in force. As a result, refugees are

often arrested for illegal stay and do not have access to the labour market, a situation which makes basic sustenance difficult.

The rapid rate of globalization, coupled with the turbulent events in Iraq, Sudan, Somalia, and other parts of the world, has caused an increasing number of refugees to seek protection in the Arab region. Many countries of the region have been tolerant towards the likes of Amira and Fatima. However, this tolerance is not always anchored in a solid legal basis and its scope has been limited. This article outlines the scope and parameters of refugee protection¹ in the region, as defined by international refugee law and international human rights law. The article will conclude that the Arab countries are obliged to protect non-Palestinian refugees because they have ratified various international human rights instruments. In light of this argument, this article advocates for the full implementation of those instruments which have been ratified by countries in the Arab region.

Who is a Refugee?

On a human level, Amira and Fatima's experiences compel their listener to consider them to be refugees. But what does international refugee law say? The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (CSR and CSRP, respectively) define a refugee as anyone who, "owing to 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/her nationality and is unable or, owing to such fear, is unwilling to avail him/herself of the protection of that country."² In other words, a refugee needs (1) to be outside of

his/her own country; (2) to be unable or unwilling to return there (avail himself/herself of protection of his/her country); (3) to have a well-founded fear of persecution; (4) to have at least one of the following five reasons for persecution – race, religion, nationality, membership of a particular social group, or political opinion.

According to these criteria, Amira is considered to be a refugee because (1) she is outside of her own country; (2) she is unwilling to return because she knows that the police are not in control of her area of residence; (3) she is afraid of being harmed because her husband was killed and she was raped; and (4) she was subjected (and will likely be again) to violence because of her religion. Similarly, Fatima is a refugee because (1) she is outside of her own country; (2) she does not trust the police when it comes to preventing honour killing; (3) she is afraid of getting killed by her father; and (4) she will be subjected to violence for having transgressed the prevailing social norms (membership of a particular social group).³

Refugee law clearly defines who is a refugee. The next question is, what can refugees expect from the governments of countries where they are seeking protection? To fully answer this question, the discussion will have to be expanded beyond refugee law.

International Protection of Refugees

How should the state protect Amira and Fatima as refugees? When their country of origin cannot or will not protect them, refugees should be accorded “international protection.” This “surrogate” protection is supposed to ensure the protection of the fundamental rights of refugees. “Protection” in this context should be understood as “all activities, aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. human rights, humanitarian and refugee law).”⁴

Admittedly, this definition of protection is very broad and, in many respects, does not provide specific details. What does it mean concretely? First and foremost, refugees should not be forcibly

sent back to their own countries in which they risk being persecuted – or a serious threat to their lives and freedoms. This principle of *non-refoulement* is fundamental to refugee law:⁵ if this right is not ensured, other rights will not be able to be fulfilled because refugees would not have the opportunity to enjoy other rights in the country in which they sought safety (“country of asylum”). In addition, if Amira and Fatima arrived illegally in their country of asylum, they should not be prosecuted for their illegal entry. If someone was escaping from an immediately life threatening situation, how could one expect him/her to have obtained a passport and the proper entry documents? Moreover, often, the state itself is an agent of persecution. Thus, it is difficult to obtain passports from the very party that may be persecuting you.

Refugees – both male and female adults – should be provided with identity documents which allow them to stay legally in the country of asylum. In addition, the documents should allow the refugee to move freely in the country of asylum. Refugees should also have access to the labour market, i.e. the right to work. Refugee children should have access to public education. Refugees should not be discriminated against with regard to their access to public healthcare, including women’s reproductive health. They should have free access to courts. Refugees should be able to practice their religion freely. Refugee protection also entails the identification of durable solutions, be they voluntary repatriation, local integration, or resettlement to third countries.

These are some of the rights outlined in the Statute of UNHCR⁶ and CSR. However, the Statute was conceived in 1950 and CSR was created in 1951 – only two years after the Universal Declaration of Human Rights and 15 years before the International Bill of Rights. Today, the basic rights enumerated in CSR have been significantly supplemented by human rights instruments that have since come into force. Indeed, foreseeing the future development of human rights law, Article 5 of CSR leaves room for states to grant additional rights and benefits to refugees.⁷ Fifty-seven years after the birth of CSR, the world now has a large number of regional and international human rights instruments and related

international and national legislation. Refugees are human beings; thus, human rights law should also protect refugees.

In short, the rights of refugees are not only found in CSR but in a wide range of regional and international human rights instruments. The development of international human rights law has had an overarching positive impact on the protection of refugees.

Refugee Protection and the Arab World⁸

Table 1 shows the status of ratification of CSR and seven other key international human rights instruments among the member states of the League of Arab States. The table also shows the number of non-Palestinian refugees and asylum-seekers hosted in each state in 2006. Arab states generally have a poor record of accession to the refugee instruments. Only 9 member states out of 22 have ratified CSR. By contrast, most of the states acceded to the main international human rights instruments. For instance, the 1989 Convention on the Rights of the Child (CRC) was either signed or ratified by all the member states (except for Palestine). This has significant implications for refugee protection. Article 22 of CSC stipulates that:

State Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other persons, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

This provision is designed to ensure that children seeking asylum or refugee children should be protected according to the national law and international human rights law. In other words, states that are not signatories to CSR but have ratified CRC have an obligation to protect refugee children's rights.

Similarly, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) also provides rights to refugees. Almost all the member states in the League of Arab States have either ratified or signed the CAT. Article 3 provides that:

No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

CAT contains the same principle of non-refoulement outlined in refugee law. Nobody can be expelled or deported to a country where there is a risk that they might be tortured. Many refugees have suffered or would risk suffering from torture as a form of persecution. Thus, there is a continuum between the *non-refoulement* principle of CAT and that of CSR. In this respect, Lebanon has established interesting jurisprudence. While the country is not a signatory to CSR, it has ratified CAT. Referring to Article 3 of CAT, the Beirut Penal Court ruled in 2003 that refugees recognized under UNHCR mandate should not be forcibly returned to their country of origin.⁹ As a result, the court ruled that a Sudanese refugee arrested for illegal entry should not be deported.

A third example of the interface between refugee law and human rights instruments can be found in the application of the 1966 International Covenant on Civil and Political Rights (ICPPR), which 16 countries of the League of Arab States have ratified. Article 7 of the ICPPR stipulates that:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

The Human Rights Committee, created to monitor the implementation of this treaty, reaffirmed the extraterritorial effect on Article 7, referring to the *non-refoulement* principle:

In the view of the Committee, States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to

another country by way of their extradition, expulsion or refoulement.¹⁰

Thus, the ICCPR also prohibits forcible expulsion or return of asylum-seekers and refugees to countries in which they may be tortured or subjected to inhuman or degrading treatment or punishment, which is often practiced as a form of persecution. Although most of the member states of the League of Arab States are not parties to CSR/CSRP, the ICCPR reinforces their obligation to the principle of *non-refoulement*.

Furthermore, the 1966 International Covenant on Economic, Social and Cultural Rights (ICESR) provides an additional framework for the realization of the right to an adequate standard of living, work, education, social services, and family life for asylum-seekers and refugees. The 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) calls on signatory states to guarantee the same rights to men and women, particularly with respect to their enjoyment of their fundamental human rights. The example of Fatima in this article touches upon Article 16 of CEDAW, obligating the signatory states to “take all appropriate measures to ensure the same right between men and women to choose a spouse and to enter into marriage only with their free and full consent.” Notably, some countries in the Arab region ratified CEDAW with reservations against this article, meaning that they did not agree to implement and protect the right as expressed in this article. This section showed that although the states in the Arab region have not ratified the CSR and the CSRP, they already have clear legal obligations to

protect refugees by applying the other provisions of key international human rights law. If these instruments were implemented in accordance with their letter and spirit, asylum-seekers and refugees would immediately have a considerable level of protection, even without the ratification of CSR/CSRP. In other words, not being a signatory to the CSR and its protocol does not absolve the state of its responsibility to protect refugees.

Conclusion

The development of international human rights law over the past fifty years has created a seamless interface between refugee law and human rights law. The ratification of CSR/CSRP has not advanced in the region and there is a continuing need to call on the Arab countries to consider accession to the two important refugee instruments, CRS and the CRSP. At the same time, this article has illustrated that the Arab countries have agreed to protect the fundamental human rights of refugees through their ratification of various international human rights treaties. All the countries in the region have ratified legal instruments that should assist and protect the likes of Amira and Fatima. However, for refugees to be afforded their rights, countries in the region will have to concretely implement and actualize the obligations that they have already agreed to.

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*The views expressed in this article are those of the author, and do not necessarily reflect the views of the United Nations or UNHCR.

ENDNOTES

1. This paper deals only with non-Palestinian refugees in view of UNHCR’s mandate and the scope of CSR51 and CSRP67. For detailed discussion on this matter, see “Note on the Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian refugees”, UNHCR, Geneva, October 2002.
2. CSR, Article 1 A (2). For further elaboration of the definition of Article 1 A (2), see “Interpreting Article 1 of the Convention Relating to the Status of Refugees”, UNHCR, Geneva, April 2001.
3. UNHCR defines a particular social group as “a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristics will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights.” For the example of Fatima, she was perceived as someone who transgressed the societal mores and tarnished the family honour by marrying someone whom her family did not approve of. She can be considered as belonging to a “particular social group” according to the international refugee law. See also “Guidelines on International Protection: Gender-Related Persecution within the Context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees”, HCR/GIP/02/01, UNHCR, Geneva, 2 May 2002.
4. Third Workshop on Protection, Background paper, ICRC, 7 January 1999. For a more detailed description of protection activities, see para. 12, Note on International Protection, UN General Assembly, A/AC/96/830, 7 September 1994.

5. See para (b), Conclusion 25 of the UNHCR Executive Committee (EXCOM): "Reaffirmed the importance of the basic principles of international protection and in particular the principle of *non-refoulement* which was progressively acquiring the character of a peremptory rule of international law."
6. Annex to the UN General Assembly Resolution 428 (V) of 14 December 1950, defining the original mandate of UNHCR. See footnote 10 below.
7. Article 5, CSR51, "Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention."
8. For a comprehensive overview of refugee policies of the countries in the Middle East and their relationships with UNHCR, see Zaiotti, R. (2006). Dealing with non-Palestinian refugees in the Middle East: Policies and practice in an uncertain environment. *International Journal of Refugee Law* 18(2), 334-353.
9. Criminal Court of Beirut, Decision no. 1119/2003, 12 June 2003. Whilst this was an encouraging development, the court could have also resorted to the argument that refugee status granted under UNHCR mandate should be respected by the state authorities, as UNHCR's mandate derives originally from the UN General Assembly Resolution 428 (V) of 14 December 1950. The original mandate has been expanded further by successive General Assembly and ECOSOC resolutions. In other words, UNHCR is mandated by UN's principle organs in accordance with the relevant provisions of UN Charter, and Lebanon, as a UN member state, has the obligation to respect the function of UNHCR, thus, refugee status granted by UNHCR under its mandate.
10. Para. 9, General Comment 20, UN Human Rights Committee, Forty-fourth session, 1992.

TABLE 1: Member States of the League of Arab States and Ratification of International Human Rights Instruments

	Refugees (2006)*	CSR/CSRP	ICCPR	ICESCR	CAT	CRC	CEDAW	CERD
Algeria	95,121	O	O	O	O	O	O	O
Bahrain	18	X	O	O	O	O	O	O
Comoros	1	X	X	O	Δ	O	O	O
Djibouti	9,278	O	O	O	O	O	O	Δ
Egypt	104,390	O	O	O	O	O	O	O
Iraq	46,586	X	O	O	X	O	O	O
Jordan	519,477	X	O	O	O	O	O	O
Kuwait	275	X	O	O	O	O	O	O
Lebanon	22,743	X	O	O	O	O	O	O
Libya	4,757	X	O	O	O	O	O	O
Mauritania	861	O	O	O	O	O	O	O
Morocco	1,878	O	O	O	O	O	O	O
Oman	14	X	X	X	X	O	O	O
Qatar	81	X	X	X	O	O	X	O
Saudi Arabia	241,050	X	X	X	O	O	O	O
Somalia	1,890	O	O	O	O	Δ	O	O
Sudan	200,660	O	O	O	Δ	O	X	O
Syria	707,442	X	O	O	O	O	O	O
Tunisia	161	O	O	O	O	O	O	O
UAE	206	X	X	X	X	O	O	O
Yemen	120,468	O	O	O	O	O	O	O
Palestine	NA	NA	NA	NA	NA	NA	NA	NA
Total	2,077,357	9 states	16 states	17 states	16 states	20 states	19 states	20 states

O=ratified/ Δ=signed but not ratified/ X=not signed or ratified

- CSR/CSRP: 1951 Convention Relating to the Status of Refugees and its 1967 Protocol
 ICCPR: 1966 International Covenant on Civil and Political Rights
 ICESCR: 1966 International Covenant on Economic, Social and Cultural Rights
 CAT: 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
 CRC: 1989 Convention on the Rights of the Child
 CEDAW: 1979 Convention on the Elimination of all Forms of Discrimination against Women
 CERD: 1965 International Convention on the Elimination of All Forms of Racial Discrimination

* Source: UNHCR/Amnesty International Annual Report 2007