10 An end to asylum?

Temporary protection and the erosion of refugee status

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Introduction

The literature on refugees' precarious legal status in the Global North has largely focused on three populations: asylum seekers (Mountz, 2011; Schuster, 2011; Rotter, 2015), temporary protection visa holders (Bailey et al., 2002; Menjivar, 2006; Abrego & Lakhani, 2015; Tize, 2020) and people whose asylum claims have been denied but who cannot or will not return to their countries of origin (De Genova, 2002; Griffiths, 2014; Hasselberg, 2016). Many individuals move between these forms of status at various points in their lives.

In this chapter, I draw attention to the precarious legal status experienced by people who are, in fact, *recognised* as refugees under the 1951 Refugee Convention ('Convention refugees'). By this I mean that their asylum claim is approved based on a 'well-founded fear of persecution' in their country of origin, on grounds of their race, religion, political opinion, nationality or social group (*The Convention relating to the Status of Refugees*, 1951). While previously so-called Convention refugees could expect permanent residence permits within a limited and predictable period of time, this expectation has been eroded by a number of different policies pursued, with increasing assertiveness, by Australia, the United States, Canada and within Europe (European Council on Refugees and Exiles, 2016; hereafter ECRE, 2016). These include periodic checks of a refugee's continued need for protection and shorter-term residence permits. While a 'final' decision on refugee status has been described as a much-anticipated end to months or even years of refugee waiting (Rotter, 2015: p. 86), these new and intensified policies prolong uncertainty concerning permission to remain in the country of refuge.

I divided the chapter into three parts. After first providing context for the turn towards more temporary protection in Europe, I move to a normative discussion about the role of time in refugee law. How does the law balance the rights of refugees acquired over time in the country of residence with a state's interest in excluding people it believes no longer have a need for protection? One way the Refugee Convention moderates this tension is by conditioning the cessation of refugee status because of improved conditions

in the country of origin on proof that the changes are durable. Meanwhile, human rights law recognises that ‘settled migrants’ (people with long-term legal residence) may have a right to remain if their familial and private attachments are stronger than the state’s reasons for removing them. Although the passage of time therefore has a purposeful dimension under international law, its significance is devalued through the *interpretation* of the law by national courts. The final part of the chapter illustrates this point through two supreme court judgments from Norway concerning cessation of refugee status and the subsequent revocation of a residence permit. The two cases, both involving Afghan women with children, reveal how narrow legal reasoning and prolonged administrative procedures maintain a facade of legal security while reinforcing the ‘invisibility, immobility, uncertainty and arbitrariness’ associated with chronic waiting (Khosravi, 2014: p. 74).

The temporary turn in European asylum policies: prolonging protracted displacement

Following the large numbers of asylum seekers claiming protection in late 2015, European countries responded with a range of new or intensified measures to contain and deter refugees. In addition to policies aimed *outside* their borders, including extraterritorial processing regimes and third-country transfers, states also adopted policies that reduced the security of stay *within* them. These policies include granting refugee subsidiary forms of protection with fewer entitlements; reducing the duration of residence permits; introducing protection reviews to assess the continued need for asylum; and applying integration-related requirements (such as income minimums, knowledge tests, etc.) for family reunification and permanent residence. Previous policies that provided refugees a clear path to long-term residence have been replaced by measures that result in premature return to unsafe areas or ‘permanent temporariness’ (Bailey et al., 2002; Tize, 2020) in the country of residence.

Temporary protection policies are nothing new in the practice of refugee law. While the primary legal instrument, the 1951 Refugee Convention, has traditionally been interpreted to provide longer-term protection (O’Sullivan, 2019a), states also grant complementary forms of protection to refugees who may not meet convention criteria but face a risk of serious harm if returned to their countries of origin (McAdam, 2007). The subsidiary protection status regulated by the EU Qualification Directive is one example. This status often comes with a shorter-term residence permit (ECRE, 2016). Further, states have periodically established explicit regimes of temporary protection as extraordinary measures in response to conflicts and disasters (Fitzpatrick, 1994; Ineli Ciger, 2018). In the 1990s, for example, refugees from the Balkans typically received temporary status with the assumption that they would return as soon as war ended. In the United States, Temporary Protection Status (TPS) may be granted to nationals or previous

residents (if stateless) of countries experiencing ‘temporary’ problems like armed conflict, an environmental disaster or an epidemic. TPS visa holders have the right to work and travel, but no path to permanent residence despite, in some cases, holding this ‘temporary’ status for decades. What is novel about more recent policies, however, is that they erase the distinction – in theory at least – between refugees recognised under the Refugee Convention and forcibly displaced persons facing other, potentially less sustained, threats.¹ Instead of serving as a supplementary or exceptional response, temporary policies now infiltrate the mainstream practice of refugee law.² The focus of this practice has shifted from criteria for inclusion i.e. (who *qualifies* for refugee status?) to those for exclusion (who can *return*, how fast, and to where?). The consequent approach to protection, based principally on minimalist duties of ‘non-refoulement’ (non-return) to persecution or serious harms, represents a convergence of the rule and its exception as a technique of sovereign control (Karlsen, 2015: p. 59). ‘Future returnee’ is the new refugee.

While many exclusionary policies are procedural in nature (i.e. rules governing where an asylum claim may be lodged), or relate to the type of permit granted, others are based on restrictive interpretations of the *substance* of refugee law. They challenge, in other words, long-standing assumptions about who qualifies as a Convention refugee, and for how long. One example is application of the so-called internal protection alternative (IPA) exception to refugee status, which results in return to the country of origin even if a person’s place of previous residence remains unsafe (Schultz, 2019). Another, as mentioned earlier, involves the periodic review of whether refugee status is still warranted. The Refugee Convention permits cessation of refugee status under certain conditions, including when the refugee ‘... can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality’ or, if the person is stateless, the country of previous residence (Articles 1C(5) and (6)). Thus, while states *may* cease refugee status under certain conditions, they have rarely done so in individual cases (O’Sullivan, 2019a). With the exceptions of Germany and Australia, states have typically granted refugees permanent residence either immediately or at least predictably within a relatively short time (ECRE, 2016).

This commitment to provide a stable refugee status is clearly eroding. Canada,³ Denmark,⁴ Norway and Sweden⁵ have all adopted policies involving the proactive review of a refugee’s continued need for protection. In Denmark, the threat of cessation even applies to resettled refugees, who already, in theory, have a ‘durable solution.’⁶ The proposed EU Qualification Regulation would introduce *mandatory* reviews of refugee status in connection with the renewal of residence permits.⁷ The introduction or extension of non-protection related criteria for permanent residence, meanwhile, means that more refugees have temporary residence permits for longer periods of

time. This exposes those with the least resources to reviews of their continued need for protection whenever they apply for renewal.

The threat of cessation and revocation of residence prolongs insecurity of status and impedes long-term planning. As Ramsay describes in her work on resettled refugees in Australia, the ‘conventional refugee narrative’ involves ‘moving from a distinct point of displacement to a distinct point of resolution’ (Ramsay, 2017: p. 515). I discuss later how this linear, progressive narrative is also reflected in law. With cessation practice, however, the positive modality of waiting in anticipation of receiving refugee status (Rotter, 2015: p. 85) is replaced by chronic uncertainty. Like other policies of temporary protection, the threat of cessation can lead to mental health problems, withdrawal from education, language and work training, and housing and employment insecurity (UNHCR, 2018: p. 27; Brekke et al., 2019). Long and ambiguous processing times intensify uncertainty and immobility, as other applications (for permanent residence, family reunification, citizenship or travel documents) are suspended until there is resolution on the question of refugee status (Brekke et al., 2019: p. 4).

A final decision to cease status or revoke residence does not necessarily resolve this insecurity. In some cases, the consequence of cessation is irregular status for those who will not or cannot return. In other cases, refugees join the ranks of the internally displaced within their countries of origin. Even those eligible to remain in the country – for humanitarian reasons including best interests of a child, family reunification or the opportunity to study – may lose entitlements, like the right to adult education, while those applications are determined. A permit provided for humanitarian reasons meanwhile may be formally limited in terms of duration and the rights that derive from that status. It may specify, for example, that it is non-renewable, does not include a right to family reunification, and/or does not provide a basis for permanent residence.⁸ In short, far from providing a longed-for ‘solution,’ the ultimate granting of refugee status prolongs what for many refugees has already been a protracted situation of forced displacement.

Durable solutions and the legal dimensions of ‘refugee time’

To understand the legal relationship between refugee status and the end of displacement, it is necessary to interrogate what Durieux (2015: p. 226) calls the two dimensions of ‘refugee time.’ The first dimension relates to the passage of time (‘time as attachment’) and opportunities to re-establish one’s life and livelihood. While states have no obligation to grant refugees a specific residence status, they must provide a basket of rights and benefits that accrue over time. These rights and benefits increase as the refugee’s relationship to the state evolves from simply being subject to its jurisdiction to eventually being habitually resident, which is defined as a stay of 3 years or longer (Hathaway, 2005: p. 190).

Refugees who are lawfully staying have a right to the same treatment as nationals when it comes to primary education, welfare and social security. Meanwhile, in terms of employment, housing and post-primary school, states are obliged to ensure the same access – at a minimum – as that enjoyed by other non-nationals in the ‘same circumstances.’⁹ Those who have completed 3 years of residence on a state’s territory are exempt from any restrictive measures imposed on the employment of foreigners. While the Convention stops short of requiring states to naturalise refugees, states are explicitly encouraged to do so.¹⁰ In other words, the Refugee Convention establishes a linear trajectory in which the passage of time results in increased attachments to society, consistent with the state-centric concept of refugee-hood that motivated the post-war Convention regime.

Full membership is, however, conditioned by a second dimension of ‘refugee time’: ‘Time as a deadline,’ meaning the eventual end of refugee status (Durieux, 2015).¹¹ While the logical consequence of long-term stay is naturalisation, the Convention also opens for cessation of refugee status before this happens, under two types of conditions. The first type encompasses voluntary acts of the refugee, like moving back to the country of origin, or taking a new citizenship somewhere else. The other type, as mentioned earlier, refers to changes within the country of origin that remove the need for international protection.

Cessation following changes in the country of origin requires more than the absence of conditions giving rise to refugee status. Changes must be significant and ‘non-temporary,’ meaning that the state is once again able and willing to provide durable protection (O’Sullivan, 2019a). This ‘double guarantee,’ as Einarsen (2000: p. 531) describes (no risk of persecution plus long-term protection), balances asylum states’ interest in controlling membership with a ‘clear commitment to avoid the constant uncertainty’ associated with ongoing reassessment of refugee status (Hathaway & Foster, 2014: p. 477). While dramatic events like a democratic transition can occur quickly, many of today’s refugee-producing countries are beset by complex conflicts where the consolidation of peace is a halting, difficult process. Therefore, the criteria required for the cessation of refugee status are rarely met within the time period for which most temporary permits are granted.

The requirement of non-temporary protection ensures that cessation practice aligns with broader aims of refugee law: to secure a ‘durable solution’ to the problem of forced displacement, meaning (1) return home when it is safe to do so (voluntary repatriation); (2) local integration (settled status in the country of asylum); and (3) third-country resettlement.¹² Although these outcomes are not specified in the Convention, they are an integral part of the practice of refugee protection (UNHCR, 2003: para. 6; UN Global Compact on Refugees, 2018). Application of refugee law should therefore, as far as possible, reduce the precarity of life in exile or as a ‘returnee’ in the country of origin. This is achieved by providing those who qualify with a stable legal status, protection and opportunities for productive activity in the country of residence. When conditions in the country of origin have

improved, cessation depends on the possibility of a sustainable, secure return. This precludes applications of law that would require a 'returnee' to join the ranks of the internally displaced.

Productive value of 'settled time' under human rights law

Attachments made over time at the local level are recognised in human rights law. In some cases, even if refugee status has ceased, a former refugee may retain the right to remain in the country of residence. In Europe, the rights to family and private life under the European Convention on Human Rights (Article 8 ECHR) apply to migrants irrespective of their status (Da Lomba, 2017: p. 3). This means that any interference by the state, such as deportation, must be deemed proportionate in light of the human interests at stake. While the right to family life usually is confined to core family members and may be exercised abroad, the concept of 'private life' covers a wide range of relationships outside the core family, encompassing the 'network of personal, social and economic relations' developed since birth (*Slivenko v. Latvia*, para. 96).¹³

In its expulsion jurisprudence under Article 8 ECHR, the European Court of Human Rights (viz. ECtHR) considers the 'totality of social ties' between the migrant and his or her community, and balances this against the state's interest in removing them.¹⁴ In cases involving migrants who have committed crimes or violated their conditions of stay, states may claim an interest in upholding law and order or immigration control. For people whose refugee status has been withdrawn, meanwhile, the stated interest may be in preserving the institution of asylum for those who still need protection. The stronger the ties, and the less compelling the state interest, the more likely that Article 8 ECHR can be engaged as a defence to deportation.

While the length of stay is legally relevant, it is not determinative, particularly if the migrant has irregular status. While all long-term migrants have developed a private life in a host state, the ECtHR distinguishes between 'settled migrants' and those with a precarious status. For people who have lawfully spent most of their youth in a country, the state must have strong reasons to expel them – usually a serious criminal record.¹⁵ Irregular migrants, on the other hand, are presumed to have more 'tenuous ties' to the host state (Da Lomba, 2017: p. 4). Therefore, the bar for deportation is lower. As discussed later, temporary visa holders, especially those who have resided in the removing state for a modest amount of time, occupy a grey zone in this jurisprudence. They are not irregular (out-of-status), but nor are they provided the security of residence associated with 'settled migrants.'

Distortion and devaluation of 'refugee time': the practice of temporary protection in Norway

The policies introduced or intensified in Norway following the record numbers of asylum claims in late 2015 are based on interpretations of law that distort the two dimensions of 'refugee time' and reduce the security

of stay for people with a recognised right to protection. These policies did not arise in a vacuum; although Norway as a non-EU state is not bound by the Common European Asylum System (CEAS), it pursues a policy of alignment with CEAS legislation. In addition to seeking inspiration at the EU level, Norwegian authorities closely monitor policies of neighbouring states, especially Denmark and Sweden (Brekke & Staver, 2018: p. 5). Its laws and practices both reflect and influence developments more broadly in Europe.

In November 2015, all but two parties in the Norwegian parliament presented an 'Asylum Agreement' including 18 measures to address the perceived crisis of refugee arrivals. One measure, focused on 'temporary residence,' states that immigration authorities may immediately start the process of revoking temporary residence permits when improvements in the country of origin have taken place.¹⁶ Parliament also asked the government to propose temporary protection regimes that do not provide a path to permanent residence;¹⁷ to introduce new integration criteria for permanent residence;¹⁸ and to restrict family reunification for refugees.¹⁹ The Ministry of Justice and Security consequently released a hearing note with proposed amendments to the Immigration Act.²⁰ This 150-page document included the increased use of temporary permits, longer qualification periods for permanent residence, restrictions on access to family reunification and an expanded scope for application of the IPA. A final proposal was presented to the parliament in April 2016,²¹ which approved amendments to the Immigration Act in June 2016.²²

The new laws increased the time period for applying for permanent residence after receiving a temporary protection permit from 3 to 5 years. The prospects of temporary protection lasting beyond 5 years, meanwhile, were expanded through the introduction of non-protection-related requirements for permanent residence including proof of economic self-sufficiency, local knowledge and language skills. While neutral in form, these measures disproportionately affect female refugees who for many years after arrival participate at a significantly lower rate in the labour market than men.²³

A new provision on collective temporary protection was introduced, which explicitly does not serve as the basis for an eventual application for permanent residence. Finally, the scope for granting a time-limited, non-renewable residence permit for unaccompanied minors was expanded as a consequence of changes to the criteria for refusing refugee status on the basis of an IPA.²⁴ This means that if a minor can return to a safe area no matter how unreasonable the consequences (e.g. being separated from family, having no access to schools), he or she does not qualify for refugee status. When Norwegian authorities nonetheless determine that the minor would not have an adult caregiver in the proposed area of return, a temporary residence permit may be granted for those under the age of 18 years.

Pursuing an end to protection: cessation and revocation of residence

Another policy change involved intensified efforts to identify people whose refugee status and/or residence permit may be withdrawn. Although the legal basis for cessation is clearly spelled out in Norway's Immigration Act, actual cessation practice was, until 2016, limited to a handful of deportation cases involving serious crimes. The high administrative costs involved and the fact that those affected often have a right to remain on alternative grounds were among the reasons why this provision was not prioritised.²⁵ This changed as a result of political pressure to intensify return activities and, as the numbers of refugee arrivals fell in 2016, an increased institutional capacity to process such cases (Brekke et al., 2019: p. 18). Cessation activities have been pursued as part of a broader effort to identify people whose residence may be revoked, including for reasons related to fraud or error.²⁶

In April 2016, the Ministry of Justice and Security issued an Instruction to the Immigration Directorate on cessation of refugee status and revocation of residence permits.²⁷ While the Immigration Act *permits* cessation of refugee status, the Instruction *requires* that caseworkers apply the cessation provisions when conditions are met. In addition, they must consider cessation and eventual revocation when processing applications for permanent residence. The Instruction do not apply to refugees who already possess permanent residence, are resettled from third countries or have received collective protection in a mass influx situation.

So far in Norway, Somali nationals have been most affected by this change of practice. In 2016, the Immigration Directorate had sent its first warning to 120 refugees from Mogadishu, informing them that cessation and revocation would be considered in connection with their applications for permanent residence (Strand, 2016). By way of explanation, it stated that since the withdrawal of al-Shabaab in 2012, the situation had appeared to stabilise. The Grand Board of Immigration Appeals reviewed this practice in 2017.²⁸ It confirmed that the cessation analysis required a 'margin of security,' meaning that the grounds for refugee status disappeared *and* that the improvements in the country of origin appeared to be durable. When applying this standard to the facts in Mogadishu, a majority found that despite the state's inability to enforce the rule of law, adequate protection could be secured from the strong clan system. Despite the insecurity this practice unleashed, most of the affected refugees have been able to remain on other grounds (Brekke et al., 2019).

The Norwegian supreme court has recently decided two cases involving the cessation of refugee status and subsequent revocation of a residence permit. These judgments provide more insight into how the courts interpret 'refugee time' and contribute through their reasoning and procedures to prolonged insecurity – particularly for women and children. The first, from March 2018, addressed the legal criteria for ceasing refugee status under the Immigration Act.²⁹ The second, decided some months later, did

not substantively review the cessation decision. Instead, the court examined whether the subsequent revocation of a temporary permit interfered with the plaintiffs' right to private and family life under Article 102 of the Norwegian Constitution and Article 8 ECHR.³⁰ Interestingly, both cases concerned Afghan women who came to Norway alone with young children, and who could not return because of their 'well-founded fear of persecution' (§28 para 1(a) of the Immigration Act). The absence of a male partner was decisive in both cases for the decision to grant protection.

In the first case, an Afghan woman and her daughter came to Norway in 2011, after being separated from the woman's partner in Greece. They received refugee status because their home area in Jaghuri district was insecure and, in the absence of male protection, they could not be returned to a safer part of the country. When the woman's partner arrived in Norway, his asylum application was rejected, and his family received notice of cessation and revocation of residence rights. The question before the supreme court concerned interpretation of the cessation provisions of the Immigration Act. Did it require simply that the family no longer fulfilled the criteria for refugee status, as the Norwegian state argued? Or, consistent with the 'double guarantee' advocated by UNHCR and others, did it also require a showing of *durable* protection on the part of the Afghan government? Since the Immigration Appeals Board's decision was based on its conclusion that Jaghuri was no longer unsafe, the court determined that it had erred by not considering whether the change in security had stabilised. Importantly, the court confirmed that the criteria for cessation involve more than simply the absence of persecution or serious harm.³¹ Effective, non-temporary protection is also required. The court also seemed to recognise the careful balance of 'refugee time' constructed in law by noting that foreigners who had adjusted to life in Norway should not be returned to a precarious existence that can easily lead to further displacement and a new claim to refugee status.³²

The case was then remanded to the Immigration Appeals Board, which based its new decision on the possibility of return to Kabul instead, if conditions in Jaghuri did not meet the cessation criteria. The Oslo district court confirmed this conclusion. It held, however, that while the requirement of 'fundamental and stable' change applies to the claimant's home area, it does not apply to *other* areas.³³ In an IPA like Kabul, the only consideration would be whether the claimants have a well-founded fear of persecution or face a real risk of serious harm. Despite evidence of Kabul's deteriorating security situation, the court concluded that conditions there did not meet that threshold. In other words, it upheld a *broad*er scope for cessation of refugee status and revocation of residence when return is to a situation of internal displacement than if the refugee could return safely to his or her previous home.

To illustrate the absurdity of this logic: In the Somali cases, cessation of refugee status for persons from Mogadishu could take place if changes there are stable and durable, but refugees *not* from Mogadishu could be returned

there under less secure conditions. In this case the court constructs time (short-term protection) and space (somewhat safe places) in ways that not only expand the state's power of exclusion beyond its normative bounds but expose refugees to new forms of legal and physical precarity in their countries of origin, as internally displaced persons.

The second judgment, decided 6 months later, concerned another Afghan woman (called 'B' in the anonymised court summary), who came to Norway with her 2-year-old daughter in October 2011. B stated that she and her current husband fled their hometown of Herat in Afghanistan to escape threats related to her forced marriage to another man. On the way to Norway following a 3-year stay in Iran, the couple was separated in Greece. Although the Immigration Directorate acknowledged that B could have a 'well-founded fear of persecution' on multiple grounds, her temporary residence permit was granted in 2012 on the basis that she was a 'single Afghan woman without a male network.'³⁴ After her husband turned up in Norway, B thus received notice that her refugee status, along with her daughter's, would be recalled as the conditions for which they were granted protection no longer existed. The question for the supreme court was not whether this decision was correct (although it did confirm the appeals court's conclusions). Instead, the issue was whether the resulting revocation of her temporary residence permit was consistent with the right to private life under Article 8 ECHR and Article 102 of the Norwegian Constitution.³⁵ B's attorneys argued that as a 'settled migrant' she had a protected right to a private life, and that the revocation decision was a disproportionate interference. During the 4 years and 4 months that B and her daughter had lived in Norway until their final revocation decision, they had settled into the local community and learned Norwegian. The daughter had attended kindergarten and school.

The court, meanwhile, agreed with the Norwegian state's argument that the applicants, given the temporary nature of their residence, were not 'settled migrants' for the purpose of protection of private life. Noting that the ECtHR distinguishes between irregular migrants and 'settled migrants,' the court concluded that formal residence is a necessary but not sufficient condition for qualifying as a 'settled migrant' under Article 8 ECHR. It found a 'long-term perspective' decisive, meaning that migrants with permanent residence are settled, while those with temporary permits typically lack a reasonable expectation of stay.³⁶ Exceptionally, Article 8 can apply when the temporary status is prolonged over an extended period of time – here the court referred to a judgment from the ECtHR in which the applicant's temporary residence lasted two decades.³⁷ In the present case, however, less than 5 years had gone by between B and her daughter's arrival and the final administrative decision. The court dismissed evidence of their integration as 'typical' and therefore not legally relevant.³⁸ There was no independent evaluation of the daughter's best interest in this case, even though she spent the bulk of her childhood, from 2011 in 2018, in Norway.

If the first case underscored the tension between ‘time as attachment’ and ‘time as deadline,’ this judgment is directly concerned with the legal value of ‘time while temporary.’ First, it reinforces a disconnection between ‘settled migrant’ status and the actual passage of time in country. Protection of a human right becomes dependent on formal categories of residence determined at state discretion. As noted earlier, refugees – especially women – may be subject to protracted temporariness for reasons like the inability to pass a language or knowledge exam – which may not reflect their actual ties to a community. The fact that the daughter, meanwhile, had spent most of her life in Norway was not deemed worthy of comment. As Iltstad and Bondevik (2016) describe, Norwegian administrative practice has typically distinguished between ‘kindergarten time’ and ‘school time,’ meaning that migrant children’s attachments to the community of residence are only perceived to start at around 6 years of age (Iltstad & Bondevik, 2016). For the purpose of determining a child’s best interest, and potentially his or her right to remain, little weight is accorded to non-familial attachments formed during the earliest years.

Finally, refugee time is not only devalued but suspended during the period of appeal following the immigration authorities’ final decision.³⁹ The applicants’ attachment to Norway is assessed at the point in which the administrative decision to revoke residence was made. The passage of nearly 2 years from this point to the supreme court’s judgment, and the applicants’ incremental inclusion in Norwegian society (especially for the daughter) during that time, was found irrelevant.

Precarity of protection and the passage of time: concluding reflections

This chapter has explored the precarity created by novel state practices of refugee law. While a decision to grant refugee status has traditionally signalled an end to waiting for resolution of a refugee claim, these new and enhanced policies prolong insecurity for a potentially indefinite period. Proactive reviews of a refugee’s continued need for protection and more limited paths to permanent residence upset the careful balance established under law between two dimensions of ‘refugee time:’ Gradual inclusion in the community of residence (‘time as attachment’), on the one hand, and the possibility of return when conditions have improved (‘time as a deadline’), on the other hand. In principle, the tension between these two is managed by requiring that the withdrawal of status depends on *durable* protection in the return state.

In practice, however, Norway and other states have endorsed clans and even the institution of marriage as providers of protection for the purpose of withdrawing refugee status. They argue this protection may be limited to specific spaces in an otherwise unsafe environment. Arguments based on non-state protectors and ‘returns’ to internal displacement create a

disconnect between application of law and the lived experience of refugees – especially for women made dependent on male relatives for their mobility and protection. Children, meanwhile, suffer disproportionately from the practice of relying on the final administrative decision to ‘set time’ for assessing their rights or best interest. Large parts of their lives may be discounted. These constructions of time and space illustrate how temporary protection, introduced by states as an alternative to Convention Refugee status, has infiltrated the Convention regime and eroded the solutions orientation of refugee law.

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Notes

- 1 In reality, many refugees who meet the criteria set out in the Refugee Convention are not recognised as such, while, on the other hand, some protection needs that do not qualify as ‘persecution’ under the Refugee Convention may actually be as profound and long lasting as those that do. This suggests that differences in levels of protection based on normative distinctions between Refugee Convention refugees and beneficiaries of complementary protection risk being under-inclusive.
- 2 It should be noted that Australia has granted temporary status to Convention refugees for a longer period of time; first between 1999 and 2008 and then again since 2014. A brief overview of temporary status in Australia is available from: <https://www.kaldorcentre.unsw.edu.au/publication/temporary-protection-visas>. (accessed 12 February 2020).
- 3 Protecting Canada’s Immigration System Act, S.C. 2012, c. 17. Available from: https://laws-lois.justice.gc.ca/eng/AnnualStatutes/2012_17/page-1.html. (accessed 28 December 2019).
- 4 Changes to Danish immigration Act are described in a fact sheet published by the Danish Institute for Human Rights. Available in Danish from: https://menneskeret.dk/sites/menneskeret.dk/files/03_marts_19/faktaark_om_inddragelse_af_opholdstilladelser_-_med_header.pdf. (accessed 28 December 2019).
- 5 The law on temporary restrictions to obtaining a residence permit in Sweden. Available from: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2016752-om-tillfalliga-begransningar-av_sfs-2016-752. (accessed 28 December 2019).
- 6 For a critique of applying cessation to resettled refugees, see O’Sullivan (2019b). Available from: <https://www.asyluminsight.com/maria-osullivan#.XgNOSTsY2x>. (accessed 28 December 2019).
- 7 European Commission, Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, COM/2016/0466 final.

- 8 Article 38, Norwegian Immigration Act. Available from: <https://www.regjeringen.no/en/dokumenter/immigration-act/id585772/>. (accessed 13 February 2020).
- 9 Article 6 of the Convention provides that ‘the term “in the same circumstances” implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.’
- 10 See also UNHCR (2002= *Agenda for Protection [Global Consultations on International Protection/General. A/AC.96/965/Add.1, Goal 5.4*. Available from: <https://www.refworld.org/docid/3d4fd0266.html>. (accessed 31 December 2019); UNHCR, ExCom Conclusion No. 104, Conclusion on Local Integration (LVI) 2005 para (j.).
- 11 The loss of refugee status should not be confused with cancellation of refugee status, which happens when authorities discover that the grant of refugee status was an error in the first place, that is because material facts were misrepresented or if the exclusion provisions would have applied had relevant information been known.
- 12 See UNHCR’s Solutions webpage. Available from: <https://www.unhcr.org/solutions.html>. (accessed 29 December 2019).
- 13 *Slivenko v. Latvia*, App. No. 48321/99, ECtHR judgment of 9 October 2003, para. 96.
- 14 *Üner v. the Netherlands*, App. No. 46416/99, ECtHR judgment of 18 October 2006, para. 59 [Grand Chamber].
- 15 *Maslov v. Austria*, App. No. 1638/03, ECtHR judgment of 23 June 2008, para. 75 [Grand Chamber].
- 16 See Asylum Agreement (‘*Asylforlik*’) point 5. Available from: www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Referater/Stortinget/2015-2016/151203/2/#asylforlik. (accessed 28 December 2019).
- 17 Asylum Agreement (‘*Asylforlik*’) point 13. Available from: www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Referater/Stortinget/2015-2016/151203/2/#asylforlik. (accessed 28 December 2019).
- 18 Asylum Agreement (‘*Asylforlik*’) point 13. Available from: www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Referater/Stortinget/2015-2016/151203/2/#asylforlik. (accessed 28 December 2019).
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- 36 Norwegian Supreme Court, HR-2018-2133-A, para. 55.
- 37 Norwegian Supreme Court, HR-2018-2133-A, referring to *Abuhmaid v. Ukraine*, App. No. 31183/13, ECtHR judgment of 12 January 2017, paras. 102-103.
- 38 Norwegian Supreme Court, HR-2018-2133-A, para. 62.
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