Welcome to The Refuge

Dear Reader,

The Refuge is the revival of the IRLC’s monthly newsletter that will brief attorneys, students, and scholars of the trending topics in international refugee and asylum law. The mission of The Refuge is to provide a light, easy-to-read, review of trending news stories and legal developments that will keep readers up to date with refugee and asylum law developments.

Last issue, we discussed a great deal about the Trump administration’s executive orders regarding visa issuance targeting certain countries and the refugee program. While the future of American immigration and refugee policy remains a trending and important issue, we are glad to present a variety of international and domestic developments.

Thanks for reading, and please take a look at Page 11 for more information about The Refuge and how you can participate.

Sincerely,
Andrew Solis
Vice-Chair, Editor
Private Resettlement: An Alternative Refugee Solution?

By Anna Szabo

In the wake of the chaos following President Trump’s recent travel bans, Australians have been tempted to temporarily tune out the mess that is our own refugee situation closer to home. While the detainees held at offshore processing centres continue to be treated as animals – just over two weeks ago, Refugee Action Coalition reported that a riot had erupted amongst Manus Island prisoners over the new food distribution system – the long-term problem facing the Australian government of resettling the backlog of refugees remains a drawn-out, overly-complicated, and ineffective process.

“In 2015, 65 million people were forced to flee their homes...”

In 2015, 65 million people were forced to flee their homes, a record high since World War II. Under the UNHCR’s Resettlement Program, the Australian government recently agreed to raise its resettlement quota from 13,750 refugees in 2015-2016 to almost 19,000 by 2018-2019. But while this action received considerable national support, the damning State of the Nation report released by the Refugee Council of Australia advised that the biggest challenge facing our government in 2017 is going to be reframing the refugee crisis as a global, and not just a domestic, policy issue and correspondingly implementing a sustainable resettlement approach.

For most Australians, there is little we can do to influence decisions at a governmental level other than adding our voices to the growing disparity of people demanding a change in our immigration laws. But what we could do is privately fund the visa and resettlement costs for a refugee to enter and settle in our country.

Private refugee sponsorship is not a new idea; it’s a program that has been flourishing in Canada since 1979, and the Refugee Council USA is currently trying to get it off the ground in the United States (although between the “merit-based” immigration system offered by the Trump administration and the recent migration bans, the future of American refugee policy is highly uncertain at present). On our own shores, the Department of Border Protection and Immigration has been trialling a Community Proposal Pilot since 2013 with great success.

“Results so far have shown that there is a higher and faster grant rate for visas.”

One faith-based and four migration service organisations have been working with families and community groups willing to assist with the cost of visa applications and

1 Refugee Action Coalition, “We are not animals” – Protest erupts in Manus detention centre’, March 19, 2017.
6 The Conversation, ‘Private resettlement models offer a way for Australia to lift its refugee intake’, Sep. 19, 2016.
provide practical and emotional assistance to refugees applying to enter Australia. The demand has exceeded available places in the program, and results so far have shown that there is a higher and faster grant rate for visas than under other government resettlement options.

In Canada it is recognised that the sponsorship arrangement is mutually beneficial, allowing refugees to be welcomed into society while generating social cohesion as active citizens are engaged in the nation-building process of understanding more about people different to themselves. However, while the principle of additionality is applied to treat the resettlement scheme as a supplement to Canada’s overall national intake, the 500 spaces in the Australian pilot program make up part of our quota within our UNHCR Resettlement Program obligations. Government reviews of the Australian pilot program in the future need to focus on applying this principle of additionality, as the potential for enabling the resettlement of hundreds of additional refugees at lower costs to the government is substantial.

“There has never been a more critical time to implement private sponsorship.”

At the Refugee Alternatives Conference held by the UNSW Kaldor Centre last February, President of the Australian Human Rights Commission Gillian Triggs advised that there has never been a more critical time to implement private sponsorship.

The national outcry and the desire to do more is there. Unless we learn from the examples of progressive, socially-minded countries like Canada, we will fail to meet our international responsibilities and fail to adapt to the global climate that is changing and adapting around us.

Anna Szabo is a law student based in Sydney, Australia completing a Masters in Human Rights Law & Policy with a passion for international law and foreign policy. She is a regular volunteer with a number of human rights organizations and has been working in the non-profit sector for four years.

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THAILAND’S PROPOSED REFUGEE SCREENING MECHANISM:
WHY WE SHOULD BE PAYING ATTENTION

By Adam Severson

The United Nations High Commissioner for Refugees (UNHCR) currently screens asylum seekers in Bangkok in a process known as “refugee status determination” (RSD). However, in January, Thailand’s cabinet approved a proposal to implement a domestic refugee screening mechanism.¹ Details are scant, but the proposed mechanism will replace UNHCR RSD—at least in part—and may impact many of the more than four thousand asylum seekers currently in Bangkok.² UNHCR has applauded the move and pledged support, but the new mechanism has not received the scrutiny it deserves. Refugee advocates and the international community should be watching closely and working with the Thai government to ensure the mechanism meets international standards for two reasons.

“*The government has forcibly returned asylum seekers…to countries where they risk persecution.*”

First, while Thailand has hosted refugees for decades, it has a poor record of providing them adequate protection.³ The government will not accede to 1951 Refugee Convention or the 1967 Protocol, and it treats asylum seekers and refugees as illegal immigrants, keeping many—including children—in detention.⁴ Moreover, in recent years the government has forcibly returned asylum seekers⁵ and even recognized refugees⁶ to countries where they risk persecution. The UN Human Rights Committee raised many of these issues in its recent review of Thailand’s implementation of the International Covenant on Civil and Political Rights.

The Thai government has complained that UNHCR’s RSD process is too slow and that the new screening mechanism is needed. The complaint is valid—UNHCR is under-resourced—but there are concerns that the new mechanism may compromise fairness in order to hasten decision-making. Refugee advocates and the international community should devote resources and expertise to ensure this does not happen. The goal should be a more efficient screening mechanism, not merely a faster one. Improving efficiency means

² THAILAND FACTSHEET, ASIA PACIFIC REFUGEE RIGHTS NETWORK (March 2017), [http://aprrn.info/pdf/Thailand%20Factsheet_MAR%202017.pdf](http://aprrn.info/pdf/Thailand%20Factsheet_MAR%202017.pdf).
increasing the decision-making rate while maintaining substantive and procedural fairness.

Second, Thailand’s new mechanism is likely to impact refugee protection in the region. Asia hosts nearly four million refugees; however, only twenty of forty-five Asian countries have signed or acceded to the Refugee Convention or the 1967 Protocol, and many allow UNHCR to conduct RSD. Regional governments wanting to create their own refugee screening mechanisms will likely look to Thailand’s example. Refugee advocates and the international community should work with the Thai government to ensure the example is a good one: a mechanism that is fast but fair.

Adam is a graduate of The University of Colorado Law School. From 2012 to 2015, he represented asylum seekers applying for UNHCR protection in Egypt, Thailand, and Indonesia. He has worked for a variety of NGOs, including Africa and Middle East Refugee Assistance (AMERA), Jesuit Refugee Service-Thailand, and St. Andrews Refugee Services (StARS). From 2015 to 2017, Adam was Senior Legal Advisor at Justice Centre Hong Kong, an NGO that provides legal and psychosocial support to asylum seekers and advocates on behalf of refugees and victims of human trafficking in Hong Kong. Adam is currently a Legal Consultant for Justice Centre.

A Balance of Power
By Rekha Sharma-Crawford

To say that immigration law is inextricably tied to politics would be an understatement. In the days that followed the inauguration of a new President, US immigration policies took a drastic shift in direction. Not only were there sweeping executive orders issued restricting the travel and visa issuance policies of the US, but there was also a clear message of caution sent to those within the US as well. The message from the very top was simple: if you had no status in the US, you were now considered a priority for removal. Period.

It was as if the years of hidden frustration and discretionary restraint that was imposed on Immigration and Customs Enforcement (“ICE”) agents, was suddenly released. Soon, reports of Immigration raids filled the media outlets and photos of families in crisis began to fill Facebook pages across the nation. Much like the fear and paranoia following the 9-11 attacks, immigrant communities again began to feel the pressure of enforcement upon them. But, something had changed in the more than a decade that had passed since the attacks on the World Trade Center. Popular sentiment, perhaps already startled awake in the aftermath of the executive orders restricting travel, was unwilling to simply sit back and let darkness again fall over immigrant communities. Lawyers across the nation were engaged.

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The US Constitution recognizes two occupations as the bedrock of the checks and balances system; journalists and lawyers. Journalists hold the power of the pen, while lawyers hold the power of the courts. The Executive Order on Enhancing Public Safety in the Interior of the United States, with its broad-brush changes to who would be subject to ICE detention, its re-authorization of the Secured Communities program, and its failure to defer to States on pending criminal matters involving noncitizens, seems to be set on a collision course with the Constitution. Lawyers, organically, began to do what lawyers do: they began preparations to address, head on, issues of access to counsel, state’s rights, unlawful detentions, illegal searches, rushed judgements and due process violations.

“Neither did anything to ease the tensions rising in immigrant communities.”

Approximately a month after the Executive Order was issued, the newly minted Homeland Security Secretary issued a memorandum, Enforcement of the Immigration Laws to Serve the National Interest, clarifying its scope and implementation procedures. But, the memorandum was as flawed as the order itself and together, neither did anything to ease the tensions rising in immigrant communities throughout the nation. Both, however, gave lawyers many fronts of attack to try and stop the desecration communities would face if ICE’s increasing powers were unchecked.

Beyond the general constitutional concerns that are inherent in the Order and the memorandum, there is also a “poison pill” that threatens the foundation of federal and state cooperation. The policy, in essence, pits the state functions of criminal accountability, against the federal goal of expedited and streamlined deportation. The play for power by the federal government is so focused that financial carrots are being both dangled at the state as well as being used as a stick to force compliance. In one known instance, where a Texas municipality refused to succumb to such tactics, ICE agents targeted its communities with stricter enforcement tactics. As information regarding these increased efforts became known, a general societal outcry began to take place in condemnation of ICE’s actions. Indeed, times had changed in both the quickness of the media’s ability to report these matters and the effectiveness of legal repudiations.

“It demands that state officials, arguably, ignore constitutional protections.”

The next frontier in the legal challenges to this Executive Order will likely involve the issue of detainers. Detainers, arguably the crown jewel in ICE’s enforcement arsenal, are used to compel the continued detention and transfer of a state criminal detainee to ICE, regardless of conviction or completion of state proceedings. New policy guidance on detainers, announced on March 24, 2017, builds on the Executive Order and enforcement

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4 8 USC 1357 (“Powers of immigration officers and employees”).
memorandum to complete ICE’s efforts to heighten enforcement of immigration laws regardless of the legal soundness of the mechanisms used.\textsuperscript{5} The new detainer form, the mechanism used by ICE to request a state jailer to continue to hold an individual released by the state for up to 48 hours for the purpose of ICE assuming custody of that person, will go into effect on April 2, 2017.\textsuperscript{6} It demands that state officials, arguably, ignore constitutional protections against unlawful seizures and simply continue to act as an extension of ICE in depriving someone of their basic constitutional rights; the policy will undoubtedly again cause attorneys to rise to the occasion and mount fresh legal challenges.

In the little over two months of this administration, the revealed agenda will require lawyers to steadfastly approach ICE’s enforcement activities with an eye toward preserving constitutional protections and accountability. Given the potential these policy changes hold to tear apart whole communities, there cannot be even the suggestion of legal apathy. As the weeks and months go forward, the level of legal attacks necessary to preserve constitutional protections in the wake of these policy shifts are anticipated to rise. But if the litigation over the administration’s travel ban orders is any indication, the resilience of the judiciary and the lawyers who continue the work of keeping the balance of power in check, is robust.

Rekha Sharma-Crawford is a passionate advocate for immigration rights and has been an active immigration law litigator since 2000. With broad experiences as an assistant district attorney and private practice attorney, Rekha is a frequent speaker and lecturer on matters of immigration law. Rekha received her Juris Doctorate from Michigan State University College of Law in 1993. Rekha is licensed to practice in Kansas, Texas, Michigan, the U.S. Supreme Court and numerous federal circuit courts. Rekha is an instructor at the American Immigration Council’s Litigation Institute and active in AILA both as a speaker and author. In 2012, Rekha and her law partner husband, Michael started a non-profit legal clinic for those facing deportation through the Kansas City Immigration Court.

Shrinking Safe Spaces for Individuals Fleeing Gender-Based Persecution

By Sherizaan Minwalla

Alisa¹ fled from Iraq seeking protection in Jordan not because of the sectarian violence, which was a problem most Iraqis living in Baghdad faced, but because she faced years of sexual abuse and was imprisoned three years for being gay. Alisa, born Ahmed, never felt that she was a boy growing up in Iraq. However, others perceived her as effeminate and gay, and she faced many abuses throughout her life in Iraq. Once she was released from prison, she left the country to escape a forced marriage to her cousin, and sought refugee protection in Jordan. To attempt to protect herself, she expressed herself as a man, except for her long hair, which she kept tied up and under a hat. Her attempts failed and Alisa faced persistent harassment and sexual assault in Jordan for being perceived as gay. The US government denied Alisa’s request for resettlement based on security grounds, presumably because she had a criminal record, although she does not know for certain, since the US government does not disclose the basis of a security denial to the refugee.

Women and girls in particular, as well as those who face persecution due to LGBTQI status, face unique challenges to accessing international refugee protection for reasons linked to their gender, gender identity, or sexual orientation. The barriers to refugee protection are not new, but are exacerbated by the current massive flows of people fleeing protracted conflict, and by the response of receiving countries to restrict asylum and refugee protection.²

“The vast majority of people confronting gender-based violence find it difficult to access protection.”

The reasons people migrate are often complex and varied, but gender-based violence compels many people around the world to flee their countries when confronted with sexual violence in conflict, by government actors, or gender-based violence perpetrated by relatives or acquaintances in their homes and communities. Unfortunately, the vast majority of people confronting gender-based violence find it difficult to access protection under the current international legal framework.

¹ Names used in this article have been changed to protect the identity of the individuals.
To obtain refugee projection, a person must meet the legal definition of a ‘refugee’ under the United Nations 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, defined as:

“[A] person who, owing to a 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 nationality and is unable, or owing to such fear is unwilling to avail himself of the protection of that country...”

Claims involving gender-based persecution have evolved over the years, as gender alone is not a protected ground. A person can include ‘gender’ in conjunction with any of the five protected grounds, although many gender-persecution cases, where women are abused and threatened for asserting their rights and resisting traditionally imposed roles, frequently fall into the ‘protected social group’ (PSG) category and/or political opinion.

“The first challenge...is to cross an international border...In many countries, women and girls cannot travel alone.”

Because a person must be physically outside her country of nationality to qualify for refugee protection, the first challenge for a person fleeing gender-based persecution is to cross an international border. In many countries, women and girls cannot travel alone, because they may not be able to obtain identity and travel documents, it may be against the law or tradition to travel unaccompanied by a male relative, or, as in places like Iraq and Syria, the security situation poses significant risks, and there are many criminals engaged in human trafficking who exploit women and girls who are alone and vulnerable.

Once in a country of refuge, a UNHCR officer will interview an individual to determine if she is eligible for refugee protection and possible eventual resettlement to a third safe country; according to UNHCR, fewer than one percent of refugees are resettled to another country. UNHCR provides detailed guidance for staff conducting refugee status determinations (RSD) interviews in cases involving gender-persecution claims. This guidance clearly demonstrates the full range of gender-persecution claims that can arise under any of the protected grounds; it also provides solid guidance on how to adjudicate such claims procedurally, paying particular attention to issues of shame, trauma, fear of reprisals from family members, and the need to create a safe space when conducting RSD
Despite the useful guidance provided to officers conducting RSD determinations, victims seeking refugee status based on gender-based persecution face hurdles when officers bring bias, stereotypes, and an insufficient training to RSD interviews and adjudication of gender-persecution claims. Consider the case of Ana, an Iraqi Kurdish woman in her 30s who, before this current refugee crisis in the Middle East, fled from a forced marriage and years of abuse by her father and elder brother. Ana had a boyfriend and was no longer a virgin, putting her at heightened risk of honor-based violence from her family. When she could no longer put off the marriage, she fled to Turkey to apply for refugee protection, hoping she would be resettled to a third country. Following her interview, Ana waited for one year for UNHCR’s decision, denying her refugee protection on the basis that the officer did not find Ana to be credible. The officer stated that she did not find it believable that an educated woman able to work and travel could also face a forced marriage. The widespread lack of understanding about the dynamics of gender-based persecution, combined with stereotypes about victim profiles, presents serious challenges for people seeking refugee protection due to gender-based persecution.

“In many cases, women and girls are trafficked into prostitution.”

During the waiting period, women, girls and LGBTQI persons face heightened risks of exploitation and abuse including human trafficking. Alisa was gang raped in Jordan, and faced constant sexual harassment in public and threats of abuse. Many refugees live in deplorable and unsafe conditions in tented camps or in substandard housing among the host population. Host country governments usually prevent refugees from legally working, leading many to work in unsafe conditions for low wages. In many cases, women and girls are trafficked into prostitution by their families, landlords, law enforcement and security officers, especially those working in refugee camps with access to vulnerable populations.

Until the recent influx of refugees into Europe, most of the world’s refugees (86%) have been hosted in the Global South, in neighboring countries with fewer economic resources. As countries in the Global North severely curtail access to refugee and asylum protection, women, girls, and LGBTQI persons who are some of the most vulnerable refugees, will face greater barriers to protection. Given the many risks facing persons fleeing gender-based persecution, it is important to ensure access to safety in countries of refuge, led by humanitarian actors and host governments. It is also critical to ensure that officers to interview and adjudicate refugee, asylum, and resettlement requests are properly trained to identify and understand gender-persecution claims in accordance with UNHCR guidance, and that there is good oversight to flag improper denials such as the one that was given to Ana.

To address the unique barriers facing persons who want to flee gender-based persecution but cannot move, it is essential to address the flaws under the current system by extending protection to those who are at grave risk of harm while they are still within

\[8\] Id.
\[9\] Hansen at 12 (citing UNHCR, Global Trends: Forced Displacement in 2015, 18).
their country of nationality. This will not only protect those who would qualify as refugees except for the fact they cannot cross an international border, but it would also reduce further instances of abuse they are likely to face if they attempt such a dangerous journey.

Alisa joined the exodus of refugees fleeing the Middle East to Europe in 2015, and was recently granted residency for three years by the German government. After Ana was denied refugee protection in Turkey, she returned to Iraq, and fled again to a European country where she was able to obtain asylum protection.

Sherizaan Minwalla is a Practitioner-in-Residence at the International Human Rights Law Clinic at the American University’s Washington College of Law. She lived and worked on human rights and humanitarian programs supporting refugees and internally displaced persons in Iraq for eight years. In the US she worked for the National Immigrant Justice Center and the Tahirih Justice Center on protecting immigrant survivors of gender-based violence.

Call for Submissions!

*The Refuge* is always looking for help in providing important and interesting information to the refugee and asylum law community. We’re just getting started and have big plans for the future. Here’s how you can help:

**Short Articles:** Contributors can submit half- to one-page articles on an important refugee or asylum law development they wish to highlight. The submission should be more than a summary of a news article and should attempt to provide concise analytical discussion of an issue. Be sure to include a short bio about yourself! Please note, contributors may be asked to sign a Publication Agreement.

**Member Spotlight:** This is the opportunity for contributors to highlight their work, or the work of others, and provide a short summary of the accomplishments and importance of that work.

**Key Dates:**
- Submission Deadline: Cut-off is the 20th of each month.
- Publication Agreement Deadline: 25th of each month.
- *The Refuge* will publish the first Monday of the month.

**Submission Instructions:**
Submit your contribution to *The Refuge* editors at irlcrefuge@gmail.com by the 20th of each month to have your contribution considered.