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Avoiding refugee status and alternatives to asylum



Key points

- The prospect of improved asylum systems must not lead to the indefinite deferral of principled advocacy for other options.
- This advocacy should target options that do not involve individuals having to first apply for asylum, and they should engage actors and institutions other than UNHCR as critical players in securing protection for displaced populations. Models of protection and assistance in certain parts of the world are changing anyway in ways that throw doubt on the need for individualised status determination.
- The choice of certain Eritreans to avoid asylum in Uganda points to procedural and political shortcomings of the asylum process. Some of these can be addressed through immediate practical measures in the country of asylum, but others are increasingly coming to constitute structural features of the refugee regime.
- Refugee status is seen as a dead end by many individuals. They are aware that opportunities for durable solutions are limited, and they aspire for forms of international mobility that these traditional options are not intended to provide.
- In countries that are more permissive towards migrants of any kind than refugees, displaced individuals' desire for regularisation through channels other than asylum might suit both parties best.

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Introduction

The nature of forced displacement and state responses over the past decade has left the post-1951 architecture of refugee relief and protection overwhelmed. In numerous locations, budgetary shortfalls have resulted in humanitarian programmes contracting, and growing political antipathy to refugees has narrowed the opportunities for durable solutions. Caught between a rock and a hard place in this regressive political climate, the United Nations Refugee Agency has overseen an evolution of the refugee regime that has favoured states over refugees. Borders have been sealed off and extra-territorialised, and the legal, political

and economic rights of the persons who cross them have faced increasing constraints.

These changes have not been lost on displaced populations. Those with access to news reports, social media and real-time communication receive a picture of a global asylum system that presents risks as well as opportunities. It may, for example, involve making oneself visible to authorities in locations where trust in traffickers, peers and social networks far exceeds faith in the protective capacity of institutional structures. Many authors have therefore challenged the assumption 'that a discourse



Map of East Africa

of refugee identification and refugee rights, as defined by international conventions, will in all cases be beneficial to the refugees concerned and therefore is desired by them.ⁱ This Research in Brief picks up on that theme. It outlines why, in the context of a specific displaced population in Uganda, individuals do choose to avoid the asylum system, and what alternatives they both pursue and would prefer to it. Their responses point towards a practical set of changes that could significantly enhance protection within the asylum system in this context. But they also point towards a preference for legal pathways to regularising individuals' statuses that are discrete from the refugee regime and its labels.

Methods

This briefing is based on research conducted with Eritreans in Kampala in late 2016. Three reasons explain this choice of population and location. First, Uganda is not a short-term transit destination for Eritreans and thus many are weighing up various longer-term options, including whether to apply for asylum or not. Second, the Eritrean community in Uganda is made up of individuals with diverse migration histories. These result in heterogeneous views on migration, solutions and refugee status. Third, I approached Eritreans because while individuals left Eritrea in response to oppressive and debilitating conditions, many had made more considered plans before departing than is often the case for populations fleeing contexts of acute, violent conflict.

Due to the enormous variation in the histories, experiences and needs of displaced individuals, the opinions contained below should not be taken as generalisable. Even amongst the sample of Eritreans I interviewed, perspectives on asylum varied as a result of factors including previous migration histories, ethnicity, gender, economic situation, and family structure. As with any population, the asylum system was venerated by some individuals and avoided by others. The views of the latter group nonetheless provide insights not just into how to reform the existing system but also how to strengthen pathways to protection and security outside of it.

Avoiding asylum

There were many reasons why Eritreans chose to avoid the asylum system at various points during their exile.ⁱⁱ

Restrictions on freedom of movement: Refugees in Uganda are not required to live in camps or settlements, but they are not entitled to certain forms of assistance and support if they reside in cities. This is significantly more generous than in other countries, where refugees are either not allowed to leave the camps or must attain special permission to do so. When Eritreans complained about restrictions on their freedom of movement in Uganda, they were therefore referring to the challenges of obtaining a Convention Travel Document that would allow them to move internationally, or to how the asylum process constrained their movements for years on end because people did not wish to forfeit appointments by being out of town. Individuals also noted that their

asylum seeker registration document was rarely recognised by Ugandan authorities as a legal form of ID, leaving them unable to prove their right to be in the country.

Restrictions on the right to work: Several informants had abandoned Refugee Status Determination (RSD) procedures in the camps in Sudan or Northern Ethiopia because observing others further through the process had made clear that refugee status would do nothing to enhance their socio-economic position. There were few opportunities to work within the camp, and restrictions on obtaining employment outside of it. Recent changes in Ethiopia may have improved the situation there but, as others have noted, the Jobs Compact is unlikely to change the availability or type of work that Eritreans in the country do.ⁱⁱⁱ While refugee status opened up the possibility for individuals to work legally in Uganda, Eritreans' fear of law enforcement officials meant that most refugees continued to work with co-nationals who they trusted not to exploit them. Those with some initial capital said that they would prefer to exhaust other routes to employment before entering the asylum pipeline. Janmyr and Mourad similarly observed Syrians in Lebanon debating whether securing residency and access to employment through local registration and the kefala system would be preferable to the putative benefits of refugee status.^{iv}

The lack of durable solutions: More often than not, Eritreans with and without status saw the granting of refugee status as the end point of the asylum process. Few Eritreans genuinely considered that refugee status would translate into them accessing a durable solution. On a global scale, the rising number of individuals in protracted refugee situations, and the increasing average duration of their displacement, validates this scepticism. Eritreans in Uganda understood resettlement as available for three groups: those with extreme vulnerabilities; those with relatives or sponsors outside; and those who had the money to pay for it. Repatriation was a matter of personal conviction and, with the exception of one individual who felt that they had made a mistake in leaving, nobody wished to return before Eritrea's ruling party had gone. In terms of local integration, people either knew that it was a

prohibitively lengthy process in Uganda and/or it was not an option they wanted.

Refugee status as a politicised identity:

Eritreans voiced concern that applying for asylum would negatively impact upon their relatives, relationships and reputation at home. There have been reports of the Eritrean government harassing and even arresting the family members of individuals who leave the country. Part of this derives from asylum claims being read as a negative commentary on conditions in the country of origin. Even if they opposed Eritrea's ruling party, some preferred to pay the 2% tax and travel on an Eritrean white paper or passport rather than jeopardise either their opportunities to return or the positions of their family members in Eritrea. Others, exclusively young single men, said that they would only apply for asylum if they had exhausted all alternatives, as they did not wish to self-identify as refugees. They saw asylum as reserved for those who did not have a plan upon leaving Eritrea, or who had failed to make a success of their journey. Individuals from across the sample population, however, said that they would prefer to be identified as 'workers' than as refugees.

State institutions as sources of persecution:

Contacting state institutions is associated with risks, as well as benefits, for displaced populations. The situation of Eritreans in Sudan epitomises this. Since a series of deals was struck between the Sudanese government and the European Union, the authorities in Sudan are seen to be kowtowing to the European migration agenda at the expense of the rights of refugees. Individuals worried that even if they had possessed refugee status, this would not have protected them from being imprisoned and deported back to Eritrea, as has been the fate of hundreds of their co-nationals in recent years. Whenever possible, Eritreans thus left the refugee camps in Eastern Sudan and avoided state institutions in the capital.

The same was true in Uganda. Even those with refugee status avoided the police. They felt targeted for bribes by law enforcement officials who saw them, for various reasons, as wealthier than the general population. Refusing to pay up would result in threats of imprisonment and deportation. If individuals had a problem they would instead seek assistance from local faith groups, refugee-led organisations, trusted Ugandans, and Eritreans in the diaspora or still in the country of origin. UNHCR, in its gated compound in an upmarket suburb of Kampala, was deemed inaccessible to urban Eritreans. Contact with the Office of the Prime Minister's Refugee Directorate (OPM) was kept to a minimum, as its staff members were criticised for intimidating refugees, demanding bribes and, in some instances, requesting sexual favours in exchange for services. The opacity and unpredictability of asylum procedures fuelled applicants' suspicions about widespread



A street in Asmara, Eritrea, during independence celebrations. Photo: Georgia Cole

corruption within the organisation, and the absolute lack of respect shown for refugees' time, money and dignity discouraged many individuals from engaging with OPM.^v

In this context, however, where Eritreans are not considered a security threat by the Ugandan government, authorities were not too concerned about individuals who remained unregistered. As research across the globe has highlighted, governments balance reasons for controlling asylum seekers against competing impulses such as the need for a low-skilled, low-paid and often informal work force, and the knowledge that fewer asylum applications suggest that refugees numbers are going down.

Asylum procedures as a waste of time and energy:

One of my research respondents memorably informed me that we would not be able to make sense of her rejection letter from OPM because she had used it to light her *sigiri* (a Ugandan cooking stove). After a year of no word from the organisation, and numerous unsuccessful and expensive trips to their office, the letter stated that she had not been awarded asylum, indicated one of six reasons why her application had failed, and sketched out how she could lodge an appeal if she wished to. She had decided not to re-approach them. She was not sure how refugee status would help her, and she felt that there was less anxiety associated with boycotting these procedures altogether than in letting them rule her life. Several others spoke of the calm that descended when they gave up on gaining refugee status, having realised that the benefits of asylum did not outweigh the abusive and demoralising means of getting it.

Refugee status underdelivers: For those who had hoped that being granted refugee status would fundamentally transform their lives, the reality was unsurprisingly disappointing. Though it translated into a nominal set of rights, individuals received no automatic set of benefits. Only the most vulnerable Eritrean refugees were given permission to live in one of the country's refugee settlements, and living conditions within these spaces were roundly condemned. Refugees were denied access to travel documents, and told

that refugee status did not confer on them the right to move freely from the country.

One young man explained that if, like him, you had risked a huge amount to leave Eritrea, the opportunity that asylum provided to 'tick over' in Uganda was not enough. He saw the continuing struggles of recognised refugees in Uganda and surmised that it was not worth the time and money to simply transfer into the next stage of limbo. He explained that this disappointment was why many of his peers, who had actively decided not to travel to Libya upon leaving Eritrea, were re-embarking on journeys north. Being awarded asylum simply initiated a new process of waiting, only this time it was less clear what for.

The positives: While this short briefing focuses in on how and why individuals avoid asylum, there are, of course, reasons why refugee status remains the preferred option for many displaced individuals and communities. For the Eritreans who I spoke with, refugee status was overwhelmingly associated with protection and security. 'Protection' was largely understood from a social and economic perspective. Even if asylum did not translate into a job or any kind of material assistance, it obliged government offices to serve you, banks to allow you to open accounts, and employers to accept your applications because it gave people the legal right to work. For the absolute minority, it also opened the door to the services of UNHCR and its implementing partners, which had proven critical for a small number of my interlocutors. The traditional physical and legal protections associated with asylum, such as non-refoulement, were seldom alluded to, perhaps because there was no precedent of forced returns from Uganda.

By 'security', Eritreans meant the security to move around the country without fear, and the security to work legally, without the fear of deportation. As one lady in her late twenties stressed, 'even if you have status, you might not get a job but at least you have a chance.' The legal right to work and retain that employment, and the sense of purpose and independence that came with a job, was the single most important goal amongst the Eritreans I interviewed. Achieving this was, however, made possible by security of movement and residency, which opened up the city for Eritreans. Without any documentation to prove their right to reside there, individuals feared leaving their homes in search of work in case authorities stopped them. Finally, refugee status provided psychological and emotional security by validating people's trauma and finally allowing them to make plans: 'As an asylum seeker, you think in three month intervals. Refugee status is for five years, so you can start thinking and moving freely, otherwise you are just always thinking about the rejection letter from OPM.'^{vi} It also raised the possibility, however improbable for most, that one day they might be resettled.

Applying for refugee status thus remains the default option for Eritreans in Uganda because it is seen as the principle route to securing the right to move without harassment from state authorities, and the right to employment. In this sense, it was pursued for proximate advantages and rights that are not exclusively granted through refugee status, rather than for long-term solutions – such as resettlement and local integration – that are uniquely associated with the granting of asylum. Those with the economic, social or political capital to secure these rights through other means preferred to avoid asylum altogether.

Who is responsible for the shortcomings? And what can be done to fix them?

Eritrean's 'lived critique' of refugee status highlights several procedural, political and structural shortcomings of the asylum process. This raises a set of questions: Is post-1951 refugee status, and the procedures that accompany its attainment, fundamentally flawed? Or is the issue less about refugee law and policies than the inability of the UN and other refugee organisations to enforce and uphold it? Or, is the key issue one of political will, and the reluctance of countries of asylum and origin to ascribe full rights to displaced populations?

One level up from this scale of questioning, however, is the need to ask whether, if we presume that the faults of the asylum system lie in multiple locations, there is any likelihood of significantly redressing them. In other words, even if the flaws in the current asylum landscape could be pinpointed to collective action failures, legal caesuras and UNHCR's conflicted mandate, how solvable are these issues? Scholars like Chimni and Jacobsen have long adopted fatalistic views on the ability of the refugee regime to recentre on refugees' rights rather than states' interests, and UNHCR's activities in recent years suggests that it has neither the political space nor appetite to prioritise legal and political solutions over assistance and access.^{vii} The prospect of improved asylum systems must not therefore lead to the indefinite deferral of principled advocacy for other options.

It is here therefore that we should learn about alternatives to asylum through the actions of those who have chosen to, and been able to, avoid it. They have sought and found ways, albeit often imperfect, to regularise their situation in exile without having to first exhaust money, emotional energy and vast amounts of time in asylum systems.

Alternatives to asylum

The population of Eritreans that I interviewed recounted various ways in which they sought to secure their position without applying for asylum. Acquiring **alternative forms of documentation** was one option. Highly localised residence permits were the most widely used, as local government chairpersons would assist individuals in procuring a card that gave them the right to move around specific neighbourhoods in Kampala. A number of wealthy Eritrean businessmen from South Sudan and Angola had business or work visas, though the cost of these was prohibitive for the majority of Eritreans I spoke with. Elsewhere in Uganda, Lucy Hovil has observed Sudanese refugees obtaining poll tax tickets in order to live and work outside of the refugee camps, and Ayla Bonfiglio has noted how Congolese interviewees sought educational opportunities in Uganda so that they could enter as 'international students' and not refugees.^{viii} Others, despite their fear of the Eritrean government within the country, chose to pay the 2% diaspora tax to the Embassy in order to renew their ID documents, travel on their passports and secure their families and assets back home. Most individuals I spoke with would have preferred a **3-5 year fixed-term residency card or work permit over refugee status**.^{ix}

There were a small number of individuals who got by with no documentation by staying close to their homes, and by learning when and where law enforcement officials

would most likely be. **Avoiding contact with the state** was a technique honed through similar experiences in Eritrea, Sudan, Israel and most locations that individuals had passed through. This was made easier through acts of solidarity. Several interlocutors recounted how their relative security depended on the goodwill of other Eritreans or local Ugandans. Business licenses and rental agreements were registered under the name of Ugandan friends and benefactors. Many of the single mothers I spoke to were receiving, or had received, some financial support from unnamed Eritrean benefactors, which for some stretched to house rent. Those with residency cards thanked the local chairpersons for facilitating this process.



Premises of an Eritrean refugee and mechanic in Kampala, Uganda. Credit: Naohiko Omata

A large number of those I spoke with had left Eritrea and first **moved to countries where there were jobs, but no formal asylum**. Tens of thousands of Eritreans moved to Israel to find employment. When this opportunity was legally and physically walled off from them, they were forced to find another route to regularising their status in exile. After South Sudan's independence, the Eritrean community there massively expanded and flourished. The economic collapse and resurgence of violence in Juba had forced many of these individuals to relocate to Uganda where they were biding their time in 2016, waiting until they could return to South Sudan. Eritreans have also moved en masse to states within the Gulf Cooperation Council. Those Eritreans who mentioned the Gulf as a possible or desirable destination were aware of the exploitation that most migrants faced there but saw it as one of their best options for employment. The strategies that individuals pursue to establish protection and a future for themselves in countries where asylum is not an option warrants more, less normative, research.

Finally, the relative porosity of the Eritrea-Sudan border for lowland, Arabic-speaking Eritreans has enabled certain individuals to cross back and forth between the two countries, resulting in the emergence of circular economies in this region. When the border between Eritrea and Ethiopia has been open in 2018 and 2019, tens of thousands of individuals have entered Ethiopia. A large number have applied for asylum, but a significant minority has also returned. In both instances, while net movement has definitely been out of Eritrea, the **option of legal movement** has enabled round trips for business, leisure and short-term political respite. For several interlocutors in Asmara, the ability to travel to and from Ethiopia was what they needed to encourage them to stay in Eritrea. In this instance, protection-sensitive **bilateral and regional mobility agreements** have long been touted as providing an alternative option for individuals who need or wish to move to neighbouring countries but do not want, or

have no claim to, asylum. Access to these should not involve individuals having to first be immobilised in the refugee regime: it should kick in before or instead of that process.

Similar calls for institutionalising labour mobility for refugees have been made in the past, but have primarily targeted UNHCR to push for this.^x These initiatives' limited success to date suggests that institutions and actors other than refugee agencies should be further engaged, and positioned as critical players in securing protection for displaced populations.

Importantly, the act of avoiding refugee status should not be interpreted by states as an indication that individuals do not have valid claims for asylum, or as a future bar to them applying for refugee status should their circumstances change. For the population of Eritreans arriving in Uganda from Israel, however, their decision to first enter the Israeli labour market has been taken by the Ugandan authorities to mean that they are not refugees. At the time of my fieldwork, individuals with this migration history were therefore being told that they could not register for asylum. This stance is both legally indefensible and practically short-sighted. Unlike the over 80% of Eritrean applicants who are awarded asylum in the EU-28 countries, less than 0.5% of Eritrean applicants receive refugee status in Israel. This does not mean that they are not refugees; it suggests that many have yet to be recognised because of Israel's restrictive asylum system. Individuals should therefore be granted the right to seek recognition of their refugee status in Uganda. Practically, dictating that individuals who leave their country must opt between labour migration or asylum, and that choosing the former option would forever preclude you from recognition of the latter, may discourage individuals from attempting to regularise their status through alternative channels. This would undermine individual autonomy by forcing them towards the asylum system, while increasing the number of claims being immediately lodged.

Implications

This all begs the question: what are the opportunity costs and benefits for individuals, organisations and states of requiring a population like the Eritreans in Uganda to first regularise their stay through the asylum system rather than through the issuance of residency cards, work permits or another status that would enable internal freedom of movement and the right to work? Undeniably the costs of acquiring refugee status are considerable for all the individuals involved. The quantifiable expenses for refugee-serving organisations are dwarfed by what this process costs those seeking asylum. It claims their money in transport, bribes and secretarial fees, their time in minimum quarterly visits to the hard, wooden benches outside OPM's offices, and their emotional energy, which could be more productively invested elsewhere. The dividends of being granted status are enormous for those with specific needs, and for those who require it to access a resettlement opportunity. But for those whose priority is to regularise their temporary stay in Uganda, applying for asylum constitutes a convoluted and costly way to access the substrates they need to build independent lives in the country.

Models of protection and assistance in certain parts of the world are changing in ways that throw doubt on the need for individualised status determination. States are being lobbied to allow refugees to live and work in urban areas, which has seen freedom of movement substituted in for humanitarian assistance, and there are ongoing efforts to integrate services and support for displaced individuals into national systems as part of 'whole of society' approaches. As these 'mainstreaming' initiatives gain traction, much of the groundwork is being laid for the emergence of *prima facie* statuses that would bestow immediate rights on nationals from certain countries. This might involve displaced individuals choosing whether to forfeit some rights – such as to one of the three traditional durable solutions, or to living in a camp – in favour of a pared back option, but research like this suggests an appetite amongst certain displaced individuals for policies that provide more immediate access to an alternative set of rights. Furthermore, in countries that are more permissive towards migrants of any kind than refugees, displaced individuals' desire for regularisation through channels other than asylum might suit both parties best.

Endnotes

ⁱ Polzer, T. (2009) 'Negotiating rights: the politics of local integration', *Refuge: Canada's Journal on Refugees*, 26(2): 92–106, p95.

ⁱⁱ In such a context, I use the word 'choice' to imply the availability of other options, not to suggest that decisions about whether to pursue alternative avenues are made in contexts of full access to information or absolute freedom, or that they are equally accessible to all. In this case, it should nonetheless be noted that men and women, single and with families, and with various degrees of financial security chose not to opt for asylum, albeit for very different reasons depending on their position.

ⁱⁱⁱ Gordon, J. (2019) 'What Ethiopia can learn from the Jordan Compact', *Refugees Deeply*, 18th February, Available at: <https://www.newsdeeply.com/refugees/community/2019/02/18/what-ethiopia-can-learn-from-the-jordan-compact>

^{iv} Janmyr, M., & Mourad, L. (2018). 'Modes of Ordering: Labelling, Classification and Categorization in Lebanon's Refugee Response', *Journal of Refugee Studies*, 31(4): 544–565.

^v How this ambivalence plays out in European and North American contexts is not explored here, but work by others corroborates that the violence inflicted by asylum services discourages refugees from approaching them in numerous contexts. These criticisms are not unique to government bureaucracies in the Global South.

^{vi} Mehret (Female, late 50s), 6 December 2016.

^{vii} Chimni, B. S. (1993) 'The meaning of words and the role of UNHCR in voluntary repatriation', *International Journal of Refugee Law*, 5(3): 442–460.; Jacobsen, K. (2002) 'Can refugees benefit the state? Refugee resources and African statebuilding', *The Journal of Modern African Studies*, 40(4): 577–596.

^{viii} Hovil, L. (2002) 'Free to Stay, Free to Go? Movement, Seclusion and Integration of Refugees in Moyo District', Working Paper No. 4, Kampala: Refugee Law Project; Bonfiglio, A. (2016) "'I'm not a refugee, I'm an international student". Finding Protection through higher education', Presentation at the International Association for the Study of Forced Migration Conference, 12–15 July 2016, Poznan, Poland.

^{ix} UNHCR has recently issued a report on 'Safe pathways for refugees', in which it emphasises the need to expand family reunification, work and student visas to displaced populations, including Eritreans (2018; report available at: <https://www.unhcr.org/5c07a2c84>). In this case, however, expanding these pathways for all Eritreans, regardless of refugee status, would allow individuals to apply directly for these visas without having to first go through the arduous, and at times arbitrary, asylum process.

^x Long, K. and Crisp, J. (2010) 'Migration, mobility and solutions: an evolving perspective', *Forced Migration Review*, No 35, Available at: <https://www.fmreview.org/disability/long-crisp>

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Cover photo: View of central Kampala, Uganda.

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