

Resilience and Human Rights: Examining the Case of MENA Migration

Dr. Elspeth [Guild](#)

Jean Monnet Professor ad Personam

Queen Mary University of London

Introduction

Resilience and its relationship to international human rights standards has, so far, been examined primarily in the context of socio-economic rights (A/HRC/10/5) with some regard to climate induced poverty, migration, and conflict. In the MENA region resilience is most frequently used in policy discussions and documents with Western neighbors led by the European Union. In those discussions it is increasingly used as a policy tool. While much of the academic literature on resilience and migration focuses on climate-change induced movement of people, resilience (rather vaguely defined) has become a key component of EU policy towards the MENA region in particular in the wake of the Syrian civil war. Further the object of resilience in the EU approach has become increasingly opaque including refugees and migrants, but also host communities as well as local and national authorities and civil society in general. In this contribution, I will seek to clarify the policy purposes related to the use of the term resilience in this regional setting with specific regard to migration and its link to international human rights standards to which all relevant states are parties.

The Arrival of Resilience as a Tool of Inclusive Governance

While the concept of resilience has a long history, its use in the context of governance is fairly new. From its origins in ecology as a way to understand environmental adaptation to severe degradation (Holling 1973), it was not until 2011-12 that it appeared in European policy documents as a tool for use in development and humanitarian actions (Anholt and Sinatti 2020). In EU policy documents it is defined as the ability of an individual, group, country, or region (note the very wide object) to withstand, adapt and quickly recover from stresses and shocks (EU Commission 2012). As a public policy tool, resilience was rapidly critiqued in the academic community on the basis that it makes the object, the crisis struck entity, responsible for recovery rather than the government authorities

normally responsible for safeguarding their people (or in the case of development policy, the state recipient of development assistance) (Chandler 2014; Evans and Reid 2014).

Resilience as a policy tool was incorporated into EU humanitarian-development policy as a new way of framing international cooperation in the field. The term has been useful to the EU institutions in this context as a way to conceptualize aid and assistance as a way to assert the primary responsibility of national governments to achieve resilience (EU Commission 2013). It also heralds an extension of the concept of resilience from people who must recover from crises to state authorities themselves as responsible for strengthening governance capacities to withstand crises and shocks. As Syria descended into civil war after 2011, resilience began to appear in the context of refugee reception. With the flight of substantial numbers of refugees from Syria in 2015+ into other countries in the MENA region, the Commission applied the concept to reception and integration of Syrian refugees (EU Commission 2016). One of the objectives of the Commission as regards this policy was to stabilize the very substantial numbers of Syrians refugees in particular in Lebanon, Jordan and Turkey so that they would not move on to the EU (Anholt and Sinatti 2020). By 2012, the United Nations High Commission for Refugees had also included resilience skills as a component for refugees in the context of the Syrian refugee crisis in its regional response plan. However, this UN body has been quite reticent to incorporate the tool of 'resilience' in its documents both as regards refugees themselves and state authorities. The United Nations Development Programme, however, has incorporated this language centrally into its approach to assistance of Syrian refugees (UNDP (2014)). Central to its resilience approach is the identification of those households, communities and institutions which are vulnerable and thus in need of more resilience in the context of refugee arrivals. The intertwining of individuals, families, communities and state authorities as the objects of resilience building in development related activities creates a number of questions in addition to the foundation of resilience as constituting a shift of responsibility to those identified as vulnerable and thus in need of developing their resilience. However, for the purposes of this discussion, the coherence of the use of a tool of resilience with international human rights standards is my focus.

Resilience in the Development-Humanitarian Nexus

It is no surprise that the tool of resilience emerged in the area of the development-humanitarian nexus. Both these areas are only tangentially engaged with rule of law compliance and human rights standard setting. International development is traditionally engaged with economic development based on indicators and objectives. Humanitarian aid is primarily focused on logistical assistance for

those in crisis or disaster situations. Both are closely tied with assistance from states which are not in crisis to those facing greater stresses. Neither are addressed directly at the rights of individuals. Notwithstanding efforts to reconceptualize development (Sen 2001), it remains a field little touched by international human rights standard setting (Guild 2020). Refugee status, however, is a right of those in need of international protection recognized in international law. The main international convention which sets out the right of refugees is the UN Convention relating to the status of refugees 1951 (and 1967 Protocol) where the key right is that of non-refoulement (the right not to be sent back to a country where the individual has a well-founded fear of persecution). For those persons with such a well-founded fear and consequently a right to non-refoulement, there is a wide range of socio-economic rights which states parties to the convention are under a duty to provide. However, this convention is not widely ratified in the MENA region (Turkey being an exception) and thus MENA states are not under an obligation to fulfil its conditions.

International Human Rights and Resilience

All MENA states, however, are parties to the UN Convention against torture and other cruel, inhuman, or degrading treatment or punishment 1984 and to both the International Covenant on Economic, Social and Cultural Rights 1966 and the International Covenant on Civil and Political Rights 1966. The individual right to non-refoulement to torture is a core duty of states which has ratified the Convention against torture (article 3). This means that anyone present in a MENA state in respect of whom there is a real risk that he or she will be tortured if returned to his or her country of origin has a right to stay in that MENA state for as long as the risk exists (or the person is resettled to a safe country). While present in that MENA state, the individual is entitled to rely on the rights contained in the two Covenants (which MENA states have ratified) which include the right to work and just working conditions, adequate food, clothing and housing, physical and mental health and education ICESCR); the right to liberty and security, fair trial guarantees, freedom of movement, equal access to courts and tribunals and protection of privacy and family life (ICCPR). Clearly, in respect of Syrian refugees in the MENA region, there are substantial issues regarding delivery of these rights (Fakhoury 2020). But gaps between obligations and compliance do not cancel out the obligation of the state. They are state failures to take positive steps required of them by international standards to which they have voluntarily committed themselves. States are not obliged to ratify international conventions; they chose to do so and by doing so accept their legal duty in international law to comply with those conventions.

The language of resilience and the deployment of a development-humanitarian crisis management approach does not change the international human rights obligations of states. This is not an either/or choice which states (or indeed, international bodies) can make. People are entitled to human rights by law. They may also be vulnerable and on that basis provided with development aid or humanitarian assistance in order to strengthen their resilience. But that provision of assistance or aid does not extinguish a state's duty to deliver human rights. Where a state is facing a public emergency, which threatens the life of the nation, human rights conventions have a formal procedure which states must follow to derogate from some human rights (but not all).

The rights versus resilience framing in the humanitarian-development approach is rarely made explicit. Instead, institutions promoting resilience approaches to refugee protection tend to avoid the language of rights altogether. This is particularly true of the EU Commission, where its policy documents on the Syrian refugee crisis in the MENA region are conspicuous for the absence of the language of human rights. UNHCR has been much more circumspect about the use of the concept of resilience, not least as among its duties is upholding the standards of the Refugee Convention which is rights based. The acceptance by MENA states of their duty of non-refoulement in respect of anyone at risk of torture if sent home (the Convention against Torture), coupled with the socio-economic and civil rights in the Covenants (also ratified by the MENA states), provides a strong basis in international law for refugees in the region to claim rights.

A Human Rights Implementation Gap in the MENA Region?

One argument for the use of development and humanitarian frameworks to address refugee protection in the region is that MENA states are resistant to a human rights-based approach. The less legal development/humanitarian approach which does not include rights on which individuals can rely regarding their treatment, it is argued, gets around this resistance. But this comes at a great cost to individual refugees and migrants whose entitlement to treatment consistent with international human rights standards is not part of the EU approach (or the conditions for funding).

Further, the argument itself is of dubious validity if one looks at the UN mechanisms to encourage states to comply with their international human rights obligations. There are a range of supervisory mechanisms which apply to each of the relevant treaties. The most recent (dating from 2005) and comprehensive is Universal Periodic Review (UN-UPR), a peer-to-peer review mechanism under the UN's Human Rights Council where states are examined by a panel of representatives of other states, members of the Human Rights Council in respect of all the international human rights conventions to

which they are party.¹ The UN-UPR process includes reports from states being reviewed in each cycle regarding their compliance. In the MENA region both Jordan and Lebanon have been subject to review in which they have been cognizant of their human rights obligations and committed to upholding them. Jordan was subject to review in 2019 resulting in a report to the UN General Assembly (A/HRC/40/2). The Jordanian authorities confirmed that “Jordan will continue its efforts in implementing its constitutional, international obligations with a view to protecting human rights and fundamental freedoms while building a state of institutions and law.” (para 600). Lebanon is scheduled for UPR review on 18 January 2021. In the national report submitted, the authorities state, in relation to a recommendation raised by other UN supervisory bodies, that “Lebanon has not signed the 1951 Convention relating to the Status of Refugees or its 1967 Protocol but it does adhere to the principle of non-refoulement as stipulated in the Convention.” This is followed by confirmation of its compliance with the Convention against torture (paras 192 and 193, A/HRC/WG.6/37/LBN/1). Further as regards a specific socio-economic right, that to education, the report states: “The pressure on the absorption capacity of State-run schools has led the Ministry of Education and Higher Education to adopt double-shift teaching which has led to a gradual increase in the number of displaced Syrians who benefit from educational services: 210,000 in 2019 as compared with 30,000 in 2012.” (para 204 A/HRC/WG.6/37/LBN/1). Clearly, the Lebanese authorities are willing to take measures to comply with their obligations under the ICESCR to provide education including to refugee children.

The evidence indicates that countries in the MENA region take seriously their international human rights obligations, including in respect of refugees and asylum seekers. This international duty constitutes the bedrock of individual rights of refugees. This rights-based approach may be accompanied and complemented by development-humanitarian aid and assistance which can contribute to the achievement of state compliance with international standards. While there are many gaps in delivery of human rights to refugees, this is not because of an unawareness on the part of state authorities of their obligations. Full implementation of these rights is very much in line with the official position of MENA states at the UN and as such a legitimate objective for other parties, such as the EU, to work towards. The addition of development-humanitarian policy tools such as resilience may be useful in some circumstances, but they must never overshadow real rights of refugees and others which are a core component of state authorities’ obligations.

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¹ Established in 2005: [General Assembly resolution 60/251](#).

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