Chapter 2
International Human Rights Frameworks in Relation to National Family Reunification Policy and Administrative Practice

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Many chapters in this book deal with obstacles to family unity and the challenges of family separation. These obstacles and challenges often emerge as a consequence of legal restrictions, harsh policies and administrative hurdles to family reunification. In this chapter, we explore these obstacles and their consequences in Sweden, Finland, Germany, the United States, Brazil, Israel, Lebanon and Jordan. These

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countries, most of which are discussed further in other chapters of this book,[1] are mostly migrant-receiving countries. Some countries, however, can be considered temporary host countries or transit countries for forced migrants – a special situation which allows us to look at obstacles to family reunification from a novel point of view. This introductory chapter therefore provides background information for the other chapters, in which the effects of regulation and family separation are explored in greater detail.

As the formal process of family reunification is available only to those migrants who have received regular residency status, this chapter mainly considers the right to family reunification of refugees and other beneficiaries of international protection. However, in many cases, forced migrants face difficulties in acquiring international protection and residence permits. We therefore mention the circumstances of asylum seekers and rejected asylum seekers as well and consider their efforts to secure a better future for their families. After all, human rights should in principle belong to all, regardless of migration status. In practice, however, human rights obligations regarding forced migrants' right to respect for family life remain rather vague. In this introductory chapter, we show that there are different types of obstacles to family reunification in national law, reflecting the lack of clear rights to family reunification in international and human rights law.

2.1 International Human Rights Frameworks for Family Reunification

In the context of international law, there is no general international agreement explicitly regulating the entry of foreign citizens, let alone an agreement that would secure family reunification for all migrants (Klaassen, 2015, p. 35; Peers et al., 2012, p. 248; Perruchoud, 2012, pp. 123–125). International obligations relevant to family reunification are found only in some human rights treaties and are realized mainly through the findings of treaty bodies and in the jurisprudence of some regional human rights courts. Interestingly, the most relevant and far-reaching obligations stem from instruments that do not specifically regulate migrants' rights.

The UN Convention Relating to the Status of Refugees (1951) and its amending protocol, the Protocol Relating to the Status of Refugees (1967), together form the only international agreement that specifically protects the rights of forced migrants. The convention and protocol prohibit refoulement, the return of refugees to a country where they face persecution. The definition of refugee in Article 1 of the convention is very specific, but some regional agreements, including the 1984 Cartagena Declaration on Refugees, issued by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama and relevant in the case of

[1] Due to changes during the writing process, the book does not include a separate chapter on Sweden.

Brazil, have adopted a wider definition (conclusion III (3)). The Refugee Convention does not create binding legal obligations regarding the entry of refugees' family members, but the final act of the conference drafting the convention included important recommendations, notably the principle of family unity, extending the rights granted to a refugee to members of his family and 'ensuring that the unity of the refugee's family is maintained'.[2] All of the countries discussed in this chapter are bound by the Refugee Convention, with the exception of Jordan and Lebanon.

The jus cogens principle of non-refoulement is now regarded as customary international law and binding on all states (Goodwin-Gill & Adams, 2021, pp. 300–306). This obligation also arises indirectly from Article 7 of the UN International Covenant on Civil and Political Rights (1966), which requires states to avoid subjecting individuals to ill-treatment and binds all the countries discussed in this chapter. Non-refoulement in this context prohibits the return of individuals 'to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm' (Office of the UN High Commissioner for Human Rights, 2018) irrespective of the cause of the harm or the conduct of the individual, making it of wider application than the Refugee Convention. The non-refoulement principle does not, by itself, create a right to family reunification. However, individuals who cannot be returned to a state under the non-refoulement principle cannot reunify with their families there, either, strengthening their family reunification claims in the countries where they are residing.

All the countries discussed in this chapter, except the United States, are parties to the UN Convention on the Rights of the Child (1989). Article 3 of the convention requires a child's best interests to be a primary consideration in all decisions that concern them, implicitly including decisions relating to their own or their parents' immigration status. This obligation is far-reaching: the Committee on the Rights of the Child has deemed it a freestanding right and a principle of legal interpretation, requiring procedural guarantees.[3] Article 9 of the Convention on the Rights of the Child prohibits family separation, and Article 10 requires that family reunification applications involving a child be dealt with 'in a positive, humane and expeditious manner', currently the strongest explicit commitment to family reunification in international law. Article 22, paragraph 2, applies to refugee and asylum-seeking children and requires states to assist in family tracing and family reunification. The Committee on the Rights of the Child has also concluded that refusing family reunification to children under 18 because of an age limit set in national law breaches the convention.[4]

[2] Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, UN Doc A/CONF.2/108/Rev.1 (25 July 1951), sec. IV, recommendation B.

[3] General Comment No. 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration, UN Doc CRC/C/GC/14 (29 May 2013).

[4] Concluding Observations: Denmark, UN Doc CRC/C/DNK/CO/3 (23 November 2005), paras. 30–31.

While international human rights instruments do not otherwise refer directly to family reunification, there are many references to the protection of family life in general, such as in the Universal Declaration of Human Rights (1948). Notably, Article 17 of the UN International Covenant on Civil and Political Rights, to which all the countries discussed in this chapter are party, prohibits 'arbitrary or unlawful interference' with family life, while Article 23 recognizes family as 'the natural and fundamental group unit of society' and requires its protection. The Human Rights Committee, which monitors implementation of the covenant, has stated that the concept of family must be at least as wide as usually understood in the receiving country[5] and that complete denial of family reunification would be against the covenant.[6] In 2016, the Human Rights Committee recommended that Slovenia 'consider steps to facilitate the process of family reunification for beneficiaries of international protection'.[7] Occasionally, the expulsion of long-term residents has been found to violate family life rights.[8]

The general rights to family life in international human rights instruments are reproduced in various regional human rights instruments, including in Article 8 of the European Convention on Human Rights (1950, ECHR), adopted by the Council of Europe, and in Articles 11 and 17 of the American Convention on Human Rights (1969), adopted by the Organization of American States. Regional courts adjudicate individual complaints – for these regions namely the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR). Human rights courts emphasize that states have the right to control entry and set restrictions and conditions, but they also expect that such restrictions not be unlawful or arbitrary. However, it is not clear what the prohibition of arbitrariness entails. In *Alim v Russia* the ECtHR specified that states should apply the national law, provide adequate procedures and act consistently with them.[9]

In Europe, the ECtHR expects states to ensure a fair balance between the interests of the state and the applicant in decision-making. In assessing this balance, the court considers whether there are insurmountable obstacles to the family living elsewhere (Klaassen, 2015, pp. 95–96). The problems forced migrants would face living elsewhere work in their favour. In *Tuquabo-Tekle v Netherlands* the

[5] Hopu v France, Communication No. 549/1993, UN Doc CCPR/C/60/D/549/1993/Rev.1 (29 December 1997).

[6] Concluding Observations of the Human Rights Committee: Zimbabwe, UN Doc CCPR/C/79/Add.89 (6 April 1998).

[7] Concluding Observations on the Third Periodic Report of Slovenia, UN Doc CCPR/C/SVN/CO/3 (21 April 2016).

[8] Husseini v Denmark, Communication No. 2243/2013, UN Doc CCPR/C/112/D/2243/2013 (26 November 2014); Madafferi v Australia, Communication No. 1011/2011, UN Doc CCPR/C/81/D/1011/2001 (26 August 2004).

[9] App. No. 39417/07 (27 September 2011).

ECtHR recognized the difficulty of return for an asylum seeker who had received a visa on humanitarian grounds, and admission of the woman's child was seen as 'the most adequate way' to develop the parties' family life.[10] There are also other factors that need to be taken into account in the overall balancing, such as effect on family ties, ties in the host country and factors of immigration control.[11] It has been explicitly stated that national bodies must 'give effective protection and sufficient weight to the best interests of the children'.[12] Restrictions such as income requirements are permitted, but they need to be reasonable and meet the balancing test.[13] The ECtHR principles concerning case law on the prohibition of discrimination (based on Article 14 ECHR) do not seem to allow differences in family reunification rights between refugees and persons granted subsidiary protection (Costello et al., 2017).

In Latin America and the Caribbean, parties to the Cartagena Declaration on Refugees 'acknowledge that reunification of families constitutes a fundamental principle in regard to refugees and one which should be the basis for the regime of humanitarian treatment in the country of asylum' (conclusion III (13)). Although the declaration is not legally binding, most countries in Latin America have adopted these recommendations in their national law, including Brazil (Jatobá & Martuscelli, 2018; Kvalvaag, 2021). The IACtHR has found that unlawful expulsions leading to family separation violate the family life articles of the American Convention on Human Rights[14] and has issued an advisory opinion that provides an expanded definition of family and recognizes a right to family reunification for children.[15]

In summary, the countries considered in this chapter have rather similar legal human rights obligations to respect family life and protect the family. The migration context is special, however, and a strong obligation to allow family reunification does not exist. Nonetheless, in the situation of forced migration, a stronger human rights obligation to facilitate family reunification does apply. How this is reflected (or not reflected) in practice differs between countries, as we will observe in the next section. We will also show that it is not only family reunification rights that are relevant in protecting family life, but also the more general right to protection of forced migrants.

[10] App. No. 60665/00 (1 December 2005), para. 48.

[11] Rodrigues da Silva v Netherlands, App. No. 50435/99 (31 January 2006), para. 36.

[12] Jeunesse v Netherlands, App. No. 12738/10 (3 October 2014), para. 109.

[13] Konstatinov v Netherlands, App. No. 16351/03 (26 April 2007), para. 50.

[14] Expelled Dominicans and Haitians v Dominican Republic (28 August 2014).

[15] Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14 (19 August 2014).

2.2 National Laws and Practices for Family Reunification

2.2.1 Sweden: Temporary Protection and New Requirements[16]

Sweden's family reunification rules are based on the Swedish Aliens Act from 2005.[17] Family reunification policy took a significant turn in 2016 with the passage of a 3-year temporary law[18] aiming to decrease asylum-based immigration (Borevi, 2018). Previously, human rights, the nature of Swedish party politics and the welfare-state ideal of equal treatment of residents had been underlying elements in Sweden's relatively liberal family reunification policy (Bech et al., 2017; Borevi, 2018). The right to family life is safeguarded in the Swedish constitution[19] and there were only two notable restrictions on family reunification prior to the arrival of large numbers of asylum seekers in 2015. The first restriction confined eligibility to the nuclear family, and the second imposed a self-sufficiency requirement on the sponsor, which had little effect, however, due to its many exceptions (Borevi, 2014).

With the new law in 2016, temporary residence permits became the norm for asylum seekers. Quota refugees were not affected. Family reunification restrictions were also introduced for most applicants: the age requirement for spouses was raised from 18 to 21 years old, and persons with subsidiary protection status were excluded from reunification access between 2016 and 2019 (see also Borevi, 2018). The temporary law was later extended to 2021 by the Swedish parliament, with some revisions.[20] According to the amended law, temporary permit holders can only reunite with previously established family members. Stricter maintenance requirements were also imposed on sponsors: proof of monthly income corresponding with the required 'reserve amount' (based on an estimate of annual living expenses set by Parliament) and housing 'of sufficient size and standard' are now mandatory before submitting the application (Swedish Migration Agency, 2020a). Child sponsors are exempt from these requirements, as are refugees and subsidiary protection beneficiaries who apply within 3 months of the sponsor's residence permit.

In 2019, a parliamentary committee was assigned to take a stand on key points of the future of Swedish migration policy after the expiration of the temporary law. This resulted in permanent changes to Sweden's migration law that are in keeping with the restrictive nature of the temporary law. With an amendment to the Aliens Act in 2021,[21] most of the temporary restrictions became permanent. However, the

[16] Written by Hilda Gustafsson.

[17] Utlänningslag (Svensk författningssamling [SFS] 2005:716).

[18] Lag om tillfälliga begränsningar av. möjligheten att få uppehållstillstånd i Sverige (SFS 2016:752).

[19] Regeringsformen [RF] [Constitution] 1:2.

[20] Lag om dels fortsatt giltighet av lagen [2016,752] om tillfälliga begränsningar av möjligheten att få uppehållstillstånd I Sverige, dels ändring I samma lag (SFS 2019:481).

[21] Lag om ändring i utlänningslagen [2005:716] (SFS 2021:765).

law was relaxed in relation to the age requirement for spouses; the minimum age had previously been 21 but is now 18.

Applications for family reunification may be submitted on paper in person at a Swedish embassy or consulate (Swedish Migration XE Agency, 2020b), or the application may be submitted online to the Swedish Migration Agency by the family member abroad or via power of attorney. Applying from within Sweden is sometimes also possible (Swedish Migration XE "Migration" Agency, 2020c). Application fees do not apply to migrants receiving international protection (Swedish Migration Agency, 2020d). Original documents such as marriage and birth certificates must be translated by an authorized translator and attached to the application. In many cases, both spouses are interviewed, sometimes leading to problems for families who cannot reach embassies due to border regulations or safety threats.[22] Law firms and NGOs such as the Swedish Red Cross (n.d.) and Swedish Refugee Law Center (n.d.) offer free but limited counselling concerning family reunification, as there is no state-funded aid available to applicants.

It is probable that the approximate 50% decrease in applications between 2016 and 2017 (P. Engman, personal communication, 7 March 2018) was a combined result of fewer asylum seekers due to the EU-Turkey Statement (2016) and increased European border controls, as well as the temporary law restricting eligibility. The law also came with two perhaps unintended consequences: the removal of legal independence between spouses in refugee families, as family members' permits went from permanent to corresponding with that of the sponsor, and the de facto outsourcing of decision-making power to landlords and employers, whose willingness to sign contracts became key to accessing both family reunification and permanent residence permits.

2.2.2 Finland: Restrictions in Law and Practice[23]

In Finland, family life is implicitly protected as part of private life by the constitution,[24] but family reunification of foreigners is stipulated at the level of ordinary law, the Aliens Act.[25] The Finnish Immigration Service, which operates under guidance of the Ministry of the Interior, is the independent decision-making body for family reunification and all other residence permits. Other organizations are also involved in the process, such as the Finnish embassies, which operate under the Ministry for Foreign Affairs.

[22] Written Question 2018/19:529 by Christina Höj Larsen (V) to Minister of Foreign Affairs Margot Wallström (S) 'Familjeåterförening i praktiken' [Family Reunification in Practice] (12 April 2019) (Swed.). https://www.riksdagen.se/sv/dokument-lagar/dokument/skriftlig-fraga/familjeaterforening-i-praktiken_H611529

[23] Written by Jaana Palander.

[24] Suomen perustuslaki (731/1999), § 10.

[25] Ulkomaalaislaki (301/2004).

In practice, the possibility of living with one's family depends greatly on migrant category, varying even between categories of international protection, raising the issue of equal enjoyment of human rights (Hiitola, 2019). Different requirements are in place for family members of refugees and foreigners receiving subsidiary protection (Aliens Act §§ 114–115). All applicants, irrespective of the status of their sponsor, need to pay for the application.[26] If admitted, the applicant usually gets a residence permit of a similar kind to that of the sponsor.

Applications are lodged by the family member abroad, either at a Finnish embassy or via an online service, which requires a later visit to an embassy or consulate for identification and an interview. Since 2011, the migrant in Finland has not been able to initiate the process. As Finland does not have embassies in every country, applicants may need to travel to another country to lodge the application. However, they cannot choose any embassy, but must go to the one designated for their nationality. Applicants are also required to be legally staying in the country where the embassy is situated (Aliens Act § 60), which creates a visa requirement for many nationalities to even reach an embassy. These requirements can be remarkable obstacles in cases where it is difficult to get the documentation needed or travel is expensive or dangerous (Hiitola, 2019; Leinonen & Pellander, 2020).

One of the most restrictive practices affecting family reunification in Finland is the requirement for 'actual' family life. In addition to requiring documents or DNA tests to prove family links, the authorities assess whether the applicant and sponsor have shared an actual family life (Tapaninen, 2016). This practice does not have an explicit legal basis in the Aliens Act, but has been documented in interviews and criticized as being used arbitrarily in some cases (Pellander, 2016).

Another significant restriction is Finland's income requirement (Aliens Act § 39). The income requirement sets a monthly salary threshold that the sponsor is required to meet, which may be higher than the average Finnish salary level when there are several family members applying. Certain social security benefits that sponsors may be eligible for are counted towards the income requirement, but the effect of including these sums is in practice negligible, as the child allowance is often the only predictable benefit (Palander, 2018). This may pose an insurmountable hurdle for sponsors, who have to meet the required sum with their earnings. In 2016,[27] the income requirement was extended to people receiving international protection, and only some exceptions are available to refugees and unaccompanied minors. Refugees' family members abroad have a window of 3 months to apply for family reunification without the income requirement (Aliens Act § 114.4).

Research has shown that especially those receiving subsidiary protection or residence permits based on individual compassionate grounds (a migration category laid out in Aliens Act § 52) have been negatively affected by the expansion of income requirements (Pirjatanniemi et al., 2021). The objective of this legislative

[26] Sisäministeriön asetus Maahanmuuttoviraston suoritteiden maksullisuudesta vuonna 2021 (1124/2020).

[27] Laki ulkomaalaislain muuttamisesta (505/2016).

change was to curb the number of asylum seekers, and the human rights considerations were minimal. When the change was implemented, it was predicted that only about 2% of people receiving international protection would be able to fulfil the income requirement, and that in practice only the estimated 27% of refugees who did not have to fulfil it would be able to bring their family members to Finland (Miettinen et al., 2016).

2.2.3 *United States: Facilitation for Some and Separation for Others*[28]

Opportunities for forced migrants to reunify with family in the United States vary based on migration status. Forced migrants who are granted temporary protection status do not have a legal route to sponsor family members for reunification, while possibilities for reunification with spouses and unmarried children under 21 do exist for refugees and asylees (Nicholson, 2018). Refugees are those who have been accepted through resettlement (quota refugees), while asylees are those who have been granted asylum through application upon reaching the United States. Minor children who are refugees or asylees, however, cannot petition for their parents,[29] leaving no legal route to parental reunification for unaccompanied minors (Nicholson, 2018). The conditions for applying for family reunification also vary for different categories of migrants. Most lawful permanent residents have to document economic self-sufficiency; refugees and asylees are exempt from this condition, as well as from the filing fee.

There are two routes for refugees and asylees to apply for family reunification: via the Priority Direct Access Program, or via the I-730 process, commonly referred to as 'follow-to-join'. These processes of seeking family reunification are often referred to as applying for derivative status, as the family member derives refugee or asylee status from the principal applicant. The I-730 is the most common route to family reunification for refugees and asylees.

Several actors are involved in the reunification process, one of the key institutions being U.S. Citizenship and Immigrant Services (USCIS). USCIS is responsible for processing follow-to-join petitions, with beneficiary interviews then being held at embassies, consulates or USCIS field offices (Schaeffer & Reynolds, 2019). The officer conducting the interview informs the applicant if they are eligible to travel to the United States. Follow-to-join refugee beneficiaries undergo additional processing, including placement with a sponsoring voluntary resettlement agency (UN High Commissioner for Refugees, n.d.-b). While follow-to-join asylees are instructed to make their own travel arrangements, the International Organization for Migration manages arrangements for follow-to-join refugees.

[28] Written by Alyssa Marie Kvalvaag.

[29] 8 C.F.R. § 207.7(b)(6); 24 I & N Dec. 275 (BIA 2007).

The conditions and restrictions for refugees applying for family reunification are outlined by § 207.7 of Title 8 of the Code of Federal Regulations, while conditions and restrictions for asylees are outlined by § 208.21. An I-730 should be filed by the refugee or asylee within 2 years of being admitted entry as a quota refugee or granted asylum. In February 2018, USCIS and the Department of State implemented new procedures by which all refugees, including accompanying family members and follow-to-join beneficiaries, receive similar, thorough vetting (USCIS, 2020). In practice, this means there are further interagency security checks and additional vetting. Petitioning for family reunification is a lengthy and comprehensive process that may take 3–5 years (Nicholson, 2018).

There are also some practical obstacles to applying. In 2018, follow-to-join refugee interviews were limited to a smaller selection of embassies and consulates; as a result, follow-to-join refugee family members may have to travel to another country to complete their interview. If a refugee family member cannot travel to an interview location within 2 years, the case may be administratively closed (Schaeffer & Reynolds, 2019).

Another practical obstacle is for same-sex couples, who may apply for family reunification via derivative status on the condition they are legally married; this creates challenges for couples from places where marriage is not a legal option, for those who prefer a common-law relationship and for those claiming a humanitarian status based on persecution for their sexuality. Further, USCIS practices requiring couples to provide proof that their marriage is bona fide are built on a traditional, heteronormative American family archetype and may create additional barriers in the reunification process (Carron, 2015).

Family unity for foreigners and the principle of family reunification are not explicitly protected in the US Constitution. Human rights discourse in the United States is used largely to express dissatisfaction at the separation of migrant families, rather than to promote the rights of refugees and asylees.

Light has recently been shed on asylum seekers' right to family unity by the Trump administration's policy of child separations for families at the southern US border (which was later revoked[30]) and a memorandum announcing a 'zero-tolerance policy', which called for the prosecution of all adults apprehended crossing the border illegally (Sessions, 2018), without regard to whether they were travelling with their families. Under this policy, over 2700 children were separated from their parents (Pierce, 2019); at least 60 of the separated families had sought asylum at ports of entry (US Department of Homeland Security, 2020). This devastating policy received international attention and resulted in renewed human rights argumentation in family unity politics; public outcry helped to reverse the practice. However, 'for-cause' separations, where U.S. Customs and Border Protection may separate families for a variety of reasons, still occur (Pierce, 2019).

[30] See L. v U.S. Immigration & Customs Enforcement, 310 F. Supp. 3d 1133, 1149 (S.D. Cal. 2018); Executive Order 13841, 83 Federal Regulations 29435 (June 20, 2018).

2.2.4 *Brazil: Liberal Law but Restrictive Practice for Refugees*[31]

Asylum (refugee status) is the main protection category for forced migrants in Brazil, including those who arrive in the country with humanitarian visas. Unlike the European Union, Brazil has not adopted subsidiary protection or any other alternative protection statuses. Article 2 of Brazil's Asylum Law[32] says that refugee status may be extended to ascendants, descendants, partners and other economically dependent members of a refugee's family that are in Brazilian territory. Thus, family reunification for refugees in Brazil is a two-step process: First, a family reunification visa is required to enter Brazil. (Some nationalities, such as Venezuelans, are exempt from this requirement.) Second, once the family member is in Brazil, they must apply for the extension of refugee status. The actors involved in the family reunification procedure are the National Committee for Refugees (CONARE), the Federal Police (the border authority in Brazil) and the Ministry of Foreign Affairs (MRE), together with consular officials and diplomats abroad.

The procedure for applying for a family reunification visa was first established by CONARE in 1998.[33] Between 2013 and 2018, the family reunification procedure was initiated by refugees in Brazil: they filled in the form, put together the documents proving family relationship and economic dependency (when necessary) and sent them to CONARE, which then requested that the MRE order a Brazilian consulate to grant the visa.[34]

In 2017, Brazil's Migration Law[35] explicitly recognized family reunification as a principle of Brazilian migration policy and as a right of all permanent immigrants living in the country, including refugees. Also in 2017, a more conservative CONARE agreed that the MRE was responsible for analysing visas applications, not CONARE. This allowed the MRE to make changes in the family reunification procedure and conduct interviews abroad with refugee family members applying for family reunification visas. Subsequently, many visas were denied, especially at the Brazilian embassy in the Democratic Republic of the Congo. Refugees did not receive further information and there was no appeal system.

In 2018, the government adopted a regulation[36] stipulating that the family member abroad must apply for the family reunification visa at a Brazilian consulate. In October 2018, the family reunification procedure changed. Now, the family member abroad is responsible for submitting the application and other documents to Brazilian

[31] Written by Patrícia Nabuco Martuscelli.

[32] Lei No. 9.474, de 22 de Julho de 1997, Col. Leis Rep. Fed. Brasil, 189 (7, t.1): 4227, Julho 1997.

[33] Resolução Normativa do CONARE No. 4, de 01 de Dezembro de 1998.

[34] Resolução Normativa do CONARE No. 16, de 20 de Setembro de 2013.

[35] Lei No. 13.445, de 24 de Maio de 2017, Diário Oficial da União [D.O.U.] de 25.5.2017.

[36] Portaria Interministerial No. 12, de 13 de Junho de 2018, D.O.U. de 14.06.2018.

consular authorities, and the refugee in Brazil sends CONARE only a form stating that they wish for the family member to come to Brazil.[37]

Thus, until 2017, refugees had a facilitated procedure to apply for family reunification. It was also possible for civil society organizations to assist refugees in the process. After 2018, the family reunification procedure became the same for refugees and migrants, with the exception that only refugees have to affirm their wish to be reunited with the family member (to avoid bringing relatives who are agents of persecution to Brazil). Refugees' families now compete for the same appointments at Brazilian consulates as other people applying for visas. In addition, refugee families have to provide additional documents from their host countries that can be hard to get and put them at risk.

There is a tension between the Migration Law, which guarantees the right to family reunification to all migrants in Brazil, and the implementation of family reunification visas, which tend to be denied. Diplomats are not trained in human rights, asylum and humanitarian issues. They conduct external border and migration control through the visa system. The result is that families are separated and refugees' right to family reunification is not guaranteed. The Brazilian family reunification procedure presents the paradox of being easy in the law and hard in practice, with increasing discretionary power being given to diplomats, visas being denied without justification, and no possibility of appeal or a review of the procedures. In addition, CONARE is a political organ, which means that the make-up of the committee varies and may be more or less supportive of family reunification. Other challenges in Brazil's family reunification procedure include a lack of set deadlines or a definition of economic dependency. Refugees are also responsible for paying all costs, such as airline tickets, documentation and visas, and there are no loans or organizations to help with these costs.

2.2.5 Israel: No Protection or Family Reunification for Forced Migrants from Africa[38]

The chances for family unification for refugees and non-Jewish immigrants in Israel are almost non-existent. Part of the problem is that there is almost no chance of becoming a recognized refugee. Although Israel signed the 1951 Refugee Convention, there is no Israeli asylum law (Ben-Nun, 2016). Instead, Israel's asylum policy is based on an ordinance issued by the Ministry of Interior.[39] Before 2008, the United Nations High Commissioner for Refugees (UNHCR) took care of

[37] Resolução Normativa do CONARE No. 27, de 30 de Outubro de 2018.

[38] Written by Usumain Baraka and Hadas Yaron Mesgena.

[39] *Procedure for Dealing with Political Asylum Seekers in Israel*, Population & Immigration Authority Procedure No. 5.2.0012 (updated 10 October 2019), https://www.gov.il/BlobFolder/policy/handling_political_asylum_seekers_in_israel/en/5.2.0012_en.pdf

asylum applications in Israel, but in 2009, the handling of the asylum process was transferred to the Refugee Status Determination Unit at the Ministry of Interior (Berman, 2018). Since African refugees and migrants, mainly from Eritrea and Sudan, started to cross the border into Israel in large numbers in 2005–2006, Israel's policy and governmental agenda have become hostile to asylum seekers and refugees (Kalir, 2014), a position that has also been supported by the parliament (Reslow, 2019). Asylum seekers have been portrayed in the media, in the parliament and in the streets as a threat to the nation and the Jewish majority (Yaron Mesgena & Ramati, 2017). This negative approach has also been reflected in family reunification, for example, by deporting one parent in the hope that the entire family would be compelled to leave the country (Reslow, 2019).

Although Israel does not deliberately set out to disintegrate refugee families, some practitioners have noted that its policy affects them in a negative manner (N. Avigal, personal communication, 13 February 2020). The refugee recognition rate in Israel is extremely low (under 1%; Berman, 2018), entirely preventing the possibility of family reunification for the vast majority of refugees, who remain unrecognized. However, even recognized refugees' requests for reunification are not all accepted. Section 12 B of Israel's asylum ordinance lists various factors to be considered, such as whether it is possible to emigrate to the spouse's country of origin, leaving wide discretion to the authorities. According to section 12 C of the ordinance, the state may grant family reunification to a spouse of a recognized refugee only if the relationship was established outside Israel, in the refugee's country of origin. Therefore, if a couple met in Israel, a refugee's spouse cannot receive a residence permit or status matching that of the refugee, nor any promise that the spouse without a refugee status will be safe from deportation. This has raised concerns among civil society actors and even an appeal[40] to the Jerusalem District Court by the Hotline for Refugees and Migrants (2019), an Israeli NGO in Tel Aviv.

In its petition, the Hotline for Refugees and Migrants also pointed out the consequences for families of the prolonged manner in which the state handles asylum applications, which remain unexamined for years. During this waiting period, asylum seekers may meet people, fall in love and have children. The state's rationale for not granting status to spouses who met in Israel is to prevent fraudulent applications. However, according to the petitioners, not only is the right to family unity threatened by Israel's asylum ordinance, but also the right to asylum itself, since the asylum procedure pressures individuals to choose between their family and asylum. Asylum seekers whose spouses' applications have been rejected are also denied visa renewals unless they turn in their spouses (N. Avigal, personal communication, 13 February 2020).

The state even obstructs maintaining refugees' familyhood across borders. For example, travellers who would otherwise be eligible to visit Israel have in practice

[40] Pet. No. 72951–05-19, 30 May 2019. https://hotline.org.il/wp-content/uploads/2019/06/29.5.2019-עתירת-השוואת-מעמד-סופי.pdf

been denied entrance at the airport if they state that they have a relative who is a refugee or asylum seeker living in Israel (Lior, 2017). Immigration officials have discretion to assume such relatives may be attempting to settle in Israel. Since asylum seekers in Israel are not able to leave and later return to Israel, they have no way to meet their families, who may be living in Western countries or in refugee camps in Africa.

The state policy also negatively affects other efforts to show care and maintain relationships across borders. Since the arrival of African asylum seekers in Israel, they have been referred to, in public discourse as well as in policy and legislation, as 'infiltrators'. According to the Prevention of Infiltration Law,[41] asylum seekers, as 'infiltrators', are prohibited from transferring property outside Israel, blocking refugees from sending remittances to their families. Although Eritreans and Sudanese in practice often find ways to support their families outside Israel, the state in fact criminalizes refugees for caring for their families and maintaining relationships with family members who are separated by war and political persecution.

2.2.6 Jordan: Syrians' Struggle for Family Reunification[42]

Jordan is not a signatory to the UN Refugee Convention; however there are 1.26 million Syrians in Jordan, 658,000 of whom are registered as refugees with the United Nations High Commissioner for Refugees (UNHCR, n.d.-a). In 1998, the Jordanian government entered into a memorandum of understanding with UNHCR that recognized that political asylum seekers are entitled to protection in Jordan while UNHCR assesses their cases. Davis et al. (2017, p. 18) suggests that this represents the 'temporary absorption model' of refugees, where refugees may temporarily remain in the country until repatriated or resettled to a third country. Like the Iraqis before them, Syrians in Jordan have been referred to as 'guests' (Davis et al., 2017). The Jordanian government also agreed to non-refoulement, ostensibly protecting asylum seekers from involuntary return to home countries where they may be subject to persecution. However, under Jordan's Law on Residence and Foreigners' Affairs,[43] the minister of the interior may deport individuals who enter Jordan illegally, on a case-by-case basis (Sadek, 2013).

While UNHCR's role internationally involves finding durable solutions for refugee populations, the three general options for long-term solutions (integration into the host community, return home and resettlement in a third country) are usually not

[41] Prevention of Infiltration (Offences and Jurisdiction) Law, 5714–1954, LSI 8133 (1953–1954), § 7.

[42] Written by Michelle Lokot.

[43] Law No. 24 of 1973 on Residence and Foreigners' Affairs, Official Gazette No. 2426, 16 June 1973, art. 31.

feasible for Syrian refugees in Jordan. Integration is not possible, since the Jordanian government does not grant Syrians the permanent right to remain in the country. While some Syrians in Jordan have chosen to return to Syria, the only other option has been resettlement (through a lengthy process) or family reunification elsewhere. Families may apply for reunification after one or more family members make a journey to another country from Jordan, often to the European Union or the United Kingdom.

According to unpublished UNHCR data cited by Chandler et al. (2020), 36.5% of Syrian refugees in Jordan are separated from a member of their family. Of families interviewed by Chandler et al. (2020), 43.5% had made the decision to temporarily separate after having lived together in Jordan. The reasons for separation included seeking a source of income, returning to Syria and seeking refuge in a third country. Adult men make up the majority of those seeking asylum in Europe (REACH, 2017); similarly, Syrian men often travel first, sometimes with one or more children, while the rest of their family members remain in Jordan.

Syrians face numerous barriers during the reunification process, including restrictions on who in the family can be reunified. Definitions of 'family' differ, with European countries defining family as the nuclear family, while Syrians consider extended family members to be part of the family (Costello et al., 2017). For example, in many European countries, children or siblings aged over 18 cannot be reunified, as they are deemed adults (McNatt et al., 2018). The rules about who can sponsor relatives are particularly strict in the United Kingdom, where even children under 18 cannot sponsor their parents (UK government, 2020; Beaton et al., 2018).

Refugees are often unaware of the processes required for reunification, which change regularly (McNatt et al., 2018). Financial barriers to seeking reunification can also be significant, with some unable to pursue reunification due to cost (Chandler et al., 2020). The reunification process is often time-consuming; waiting times for decisions regarding reunification in European countries may take several years (European Council on Refugees and Exiles and Red Cross EU Office, 2014). Women in particular are often left waiting to be reunified with their husbands, facing the challenges of earning income and caring for children while waiting for their reunification applications to be processed (Damir-Geilsdorf & Sabra, 2018).

In addition, the documentation requirements for reunification can often create insurmountable barriers. CARE International in Jordan (2018) found that 33.2% of Syrians were missing important documents such as birth certificates, marriage certificates or death certificates, and 22% of refugees who returned to Syria did so to obtain documents. In other cases, documents may no longer be available because they were taken by government officials (Chandler et al., 2020).

2.2.7 *Lebanon: Syrians Seeking Family Reunification in Germany*[44]

Lebanon is not a signatory of the Refugee Convention and does not recognize the Syrians living in its territory as refugees (*lāji'iyn*) but rather as displaced persons (*naziḥiyn*) (Mourad, 2017). The state operates under a memorandum of understanding signed with the UNHCR in 2003, which gives the UNHCR autonomy to assist displaced people in Lebanon. A persistent number of Syrian refugees remain unregistered, however, and are thus excluded from UN assistance and any alternative solutions to displacement. Moreover, many of those who are registered with the UNHCR are not offered the possibility of integrating into Lebanese society or resettling in other countries.

Lebanon does not have a governmental programme of family reunification for migrants in its territory, nor does it offer support for left-behind families in Lebanon attempting to join their family members abroad. The state is rather a sending country for Syrians who want to reunite with their families in other countries. In this way, family reunification has been used as an alternative avenue for protection.

Most Syrians in Lebanon ask to be reunited with their families in Germany. For these migrants, family reunification is operated by the International Organization for Migration (IOM). According to the IOM, many of those who are now in the process of family reunification in Lebanon or Syria are wives or minor children who were separated from their families in 2015, when their family members took the so-called Balkan route, travelling from Syria to Turkey and then to Hungary by land. Only a smaller number of Syrians crossed the sea to Greece during these years.

After Syrians in their home country or in Lebanon have booked an appointment with the German embassy in Beirut, the IOM office assists them and their family member sponsors in Germany with preparing for the personal appointment. Cases are processed in order of application, but priority is sometimes given to urgent cases (such as medical cases) or to cases involving minors. Syrian families applying for reunification in Germany have to fill in a questionnaire about their humanitarian situation, on the basis of which the embassy makes a decision on the applicant's eligibility for family reunification.

The protection status of the sponsoring family member in Germany affects the requirements for family reunification. In Germany, many Syrians have been granted subsidiary protection, with only a minority having received full refugee status. While refugees are granted the legal right to family reunification, beneficiaries of subsidiary protection do not have this privilege and are subject to further conditions and quotas. In August 2015, the Act on the Redefinition of the Right to Stay[45] granted access to family reunification also to beneficiaries of subsidiary protection, but this right was suspended in March 2016 for 2 years. In March 2018, the law was

[44] Written by Irene Tuzi.

[45] Gesetz zur Neubestimmung des Bleiberechts und der Aufenthaltsbeendigung, 27 July 2015, Bundesgesetzblatt, Teil I [BGBl I] at 1386.

amended and the right was abolished. It was replaced with a 'humanitarian clause', placing family reunification for beneficiaries of subsidiary protection at the discretion of the authorities. In effect, family reunification can be granted only in cases of particular hardship.

The general principle of family immigration in Germany is regulated by the Residence Act,[46] which includes only members of the nuclear family (spouses and minor children) and excludes other family members. Section 36 of the Residence Act allows other dependents to obtain a residence permit only to avoid particular hardship (Bick, 2018). As observed by Tometten (2018), the German Federal Foreign Office considers that such particular hardships must be 'family-related', not 'country-of-origin-related'. In that sense, living in a war zone cannot be considered a particular hardship. It would rather apply to adult children in need of care, such as people with disabilities (Tometten, 2018, p. 49).

To be reunited as spouses, family members of refugees and holders of subsidiary protection must apply for family reunification within 3 months of a positive asylum decision and thus must have been married by this point in time. They may still apply at a later date, but in that case, they will have to meet specific conditions for family reunification, such as sufficient financial resources, proof of financial stability and a home with enough space for the family. The family member wishing to reunite must also prove language proficiency.

The main obstacle for Syrian holders of subsidiary protection attempting to leave Lebanon for reunification in Germany is undoubtedly the long waiting time. When claims started being collected in August 2018, there was already a 2-year waiting list. Since then, Germany has allowed only 1000 cases worldwide to be reunited per month. The wait for Syrians to enter Germany through family reunification lasts for years, and many families find it difficult to bear the separation. Many live in substandard conditions, having lost their income and being dependant on family members abroad. Although most Syrians waiting to reunite with their families in Germany reside in Syria, the process has to be done in Lebanon. Families must therefore travel between the two countries or send their documents across the border with someone else. In 2020, the border between Lebanon and Syria remained closed for some time due to the COVID-19 pandemic, creating further delays.

2.3 Discussion

In this introductory chapter, we first described the legal framework of human rights obligations related to family reunification. Some aspects of this framework are common to all of the countries discussed in this chapter, such as the prohibition of return (non-refoulement) and the obligation to respect and in some cases facilitate family

[46] Aufenthaltsgesetz [AufenthG], 25 February 2008, BGBl I at 162, last amended by Gesetz, 30 October 2017, BGBl I at 3618, art. 10(4), §§ 27, 36.

reunification. Regional human rights law varies in the level of respect required from contracting states. For example, the European human rights system, with its more extensive case law, relies on a balancing test, whereas the Inter-American system has created further-reaching obligations in regard to the rights of the child. We can say that practices that arbitrarily, discriminatorily or disproportionally restrict family life are in violation of human rights. However, a lack of clear principles and case law hinder a proper legal analysis. Instead, we have pointed out laws, policies and practices that cause family separation and potentially amount to human rights restrictions and violations.

First we looked at the Nordic context, and at the two quite similar legal systems of Sweden and Finland. Juxtaposing these two Nordic countries nonetheless reveals interesting differences in their approaches to respect for family life as a human right. Both Sweden and Finland often require applicants to travel to embassies abroad, posing practical obstacles. In responding to the large inflow of asylum seekers in 2015, legislators in Finland saw no notable human rights problems in adding an income requirement and thus removing the realistic possibility for family reunification from many people receiving subsidiary protection. A similar restriction in Sweden was passed as a temporary law, which can be seen as a sign of stronger respect for family life. Sweden did introduce a housing requirement, however, which seems to have created practical problems for applicants. Both Sweden and Germany first temporarily restricted the family reunification of subsidiarily protected people and later made the restrictions permanent. The migration status of the sponsoring family member is significant in both Nordic countries and in Germany, as it is in the United States, which can be considered problematic from the point of view of non-discrimination.

In the United States, asylees and refugees have slightly different conditions for family reunification, but the two categories are treated similarly in some important aspects; both are exempt from the income requirement, for example. The different treatment is particularly noticeable in regard to travel arrangements and reception services, which are provided to family members of refugees, but not to family members of asylees. The case of the United States includes some shocking administrative practices that clearly lack respect for family life and family unity. Family members have been separated and children held in custody and not returned to their parents. Although these are not family reunification cases as such, the measures show disrespect towards family life and demonstrate readiness to use family separation as a deterrent.

We then continued to South America, to Brazil, where the family reunification legislation is rather liberal, but refugees still face political and administrative obstacles. In both Brazil and the United States, residence permits for family members are explicitly based on the extension of the refugee or asylee status of the sponsor, whereas in Finland, for example, family member permits are distinct and asylum status is granted separately if applicable. Perhaps inspired by the example of other countries, Brazil has now adopted the rule of applying for family reunification from abroad. The process for refugees in Brazil is now more similar to that of other migrants, marking the end of the facilitation of family reunification for refugees.

One of the problems associated with this transfer of duties and power to diplomats in consulates is their arbitrary interpretation of family ties when conducting interviews, exacerbating problems of administrative discretion. Similar problems with interviews have been detected in Finland.

In the Middle East, we first looked at Israel as a receiving country and then Lebanon and Jordan as sending or transit countries for family members in need of protection. In Israel, family reunification is rare for forced migrants since hardly anyone is granted the status of refugee. Family reunification is possible only for migrants with a formal residence permit, as is the case in all the countries we examine in this chapter. In addition, Israel has a long history of securitizing family migration and transnational family life. Legal rules designed to combat terrorism are applied in a manner that obstructs transnational family life, let alone family unity. Forced migrants also face restrictive administrative border practices that do not seem to have a basis in law.

The temporary host countries Lebanon and Jordan have received many asylum seekers from the region, especially from Syria, and provided them with temporary shelter and services. These countries are not bound by the Refugee Convention, but they have allowed asylum seekers entry, passing the responsibility for protection to international organizations. Like Israel, these countries are not ready to permanently host all the forced migrants residing in the country, and therefore migrants' possibilities for integration, work and study are limited. Since returning to the origin country is not always viable, many families look to third countries. Lebanon and Jordan can therefore also be considered transit countries. Family members either stay in these temporary host countries or in their country of origin across the border; in either case, they need access to the embassies in these countries.

The cases of Jordan and Lebanon are thus not about facilitating family reunification within their borders and in their societies, but about family members staying in or near these countries and applying for family reunification elsewhere. Our focus was thus on the obligation of those third countries to respect and facilitate family life. Research in Lebanon and Jordan reveals the obstacles related to applying for family reunification at some third-country embassies. From the point of view of sponsors in Europe, as well as of family members abroad, it has been challenging to follow the changing requirements for family reunification. For example, Germany has introduced quotas and restrictions for certain categories of migrants, such as those receiving subsidiary protection. Quotas on family reunification are problematic because limiting the number of people whose rights are to be respected is not compatible with the idea of equal and effective respect for human rights.

The case of Syrians applying for family reunification at the German embassy in Lebanon shows how, despite some facilitation, practical obstacles such as organizing travel and obtaining documents can be overwhelming. Such obstacles seem to be significant in almost all the examined countries. For example, Sweden, Finland and the United States require visiting a specific embassy, limiting the possibilities for a successful application. The COVID-19 pandemic has brought even more obstacles, closing embassies and stretching out waiting times, for example.

The narrow scope of family members accepted for reunification is a significant obstacle for forced migrants in Jordan and Lebanon. Unlike Brazil, where a wide range of family members are accepted, European states and the United States usually narrow the scope of reunification to the nuclear family, which may lead to separation from adult children or elderly parents. The conditions in Jordan and Lebanon also indirectly cause family separation when temporarily hosted migrants leave their families behind in search of durable solutions. Family reunification in third countries could be a way to relieve the pressure in refugee camps and allow a safe, complementary pathway to protection for family members left behind, as envisaged in the UN Global Compact on Refugees.[47]

From the point of view of human rights obligations, many countries limit family reunification in a way that undermines the right to respect for family life. The differential treatment of people receiving subsidiary protection seems especially discriminatory since human rights law does not make a distinction between different categories of international protection. Some restrictions, such as income requirements, are in principle allowed by human rights obligations, but the requirements cannot be disproportionate, such as in case of vulnerable people and especially minors. In cases where there are no major legal restrictions, but administrative procedures hinder the right to family reunification, states may be violating positive human rights obligations to facilitate the enjoyment of family life.

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