Southern Urbanism and the Rescaling of Migration Law and Policy

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Introduction

International migration is a deeply spatial process. Crossing borders – or attempting to do so – invokes concerns of state sovereignty, regulation, and global governance. Those moving also intersect with economies, politics, and societies at far more micro-scales. It is often these sub-national dynamics and responses that produce the most immediate and enduring effects on migrants' lives. While many recognise the spatial dimensions of international migration in principle, they are poorly reflected within the international governance regime. They are also under-represented in ongoing deliberations within regional and sub-regional migration debates – at least within Africa – and in the discussions surrounding the global compacts. The deeply spatialised nature of migration is better (if implicitly) reflected in Habitat's *New Urban Agenda* and the *Sustainable Development Goals* in their call to build more inclusive settlements, but even here policy direction and engagement is remarkably limited. This paper considers what taking space seriously – particularly urban spaces of the global south – may mean for global approaches to governing human mobility.

Drawing on research from across African cities and new research in Pakistan and Turkey, this short paper argues that in seeking means of improving migration policy, there are benefits of rescaling the levels of interventions and thinking pragmatically about the role of law in ensuring safer and more productive patterns of human mobility. Doing this focuses attention on the existing socio-political and economic character of the sites international migrants most of inhabit: spaces within the global south.

More specifically, this paper explores the 'southern' cities where refugees, international migrants, and domestic migrants increasingly seek pathways out of persecution and poverty. Such sites are often highly informal honeycombs of interconstitutive social, political, and economic institutions. Within them, national and global policies are often far removed from migrants daily realities. In many cases, they have little direct positive or negative effect on migrants' rights or welfare. Such cities may share generic characteristics, but they are also deeply particular. As such, **effective migration policy must be based on high levels of local institutional and political literacy.** More rationalized regional or global policies are likely to offer little short-term protection in the short term and can be potentially counter-productive.

Moving forward towards more effective legal intervention amidst Southern urbanism, it is worth considering two primary research findings:[1]

First, **legal status and documentation are unreliable predictors of effective protection and prosperity**: state-recognized refugee status or visas are a poor indicator of someone's substantive experience and has limited effects on welfare or security. Indeed, the primary determinants of substantive protection–whether someone is doing well in terms of income, housing, and physical security–correspond less with direct assistance and legal status than individual choices, skills, and social relations. Very few of those captured in surveys across

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1   These findings were first described in L.B. Landau and M. Duponchel, 2011. 'Laws, Policies, or Social Position? Capabilities and the Determinants of Effective Protection in Four African Cities,' Journal of Refugee Studies 24(1): 1-22. See also S. Madhavan and L.B. Landau, 2011, 'Bridges to Nowhere: Hosts, Migrants and the Chimera of Social Capital in Three African Cities,' *Population and Development Review* 37(3): 473-497.

African cities,[2] including recognized refugees, asylum seekers or displaced persons, received any form of humanitarian aid or assistance. Instead, the most significant factor in explaining 'success' (i.e., accessing food, jobs, housing, and physical security) was social networks. Although they are clearly important in exchanging information on housing and work, advising people on evading the police (or escaping from custody), and providing moderate (usually once off) material assistance, additional work is needed on the roles these networks play. New research suggests relying on social networks alone can be a dangerous dead end for certain groups.[3] Regardless, where vulnerability is widespread and humanitarian resources are limited – as they are in most southern cities – it is these relationships, not legal status or aid, that become protection's *de facto* lynchpins. Indeed, **heightened focus on legal status can heighten visibility and dangerous contact between migrants and state law-enforcement mechanisms.**

Second, on aggregate, **international migrants are not the most vulnerable among urban residents**. This is so even when focusing on those who self-identify as having been displaced. Indeed, despite encountering a range of formal and informal restrictions on their activities (e.g., prohibitions on employment, education, access to rental housing, challenges in accessing services), international migrants (including forced migrants) regularly negotiate *de facto* protection more effectively than domestic migrants. As noted above, it is not legal status that enables such success but previous urban experience and diasporic networks. **Non-citizens are undoubtedly vulnerable, but they operate in contexts in which few residents have the kind of access outlined in international humanitarian standards let alone the sustainable development goals**.[4] Precarity is the norm for refugees, migrants, and 'hosts' alike.

The findings summarised above questions the practicality and political viability of migrant-centric interventions or policies in spaces where vulnerability may be more acute among non-migrants. Inasmuch as legal interventions shape such offering, they are potentially part of the problem. Where these programs demand rights or services be claimed based on someone's immigration status, they can foster popular resentment and social fragmentation.[5] This hinders the kinds of solidarities with local populations and autonomy that are often necessary for migrant and displaced populations to access effective economic and physical protection while avoiding scapegoating and varied forms of precarity.[6]

In such environments, legal rights may have value for some (normative if not practical), but with only limited enforcement capacity and a minimal reliance on state provided services—schools, clinics, jobs—it is safe to say that documentation and legal status often do little. Even in South Africa, arguably Africa's 'strongest' state, these processes are negotiated on the ground through a panoply of rationalities and calculations, sometimes involving laws and state actors but not always in predictable ways.[7] Rather than integrating into space-bound social or legal communities, the forms of solidarity and recognition people seek are increasingly fluid, syncretic and translocal. Even churches—often seen as instruments of local integration, community formation, or stable transnational mobilization[8]—are now sites through which migrants seek incorporation and recognition beyond the state.[9] Within them and similar bodies, people find ways to maintain the levels

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2   For details on the survey data, see Landau and Duponchel (2011).

3   See L.B. Landau, K. Bule, A.A. Malik, C.W. Kihato, Y. Irvin-Erickson, B. Edwards, and E. Mohr. 2017. 'Displacement and Disconnection? Exploring the Role of Social Networks in the Livelihoods of Refugees in Gaziantep, Nairobi, and Peshawar.' Washington DC: Urban Institute.

4   See 'The Sphere Project': www.sphereproject.org/about/.

5   See M. Ticktin. 2011. *Casualties of Care: Immigration and the Politics of Humanitarianism in France.* Berkeley, University of California Press; R. Krystalli, 2014. 'Deconstructing the 2012 Human Security Report: Examining Narratives on Wartime Sexual Violence,' *International Journal: Canada's Journal of Global Policy Analysis* 69(4): 574-593.

6   J.P. Misago, I. Freemantle and L.B. Landau, 2015. *Protection from Xenophobia: An Evaluation of UNHCR's Regional Office for Southern Africa's Xenophobia Related Programmes.* Geneva: United Nations High Commissioner for Refugees.

7   T.B. Hansen, T.B. and F. Stepputat, eds. (2010). *States of Imagination: Ethnographic Explorations of the Postcolonial State*. Durham: Duke University Press.

8   W. Cadge, W and E.H. Ecklund. 2007. 'Immigration and Religion,' *Annual Review of Sociology* 33: 359-379.

9   See D. Garbin,2012. 'Marching for God in the Global City: Public Space, Religion and Diasporic Identities in a Transnational African Church,' *Culture and Religion* 13(4):425-447; N.G. Schiller, A. Caglar, and T.C. Guldbrandsen, 2006. 'Beyond the Ethnic Lens: Locality, Globality, and Born-again Incorporation,' *American Ethnologist* 33(4): 612-633; also L.B. Landau. 2014. 'Conviviality, Rights and Conflict in Africa's Urban Estuaries,' 2014. *Politics & Society*. 14(3): 359-380.

of social engagement and recognition necessary to negotiate everyday life, but without the kind of place-based fixity often associated with durable solutions or locally enforceable legal rights. The forms of solidarity forged through these bodies are often inherently transient, translocal, post-territorial and, in the case of millenarian religious configurations, potentially post-terrestrial. In almost all cases, they speak to systems of rights beyond the legal and national order.[10]

Intersections and Conclusions[11]

It is not clear where the emergence of fragmented polities, economic precarity, and translocal socialities leave efforts to ensure migrants' protection. While there is normative value in pushing for regional and global legal reform or a rule of law agenda, their effectiveness means overturning the fundamental political and economic character of 'Southern' sites.[12] That may take a while. Moreover, legal rights and assistance programs specifically targeting refugees and migrants in urban areas often draw the ire of the equally impoverished citizens amongst whom they live. It is worth remembering Arendt's conclusion that 'that human rights were not a problem of moral speculation nor legal philosophy so much as a problem of *politics*, a matter of mobilizing new and effective forms of solidarity and concern.'[13]

Recognizing this, I suggest working towards a kind of a complementary politics and law informed by a spatial and social understanding of rights violations and potential for empowerment. In terms of the humanitarian and legal enterprise three principles can guide the effort. The first is to promote ***stealth protection interventions***. Given the vulnerability that may be associated with visibilizing and fixing migrants within contentious spaces, there is a need to shroud interventions in a language that is both more flexible and in solidarity with non-migrant populations; to find ***back routes to rights*** and social solidarity with locally legitimate actors who have the power to bring about immediate positive change.

Second, there is a need to ***shift from people to place***. As Soysal notes, '…the nation state as a territorial entity is no longer the source of legitimacy for individual rights.'[14] Recognizing the diversity of scales, solidarities, threats, and opportunities within sites refugees occupy, analysis and interventions should begin by improving life within these sites. This means taking advantage of opportunities for 'bureaucratic incorporation' in which refugees gain access to service based less on legally defined rights than by appeals to bureaucrats' professional ethos as teachers, nurses, or urban planners.[15] Indeed, appealing to more generalized interests, around housing, crime, or other concerns – not rights – can help appeal to local political incentives that do not draw lines or make references to discourses which are seen as foreign, threatening, or unwelcome.

In all cases, these interventions demand high levels of ***local literacy*** in which one's language–even if informed by legal or rights based principles—must be in the vernacular and appeal to interests that make them locally legitimate. Engaging within the legal regulation of space through housing and labour markets or policing can open space for refugees to build lives (i.e., achieve *de facto* protection and human security) that neither

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10   See P. Kankonde, 2016. *Taking Roots in the Name of God?: Super Diversity and Migrant Pentecostal Churches' Legitimation and Social Integration in Post-Apartheid South Africa.* Doctoral Dissertation, University of Göttingen.

11   This section is largely drawn from Landau, L.B. 2017. 'Southern Urbanism, Legalization, and the Limits of Migration Law,' *American Journal of International Law (AJIL) Unbound* 111: 165-171; C.W. Kihato and L.B. Landau. 2016. 'Stealth Humanitarianism: Negotiating Politics, Precarity, and Performance Management in Protecting the Urban Displaced,' *Journal of Refugee Studies* (2016): doi: 10.1093/jrs/few031; and Landau, L.B. and E.T. Achiume. 'Misreading Mobility?: Bureaucratic Politics and Blindness in the United Nations' Migration Reports,' *Development & Change* 48(5) (September 2017).doi: http://onlinelibrary.wiley.com/doi/10.1111/dech.12325/epdf.

12   See T.E. Achiume and L.B. Landau. 'The African Union Migration and Regional Integration Framework.' 2015. *Policy and Practice Brief* 36. Durban: ACCORD. www.accord.org.za/publications/policy-practice-briefs/1422-the-african-union-migration-and-regional-integration-framework.

13   J. Isaac, 1996. 'A New Guarantee on Earth: Hannah Arendt on Human Dignity and the Politics of Human Rights,' *American Political Science Review* 61. Also H. Arendt, 1958. *The Origins of Totalitarianism.* Orlando: Harcourt Brace.

14   Y.N. Soysal. 1996. 'Changing Citizenship in Europe: Remarks on Postnational Membership and the National State,' Pp. 17-29 in D. Cesarani (Ed.) *Citizenship, Nationality, and Migration in Europe*. London: Routledge.

15   See H.B. Marrow, 2009. 'Immigrant Bureaucratic Incorporation: The Dual Roles of Professional Missions and Government Policies,' American Sociological Review 74(5): 758.

bind them to space nor alienate them from those surrounding them. Interventions, legal or otherwise, that improve conditions in refugee affected areas may also help build political support for their presence. This also means finding credible local voices to take forward migration policy and agenda. In an era in which external actors active seek to manipulate African (and other regions') immigration policy,[16] local leaders and populations are likely to treat international organisations and agencies with high levels of scepticism.

Lastly, there is a need for greater honesty in the promises made to local and national authorities. For many years, the World Bank and others offered the potential of triple wins from properly calibrating migration policies (for migrants, hosts, and sending communities). Selected examples were offered as best practice. The humanitarian community has echoed such tendencies with promises that refugees can be an economic resource. This is potentially true, but even under the best circumstances immigration and displacement will likely have significant short-term costs for host communities. It is the poorest in these communities who will likely bear these costs even when there are aggregate benefits in the short or long-term. Such costs may be economic, but will also social and institutional. Where costs are not addressed – and even where the costs are only perceived – migrants can become a political resource for populist politicians. As such, **policies must be pragmatic, attitude to local economic and political incentives, and be prepared to align incentives at elite political and popular levels.** Organisations and agencies should build case-study repository outlining both successes and failures in ways not typically recorded in donor reports. These need to reflect backroom deals, compromises, and dead-ends can help guide future initiatives and avoid repeating potentially hazardous mistakes.

The approach I describe may in many cases means all but abandoning the language of rights and protection. That may include the language of 'safe and legal' migration. This will not be easy. As Fassin[17] (2010) so trenchantly notes in discussing reforms to the humanitarian systems, there are great institutional and personal interests invested in preserving both the universal language and mechanisms mobilized for rights. People with almost religious faith in law and rights may be deeply unsettled when confronted with pragmatic shades of grey. Organizations built around a rights discourse may fear for their relevance and funding. But there is a place for all these strategies in the complementary politics I have described. The diversity of spaces in which we push for social justice demands as many strategies and appeals.

16   See J. Brachet, Julien. 2016. 'Policing the Desert: The IOM in Libya Beyond War and Peace." *Antipode* 48 (2):272-292; A. Knoll and F. de. Weijer. 2016. 'Understanding African and European Perspectives on Migration: Towards a Better Partnership for Regional Migration Governance?' *Discussion Paper 203.* Maastricht: ECDPM; M. Casas-Cortes, S. Cobarrubias, and J. Pickles. 2015. 'Riding Routes and Itinerant Borders: Autonomy of Migration and Border Externalization,' *Antipode* 47 (4):894-914; D. Perrin, 2012. 'The impact of European migration policies on migration-related legislative activity in Maghreb countries: An overview of recent reforms,' Pp. 251-260 in C. Gortazar, M. C. Parra, B. Segaert and C. Timmerman (Eds) *European Migration and Asylum Policies: Coherence or Contradiction?* Brussels: Bruylant.

17   D. Fassin. 2010. 'Heart of Humanness: The Moral Economy of Humanitarian Intervention,' Pp. 269-293 in Fassin, D. and Pandolfi, M. (eds.) *Contemporary States of Emergency*. New York: Prospect Books: 269-293.

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He is currently exploring comparative perspectives on how mobility is reshaping the politics of rapidly diversifying and expanding communities. Through examinations starting in South Africa and extending across Africa and elsewhere, it will identify and explain emerging forms of political subjectivity, political authority, and governance regimes in spaces characterised by continued mobility. In its initial phase the concentration will be on the continent's emerging urban estuaries: gateway zones characterised by transience, translocalism and social heterogeneity. As sites often loosely structured by state policy or dominant cultural norms, these estuaries are giving rise to novel modes of political community, institutional configurations, and practical ethics.