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## Strengthening the rule of law on the margins: experiences from Za'atari refugee camp, Jordan

George Riach<sup>a\*</sup>  and Zoe James<sup>b</sup> 

<sup>a</sup>*School of Law, University of Leeds, United Kingdom;* <sup>b</sup>*School of Sociology and Social Policy, University of Nottingham, United Kingdom*

International law is often regarded as an omnipotent force, which, as a consequence, subordinates the lived experience of those who consider law in its local customary form. Framed in the context of vulnerable refugee groups displaced through conflict and beyond their national jurisdiction, this article critically examines discourses of legal pluralism and legal empowerment. Incorporating empirical research from Za'atari refugee camp this article will identify the barriers which refugees face when accessing formal legal services. In the absence of an effective and accessible legal process, Syrian community groups have emerged offering alternative avenues to pursue civil, religious and criminal claims, providing a level of legal empowerment. These groups present an opportunity whereby international human rights standards can be reincorporated where they are otherwise absent.

**Keywords:** Za'atari refugee camp; rule of law; human rights; legal fragmentation; quasi-legal; participatory incorporation; sui generis

### Introduction

This research assesses the disempowerment of Syrian refugees due to procedural and structural inadequacies of Jordan as a host state. The absence of adequate legal provisions has contributed to the emergence of alternative 'informal' mechanisms from the Syrian community itself. Refugee groups, and religious and political leaders demonstrate quasi-legal characteristics in line with customary legal traditions. Specifically, refugee camps represent a legal *sui generis* which focus discussions of legal pluralism. This work is based on empirical fieldwork to Jordan, and the world's second largest refugee camp, and reinforces human rights arguments that legal empowerment is vital in protecting refugees from vulnerabilities caused through displacement. It is proposed here that legal empowerment of Syrian community groups and cooperation between state and international actors could facilitate a stronger rule of law which reincorporates international human rights standards. Harnessing existing customary authority which reincorporates human rights standards in a non-parochial way could allow a stronger, more durable rule of law where it is otherwise lacking. This is of contemporary significance when we consider global mobility, the vulnerabilities of millions of refugees, and the conflict which inevitably arises as a result. Different social,

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\*Corresponding author. Email: [georgeriach@hotmail.co.uk](mailto:georgeriach@hotmail.co.uk)

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political and legal traditions combined with a lack of understanding exacerbate feelings of resentment, arbitrary rule and discrimination.

Three main focal points underlie this research: the recognition of pluralism and understanding the importance of customary law; the role of legal empowerment; and how when considered together attempts can be made to strengthen the rule of law and human rights. To unravel these complex discussions, this work will be broken down into the following sections: First, legal pluralism and the importance of respecting customary legal norms will be addressed. Second, a human rights approach will demonstrate the value of legal empowerment in developing a strong rule of law which forms the foundation for securing fundamental rights for refugees. The third section will outline the precarious implications of legal disempowerment in Jordan, and the Za'atari refugee camp specifically. Fourth, Za'atari will be used to contextualise discussions of pluralism and empirical observations will demonstrate a complex *sui generis* in which Syrian stakeholders work alongside, and at times separate from, Jordanian legal administrators and international aid organisations. The fifth section explores the importance of legal empowerment in Za'atari, whilst the sixth focuses on the implications of a stronger rule of law for refugees.

### 1. Legal pluralism

International law is not a self-encompassing process, but it comprises a network of overlapping and sometimes distinct jurisdictions characterised by pluralism.<sup>1</sup> Law is derived from different sources and cannot be seen as an isolated system. There is sometimes a tendency to view international sources of law as all powerful and hierarchical, under which forms of local customary legal origins can be seen as subordinate.<sup>2</sup> However, this view cannot be sustained when considering the lived realities of different people's experience of legal norms and customs. In order to understand international law it is vitally important to understand who experiences those laws, and what other factors influence their imposition into different contexts.<sup>3</sup> There exists a plethora of semi-autonomous legal and quasi-legal networks, some of which can be competitive or frictional, while others are more complementary.<sup>4</sup> The epoch of increasing globalisation highlights these interactions between states and multilateral organisations, but increasingly incorporates non-governmental organisations (NGOs) and civil society as influential stakeholders.<sup>5</sup> Interconnections can be seen in many respects to strengthen international human rights; however different governance structures, existing from the local, to the national, create and open up new spaces whereby international law is reinterpreted and in some cases dismissed by customary legal systems.<sup>6</sup>

Governance is fluid and dynamic, making legal integrity a complex process. A range of internal and external factors influence the norms of any given social, political or legal system. Doreen Massey's concept of spatial relations is of importance here, recognising the multiple understandings of the same system, which do not operate in isolation as essentialised products, but are more aptly seen as a series of processes which take account of a range of internal and external influences.<sup>7</sup> Massey's theory of social systems offers an important interdisciplinary approach which is useful for legal traditions. It resonates with the pluralistic interpretation of international law where a single system can be understood in multiple ways.<sup>8</sup> As such, the empiricism here adopts a non-parochial perspective which respects the integrity of informal customary systems whilst understanding justifications for universal legal norms. This allows a nuanced position from which policy recommendations are proposed in the final sections of this article which could strengthen legal environments for refugees in Jordan.

While international legal standards are recognised as an effective measure in securing fundamental human rights, this work demonstrates operational challenges for vulnerable

groups who become displaced beyond their national jurisdiction. The mass migration of refugees between countries frames discussions of pluralism in a concentrated form which creates difficulties and opportunities in understanding overlapping governance structures between local customary values of refugees and the jurisdiction of the sovereign host state. Overarching and interacting with these systems are theoretical understandings of international and regional laws which propagate universal human rights. As demonstrated here, universalism often gives way to state constitutionalism and the power of customary autonomy which receive high degrees of 'internal legitimacy'.<sup>9</sup> Through the protracted composition of different nationalities, religions and ethnicities within a given jurisdiction, legal pluralism is better seen as a network of systems which interact in different ways and force us to reconsider the state-centric philosophy of international law.<sup>10</sup>

## 2. The value of legal empowerment – a human rights approach

The interface between legal empowerment and human rights protection is well recognised.<sup>11</sup> Access to justice and legal aid is vitally important in reducing human rights violations and promoting democratic empowerment for marginalised social groups.<sup>12</sup>

Legal empowerment is a human rights-based approach (HRBA) that employs the law and legal processes to effect empowerment, 'the ability or opportunity [of refugees] to claim and exercise their rights', and thereby to gain the power to 'influence the behaviour of other agents and social arrangements'.<sup>13</sup>

Universal principles of human rights are threatened by the negative outcomes of displacement. Purkey's reference to specific challenges to refugees is paramount here. Displacement increases social and economic vulnerabilities, disempowering vast populations globally and negatively affecting an individual's legal rights and how they access those rights.<sup>14</sup> Ensuring legal empowerment is essential therefore to a strong rule of law. It is worth briefly considering some of the relevant rights available to refugees in Jordan, as a foundation for the rest of the discussion.

### 2.1 Jordan's legal obligations

No formal framework has been adopted in the Middle East to resolve refugee challenges despite the region's 2,528,012 foreign displaced persons and 11,562,929 internally displaced persons.<sup>15</sup> The 1994 Convention on Regulating Status of Refugees in the Arab Countries<sup>16</sup> has never been ratified and there is no comparative legal document to other regional human rights providing specific rights to refugees in the region.<sup>17</sup> Similarly, Jordan is characteristic of other nations in the Middle East in that it is not a party to the 1951 Convention Relating to the Status of Refugees,<sup>18</sup> nor its 1967 Protocol.<sup>19</sup>

Importantly, the 1998 Memorandum of Understanding (MoU) with the UNHCR outlines the rights of refugees and the respective duties of the government of Jordan and international humanitarian agencies:

In the absence of any international or national legal refugee instruments in force in the country, the MoU establishes the parameters for cooperation on providing protection and assistance to refugees and asylum-seekers.<sup>20</sup>

Jordan demonstrates the position of the modern nation state's interaction with the international community, reflecting the *realpolitik* of democratic constitutionalism which can

take precedence over international law, without necessarily compromising some of the humanitarian principles. The MoU reflects a dualist relationship between the internal legal order of Jordan which interacts and interprets normative international values through its interactions with external political, social and legal systems.<sup>21</sup> This approach challenges the hierarchy of legal jurisprudence implicit in other countries.<sup>22</sup> Jordan is however, party to a number of international human rights instruments which are particularly relevant considering the vulnerabilities of refugees.<sup>23</sup> As the OHCHR clarifies:

... refugees are entitled to all the rights and fundamental freedoms that are spelled out in international human rights instruments. The protection of the refugee must therefore be seen in the broader context of the protection of human rights.<sup>24</sup>

Of particular importance for the purposes of seeking judicial remedy is the International Covenant on Civil and Political Rights Article 2(1):

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind ... national or social origin ... birth or other status.<sup>25</sup>

This should be considered in conjunction with Article 2(3):

Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy ... (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.

The Committee on the Elimination of Racial Discrimination (CERD) goes further, extending Jordan's obligation to afford equal human rights to non-citizens within its jurisdiction as it does its citizens.<sup>26</sup> Jordan has an obligation to,

Ensure that non-citizens enjoy equal protection and recognition before the law and in this context ... ensure the access of victims [of violence] to effective legal remedies and the right to seek just and adequate reparation for any damage suffered.<sup>27</sup>

Differential treatment on the basis of citizenship constitutes discrimination without some legitimate aim pursuant to the aims of the convention.<sup>28</sup>

It is clear that refugees hosted in Jordan have certain rights for which they can seek remedy through the courts as outlined in Articles 99, 103–106 of the Jordanian constitution. These rights are further outlined in Article 7 of the MoU with the UNHCR which states: 'A refugee shall have free access to courts of law and in order to enjoy this treatment he has the right of litigation and legal assistance as accorded to the nationals wherever that is possible.'

### 3. Legal disempowerment

Jordan provides favourable rights *de facto* to refugees; however the legal system faces numerous challenges, preventing effective legal empowerment. International law and positive obligations can be inhibited by domestic limitations such as resource constraints and cultural relativism.<sup>29</sup> Legal empowerment can be critically viewed as a mantra considering the reality, which shows the judiciary to be arbitrary. Structural factors in this instance have little impact on the delivery of adequate legal services to vulnerable social groups such as

the poor, the uneducated, disempowered women and many refugees.<sup>30</sup> Jordan's Ministry of Justice made improving access to justice a priority in its 2010–2012 Judicial Reform Strategy, but resource constraints, among other social issues, have inhibited any real change.<sup>31</sup> International law does not work for certain marginalised segments of Jordanian society and highlights a deficit between what the law says *de facto* and what is experienced *de jure*. Access to the law and administrative systems entails more than procedural mechanisms. An effective rule of law must also incorporate other variables which include the,

physical conditions of the premises where justice is dispensed, the quality of the human and material resources available thereat, the quality of justice delivered, the time it takes for the delivery of justice, the moral quality of the dispenser of justice, the observance of the general principles of the rule of law, the affordability of the cost of seeking justice in terms of time and money, the quality of the legal advisers that assist the litigants, the incorruptibility and impartiality of operators of the system.<sup>32</sup>

In discussing access to justice and legal aid it is important to analyse broad discussions of the legal system which include structural factors as well as the obtainability of quality services for vulnerable individuals. Some broadly debated challenges facing Jordan's legal system were identified by triangulating empirical findings with reports from different agencies and government statistics. These themes were:

### 3.1 *Overburdened, under-resourced*

Jordan is host to an ever growing refugee population due to its geography in the region. This exacerbates burdens on public services broadly, but in particular on the judiciary. Estimates of the number of refugees residing in Jordan including unregistered persons exceeded 3,000,000 by mid-2013.<sup>33</sup> The extra demand on services required to process and manage displaced persons falls to Jordanian and humanitarian agencies as well as the vast network of NGOs which offer a safety net to vulnerable groups. This mobility is having long-term social, political and economic implications for host states. The government of Jordan predicts that the increasing strain on public services and administrations will require an input of US \$413,787,018.<sup>34</sup> On top of this the UNHCR predicts that the total funds needed to sustain refugee assistance projects is US\$1,200,650,591.<sup>35</sup> With already strained resources, the effectiveness of national action plans and programmes is dependent on international cooperation and support. Yet only 25% of pledged support has been received to date, and Jordan retains overwhelming responsibility for the delivery of not only refugee services, but all public services.<sup>36</sup> The detrimental impact of this can be seen in the inadequate provision of legal aid services, which as a consequence contributes to disempowering already marginalised groups.

### 3.2 *Time*

The overburdened and under-resourced legal system has resulted in severe back logs. It is estimated that complex cases which enter formal court proceedings can take up to three years to process.<sup>37</sup> As a result, litigation is a lengthy process which is off-putting to many. In the absence of any efficient legal system some forgo the formal processes of seeking justice all together. This problem is well recognised, prompting reactions by organisations such as the United States Agency for International Development (USAID) calling for the urgent reform of the legal system in order to overcome the challenges facing the entire judiciary and to improve efficiency, effectiveness and transparency.<sup>38</sup>

### 3.3 *Legal representation*

There is a distinct lack of judges and lawyers in Jordan to deal with the increasing number of cases from the exponential growth in refugees.<sup>39</sup> Service demand exceeds service delivery, which creates a situation where legal representatives are free to choose the cases they deal with; without a pro-bono culture, social underclasses are underrepresented and disempowered, exacerbating social vulnerabilities and exploitative power relations.

### 3.4 *Financial barriers*

Poverty legally disempowers individuals and financial hardship prevents many from accessing the few services that do exist.<sup>40</sup> The Commission on Legal Empowerment of the Poor demonstrates how legal systems are burdened with inequalities which marginalise so many people because of the expenses which shadow litigation.<sup>41</sup> In Jordan,

Impoverished people are unable to access fee-based legal services, which leads to impunity of rights-abuse: poverty makes people vulnerable to abuse, yet without the financial means to seek legal assistance these abuses remain unresolved. Significant sections of Jordanian society desperately need legal assistance ... Women and refugees are however hardest hit by the lack of sufficient legal aid.<sup>42</sup>

Fourteen percent of Jordan's citizens live below the poverty line. This is more concerning considering that poverty is far more apparent in refugee communities. The economic and social hardships created through conflict displacement over protracted durations create huge vulnerabilities.<sup>43</sup>

Poor individuals can defer payment of court fees in Jordan; however there are several challenges with this. First, there is no uniform system to determine poverty rates and this is left to the discretion of the judge. Furthermore, many legal experts and litigants are unaware of this right and individuals must prove their financial hardship by the delivery of written documentation. Delivering this documentation is difficult if not impossible and the process can be so humiliating that it can discourage applications.<sup>44</sup>

Common disempowerment of Syrian refugees was observed due to the following issues:

### 3.5 *Mobility and uncertainty*

The extended duration experienced in administrative and legal services is a particular issue for refugees considering the temporal nature of refugee status and high levels of mobility. Refugees are permitted to stay in Jordan for six months before renewal of their visas, in which time the UNHCR tries to resettle them. In reality most refugees stay in Jordan for much longer by renewing their status or by failing to register and staying as unregistered refugees. The issue is uncertainty about one's future plans and many refugees do not know whether they can complete the entire process of complex litigation, and many simply prefer quick fix alternatives which can cause additional issues.

### 3.6 *Implications of informal status*

Formal documentation provides certain civil rights in Jordan. As a consequence of displacement, many refugees lack the necessary civic documents such as birth, marriage and divorce certificates. Without such documentation it is hard to demonstrate to an authority the rights

one assumes. Many turn instead to customary practices such as local religious leaders to meet cultural standards of formality. People continue to marry, have disputes and divorce, or, fight for custodianship over children, as is common in any society. But because often these practices take place informally and people fail to register with the authorities, they face large fines when referring cases through formal administrative bodies, fostering violations of justice.

### 3.7 *Perceptual barriers to formal justice*

Formal judicial arenas are unfamiliar environments for many people who might lack the knowledge of the system or their own personal rights. This issue is inflated through displacement and misunderstandings of foreign systems.

Perceptual barriers to administrative powers are common in refugee communities as a result of long-standing frictional relationships between themselves and formal administrations. The International Association of Refugee Law Judges, understanding such difficulties, issued the following statement:

All judges in refugee and other protection cases, particularly as part of credibility assessments, must recognise that not only are some claimants less able to articulate their story and background than others but also psychological impairment will often affect the evidence and presentation of genuine claimants. Such impairment may arise from past persecution or serious maltreatment and indeed occasionally, through fear of 'authority figures', from the IP determination process itself.<sup>45</sup>

Refugees who have experienced persecution at the hands of governing authorities in Syria remain suspicious of Jordanian authorities for fear of reprisals. The legacy of mistrust was identified as a common theme in interviews with key informants and refugees. Some have a perception that their disputes will face unfair judgments or they might not even have their disputes heard because of an aura of intolerance in the host population.

Oxfam recently published a perceptions report outlining empirical findings on refugees' experiences.<sup>46</sup> This is consistent with our research findings in which all participants expressed that Syrian refugees are more likely to discuss disputes or legal issues with kinship groups such as family members, community leaders/elders or religious leaders over Jordanian, UNHCR or NGO administrations. The familiarity of social systems based on nationality, ethnicity and culture provides customary legitimacy in Za'atari's refugee population. As refugee communities become more stable through protracted displacement, more dependence is placed on these grass-roots organisations with few incentives to approach formal administrations unless in dire need.

### 3.8 *Patriarchal norms and understandings of rights*

An observational finding was that many refugees express a wish to know their rights and many are open to visiting legal information services if they are accessible. However, they are more interested in citizenship rights and registration than actually proceeding with formal litigation.

## 4. *Za'atari camp as a sui generis*

Refugee camps present unique spatial relations where multiple jurisdictions overlap through the understandings of law from different stakeholders, including: different

Syrian communities; Jordanian administrators; and international humanitarian agencies, like the UNHCR. These camps offer a unique space in terms of jurisdictional duties and the norms which shape their social infrastructure.

Za'atari refugee camp provides the focus of this work. It is the largest refugee camp in Jordan with a registered population of 115,000.<sup>47</sup> It was established in July 2012 as a temporary location to hold Syrian refugees before being repatriated voluntarily or resettled elsewhere.<sup>48</sup> With no end in sight to the crisis in Syria and with no immediate plans of resettlement for the majority of the inhabitants of Za'atari, it has become a semi-permanent city in its own right, offering an interesting case study into the (re)formation of social systems disrupted by conflict.

Za'atari camp mixes customary Syrian law with Jordanian and international legal norms into a complex legal system, which decreases consistent understandings about the legal rights afforded to displaced individuals.<sup>49</sup> Contrary to other empirical work in refugee camps these research findings demonstrate that many refugees are not embedded in international law.<sup>50</sup> Brian Tamanaha contends, 'what law *is* depends substantially upon what law *does*'.<sup>51</sup> This highlights the social nature of 'law', and that one's own meanings can be different to another person's conceptions.<sup>52</sup> In this context, international sources of law struggle to be mobilised as authoritative when many refugees claim their rights/seek legal aid. As such it is important to recognise and critically analyse alternative mechanisms through which people access justice before new methodologies can be proposed to reincorporate the positive aspects reflected by universal rights standards. This approach importantly reflects the legal realism of fragmentation, whilst seeking to reincorporate the positivism of international law. In Za'atari camp there are two different approaches in seeking legal empowerment; through the formal administration of Jordanian procedures; and second, through Syrian customary legal procedures.

#### 4.1 *Jordanian administration*

Since 2013 Za'atari refugee camp has been under the administrative duty of the government of Jordan which established the Syrian Refugee Camp Directorate (SRCDC). It assumes responsibility for camp management and protection alongside the UNHCR. The targeted services and management of refugees operate under the auspices of Jordanian law and the MoU with the UNHCR.

The majority of refugee participants described a lack of trust between camp management and the Syrian refugees in some shape or form; contrastingly, representatives of the SRCDC described the relationship as greatly improved. This contrast is more than likely due to a number of initiatives put in place by the SRCDC to try and improve relations.

Since the transfer of the camp's security and administration ... in 2013, the Public Security Department has worked tirelessly to foster relationships with local camp leaders and empower them to take the lead in maintaining security within the camp.<sup>53</sup>

However,

The implementation of the governance plan in Za'atari, planned to reduce tensions and improve conflict resolution, has encountered some delays, including the appointment of appropriate civil administration representatives and the establishment of committees providing equitable voice to women and men.<sup>54</sup>

#### 4.2 Syrian customary legal norms

Alternative governance and justice systems exist inside Za'atari camp; they operate within Jordanian jurisdiction but operate outside of the institutional confines of its substantive provisions and services.

In their 'hands-off' approach, Jordanian authorities have allowed 'local committees', groupings of tribal leaders and respected community figures to carry out internal policing and ensure that residents uphold the rule of law, while forces such as the Gendarmerie provide external security.<sup>55</sup>

These informal systems incorporate a range of actors who engage in customary legal environments, and forms of Alternative Dispute Resolution (ADR). Some of these systems and processes can be referred to as 'traditional' because they can be seen to reconfigure along legacies of familiarity in the community they serve; however it must be noted that displacement often results in transitional governance and social reordering, making many mechanisms relatively different.<sup>56</sup>

#### 5. Legal empowerment through customary actors

The United Nations Human Rights Council recognises the importance and potential of civil society and local governance structures in strengthening legal environments for the promotion of human rights.<sup>57</sup> The engagement of all actors in the governance of society is recognised as hugely important in enabling strong human rights standards. As such, it is through engagement with all stakeholders and interest groups that strong standards could be promoted.

Quasi-legal organisations in Za'atari emerge because they offer better alternatives to formalised legal systems, or sometimes the only viable recourse to services for some Syrians who would otherwise forgo processes of seeking justice altogether. The substantive and procedural challenges facing formal judicial structures inhibit their use for many refugees. As such, alternative systems emerge to fill the gap left and they emerge as more attractive options for refugees. The prevalence of quasi-judicial services is symptomatic of pluralism and at best it is used as a tool for democratic participation and legal emancipation.<sup>58</sup> Importantly, these informal systems provide services in a timely manner, for free, and they are formed by respected community figures, helping retain customary legitimacy.<sup>59</sup>

The range of informal mechanisms which this research identifies is fluid and dynamic, incorporating a diverse range of stakeholders in processes such as mediation, conciliation, and/or negotiation. It is apparent, that far from emerging, many of the informal social structures are based on culturally normative understandings. Moral and social norms remain integral binders which promote a sense of stability in an unfamiliar context and environment for displaced persons.<sup>60</sup> For example, *Sulha* refers to a tradition of conflict resolution based on honour and respect between parties.<sup>61</sup> It is a deep-rooted mediation culture, preferable at times to formal litigation, which can be regarded as harmful to communities.<sup>62</sup> The benefits of diversity are well recognised by human rights advocates:

the use of parajudicial procedures for conflict resolution, including customary procedures compatible with human rights, mediation or conciliation ... can serve as useful options for ... victims ... and to which less stigma may be attached.<sup>63</sup>

These alternative mechanisms provide flexibility, which allows integration of customary norms in contexts with overlapping jurisdiction.<sup>64</sup> The benefits of legal empowerment

through customary norms are becoming clear, but increasing pluralism can similarly create its own challenges to the rule of law by human rights standards.

These services are characterised by grass-roots formation and informal status with little, if any, oversight or monitoring. Jennifer Hyndman has criticised UNHCR camp management systems which fail to understand refugees' codes of justice and how/if they conflict with international human rights standards.<sup>65</sup> These semi-autonomous spaces can foster violations of justice by universal human rights standards.<sup>66</sup> Critical analysis of alternative and informal community governance structures' services demonstrates both benefits and challenges.

The following case studies demonstrate the complexities of legal empowerment through customary Syrian mechanisms. Some, such as the Syrian Family Clan Council (SFCC) and certain religious leaders, are recognised here as quasi-legals due to professional backgrounds and the functions they serve in enacting civil, criminal and religious legal codes. The prevalence of female neighbourhood organisations does not emerge as an alternative legal actor, however their role in providing an avenue through which Syrian women can seek legal counsel offers a positive case study for analysis and prescriptive action.

### 5.1 *Religious leaders*

Some Imams practise areas of criminal, civil and religious law in an attempt to reverse the lawlessness associated with camp life.<sup>67</sup> They do this informally and their legal character is sometimes blurred with protection, economic, political and other social functions. A network of Imams is spread throughout Za'atari, with approximately 52 mosques. Many of the substantive duties carried out by them are similar to formal procedures of the religious court system in Jordan and influential Imams already work closely in consultation with formal camp administrations. These figures are established sources of legal authority and are often familiar with legal standards and human rights. They provide legal provisions to many Syrian refugees who would otherwise have no recourse to justice.

### 5.2 *Syrian Family Clan Council (SFCC)*

The SFCC is a community council comprising the male heads of family in the Syrian community. They provide alternative criminal and civil legal proceedings through alternative dispute resolution such as negotiation, mediation and conciliation. Administrative structure was apparent in the organisation, with evidence of arbitration agreements drawn up by the council in which parties agreed to be bound. These documents outlined the specific case, the approach taken and the obligations and rights of each party. The authority the council held emerged from its respected legitimacy in the community, and its willingness to incorporate other respected community figures such as Imams. The head of the council boasted a high success rate in mediation, arbitration and conciliation between Syrians, with an extensive membership of families inside and outside of Za'atari camp. They spoke of their willingness to interact with aid agencies and the Jordanian police in order to resolve serious contentious issues, such as battery and murder, when they had exhausted customary remedies. Importantly, they offered a platform and voice for Syrians when speaking out against poor management, policing and violations of rights.

### 5.3 *Syrian Lawyers Initiative (SLI)*

This project was established and supported by a local NGO, which provided legal education to Syrian refugees. Through training, these refugees have become advocates in their

community and able to provide limited legal services with an understanding of Jordanian law and specialist human rights training. Learning how to incorporate their own customary understandings with this education facilitates a proliferation which has the potential to reduce violations of justice in their communities, as well as to empower other refugees to seek their legal rights.

The number of participants is modest, but demonstrates an important proliferation of legal understandings. Education and training have provided legal empowerment which reincorporates human rights standards in a non-parochial, bottom-up approach, respecting the activism and advocacy skills of Syrian refugees. The demographic mix in this initiative includes educated females, which is important for vulnerable Syrian women seeking legal empowerment when other customary mechanisms (discussed above) display traditional characteristics of patriarchy.

#### 5.4 *Matriarchal groups*

There is a worrying gap in the accessibility of justice available to female refugees who face greater vulnerabilities and greater barriers to securing civil rights due to a patriarchal dominance in the Syrian community. Identifying mechanisms which offer forms of legal empowerment is therefore an important task. A female street committee was observed which exists in order to resolve micro-level management of certain neighbourhoods in various districts. This group allows a platform for women to voice their issues and concerns. It has very little authority, which extends the idea of legal services beyond its formal definition as an administrator of justice. It does however provide a form of empowerment through dissemination of legal rights and how to access justice.<sup>68</sup> Women are given a voice to discuss issues important to them with their peers and some matriarchal figures arise as advocates for women's rights. This is a soft approach through information dissemination, referrals and often through their husbands. For example, the wife of an Imam acknowledged her influence in challenging domestic violence in Friday prayers.

These women demonstrate the potential for equitable governance within the camp's population, assuming a level of prominence and respectability within the community. As seen in the SLI above, when advocates are given the tools, such as legal advocacy education with mediation training, the concerns and local conflict drivers which particularly effect women in the community, such as sexual and gender based violence (SGBV), could be mitigated. Such vulnerabilities require both social and legal empowerment through different means, which avoid patriarchal or gendered values, without fear of reprisal. Advocacy work is well established in the camp but must be accompanied by empowerment of local females in order that legal aid and judicial processes are easily accessible.

#### 5.5 *Overview of findings*

The collection of customary quasi-legal actors which have been selected epitomise legal pluralism and the fragmentation of international human rights law. Za'atari camp presents itself as a legal *sui generis* with a complex array of customary legal mechanisms which emerge alongside, and largely separate from, Jordan's judiciary. They have emerged as a response to inadequate formal procedures which fail to respond to the complex needs of Syrians.

These customary actors legally empower Syrians in Za'atari camp, offering greater access to services, with more flexibility in processes and outcomes of litigation. The greater variety of quasi-legal actors contributes to specialisation, in terms of religious,

civil and criminal matters, and a cooperative referral system between community groups.<sup>69</sup> This network is responsive to the particular social and legal needs of refugees, which prevented many informants from seeking formal legal remedies. For example, the variety of service providers and informal procedures reduces the duration of formal litigation which is considered paramount for those who consider displacement a temporary situation. Swift justice in the eyes of disputing parties can promote stability and reduces potential violations of justice, and importantly, customary practices are seen as organic, retaining legitimate authority in certain cases. What is evident is the willingness of these community groups to refer the most serious contentious matters to the Jordanian police, but only when internal customary remedies have been exhausted. This engagement goes further, and the empowerment of marginalised Syrians enables individuals to enact the law and improve the administration of justice in Za'atari, making aid organisations and local power holders more accountable. This willingness to interact blurs strict concepts of a separation of powers in legal pluralism. It also offers possibilities in reincorporating international human rights standards alongside customary legal procedures.

No cases were observed which demonstrated a blatant violation of a rule of law and civil liberties during this empiricism. However, concerns over 'punishments' administered by the SFCC in conjunction with reports documenting a prevalence of underage marriage by some Imams reflects topical debates regarding the legality of ADR. At worst, community stakeholders reinforce negative aspects of informal justice and legal services.<sup>70</sup> For instance patriarchal norms sustain a precarious situation for women.<sup>71</sup> Certain Imams and the SFCC facilitate some of the doctrinal attitudes which formal administrations are attempting to overcome. Without effective monitoring it is difficult to assess how these alternative quasi, or para-legal services compare to understandings of international human rights. While each key informant expressed knowledge of international laws and human rights they are viewed with trepidation, as it remains unclear as to their precise character and what legal code is being dispensed. Community groups could be subject to formal oversight in order to observe their exact function and their effectiveness, an idea that was welcomed by all informants if it meant formal delegation of responsibility by the camp's management system.

## 6. A stronger rule of law for refugees

Jordan is plagued by procedural challenges which are disempowering an already vulnerable refugee population. Displacement creates complex and unique social, economic and psychiatric difficulties which exacerbate legal empowerment further. Legal empowerment is recognised as a tool to promote human rights standards, so any derogation of it for refugees is particularly concerning. The engagement of refugees is important if strong standards are to be promoted and a rule of law to be considered legitimate.

The range of informal dispute resolution mechanisms identified above offers flexible approaches to ideas of justice and civic rights. Proliferating legal norm values and improving relations between key stakeholders like the UNHCR, legal experts and community groups can promote a participatory legal approach in line with international human rights standards. Facilitating dialogue with stakeholders who hold values which differ from ideas of fundamental human rights can introduce conversation rather than an imposition of one set of values over another.<sup>72</sup> A stronger rule of law and culture of rights comes through exposure to international human rights norms and education.<sup>73</sup> This is something that has been identified in the SLI. These informal and autonomous organisations reflect the values and norms of a particular interest group; alienating them because they

do not conform to international legal standards would be wrong considering the influence they exert in the community. They might offer imperfect solutions, but they provide *de facto* legal counsel and protection through the authority they apply. It is important that those organisations be subject to the oversight and organisation of an administration, such as the UNHCR, in order to identify the complex processes and understandings at work in the community. Participatory approaches in the formation of a devolved governance structure have worked in similar circumstances in other protracted refugee situations and have been beneficial to strengthening the rule of law because of formalisation and monitoring.<sup>74</sup> This will be looked at next as it demonstrates how devolution of formal responsibilities equates to further empowerment of local stakeholders.

Customary sensitive committees which are organised on a tripartite agreement between different stakeholders have offered effective mediation services as an alternative to civil or religious courts, as well as an alternative to informal services which can foster violations of justice and human rights.<sup>75</sup> These committees can align different customary and legal values from different interest groups and therefore exercise greater legitimacy through nuanced judgments.

This scheme was established in Iran under similar circumstances through the formation of a number of 'Special Legal Committees for the Settlement of Afghan Refugee Disputes' which provide alternative legal advice and mediation services. These panels retain legitimacy in the community because refugees are represented by someone they consider authoritative. Whilst the representation of a human rights specialist ensures that the entire process complies with humanitarian principles. The appointed 'Special Mediators' have a mandate to provide binding outcomes when parties agree to a resolution. The importance of this formal process is that refugees are provided with documentation which is transferrable between jurisdictions, offering a durable outcome. Interestingly, Jordan has a constitutional and legal framework which can facilitate the same platform.<sup>76</sup> What is particularly attractive about the formation of a multi-stakeholder panel is that international human rights can be reincorporated whilst formally empowering cultural and legal normative standards of Syrian and Jordanian traditions. This way of formalising existing community groups can offer a progressive step in the legal empowerment of Syrian refugees in Jordan.

The findings and observations of the fieldwork suggest a positive environment upon which workable relationships can be built which lead to the recommendations to map, monitor and assess informal community services. It is from here that normative legal values can find common ground and proliferate the reincorporation of international human rights standards.

## Conclusion

Jordan is symptomatic of a modern nation state which interprets the legal expectations of the international community within domestic legal systems and under resource restraints. This article finds common ground between legal realism, reflected within informal local customary law, and the positive values of universalism and human rights law. As an academic critique, this research addresses the noticeable deficit of analysis surrounding Syrian refugees within Za'atari and their relationship with the law. Practically, the data provide an insight into a network of quasi-legal actors and organisations which were undocumented by camp authorities and practicing NGOs.

Za'atari refugee camp is regarded as a space with no single legal identity, but is rather characterised as a jurisdictional *sui generis*, blending a variety of international and local customary norms. It is a flexible and mobile space where vast numbers of refugees, different

administrations and organisations live and work. The blurring of understandings and impetuses makes Za'atari a complicated environment epitomising legal fragmentation. In contrast to comparative research, these first-hand observations and testimonials demonstrate that refugee communities in Za'atari camp are not embedded in understandings of international law. Instead customary traditions meet and sometimes compete with formal legal procedures. Empirical observations demonstrate complexities in the prevalence of informal quasi-legal and community based organisations which operate alongside and separate from the formal administration processes in the camp. These alternative systems have emerged under specific circumstances which have left a gap in legal services for Syrian refugees in Za'atari camp. A tempered view demonstrates both positive and negative consequences of these semi-autonomous mechanisms. Positive elements of legal empowerment include: greater accessibility due to fewer psychosocial or cultural barriers; familiarity and ease of access through devolved local systems with fewer time constraints in accessing services and justice. Furthermore, they offer services when there would otherwise be no practical recourse to a court or legal practitioner. Despite these positives, it is similarly noted that informal customary practices can facilitate and reinforce patriarchal dogmas and enforce relativist standards of justice, undermining the rule of law and human rights norms, which can facilitate legal disempowerment for certain demographics, including women. Caution must be taken in order to improve access to justice for those who would otherwise forgo it, whilst similarly tackling any human rights abuses or derogation of the law which can occur through autonomous community governance.

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No potential conflict of interest was reported by the authors.

### Notes on contributors

**George Riach** received his bachelor's degree from the School of Social Sciences, University of Leeds in 2013. He returned to the University of Leeds, this time under the school of Law, to obtain an LLM International Law, where he also received the accolade for best dissertation. He is currently completing his Graduate Diploma in Law at the University of Law, Birmingham.

**Zoe James** obtained her bachelor's degree from the School of Humanities, University of Derby in 2013. The following year, she went on to achieve her master's degree in Global Citizenship, Identities and Human Rights from the School of Sociology and Social Policy, University of Nottingham. She is currently a postgraduate student at Birmingham City University, in the school of Education.

### ORCID

George Riach  <http://orcid.org/0000-0002-7043-0730>

Zoe James  <http://orcid.org/0000-0002-6821-3526>

### Notes

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2. Michael Akehurst, 'The Hierarchy of the Sources of International Law', *British Yearbook of International Law* 47, no. 1 (1975): 1. Such affirmations can be inferred from the International Court of Justice Article 38 as a renowned legal authority in which there is an absence of micro plurality reflecting customary relativity as a source of international law.

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13. Anne Lise Purkey, 'A Dignified Approach: Legal Empowerment and Justice for Human Rights Violations in Protracted Refugee Situations', *Journal of Refugee Studies* 27, no. 2 (2013): 267.
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18. UNGA, *Convention Relating to the Status of Refugees*, United Nations Treaty Series, 189 (1951), 137.
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27. CERD, *General Recommendation XXX on Discrimination against Non-citizens*, 65th Session (2005) UN Doc. A/59/18, para. 18.
28. *Ibid.*, para. 4.
29. Oona Hathaway, 'Do Human Rights Treaties Make a Difference?', *Yale Law Journal* 111 no. 1870 (2002): 2020. Hathaway raises concerns about how human rights are constructed in different countries and to what extent countries approach their positive obligations. While the intention to meet these obligations is sometimes apparent, political and economic realism often inhibits their delivery, for example resource constraint. This has been noted as a barrier to particular international treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR).
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33. UN Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA), *Where we Work: Jordan*, <http://www.unrwa.org/where-we-work/jordan> (accessed 18 August 2014); Samar Muhareb, 'Implications of the Geopolitical and Economic Constraints for Providing Legal Aid to Refugees in Jordan', *Rights in Exile Newsletter*, <http://rightsixinexile.tumblr.com/post/46838149992/implications-of-the-geopolitical-and-economic> (accessed 18 August 2014); UNHCR, *Country Operations Profile* (2015).
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40. See Prettitore, 'Who Needs Legal Aid Services?'
41. UNDP, *Making the Law Work for Everyone*.
42. See Gora, *Provision of Legal Services in Jordan*.
43. CERD, *General Recommendation XXX*, para. 7: 'Ensure that legislative guarantees against racial discrimination apply to noncitizens regardless of their immigration status, and that the implementation of legislation does not have a discriminatory effect on non-citizens.'
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52. Ibid., 13; Joseph Raz, 'Can There Be a Theory of Law?', in *The Blackwell Guide to Philosophy of Law and Legal Theory*, ed. Martin P. Golding and A. William (Oxford: Blackwell, 2005), 331.
53. Taylor Luck, 'Jordan's "Zaatari" Problem', *The Jordan Times*, 19 April 2014.
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56. Erica Gaston, Akbar Sarwari, and Arne Strand, 'Lessons Learned on Traditional Dispute Resolution in Afghanistan', *Building Peace* no. 3 (2013): 7. For example, some of those historic traditions in dispute resolution, upheld by prominent figures in a community 'may not capture the constantly evolving nature of these practices and denote overly static forums'.
57. Human Rights Council, 'Civil Society Space: Creating and Maintaining, in Law and in Practice, a Safe and Enabling Environment', UNGA, 23 September 2013, Doc/A/HRC/24.L.24, paras 5 and 7.
58. UNDP, *Making the Law Work for Everyone*, 1ff. By 'quasi-legal' the authors refer to agents who display characteristics of customary legal codes and practice.
59. See Human Rights Council, 'Civil Society Space'. The terms 'informal' and 'quasi-legal' are meant as rhetorical devices to overcome notions which induce overly static visions of community organisation. The term 'informal' is not to be misconstrued: in some instances it incorporates agents who engage with, or are themselves vested with formal administrative functions. For example, influential Syrian Imams work closely with a Jordanian Judge and his legal team in the religious court which is operational in Za'atari. This court was an initiative launched by the Jordanian Ministry of Interior (MoI) under conditions outlined by the Jordanian constitution.
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62. Michael Palmer, 'ADR Missionaries: Developing Countries Import, Adapt Western methods', *Dispute Resolution Magazine* 12, no. 3 (2006): 13.
63. CERD, *General Recommendation XXX*, 16.
64. World Bank, *World Development Report: Conflict Security and Development* (Washington, DC: World Bank, 2011), [http://wdr2011.worldbank.org/sites/default/files/pdfs/WDR2011\\_Full\\_Text.pdf](http://wdr2011.worldbank.org/sites/default/files/pdfs/WDR2011_Full_Text.pdf) (accessed 28 May 2014), 84. Customary practices refer to different forms of social organisation and governance which develop locally. The support of empirical research helps to understand customary values as they find existence through the realities of people's everyday lives.
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66. Richard Delago, Chris Dunn, Pamela Brown, Helena Lee, and David Hubbert, 'Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution', *Wisconsin Law Review* (1985): 1359; Paul Jackson, 'Decentralised Power and Traditional Authorities: How Power Determines Access to Justice in Sierra Leone', *Journal of Legal Pluralism* 43, no. 63 (2011): 205. For particular implications of local ADR on women in patriarchal communities see, Subadra Panchanadeswaran and Catherine Koverola, 'The Voices of Battered Women in India', *Violence against Women* 11, no. 6 (2005): 736.
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68. See Purkey, 'A Dignified Approach', 8.
69. The SFCC would regularly consult with religious leaders and request their opinions and input into the resolution of certain cases.
70. See McQue, 'Inside Zaatari'.
71. See *ibid.* Panchanadeswaran and Koverola provide comparative studies on violations of women's rights as a result of informal community councils.
72. Kenneth W. Abbott and Duncan Snidal, 'Hard and Soft Law in International Governance', *International Organisation* 54, no. 3 (2000): 421. This is often the case in international relations and human rights law, where soft law approaches can be more receptive.
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74. International Centre for Policy and Conflict, *Paralegalism in Kenya in a New Constitutional Dispensation* (ICPC, 2012), 2; and Purkey, 'A Dignified Approach'.
75. See note 66 above.
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