

# THE ACTIVIST

**HRSI's annual student-led human rights journal**

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# Editorial

**D**uring a tumultuous past year, we have witnessed a further erosion of human rights around the globe—with the spread of misinformation, rising populism and growing hate mongering not only directed against the most vulnerable and voiceless social groups, but also their defenders.

Beyond disturbing reports depicting abuse against women all over the world or the plight of refugees in Europe, the Rohingya in Myanmar or sexual minorities in Chechnya, we have seen headlines about the continuing crackdown on human rights organizations and other independent institutions, including our beloved alma mater, Central European University. At the same time, elections in Russia and Hungary further consolidated the power of strongmen who have anchored their ideology in the subversion of the rule of law and human rights.

Amidst all these challenges, and in keeping with tradition, articles in this year's journal reflect upon some of the most pressing human rights issues of our time. Some of them are concerned with abuse against vulnerable populations, depicting the human impact of gender-based violence, the lack of legal protections against domestic violence

in Lebanon, and the conditions of persons with disability living in Pakistan. Other pieces discuss the implications of the exploitation of our environment, tackling questions around water shortage, corporate social responsibility, environmental induced migration and the potential future statelessness of low-lying islands' populations. Two authors highlight the invaluable and key role NGOs and educational institutions respectively play in the treatment of refugees amidst the crisis. Additionally, two articles deal with an ever-elusive concept, truth, and the human rights implications of speaking it to power or trying to preserve it for justice and accountability.

This year's photography submissions address similarly pertinent struggles by letting us peek inside the lives of artisans suffering in utter neglect in Kolkata, and HIV-positive former drug users ostracized in Kyrgyzstan.

Each article or photo reveals its creator's profound understand-



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Ifra Asad

ing and unique sensitivity about human(s and our) rights, either in a highly professional manner or in deeply personal terms. And more importantly, they each give voice to the voiceless.

Our sincere gratitude goes to our authors, photographers, associate editors, proofreaders, reviewer, the HRSI team as well as our readers for their interest and support. We hope that this year's *The Activist* will follow in the footsteps of previous editions by propelling the discourse on human rights forward, generating groundbreaking ideas and serving as a call for action for all of us.

The *Activist's* 2018 edition offers a unique set of perspectives from a diverse range of voices that resonate on the global stage—exemplifying the values and mission of Central European University.

*Ifra Asad, MPA student, School of Public Policy, CEU*

*Editor-in-Chief*

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## COVER IMAGE

Credit: Gigi Ibraim

<https://www.flickr.com/photos/gigiibrahim/>

This is the image of two stencils found next to each other across the street from the sit-in at the Maglis Al-Sha'ab (lower house of Parliament or People's Assembly in Egypt). On the left, the stencil of **Aliaa Magda Elmahdy** and on the right, of **Samira Ibrahim**.

**Aliaa Magda Elmahdy** (left) is an Egyptian internet activist and women's rights advocate. She uploaded a nude photo of herself on her Blogspot page, which she described as "screams against a society of violence, racism, sexism, sexual harassment and hypocrisy". Legal action has been taken against her for "trying to spread her obscene ideology" and "violating morals, inciting indecency and insulting Islam". In 2013, Elmahdy sought political asylum in Sweden for fear of being jailed, after being kidnapped and receiving death threats, and escaping a rape attempt. The stencil reads: "Samira Ibrahim: 25 years-old, she had been stripped naked by force and checked for her virginity in front of officers and soldiers in the army. She filed a lawsuit in the Egyptian court (...). Aliaa Elmahdy: 20 years-old, she stripped and exposed her body clearly by her own wanting".

**Samira Ibrahim** (right) is also an Egyptian activist who became known during the Egyptian revolution. On March 9, 2011, she participated in a sit-in at Tahrir Square in Cairo. The military violently dispersed protesters, and Samira and other women were beaten, given electric shocks, strip searched, and videotaped by the soldiers. Seventeen of them were also subjected to virginity tests. The tests were allegedly carried out to protect the soldiers from accusations of rape. Due to the success of her claims, a court order was issued in December 2011 to stop the practice of "virginity tests". However, in March 2012, a military court exonerated Dr. Adel El Mogy from charges laid in connection with the virginity testing of Ibrahim. Ibrahim promised to take her case to the international courts. The stencil reads: "Tribute and homage to cherish and support For Samira Ibrahim, daughter of Upper Egypt."

Sources: <http://thisisnotgraffiti-cairo.blogspot.hu/2011/11/naked.html>  
<https://www.revolvy.com/main/index.php?s=Aliaa+Magda+Elmahdy>  
[https://en.wikipedia.org/wiki/Samira\\_Ibrahim](https://en.wikipedia.org/wiki/Samira_Ibrahim)

**ABOUT HUMAN RIGHTS INITIATIVE** Human Rights Initiative (HRSI) is an awareness raising and capacity building organization based at Central European University (CEU) in Budapest. It was founded in 1999 by the students of the CEU Legal Studies Department, Human Rights Program. Since then, it has grown into an internationally-recognized human rights organization, focusing on youth involvement, informal education and student participation. HRSI's mission is to promote social engagement through awareness raising and capacity building. Our main target groups are CEU students and alumni, local and regional NGO staff and activists.

**THE ACTIVIST TEAM** Ifra Asad, Editor-in-Chief • Mackenzie Anderson, associate editor • Ana Jabauri, associate editor • Ozge Cakir, associate editor • Zoie Macneill, associate editor • Olga Romadin, associate editor, proofreader • Sana Salman, proofreader • Zsolt Bobis, peer reviewer, proofreader • Ana Belén Amil, designer, proofreader, HRSI Project Manager • Zsófia Suba, proofreader, HRSI Program Coordinator.



# The Tragedy of Plurality: Domestic Violence Law in Lebanon

**Menaal Munshey** examines domestic violence legislation in Lebanon and how women who have experienced domestic violence have been impacted by the plural legal system. She also looks at a recently passed law which criminalizes certain forms of partner violence and how civil society is responding to support survivors.



## *Diversity and Plurality*

**L**ebanon is a uniquely religiously and culturally diverse country. Today, it has a population of approximately 6 million, which includes 250,000 Palestinian refugees and 1.3 million Syrian refugees (Samad and Eid, 2016). The political system is based on a power-sharing mechanism termed consociationalism which is a form of democracy that seeks to regulate the sharing of power in a state that comprises diverse societies. In Lebanon, this was adopted based on religious sects, or confessions. Lebanon is made up of 18 officially recognized religious sects, none of which constitute a majority (Mourad and Piron, 2016). Most political parties in Lebanon draw their support and legitimacy primarily from a sectarian group. In effect, religious affiliation determines the extent of citizens' political rights and privileges. The system, although overtly inclusive in its plurality, is, in fact, not.

Lebanon's democracy has done little for many disempowered groups' political participation, including women. As of 2009, there have only been 17 women in parliament and currently, there are only 4 women in the

outgoing Parliament, which comprises 3% of its lawmakers - one of the lowest in the region. 1 out of every 4 Lebanese women has been the victim of an attempted or completed rape in her lifetime (Internal Security Forces, 2018). Lebanon's legal system is also profoundly discriminatory on the basis of sex (Mourad and Piron, 2016).

## *Personal Status Laws*

Lebanon acquired, and retains, the main elements of its judicial and legal systems under the French mandate (Mallat, 1997). There are several codes for civil, criminal, and commercial law. Lebanon's hybrid, plural legal landscape is particularly pronounced in the realm of personal status laws, which mainly pertain to family law matters. Lebanon does not have a civil code regulating personal status matters. There is a separate jurisdictional system for family law. Areas that are considered matters of 'personal status' are regulated by different codes and fall under religious jurisdictions. There are 15 separate personal status courts for the country's different recognized religious communities including twelve Christian, four Muslim, the Druze, and Jewish confessions,

which are administered by separate religious courts (Human Rights Watch, 2015). Religious authorities often promoted this judicial pluralism as protecting religious diversity and coexistence. However, the plural legal landscape means that Lebanese citizens are treated differently when it comes to fundamental aspects of their lives, including marriage, divorce, and custody of children (Human Rights Watch, 2015). This disproportionately affects women. For example, the minimum age for marriage differs according to sect (Table 1), essentially legalizing child marriage. Across all confessions, women face legal and other obstacles in exercising their rights.

## *Domestic Violence Law & Dynamics*

In 2014, a new domestic violence legislation was passed which criminalizes various forms of interpersonal violence, particularly intimate partner violence. Current assessments suggest that the new domestic violence legislation suffers from a lack of awareness among the legal community, ill-equipped courts, and a lack of economic empowerment of women, resulting in them not being able to

use the law to their benefit (Moussawi and Yassin, 2017). Particularly, the law states that in case of any conflict between the new law and personal status laws, personal status laws would take priority (Kafa, 2015). This applies even when they appear to tolerate violence against women (Sussman, 2011). For instance, Shia and Sunni men have the right to discipline their wives. This often results in abuse as it can be interpreted as physical beating. Although they can be prosecuted under criminal law, religious courts are under no obligation to take this behavior into account when adjudicating on cases of divorce or custody (Human Rights Watch, 2015).

The law also does not protect refugee women, as they face particular challenges such as a lack of legal residence in Lebanon (Moussawi and Yassin, 2017). NGOs also discriminate in providing services due to a lack of documentation (IRC, 2012). Many refugee women from Syria lacked valid residence permits and, as a result, feared reporting sexual harassment or other abuse to the Lebanese authorities (Amnesty International, 2016). In order to better operationalize and implement the law, there is a need to collect testimonies of women's experiences.

Survivors are reluctant to report gender-based violence due to cultural stigma, and a lack of access to information about avenues of protection (IRC, 2012). A study commissioned by the leading NGO, KAFA, found that 1/3 of the population thought that turning to family is a better option than resorting to state institutions (especially among the Shiites, and residents of the South and Bekaa areas) in the case of family violence (KAFA, 2016). They view the civil courts as corrupt and religious courts as unfair (KAFA, 2016). In such a

Religious Sect	Man	Woman
Catholic Church	16	14 (a higher age can be imposed by the head of the Church)
Orthodox Church	18 (This can be reduced to 17)	18 (This can be reduced to 15)
Evangelical Church	18 (This can be reduced to a lower age)	17 (This can be reduced to a lower age)
Sunni	18 (This can be reduced to a lower age)	17 (This can be reduced to a lower age)
Shia	Puberty is the main criteria – theoretically set at 15	Puberty is the main criteria – theoretically set at 9
Druze	18 (head of the sect can reduce it to 16)	17 (head of the sect can reduce it to 15)
Jews	18 – the age requirement can be reduced to 13	12

Table 1: Marital Age by Sect (Data source: Inter-Agency Coordination, 2016)[1]

*“For survivors of domestic violence, NGOs often step in to provide appropriate support for women to fill the gap left by the state”.*

scenario, it is important to examine how justice-seekers navigate the legal options available to them, and understand the contextual dynamics.

For survivors of domestic violence, NGOs often step in to provide appropriate support for women to fill the gap left by the state (Human Rights Watch, 2015). NGOs aim at providing direct aid to female survivors of every form of gender-based vio-

lence through socio-psychological, economic, legal, and medical assistance and work towards strengthening self-empowerment (UNFPA, 2010). This is done all over the country through specialized clinics, and a limited number of shelters. These organizations represent safe havens to female survivors of domestic violence and provide them with access to essential services. Many innovative measures have been taken by



organizations such as KAFA and Abaad. For example, KAFA runs a 24/7 hotline in cases of emergency and operates shelter homes. Abaad runs a pioneer program on masculinities which employs a holistic strategy that involves working with and engaging men through psychotherapy, and building awareness about gender socialization. Abaad has recently launched an app called RESPOND which aims at providing any frontline worker in Lebanon with information about organizations that are able to support survivors of SGBV. Abaad also employs a touring bus called “Jina Al-Dar” to provide services on the prevention and reduction of all forms violence against women in marginalized areas. Although constrained by a lack of long-term funding, civil society actors in Lebanon are finding novel ways to reach and support survivors of domestic violence and other forms of gender-based violence, with the aim of scaling up their services within Lebanon and making them more sustainable. NGOs are therefore playing an indispensable role in advocating for a more just legal system and providing equitable services to improve protection.

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[1] <https://www.abaadmena.org/documents/ebook.1491983561.pdf>

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# Who can claim a “right not to be offended”?

**Findlay Glynn** argues that the phenomenon of inscribing a “right not to be offended” into law undermines freedom of expression, the cornerstone of the modern democratic society.



Upholding the right of the individual to express their opinion is the cornerstone of the modern democratic society. Formulated under the right to freedom of expression, this protection has been established in human rights conventions, bills of rights and constitutions around the world<sup>1</sup>. However, with this “freedom” comes certain responsibilities, most notably displayed in the context of offence. The debate over the existence and ownership of a “right not to be offended” has arisen across the socio-political sphere, from student-led university campaigns attempting to censor controversial speakers to religious groups

protesting television adverts and particular film releases. Nevertheless, if anyone can indeed claim this as a right, then it is certainly not the individuals noted above. Where the “right not to be offended” has been recognised in domestic law, it has seldom been formulated as a tool to protect citizens and instead serves both the State and the political elite.

The hypocrisy that followed the 2015 terror attack against the satirical magazine *Charlie Hebdo* was illustrative of this point. Following the murder of the magazine’s twelve staff members in reaction to a cartoon displaying the Islamic prophet Muhammed, the world reacted in

solidarity with the deceased journalists, prompting the “Je suis Charlie” campaign<sup>2</sup>. The presidents and prime ministers of the United Kingdom, Germany, Turkey and various other nations were shown hand in hand leading a march in Paris, standing up for “freedom of speech”. Notably, in an interview regarding the attack, the then-Prime Minister of the UK, David Cameron, stated that “in a free society there is a right to cause offence”<sup>3</sup>. Regardless of the inevitable unrest that the cartoon would have caused amongst the Muslim community, these leaders showed their support for the expression of *Charlie Hebdo*, stating that they indeed stood alongside the magazine. However, whilst the supporting leaders may have claimed to stand in solidarity with the publication, their actions and existing domestic legal provisions could not have been further from this ideal. Despite the Turkish Prime Minister’s appearance at the march, had the cartoon been published in Turkey and satirised the Pres-



**Demonstrators shout slogans during a protest against the arrest of three prominent activists for press freedom, in central Istanbul, Turkey, June 21, 2016.**

**Source:** REUTERS/Osman Orsal - RTX2HFFQ (Photo: © Osman Orsal / Reuters)



Israel's Prime Minister Benjamin Netanyahu, Mali's President Ibrahim Boubacar Keita, France's President Francois Hollande, Germany's Chancellor Angela Merkel, EU President Donald Tusk, and Palestinian President Mahmoud Abbas march during a rally in Paris, France, Sunday, Jan. 11, 2015.

Source: Photo: © AP/Philippe Wojazer, Pool

ident or the nation's founder, Atatürk, then the artist could have faced up to four years in prison<sup>4</sup>. In 2016, Rifat Cetin was given a suspended one-year prison sentence for posting a picture online depicting the similarities between the President and the *Lord of the Rings* character Gollum<sup>5</sup>. Although this was a particularly ridiculous denial of freedom of expression, it was not an anomaly and was followed only months later with the conviction of Dr. Bilgin Çiftçi for publishing the same image<sup>6</sup>.

The former French President Nicolas Sarkozy also made his way to the front of the crowd, clearly forgetting that seven years earlier a French citizen was prosecuted for holding a sign with a mildly insulting statement on it towards him<sup>7</sup>. A similar lapse in memory must have faced the Spanish Prime Minister, Mariano Rajoy, whose country's criminal

code imprisons those who slander the royal family for up to two years<sup>8</sup>.

The German Chancellor, Angela Merkel, was also in attendance, stating that the attack was "against the values we all hold dear"<sup>9</sup>. These values were absent when she later permitted the prosecution of Jan Böhmermann, a German comedian, for a distasteful yet relatively harmless joke<sup>10</sup>. On his television show, Mr. Böhmermann made several lude remarks in a satirical poem about the Turkish President, in an attempt to expose the restrictive nature of s.103 of the German Criminal Code, a law prohibiting insults made against representatives or organs of foreign states<sup>11</sup>. The broadcast was met with a legal challenge by representatives of President Recep Tayyip Erdoğan, who pursued a case under this section, and the District Court in Ham-

burg sided with the plaintiff, prohibiting any further broadcast of the poem<sup>12</sup>. This provision was recently repealed in reaction to this case<sup>13</sup>, however, several provisions remain in the German Criminal Code regarding defamation of the President, public officials, or "the colours, flag, coat of arms of Germany or of a German state"<sup>14</sup>. Despite small steps being taken to bring German law to a more free speech oriented position, these provisions<sup>15</sup> remain a clear indication of the hypocrisy that lies at the centre of domestic protection against offence.

The United Kingdom, despite having abolished criminal libel provisions, have used immigration laws to formulate this right, denying entry or deporting non-UK citizens where their deportation is deemed "conducive to the public good"<sup>16</sup>. Whilst this could be justified in cases of suspected terrorists, those convicted of crimes, or xenophobic preachers, the Home Office have further utilised this power to deny entry to anyone whom they deem to be offensive. This was demonstrated in 2015, when the American rapper Tyler Okonma was refused entry on the basis of lyrics from his first album, which were held to risk "fostering hatred" within the UK<sup>17</sup>. It cannot be disputed that the lyrics were truly offensive—a fact conceded by the artist himself<sup>18</sup>—however, this decision sets a dangerous precedent in

*"Where the "right not to be offended" has been recognized in domestic law, it has seldom been formulated as a tool to protect citizens and instead serves both the State and the political elite".*



the United Kingdom and acts as further evidence of the existence and ownership of the “right not to be offended”.

It should be noted that a distinct “right not to be offended” does not exist within international human rights law. For example, the European Court of Human Rights (ECtHR) has consistently refused to permit the sanctioning of offensive work in its jurisprudence, finding numerous violations of Article 10 in relation to criminal defamation provisions, most prominently in regards to Turkey<sup>19</sup>. The Court has repeatedly stated that under the right to freedom of expression, that limits of acceptable criticism must be “wider as regards a politician as such than as regards a private individual”<sup>20</sup>. Provisions that allow the personality rights of the powerful to supersede the free speech rights of the vulnerable contradict the Convention’s aims and the ECtHR has thus reacted accordingly.

Nevertheless, the social debate on offence misses this issue altogether, as both left- and right-wing activists focus their attention on arguing whether the other side has this right and ignore the real problem at hand. The resultant “chilling effect” on citizens’ ability to challenge, criticise and simply make fun of their Government is monumental. This has sparked several campaigns to repeal these laws, led by non-governmental organisations such as Pen International and the International Press Institute<sup>21</sup>. However, without a significant change in awareness on a mass scale, those in office will persist in enforcing this power on a domestic level, bereft of proper scrutiny, and individuals will continue to be criminalised for offending the State.

## FOOTNOTES and REFERENCES

<sup>1</sup>For example, Article 10 European Convention on Human

Rights, Article 19 International Covenant on Civil and Political Rights, First Amendment to the United States Constitution

<sup>2</sup>“Charlie Hebdo: Gun attack on French magazine kills 12”, BBC News, 7/01/15, Accessed via <http://www.bbc.com/news/world-europe-30710883> on 20/03/18

<sup>3</sup>“PM on Pope comments: ‘There is a right to cause offence’”, BBC News, 18/01/15, Accessed via <http://www.bbc.co.uk/news/uk-30869585> on 27/02/18

<sup>4</sup>Articles 299, 301 Turkish Penal Code, Law No. 5816

<sup>5</sup>“German court rules against comic Boehmermann over Erdogan poem”, BBC News, 17/05/16, Accessed via <http://www.bbc.co.uk/news/world-europe-36317006> on 13/01/18

<sup>6</sup>However, in Dr Çiftçi’s case, the Turkish Court brought in Lord of the Rings ‘experts’ to determine whether “Gollum” was a positive or negative character.

<sup>7</sup>In *Eon v. France*, Application no. 26118/10 2013, the ECtHR held that fining an individual for telling the French President to “Get lost, you sad prick” was a disproportionate violation of Article 10

<sup>8</sup>Article 490(3), Spanish Criminal Code

<sup>9</sup>“Charlie Hebdo: world leaders’ reactions to terror attack”, Harriet Line, The Telegraph, 08/01/15, Accessed via <http://www.telegraph.co.uk/news/worldnews/europe/france/11332726/Charlie-Hebdo-world-leaders-reactions-to-terror-attack.html> on 27/02/18

<sup>10</sup>“German court rules against comic Boehmermann over Erdogan poem”, BBC News, 17/05/16, Accessed via <http://www.bbc.co.uk/news/world-europe-36317006> on 17/02/18

<sup>11</sup>German Criminal Code s.103

<sup>12</sup>“German court rules against comic Boehmermann over Erdogan poem”, BBC News, 17/05/16, Accessed via <http://www.bbc.co.uk/news/world->

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<sup>13</sup>“Cabinet overturns ‘lèse majesté section’ of Criminal Code”, The Federal Government, 25/01/17, Accessed via [https://www.bundesregierung.de/Content/EN/Artikel/2017/01\\_en/2017-01-25-abschaffung-paragraf-103-stgb\\_en.html?nn=1384552](https://www.bundesregierung.de/Content/EN/Artikel/2017/01_en/2017-01-25-abschaffung-paragraf-103-stgb_en.html?nn=1384552), on 14/02/18

<sup>14</sup>Articles 90, 90(a), 188, German Criminal Code

<sup>15</sup>Seditious Libel, Defamatory Libel, and Obscene Libel were all abolished by s. 73 Coroners and Justice Act 2009

<sup>16</sup>Immigration Act 1971 s.3(5)(a)

<sup>17</sup>“Tyler, the Creator on being banned from the UK: ‘I’m being treated like a terrorist’”, J E Shepherd, The Guardian, 01/09/15, Accessed via <https://www.theguardian.com/music/musicblog/2015/sep/01/tyler-the-creator-comments-banned-uk-freedom-of-speech> on 03/03/2018

<sup>18</sup>Ibid.

<sup>19</sup>See *Murat Vural v. Turkey*, Application no. 9540/07, 2014, *Altuğ Taner Akçam v. Turkey*, Application no. 27520/07, 2016

<sup>20</sup>*Lingens v. Austria*, Application no. 9815/82, 1986, § 42 *Criminal Defamation in the EU*, C Shepherd, English Pen, 5<sup>th</sup> January 2016, Last Accessed

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<sup>21</sup>*Criminal Defamation in the EU*, C Shepherd, English Pen, 5<sup>th</sup> January 2016, Last Accessed 22/04/18, Accessed via <https://www.englishpen.org/press/criminal-defamation-in-the-eu/>

## BIOGRAPHY

Findlay Glynn is a Scottish student at the Human Rights LLM program at CEU. He has a particular interest in the ways in which modern technology interacts with civil liberties, in terms of fair trial rights, privacy, and freedom of expression.

# What Does a Controversy Over a Statue in Spain Say About Gender Violence?

In this opinion piece, **Hope Loudon** reflects on personal trauma, victimhood, and gender-based violence.



**I**n Zaragoza, Spain, in the Plaza de César Augusto, sits a metal statue under a tree. It is a somewhat abstract figure of a woman kneeling with her head in her hands as if weeping. It has a name, “*Víctima*” (victim), and was chosen in a design contest for a gender violence memorial. It would be easy to pass by this statue with indifference, or not to notice it at all, but its subtlety

and simplicity belie the controversy which surrounds it.

I learned of this statue when a brilliant and admirable Spanish journalist friend was showing me around Zaragoza. She expressed disgust with the figure, telling me that she hated it and wanted it removed, because it is awful that there are so many statues of triumphant men and, when there is finally one of a woman, she is depicted crying. I disagreed and thought, “Victims of gender violence cry because they suffer. Crying victims should not be shamed or hidden away from the world.”

The sculpture, designed by Fernando Clavo Sanz, drew the ire of feminist organizations who wanted “an image of ‘struggle’ and

‘optimism,’” not a victim on her knees, crying. Activists argued, “We wanted a public recognition of the women standing up, with their heads held high, denouncing aggressions and fighting against them” [1]. They are right that there should be more statues of triumphant women and, certainly, victims should have been consulted about the design and name. However, a triumphant woman would not have been a more appropriate portrayal of victims.

The way I see it, *Víctima* represents one of the authentic, although highly stigmatized, ways in which victims respond to gender violence. The victims I have known through my activism on gender-based violence run the gamut from grieving to galvanized. They are different things at different times, and their many legitimate responses can coexist over the course of their life-long healing journeys. Whatever they are, and however they are, the important thing is that they are validated. Silencing and sanitizing victims’ stories does a



The gender violence statue “*Víctima*” in Plaza de César Augusto, Zaragoza, Spain.

Source: Javier Cebollada





Members of the association “We are more against gender violence” during the demonstration.

Source: EFE News Agency

great disservice to them and to society.

Perpetrators of violence and abuse break victims' bodies and spirits, but society pressures victims not to be broken. Victims are expected to be “survivors”, to stand up and “stay strong,” and they are seen as “stuck in the past” if they suffer. Societal expectations about what it means to be a “survivor” instead of a “victim” complicate the issues of identity and emotionality for those of us who have experienced trauma.

As a child victim of abuse, I used to think emotions meant weakness too. I tried to teach myself not to cry, and not to need love and affection, because I thought these made me vulnerable. I told myself “the abuse doesn't affect me,” and I mostly believed it until I had a mental breakdown at 18. I was angry and disappointed that the abuse affected me because, although my abuser tried to break me, I had the unreasonable expectation of myself not to be broken.

My breakdown empowered me with the self-awareness to

choose how to respond to my trauma, and for that I am grateful. People tell victims “Don't let the abuse define you,” as though it is possible or even desirable not to be affected by such life-altering and personality-shaping experience. Trauma is a defining part of who I am, and after a lot of healing, I am o.k. with that.

To be a “victim” should not be a pejorative term. It is simply a reality of being victimized. As an activist, I am very publicly and, unapologetically, a victim. The struggle I face now is a fear of my own vulnerability. I am now

*“Societal expectations about what it means to be a “survivor” instead of a “victim” complicate the issues of identity and emotionality for those of us who have experienced trauma”.*

in the process of learning to cry in front of people without the fear they will reject me for my victimhood instead of embracing me. Thus the problem is not that *Víctima* is crying in Zaragoza, but that she was rejected.

When activists protested *Víctima*, they circled her with their backs turned to signify their rechazo total (total rejection) of her in what, to me, seemed like an ironic representation of the rejection that grieving victims experience far too often.

For a statue that honors victims and is inspirational, consider my alternative:

Imagine the women protesters around the statue in the photo above cast in bronze, and then turned towards *Víctima* with their arms linked in a circle representing protection and solidarity. *Víctima* herself is still crying, but her face is uncovered. Let this represent the courage that it takes for victims to refuse to hide their suffering in deference to stigma and shame. Put the activists' signs that say "No estás sola" [You are not alone] where *Víctima* can see them.

The first sentence of Judith Herman's seminal text *Trauma and Recovery* is: "*The ordinary response to atrocities is to banish them from consciousness*" [2]. The societal instinct is to deny and bury the memories of trauma, but the essence of victims' recovery is doing the opposite. A memorial for victims of gender violence should acknowledge and validate victims, not banish their pain from the public consciousness. Portrayals of victims in our suffering are equally as important as portrayals of us in our strength.

To remove the statue of *Víctima* because she is crying would be to deny part of the inconvenient truth that all victims of gender violence suffer, and not all of

them survive. If *Víctima* makes people uncomfortable, then let them be uncomfortable. Let this discomfort yield to an acceptance of the reality and a rejection of gender violence, not a rejection of victims and their responses.

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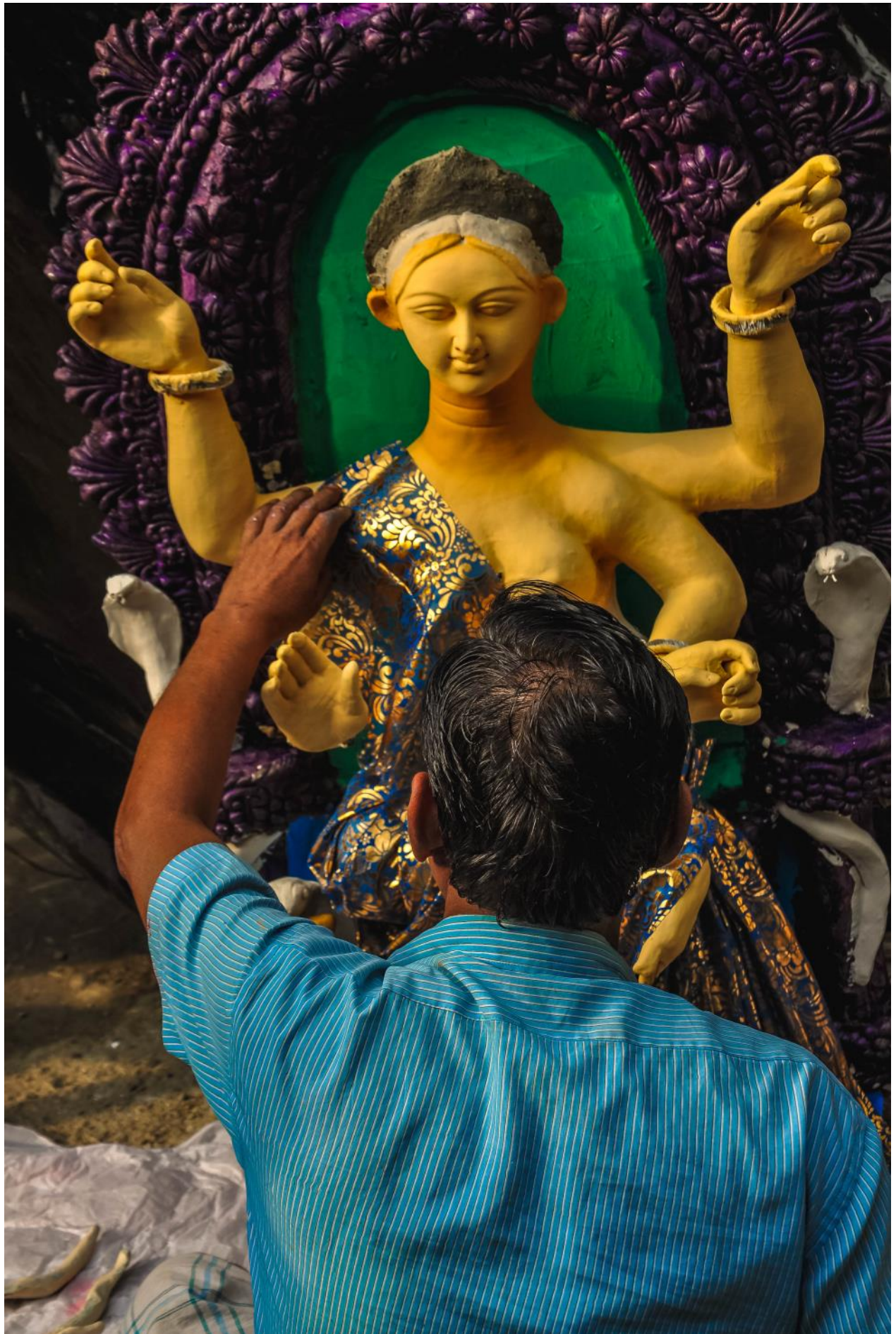
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## BIOGRAPHY

Hope Loudon is an activist and writer who is presently pursuing her Master of Public Policy at Central European University in Budapest, Hungary. She has worked in journalism and non-profits both at home and abroad, and her writing has appeared on platforms such as *Huffington Post*, *Washington Post*, *Ms. Magazine*, and *Truth-out.org*. She specializes in the little-known women's and children's rights issue of court licensed abuse (children being placed in the custody of domestic abusers by courts) and has a strong interest in trauma-sensitive peacebuilding.





# Photography

## by Samrat Sil



**Samrat Sil** is an MA student in the Department of Medieval Studies. Apart from his fascination towards history, he is interested in capturing the daily lives of people through the lens of his camera. His interest lies in culture, abandoned places and streets of urbanscape.

**D**urga Puja is one of the most celebrated festivals in the city of Kolkata: an annual cultural event during which people worship goddess durga and celebrate the victory of good over evil. It symbolizes harmony, peace, victory, and love for all of humanity. The divine goddess is worshipped for ten continuous days and people spend millions on the event. However, amidst this pomp and grandeur what is ignored is the plight of the craftsmen and artisans who dedicate their lives to creating these life-like idols which are worshipped during the festival. The basic needs of these artisans are not met; they lack a proper place, there are no lights, they are faced with improper sanitation facilities and a distinctive lack of financial resources. They are compelled to live and create on the narrow open lanes of a single street. In other words, they have no rights. The government is yet to take any concrete initiative and has only given verbal assurance for the last 10 years. When the whole city lights up in the annual fall celebrations of this festival, we tend to forget about those souls who are responsible for this celebration, and their misery.

### Image 1:

Artisans responsible for creating these beautiful idols for the worship suffer utter neglect. Yet one cannot find the slightest trace of imperfection in their creation.

### Image 2 (pictured overleaf):

**The hand of God:** a man intricately draws the eyes of the goddess after which the heads are mounted on the body and painted.









# Disability in Pakistan: An In-depth Analysis under the Standards of the CRPD

**Hooriya Rashid** analyses the implementation of the UN Convention on the Rights of Persons with Disabilities in Pakistan and the steps that have yet to be taken to ensure the ability of persons with disabilities to fully exercise their civil and political rights.



During the past seven years since the ratification of the UN Convention on the Rights of Persons with Disabilities<sup>1</sup> (hereinafter, the “CRPD” or the “Convention”), progress towards building an inclusive society in Pakistan has been slow. Persons with disabilities (hereinafter, “PwD”) continue to represent a disadvantaged group in society, where they are not able to fully exercise their civil and political rights. The present paper will examine the extent to which the legislation and policies of Pakistan comply with the CRPD, and suggest that they should be altered in order

to ensure the full and effective participation of PwD in society. Two articles of the CRPD will be analyzed for these purposes: Article 29 on PwD’ participation in political and public life and Article 19 on PwD’ living independently and being included in the community. The implementation of Article 29 is crucial for Pakistan mainly because PwD do not have any political representation. On the other hand, Article 19 of the CRPD is relevant because PwD cannot make their own decisions, as they are financially dependent on their families. In other cases, they live in rehabilitation centers and are unable to

maintain a healthy social life or be economically independent.

## *Political representation and the voting procedure under Article 29*

Despite the ratification of the CRPD by Pakistan, there has not been a single comprehensive law for the parliamentary representation of the persons protected under the Convention. In contrast to women and ethnic minorities, PwD have no representation in the Parliament. This is mostly due to the fact that the last National Census was carried out back in 1998, long before Pakistan’s ratification of the CRPD.

Therefore, the accurate ratio of the community of PwD is unknown. Eventually, this has an effect on the legislation regarding their parliamentary representation<sup>2</sup>.

In addition, access to polling stations is a major challenge in Pakistan. The State does not provide special assistance



**Disabled young girl in a wheelchair.**

**Source:** *Dunya News*

<http://dunyanews.tv/en/Pakistan/311226-International-Day-of-Persons-with-Disabilities-bei>



27 September 2007 - Signing of the Convention on the Rights of Persons with Disabilities, United Nations Headquarters, New York. Mr. Zeljko Sturanovic, Prime Minister of the Republic of Montenegro, signing the Convention.

Source: © UN Photo/Devra Berkowitz



for PwD in order for them to exercise their right to vote. The infrastructure of the government buildings is not accommodated to the needs of PwD and there are no alternative voting mechanisms for people who cannot leave their houses. Naturally, all of this significantly reduces the number of PwD who vote.

#### *Dependency on Family and Rehabilitation centers under Article 19*

In Pakistan, the implementation of Article 19 of the Convention is problematic mainly because of specificities of the structure of society. Due to strong family dynamics, the question of living independently is a taboo not only for PwD, but for able-bodied people as well. Thus, PwD either live with their families or are placed in rehabilitation centers in case of severe mental disabilities. Others, who have nobody to support them, live in complete destitute on streets as beggars. PwD living with their families are dependent on them both financially and socially. Therefore, issues of employment, marriage, healthcare, ability to gain information, and socialization all de-

pend on the decisions and financial resources of their families.

As to PwD living in rehabilitation centers, their freedom of choice is curtailed because they are carefully monitored under the centers' regulation. Most importantly, the conditions of these rehabilitation centers are not good in terms of hygiene, health care and staff. Pakistan is a country with five million persons living with permanent disabilities including 2.18 million disabled children<sup>3</sup>. However, the number of trained and qualified physiatrists is only about 30-35<sup>4</sup>. Amongst these, the majority works for the army, while only five or fewer are available for civilians. As a result, the gap between trained physiatrists and

disabled population in Pakistan is huge.

#### *Recommendations*

In order to ensure compliance with its obligations under the CRPD, Pakistan needs to change its approach towards the issues discussed above. Firstly, it is necessary to carry out a National Census and establish the proportion of PwD among the population. After this, PwD should be respectively afforded equal representation in the legislature. Further, the National Election Commission of Pakistan should take necessary steps to ensure that the polling stations are accessible for all PwD. Tactile ballot guides shall be developed for

*“Progress towards building an inclusive society in Pakistan has been slow. Persons with disabilities continue to represent a disadvantaged group in society, where they are not able to fully exercise their civil and political rights”.*

blind voters in order to make it possible for them to cast their votes independently and in secret. The government should train election officials and local authorities for the purposes of providing assistance to PwD during voting. In addition, since the Convention refers to disability as an “evolving concept”<sup>5</sup>, it is crucial to use the right definitions and avoid referring to PwD with terms of a discriminatory nature.

Rehabilitation centers are necessary, but such an exclusivist measure might promote dependency instead of personal autonomy of PwD. Therefore, the State should reverse its resources from rehabilitation centers towards empowerment of PwD by giving them housing facilities with individual help, which can cater for their health, nutrition and day-to-day needs. The state should monitor the proper allocation of government funds and ensure that sufficient financial resources are directed towards the development of a social model serving the empowerment of all PwD in Pakistan.

## FOOTNOTES

<sup>1</sup>UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 24 January 2007, A/RES/61/106.

<sup>2</sup>OHCHR, *Association of Women for Awareness and Motivation*, [http://webcache.googleusercontent.com/search?q=cache:5O9Oxb6LA0QJ:www.ohchr.org/Documents/Issues/Disability/SocialProtection/civil\\_society/AWAM\\_Pakistan\\_ENG.doc+&cd=1&hl=en&ct=clnk&gl=hu](http://webcache.googleusercontent.com/search?q=cache:5O9Oxb6LA0QJ:www.ohchr.org/Documents/Issues/Disability/SocialProtection/civil_society/AWAM_Pakistan_ENG.doc+&cd=1&hl=en&ct=clnk&gl=hu)

<sup>3</sup>Business Recorder, *Rehabilitation of 5m disabled persons: Pakistan has only 30-35 trained doctors: experts*, available at:

<http://epa-per.brecorder.com/2016/01/08/3-page/721684-news.html> [accessed 27 April 2018].

<sup>4</sup>*Ibid.*

<sup>5</sup>The Economist Intelligence Unit, *Moving from the Margins*, British Council, 2014, available at: [https://www.britishcouncil.pk/sites/default/files/moving\\_from\\_the\\_margins\\_final.pdf](https://www.britishcouncil.pk/sites/default/files/moving_from_the_margins_final.pdf) [accessed 27 April 2018].

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Hooriya Rashid was born in a sectarian and conflicted region of Pakistan. She became acquainted with the notion of human rights violations at a young age. It was then that she started to condition herself to work in the field of human rights. In the past four years, she has worked for the empowerment of women, the disabled, the transgender community and the most persecuted religious minorities in her country. In the future, she aspires to work in the UN, with a particular focus on refugees.

# Photography

## by Svetlana Zens

**Svetlana Zens** is a journalist from Kyrgyzstan, currently pursuing an MA in Public Policy.



**B**eing an HIV-positive former drug user is equal to a death sentence in Kyrgyzstan.

Nona, a mother of three, learned she was HIV positive while she was in detox. She gets limited support from a drop-in center; once she was diagnosed, her relatives isolated her. She fears her daughter may have been born HIV positive. The community provides her with ARV treatment, but not her daughter. To the government of Kyrgyzstan, she says, “We don’t ask for apartments or millions, just some support for our children”.

Alongside her, the woman in yellow has been struggling to get a passport, after having been in prison for three years. She, too, suffers isolation and stigma, and has found herself with no recourse from the state.

These photography are a part of a project on women who are HIV positive. The aim of the project was to eliminate the stigma and raise awareness on the implicit human rights violation perpetrated by the government of Kyrgyzstan in leaving this vulnerable community out in the cold.





Zens Svoboda



Zens Svetlana



# Ethical Considerations of Corporate Social Responsibility: Do Business Entities Have Positive Human Rights Obligations?

**Gvansta Elgendashvili** discusses whether corporate social responsibility could be interpreted as entailing positive obligations for private corporations at present or in the future.



The notion of corporate social responsibility (hereinafter, “CSR”) has become a widely accepted concept not only in the business world, but also in the fields of human rights, law and sociology. The generally accepted view among CSR scholars is that obligations of legal entities extend beyond making profits and includes obligations to serve society and individuals within society<sup>1</sup>. Ethical considerations of CSR suggest that business entities should be held socially responsible as a response to “the risks that corporate wrongdoing poses to society”<sup>2</sup>. Hence, for

some people, CSR obligations of business entities are used to offset the wrongdoings of corporations towards society as a whole that includes, *inter alia*, the environment, employment and other relevant social rights.

Modern business entities are required to fulfill social, political as well as economic roles in a society by recognizing that the more fortunate members of society are obliged to help the least fortunate ones<sup>3</sup>. It can be said that business entities are faster and more efficient at achieving policy objectives than governments. However, it is not that

evident whether ethical considerations that form the basis of CSR can rise to the level of positive human rights obligations.

Supporters of the ethical approach of CSR claim that companies should engage in CSR activities even if they are not profitable. Business entities need to take care of the environment and adopt or support environmental policies; they should take into account the interests of their employees, consumers and society as a whole. Therefore, besides traditional concepts of profit and loss, they should have a “planet account” for environmental activities and a “people account” for socially beneficial activities<sup>4</sup>.

For CSR activists, following the ethical approach of CSR, potential profit losses are acceptable as long as actions undertaken by

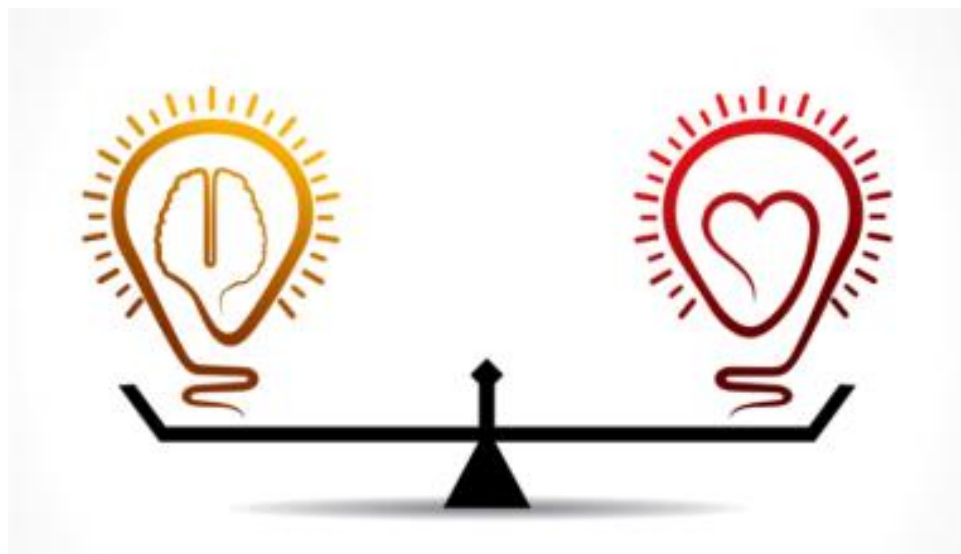


**Proponents of CSR argue that business entities need to take care of the environment and adopt or support environmental policies.**

Source: United Nations Industrial Development Organization; <https://www.unido.org/our-focus/advancing-economic-competitiveness/competitive-trade-capacities-and-corporate-responsibility/corporate-social-responsibility-market-integration>

Ethical considerations of CSR suggest that business entities should be held socially responsible as a response to “the risks that corporate wrongdoing poses to society”.

Source:© Tania Ellis, The Social Business Company; <http://www.taniaellis.com/blog/build-effective-business-case-csr/>.



the business entities in question are morally justifiable, as “moral considerations take precedence over the company’s interests”<sup>5</sup>. Ethical considerations that serve as the basis of CSR can be expressed by the famous German philosopher Immanuel Kant’s words as to what basic ethical principle is:

“Act in such a way that you treat humanity, whether in your own person or in the person of any other, always at the same time as an end and never merely as a means to an end”<sup>6</sup>.

Therefore, the ethical basis of CSR, other than using CSR activities as an instrument of generating profit, entails that business entities should act in a morally justifiable manner and managers of companies have positive duties to take into account the environment, consumers, employees as well as shareholders

and the general public when they make corporate decisions. The emerging shift from profit-maximization theory towards CSR in corporate law has raised various questions in different fields. It is evident that business entities have negative human rights obligations, as they need to refrain from, among other things, stealing, committing fraud, violating labor and consumer protection laws. However, the key questions are whether they have an obligation to treat everyone as ends under the Kantian approach and whether it will go beyond negative human rights obligations and imply positive obligations as well.

In this regard, it should be pointed out that the question whether corporations have positive obligations has generated a debate in the field of human rights<sup>7</sup>. According to some scholars, it is States that have positive obligations to ensure

the effective enjoyment of fundamental human rights. However, an increasing number of academics argue that such human rights obligations should be extended to non-state actors and to the private sector in particular. This suggestion seems to be logical, but the problem of placing positive human rights obligations within the ethical considerations of CSR is the issue of voluntariness. This problem clearly indicates that there is a clash between the voluntary character of CSR and the nature of positive human rights obligations.

If we assume that business entities are obliged to provide minimum care towards corporate stakeholders, the very nature of voluntariness will be under risk. For most people, CSR activities are discretionary and they understand CSR to be “fundamentally” voluntary<sup>8</sup>. Despite the attempts of CSR supporters to push business entities towards undertaking CSR policies as positive human rights obligations for guaranteeing individuals’ enjoyment of their fundamental rights and freedoms, there is no uniform agreement in this regard.

The UN Global Compact, which includes the most widespread CSR standards, is mainly focused on negative rights. Moreover,

*“Business entities need to take care of the environment and adopt or support environmental policies; they should take into account the interests of their employees, consumers and society as a whole”.*

various economists and even legal scholars are against CSR and the claims of its promoters who contend that CSR has risen to the level of a totally separate field, combining legal, social, political and ethical considerations. Their ideas were expressed by famous economist and Nobel Prize winner Milton Friedman, arguing that “there is one and only social responsibility of business – to use its resources and engage in activities designed to increase its profits”<sup>9</sup>.

Even if the approach undertaken by Milton Friedman is outdated and the 21<sup>st</sup> century is an era of CSR, it should be noted that attaching positive human rights obligations to business entities is fundamentally contradictory to the voluntary nature of CSR. Business entities are free to undertake a CSR-conscious approach and they are encouraged to do so within an international business context, however, ethical considerations of CSR have not yet risen to the level of positive human rights obligations. It can, however, be predicted that positive trends in the development of CSR as a separate field might lead to extension of positive obligations of business entities in the future.

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<sup>4</sup>Fauzi Hasan, Goran Svensson, Azhar Abdul Rahman, “*Triple bottom line*” as “*sustainable corporate performance*”: a proposition for the future, 2(5) Sustainability 1345, 1353 (2010).

<sup>5</sup>Claus Strue Frederiksen & Morten Ebbe Juul Nielsen, *The Ethical Foundations For CSR*, in Corporate Social Responsibility Challenges, Opportunities and Strategies for 21<sup>st</sup> Century Leaders, 19 (John O. Okpara, Samuel O. Idowu eds.)

<sup>6</sup>See Immanuel Kant, *Groundwork of the Metaphysics of Morals*, Hamburg: Felix Meiner Verlag (1994).

<sup>7</sup>Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (2015).

<sup>8</sup>Florian Wettstein, *CSR and the Debate on Business and Human Rights: Bridging the Great Divide*, 22(4) Business Ethics Quarterly, 739, 748 (2012).

<sup>9</sup>Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, The New York Times Magazine (1970).

rate law, law and economics and European Union law. Her professional experience includes working for governmental agencies, private companies and educational institutions.

## BIOGRAPHY

**Gvantsa Elgendashvili** is currently pursuing an LL.M degree in International Business Law at Central European University. During the course of her studies at CEU, Gvantsa was chosen to represent the University at the 25th Willem C. Vis Moot Competition. She holds an LL.B. with honors from Ivane Javakhishvili Tbilisi State University. During the 2015-2016 academic year, she was an Erasmus Mundus exchange student at Tallinn University, Estonia. She is also enrolled to earn an LL.M degree at the Private Law program of Tbilisi State University. Her research activities mainly focus on corpo-

## FOOTNOTES

<sup>1</sup>See e.g., John F. Mahon & Richard A. McGowan, *Searching for the Common Good: A Process Oriented Approach*, 34 Bus. Horizons 79, (1991); Wayne Visser et al., *The A to Z of Corporate Social Responsibility*, 106 (2010).

<sup>2</sup>Jeehye You, *Legal Perspectives on Corporate Social Responsibility: Lessons from the United States and Korea* 4 (2015).

<sup>3</sup>Andrew Carnegie, *Wealth*, 148



# Archives and Social Change

**Stephanie Haszczyń's** article discusses the important role of archives in preserving evidence of human rights atrocities for their use in criminal tribunals, as well as their relevance in communities' healing processes.



"Through archives, the past is controlled". —Joan M. Schwartz and Terry Cook

**A**rchives are institutions which maintain and preserve historically valuable materials. To many historians, archives and archivists are the keepers of history: a place whose existence enables a broader knowledge and understanding of the past. Archives, essentially, are invaluable to our ability to write history. More than simply providing much needed evidence to legal cases, the contents which are stored within archives can contribute to societies coming to terms with some of the most atrocious and horrific crimes against humanity of the twentieth century<sup>1</sup>. By acknowledging that a huge variety of records exist not only documenting the crime but also the aftermath, archives play an extremely important role in the legal aspect while allowing for communities to find their paths to move past the label of "victim". With the advancement in technologies such as film, photography and the invention of online media platforms like YouTube, the amount of information which needs to be and can be archived has increased. The more people able to document and record the happenings

of the present, the more necessary it becomes to preserve these memories. Interestingly, the explicit content which is sometimes posted onto social media platforms such as YouTube are removed and forgotten, and in a way these materials are being erased from memory by removing the accessibility to them. YouTube has huge potential as an archiving platform: videos from the past can be uploaded and shared with a substantial audience. When videos whose explicit content shows human rights violations are removed from YouTube, the documentation of history of these events is being damaged.

In special reference to the violation of human rights, archives play an instrumental role in bringing perpetrators to justice, as well as providing the victims and prosecutors with evidence of the crime itself, allowing for personal testimony, memory preservation and closure. Without the documentation and preservation of atrocities, the perpetrators' accountability for their crimes can be lost, and absolution made impossible.

In the 1990s, former Yugoslavia erupted into a series of ethnically-fueled wars and conflicts which resulted in the 1995 genocide of over 7,000<sup>2</sup> Muslim Bosnians in Srebrenica, among oth-

er massacres and human rights violations which took place throughout the Balkans. The Balkan Wars represent some of the worst human rights atrocities to have taken place in Europe since the 1940s, and the conviction of 161<sup>3</sup> individuals helped provide some justice for the victims and their families. The International Criminal Tribunal for Yugoslavia (ICTY), the legal body responsible for the conviction of perpetrators of the Balkan genocide, was established in 1993 by the United Nations, with its sole purpose being to find and try those individuals who had committed appalling acts against humanity. The violence in Srebrenica, for example, led to the conviction of fourteen individuals for genocide and other human rights violations. The ICTY's role concluded in December 2017, with the sentencing of Ratko Mladić to life imprisonment. The role of archives in these cases resulted in successful convictions for crimes which happened in the past. Archives like the Open Society Archive (OSA) now label themselves as "activist" archives, with a purpose to advance the availability of materials for people across the world, and, in the pursuit of democracy, make history unforgettable. Human Rights archives and activist archives "increasingly play

*“Archives like the Open Society Archive (OSA) now label themselves as “activist” Archives, with a purpose to advance the availability of materials for people across the world, and, in the pursuit of democracy, make history unforgettable”.*

a role in advocacy, restorative justice, historical memory and struggles against impunity”<sup>4</sup>. It is the content within an archive which holds considerable historical value as it is these documents which can be used in legal situations to prove connections to atrocity and crime and liability.

During some of the ICTY trials, evidence which had been recorded and collected by journalists, United Nations officials, photographers, and others, was necessary for the successful prosecution of the perpetrators. These materials did not simply ‘exist’, but had been carefully stored and examined in the appropriate setting, an archive. The OSA holds unique collections relating to the Balkan Wars, resulting in the occasional need for the archive to lend materials to the legal proceedings. The collection held in OSA consists of diaries, photographs, maps, and films among many other official and non-official documentation.

Without the careful preservation of materials by Archives such as OSA, the prosecution of war criminals would be nearly impossible. By expertly selecting and issuing which materials can and should be preserved, archives make an invaluable contribution to the success of human rights cases globally. Some scholars argue that records must be “activated” in order to provide meaning to their existence, in other words, the records pertaining to human rights abuses must be explained in their context and used to obtain justice in order to be significant, but their mere existence suggests that they hold

the potential to be “activated”<sup>5</sup>. The deletion and removal of videos from YouTube, arguably, has similarly detrimental effect as destroying documents and photographs held in an archive. From a legal perspective, the importance of preservation is paramount to maintaining accountability of human rights perpetrators. It is for this reason that the destruction of records and the removal of explicit content videos from platforms such as YouTube could hold severe and damaging consequences, even if these materials are removed because their content is considered too violent for the public eye.

<sup>5</sup>Caswell, ‘Defining Human Rights Archives’, p.208.

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Stephanie Haszczyn is a student in Comparative History from the UK who is currently looking into the history of the Hungarian Revolution and the Suez Canal “crisis” of 1956. She is working to pursue a career as an archivist.

## FOOTNOTES

<sup>1</sup>Michelle Caswell, ‘Defining Human Rights Archives: Introduction to the Special Double Issue on Archives and Human Rights’, *Archival Science*, pp.207-213, p.208.

<sup>2</sup>ICTY Remembers: Srebrenica Genocide 1995-2015, <http://www.icty.org/specials/srebrenica20/index.html> [accessed on 12.04.2018].

<sup>3</sup>About the ICTY, <http://www.icty.org/en/about> [accessed on 10.04.2018].

<sup>4</sup>Archiving Human Rights for Advocacy, Justice and Memory <https://www.newtactics.org/conversation/archiving-human-rights-advocacy-justice-and-memory> [accessed on 10.04.2018].

# Graduate students want to study with refugees: the CEU Community and Open Learning Initiative.

With a focus on Central European University (CEU), **Elena Krusheuskaja** details the significance of integration into societies for migrants.



'Refugee integration' can be demonstrated by raising awareness and inclusion. However, when it comes to insecurities faced by migrants and refugees, we must acknowledge both the reasons they have had to leave their home countries and the socio-political context of the receiving community. For example, the ruling party of Hungary (FIDESZ) has used a harsh anti-migration rhetoric during the recent elections campaign<sup>1</sup>, falsely blaming Open Society Foundations and George Soros of "letting the refugees in". Let's take a closer look at the opinions of CEU students and their peers with refugee status in Hungary to find out how one single educational program can help the two sides to get closer and come together in seeking justice and self-advancement.

*Open Learning Initiative*<sup>2</sup> consists of two programs that are hosted in various universities in Europe: Weekend Programme (OLive-WP) and University Preparatory Programme (OLive-UP). Both are designed for registered refugees and asylum seekers and provide them with the opportunity to study on weekends prior to receiving their refugee status.

CEU OLive-WP<sup>3</sup> has been running since January 2016 and recruits up to 50 students every term (3 times a year). It consists of a 12 week-long training that aims at improving their academic skills via discussions and seminars, career consultations and English courses. It also includes practical training courses, such as how to start a business in Hungary, and a short introduction to local life and culture. In addition, advocacy courses are provided such as a participatory film making workshop, and drama and theatre workshops which aim to help students reflect on their experiences as refugees. The courses are held on Saturdays at CEU's campus in downtown Budapest, and the funding comes from the CEU's Intellectual Themes Initiative.

Students who participated in this program have mentioned that the combination of educational and cultural initiatives did help them to make new friends and overcome the psychological traumas that they have been through.

I talked to a PhD student who has been teaching one of these courses, and he shared that "the language barrier exists at the initial stage of communication

throughout the course," which impacts the expected outcomes from both sides. In this sense, designing a more comprehensive program was inevitable.

University Preparatory Programme (OLive-UP)<sup>4</sup> was launched in January 2017. It is an intensive, full-time, fully-funded course of study for students with refugee status in any of the EEA countries, helping students with their applications for BA and MA degree programmes at European universities.

This program focuses on teaching academic English and developing further academic skills, as well as advocacy and human rights trainings that are delivered through intensive small group classes designed to offer an interactive learning environment. It is mainly funded by the Erasmus+ initiative that supports student mobility in European Union (EU) and beyond. It aims for policy innovation and 'social inclusion through education, training, and youth'. CEU closely cooperates with the University of Vienna and the University of East London as part of the Erasmus+ network. Legal support to the program is provided by the European Network Against Racism, while local





## Students at the Olive UP/WP

Source:© Open Learning Initiative  
<https://www.ceu.edu/academics/academic-outreach-programs/OLive>

Hungarian actors such as Migrant Solidarity Group of Budapest ('Migszol') and Hungarian Association for Migrants ('Menedek') help with pastoral services and legal rights trainings.

Talking to three alumni of this program, I found out that many have participated in CEU community events such as Hate Speech Monologues, and various seminars where the migration topics were raised, and met more than ten friends who have no refugee background.

A former volunteer of the pro-

gram, however, shared her concerns regarding the student selection criteria. She commented, "Due to the high diversity in [the] academic pool of applicants it's hard to come up with educational standards equal to those of an ordinary CEU academic program".

One of the refugee students has agreed to give me a slice of his life as a refugee on a condition of full anonymity. Therefore, I address the identity as 'refugee' and the country of origin - as 'Country X', indicating his gender as male and the age group as 25-30.

"I worked as a Logistic Manager in Country X, this position allowed me to generate the funds used in my escape trip. First, I went to Turkey by air and spent 2 months there using a minor dialect to communicate. I crossed the Greek border in a boat with 50 others, with many children on board risking their lives late at night. The police acted in accordance with the reception standards, and I entered a camp of 800 people living in a single container. In a week I was in Athens, then I destroyed my documents and went to Serbia, sharing a van with 5 asylum seekers. One of the taxi drivers helped us to get to Hungary for a fair fee. First, I was placed in a building with 50 people where I had a single room. Later, I was transferred to a huge camp, where people were placed either in a huge tent based on their country of origin or in an abandoned factory building, sharing the floor spaces with up to 6



## Open Learning Initiative classroom.

Source: Open Learning Initiative  
<https://www.ceu.edu/article/2017-06-19/universities-should-expand-refugee-outreach-zaman-says>



20.000 of refugee supporters in London, one of the locations of Open Learning Initiative

Source: <http://www.middleeasteye.net/news/20000-refugee-supporters-march-through-london-1301169690>

persons, but sleeping in single beds. I stayed there for 7 months and saw at least 100,000 asylum seekers waiting for their refugee status and engaging in social work for any chance to upgrade their living conditions. Prior to applying for the OLIVE program at CEU, I lived in a cheap hostel and had a PC related, English speaking job at a local company. Since I had 90.000 HUF in support from the Hungarian government, all I was looking for was meeting people who can/could understand me, from both the refugee community, and academia”.

I had 50 interviews<sup>5</sup> with CEU students from the standard academic programs, trying to get a gender-balanced sample: of 52% male and 48% female participants.

68% of the respondents said that

they know a CEU student with a refugee background, and 86% of the respondents think that “the presence of refugees in the class could help understanding causes of the refugee crisis better”. Furthermore, 34 students have already asked refugees about their home countries and cultures, while 99% of those who didn’t have this chance before would be very interested in doing so! 58% of the respondents confirmed that they closely follow all migration related news, and 82% differentiate between the terms “refugee” and “migrant”, which are used interchangeably in political discourses, creating numerous misinterpretations.

The access to education and integration into a local society is an essential right of all foreign students in Hungary, including refugees. CEU functions as an

education institution that protects human rights and provides the tools to foster inclusion. It also pioneered in Budapest, providing work in opening up higher education to Europe’s new refugees and migrants<sup>6</sup> – being able to justify ‘mystification of the real’ and becoming an object of political attack on academic freedom in Hungary as such. CEU’s Rector fairly mentioned that “We do not work with illegal immigrants. Every government has the right to protect its borders and its country’s sovereignty. The issue here is demonization of people, the ‘othering’ of others”<sup>8</sup>. CEU community members have a unique chance of social inquiry. It opposes the concept of “short term thinking about integration”, which is based on fear and ‘impressions of security threats’ that have negative impacts on the welfare and migration projects of refugees and their families<sup>9</sup>. “We have to recover a sense of solidarity”<sup>10</sup>, stated Ignatieff, “and we hope that the Hungarian government will permit campus operations in Budapest furthermore, fulfilling the obligations of an EU member state committed to the principles

*“The access to education and integration into a local society is an essential right of all foreign students in Hungary, including refugees. CEU functions as an education institution that protects human rights and provides of the tools to foster inclusion”.*



and values of the EU Treaties<sup>11</sup>.

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<sup>2</sup>See Open Learning Initiative at CEU: <https://olive.ceu.edu/REIs>

<sup>3</sup>Also see Weekend Program of Open Learning Initiative at CEU: <https://olive.ceu.edu/OLive-WP>

<sup>4</sup>University Preparatory Programme of Open Learning Initiative at CEU: <https://olive.ceu.edu/OLive-UP>

<sup>5</sup>Interviews were collected in person by the article author

<sup>6</sup>Central European University (CEU), 'From the president and rector', Available at: <https://www.ceu.edu/about/rector>

<sup>7</sup>Brett Milano, 'The pressures on academic freedom', *The Harvard Gazette* (22 March 2018), Available at: <https://news.harvard.edu/gazette/story/2018/03/pressures-rising-on-academic-freedom-harvard-panelists-say/>

<sup>8</sup>Catherina Pepinster, 'Michael Ignatieff fights his toughest battle over academic freedom', *The Guardian* (30 April 2017), Available at: <https://www.theguardian.com/world/2017/apr/29/michael-ignatieff-fight-academic-freedom-hungary-central-european-university-refugees>

<sup>9</sup> <https://olive.ceu.edu/what-we-stand>

<sup>10</sup> <https://www.theguardian.com/world/2017/apr/29/michael-ignatieff-fight-academic-freedom-hungary-central-european-university-refugees>

<sup>11</sup>European Union Agency for Fundamental Rights, 'EU Charter of Fundamental Rights Article 14: Right to education', Available at: <http://fra.europa.eu/en/charterpedia/article/14-right-education>

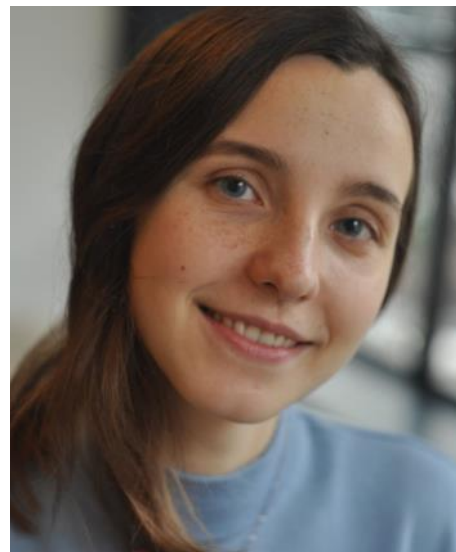
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**Elena Krusheuskaja** is a Master's candidate in Public Administration at Central European University (CEU). She specializes in media and communications policy, with a particular focus on multicultural integration. She is a student in the CMDS practicum course taught by Marius Dragomir. Prior to attending CEU, Elena studied at Corvinus university of Budapest and her research areas were migration, European integration and international relations. Elena is active in visual studies and radio projects, as well as in the promotion of cosmopolitanism and open society.



# Volunteering with Afghan Refugees in the Oinofyta Refugee Camp, Greece

**Diana Hrytsyshyna** looks at the refugee crisis and the refugee camps in Greece from her perspective as a volunteer at one of the camps last summer.



*The Afghan Refugees in the World / Europe / Greece*

**T**he Afghan people have been suffering for over 39 years from armed conflicts since 1979. Currently in Afghanistan civilians are targeted with violence from the Taliban and ISIS. Horrific militant attacks, killings, large-scale human rights violations, abuses, persecutions, sexual violence and different forms of ex-

ploitation have been happening there.

Nowadays Afghanistan is announced to have the most protracted refugee and internally displaced person populations in the world. About 2.7 million people from Afghanistan are living as refugees worldwide, over 1 million being in Europe.

Many refugees are waiting for their asylum application decisions in the refugee camps in Greece. In the summer of 2017, I

volunteered in the Oinofyta Refugee Camp. It once used to be an old factory-building but was transformed into the camp where people who fled Afghanistan could stay during the refugee crisis. Many refugees remained in the camp while applying for asylum in Greece or any other eligible country of the EU, and waited for the decision or, in case of families, waited for their reunification.

Oinofyta is a small village 55 km to the North from Athens. The camp can accommodate 600 refugees but last summer it hosted 411 Afghan refugees (which is the majority) as well as few Iranian and Pakistani refugees. The NGO I was volunteering for was called "IAMYOU". Its aim is to bring emergency relief to those in need. I was responsible for the education in emergencies programme which included preschool (for 2-5 year-old children), Youth Programmes (for male and female teenagers), Female Friendly Spaces and Summer Camp activities for all the chil-



**"Trying to fit into the shoes, or the Afghan Cinderella", Oinofyta Refugee Camp, July 2017.**

**Source:** Photography by Diana Hrytsyshyna

dren in the camp.

### *The Role of NGOs in the Migration Crisis*

Everyone will agree that NGOs are crucial in taking humanitarian efforts in this time of crisis because they can show empathy and cultural understanding and at the same time assist with social security and integration. Their aims are emergency relief, provision of education and psychological support to kids, teenagers and their parents. NGOs have been an efficient factor in solving the problem of the mass arrival of refugees by involvement of hundreds of volunteers who are willing to provide their support.

As for the Greek case, many NGOs were created by independent entities from all around Europe or ordinary personalities who did volunteering on their own addressing the needs of the migrants. Volunteers and NGOs became active from September 2015 in Lesbos. They were primarily engaged with first aid, helping refugees when they disembarked on the island and providing them initial help upon arrival.

### *NGO "IAMYOU" and Emergency Relief*

One of the organisations involved in those activities is "IAMYOU". It began its work as a volunteer emergency response to the humanitarian crisis on Lesbos (the Moria refugee camp) in the autumn of 2015.

By April 1, 2016 "IAMYOU" volunteers gathered in Ritsona refugee camp, 1 hour of travelling to the north of Athens. The camp was an unsafe environment for up to 900 Syrian refugees. At the same time the NGO

learned of the Oinofyta refugee camp, located in an industrial area not far away from Ritsona where up to 2000 refugees were planned to arrive in 2016. Thus, "IAMYOU" started to provide its relief operations and humanitar-

camp for Syrian refugees, while Oinofyta is predominantly Afghan with a small amount of people coming from Iran and Pakistan.

The main types of emergency response that NGO "IAMYOU" provided were educational support, child protection, female friendly spaces and thousands of other activities. These were partially my responsibilities shared with other volunteers. The aim of education support is to restore a sense of normality to people's lives while countervailing

fear. There was a pre-school which served the 2-5 year old kids who had different playing activities and basic learning activities. This allowed children to learn discipline principles and time management for the further continuation of studies. The daily schedule at the pre-school is broken down into 15-minute inter-

*"The biggest lesson I learned is that you do not need to speak the language of the community to communicate with the children in the refugee camp, as it is the emotional communication by nonverbal means that counts more and shows your real sincerity!"*

ian assistance in two camps in the Central Greece region and a lot of volunteers helped in following its mission. The minimum length of volunteer appointment for any of the projects is three weeks and the maximum stay can be up to half a year.

The Ritsona camp is mainly the



**"We rise up by lifting others",  
Oinofyta Refugee  
Camp, July 2017**

**Source: Photog-  
raphy by Diana  
Hrytsyshyna**





**The Child Friendly Space and all the Volunteers Involved in Emergency Relief, the Oinofyta Refugee Camp, August 2017.**

**Source:** Photography by Diana Hrytsyshyna

vals where the children learn for 15 minutes and then play for 15 minutes. I was involved in it with two other volunteers who helped to conduct the activities and explain to the children the instructions of games.

Another type of activity is child protection that is realized through the Child Friendly Spaces (CFSs) in order to provide a safe and supportive system for children and families during a time of crisis. The creation of a safe environment is the focus of CFS. CFSs provide a stimulating and supportive environment for children which entails three key elements: a wide range of appropriate activities and programmes to support positive socialisation of children with peers; a physical environment to facilitate the activities, and encouraging staff. The three most involved sectors of a CFS are ed-

ucation, protection, and health. The Child Friendly Space in the Oinofyta Refugee Camp was opened in September, 2017. The children between ages 3-5 could run around and play in this environment. They got psychosocial activities, informal education and a sense of normality provided by safe adults. The parents could do their daily tasks knowing that their children were safe. It was exciting for me to learn about the Female Friendly Spaces (FFSs) and in particular to organize them. It is a special safe area for women and adolescent girls. Our FFS was used for various activities such as: individual or group counseling, awareness-raising, skills-building, NFI distribution, recreational activities. Information on childcare, reproductive health, legal rights and psychological support were shared there, aiming to promote

women's protection and empowerment. We organized the workshops combined with the usual things the Afghan females are doing: tea ceremonies, henna paintings, doing makeup on all the representatives of the Afghan community, as well as volunteers, which we did in turns.

Unfortunately, the Oinofyta refugee camp was officially closed in the end of October 2017. Some of the former residents moved to Athens and have been waiting for the decisions of their asylum applications while others have already moved to their desired "final destination countries". But the services the NGOs were providing previously continue to be brought to the former residents in the form of community centers where they are involved in sewing workshops and language lessons.

All in all, my experience of vol-



unteering in the refugee camp contributed a lot to the perception that humanitarian assistance and in particular child protection are the fields that I would like to connect my future with. One child is worth more than all the guns on Earth!

The biggest lesson I learned is that you do not need to speak the language of the community to communicate with the children in the refugee camp, as it is the emotional communication by nonverbal means that counts more and shows your real sincerity!

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To contact the NGO or to learn more information about the NGO "IAM YOU" visit the official website: [www.iamyou.se](http://www.iamyou.se)

More about Female Friendly Spaces can be found here: [https://www.humanitarianresponse.info/system/files/documents/files/brief\\_guidance\\_on\\_female-friendly\\_spaces\\_v1\\_05\\_12\\_15.pdf](https://www.humanitarianresponse.info/system/files/documents/files/brief_guidance_on_female-friendly_spaces_v1_05_12_15.pdf)

## BIOGRAPHY

Diana Hrytsyshyna is a Ukrainian student currently finishing her Master in International Relations from Budapest Business School. She believes in the power of people & social movements and is sure that education has the power to turn the world around. "One child is worth more than ALL the guns on Earth" made her decide to volunteer with the Afghan children and connect future life with child protection.

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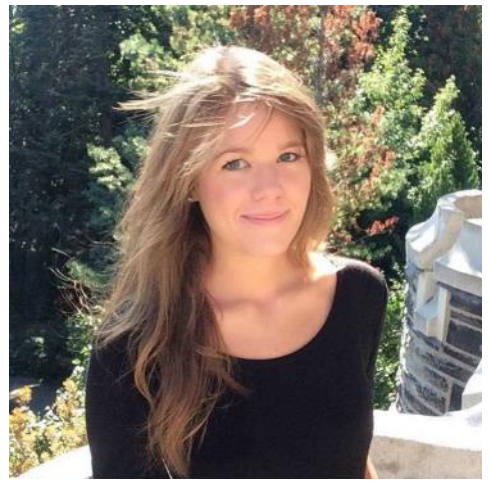
The Oinofyta Facilities: the Pre-school to the right, the studying & playing space in the center and the library to the left, Oinofyta Refugee Camp, July 2017

Source: Photography by Diana Hrytsyshyna



# Will the sinking of low-lying island states render their populations stateless?

**Noémi Radnai** discusses whether the citizens of low-lying island states will become stateless in the case of de-territorialisation. She argues that besides the establishment of an autonomous legal status for the environmentally displaced, states should also focus on the amendment of their nationality laws to prevent the statelessness of communities in permanent exile.



**L**ow-lying island states (LLIS) such as the Maldives and some Pacific Island States like Kiribati, Tuvalu and the Marshall Islands face rising sea levels and the threat of sinking of their territory. Having a defined territory is a requirement of statehood; therefore, sea-level rise puts the populations of LLIS at great risk of statelessness<sup>1</sup>. Lacking the closest legal bond to a state, stateless persons are denied their most basic human rights. The phenomenon has severe implications on both the individuals affected and the communities they live in.

Currently, sea levels rise at 3.2 millimeters per year<sup>2</sup>, while the highest elevation point is 2.4 meters for the Maldives, 5 meters for Tuvalu and 10 meters for the Marshall Islands<sup>3</sup>. According to the UN Intergovernmental Panel on Climate Change (IPCC), the complete submersion of LLIS will likely not happen until the end of the 21<sup>st</sup> century, but these

predictions are made with medium confidence only<sup>4</sup>.

According to customary international law, the interlinked requirements of statehood are a defined territory, permanent population, a government, and capacity to enter into relations with other states<sup>5</sup>. What happens to statehood if a state's defined territory disappears? So far, international law has only contemplated the extinction of statehood in the case of state succession. The disappearance of a state's inhabitable territory, thus the extinction of statehood without state succession, is yet unprecedented. Presumably, if such a loss were temporary, statehood would not cease<sup>6</sup>. However, a permanent situation, such as the submersion of the full territory of a state, would be different, and could lead to the cessation of statehood. In this case, the presumption of continuity would probably not apply<sup>7</sup>.

So will the citizens of disappear-

ing island states eventually become stateless? Even if the international community chooses to sustain some kind of fictional legal status of the affected states (i.e. *ex situ* nationhood)<sup>8</sup>, governments in exile would face many constraints in practice, as the population would technically still be relocated to another state's sovereign territory<sup>9</sup>. On the other hand, if the international community does not uphold the statehood of such countries, but instead offers relocation schemes for the forcibly displaced, the persons affected will likely become stateless, as there is no citizenship without a state<sup>10</sup>.

Nevertheless, while contemplating the possible outcomes of de-territorialisation in international law is an intriguing academic exercise, in practice, LLIS are very likely to become entirely uninhabitable long before their complete submersion. Climate change is due to cause extreme weather conditions and subse-

*“What happens to statehood if a state's defined territory disappears? So far, international law has only contemplated the extinction of statehood in the case of state succession. The disappearance of a state's inhabitable territory, thus the extinction of statehood without state succession, is yet unprecedented”.*



**Children play at a plaza flooded by seawater in Funafuti, the capital of Tuvalu.**

**Source: Kyodo/AP**

quent environmental disasters. This is likely to limit adaptation possibilities to migration<sup>12</sup>. In Kiribati, around 2,500 people are already internally displaced because of sea-level rise<sup>13</sup> and worsening conditions are expected to cause elevated forced migration across borders.

Even though there is a 95% chance that climate change is an anthropogenic phenomenon<sup>14</sup>, as of today, international law does not foresee a protection status for the environmentally displaced and there is no mechanism to guarantee the legal status of the citizens of LLIS. Those who are displaced for climate-related reasons do not fall under the scope of the 1951 Geneva Convention Relating to the Status of Refugees<sup>15</sup> and they should not be considered refugees, either. Their protection needs to differ from those who were forced to flee their homes for political reasons and their problems need different solutions.

The international community should urgently find a way to address the legal status of the environmentally displaced. Objective 2 of the nascent Global Compact for Safe, Orderly and Regular Migration<sup>16</sup> sets out to

tackle climate migration, but it does not foresee a concrete solution for the citizens of LLIS<sup>17</sup>. Nationality matters are still in the hands of sovereign states. Countries in the affected regions should at the very least amend their nationality laws to be in line with the 1961 Convention on the Prevention and Reduction of Statelessness, allowing children who would otherwise be stateless to acquire the citizenship of the country of birth (*ius soli*)<sup>18</sup>. In this way, the second generation of those in exile would be granted the right to a nationality.

Of course, such amendment of nationality laws would not provide a comprehensive solution to the plight of the permanently displaced inhabitants of LLIS. The loss of their livelihoods will pose a great threat to their culture and traditions, and relocation to the territory of another state will risk assimilation of those in permanent exile. At the beginning of the 21<sup>st</sup> century, we cannot possibly grasp the geopolitical consequences of climate change and subsequent environmental displacement. For this reason, the international community should immediately set out drastic measures to mitigate the damage being done to the

environment and to protect the forcibly displaced.

## FOOTNOTES

<sup>1</sup>A stateless person is not considered a national by any state under the operation of its law. Article 1, Convention Relating to the Status of Stateless Persons, New York, 28 September 1954, in force 6 June 1960, 360 UNTS 117.

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<sup>5</sup>Article 1, Convention on the Rights and Duties of States Adopted by the Seventh International Conference of American





Locals plant mangroves to protect shorelines in Kiribati.

Source: Nicole Clements/  
Caritas Australia

States, Montevideo, 26 December 1933, 165 LNTS 19.

<sup>6</sup>Park, *supra* 3, p. 4.

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<sup>12</sup>IPCC, *supra* 4.

<sup>13</sup>Internal Displacement Monitoring Centre, Country information on Kiribati, available at <http://www.internal-displacement.org/countries/kiribati/> [accessed 30 March 2018]

<sup>14</sup>IPCC, *supra* 4.

<sup>15</sup>Convention relating to the Sta-

tus of Refugees, Geneva, 28 July 1951, in force 22 April 1954, 189 UNTS 150.

<sup>16</sup>Zero Draft of the UN Global Compact for Safe, Orderly and Regular Migration (5 February 2018), available at [https://refugeesmigrants.un.org/sites/default/files/180205\\_gcm\\_zero\\_draft\\_final.pdf](https://refugeesmigrants.un.org/sites/default/files/180205_gcm_zero_draft_final.pdf) [accessed 30 March 2018]

<sup>17</sup>Convention on the Reduction of Statelessness, New York, 30 August 1961, in force 13 December 1975, 14458 UNTS 989, 175.

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Noémi Radnai is a Juris Doctor candidate at Eötvös Loránd University, Faculty of Law. She also holds an M.A. in International Relations from Corvinus University of Budapest. Her main fields of interest are statelessness, forced migration, minority protection, and human rights in constitutional law.

# When oily hair and a dirty car become symbols of status: Water crisis in Cape Town

**Fabiola Espinoza** examines how water scarcity has become a tangible problem in Cape Town, and suggests possible solutions for us to explore.



*‘I shower briefly, once every three days...I regard oily hair in a drought to be as much of a status symbol as a dusty car’.* - Helen Zille, Western Cape Premier<sup>1</sup>.

Ok, hold on everyone. It is already happening. Water scarcity has arrived in large cities.

Most of us are aware of water scarcity and sanitation problems that the developing world faces nowadays. We hear stories of people who spend several hours per day walking long distances in order to collect water, and outbreaks of waterborne diseases that affect the health of millions of people. Water conservation campaign slogans such as “check faucets’ pipes for leak”, “turn off the water while tooth brushing”, and “take shorter showers” have become widespread. Every year, The World Water Day reminds us of the importance and fragility of this vital resource. Yet, for many of us, water crises continue to be perceived as a future threat, which has the potential but has not yet affected our daily lifestyles.

What if I tell you that currently almost 4 million inhabitants of a modern city have a strict mandate to use 50 l. of water, or less, per day? Imagine: posters circulating on the media suggesting efficient ways to spend your daily amount of water, 10 l. for a shower (no hair wash/sponge bath options), only one flush per day, 1l. for cooking, etc.<sup>2</sup>; a set day marked in your calendar when running water won’t come out from your tap anymore. Shocking, right?

This is the current situation in Cape Town, South Africa. This modern metropolis, a global tourist destination with the most prosperous economy in the region, has become the first major city in the world to face extreme water scarcity. The so-called Day Zero, when the government will officially turn off running water in most of the houses and businesses in the city, has been pushed to 2019 after being forecast as early as February and July 2018<sup>3</sup>. Thus, the situation is still far from being resolved.

Three years of unexpected severe drought, combined with an increase in water demand and

economic development, have left the country with its most important dam, “Theewaterskloof”, in 12,5 % of its capacity. Consequently, sharp inequalities amongst members of the society have worsened. Implementation of stricter water tariffs are diminishing poor people’s access to water, forcing them to depend on communal taps, while upper-middle classes can afford it in addition to buying expensive bottles of water or digging wells to access more water. At the same time, the economy is negatively affected. Wine production, the city’s characteristic product, has gone down by 20% while fruit and vegetable production has dropped by 15%, deteriorating the city’s once prosperous economy<sup>4</sup>.

Nevertheless, Cape Town is not the only country facing this situation. Currently, 14 of the World’s 20 megacities are experiencing drought conditions<sup>5</sup>. Large modern cities such as Barcelona and Sao Paulo, although not as severe as Cape Town, have already experienced their own Day Zero in 2008 and 2015, respectively. This tells us that what is happening in Cape

Town is not unique, but possible to observe anywhere else in the world.

But what has triggered this situation? Changes in the hydrological water cycle caused by climate change seem to be the main cause. Changes in the rainfall distribution patterns are expected to evoke water scarcity in regions where it does not exist, and, to worsen the situation, in regions that already suffer from it<sup>6</sup>. Agriculture, which accounts for 70% of global water withdrawals, and industry, which accounted for 20%, are other important factors causing severe stagnation of water supply<sup>7</sup>. Predictions indicate competition of those sectors with domestic uses of water for an already scarce water supply are likely to intensify in the future. Agricultural and industrial water demand will increase by more than double by 2050 in order to meet with the accelerated consumption patterns of society, and food demand of a world population that is increasing at a rate of 1% per year<sup>8</sup>.

Water scarcity crisis is no longer a potential threat that we can confront in the future, it is already happening. Access to water is a vital human right. The lack of it jeopardizes societies' economic development, food security, and sustainable livelihoods while increasing poverty and social inequalities just like it happens currently in Cape Town. The time has come. Severe measures need to be taken.

*“Water scarcity is no longer a potential threat that we can confront in the future, it is already happening. The time has come. Severe measures need to be taken”.*

According to the latest UN World Water Development Report, agricultural management shift is the key to solving the problem. Nature-based solutions, applying conservation techniques in agriculture, and relying more on green infrastructure rather than pipes and concrete can help us to increase productivity yield while reducing our energy and water footprint. Nevertheless, not everything needs to fall on the authorities' shoulders. Each individual can take responsibility. Sure, we can still conserve domestic water, which only represents about 3% of humanity's total water consumption<sup>9</sup>. But, what if we do more? Choosing chicken meat instead of beef (which consumes 11,100 l. less water), not buying that new pair of jeans which consume 7,6000 l. of water<sup>10</sup> or choosing to drink tap water rather than buying a bottle of soda that consumed 175l. of water, could certainly make a bigger difference.

Now that we have a taste of the bitter future, are we finally ready to make a change?

## FOOTNOTES

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## BIOGRAPHY

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# Justice for the Victims of Environmental Induced Migration

Patricia Petra Velicu illustrates the plight of those who have had to migrate due to climate change, and how the issue is still largely unaddressed under the international environmental law.



Environmental induced migration represents a direct consequence of environmental degradation, but the international community fails to appropriately acknowledge it and to codify it under international environmental law (IEL)<sup>1</sup>. This situation becomes particularly problematic when viewed from an ethical perspective, as the people who are currently affected by this phenomenon are vulnerable communities<sup>2</sup>. They are indigenous people or citizens of small island states, who are the least responsible for environmental degradation, but who are forced to leave their homes and exercise self-help in lack of any remedy or compensation from the ones responsible for the destruction of their environment<sup>3</sup>. This paper focuses on environmental induced migration and the challenges it poses to international law. It hereby takes into account the North-South divide and the issue of environmental justice which refers to a fair distribution of the burdens, but also the benefits, connected

to the environment<sup>4</sup>. For this purpose, it illustrates the case of Nauru and the proposed relocation of its people to Australia. This paper argues that the North bears the responsibility to address environmental migration and to develop a just mechanism of mitigation, adaptation and remedy to this issue.

The North refers to the developed states; the South refers to the currently developing and the less developed states that share

*“The power imbalance between the North and the South enables the North to avoid the legal binding regulation of issues it wishes to avoid, mostly out of economic considerations”.*

a history of colonialism, political domination and economic exploitation by the North<sup>5</sup>. This history continues to shape international law and especially IEL, reinforcing political, social and economic inequalities and causing environmental injustice<sup>6</sup>. The North still dominates the formulation of international law, while the influence of the South continues to be limited<sup>7</sup>. This power imbalance enables the North to avoid the legally bind-

ing regulation of issues it wishes to avoid, mostly out of economic considerations<sup>8</sup>. As a result, environmental induced migration continues to remain unaddressed in IEL<sup>9</sup>.

Environmental justice needs to be understood in connection to the historical responsibility of the North towards the South regarding compensation or remedy for environmental damage. The North has the responsibility of helping or, at least, allowing the South to develop, by not placing burdens on it through legal standards in international law. This historical responsibility lies in the colonial history, because the North was able to develop without any limitations, exploiting the lands and resources of their past colonies in the South, causing many of the current environmental problems<sup>10</sup>. The need for environmental standards is uncontested, but the North needs to take into consideration its historical responsibility for the current environmental problems and to create an environmental regime which offers support to





Rich deposit of phosphate was discovered in 1900. To this day phosphate mining has remained Nauru's main source of economic revenue.

Source: Website of the government of Nauru, <http://www.naurugov.nr/about-nauru/our-country.aspx>

the South and a mechanism for remedy and compensation to communities whose urgent situation does not require only mitigation, but also adaptation<sup>11</sup>. The North has so far resisted to acknowledge this historical responsibility and to offer compensation for the ecological debt owed to the South<sup>12</sup>. Environmental justice is essential in the case of environmental induced migration, lying at the core of the main argument for providing appropriate assistance to the people affected by it.

Nauru is a small island state located north-east of Australia. Its surface amounts to 21 square kilometers and it has a population of approximately 10,000

people. The country has a rich deposit of phosphate that was discovered in 1900 and that has been extracted by Australia throughout the 20<sup>th</sup> century<sup>13</sup>. The extensive mining destroyed the island, which scientists believed to become uninhabitable by the 1990s unless the land would be rehabilitated. On May 19, 1989 Nauru started proceedings against Australia at the International Court of Justice over the dispute concerning the rehabilitation of phosphate lands<sup>14</sup>. Simultaneously, negotiations took place between the two, ending in 1993 with an agreement for the settlement of the case<sup>15</sup>. Due to the high costs, Australia refused to rehabilitate the lands, offering instead to relocate the

entire population<sup>16</sup>. A cash settlement was also offered to Nauru, who accepted, making a huge concession by agreeing to waive itself of the right to make any future claims<sup>17</sup>. However, Nauru refused relocating its population, as it did not want to give up its culture and identity, being assimilated into White Australia<sup>18</sup>.

This case is a perfect illustration of environmental (in)justice. The history of the country shows Australia's historical responsibility to offer compensation to Nauru, because it has benefited from the exploitation of its resources. Australia has been the "administrating power and main beneficiary of phosphate mining" between 1920 and 1968<sup>19</sup>.



Australia's agricultural export industry relied heavily on the use of phosphate as fertilizer. Australia extracted and used Nauru's resources disregarding the environmental destruction of the island, pursuing its own development at the expense of Nauru's natural resources and environmental well-being.

Environmental justice lies at the heart of the North-South divide in IEL, representing one of the main starting points for the development of IEL principles that have offered advantages to the South<sup>20</sup>. Such principles are: permanent sovereignty over natural resources, self-determination,

self-government or preservation of identity and culture<sup>21</sup>. Even if some of these principles are not legally binding, they still provide a framework for negotiations<sup>22</sup>. This is particularly relevant for environmental migration, because this unregulated consequence of environmental degradation can be tackled by reiterating environmental principles which are already acknowledged. Furthermore, these legal instruments provide a legal hook through which the South can legitimately argue for the appropriate regulation of environmental induced migration and its mitigation and adaptation.

The case of Nauru raises the is-

sue of the "disappearance" of states, as the land of the island will become uninhabitable due to the environmental degradation caused by phosphate mining<sup>23</sup>. Self-determination becomes relevant in this context, because the population of the island will be forced to move. Relocation is the primary option for adaptation and remedy, self-determination being relevant for a relocation *en masse*<sup>24</sup>. However, Nauru sees this option as the last resort, due to fear of losing its identity and culture<sup>25</sup>. Australia rejected to offer self-determination or self-government to Naurans through relocation *en masse* to a part of

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**Nauru is a tiny island north-east of Australia. It is situated 42 kilometres south of the equator.**

**Source:** Website of the government of Nauru, <http://www.naurugov.nr/about-nauru/our-country.aspx>



its territory, in spite of its historic responsibility to offer the best solution possible<sup>26</sup>. Instead, Australia offered “individual migration and assimilation” – unacceptable to Naurans who would lose their culture and identity<sup>27</sup>. Preservation of identity and the right to culture become essential in the context of environmental migration and have been codified in the UNDRIP<sup>28</sup>. By taking these rights into consideration, an environmental migration regime would have to recognize the rights of the affected communities to preserve their distinct identity and culture and to not force them to assimilate in the receiving society.

## FOOTNOTES

<sup>1</sup>Dayna Nadine Scott and Adrian A. Smith, “The abstract subject of the climate migrant: displaced by the rising tides of the green economy,” *Journal of Human Rights and the Environment* 8, no. 1 (2017): 36-38.

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<sup>8</sup>Ibid.

<sup>9</sup>Dayna Nadine Scott and Adrian A. Smith, 36-38.

<sup>10</sup>Sumudu Attapattu and Carmen G. Gonzalez, 10.

<sup>11</sup>Ibid., 10-11.

<sup>12</sup>Sumudu Attapattu and Carmen G. Gonzalez, 10-11; Chukwumerije Okereke and Philip Coventry, 837.

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<sup>15</sup>Ibid.

<sup>16</sup>Jane Mcadam, 7.

<sup>17</sup>American Society of International Law, 1472.

<sup>18</sup>Jane Mcadam, 7.

<sup>19</sup>Ibid.

<sup>20</sup>Chukwumerije Okereke and Philip Coventry, 837-838; Sumudu Attapattu, “Climate Change: Disappearing States Migration and Challenges for International Law,” *Washington Journal of Environmental Law & Policy*, Legal Studies Research Paper Series Paper No. 1275 (2014): 78-79.

<sup>21</sup>Sumudu Attapattu, 79.

<sup>22</sup>Ibid., 74.

<sup>23</sup>Ibid., 14-16.

<sup>24</sup>Sumudu Attapattu, 79.

<sup>25</sup>Jane Mcadam, 9.

<sup>26</sup>Ibid., 9-10.

<sup>27</sup>Ibid.

<sup>28</sup>Elizabeth Ann Kronk Warner, “South of South: Examining the International Climate Regime from an Indigenous Perspective,” in *International Environmental Law and the Global South*, ed. Shawkat Alam, Sumudu Attapattu, Carmen G. Gonzalez, and Jona Razzaque (Cambridge University Press: 2015), 455.

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