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SPEAKERS

Rob McNeil, Jacqui Broadhead, Catherine Briddick, Sabir Zazai

Jacqui Broadhead 00:00

Hello, and welcome to the migration Oxford Podcast. I'm Jacqui Broadhead.

Rob McNeil 00:04

And I'm Rob MacNeil.

Jacqui Broadhead 00:05

Today we're talking about the 1951 refugee convention and whether it's still fit for purpose. Rob, I know this was something that you were really keen for us to talk about on the podcast. Why was that?

Rob McNeil 00:16

So my interest in this is sort of emerged in the fact that we seem to be seeing this kind of erosion by states of the, what I would perceive as the sort of the spirit of the 51 convention, whether it be the push backs from Greece into Turkey, or the Rwanda policy in the UK, or the offshore processing in Australia, I mean, the multitude of different policies that are all designed with really one purpose in mind, which is to minimize the number of people that arrive generally in wealthy states, from poorer states to claim asylum. And it struck me that the kind of point in time when the 51 Convention was created 1951 was a fairly unique moment, in that it was a time you know, it was after the Second World War, it was a it was a period where we had the Cold War, obviously, sort of beginning to really bubble up as a major as a major issue in society. But it was also a point where a kind of international response to a global threat and a massive amount of refugee movement and all that kind of stuff had created possibly a an opportunity and a space where this kind of conversation had to be had, but also where a bunch of major powers were so established and significant, that, that it was quite possible to sort of implement these sorts of policies, with, you know, the agreement of this kind of bunch of large major, major nations. But and that now we face a very different time and a very different reality.

Jacqui Broadhead 01:49

Yeah, absolutely. And I think it doesn't feel like we're making progress, although there have been developments, like the Global Compact, both for migrants and refugees, but also at the national level, we're seeing a lot of quite regressive policy it feels like, and a lot of the work seems to be quite reactive. So it's based on legal challenge to policy or it's based on chipping away at some of the entitlements, rather than perhaps some of this some of the optimism around building systems that function on a global level.

Rob McNeil 02:25

We were discussing a little earlier on the question about how public's respond to this kind of thing. And how we talk about these things in a way that shapes the way that public responses are, which is something very close to my work. And I think that one of the things that we also discuss later on is the role of narrative, the role of discussion about this kind of thing, in shaping the way that public's are willing to deal with with a question like poor people or vulnerable people arriving in society, from a war or from oppression in one way or another. And I think it's a really important situation to get to grips with because how we tell stories about people shapes the reality that those people then move into. We're joined today by Dr. Catherine Briddick, departmental Lecturer in gender, international human rights and refugee law at the refugee Studies Center in Oxford, and Sabir Zazai, the chief executive of the Scottish Refugee Council. Catherine, if I can start with you, I just wanted to ask the question about whether or not you think that the 1951 refugee convention is still the best instrument for providing safety and security for those fleeing conflict and oppression globally.

Catherine Briddick 03:43

Thank you. I do. The internationally agreed 1951 refugee convention was amended in 1967. And it defines who a refugee is, and it sets up the protection that all refugees should enjoy without discrimination. This includes protection from return in someone to a situation where their life of freedom is threatened. And it also includes protection from penalisation, or punishment for their mode of entry into a jurisdiction which is safe. The Convention also includes another set of really important rights, including the right to education and to free movement. So the drafters of the Refugee Convention knew exactly what was required to ensure that people fleeing persecution and serious threats to their lives and freedom are able to access and secure international protection. The problem is not the law and international protection of which the Refugee Convention is just one part, but states consistent and persistent failure to meet their legal and ethical obligations to refugees.

Rob McNeil 04:40

One of the things that seems to be happening globally at the moment is an erosion of the spirit of that convention. I mean, we see this in the UK with with the initiative to remove refugees to the UK to Rwanda, for example, we've seen it with refugee pushbacks. We've seen it in a number of different situations around the world. So is this just the price that you pay for any legal instrument? Or is there something going on that needs to be resolved?

Catherine Briddick 05:12

I don't think this is about the spirit of the convention. I think that provisions or proposals, like the UK is proposed externalization of refugee protection and its agreement with Rwanda, or simple breaches of the convention. This proposal, or the UK government's legislation that it's just passed in relation to

refugee protection has to be seen, in the light of the broader context that you've described of a number of different countries seeking to externalize, evade, or obscure their legal and ethical obligations to refugees. I think what we need to talk about is about how we enforce rights, and how we enable refugees to advocate to secure the rights of themselves and others who are in need of international protection.

Rob McNeil 05:58

That's very interesting. I mean, do you have a version of that that you could sort of suggest? So I

Catherine Briddick 06:03

think at the moment lawyers and others in the UK are preparing to challenge this proposal and the decisions that we expect to see in the next few weeks in court. So I think legal challenges are always going to be one way in which refugees rights have indicated. But I think this is only just part of the picture. I think that political advocacy is also really important. And that's why organizations like the Refugee Council are so important.

Rob McNeil 06:26

Can you explain to us a little bit about how the UK has justified this, and what the sort of legal basis for it is, and to what extent this is reflected in other activities by other governments around the world.

Catherine Briddick 06:40

So on the 13th of April this year 2022, the government signed a memorandum of understanding with the Republic of Rwanda on what is described as an a, an asylum partnership arrangement. And this agreement seeks to enable the transfer or forced removal or deportation of asylum seekers from the UK to Rwanda, to have their claims determined there. In accordance with Rwanda and asylum and immigration law. It applies to anybody who arrived in the UK this year. So it applies to people who arrived before the agreement with Rwanda was signed, including potentially individuals who fled the war in Ukraine. Now this agreement needs to be understood within the context of the nationality and borders Act, which recently received royal assent. And this legislation will amongst other things, criminalize people for seeking protection in the UK, and will make it harder for those who are not deported to Rwanda to be recognized as refugees. It will also deny them key rights. It's this act that provides an additional or strengthen domestic legal foundation for the UK is proposed externalization of refugee protection. Now the UK is proposals need to be seen within a broader context of externalization. And you've already alluded to that. So Australia, for example, is a country that has paid vast amounts of money to detain unlawfully individuals in other countries and have their claims for protection determined there. Israel also attempted to reach an agreement with Rwanda and agreement which was struck down by the Supreme Court that would try and do a similar thing. Denmark, at the moment, a country within the EU has also passed legislation and which envisages a similar type of externalization arrangement. So the UK is proposals situates it within a group of states who are seeking to have the protection of refugees dealt with in countries other than the jurisdictions themselves?

Rob McNeil 08:29

One of the key challenges here is the enforcement of this legislation, I mean, the enforcement of any international sort of any international instrument legal instrument, because obviously, it requires

national governments to actually implement it. Is it is there anything beyond national government enforcement that we can see that actually will have an impact on the way that governments choose to do things?

Catherine Briddick 08:51

So I think what you're pointing to there is the fact that the Refugee Convention itself doesn't have an enforcement court or monitoring body in the way that other international human rights instruments do. So for example, the European Convention on Human Rights is overseen by the European Court of Human Rights, and other UN human rights instruments such as, for example, the International Covenant on Civil and Political Rights, or the Convention Against Torture, or the Convention for the Elimination of All Forms of race discrimination. These are instruments which are also very important to refugee protection, have committees treaty bodies, who can hold states responsible for breaches of the convention, and they have different mechanisms which enable them to do that. The Refugee Convention is slightly different from these instruments in that it doesn't have a court or a treaty body that can hold states accountable for situations or proposals like the one we're talking about, which are clear breaches. Instead, it has the UNHCR now the UNHCR is the guardian of the convention and has a really important role to play in providing humanitarian assistance to refugees in terms of putting pressure on states to meet their legal obligations and with Seeing UNHCR do that in relation to the UK is proposals and in relation to the actions of the Australian government, for example, but they don't have that same ability. They don't have a mechanism, which would enable, for example, a refugee in the UK, who faces deportation to under to be able to go to a refugee court, and have their rights have indicated in that forum. And instead, we're faced with what you've described, which is going to domestic courts and domestic legal proceedings, which is not to say, though, that the European Court of Human Rights might not have a look at this, I think it's quite likely that some of the proposals, if implemented, will engage protections under that convention. And so I think we're likely to see individuals seeking to go to a number of different international, regional and national courts and tribunals, in attempts to stop their removals.

Rob McNeil 10:48

So could you just explain a little bit about your background? Because you are yourself a refugee in the UK?

Sabir Zazai 10:55

Yeah. Thanks, Rob. I arrived from Afghanistan in year 99. So I fled the conflict in Afghanistan, we initially became internally displaced. And we lived in a refugee camp with my family for about 10 years, counting days, months and weeks to go back and rebuild our family home, highlighting the fact that not everyone wants to cross an international border, when there is conflict, people do hope for a better days to go and rebuild their lives, all people are looking for, even if they cross international borders is also safety, and rebuilding the life suits and safety and dignity, nothing else. So it got to a point where life became unbearable, under the Taliban at that time. And there was a threat to the likes of me and many other young people being targeted to join the Taliban, against international community who were just about to go into Afghanistan. And I had to flee and arrive here in the back of a lorry. I arrived as a young fit man, as the Home Secretary, and others would now try to scapegoat. And since then, I've been living in the UK, grateful for the welcome and the investment that the society here made. And that

warm welcome that I was given, I'm grateful for the protection as well, that was explained earlier, in terms of the Refugee Convention, if the Refugee Convention was in there, someone like me would have been put on a plane and center Rwanda, that would have re traumatized me, it would have made life difficult for me. And today, I wouldn't have been speaking with you or I wouldn't have been able to make that little contribution, whatever I've made to the UK, and many others that arrived at the same time. So when I look back on my shoulder back to those days of seeking asylum, and the people that arrived at the same time, as I did, I see, I see teachers, I see accountants, I see engineers, I see nurses, taxi drivers, bus drivers, all going about their lives, trying to make a contribution to work. And to be an important part of our society. I don't see anyone being a threat or a burden on to anyone. And I arrived with seven years of formal education. But I arrived with my hopes and dreams. So all these people that are arriving, and today they're going to face the vicious nationality and boulders bill and the plans to be sent to Rwanda, we need to pause for a moment and think these are people that human beings, I think what is lacking across the UK currently is that moral, political leadership. And we've seen images of Ukraine and Ukraine remind us very close to on our doorstep, is a powerful reminder of how things can change for people overnight, how people can be forced to flee their homes in a matter of seconds. What Ukraine also reminds us of the of the the strong app swelling of public generosity, and how generous this society is people trying to open their doors and their hearts to welcome people from Ukraine, I think this year particularly, could have been that real moment for us to reimagine the UK and Britain, as a nation as a country of of sanctuary and celebrate and harness that positivity towards refugees. But sadly, in that time, when we see these tragic images of people fleeing Ukraine, and also the public goodwill, we are pushing ahead with some really cruel, inhumane costly and unworkable policies.

Rob McNeil 14:47

In our conversation before we started recording you were talking about the impact of narrative on refugee reception in a in a country or in a region or in a location. Would you Would you say that narrative in that case has been a really key factor in shaping the refugee experience in the UK?

Sabir Zazai 15:06

Absolutely. Narrative plays a big part language and words do matter in this process. And I think if they're especially used in an ethical way, by people in power at senior level, when the damage could be even greater, the whole Rwanda thing, and the bill, I think, has created quite a lot of anxiety, tension and frustration within all communities of color, I think, yeah, because ultimately, the approach that has been taken in this policy is very much around othering people, because they're either looking or sounding different to how we sound or look, think that has made even the likes of me who have got three children born and brought up in Coventry. I still feel very unwelcome and when I speak with other people from within the community, they to feel the same, because ultimately, the policies have got to a level where we need to be asking this very difficult question whether these are racist policies more or less, because we are within the context of Ukraine, what is the difference between a woman fleeing the Taliban and a woman fleeing the conflict in Ukraine?

Rob McNeil 16:22

So the way the Rwanda policies have been reported so far, one of the things that has been reported there, whether or not this would actually make it into the the way that this is actually implemented is that

it would specifically affect men is that it would be men that would be sent to Rwanda and not women. And of course, a lot of the rhetoric and a lot of the discussion around these issues has been about the arrival of young working age men, the way that that narrative tends to be interpreted is that what they've left behind the vulnerable women and children and just run to save their skins? So submit as somebody who arrived in the UK as a young man, as you described earlier on, I mean, is there anything that you would say that sort of describes why we see this? And then Katherine, it'd be very nice to get your perspective on this in a minute as well, if that's okay.

Sabir Zazai 17:06

It's gut wrenching to even listen to some of this language around young men arriving and leaving their family behind, because I left my family behind, not because I wanted to leave them behind. Because there was no safe route to bring the whole family including my granny and others. I am the only person from a larger family of 300 people in the UK. And if tomorrow, my dad arrived in Dover, because maybe life was made difficult for him because of what I said in the media here, he will be centered. One thing that is not right, if one of my nephew's arrived in Dover, because I'm here, and that is the only hope for him fleeing the Taliban not wanting to be affected by their mentality or their approach and thinking he will be sent to Rwanda. So I think, sadly, there is a desperation and finding issues to just target a small number of people, initially was people, yet the language of jumping out and the language has changed, I think even from David Cameron to even some of the labor leaders as well. So we've been swamped and others. And so I think our leaders need to be very careful about that, because that is very divisive language, and it really undermines the cohesion of this country and our society. Yeah.

Rob McNeil 18:26

So Catherine, you're a specialist in gender issues and in refugee issues. I mean, this commonly cited concern about the arrival of young men, I mean, is there anything you need? And if not, why do we consistently see this?

Sabir Zazai 18:38

So the first thing I want to say is that we're talking about the forced removal of people who are refugees 72% of initial asylum decisions, which are taken by the home office or grants of protection. And then if you look at countries we've talked about Afghanistan, the refugee recognition rate is 71%, Eritrea 97%, Syria 99%. So we are talking here about people who are refugees, and should be entitled to protection in the UK. On that basis. Secondly, we've we've started to talk about discrimination, and in particular, potentially race discrimination. Now, the Refugee Convention protects refugees from discrimination on a number of grounds, including race. And to my mind, these proposals do raise really serious questions of discrimination, and in particularly punishing people potentially on that indirect basis of race. But for their mode of arrival in the UK, which is something that they have no control over, as Serbia has described, there are no or there are insufficient, safe and legal routes to access protection in the UK. And then the third is this really important question of gender. Now, we don't have details of who the government is planning on issuing decisions to which seat to deport them to Rwanda because they're not making that information publicly available. What we do know that the legal rounds for externalization are in the act as I've described and something which Sabir has started to talk about, which is the admissibility or inadmissibility criteria. Now these criteria don't just apply to men, they also apply to families to children, we know that the government is seeking or has at least not ruled out

sending people who have been trafficked, and who may also be refugees to Rwanda, that they will send to people who may be making claims on the basis of their sexual orientation or their gender identity. As a bit as very eloquently described, the fact that somebody is a young man who is sensibly fit does not mean that he doesn't have serious protection issues or is not vulnerable to other forms of violence and abuse. It's really important that all those who are eligible for international protection are able to secure it on a non discriminatory basis.

Rob McNeil 20:56

Catherine, just to just to wrap this up, is there ever likely to be a moment like 1951? Again, where anything could be reimagined to make the world safer and to improve protection for refugees around the world? Or is the world simply not in that place anymore?

Catherine Briddick 21:16

That's a really difficult question. I think with the global compacts that were agreed, negotiated over two years and agreed the global compact in relation to refugees and a global compact for migrants. We see states reaffirming their commitment to the 1951 refugee convention, affirming their commitment to international human rights law and the protection that it offers all migrants, including refugees, and we also see them making political commitments to include sharing responsibility for individuals who were forced to flee and working with each other in the spirit of cooperation and human rights compliance, should we say? I think what's another thing that's really disappointing about the government's proposal isn't just its breach, very clear and flagrant breach of international law. But the fact that it is immediately undercutting those political commitments that it's so recently made at the UN level.

Jacqui Broadhead 22:17

Thanks for listening to the migration Oxford Podcast. I'm Jackie broadhead.

Rob McNeil 22:20

And I'm Rob McNeil.