Intersectionality and the Vulnerability of Irregular Migrant Women to Sexual Assault: the Journey and Arrival to the U.S./Mexico Border

Laura Marie Clark

A Qualitative Approach to Refugee Law and International Migrant Legislation: The Life Stories of Venezuelan Emigrants

Lis Cristina Santamaría García
Migrant

Asylum Seeker

Irregular Migrant

Refugee

International Legislation
Considerations

Limitations of the nation-state framework to recognize vulnerability of displaced persons.

Process of Fragmentation of Power: States are not the only perpetrators of HR violations or withholders of HR protection.
These groups share similarities beyond categories proposed in International Legislation:

- Approach from Intersectionality and Vulnerability: the Journey and Arrival to the U.S./Mexico Border

- Approach from Qualitative Research and the Social Sciences: The Life Stories of Venezuelan Emigrants
Intersectionality and the Vulnerability of Irregular Migrant Women to Sexual Assault: the Journey and Arrival to the U.S./Mexico Border
Topic

• sexual assault of irregular migrant women on the journey and arrival to the United States/Mexico border from an intersectional perspective
  • understanding cultural issues and changes at the border which have fomented abuse of migrant human rights
  • investigate how various factors and developments have led to a more precarious experience for migrants, and how these situations lend themselves to the perpetration of sexual violence of female migrants
  • Focuses on several scenarios of violence en route and upon arrival to the U.S./Mexico border, underlines that the situations lend themselves to particular vulnerability of sexual assault for irregular migrant women
Research Questions

• What contributes to women’s sexual assault and sexual violence in the U.S. Mexico/border and borderlands?

• How are irregular migrant women’s bodies compromised in the borderlands of the U.S./Mexico border?

• How does irregular status affect migrant women’s experience regarding migration?

• How can the theory of intersectionality address this population of migrants?
Basic background

- Three main points of literature review: a lot written on the topic
  - 1. Violence Against Women
     - sexualized violence and abuse, feminization of poverty & migration (note: violence as multifaceted and pluralistic)
  - 2. Impunity
     - “ignorance about complaint procedures, fear of reprisals, frustration with procedures, and the apparent futility of filing complaints” (Human Rights Watch, 1995, p. 20)
  - political climate
  - 3. Militarization
     - Likening border to a war zone, funneling of migrants, militarized border rape: papers, threats, deportation
Relationship to Intersectionality

- Protection of States, right to health, security, right to life (UDHR)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) condemns: “discrimination against women in all its forms” …“public authorities and institutions shall act in conformity”, which reinforces the idea that police forces and governments are not exempt
- The Convention of Belém do Pará outlines that violence against women includes “physical, sexual, and psychological violence”
Methodology: methods and analysis

• Methods:
  • Discourse Analysis
  • Document Review: government, newspaper, security
  • Analysis: feminist theory, patriarchy, intersectionality
Intersectionality

• Systems of power are connected and imbricate one another
  • Marginalization and subordination within axes of oppression
  • Critical Race Theory, Feminist Theory
  • “A Black Feminist Statement” → This document argued that an analysis on solely race or solely gender would never sufficiently cover Black women’s experiences in the United States; both oppression systems needed to be considered together to understand these women’s experiences.

Militarization – legal status – gender
Militarization and Irregular Migration

- × intersection of legal status and militarization

- Through budget increases to Border Patrol, technology implementation and number of ‘boots on the ground’ → ‘illegal’ migrant becomes a target/enemy of the US Border Patrol

- despite the monetary, physical, and technological advancements, irregular migrants are on the move → will be affected by the intersectionality of their lack of legal status and their entrance to militarized territory, where they are considered enemies → legal status is relevant

- hundreds of thousands of irregular migrants will come up against militarized borders each year: vulnerability
<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mexicans</td>
<td>424,978</td>
<td>350,177</td>
<td>267,885</td>
</tr>
<tr>
<td>Guatemalans</td>
<td>73,208</td>
<td>97,151</td>
<td>66,982</td>
</tr>
<tr>
<td>Hondurans</td>
<td>64,157</td>
<td>106,928</td>
<td>42,433</td>
</tr>
<tr>
<td>Salvadorans</td>
<td>51,226</td>
<td>79,321</td>
<td>51,200</td>
</tr>
</tbody>
</table>

Funnel Deaths of Migrants

- Military operations during the Clinton Administration in the 1990’s funneled irregular migrants to less safe areas/crossing zones: vulnerability

<table>
<thead>
<tr>
<th>Year</th>
<th>Women Pre-funnel effect</th>
<th>Women Funnel effect</th>
<th>Increase of violence</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999-2011</td>
<td>13.6%</td>
<td>22.6%</td>
<td>women vulnerable to sexual abuse: compounded violence</td>
</tr>
</tbody>
</table>

- Gendered component:
  - Pre-funnel effect years → women at 13.6%
  - Funnel effect years → women at 22.6%

**Intersection between gender -- legal status – militarization**
Abduction and Trafficking of Migrants

*intersection between gender and legal status*

A study of migrants who had been kidnapped en route to the United States showed:

- 238 testimonies that estimated 9,758 individuals were kidnapped
- 37 migrants reported witnessing rapes of women while kidnapped, women made sexual slaves to kidnappers
- Estimates that over 1,600 migrants a month are victims of trafficking in Mexico
- Victims of trafficking largely unable to seek justice due to fear and lack of legal status, *vulnerability*
Interaction with U.S. Border Patrol

- Approximately 1 in 4 migrants report abuse by the U.S. Border Patrol: vulnerability
- Of the 26.7% of women who reported this abuse:
  - 4.3% reported physical abuse
  - 17.6% reported verbal abuse
  - 2.0% report theft of personal belongings
  - 1.5% report ‘other’ abuse
  - 2.4% unknown abuse

Figure 1. Migrants Report Abuse by U.S. Border Patrol at Higher Rate Than by Criminals or Mexican Police

<table>
<thead>
<tr>
<th></th>
<th>Percent of Men</th>
<th>Women</th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td>Border Patrol</td>
<td>24.4</td>
<td>26.7</td>
<td>24.8</td>
</tr>
<tr>
<td>Other</td>
<td>11.1</td>
<td>10.4</td>
<td>10.4</td>
</tr>
<tr>
<td>Local Police</td>
<td>8.8</td>
<td>8.8</td>
<td>8.8</td>
</tr>
<tr>
<td>Criminals</td>
<td>4.6</td>
<td>5.6</td>
<td>4.7</td>
</tr>
</tbody>
</table>

Observations: Men, 2,654; Women, 540; All, 3,209


Source: Kino Border Initiative, 2013, p. 7
A Qualitative Approach to Refugee Law and International Migrant Legislation:

The Life Stories of Venezuelan Emigrants
Migrant

Irregular Migrant

International Legislation

Asylum Seeker

Refugee
Universal Documents

Regional Documents

Refugee Law

International Migrant Legislation
<table>
<thead>
<tr>
<th>Refugee v. Migrant</th>
<th>1948 Universal Declaration of Human Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>1966 ICCPR</td>
<td>1966 ICESCR</td>
</tr>
</tbody>
</table>
Refugee v. Migrant: Legitimate QUESTIONS

• Preeminence of the nation-state framework and positivist law into research and policy debate.
• Lack of understanding and recognition of different aspects of persecution and war.
• Legislation controversies and/or incongruities: Ex. Empirical shared substance between Refugees, IDPs DIPD.
• Political interests underpinning Conventions
• Process of Fragmentation of Power: States are not the only perpetuators of HR violations or withholders of HR protection.
Refugee v. Migrant

3 MAIN PROTAGONISTS
Do the experiences of Venezuelan emigrants contest Refugee and Migrant international legislation policies and implementation?

• Do the current Human Rights categories fully reflect or provide a space for Venezuelan “emigrants” of the more recent diaspora to enjoy Human Rights in their entirety?
Objectives
- Shed light on conflicts of human rights implementation, problematizing the field beyond positivist law.
- Challenging the predominance of the nation-state framework in research.

<table>
<thead>
<tr>
<th>Top-Down</th>
<th>Bottom-Up</th>
</tr>
</thead>
<tbody>
<tr>
<td>Document Research/Desk study</td>
<td>• Fragments-of life-stories</td>
</tr>
<tr>
<td>• NGO Reports</td>
<td>• Semi-structured Interviews</td>
</tr>
</tbody>
</table>
23 Fragments of Life Stories

23 Semi-structured Interviews

11 Countries
“Can you tell me the story of the first time you thought about leaving Venezuela, and continue until the present moment?

What reasons or things motivated you and what was important for you to take into consideration?

What do you think were the milestones of this process?”
• Progressive Deterioration of the Country

• The Degree of Legality and Illegality

• The Importance of Networks

Contesting the Legislative Framework
TIMELINE

2000: Chávez is reelected President.


April 2013: Maduro “wins” Presidential elections on a 2% voters margin and under protest of fraud. (Romero, 2013)
Progressive Deterioration of the Country

- Civil and Political. *A repressive state: Violence, Torture and Impunity*
- Pro-Government Paramilitary Groups
- State control on Communications and Media
- Economy
- Health
- Food Shortages

Traditional Considerations on Granting Refugee Status
Degree of Legality and Illegality

“They make it illegal to be legal” (Interview 18, 01/26/2017)

Bureaucracy or Strategy

Venezuelan emigrants particular circumstances to comply with legal procedures related to their country of origin, which endure after years of leaving Venezuela. The solution: bribing into accessing personal legal documents.

Foreign Exchange Control

Absence of procedures for Venezuelan emigrants to change Venezuelan currency into foreign currencies, due to state control. Many turn to the black market in order to transform savings and assets into viable resources.
The Importance of Networks

“I never liked the country (Venezuela). I never felt I belonged, never felt it was my place (…) In Venezuela if I say I have a girlfriend, a job or a bank credit could be denied to me. Here you could easily sue them. Go to a place where you don’t have to be a second class citizen just because you exist. Homophobia is in every day details.” 30 (Interview 23, 04/05/2017)

• High value on being geographically close or physically reunited with friends and family, more than legal status in another country.

• Deciding to emigrate to cultures perceived as similar beyond practical considerations, in search to feel closer to their own culture.
Contesting the Legislative Framework

1. Practices of Implementation overlooking dynamic aspects of the country of origin situation.

2. Determination of refugee status on the base of an analytic approach on isolated factors.
   • Fostering an atomized perspective on HR, deeming them as divisible and hierarchical.
   • De-contextualizing refugee stories into the perspective of the country legislation receiving the application.
   • Refugee status is granted on the base of the “violation certain right ”, and not as a response to a threat on HR.

3. Vulnerability issues to HR are lost within the categorical differentiation between refugee and a migrant.
   • Aspects of country of origin legislation which deem migrants more vulnerable to HR violations seem to go under-noticed with the current refugee law and HR legislation

4. Vulnerability increases due to the independent action of two different and mixed national legislations, acting independently and full-force according to their standards.
Closing Thoughts

• The nation state as a comprehensive framework for Refugee Law, International Migrant Legislation and Human Rights protection proves to be insufficient when faced with social structural factors. Additional issues of vulnerability associated to the juxtaposition of the countries involved legislations can easily go unnoticed/unreported/etc.

• Refugee status determination procedures should be de-centralized from governmental organizations, and involve institutions of the third sector, i.e.: non-profits, grassroots, transnational. These procedures should include a mix of top-down and bottom up methodological approaches, and interrelated consideration of social structural factors, rights and context situation affecting the applicants.

• There is a need to identify and describe the dynamics of intersectional aspects related to migrants and refugees’ full enjoyment of HR, such as socio-cultural structures like militarization, race, indigeneity, gender, legal status, etc.
Thank you!
Refugee v. Migrant

a person who

As a result of events occurring before 1 January 1951 (1967 protocol amendment)

“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”*

Refugee v. Migrant

“a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.”**

Asylum Seeker: person waiting for an official response after applying for refugee status. ***

Internally Displaced Persons: constitute the group of people facing persecution and moving within the borders of their own country.

**1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

***Robert Zetter 2007
# Refugee v. Migrant

<table>
<thead>
<tr>
<th>Regional</th>
<th>Universal</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004 EU Qualification Directive</td>
<td></td>
<td>1984 Cartagena Declaration on Refugees: “who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”</td>
</tr>
<tr>
<td>2015 European Agenda on Migration</td>
<td></td>
<td>1948 Organization of American States Charter</td>
</tr>
</tbody>
</table>