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The Protection of Refugees:

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Data Privacy with the example of UNHCR

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Abstract

“How do you protect the world’s vulnerable people, being processed by a vulnerable organization, collecting vulnerable information with vulnerable practices?”

While Privacy International asking this question, they emphasize one of the most important issues in the world: refugees.

In all over the world, more than 60 million people seeking for an asylum. In order to be recognized as a refugee, it is required to share their personal – vulnerable- information such as the reason for fleeing. In this collection information process, United Nations of High Commissioner for Refugees (UNHCR) is in the core role.

There are many different laws and legislations in accordance with refugees and data protection policy of refugees. “[M]igration is considered as a contemporary security threat with serious implications for the socio-political and socioeconomic stability both domestically and regionally.” (McGahan, 2009) In other words, elaborating national and international laws and legislations, the significant focus is security of the states and citizens rather than refugees simple because of that refugee connote with “crime, deviancy and terror”.

In this article, my purpose is to consider laws and legislations regarding refugees as a surveillance mechanism and try to reveal the sociological concealing part of these laws and legislations specifically with UNHCR case. While clarifying this issue, interpretative sociology will be one of the key features in methodological framework. Through theoretical framework, my main focus will be on the concepts of surveillance mechanism and refugee definition related with Geneva Convention.

For me, the protection of the information regarding refugees is questioned, therefore; the deficiency of the laws and legislations are interpreted.

Key words: refugee, surveillance mechanism, data protection.

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1. Introduction

“There is no transparency, Marus. It can’t exist. Surveillance doesn’t go both ways. There are those who watch, and those who are watched; the powerful, and the powerless.”

— Celeste Chaney

1.1. Research Question Framework

Research Question: What is sociologically concealed in the surveillance mechanism on the refugees – the example of UNHCR- ?

Surveillance mechanism; is the focused, systematic and routine attention to personal details for purposes of influence, management, protection or direction. Surveillance directs its attention in the end to individuals (Lyon, p.14). Security and social order refer to an environment in which individuals feel pleasant to live (Lyon, 2006, p.106). The responsibility of citizens’ condition of being secure is attributed to the state. Therefore, the fact that the state uses its power to control and surveil under the name of providing a secure atmosphere is ignored. Surveillance mechanism more focuses on the “unknown, other, stranger” because of the potential risks. Refugees are in the core of the surveillance mechanism since most of the time refugees correlate with terrorism, crime and other illegalities. However, “[r]efugees are people who cross international borders in order to flee human rights abuses and violations and vulnerability. People who are persecuted and deprived of their homes and communities and means of livelihood are frequently forced to flee across the borders of their home countries and seek safety abroad” (Betts & Loescher, 2011, p.1).

The omitted part in here is that the surveillance mechanism focus is always on security of host country and its citizen, however; security of refugees is always omitted although they are most vulnerable people amongst the world. Private information of refugees is also vulnerable. Although, surveillance mechanism focuses on refugees by all its tools, the protection of refugee information is omitted. It should be highlighted that people would be arrested, imprisoned, tortured, and may sometimes lead to death if this private information is captured by wrong people. What needed to protect refugee's information is that providing laws and legislations in national and international level. To elaborate concealed part of the issue, it is essential to examine these laws and legislations.

1.2. Organization

My main purpose in this article will be cover the international laws and legislations related with refugees and specifically UNHCR in order to analyze concealed part of the surveillance mechanism on the refugees. Since one of the roles of United Nations High Commission of Refugees is to supervise the Refugee Convention but depending on the circumstances in each country where it operates, the agency takes on *quasi*-state roles in order to protect and assist refugees, my focus will be on the UNHCR through the analyzing concealed part.

My main focus is firstly refugee definition and on the basis of Geneva Convention since it is the first treaty regarding refugees. Secondly, it is essential to elaborate other agreements about refugee protection and specifically data protection articles. Thirdly, to analysis deficiency of laws and legislations regarding data protection of refugees since it is a human rights violation eventually. By these, UNHCR is the core of the analysis as I explained the reason above. Registration process of refugees will also be covered. And then, since it is not just about the international laws and legislation, there is also another aspect of this issue which is national laws and legislations will be also mentioned interrelatedly.

1.3. Method & Methodology

Methodologically, I will scan the international laws and legislations which are critical and milestone for refugee issue related with UNHCR. It is essential to highlight whether or not the existing laws are protecting private data of refugees. Interpretative sociology will be the key method to analyze the literature. While analyzing these laws and legislations, surveillance

mechanism on refugees will also be considered as laws and legislations. By this process, main concepts will be refugee, surveillance mechanism and sociologically concealed part.

2. Methodological and Theoretical Framework

2.1. Theoretical Framework

2.1.1. Concepts

“Refugees are defined as people who “owing to a well-founded fear of persecution, on the grounds of race, religion, nationality or membership of a social group, find themselves outside their country of origin, and are unable or unwilling to avail themselves of the protection of that country” (Article 1a of 1951 Convention on the Status of Refugees). Because they flee persecution and conflict, and cross international borders, they are colloquially referred to as “human rights abuses made visible,” and the number of refugees fleeing country is often taken to be a proxy measure for the degree to which that country respects human rights” (Betts, 2009, p.5). However, in order to be recognized as a refugee, the person needs to register UNHCR and provide the necessity of the refugee definition. By this registration process, an asylum seeker have to share some information; personal information. “The use of biometrics by humanitarian agencies is quietly nearing its thirteenth birthday. As one of the first adopters of this technology, the UN High Commissioner for Refugees (UNHCR) has increasingly used biometric data collection technology, which includes fingerprinting, iris scanning, and facial recognition software, since 2002. According to the UNHCR, this technology is a tool to prevent and deter fraud while ensuring faster and more accurate registration of refugees. Because humanitarian agencies must learn and record names, addresses, and family and tribal information to ensure an individual qualifies for refugee status and to accurately distribute benefits, the collection of this potentially sensitive data is a key element of the humanitarian aid methodology. Moreover, UNHCR argues that identity verification is not just a procedural necessity, but also a matter of human dignity.” (Akkaya, 2015)

“As Zygmunt Bauman (2000) cannily observes, today’s social relations are in a state of liquidity. Among other causes of this states, new software and hardware, unimaginable less

than a generation ago, now enable a general social disengagement, a melting of things one thought solid, and a radical shifting of power relations to an “extraterritorial” (Bauman 2000, II, original emphasis) dimension, no longer bound or even slowed down by the resistance of space. Surveillance studies are in part a concerted attempt to trace some of the extraterritorial power relations of the present, visible in all manner of devices and systems, from cell phones to Web 2.0, from security cameras to biometric passports, and from credit cards to national ID cards.”(Ed. Zureik, Stalker, Smith, Lyon, Chan, 2010). This actually brings us to “globalization of personal data” in line with surveillance because all information about a person has a meaning beyond its own territory. Surveillance as it is indicated in the introduction part has a power but it is not bi-directional. What extraterritorial is not all the information about all the people; rather basically information of powerless because they are so-called “need to be under control”. Refugees are those needs to be under control although they are fleeing from “danger”. Surveillance is an enforcement of control mechanism, therefore, surveillance mechanism mainly focus on the individual with a huge attention. It is needed to highlight that the more focus tendency of the surveillance mechanism is generally on the people who is “potentially dangerous” such as illegalities, deviancies and migrants.

Refugee and surveillance mechanism concepts are intertwined in line with “globalization of personal data”. What is sociologically concealed part in here will reveal after the analysis of laws and legislations regarding the data protection of refugees.

2.2. Methodological Framework

In this article, I try to *interpret* the existing laws and legislations regarding refugee issue. Therefore, with the data collection method, I will review the academic literature with refugee protection and then, with the interpretative sociology, I will focus on the meaning of these materials.

2.2.1. Data Collection Method

2.2.1.1. Literature Review

The very first declaration about protecting privacy is the Universal Declaration of Human Rights guaranteed that with the Article 12 of the Universal Declaration of Human Rights and

Article 17 of the International Covenant on Civil and Political Rights: *“No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence.”*

According to Akkaya (2015), “Data protections specifically arose with the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data implemented by the Council of Europe in 1981, the United Nations General Assembly’s Guidelines for the Regulation of Computerized Personal Data Files adopted in 1990, and the e-Privacy Directive of the European Parliament issued in 2002, which all guaranteed the right of all individuals to privacy and security in the processing of their data. No attempt was made however, to address the unique security issues faced by humanitarian aid agencies in their collection of refugee and asylum-seeker data.”

UNHCR, as an important organization to keep refugees’ data, in other words persons of concern to UNHCR, has a responsibility to routinely records highly sensitive data and also protect, monitor, assistance and resettlement activities. “However, increased inter-agency cooperation, more sophisticated forms of assistance (e.g. cash assistance by mobile devices) requiring cooperation with the private sector as well as the general development of technology (e.g., the increased use of biometrics) caused the organization to replace its earlier internal “Confidentiality Guidelines” with a new High Commissioner’s Policy based on high standards of data protection.” (Akkaya, 2015). In addition to that, UNHCR published Policy on the Protection of Personal Data of Persons of Concern to UNHCR (Data Protection Policy) for its staff members as an internal guidance. This policy specifically highlights the importance of data protection in international law, especially for the staff members of international organizations. “Emanating from the UN Human Rights Commission, there is however one guidance document at the UN level that is highly relevant for the work of international organizations, namely the 1990 United Nations General Assembly Guidelines for the Regulation of Computerized Personal Data Files. The interesting aspect of these Guidelines is that the General Assembly requested not only governments to take them into account in their legislation and administrative regulations, but also asked “governmental, intergovernmental and non-governmental organizations to respect those guidelines in carrying out the activities within their field of competence.” (Beck & Kuner, 2015)

Additionally, one of the responsibilities of UNCHR that is highly important is that although the vast amount of information about refugees are collected by UNHCR; it is a must to share this information with the host government and resettlement countries. Also, information may

be shared with 'Implementing Partners' including providers of food and health services, non-governmental organizations seeking to assist refugees.

2.2.1.2. Interpretation

According to Privacy International which is a London-based charity investigating the secret world of government surveillance and exposing the companies enabling it. They met community leaders in refugee camps and they found that refugees concerns about their data privacy in UNHCR because of this reason they are cautious to give personal data to UNHCR. This is one of the sociologically concealed parts of the surveillance mechanism on the refugees. “Millions of individuals around the world seek refuge under UNHCR's banner. They seek protection under the international refugee protection scheme through recognition as a refugee. Normally, it is up to States to determine who is a refugee before granting asylum. However, a large amount of countries simply don't carry out refugee status determination (RSD). In this case, UNHCR conducts the asylum procedure (or RSD) with its own staff in order to know to whom it needs to offer its protection and assistance services ranging from interventions with the host Government to assistance in food and non-food items and sometimes organization of resettlement to a third country. For this reason, high hopes and expectations are coupled with approaching a UNHCR office in the field.” (Privacy *International*, 2015) However, the suspect of the data protection can cause not to give important information about them or refrain from sharing vulnerability such as sexual orientation or gender-based violence. Another sociologically concealed part in here is that, as it is mentioned in the literature review, UNHCR have to share refugees' information with the implementing partners and resettlement countries. While sharing this information, refugees can face with discrimination on the state or societal level depending upon the resettlement country. For example, one may not want to accept a HIV+ individual as a refugee since it can be seen as a “harmful, unhealthy” person.

UNHCR data protection policy has a positive step yet with important handicaps. It has not a full solution to the data insecurity for some reasons. The policy indicates general principles and requirements to process personal data, however; the sharing information collected by UNHCR may be accessed by implementing parties and states without any restrictions. Also, there is not a restriction for other organizations which supplies assistance, food to refugees

and the proportionality and confidentiality requirements only cover UNHCR staff members. “These gaps in the policy leave sensitive data open to breach, and put the safety and security of refugees at risk.” (*Privacy International*). In addition, UNHCR data policy is a new step and it is not observed in practice whether or not the policy is effective. “[T]here is a need for continued vigilance on the part of the UNHCR and other humanitarian organizations and practitioners regarding data security so that security policies and ever-evolving technologies in the humanitarian context serve to protect, and not endanger, refugee populations. As such, effective data policies and improved data security measures are needed to allow for increased efficiency of humanitarian agencies without sacrificing the safety, security, and privacy of the people these agencies serve.” (Akkaya, 2015)

Focusing on the state level protection of private information, “[t]he protection of personal information is only one aspect of the right to privacy; the UN Human Rights Committee never had the chance to develop relevant “jurisprudence”, and its General Comment No. 16 of 1988 only dedicated one paragraph to the protection of personal information. Instead, data protection and privacy law was essentially developed at the national level, starting in the 1970s and 1980s. Today, over 100 countries around the world have adopted comprehensive data protection legislation. But the lack of international legal consensus on the detailed meaning of terms such as “data protection” or “data privacy” remains, reflecting the fact that conceptions of privacy differ among legal systems.” (Beck & Kuner, 2015). This difference between national and international data privacy policy is also an indicator that migration issue has a security dimension especially for nation states; national level.

Considering the protection of the refugees’ information, one should not forget that this information is really vulnerable. The first concealing part of the privacy is that states’ attention does not focus on the “powerless” therefore, the surveillance mechanism’s tool turn its attention to the refugees or migrants. Interpreting the laws and legislations in accordance with refugee issue is highly important to reveal the data privacy of refugees. Secondly, as Privacy International indicated in their interviews, many refugees may not benefit from basic needs or other necessities since they have a doubt in their mind regarding the protection of their information. Hence, another concealing part that is the informing refugees about the collecting information process and its protection.

3. Review

In this article, I aim to elaborate the hidden part of the refugee data protection issue in line with laws and legislations. I think that these laws and legislations treat as surveillance mechanism for refugees since they determine the refugee status, rights and services. For that reasons, although some of them provide a secure area for asylum seekers, there is always a gap in refugee issue. First and foremost reason for this gap, refugee issue is approached both national and international level as a security issue, therefore the laws and legislations are regulated on the securitization of the “citizens”. Here, I try to highlight the other side of the issue; securitization of the refugees. This paper mainly argued that the concealing part of the surveillance mechanism –laws and legislations- on the refugees with the specific example of UNHCR since it is one of the important actor for refugee issue.

As a concluding remark, since it is a new topic in sociology discipline and also in the area of international relations, there is hardly any literature regarding data security specifically on the refugees. I think that, in the forthcoming years, with the development of the big data and related with big data sociology, data security of the refugees will be studied with many aspects.

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