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## Refugee Protection through Safeguarding Intangible Cultural Heritage of the Home Country and Refugee Journey

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### Abstract

The legal literature on refugee cultural heritage is limited, and cultural rights are part of the law that appropriately addresses refugee cultural heritage issues. Cultural heritage is integral to the definition of refugees; refugee protection must include safeguarding refugee cultural heritage.<sup>1</sup> This Article reviews international law around refugees' intangible cultural heritage, which incorporates refugee relationships with their tangible cultural heritage.<sup>2</sup> It also frames the discussion around refugee intangible cultural heritage in a holistic paradigm that consolidates “refugee home heritage” (refugee intangible cultural heritage of home country) and “refugee heritage” (refugee intangible cultural heritage of refugee journey from persecution or conflict to resettlement or return). The Article finds that, whereas the international law framework lays the groundwork for such a holistic paradigm, international and national laws and state policy approaches must be reformed to achieve refugee protection in line with international obligations.

**Keywords:** Refugee cultural heritage; intangible cultural heritage; refugee protection; refugee definition; authorized heritage discourse; statelessness; refugee home heritage; refugee heritage; refugee camp; refugee heritage

### Introduction

The legal literature on refugee cultural heritage is limited, much like the international policy on refugee cultural rights that multiple United Nations Special Rapporteur mandates have put off.<sup>3</sup> Refugee cultural rights were defined as a priority for the 2015–2018 mandate, “[i]n light of the epic 2015 refugee and migrant crisis that is ongoing,” to find ways “to underscore that protecting the cultural rights of refugees and migrants, including women [for] their well-being, integration, and rehabilitation after trauma.”<sup>4</sup> In 2022, the Special Rapporteur emphasized “contributing to these continuing debates in the coming years.”<sup>5</sup> At the same time, cultural rights are part of the law to address issues relevant to refugee cultural heritage appropriately. Cultural heritage speaks to the heart of the

<sup>1</sup> Lucas Lixinski, *Moving cultures: Engaging Refugee and Migrant Cultural Rights in International Heritage Law*, 16(1) *Indonesian Journal of International Law*, 16(1), 2018: 1–2 (2018).

<sup>2</sup> See also International Criminal Court, The Office of The Prosecutor, *Policy on Cultural Heritage*, June 2021, 4 (ICC).

<sup>3</sup> See for example Human Rights Council 2016; See also Human Rights Council 2022.

<sup>4</sup> Human Rights Council 2016.

<sup>5</sup> Human Rights Council 2022.

definition and the plight of the refugees, who are defined as persecuted on grounds directly linked to cultural heritage.<sup>6</sup> It could thus be argued that refugee protection must include safeguarding refugees' cultural heritage.<sup>7</sup> Moreover, the proportion of the total population of a country that may be affected by refugee flows makes it clear that preserving cultural heritage during and after the conflict or persecution that induced these flows is essential not only for the "identity" and dignity of the refugees themselves but for the "continuity" and existence of entire nations and populations – in line with the 2003 *Convention for the Safeguarding of International Cultural Heritage* (ICH Convention). That is to say, intangible cultural heritage "transmitted from generation to generation [] is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity."<sup>8</sup> The current size of the refugee populations (108.4 million forcibly displaced and 35.3 million refugees in 2023) and estimated refugee flows emphasize the urgency for tailored international law and policy consideration of refugee cultural heritage. The forced displacement of refugees from their homes, and the homes of the tangible cultural heritage they are connected to, lend particular significance to their associations and relationships with tangible cultural heritage, in addition to their "practices, representations, expressions, knowledge, [and] skills."<sup>9</sup> More broadly, rights related to intangible cultural heritage require protection "for the well-being, health, and development of the individual, the social cohesion of the society, and the evolution of civilization."<sup>10</sup>

This Article reviews international law around refugees' intangible cultural heritage, which incorporates refugees' relationships with their tangible cultural heritage.<sup>11</sup> The Article frames the discussion around refugees' intangible cultural heritage in a holistic paradigm that consolidates "refugee home heritage" (refugees' intangible cultural heritage of their home country) and "refugee heritage" (refugees' intangible cultural heritage of refugee journey from persecution or conflict to resettlement or return). The paradigm is not constructed along territories of origin, transition, and destination but along the constitution of heritage between "original identity," heritage of the home, "refugee identity," and the exile experience. The Article considers refugee home heritage and refugee heritage separately because it argues that, under notions of authorized heritage discourse that constrain what is and what is not cultural heritage, in addition to limitations both from the constitution of rights to culture (language, religion, etc.) and their application to individuals rather than groups and from interpretations of cultural heritage law, refugee heritage is treated differently from refugee home heritage. It is excluded from contemplations of refugee intangible cultural heritage, whereas it is refugee heritage that distinguishes refugees from migrants of the same home country. The paradigm was constructed to avoid the pervasive state- and territory-centric approaches to cultural heritage and to center the refugee narrative on refugee cultural heritage. As such, the Article necessarily overlays analytical intervention from non-legal disciplines and, in some instances, the same international law across the paradigm. The Article finds that, whereas the international law framework lays out the groundwork for such a holistic paradigm, international and national laws, and state policy approaches, it must be reformed to achieve refugee protection in line

<sup>6</sup> *Refugee Convention*, Art. 1.

<sup>7</sup> Lixinski 2018, 1–2.

<sup>8</sup> This has been the case for forced displacement of Syrians, Palestinians and Armenians. *ICH Convention*, Art 2(1); See also Blake 2017, 78.

<sup>9</sup> *ICH Convention*, Art. 2(1).

<sup>10</sup> Human Rights Council 2022, 7.

<sup>11</sup> See also International Criminal Court, *Policy on Cultural Heritage*, 4.

with international obligations. In doing so, the Article centers on communities in cultural heritage discourses.

### Refugee protection and cultural heritage under refugee law

Cultural heritage law does not specifically address refugee cultural heritage, nor does international refugee law directly address cultural heritage. However, examining international refugee law must include its association with cultural heritage protection. The main international law instrument for refugee protection is the 1951 *Convention Relating to the Status of Refugees* (Refugee Convention), parts of which are considered to be customary international law.<sup>12</sup> The Refugee Convention directly engages refugee cultural heritage in the refugee definition.<sup>13</sup> A refugee is defined as a person with a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.”<sup>14</sup> The interpretation of the Refugee Convention must be in accordance with the ordinary meaning of its terms in their context and in the light of its objects and purpose.<sup>15</sup> Race has been interpreted to refer to “race, colour, descent, or national or ethnic origin.”<sup>16</sup> Religion includes thought, conscience, and religion as theistic, non-theistic, and atheistic beliefs.<sup>17</sup> Nationality has been interpreted as national origin and consists of the origin and membership of particular ethnic, religious, cultural, and linguistic communities.<sup>18</sup> Membership of a particular social group refers to “shared interests, values, or background.”<sup>19</sup> Political opinion has also been broadly interpreted to “be any opinion on any matter in which the machinery of state, government, and policy may be engaged.”<sup>20</sup> The concept of “cultural” in heritage (or property) refers to qualifying criteria, whether they be historical, archaeological, artistic, or ethnographic.<sup>21</sup> Therefore, the grounds for persecution under the refugee definition in the Refugee Convention are interlinked with the cultural heritage of refugees.

Linking the grounds for persecution to cultural heritage implies that a refugee group could be defined in terms of their cultural heritage and that their forced displacement and return or resettlement (refugee status) also hinges on the “persecution” of their cultural heritage. Not only does the Convention define who is to be considered a refugee, it also provides a guarantee of “*non-refoulement*” such that refugees could not be returned to their home country if doing so would subject them to persecution within the meaning of the Convention.<sup>22</sup> The destruction of cultural heritage is considered to be a risk factor in the persecution of groups and communities.<sup>23</sup> Besides being a crime against humanity, the notion of persecution is elaborated upon in several international

<sup>12</sup> *Convention relating to the Status of Refugees*.

<sup>13</sup> *Refugee Convention*, Art. 1.

<sup>14</sup> *Refugee Convention*, Art. 1A(2).

<sup>15</sup> *Vienna Convention on the Law of Treaties*, Art. 31(1).

<sup>16</sup> Goodwin-Gill 1996, *The Refugee in International Law*, 43; *International Convention on the Elimination of All Forms of Racial Discrimination*, Art. 1.

<sup>17</sup> Goodwin-Gill 1996, *The Refugee in International Law*, 44–45; UN General Assembly, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination*, Art. 1; United Nations Secretary-General 1971, 8.

<sup>18</sup> Goodwin-Gill 1996, *The Refugee in International Law*, 45; *London Borough of Ealing v Race Relations Board*; *International Covenant on Economic, Social and Cultural Rights*, Art. 27.

<sup>19</sup> Goodwin-Gill 1996, *The Refugee in International Law*, 47; Bagaric and McConvill 2006, 120–21.

<sup>20</sup> Goodwin-Gill 1996, *The Refugee in International Law*, 49; *Canada (Attorney General) v Ward*.

<sup>21</sup> Frigo 2004, 376.

<sup>22</sup> Bagaric and McConvill 2006, 122; *Refugee Convention*.

<sup>23</sup> *Rome Statute of the International Criminal Court*, Art. 5; United Nations, *Framework of Analysis for Atrocity Crimes*, 18–21.

crimes.<sup>24</sup> The notion of persecution under the Refugee Convention must be interpreted to provide the maximum possible assistance to refugees,<sup>25</sup> which must include the destruction of cultural heritage. When proposing vandalism as a crime that destroys a group's material culture, Lemkin argued that "an attack targeting a collectivity can [...] take the form of systematic and organized destruction of the art and cultural heritage in which the unique genius and achievement of a collectivity are revealed."<sup>26</sup>

As victims of "collective attacks" that forced them to flee their home countries, refugee protection centers around the protection of refugees' cultural heritage.<sup>27</sup> Crimes against or affecting cultural heritage, such as acts to suppress the culture of a community under occupation, could constitute coercion that causes forced displacement of some community members to practice their culture freely.<sup>28</sup> The destruction of family and social structures that often accompany forced displacement can have a particularly detrimental impact on intangible cultural heritage by affecting a refugee community's ability to carry on with certain traditions and pass them on to future generations.<sup>29</sup> Finally, the forced removal of certain persons from a community, such as religious or spiritual leaders, can have a disastrous effect on that community's cultural heritage, thus compromising its safety.<sup>30</sup>

The destruction of cultural heritage not only causes persons to flee, it can also dissuade the refugee population from returning and restoring their cultural heritage, which has also been linked to whether refugees return to their home country.<sup>31</sup> On the other hand, refugee camps are characterized as vibrant "lived spaces" that prefigure a world without borders.<sup>32</sup> The right of return is enshrined as "refugee law" in several international law instruments. The 1948 *Universal Declaration of Human Rights* (UDHR) states that "[e]veryone has the right to leave any country, including his own, and to return to his country,"<sup>33</sup> which the 1966 *International Covenant on Civil and Political Rights* (ICCPR) also articulates.<sup>34</sup> It is relevant to note that the notion of "own country" in the ICCPR (and arguably the Refugee Convention) is broader than state or country of nationality as it embraces "special ties to or claims in relation to a given country" and "factors [that] result in the establishment of close and enduring connections between a person and a country."<sup>35</sup> It could be implied that cultural ties and heritage connections between a refugee and a "country" would constitute a right of return under international law, further cementing that the cultural heritage component underlies refugee rights in international law. Protecting the cultural rights of refugees and migrants has been characterized as "a critical aspect of ensuring their well-being, integration and rehabilitation."<sup>36</sup> Refugee camps have been described as a representation of "intimate connections of solidarity [in which] we glimpse another world becoming possible."<sup>37</sup>

<sup>24</sup> *Rome Statute of the International Criminal Court*.

<sup>25</sup> Bagaric and McConvill 2006, 135.

<sup>26</sup> Lemkin 1933.

<sup>27</sup> *The impact of the Rome Statute system on victims and affected communities*; Vrdoljak 2011, 46–47.

<sup>28</sup> *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, [85]. The Order holds that attacks on cultural heritage caused some persons to flee Timbuktu.

<sup>29</sup> See also *Río Negro Massacres v. Guatemala*, [153]–[165].

<sup>30</sup> International Criminal Court, *Policy on Cultural Heritage*, 26.

<sup>31</sup> International Criminal Court, *Policy on Cultural Heritage*, 26; Burns 2017, 957.

<sup>32</sup> Rygiel 2012.

<sup>33</sup> *Universal Declaration of Human Rights*, Art. 13(2).

<sup>34</sup> *International Covenant on Civil and Political Rights*, Art. 12.

<sup>35</sup> *Refugee Convention*, art 1C; Human Rights Committee, *General Comment 27*.

<sup>36</sup> Human Rights Council 2016, 10.

<sup>37</sup> Tyerman 2021, 485.

The 1966 *International Covenant on Economic, Social and Cultural Rights* (ICESCR) implies that “cultures have no fixed borders.”<sup>38</sup> This notion is aligned with the notion of “people” in international heritage law – such as the 1954 *Convention for the Protection of Cultural Property in the Event of Armed Conflict* (the 1954 Hague Convention), which states that “each people makes its contribution to the culture of the world,”<sup>39</sup> possibly foreshadowing the *erga omnes* obligation owed to the international community as a whole rather than to individual states.<sup>40</sup> Legal theorists continue to assert that international law continues to expand the framework of cultural rights by adding “people” to states and individuals to achieve adequate protection.<sup>41</sup> At the same time, international and national law frameworks continue to address refugees as individuals even though refugee persecution and rights violations target them as groups and potentially as “people.”

## Safeguarding refugee intangible cultural heritage

### Overall framework

The main instrument for safeguarding intangible cultural heritage is the ICH Convention. The ICH Convention aims to respect and safeguard intangible cultural heritage, including “practices, representations, expressions, [and] knowledge, skills,” in addition to “instruments, objects, artifacts and cultural spaces associated therewith.”<sup>42</sup> The ICH Convention acknowledges the “deep-seated interdependence between the intangible cultural heritage and the tangible cultural and natural heritage.”<sup>43</sup> For the purposes of the ICH Convention, “safeguarding” is related to “measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.”<sup>44</sup>

The ICH Convention has been characterized as shifting emphasis from protecting cultural objects to safeguarding social structures and cultural processes.<sup>45</sup> This shift is intended to broadly benefit “cultural communities and human groups,” particularly minorities whose cultural traditions are the “real object of the safeguarding under international law.”<sup>46</sup> Persecuted minorities and other refugees fleeing conflicts fit into the category of communities and groups whose intangible cultural heritage is the object of safeguarding. The ICCPR places an obligation on receiving states to protect refugee intangible cultural heritage, providing that “[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”<sup>47</sup> Not only does intangible cultural heritage provide refugees with the know-how that is essential to surviving challenging conditions, it also provides the “norms and social arrangements necessary for such groups of people to

<sup>38</sup> United Nations Economic and Social Council Committee on Economic, Social and Cultural Rights, *General comment 21*, [41].

<sup>39</sup> *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, Preamble.

<sup>40</sup> Francioni 2011.

<sup>41</sup> Ahrén 2008.

<sup>42</sup> *ICH Convention*, Arts 1 and 2.

<sup>43</sup> *ICH Convention*, Preamble.

<sup>44</sup> *ICH Convention*, Art. 2(3).

<sup>45</sup> Francioni 2011.

<sup>46</sup> *Ibid.*

<sup>47</sup> *International Covenant on Civil and Political Rights*, Art. 27.

continue to live as a community.”<sup>48</sup> Arguably, refugee intangible cultural heritage should include the cultural heritage of the home or origin and the refugee and exile experience.

### **Compatibility of state role with statelessness and authorized heritage discourse**

The nature of intangible heritage has made their nomination more accessible for communities and minority groups – including refugee groups.<sup>49</sup> However, the ICH Convention emphasizes the state’s role in identifying and nominating intangible cultural heritage on behalf of communities and groups.<sup>50</sup> This becomes problematic in the refugee context in which the communities and groups are, by definition, stateless. Anthropologists have questioned whether the United Nations Educational, Scientific and Cultural Organization (UNESCO) should rethink the nomination of cultural heritage by “nation-states” and its attribution to them in a world where millions live stateless as refugees.<sup>51</sup> Legal scholars join anthropologists in probing the reconsideration of the mechanisms of identification, classification, and nomination of heritage, urging that refugees replace states to take their rightful place as the “central agency through which we distribute the ‘spiritual heritage of mankind.’”<sup>52</sup>

Another challenge facing safeguarding refugee home heritage and refuge heritage is heritage scholars’ argument that the heritage sector engages insufficiently with some groups,<sup>53</sup> such as refugee groups. This under-engagement or disengagement leads to the emergence of an “authorized heritage discourse,”<sup>54</sup> which deepens existing power relations.<sup>55</sup> More significantly, for refuge heritage, authorized heritage discourse only legitimizes some understandings of heritage and, as such, discredits nuances and misrecognizes entire communities.<sup>56</sup> The misrecognition of communities is deepened further through the inability to interact “on parity” in heritage matters through adjudication capability and access to resources, such as exclusion from decisions on what is or is not heritage.<sup>57</sup> Access to education and financial resources is arguably another obstacle in the refugee context, such that refugees are faced with foreign languages and unfamiliar education and funding systems. The “normalization” of some collectives and the “subordination” of others suggests how groups could be seen as being unworthy of esteem and how refugees could be dehumanized or “not seen – as a full human being whose presence matters.”<sup>58</sup>

## **Refugee home heritage**

### **Conceptual overview**

Refugee home heritage refers to a refugee group’s background, intangible cultural heritage, or intangible cultural heritage of their original identity and home country. The destruction of the home cultural heritage of forcefully displaced communities has been described as “ruins to the dust of ruins.”<sup>59</sup> Refugee home heritage is mapped to the refugee experience

<sup>48</sup> Blake 2017, 77.

<sup>49</sup> Logan 2009, 14–18.

<sup>50</sup> Kuutma 2013, 21–36.

<sup>51</sup> Hochberg 2020, 43.

<sup>52</sup> *Ibid.*; See also Lixinski 2019, *International Heritage Law for Communities*, Chapter 1.

<sup>53</sup> See Waterton and Smith 2010, 1–2, 4–15.

<sup>54</sup> *Ibid.*

<sup>55</sup> Burkett 2001, 233–46; Yar 2002, 179–98; Waterton and Smith 2010, 1–2, 4–15.

<sup>56</sup> *Ibid.*

<sup>57</sup> Fraser 2003; Waterton and Smith 2010, 1–2, 4–15.

<sup>58</sup> Fraser 2008, 129, 135; Lister 2008, 157, 169.

<sup>59</sup> Beddiari 2016.



before and until persecution or conflict and during return or resettlement segments within the refugee home and refugee paradigm that this Article endeavors to conceptualize. As such, the issues of significance to the safeguarding and protection of refugees are their rights in the receiving countries to their cultural heritage and original identity (such as language and religion) and their safeguarding through the protection of cultural heritage sites (and safeguarding of intangible cultural heritage associated therewith) in countries of origin under international humanitarian and criminal law. Refugee rights to intangible cultural heritage are explored under international law. Regional and national frameworks are only referred to as examples rather than examined for a comprehensive framing of rights in different receiving countries.

### Refugee Rights to Intangible Cultural Heritage

Refugee rights to the intangible cultural heritage of their home countries are elaborated in several international legal instruments. The Refugee Convention grants refugees the basic cultural rights of freedom of religion and association.<sup>60</sup> International human rights law has provided prospective protection of refugees' cultural heritage.<sup>61</sup> Even though "authorized heritage discourses" may obstruct the approaches of refugee groups to their intangible cultural heritage,<sup>62</sup> human rights instruments include provisions for the positive protection and promotion of their cultural, religious, and linguistic rights.<sup>63</sup>

Respect for cultural rights presupposes respect for human rights, and cultural right protection is regarded as promoting respect for *other* human rights.<sup>64</sup> The right to access and enjoy cultural heritage forms part of international human rights law, and cultural heritage is linked to human dignity and identity.<sup>65</sup> The protection of refugee home heritage is "reflected" in international human rights, including freedom of expression and thought, conscience, religion, the right to education, and economic rights.<sup>66</sup> Refugee home heritage protection is also the subject of cultural heritage rights, such as the right of access to and enjoyment of all forms of cultural heritage, including the right to take part in cultural life, the right of minorities to enjoy their own culture, and the right of indigenous peoples not only to cultural heritage but to self-determination.<sup>67</sup> Violations of the right to self-determination can lead to the destruction of intangible cultural heritage if committed on a large scale or are directed against specific persons of importance to the community.<sup>68</sup>

<sup>60</sup> *Refugee Convention*, Arts 4, 15.

<sup>61</sup> *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*; UN General Assembly, *The Crime of Genocide*; *Convention for the Protection of Cultural Property in the Event of Armed Conflict*.

<sup>62</sup> Logan 2009.

<sup>63</sup> See *Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*; Vrdoljak 2011, 39–40.

<sup>64</sup> Human Rights Council 2022, 10.

<sup>65</sup> Human Rights Council 2016, 20.

<sup>66</sup> *Universal Declaration of Human Rights*, Arts 18, 26–27; *International Covenant on Civil and Political Rights*, Arts 18–19; *International Covenant on Economic, Social and Cultural Rights*, Arts 13, 15; Human Rights Council 2010; International Criminal Court, *Policy on Cultural Heritage*, 10–11; See also *Convention on the Rights of the Child*, Arts 28–29; *Convention for the Protection of Human Rights and Fundamental Freedoms*, Arts 9–10; *Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms*, Arts 1–2; *American Convention on Human Rights*, Arts 12–13, 26.

<sup>67</sup> *Rome Statute of the International Criminal Court*, Art. 21(3); *Report by the Special Rapporteur in the field of cultural rights*, [14]; See *Universal Declaration of Human Rights*, Art. 27(1); See also *International Covenant on Economic, Social and Cultural Rights*, Art. 15(1)(a).

<sup>68</sup> See for example *Río Negro Massacres v. Guatemala*; See also Human Rights Council 2016.

Refugees' rights to the intangible cultural heritage of their home countries are also elaborated in other broadly applicable international legal instruments. The UDHR links human dignity to cultural rights, "[e]veryone [...] is entitled to [...] the economic, social and cultural rights indispensable for his dignity and the free development of his personality."<sup>69</sup> The UDHR is legally binding due to its integration into the ICESCR and the ICCPR.<sup>70</sup> The ICESCR outlines specific substantive rights to be protected, such as the right to education; the right to participate in cultural life; the right to enjoy the benefits of scientific progress and its applications; the right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which the person is the author; and the freedom for scientific research and creative activity.<sup>71</sup> The right of everyone to take part in cultural life is intrinsically linked to the right to education through which "individuals and communities pass on their values, religion, customs, language and other cultural references," "which helps to foster an atmosphere of mutual understanding and respect for cultural values,"<sup>72</sup> interdependent on the right of all peoples to self-determination.<sup>73</sup> Further, the right to participate in cultural life places a positive obligation on states to ensure preconditions for participation, facilitation, and promotion of cultural life and "access to and preservation of cultural goods."<sup>74</sup> The ICCPR provides that "[in] those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture."<sup>75</sup>

International law also protects refugees' rights to home cultural heritage through instruments for protecting migrant and minority rights. The 1990 *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* places obligations on states to especially protect "the cultural identities of migrants, as well as their language, religion and folklore," and "not prevent migrants from maintaining their cultural links with their countries of origin."<sup>76</sup> The 1969 *International Convention on the Elimination of All Forms of Racial Discrimination* guarantees everyone the right to equal participation in cultural activities.<sup>77</sup> The 1989 *United Nations Convention on the Rights of the Child* places obligations on states "to respect the right of the child to preserve his or her identity," pay due regard to "the child's ethnic, religious, cultural and linguistic background" when considering solutions for alternative childcare placement, and not deny "a child belonging to [...] a minority [...] the right, in [their] community with other members of his or her group, to enjoy his or her own culture."<sup>78</sup> The 1979 *United Nations Convention on the Elimination of All Forms of Discrimination against Women* also guarantees non-discrimination in all aspects of cultural life.<sup>79</sup>

The European Court of Human Rights held that the adoption of a refugee child into an upbringing that discontinues their ethnic and linguistic background and breaks with their

<sup>69</sup> *Universal Declaration of Human Rights*, Art 22.

<sup>70</sup> Chechi 2016, 40.

<sup>71</sup> *International Covenant on Economic, Social and Cultural Rights*, Arts 13–15.

<sup>72</sup> *International Covenant on Economic, Social and Cultural Rights*, Arts 11,13, and 14; United Nations Economic and Social Council Committee on Economic, Social and Cultural Rights, *General comment 21*, [2].

<sup>73</sup> *International Covenant on Economic, Social and Cultural Rights*, Art 1; United Nations Economic and Social Council Committee on Economic, Social and Cultural Rights, *General comment 21*, [2].

<sup>74</sup> United Nations Economic and Social Council Committee on Economic, Social and Cultural Rights, *General comment 21*, [6].

<sup>75</sup> *International Covenant on Civil and Political Rights*, Art. 27.

<sup>76</sup> *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, Art. 31.

<sup>77</sup> *International Convention on the Elimination of All Forms of Racial Discrimination*, Art. 5(e)(vi).

<sup>78</sup> *Convention on the Rights of the Child*, Arts 8(1), 20, 30.

<sup>79</sup> *Convention on the Elimination of All Forms of Discrimination Against Women*, Art. 13(c).



cultural and religious heritage constitutes a violation of the right to respect for family life.<sup>80</sup> In the context of the forced displacement of 30,000 Azeris after the capture of Lachin,<sup>81</sup> the Court found that ethnic hatred was confirmed by the continuing destruction of cultural heritage that compromised the right to self-determination.<sup>82</sup> Notably, the Court linked the definition of Armenian “people,” their continuous link with their “home,” and their right to return to “undisputed ethnic, religious, linguistic and cultural identity and its historical bond to that territory” to find a violation of the right to private and family life and the lack of cultural protection.<sup>83</sup>

Tangible and intangible heritage overlap and attacks on tangible and intangible cultural heritage are interconnected through a human rights approach.<sup>84</sup> For example, the destruction of mausoleums and ancient Islamic manuscripts in northern Mali signified attacks on various forms of cultural practice that greatly affected populations in an integrated way, similar to the loss of ancient languages and religious practices tied to sacred spaces and structures in northern Iraq and the Syrian Arab Republic as a result of forced displacement and physical destruction.<sup>85</sup> The Inter-American Court of Human Rights recognized that the genocidal extermination of Mayan communities violated their right to ethnic or cultural identity and the right to express and disseminate their culture.<sup>86</sup> The Court also linked cultural rights to protection, having found that “depriving indigenous communities of access to their ancestral territory [...] subject[s] them to situations of extreme lack of protection.”<sup>87</sup> The International Criminal Court (ICC) considers that attacks on cultural heritage may violate international humanitarian and criminal law and human rights because these attacks destroy conditions that allow people to access, participate in, and contribute to cultural life.<sup>88</sup>

### **International criminal and humanitarian law**

Responding to the needs of refugees’ intangible cultural heritage, safeguarding requires refugee law, human rights law, cultural heritage law, international humanitarian law, and international criminal law.<sup>89</sup> Moreover, the persecution of current mass refugee flows within predominantly non-international armed conflicts with non-state actors implies that the peace/war dividing line between human rights and cultural heritage laws on the one side and humanitarian law on the other is applied less strictly.<sup>90</sup> The ICC considered that, during armed conflict and in peacetime, objects of cultural value that were “damaged, desecrated, repurposed, or stolen” harmed “the people to whom they are intrinsically linked.”<sup>91</sup> The protection and safeguarding of tangible and intangible cultural heritage finds its reflection in rules on the protection of cultural property in international humanitarian law.<sup>92</sup>

<sup>80</sup> *Abdi Ibrahim v Norway*; *Convention for the Protection of Human Rights and Fundamental Freedoms*, Art 8.

<sup>81</sup> Human Rights Watch 1994.

<sup>82</sup> *Sargsyan v Azerbaijan* [30]–[31].

<sup>83</sup> *Chiragov and Others v Armenia* [43], [257].

<sup>84</sup> Human Rights Council 2016, 17.

<sup>85</sup> *Ibid.*

<sup>86</sup> See for example *Plan de Sánchez Massacre* [42(7)].

<sup>87</sup> *Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v Colombia* [354]; See also *Yakye Axa Indigenous Community v Paraguay* [164]–[203].

<sup>88</sup> International Criminal Court, *Policy on Cultural Heritage*, 10–11.

<sup>89</sup> Blake 2017, 81.

<sup>90</sup> Blake 2017, 73.

<sup>91</sup> International Criminal Court, *Policy on Cultural Heritage*, 10–11.

<sup>92</sup> See *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, Arts 1, 4. Similar rules are also found in customary international humanitarian law.

Under the 1954 Hague Convention, “[a]ll warring parties, including non-state actors, are bound to observe, as a minimum, the provisions relating to respect for cultural property.”<sup>93</sup> Moreover, designated cultural property could be granted special protection if entered in the “International Register of Cultural Property under Special Protection,” which is maintained by the Director-General of UNESCO.<sup>94</sup> Special protection could be granted to movable cultural property, monuments, and immovable cultural property of great importance. It implies that the parties to the 1954 Hague Convention undertake measures to ensure immunity from prosecution for damaging cultural property by acts of hostility in armed conflicts.<sup>95</sup> However, the literature argues that international humanitarian law does not sufficiently respond to the needs of intangible cultural heritage.<sup>96</sup>

The preoccupation with protecting refugees’ cultural heritage is articulated in the international criminal law concern that the “delicate mosaic” of the shared cultural heritage of all peoples “may be shattered at any time.”<sup>97</sup> The Statute of the ICC protects cultural heritage and deems its destruction without military necessity to be a war crime.<sup>98</sup> Whether cultural heritage destruction is a form rather than a manifestation of persecution has been argued, as the destruction of cultural heritage is an attack on the identity of a group. Persecution is defined as a deprivation of fundamental rights contrary to international law because of the group’s identity and as part of a widespread or systematic attack on knowledge.<sup>99</sup> The destruction of cultural property and heritage has developed beyond the special protection of buildings or sites to securing the interests and rights of those who value those sites.<sup>100</sup> International heritage law scholars noted that even the 1972 *World Heritage Convention* presented “the protection of cultural heritage as a matter of public interest, and not only as part of private property rights.”<sup>101</sup>

### **Refugee protection and safeguarding refugee home heritage**

Safeguarding refugees’ home heritage enables refugees to choose their cultural identity in a community with a group from the same home to protect their community constitution. The right to choose one’s cultural identity includes the right not to have an alien culture imposed on one; the right of each cultural group to preserve, develop, and maintain its own specific culture; and the right to positive discrimination in favor of minorities to participate in the cultural life of the wider community.<sup>102</sup> Whereas broader society cannot impose a cultural identity on a community or group from outside,<sup>103</sup> Germany’s *Leitkultur* (leading culture) legislation on guiding culture for refugees and migrants and France’s “Republican Integration Contract”<sup>104</sup> contradict these fundamental notions. In the context of the forced displacement of the Rohingya, it has even been argued that the requirement for cultural assimilation constitutes the continued persecution of that refugee group.<sup>105</sup>

<sup>93</sup> Cunliffe et al. 2016, 7; *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, Art. 19(1).

<sup>94</sup> *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, Arts 11–14.

<sup>95</sup> United Nations Educational, Scientific and Cultural Organization, “Immunity of Cultural Property under Special Protection.”

<sup>96</sup> Blake 2017, 81.

<sup>97</sup> *Rome Statute of the International Criminal Court*, Preamble.

<sup>98</sup> *Rome Statute of the International Criminal Court*, art 8.

<sup>99</sup> See *Rome Statute of the International Criminal Court*, art 7.

<sup>100</sup> Gerstenblith 2016, 383.

<sup>101</sup> Francioni and Lenzerini 2003, 635; *Convention Concerning the Protection of the World Cultural and Natural Heritage*.

<sup>102</sup> Blake 2017, 80.

<sup>103</sup> Ibid.

<sup>104</sup> French Office for Immigration and Integration, *The Republican Integration Contract*.

<sup>105</sup> O’Brien and Hoffstaedter 2020.

Communities are subordinated to the state's priorities, and "groups are subsumed within nation-states and representations of their culture employed within broader nationalist discourses."<sup>106</sup> If the state continues to dominate representations of intangible cultural heritage, the experiences, concerns, and rights of minority groups and communities are likely to, at best, become occluded by state concerns. This applies especially to refugee groups, which are regularly the subjects of discourses about the limits of the nation.<sup>107</sup>

Anthropology literature on migration (including forced migration) has discussed the "acculturation" phenomena that occurs when "groups of individuals having different cultures come into continuous first-hand contact, with subsequent changes to the original culture patterns of either or both groups."<sup>108</sup> As such, refugees may have specific preferences for how they wish to "fit" into the society of the receiving country, and the receiving society allows or obstructs this acculturation under an acculturation framework that considers assimilation, integration, separation, and marginalization as the four strategy options. The choice of strategy depends, first, on the extent to which individuals wish to maintain their cultural heritage and, second, on their wish to have contact with those who do not share their cultural heritage.<sup>109</sup> When refugees are interested in preserving their cultural heritage and seeking relationships with the receiving society, the acculturation strategy they adopt is one of integration, but only if the receiving society promotes cultural diversity and does not discriminate against them.<sup>110</sup> If refugees are not allowed to maintain relationships with their own cultural heritage group, the acculturation strategy adopted is one of marginalization.<sup>111</sup> If the receiving community does not allow refugees to preserve their cultural heritage, this may be reflected in discrimination and anti-immigration policies.<sup>112</sup>

Safeguarding cultural identity is linked to refugee status under the Refugee Convention, thus protecting refugees in the receiving state. A case study of Bajuni refugees from Senegal in Glasgow highlighted how the success of the asylum cases was linked to cultural heritage "tests" to assess persecution grounds in the absence of supportive documentation, as is the case for most refugees.<sup>113</sup> The European Court of Human Rights jurisprudence also highlighted the link of cultural heritage claims to property rights.<sup>114</sup> Dismissing the intangible cultural heritage of refugees could place their fundamental human right to seek asylum and freedom from persecution at risk.

## Refuge heritage

### Conceptual overview

Refuge heritage refers to intangible cultural heritage linked to the refugee journey from persecution or conflict to resettlement or return. Refuge heritage is mapped to the exile and seeking refuge segment of the refugee experience after persecution and before resettlement within the refugee home and refuge paradigm. Therefore, the issues of significance to safeguarding refuge heritage to protect refugees are related to its recognition and respect under international heritage law, particularly notions of culture, heritage, and community. Notwithstanding the requirement of further understanding of identity from disciplines such

<sup>106</sup> Harrison 2013, *Heritage: Critical Approaches*, 2013, 136.

<sup>107</sup> Hill 2016.

<sup>108</sup> Esses 2018; Redfield et al. 1936, 149.

<sup>109</sup> Berry 1997, 5.

<sup>110</sup> See Berry 1997; See also Sam 2006, 11–26.

<sup>111</sup> See also Sam 2006.

<sup>112</sup> Bourhis et al. 2010; Brown and Zagefka 2011.

<sup>113</sup> Hill et al. 2018; *Somalia v. Secretary of State for the Home Department*.

<sup>114</sup> *Chiragov and Others v Armenia*, [48].

as anthropology or ethnography, refugee heritage is explored as it distinguishes refugees from migrants of the same refugee home heritage to protect them within the original reconciliatory objectives of international heritage law. Arguably, integrating refugee heritage allows refugees the “right to exit” from their home heritage if they no longer agree with the values it embodies.<sup>115</sup> As this concept is underdeveloped and is yet to be refined, two brief case studies of the *Dheisheh Refugee Camp* world heritage listing proposal<sup>116</sup> and *Conversations from Calais* documentation project<sup>117</sup> are briefly discussed for illustration. Even though the Dheisheh Refugee Camp has been proposed in the context of tangible cultural heritage, its listing proposal has important conceptual implications for refugee and intangible cultural heritage.

### International heritage law

International cultural heritage law has not defined “cultural heritage,” “culture,” or “heritage” to the inclusion or exclusion of some concepts or notions of culture, heritage or identity.<sup>118</sup> Culture has been understood to refer to a product and a way of life.<sup>119</sup> Culture is a “broad, inclusive concept encompassing all manifestations of human existence,” and “cultural life” in international legal instruments refers to “culture as a living process, historical, dynamic and evolving, with a past, a present and a future.”<sup>120</sup>

The ICH Convention argues for an understanding of (intangible) cultural heritage as being practiced, elastic, and changeable.<sup>121</sup> The “changeability” of intangible cultural heritage is closely aligned with what some architecture scholars have referred to as the destabilization of conservation from a notion that “freezes time, space, and culture” to knowledge and practice that reframes the understanding of culture, history, and aesthetics, and pertains to “contested space in which identity and social structures are built and demolished.”<sup>122</sup> This notion aligns tangible cultural heritage with intangible cultural heritage in framing tangible cultural heritage as spaces of identity, history, and memory. It could also be argued that this interpretation aligns with the original objective of international heritage law as “reconciliation and [...] prevention of future conflicts”<sup>123</sup> with the conception that “cultural heritage must be preserved, developed, enriched and transmitted to future generations as a record of human experience.”<sup>124</sup>

### Case studies

#### *Introduction: Documenting Refugee Heritage*

Documenting refugees’ lives and practices has been part of several endeavors to understand the conditions of refugees.<sup>125</sup> Human geographers have argued that refugee camps are “[a] ssemblage[s] of buildings, homes, *people*, institutions, *social relations and practices*’ and ‘spaces

<sup>115</sup> See Human Rights Council 2022, 9.

<sup>116</sup> Decolonising Architecture Art Research, “Introduction.”

<sup>117</sup> *Conversations from Calais*.

<sup>118</sup> See Blake 2000, 63.

<sup>119</sup> United Nations Economic and Social Council Committee on Economic, Social and Cultural Rights, *General comment 21; UNESCO Universal Declaration on Cultural Diversity*, Preamble.

<sup>120</sup> United Nations Economic and Social Council Committee on Economic, Social and Cultural Rights, *General comment 21*, [11].

<sup>121</sup> Hill et al. 2018.

<sup>122</sup> Decolonising Architecture Art Research, “Conservation.”

<sup>123</sup> Blake 2000, 61.

<sup>124</sup> *UNESCO Universal Declaration on Cultural Diversity*, Art. 7.

<sup>125</sup> See also Godin et al (eds), *Voices from the “Jungle.”*

in which social formations [...] are reassembled and sustained in exile, and in which *cultures and traditions [...] are recreated and performed.*"<sup>126</sup> Others have coined the term "camp geographies" to refer to refugee camps as sites of biopolitical violence that "determin[e] the *actual practices of citizenship today.*"<sup>127</sup> The case studies of Dheisheh Refugee Camp and Conversations from Calais explore the performance of culture and the practice of citizenship in exile to illustrate the constitution of refuge heritage.

### *Dheisheh refugee camp*

The Dheisheh Refugee Camp was established in 1949 to serve 3,000 refugees from 45 villages in western Jerusalem and Hebron.<sup>128</sup> The Camp is located along the main street in Bethlehem, covering 0.33 square kilometers, and is home to approximately 15,000 refugees with a population density of 45,454 people per square kilometer.

Decolonizing Architecture Art Research (DAAR), non-governmental organizations, and communities from the Dheisheh Refugee Camp prepared and submitted a dossier to nominate the Camp for inclusion on the World Heritage list.<sup>129</sup> DAAR articulated the bases for nomination as *embodiment of the memory of Nakba* as the "longest and largest living displacement in the world today," an expression of "exceptional spatial, social, and political form," in addition to association "with an *exceptional belief in the right to return* that has inspired both refugees and non-refugees from around the world in the *struggle for justice and equality.*"<sup>130</sup> According to DAAR, refugee camps are meant to have no history and no future and are only established with the intention of being demolished and forgotten.<sup>131</sup> States erase the history of refugee camps because it represents political failure, and their future is fearfully dismissed by refugee communities for fear of undermining the right of return or resettlement.<sup>132</sup> At the same time, Dheisheh Refugee Camp's home stories are narrated through its urban fabric. They document refugee history that represents the refugee journey beyond the simplistic narrative of suffering and displacement.<sup>133</sup>

Through the nomination, the involved organizations and communities seek to "deploy the potential for heritage to be mobilized as an agent of political transformation."<sup>134</sup> Moreover, the process of nomination over the course of two years, with the involvement of organizations, individuals, politicians, conservation experts, activists, and governmental and non-governmental representatives, in addition to proximate residents,<sup>135</sup> addresses the criticism around community disengagement and the inflated role of the state and state actors in heritage nomination, authorized heritage discourse, and UNESCO notions of cultural value and UNESCO mechanisms more generally. The Dheisheh Refugee Camp nomination project invites the rethinking of heritage and the investigation of the complex relationship between memorialization, archiving, and responsibility. According to DAAR, "[i]n a moment in history in which [35.3] million refugees around the world are actively navigating identities defined by their exclusion from statehood, *Dheisheh offers a historical perspective onto the contemporary condition of refugehood and the culture of exile.*"<sup>136</sup>

<sup>126</sup> Ramadan 2013, 74. (*Emphasis added*)

<sup>127</sup> Minca 2015, 81. (*Emphasis added*)

<sup>128</sup> United Nations Relief and Works Agency for Palestine Refugees in the Near East, "Dheisheh Camp."

<sup>129</sup> Decolonizing Architecture Art Research, "Introduction."

<sup>130</sup> Petti 2017. (*Emphasis added*)

<sup>131</sup> Decolonising Architecture Art Research, "Introduction."

<sup>132</sup> See Decolonising Architecture Art Research, "Introduction."

<sup>133</sup> See Decolonising Architecture Art Research, "Introduction"; See also ICH Convention.

<sup>134</sup> Decolonising Architecture Art Research, "Introduction."

<sup>135</sup> See Decolonising Architecture Art Research, "Introduction."

<sup>136</sup> Petti 2017 (*Emphasis added*); See United Nations Higher Commissioner for Refugees, "Refugee Statistics."

### *Conversations from Calais*

Calais is a port city in northern France, directly across from Dover in the south of England, and the site of the “Jungle” of makeshift camps since the French Minister of the Interior closed the Sangatte refugee center in 2002 – until the French police demolished it in 2016.<sup>137</sup> Approximately 1,500 refugees around Calais are still trying to get to England to seek asylum.<sup>138</sup>

Mathilda Della Torre started the graphic design project “Conversations from Calais” in October 2019 to “re-humanize” those affected by the refugee crisis by using public spaces to share conversations volunteers had with migrants in Calais.<sup>139</sup> The project contains a collection of conversations that have been transformed into posters in 15 languages and pasted on the walls of 60 cities worldwide to “remember” and “document” intimate conversations.<sup>140</sup>

As a slum, the “Jungle” provides a “visibility for certain histories and the landscapes of politics.”<sup>141</sup> Calais has been described as a site of oppression and structural violence that is interwoven with the city of London “historically, politically, socially, culturally and economically.”<sup>142</sup>

### *Conclusion: Refugee heritage and border injustice*

Refugee camps have been described as heritage, a “commemoration of the tireless efforts of all those [...] who struggle against border injustice.”<sup>143</sup> The nomination of the Dheishah Refugee Camp to the World Heritage List has implications for heritage conservation. In some sense, it became the restoration of a landscape of destruction rather than the memory of something *before it was destroyed*. By contrast, safeguarding becomes the archiving and documentation of the impact of the destruction on the present.<sup>144</sup> Conversations from Calais document conversations at a site of “political contestation” that embodies “racialized geopolitics of global borders,” power of division, world-making, and the struggle against segregation.<sup>145</sup> Both case studies highlight the constitution of refugee heritage, the significance of its safeguarding, and its role in world heritage around border injustice.

### **Refugee protection and safeguarding refugee heritage**

Heritage scholars argue that the heritage sector is dominated by a notion of community that overlooks representations of groups under construction, such as refugee groups, and leads to discrimination and inequality in engagement with cultural heritage.<sup>146</sup> An “authorized heritage discourse” emerges,<sup>147</sup> legitimizing some understandings of heritage, discrediting nuances, and misrecognizing entire communities.<sup>148</sup> The misrecognition of communities is deepened further through the inability to interact “on parity” in heritage matters through adjudication capability and access to resources, such as exclusion from decisions on what is

<sup>137</sup> Conversations from Calais; Mould 2017

<sup>138</sup> Conversations from Calais.

<sup>139</sup> Vice (News).

<sup>140</sup> Conversations from Calais; Vice (News).

<sup>141</sup> Rao 2006, 228.

<sup>142</sup> Mould 2017, 404.

<sup>143</sup> Tyerman 2021, 485.

<sup>144</sup> Hochberg 2020, 47.

<sup>145</sup> Tyerman 2021.

<sup>146</sup> See Waterton and Smith 2010, 1–2, 4–15.

<sup>147</sup> See Smith 2006, *Uses of heritage*.

<sup>148</sup> Burkett 2001, 233–46; Yar 2002, 179–198; Waterton and Smith 2010.



and what is not heritage.<sup>149</sup> One barrier to adjudication capability is linked to heritage understanding and aesthetic values, which themselves are cultural.<sup>150</sup> Another is the layer of experts that presides over such assessments.<sup>151</sup> In the refugee context, policies tend to assimilate communities into an understanding of traditional definitions of heritage rather than serving their cultural and historical experiences, including persecution, conflict, and the refugee journey itself.<sup>152</sup>

Authorized heritage discourse defines heritage as “innately material,” “aesthetically pleasing,” and “good,” such that it fails to recognize competing concepts of heritage or question the link between heritage and identity.<sup>153</sup> Anthropologists have discussed ways to frame historical injustice, resistance, and perseverance as heritage.<sup>154</sup> Some suggest that refugee histories and experiences constitute cultural heritage and that if heritage wants to remain relevant as a concept and a practice, it needs to find articulation in new modalities and new understandings.<sup>155</sup> Self-identification can also be framed as an important aspect of the right to cultural identity.<sup>156</sup> The right to cultural identity means choosing one’s cultural identity alone or in a community with others.<sup>157</sup> In some instances, those who have had to flee from persecution because of their culture destroy ties with their home heritage when becoming refugees.<sup>158</sup> The protection of these refugees may hinge on safeguarding their refuge heritage.

## Conclusion

This Article contends that refugee protection provided by the Refugee Convention and other international refugee law includes safeguarding refugee home and refuge heritage. To afford appropriate refugee protection, the safeguarding of refugees’ intangible cultural heritage must cover not only cultural rights but also self-identification. Self-identification faces obstacles of acculturation and authorized heritage discourse, in addition to statelessness, and challenges self-determination. The 1989 *Indigenous and Tribal Peoples Convention* lays out a sequential relationship between self-identification and self-determination, giving the latter right to communities that identify as such.<sup>159</sup> Self-determination is an international legal right and a human right triggered by refugee populations that the governments do not generally represent in their home countries or receiving countries, and such that their home governments infringe their human rights.<sup>160</sup> This has implications for the role of states in terms of departure from their definition as linked to a permanent population and a defined territory.<sup>161</sup>

This Article finds that, whereas the international law framework lays the groundwork for a holistic paradigm that covers home and refuge heritage and international and national laws, state policy approaches must be reformed to achieve refugee protection in line with international obligations. An updated international law would enable international cultural heritage law to safeguard refugees’ intangible cultural heritage, not only in terms of home

<sup>149</sup> Fraser 2003; Waterton and Smith 2010.

<sup>150</sup> Waterton and Smith 2010.

<sup>151</sup> Lixinski 2019, *International Heritage Law for Communities*, Chapter 1.

<sup>152</sup> See Waterton and Smith 2010.

<sup>153</sup> Ibid.

<sup>154</sup> Hochberg 2020.

<sup>155</sup> Hochberg 2020; Decolonising Architecture Art Research, “Conservation.”

<sup>156</sup> Blake 2017, 80.

<sup>157</sup> Ibid.

<sup>158</sup> *Committee on Participation in Global Heritage Governance*.

<sup>159</sup> *Indigenous and Tribal Peoples Convention* (No. 169), Art. 1.

<sup>160</sup> See *Chiragov and Others v Armenia*, [50]; *Universal Declaration of Human Rights*, Preamble.

<sup>161</sup> *Convention on Rights and Duties of States adopted by the Seventh International Conference of American States*, Art. 1.

practices and associations but also knowledge and representations of the refugee experience of each refugee community. Similar reasoning could be applied to protect refugees' tangible cultural heritage.

In a world with 108.4 million forcibly displaced people and 35.3 million refugees, UNESCO and other international organizations must place refugees on their nominations for cultural heritage to be safeguarded, and reparations in case their heritage is destroyed.<sup>162</sup> The sharing of the possible benefits that the separation of the cultural heritage has had from its original communities could provide redress to affected communities.<sup>163</sup> This Article invites further thought on the room for transitional justice in the refugee cultural heritage discourse.

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<sup>162</sup> See Hochberg 2020.

<sup>163</sup> See Human Rights Council 2022, 5.

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