jpia

Journal of Public &
International Affairs
2015

*J*OURNAL OF *P*UBLIC AND *I*NTERNATIONAL *A*FFAIRS
2015

Association of Professional Schools of
International Affairs

and

The Woodrow Wilson School of
Public and International Affairs
Princeton University

Contents

Letter from the Editors

The *Journal of Public and International Affairs* (JPIA) has been published annually since 1990, making this the 26ᵗʰ edition. But JPIA has an ancestor in another journal published annually by Woodrow Wilson School graduate students between 1963 and 1968. Fifty-two years ago, the first editor of *Public and International Affairs* (PIA) described the ambition that brought it about:

> [T]his publication is an experiment— an experiment whose conception is based on the belief that students in public affairs can have something important to say about these affairs...

JPIA is a bigger project today than it was in 1963— this year's staff includes 47 editors representing 17 schools of public and international affairs. Over a long weekend in February, we gathered in Princeton to review 85 papers submitted by graduate students at APSIA schools around the world, and following an impassioned debate, the editors selected the seven submissions you see here.

Despite the journal's evolution, the guiding principle evinced in 1963 remains JPIA's *raison d'etre* today: we firmly believe that graduate students in public and international affairs have meaningful contributions to make to the trenchant policy debates of our day, and we hope that this journal will provide a forum for some of the most excellent of these ideas to find a wider audience— and perhaps even a slice of political sunlight.

The seven essays in this journal represent some of the best analysis and creative wonkery practiced in our various graduate schools, and we are proud to publish them here. Cynthia Barmore builds on primary survey research conducted in Bosnia and Herzegovina to offer new explanations of the constraints placed on farmers by an unreformed land system. Natasha Geber addresses an under-explored policy area, looking at Russia's geopolitical ambitions in the Arctic and offering a perspective on the chances of international cooperation on Arctic issues. Abby McCartney pulls together two seemingly disparate policies, seeing an opportunity for New Jersey to expand its successful drug court program using provisions of the Affordable Care Act. Emily Wiseman looks at how women and girls still tend to be excluded from post-disaster relief efforts, even though almost all implementers understand that this exclusion exacerbates gender inequality and retards reconstruction. Jordan Dantas analyzes the drop in piracy off the Somali coast, and finds private sector success where military solutions failed. Stephanie Leutert offers a clear-eyed perspective on the divergent narratives about the Obama Administration's deportation policies, and analyzes how those policies have impacted immigrant communities. Lauren Dunn looks at two programs for using mobile phones to provide basic banking services—a success and a failure—and offers lessons for how the regulatory environment and existing institutions must shape program design.

This journal is the product of the support and hard work of many people, and we must express our gratitude to those who made it possible. For the past

1

ENERGIZING THE RURAL LAND MARKET IN POST-WAR BOSNIA & HERZEGOVINA

Cynthia Barmore

A central challenge for agricultural development in Bosnia and Herzegovina (BiH) is the high prevalence of inefficiently small farms, often composed of non-contiguous parcels that reduce productivity. Based on survey results from 203 farmers, this article investigates current barriers to farm expansion and consolidation in BiH and potential opportunities for improving farm structures. The results suggest that a low supply of farmland on the market, incomplete property registration, and related financial barriers limit opportunities for farm expansion and consolidation. To partially address these challenges, BiH may benefit from transitioning to a unified land registration system.

Poverty is a pervasive challenge in Bosnia and Herzegovina (BiH). It haunts rural areas, and its effects ripple through life across the country. Agricultural development offers a key way for domestic and international actors to reduce poverty in BiH. An estimated 61 percent of the BiH population lives in rural areas. While agriculture accounts for 20.5 percent of formal employment and more than half of informal employment, it accounts for just 6.5 percent of GDP. Poverty is widespread in rural areas, with the

greatest recorded increases in poverty occurring in the informal sector (Ministry of Foreign Trade and Economic Relations 2007, 7).

An underlying challenge for BiH's agricultural competitiveness is the prevalence of inefficiently small farms, often composed of non-contiguous parcels that further reduce farm productivity and profitability. The lack of farm expansion and consolidation has meant many farmers do not cultivate large enough plots to be competitive producers, having neither economies of scale nor significant bargaining power in the market. Small or fragmented holdings make mechanization difficult and uneconomical, creating barriers to capital intensification and related increases in productivity. Producers in other countries are often able to overcome such challenges by joining cooperative organizations, but underdevelopment in the BiH cooperative sector currently limits the extent to which BiH farmers can take advantage of those solutions (Barmore 2013). The BiH Ministry of Foreign Trade and Economic Relations recognizes the need to consolidate fragmented farm holdings as "one of the most pressing agricultural policy issues in B&H today" (Ministry of Foreign Trade and Economic Relations 2007, 11).

BiH has a poorly functioning land market that constrains the ability of agricultural producers to expand and consolidate their landholdings, thereby creating barriers to development in the agricultural sector. BiH has a long history of incomplete land titling, flip-flopping land registration processes, and division of farmland into small parcels. The combination is partially responsible for today's stagnant rural land market, reducing opportunities for income generation and contributing to the overarching problem of rural poverty. A greater understanding of land-market challenges is important for policymakers in BiH, who must identify the relevant problems before they can craft effective rural development strategies, as well as for those who wish to gain a broader perspective of the difficulties states face during post-socialist transitions.

A large portion of the literature on economic transformation in post-socialist countries, particularly those in Central and Eastern Europe, explores challenges for agricultural development and focuses on issues in the agricultural and rural economy that contribute to those difficulties (Davidova and Buckwell 2000, 1). Within that context, this article explores specific issues relevant to development of the rural economy in BiH, focusing on current challenges in the BiH land market. It includes an analysis of barriers to farm expansion and consolidation, as well as potential solutions to overcoming those barriers, based on primary survey data that address farmer experiences with farmland transactions and land registration. The results show that the key challenges to overcome are a

low supply of agricultural land for rent or sale, incomplete land titling, and insufficient access to financing. In the long term, completing the land registry may energize the land market and facilitate access to collateral-based financing.

A central complication for resolving development challenges in BiH is the country's divided system of governance. The 1995 Dayton Peace Accords created the current governmental structure in BiH, which consists of two entities—the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS)—as well as a third administrative unit, the Brčko District. FBiH, the RS, and Brčko are largely autonomous and loosely overseen by a weak national government. Each entity possesses a remarkable degree of freedom to craft its own policies, and such autonomy is particularly evident in the agricultural sector. There is no national Ministry of Agriculture, and the entities are left to create their own agricultural development strategies (European Commission 2012). This article examines survey respondents by entity, to account for the possibility that differences between entities may create different land-market dynamics. Brčko is excluded from the survey because of its relatively small size.

HISTORICAL BACKGROUND AND REGIONAL CONTEXT
Challenges in the BiH Agricultural Sector
The problem of small and fragmented farms in BiH has origins in the Ottoman Empire. Under Ottoman rule, peasants were permitted to own land on the military frontier if they were willing to defend the region. Those property claims were undermined in the eighteenth and nineteenth centuries, as economic decline in the Balkans led a new landed nobility to encroach on peasants' property and seize land. Later Ottoman reforms stripped peasants of their property rights (Frucht 2005, 679). Beginning in 1918, the Kingdom of Yugoslavia systematically dismantled most remaining large landholdings during the first agrarian reform (Crampton 2003, 130). After World War II, the new Socialist government instigated the second agrarian reform, confiscating land from religious groups and large private farms for further redistribution in smaller parcels (Pejovich 1966, 7). Small farm sizes have persisted into the current period. The average farm in BiH is comprised of multiple parcels that together total about 2.5 hectares, while 80 percent of farms are less than five hectares in size (Ministry of Foreign Trade and Economic Relations 2007).

The status quo of small and fragmented farms is perpetuated in part by an incomplete land registration system. In many parts of the world, complete land titling is seen as one factor for improving the ability of

landholders to access bank loans and undertake property improvements (De Soto 2000). There are no current statistics regarding the extent of land registration in BiH, but one BiH government official formerly involved in property registration unofficially estimates that 30 percent of land in BiH is accurately registered in both the municipal and court registries (Personal communication 2010). Registration is further complicated by the legacy of the 1992-1995 war that displaced many residents from their homes, particularly in rural areas (Arcotrass 2006, 10). The Brčko District is the only area of BiH with a complete and accurate record of land use.[1]

Today's incomplete land registry has origins in the Austro-Hungarian Empire. When the Austrians took control of the region in 1878, they accepted the land ownership situation as it was and completed a property survey from 1886 to 1910 (Arcotrass 2006, 8). They drew on the German dual model of land registration that separates property descriptions from legal rights, placing the former with municipalities and the latter with the courts (Rose et al. 2000, 12-13). Property descriptions were contained in the *cadastre* (municipality-based), while ownership registrations were kept in a land book known as the *grunt* (court-based). Municipalities were responsible for actively recording land use in the *cadastre*, whereas landholders were responsible for visiting the court to gain formal title through *grunt* registration. BiH's current land registration system follows the Austro-Hungarian model of dual registration (Arcotrass 2006, 8-9).

The Austrians' property record contained some inconsistencies dating to unregistered land transfers during the Ottoman period, but it is considered to have been largely accurate (personal communication 2010). With the beginning of World War I, however, the *grunt* and *cadastre* began to deteriorate, and records were widely destroyed during both World Wars (Arcotrass 2006, 9). Many landholders did not register land transfers throughout the twentieth century, due largely to political instability and a desire to avoid taxes on real estate transactions (Giovarelli and Bledsoe 2001, 31). In 1953, the state began to register land usage for taxation, adjusting the *cadastre* but leaving the *grunt* untouched, thereby creating a particularly complicated legacy for cases in which the land user was not the *grunt*-registered owner (Vucic et al. 2011, 257).

In 1984, the state eliminated the dual Austrian system in favor of maintaining all land registration information in the *cadastre*, a unified record based in municipalities.[2] From 1984 to 2002, the state attempted to update the inaccurate land registry through a process of single registration (Merrill et al. 2004, 12). Estimates vary widely regarding the success of this process, with proponents of the unified system estimating registration as

50 percent complete by 2002, and opponents claiming the unified system successfully registered only 10 percent of land (Personal communications 2010-11).

In 2002, BiH reverted to the dual registration system with the Law on the Land Registry, a highly controversial decision that gained wide support from the international community based on concerns about legal security of ownership in a unified registration system (personal communications 2010).[3] Since 2002, GIZ[4] and the World Bank have led the international community's efforts to update BiH's *cadastre* and *grunt*, focusing primarily on digitalization and increasing registration speed, but the process remains prohibitively expensive for many landowners (World Bank 2006).

Regional Context and Experiences of Other Post-Socialist States

BiH's experience with land registration mirrors that of other post-socialist countries. In Romania, for example, a country with similar roots in the Austro-Hungarian period, land transactions were not always recorded in the Austrian land registry introduced in the 1860s, and many chose not to register land transfers during the communist period. As in BiH, landowners often did not register property inheritances, further complicating present ownership records with generations of unrecorded transfers. This similar historical legacy resulted in an incomplete land registry, significantly hindering the privatization process in Romania and generating consequences for the vitality of its land market (Verdery 1994, 1087-97).

Small farm sizes and non-contiguous plots are similarly common features of post-socialist countries in the region and affect the viability of their agricultural sectors in various ways. Lithuania and Latvia, for example, had average household plots of between two and four hectares in the mid-1990s, contributing to low efficiency in agricultural production during their transition periods (Rabinowicz 1997, 123). An expansive literature details the effects of farm size on productivity, with results mixed throughout the region depending on a variety of factors beyond the scope of this article, such as the quality of input and output markets or the technology used (Swinnen 1997, 386). It is worth noting, however, that the combination of small farm sizes, low productivity, and barriers to land registration has particularly hindered agricultural development in Russia, resulting in a stagnant land market for smallholders that limits their capacity to engage in land transactions (Shagaida 2005).

The experiences of other countries in the region also suggest that if BiH one day accedes to the European Union, it too will face increased

pressure towards efficiency and productivity in its agricultural sector (Tangermann and Swinnen 2000, 186). This can lead to larger farm sizes and a decreasing share of the population engaged in agriculture. Nearly every country in Central and Eastern Europe that recently acceded to the European Union reports increases in average farm size. Of those that acceded in 2004, average farm sizes increased between 3 and 50 percent in Hungary, Lithuania, Poland, and Slovenia; between 80 percent and 90 percent in the Czech Republic and Latvia; and more than 100 percent in Slovakia from 2003 to 2010 in terms of utilized agricultural area per holding (Eurostat 2013). Of countries that acceded in 2007, average farm size remained the same in Romania and increased 98 percent in Bulgaria from 2007 to 2010 (ibid.).

The Survey: Exploring Challenges and Solutions for Agricultural Development in BiH

The survey results paint a bleak picture of the rural land market in BiH. In general, the demand for reform exists. Respondents would like to pursue land transactions to improve the structure of their holdings, but they often face insurmountable barriers of insufficient access to financing, incomplete property registration, and low supply of land on the market. One solution may lie in completing the BiH land registry.

Methodology

This article is based on a 2010-11 survey that I implemented in partnership with the Fostering Agricultural Markets Activity Project (FARMA), the largest donor-funded agricultural development project operating in BiH. Research teams from the local non-governmental organization Nešto Više conducted 203 in-person interviews of farmers across BiH. The survey includes 103 farmers in FBiH from the municipalities of Sanski Most, Ravno, Jablanica, Čapljina, Stolac, and Mostar, and 100 farmers in the RS from the municipalities of Bijeljina, Trebinje, Ljubinje, and Teslić. The ten municipalities were chosen to ensure wide geographic distribution. Nešto Više selected farmers in partnership with five agricultural cooperatives, each of which identified fifteen to twenty cooperative members and cooperants and fifteen to twenty independent agricultural producers. The survey includes a wide range of large- and small-scale producers, as well as a variety of agricultural sectors, including fruits and vegetables, dairy, livestock, beekeeping, and cereals.

It is important to recognize the limitations of the data set. Responses point toward the existence of relationships between various barriers to

development and farmer success, but I do not attempt to prove causation in this article. There are too many relevant variables to prove causation with a sample size of this magnitude. With this data, I hope instead to explore what evidence we have to suggest a way forward for future work. To supplement these conclusions, the discussion about transitioning to a unified land registration system is based on consultations with in-country experts in addition to survey results. Whenever possible, I contacted current and former government officials, donor projects, private sector actors, and other local experts. Their input provided essential guidance related to context and background for relevant challenges, as well as creative feedback on the feasibility of potential solutions.

Supply and Demand in a Stagnant Market

The first question to ask is whether there is demand among BiH farmers to change the status quo. Do farmers want to expand the size of their farms and consolidate their holdings? Most respondents report either not trying or failing in at least some attempts to complete a land transaction in the past two years, including 81 percent of respondents in FBiH and 77 percent of respondents in the RS.[5] Part C explores why that may be, but for now, it is enough to note that lack of interest is not the driving factor. In short, many farmers would like to change the structure of their holdings, but there are barriers preventing them from completing successful transactions.

The survey results hint at the depth of the problem. Of all respondents, 90 percent in FBiH and 85 percent in the RS have farms composed of noncontiguous parcels. Table 1 shows the prevalence of fragmentation, general interest in farm consolidation, and lack of prior attempt to consolidate. While roughly half of respondents in FBiH and two-thirds of respondents in the RS with fragmented holdings are interested in consolidation, less than one-fifth in both entities attempted to consolidate their holdings in the past two years. There is clear, unmet demand for farm consolidation.

Table 1. Interest in Farm Consolidation

Entity	% of Respondents With Separated Farmland	Of the 93 FBiH and 85 RS Respondents With Separated Holdings	
		% Interested in Consolidation	% Attempted Consolidation
FBiH	90%	46%	16%
RS	85%	64%	19%

The high prevalence of non-contiguous landholdings has serious implications for the viability of BiH's agricultural sector. The most recent national data suggest BiH farms typically comprise between seven and nine parcels (Arcotrass 2006, 10). Elsewhere, fragmentation has been a widely documented constraint on farm productivity (Sabates-Wheeler 2002, 1006-08), and in one example outside the region, researchers found 40 percent of agricultural land area taken up by paths, roads, ditches, and fences as a direct result of farm fragmentation (Calvo 2005, 17). The pervasiveness of fragmentation in BiH suggests the country may suffer from similar challenges that hinder performance in the agricultural sector. The current land market is inadequate to resolve those barriers to development.

Before exploring barriers to farm consolidation, it is worth highlighting one possibility that likely does not explain lethargy in the land market: low supply of unused agricultural land. Of total surveyed holdings, 34 percent are uncultivated in FBiH and 21 percent are uncultivated in the RS. Across BiH, about 29 percent of surveyed farmland is out of production in an environment where agricultural producers would like to expand and consolidate their farms. This land is not, however, typically placed on the market. There is a cultural norm to hold land regardless of the owner's intent to use it for production. Table 2 shows the percentage of surveyed farmland that is cultivated and uncultivated in BiH.

Table 2. Cultivated and Uncultivated Farmland in BiH

Surveyed Farmland	FBiH	RS	BiH Total
Cultivated	66%	79%	71%
Uncultivated	34%	21%	29%

Barriers to Farm Expansion and Consolidation

As a starting point, surveyed farmers were asked to identify barriers to farmland transactions that most affected their ability to complete a transaction or their decision not to attempt one in the past two years. The results reveal two central factors that constrain farm expansion and consolidation. The first is inadequate financing, which is the most important barrier to land transactions as identified by respondents, including for temporary rental arrangements that require lower capital investments. The second is a low supply of farmland on the market for rent or sale, which leads to limited options for agricultural producers. An underlying challenge for solutions to both barriers is the incomplete land registry. While few farmers report

lack of registration as a significant barrier to completing land transactions, the survey reveals that those with unregistered property have lower profits and greater difficulty securing bank loans, reflecting less capacity to leverage their capital to expand and consolidate their holdings. Table 3 shows the prevalence of different barriers to land transactions among surveyed farmers.

Table 3. Prohibitive Barriers to Completing or Attempting Farmland Transactions, Among BiH Surveyed Farmers With At Least One Failed or No Attempted Transactions in the Past Two Years

Barriers to Farmland Transactions [a]	FBiH	RS
Inadequate Financing	60%	64%
Unable to Secure a Bank Loan	29%	48%
No Available Land to Buy, Rent, Exchange	27%	19%
Insufficient Labor to Farm Additional Land	22%	22%
Could Not Find Someone to Buy, Rent, or Exchange	19%	8%
General Lack of Interest	16%	12%
Land Ownership Claimed by Multiple People	12%	21%
Other	8%	1%
Lack of Land Registration for One or Both Parties	6%	6%
Disagreement on the Boundaries of Land Proposed	4%	4%
Disagreement on Other Usage Rights (i.e., Water)	2%	3%

[a] Some farmers report multiple barriers.

Barrier 1: Insufficient Access to Financing and Inadequate Land Registration

Table 3 shows that financing is clearly the greatest challenge for respondents in both entities. Inadequate land registration, however, poses a related challenge. While only six percent of respondents identify lack of land registration as a significant barrier to completing a land transaction, other survey data reveal a complex relationship between financing and registration. Without registration, farmers may have more difficulty accessing collateral-based lending and bank financing. Unclear title also reduces ownership security of potential land transfers, eliminates the possibility of receiving agricultural subsidies, and creates disincentives for farmers to

invest in their property. All of these factors compound the challenge of inadequate financing, the barrier that farmers care most about.

What is the current status of land registration? About half of respondents in FBiH have registered all of their farmland, and among those who registered at least some of their farmland, 55 percent registered it in both the court-based *grunt* and the municipality-based *cadastre*. Almost two-thirds of respondents in the RS have registered all of their farmland, while less than half of those with at least some registered land recorded their parcels in both the *grunt* and the *cadastre*. Table 4 shows the percentage of surveyed farmers in both entities who registered all, some, or none of their farmland, while Table 5 shows where their land is registered.

Table 4. Percentage of Surveyed Farmers in BiH by Amount of Farmland Registered

Amount of Farmland Registered	FBiH	RS
All	51%	63%
Some	34%	27%
None	15%	10%

Table 5. Type of Registration, of Surveyed Farmers with at Least Some Farmland Registered

Where Farmland is Registered	FBiH	RS
Both *Grunt* and *Cadastre*	55%	36%
Grunt Only	3%	2%
Cadastre Only	30%	36%
Mixed[a]	13%	27%

[a] *On one farm, some parcels are registered in the* cadastre *and some are registered in the* grunt.

These widespread registration difficulties correspond with lower farmer profit. Respondents in both entities who registered all of their farmland report higher average profit than respondents who registered some or none of their farmland, as shown in Table 6. Respondents similarly report higher average profit when their farmland is registered in both the *grunt* and the *cadastre* as opposed to just the *cadastre*, as shown in Table 7. While the

number of complicating factors makes it impossible to provide meaningful information about whether those differences are statistically significant, the results do suggest that insufficient access to financial resources may be less of a barrier for farmers with fully registered land.

Table 6. Average 2010 Profit (in KM) from Agricultural Activities

Amount of Farmland Registered	FBiH	RS
All	15,184	3,533
Some	5,130	634
None	9,857	2,740

Table 7. Average 2010 Profit (in KM) from Agricultural Activities

Where Farmland is Registered	FBiH	RS
Both *Cadastre* and *Grunt*	16,438	2,953
Only *Cadastre*	2,802	1,875

Similarly, incomplete land registration corresponds to difficulty securing bank financing among surveyed farmers. Banks typically require *grunt* registration before they will accept land as collateral for a loan. In both entities, the percentage of respondents reporting difficulty securing a bank loan increases as their amount of land registered decreases. Notably, it is difficult to secure bank financing even with fully registered property, because of a number of legal challenges beyond the scope of this article. The one exception is among RS farmers with no registered land, but the small sample size makes it difficult to draw general conclusions about this category. Table 8 shows the percentage of surveyed farmers in BiH who report difficulty acquiring a bank loan by the amount of their land that is registered and the type of registration. Note that challenges related to bank financing are prevalent in the RS for all categories, but it is not possible to suggest explanations based on available information.

Table 8. BiH Farmers Reporting Inability to Secure a Bank Loan as a Prohibitive Barrier to Completing or Attempting Farmland Transactions in the Past Two Years

		Type of Registration	% Unable to Secure a Bank Loan in FBiH [b]	% Unable to Secure a Bank Loan in the RS[b]
Amount of Land Registered	All	*Grunt* or Both *Grunt* and *Cadastre*	23%	42%
		Cadastre or Mixed [a]	10%	57%
		Total	**20%**	**49%**
	Some	*Grunt* or Both *Grunt* and *Cadastre*	20%	100%
		Cadastre or Mixed [a]	42%	53%
		Total	**34%**	**58%**
	None		**46%**	**22%**

[a] *On one farm, some parcels are registered in the* cadastre *and some are registered in the* grunt.

[b] *The base is the number of surveyed farmers reporting at least one identified failure or no attempted transactions in the past two years, not all surveyed farmers.*

Greater difficulties with bank loans in the RS also correspond to a larger emphasis on multiple ownership claims as a significant barrier to transactions. The problem of land ownership being claimed by multiple people is essentially a question of unresolved property title, which compounds the difficulty of securing bank loans. In sum, while few farmers directly identify lack of land registration as a significant barrier to expansion, the security of their collateral is a relevant factor for their inability to access bank financing, a problem that is relatively common across entities.

Barrier 2: Low Supply of Available Farmland on the Market

Lack of available land on the market is also a major barrier to land transactions, particularly in FBiH. As shown in Table 3, among respondents with at least one identified failure or no attempted transactions in the past two years, 27 percent in FBiH and 19 percent in the RS report lack of available land to buy, rent, or exchange as a prohibitive barrier to completing or attempting a transaction.[6] Two respondents in FBiH also identify the high price of land as a barrier to acquisition, which can either be understood as

a financing problem or as a result of the low supply of land on the market.

Surveyed farmers are typically uninterested in selling or renting their holdings, while the majority of respondents would like to acquire new farmland to expand production. In both entities, 54 percent of respondents are interested in acquiring new farmland to expand production. Just 12 percent in FBiH and ten percent in the RS are interested in disposing of their farmland through sale or rent, while 19 percent in FBiH and eight percent in the RS are interested in exchanging farmland. The gap suggests current demand for farmland is not being met by adequate supply.

Additionally, surveyed farmers interested in selling or renting their farmland have smaller holdings than the average surveyed farmer. This further limits supply of land on the market, as shown in Table 9. Landholdings of respondents interested in selling or renting their farmland represent seven percent of total surveyed acreage in FBiH and ten percent in the RS, while landholdings of respondents interested in exchanging farmland represent six percent of surveyed farmland in both entities. The total supply of potentially available farmland is likely smaller still, because the vast majority of respondents would be willing to transfer only a limited portion of their holdings, if any. Only one respondent in the RS and no respondents in FBiH are interested in renting all of their land, and no respondents in either entity are interested in selling all of their land.

For the typical successful land transaction, the small size of transferred farmland provides additional evidence of a constrained land market. The surveyed median size of completed land transfers in both entities is two hectares. Table 9 details the median size of reported successful farmland transfers during the past two years, showing that successful permanent transactions (buying, selling, or exchanging) are generally completed on a smaller scale than temporary transactions (renting). Successful permanent transactions are also less common, comprising 33 percent of total successful transactions in FBiH and 16 percent in the RS.

Table 9. Average Landholdings of Surveyed Farmers Interested in Disposing of Land and Median Size of Successful Surveyed Land Transactions in BiH

	FBiH	RS
Average Size of Landholdings for Respondents Interested in Selling, Renting, or Exchanging Land [a]	3.3 ha	3.4 ha
Average Size of Landholdings for All Respondents [a]	6.1 ha	4.1 ha
Median Size of Successful Permanent Land Transfers (Bought, Sold, or Exchanged)	0.8 ha	0.5 ha
Median Size of Successful Temporary Land Transfers (Rented)	3.0 ha	2.0 ha

[a] *Average landholdings is total farmland held by respondents. Average surveyed farm size (cultivated land) is 4.0 ha in FBiH and 3.2 ha in the RS.*

Other barriers to land transactions are generally less common, as shown in Table 3. Labor shortages are moderately prevalent. The younger generation is increasingly migrating from rural to urban areas, leaving a labor gap in many rural communities.[7] Disagreements over land boundaries or usage rights could also have particular relevance for dampening the potential for land exchange deals for farm consolidation. These problems, however, are reported with less frequency than other challenges, and they pose prohibitive barriers in a negligible number of cases.

A Solution in Updating the Rural Land Registry

An accurate land registry is a potential solution for addressing barriers to farm expansion and consolidation in BiH. A complete record of land ownership is important for improving ownership security, increasing access to collateral-based financing, and potentially facilitating a future national land bank and land consolidation program (Food and Agriculture Organization of the United Nations 2003). Given these and other benefits, however, why have many farmers not already registered their property? And what do these reasons say about ways to move forward?

The current dual system of registration relies on landowners to visit the courts to register their property. The underlying assumption is landowners believe the value of registration surpasses its costs. Any system that relies on active participation from the community must address the possibility that some people may prefer not to participate. The survey asked farmers

to identify whether or not they had registered their land, and if not, the reasons that motivated their decision not to register. The decision not to register land is similarly common across entities, with about one-third of farmers identifying motivations to not register at least part of their land, as shown in Table 4. Table 10 shows the percentage of surveyed farmers who identify specific reasons for not registering land.

Table 10. Motivations to Not Register Land Among Surveyed Farmers Who Did Not Register At Least Part of Their Land

	FBiH	RS
Registration Taxes, Fees, and Charges	79%	54%
Possibility of Future Land or Property Taxes	64%	18%
Impossible to Resolve Inheritance Issues	24%	61%
Costly to Resolve Inheritance Issues	52%	39%
Court Location	9%	11%
Other	3%	7%

Registration costs, taxes, and fees are the most common reasons that FBiH farmers do not register, including 79 percent of respondents with at least partially unregistered land in FBiH and 54 percent in the RS. The most significant fee associated with registration is the transfer tax. Because the buyer is usually responsible for paying the transfer tax, both parties have an incentive not to register the change in ownership: the seller benefits from remaining the legal owner, and the buyer benefits in the short-term from avoiding the transfer tax. In FBiH, the transfer tax is five percent of the property value in most cantons, with the level capped at five percent but delegated to municipalities in Unsko-Sanski and Herzegovina-Neretva cantons. In the RS, the transfer tax is currently three percent, but the tax may be eliminated if the government replaces it with a proposed ad valorem property tax.

Intractable inheritance issues are the most common reason that RS farmers choose not to register, including 61 percent of respondents with at least partially unregistered land in the RS and 24 percent in FBiH. To register ownership, the Law on Inheritance requires that all potential heirs of the last registered owner be contacted. In many cases it has been several generations since property was last registered, and interested buyers or owners must undergo a costly investigation to settle the question of ownership. RS respondents view their inheritance issues as more deeply

entrenched and difficult to resolve than FBiH respondents, who more commonly view inheritance issues as costly rather than impossible to resolve. The perceived benefits of registration may be less salient than immediate and necessary investigation costs, particularly for RS farmers who more often view their inheritance issues as insurmountable.

The most significant difference between entities relates to apprehension about the possibility of future land or property taxes. Almost two-thirds of respondents in FBiH choosing not to register at least part of their land cite future taxes as a motivation for their decision, compared to less than one-fifth in the RS. Barriers related to current registration fees and unresolved inheritance issues are possible to resolve within the framework of the current registration system. The fear of future property taxes, however, challenges the system's underlying assumption that owners would like to register their property. Even if taxation were based on non-voluntary cadastral records, public perception of court-based records and their role in taxation undermines accuracy within a dual registration system. These difficulties may be more easily addressed by a registration system that does not rely on voluntary participation.

Additional registration outreach may be required for landowners without previous registration experience, as they may have particularly entrenched reasons for not registering ownership. In both entities, 40 percent of respondents who previously registered some of their farmland are currently in the process of registering additional farmland. Among farmers who had not previously registered farmland, however, 13 percent in FBiH and 10 percent in the RS are in the process of registration.

A primary benefit of a unified registration system is the burden of registration falls entirely on the state, while the dual system relies on owners to visit the courts to register their property and gain a formal title. From the state's perspective, the unified system shifts the burden from passive to active, requiring municipalities to survey ownership in addition to land usage. This reduces participation challenges relative to the dual system. Other benefits of the unified system relate to data accuracy and convenience. By keeping property information in one register, the unified system automatically harmonizes registration information and reduces discrepancies between the *cadastre* and *grunt*. Data inaccuracies can arise when two institutions control and update similar information for different purposes. The unified system also creates a relatively easier process for registration by placing all necessary steps in one location. There are 142 municipalities in BiH, compared to only 48 courts that handle land registration. When land registration is not only voluntary but also inconvenient because of

court location, the likelihood of completing an accurate land registry is limited.

In contrast, the most significant benefit of the dual system is the *cadastre's* potential manipulation. The dual system may achieve greater security of land ownership for those who successfully harmonize their *grunt* and *cadastral* records. In a unified system, a single institution controls all issues surrounding the *cadastre* and legal rights to property. For a dual system in which courts determine property rights based on proper documentation, there is an additional check on power that is not present in the unified system. Under the previous unified system from 1984 to 2002, committees established legal ownership by determining rights based on field assessments, and some claim the process was subject to corruption (BiH government officials and donor representatives in BiH, personal communications 2010-11). If BiH transitions to a unified system, transparency must be prioritized throughout the process.

Despite shortcomings of dual registration, many farmers have been motivated successfully to register in the current dual system. Table 11 shows the importance of different motivations among surveyed farmers who registered some or all of their land. For example, agricultural subsidies appear to have been an effective tool to encourage registration in the past, particularly among farmers with partially registered property. The desire to use land as collateral for a loan is not a commonly cited motivation in either entity. These responses can help inform future initiatives to target farmer concerns and better incentivize property registration.

Table 11. Motivations to Register Land

Reasons for Registration	FBiH		RS	
	Amount of Land Registered			
	All	Some	All	Some
Security	96%	88%	89%	67%
Subsidies	79%	74%	79%	81%
Collateral	30%	38%	21%	37%

Conclusion

A central problem for agricultural development in BiH is the small size of farms and their composition in non-contiguous parcels, a situation with serious implications for income generation and rural poverty reduc-

tion. This article seeks to place BiH in the wider international context of post-socialist states grappling with land reform, confirming that the BiH experience includes common challenges related to small farm size, farm fragmentation, and incomplete land registration. Within that context, this article provides a foundation for identifying the most significant barriers to land transactions in BiH today, particularly the limited supply of agricultural land on the market, an incomplete land registry, and farmers' related inability to access adequate financing. Completing the land registry, potentially by transitioning to a unified system, is one option for addressing some of the identified barriers to improving farm structures in BiH. While this will not be a silver bullet for stagnation in the Bosnian land market—notably, other solutions are needed to spur desire to sell land for owners uninterested in agricultural production—it would be a meaningful step in the right direction.

Notes

[1] During implementation of the Brčko District's ad valorem property tax, the USAID Tax Reform Activity (TARA) Project fully updated Brčko's cadastre (Bosnic, USAID TARA Project Chief of Party, personal communication, 2010).

[2] The unified land registration system was established by the Law on Land Surveying and the Real Estate Cadastre. The law remains in effect in FBiH, with the exception of those parts that conflict with the 2002 Law on the Land Registry. The RS cadastre is regulated by the Law on Land Surveying and the Real Estate Cadastre, adopted in 2006, as well as the Law on Maintenance of the Survey and Land Cadastre, adopted in 1996.

[3] There is harmonized regulation in FBiH, the RS, and the Brčko District establishing a dual system. The harmonized Law on the Land Registry is included in FBiH Official Gazette No. 19/03 and 54/04, RS Official Gazette No. 67/03, 46/04, and 109/05, and Brčko District Official Gazette No. 11/01, 1/03, and 14/03.

[4] From 2002 to 2010, the German Organization for Technical Cooperation (GTZ) operated the relevant projects in BiH. The German Society for International Cooperation (GIZ) was created in 2011 and combined the competencies of GTZ and two other German organizations.

[5] N = 102 for FBiH and 100 for the RS.

[6] N = 83 for FBiH and 77 for the RS.

[7] The problem of inadequate labor is related to low farm productivity, which creates minimal economic opportunity in rural areas and low wages paid for farm labor. See Ministry of Foreign Trade and Economic Relations (2007) for a discussion of rural population change in BiH and the increasing elderly dependency ratio.

References

The majority of this article is based on primary survey data and personal interviews with current and former government officials, donor projects, private sector actors, and other local experts. Out of privacy concerns, identifying details are omitted for government commentators.

Arcotrass GmbH. 2006. "Bosnia and Herzegovina: Country Report." http://ec.europa.eu/agriculture/analysis/external/applicant/bosnia_herzegovina_en.pdf.

Barmore, C. 2013. "Agricultural Cooperatives in Post-War Bosnia and Herzegovina: Internal and External Factors Affecting Cooperative Financial Performance." *Journal of Rural Cooperation* 41: 1-26.

Calvo, J. 2005. "Market Access and Poverty Alleviation (MAPA)." Final project report produced for USAID Bolivia. http://www.chemonics.com/pv_obj_cache/pv_obj_id_DAA3183B0CEEB70FD0B014112DBF1272BD421A00/filename/Bolivia%20Market%20Access%20and%20Poverty%20Alleviation.pdf.

Crampton, R. J. 2003. *Eastern Europe in the Twentieth Century – And After*. New York: Routledge.

Davidova, S. and A. Buckwell. 2000. "Transformation of CEEC Agriculture and Integration with the EU: Progress and Issues." In *Central and Eastern European Agriculture in an Expanding European Union*, edited by S. Tangermann. Oxon: CABI Publishing.

De Soto, H. 2000. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. Basic Books, New York.

European Commission. 2012. "Bosnia and Herzegovina – Agriculture and Enlargement." http://ec.europa.eu/agriculture/enlargement/countries/bosnia-herzegovina/profile_en.pdf.

Eurostat. 2013. Farm structure. http://epp.eurostat.ec.europa.eu/portal/page/portal/agriculture/data/database.

Food and Agriculture Organization of the United Nations. 2003. "The design of land consolidation pilot projects in Central and Eastern Europe." FAO Land Tenure Studies. Rome: FAO. ftp://ftp.fao.org/docrep/fao/006/Y4954E/Y4954E00.pdf.

Frucht, R. 2005. *Eastern Europe: An Introduction to the People, Lands, and Culture*. Santa Barbara: ABC-CLIO.

Giovarelli, R. and D. Bledsoe. 2001. "Land Reform in Eastern Europe: Western CIS, Transcauceses, Balkans, and EU Accession Countries." Prepared by the Rural Development Institute for submission to the Food and Agriculture Organization of the United Nations. Seattle. http://www.fao.org/docrep/007/ad878e/ad878e00.HTM.

Merrill, S., C. Rabenhorst, S. Butler, N. Flynn, and T. Zecic. 2004. "Real Estate Finance and the Real Estate Market in Bosnia: Unlocking Capital for Development." Prepared by The Urban Institute for USAID Bosnia Financial Sector Project. http://pdf.usaid.gov/pdf_docs/PNADD253.pdf.

Ministry of Foreign Trade and Economic Relations, Bosnia and Herzegovina. 2007. "Bosnia and Herzegovina: Agriculture Report 2007." http://www.agrowebcee. net/fileadmin/content/agroweb_ba/files/Country_profile/Z/BiH_Agriculture_Report_2007.pdf.

Pejovich, S. 1966. *The Market-Planned Economy of Yugoslavia.* St. Paul: University of Minnesota.

Rabinowicz, E. 1997. "Political Economy of Agricultural Privatization in the Baltic Countries." In *Political Economy of Agrarian Reform in Central and Eastern Europe*, edited by J. Swinnen. England: Ashgate Publishing Ltd.

Rose, L., J. Thomas, and J. Tumler. 2000. *Land Tenure Issues in Post-Conflict Countries: the Case of Bosnia and Herzegovina.* Eschborn: German Organization for Technical Cooperation. http://www.gtz.de/de/dokumente/en-landtenurebosnia.pdf.

Sabates-Wheeler, R. 2002. "Consolidation Initiatives After Land Reform: Responses to Multiple Dimensions of Land Fragmentation in Eastern European Agriculture." *Journal of International Development* 14: 1005-1018.

Shagaida, N. 2005. "Agricultural Land Market in Russia: Living with Constraints." *Comparative Economic Studies* 47: 127-140.

Swinnen, J. 1997. "The Choice of Privatization and Decollectivization Policies in Central and Eastern European Agriculture: Observations and Political Economy Hypotheses." In *Political Economy of Agrarian Reform in Central and Eastern Europe*, edited by J. Swinnen. England: Ashgate Publishing Ltd.

Tangermann, S. and J. Swinnen, J. 2000. "Conclusions and Implications for Food and Agricultural Policy in the Process of Accession to the EU." In *Central and Eastern European Agriculture in an Expanding European Union*, edited by S. Tangermann. Oxon: CABI Publishing.

Verdery, K. 2004. "The Elasticity of Land: Problems of Property Restitution in Transylvania." *Slavic Review* 53: 1071-1109.

Vucic, N., M. Roic, and Z. Kapovic. 2011. "Current Situation and Perspective of 3D Cadastre in Croatia." Paper presented at the Second International Workshop on 3D Cadastres, Delft (16-18 November). http://www.gdmc.nl/3dcadastres/literature/3Dcad_2011_26.pdf.

World Bank. 2006. "Project Appraisal Document on a Proposed Credit in the Amount of SDR 10.4 Million (US$15 Million Equivalent) to Bosnia and Herzegovina for a Land Registration Project." Washington, DC: The World Bank. http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/04/10/000012009_20060410100609/Rendered/PDF/356300rev0pdf.pdf.

2

RUSSIA'S ARCTIC POLICY: OBJECTIVES AND PROSPECTS

Natasha Geber

The Arctic is a region characterized by opposing forces: while melting sea ice increases the potential for competition over resources, major world powers have built cooperative conventions to govern the region. Russia's stance on the Arctic will greatly affect the equilibrium that can be found in the region, particularly as Russia is increasingly determined to establish itself as the primary Arctic actor through political, economic, and military means. This paper analyzes the implementation of Russia's official Arctic policy from 2008 to date, with a focus on issues of sovereignty, natural resources, the Northern Sea Route, and militarization. Thus far, Russia's ambitions to extend territorial claims in the Arctic, jumpstart natural resource extraction and bolster its Arctic military presence have been frustrated by low energy prices, technological, and infrastructure inadequacy, and the need for continued cooperation with Western and other Arctic nations.

The Arctic is increasingly prominent in Russia's domestic and foreign policy discourse. Accelerating climate change, proven energy deposits, and increasing world trade have all contributed to the Arctic's emergence as a new locus of strategic significance for the Kremlin. Russia sees itself as the most significant player in the Arctic region, and is determined to

Natasha Geber is a 2015 graduate from Columbia University's School of International and Public Affairs, where she focused on multilateral security issues and conflict resolution. She holds a Joint Honors BA from McGill University in Political Science and Russian Studies.

establish itself as such through political, economic, and military means (Zysk 2010). As a relatively unexplored region, the Arctic offers new space for the assertion of state sovereignty and power (Laruelle 2014). However, the Kremlin is caught between its increasingly ambitious drive to restore Russia's status as a great power, and the structural weaknesses that hinder its ability to do so (Roi 2010).

Despite increasing attention in the media to the implications of climate change for future energy and shipping prospects in the Arctic, and to the purportedly increasing militarization of the Arctic space, academic analysis of Russia's Arctic policy is relatively scant. Thus, this paper examines Russia's 2008 Arctic Strategy and surveys its implementation to date. After broadly outlining the context surrounding international and Russian policy towards the Arctic, this paper deconstructs Russia's Arctic policy on four themes: sovereignty, natural resources, the Northern Sea Route, and militarization. In the examination of each theme, the paper seeks to understand stated Russian policy, how the policy relates to recent Arctic developments, and future prospects for the realization of Russia's stated Arctic goals. Russia has prioritized resolving territorial claims in the Arctic in order to assert its sovereignty over the vast reserves of natural resources found there, and over the Northern Sea Route, which Russia envisions as a major global shipping lane. Russia is currently moving to modernize military installations across its Arctic region, ostensibly to protect its oil and gas developments in the region. Across these issues, the Kremlin's rhetoric ranges from prioritizing cooperation when addressing international audiences to more brash proclamations of nationalist rhetoric for domestic consumption.

The Global Arctic Context

Contemporary narratives surrounding the Arctic often portray the region as the site of a new Gold Rush for resources, of a new Great Game between major world powers, of an impending new Cold War, or as a vast, unexplored final frontier. In reality, the Arctic does not fall neatly into any of these simplistic categories. It is a region of heightened international interest and exploration, yet also a region in which major powers have committed to international cooperation, and in which significant legal frameworks already exist to regulate Arctic governance.

There are five littoral Arctic states: Russia, Canada, Norway, Denmark (Greenland) and the United States (Alaska). Finland, Sweden and Iceland all have significant territory beyond the Arctic circle but no direct access to the Arctic Ocean. These eight Arctic states constitute the permanent

voting members of the Arctic Council, the principal forum for international cooperation on Arctic issues. Within the Arctic Council, there is disagreement over how the Arctic and its resources should be divided. On one side, the most prominent Arctic powers—Russia, Canada, Denmark, and Norway—want to settle a "formula for dividing the region" in the near future (Trenin 2010). They would likely benefit from such a division. On the other side, the United States and the more peripheral Arctic states, as well as Britain, China, India and others, advocate for declaring the Arctic a common zone (ibid.). In fact, in 2013, India, Italy, Japan, Singapore, South Korea and China joined the Arctic Council as observers, a clear signal that non-Arctic states wish to have a stronger voice in Arctic affairs.

Although the Arctic is often portrayed as a new 'Wild West,' the region is in fact subject to many complex and often overlapping legal charters and institutions (Laruelle 2014). The primary international convention governing the use and division of the Arctic resources and territory is the United Nations Convention on the Law of the Sea (UNCLOS), to which all Arctic states are signatory except the United States. According to UN-CLOS, each of the littoral Arctic states has an Exclusive Economic Zone (EEZ) extending 200 nautical miles from national territory, in which the littoral state has exclusive right to "living and non-living resources" (Carlsson and Granholm 2013, 17). If a littoral Arctic state can prove that its continental shelf extends farther into the ocean than 200 nautical miles, the EEZ may be extended.[1] To be granted this territorial extension into the Arctic, however, the petitioning state must support their claim with scientific evidence, including sonar seabed charting and seabed composition samples (ibid.). Moreover, a petition for EEZ extension will not be granted unless all other Arctic littoral states agree to the claim. This provision, by requiring this unanimous consent of all Arctic states on territorial claims, has thus far encouraged a relatively cooperative environment in Arctic politics.

Arctic states are eager to formalize their territorial claims because the vast resources stored in the Arctic will become increasingly accessible as climate change accelerates and the polar ice cap continues to melt. Arctic shipping routes will become more easily navigable, thus providing a potentially cheaper and quicker shipping route between Europe and Asia (Council on Foreign Relations 2014). The U.S. Geological Survey, in a 2008 study of potential Arctic resources, estimated that the Arctic could hold up to 13 percent of the world's undiscovered oil reserves, 30 percent of natural gas, and 20 percent of liquefied natural gas reserves (Cohen 2011). However, roughly 80 percent of estimated offshore Arctic resources

lie within already demarcated national EEZs (Laruelle 2014). Therefore, while states are eager to solidify their territorial claims in order to secure future access to the remaining twenty percent, Arctic states can be largely expected to adopt a defensive posture in the coming years. It is estimated that the majority of the Arctic's hydrocarbons—between 60 and 70 percent of reserves—are within Russia's Arctic territory (ibid.).

Russia and the Arctic

The Arctic is an important symbol of Russian identity and a locus of strategic significance for economic growth and assertion of territorial sovereignty. Arctic exploration and expansion figure prominently into the narratives of both the Peter the Great's reign and of the Soviet era. Speaking in April 2014 at a meeting of Russia's Security Council, President Vladimir Putin highlighted that the Arctic region is a "concentration of practically all aspects of national security—military, political, economic, technological, environmental and that of resources" (Putin 2014). Indeed, the region is vital for Russia: as much as 20 percent of Russia's GDP and 22 percent of its exports are already produced north of the Arctic Circle (Laruelle 2014). Roughly 75 percent of Russia's oil, 95 percent of its natural gas, and vast quantities of minerals such as nickel, tin, platinum, and gold come from its Arctic region (ibid.).

As such, Moscow ascribes great importance to the Arctic—increasingly so within the past decade. The Kremlin sees the Arctic as a key arena for brandishing and bolstering its great power status. The restoration of great power status—*derzhavnost'*—is a driving motivation behind much of Moscow's foreign policy (Roi 2010) and Russia's renewed interest in the Arctic over the last ten years is part of a broader shift in the Russian political climate, which has seen "the reassertion of patriotism as a tool for fostering political legitimacy" (Laruelle 2014). Moscow's narrative for domestic public audiences implies a more aggressive role for Russia in the Arctic, while the narrative for international audiences positions the Kremlin as an actor on par with other great powers, and open to cooperation (ibid.).

Russia's Arctic Policy

Russia issued a comprehensive Arctic Strategy in September 2008 under then-President Dmitri Medvedev. Since the release of this policy, several other relevant strategy documents have been published, which further confirm Moscow's prioritization of the region. Foremost among them is

the National Security Strategy (2009), which emphasizes energy resources as a potential means to great power status, and the February 2013 "Strategy for the development of the Arctic region up to 2020," which outlines a vision for the development of these resources (Russian Federation 2013). Finally, in December 2014 the Kremlin released a revised military doctrine, which tasked its armed forces with "ensuring the national interests of the Russian Federation in the Arctic." This revision from the 2010 version marks the first time the Arctic has been mentioned explicitly in Russia's military doctrine, and underscores the increasing importance Moscow ascribes to the region (Office of the President of Russia 2014). Particularly since Russia views its Arctic as a "strategic resource base capable of fulfilling the socio-economic tasks associated with national growth," the Kremlin's conceptual links between the Arctic, energy, and security seem clear (President of the Russian Federation 2008).

Russia's Arctic Strategy outlines three stages of Arctic development. First, from 2008 to 2010, Russia planned to collect geological proof for its extended EEZ claim for submission to UNCLOS, and to put forth a strategy for the development of the Arctic region up through 2020. Then, from 2011-2015, Russia planned to demarcate the international borders of its Arctic claims and improve the infrastructure of its Arctic regions to facilitate resource exploitation (Carlssson and Granholm 2013). Finally, from 2016-2020, Russia's Arctic is to be transformed into a "leading strategic resource base for the Russian Federation" (President of the Russian Federation). The following four sections analyze Russia's Arctic policy, current progress on implementation, and future prospects for policy realization across the Kremlin's priority areas of sovereignty, natural resource extraction, the Northern Sea Route, and militarization.

Territorial Claims and Sovereignty

Per its 2008 Arctic strategy, Moscow seeks the "active interaction of the Russian Federation with other Arctic states for the purposes of delineating maritime boundaries on the basis of international legal norms and cooperative agreements" (ibid.). Indeed, Russia is very active in making legal claims concerning demarcation of EEZ boundaries, the delimitation of the continental shelf, and vessel transit in the Arctic. The Kremlin has prioritized formalizing territorial claims to seas it deems part of its Arctic territory; notably, this includes the Lomonosov and Medeleev Ridges, which run toward the North Pole, the Sea of Okhotsk, and parts of the Barents and Bering Seas. In order for its claims to be recognized, Russia must submit application for recognition of its continental shelf to the UN

Commission on the Limits of the Continental Shelf (CLCS). The CLCS's decisions on territorial disputes require a two-thirds majority but because no claim to sovereign territory can be recognized to the disadvantage of another state, all states must, in effect, agree to the claim.

In 2001, Russia submitted its claim for the area running from the Lomonosov and Medeleev Ridges to the North Pole—roughly 1.2 million square kilometres (Cohen 2011). Citing lack of sufficient data, CLCS rejected the claim. Since then, Russia has prioritized gathering academic and scientific evidence to support its claims to both an extended EEZ in the Arctic Ocean and the Northern Sea Route (Carlsson and Granholm 2013). Currently, Russia's claims to an extended EEZ overlap with claims made by Denmark, Canada and the United States, meaning that for certain claims—the Lomonosov/Mendeleev Ridge claim in particular—resolution may be many years away (ibid.).

Since Russia's Arctic claims can only be legitimized with the consent of its Arctic neighbors, Moscow has demonstrated a willingness to cooperate and improve bilateral relations with other Arctic states (Baev 2012). In 2010, Russia and Norway bilaterally resolved a decades-old maritime border dispute, in which the countries divided roughly 67,600 square miles in the Barents Sea (Council on Foreign Relations 2014). This bilateral deal indicated that Moscow is willing to make pragmatic sacrifices for the sake of expedited Arctic development. It is worth noting, however, that the agreement has been domestically unpopular in Russia, and Putin has since distanced himself from the initiative (Baev 2013c). In a 2014 National Security Council speech, Putin stressed Russia's commitment to "cooperation and absolute respect of international law…[It is] within the framework of the Arctic Council, [that] we resolve issues pertaining to cooperation in border areas [and] maritime transportation" (Putin 2014). This emphasis on territorial demarcation and resolution through institutionalized fora and bilateral relations is likely an effort, in part, to exclude aspirational Arctic actors such as China from decision-making.

Domestically, Russia's actions surrounding Arctic sovereignty issues have been, predictably, more nationalist in tone. In 2007, Artur Chilingarov, a famous Arctic explorer and vice-speaker of the State Duma, led a submarine mission to the North Pole seabed, where he planted a titanium Russian flag amid triumphant proclamations in the Russian media. Baev notes that a "key" to Russia's Arctic policy is its quest for "great power" status, which underpins its ambitious drive to expand the legal boundaries of its continental shelf (Baev 2013b).

Russia recently scored its first major victory on an extension of its EEZ

in the Sea of Okhotsk, off of Russia's southeastern coast. In March 2014, the UN CLCS adopted Russia's claim to the 52,000 square kilometer sea north of Japan (United Nations 2014), which Russian authorities described as "a real Ali Baba's cave" (*RIA Novosti*, March 15, 2014). Although not officially part of the Arctic (the Sea of Okhotsk falls just below the official Arctic administrative boundary), the recognition is likely to galvanize Russia's pursuit of evidence to support its Arctic claims.

Considering that Russia's territorial claims to the CLCS must pass through the commission without objection from other states, the prospects for continued international cooperation remain quite good. However, the international community must consider what will happen in the event that existing norms and mechanisms such as CLCS cannot adequately resolve territorial disputes. As is often the case in international law, the relevant conventions (UNCLOS and customary law) leave room for interpretation and judgement, and existing mechanisms may break down in the future as new, non-Arctic players seek a voice on the Arctic stage.

Energy and Natural Resources

Russia's primary ambitions in the Arctic space are related to the extraction of natural resources—namely oil, gas, and minerals. The Kremlin views Arctic natural resources, both on land and offshore, as the foundation for its future economic and social development (Carlsson and Granholm 2013). Moscow hopes to significantly expand its Arctic revenues, and furthermore sees the development of its natural resources as closely linked to national security; its Arctic Policy envisions "the utilization of the Russian Federation's Arctic zone as a national strategic resource base capable of fulfilling the socio-economic tasks associated with national growth" (President of the Russian Federation 2008).

Overall, Russia's Ministry of Natural Resources estimates that its Arctic region contains "up to 10 trillion tons of hydrocarbon deposits"—the equivalent of "73 trillion barrels of oil" (Cohen 2011, 4). Since a steep decline in conventional oil and gas production is predicted in existing Western Siberian fields over the next 20 years, Russia's Arctic reserves are likely to be vital for continued growth (ibid.). Russia's *Energy Strategy up to 2030* illustrates Moscow's hope that Arctic resources will compensate for dwindling reserves elsewhere (Ministry of Energy of the Russian Federation 2009). The *Energy Strategy*, released in 2009, envisioned that resource exploitation in Russia's Arctic would begin in 2015.

However, extraction of Arctic resources involves high risk, major investment, and advanced technologies, and thus short- to medium-term

profitability seems unlikely—particularly while oil prices stay under $60 per barrel. Since global energy prices fell steeply in 2014, Arctic energy extraction no longer appears economically viable in the short-term; most analysts estimate oil prices must be at least $100 and $120 per barrel if Arctic extraction is to be feasible, given the expensive tools used in offshore and deep sea drilling (Piskunova 2010). Moreover, as new hydrocarbon sources, such as shale deposits, become available, higher-risk and higher-investment Arctic reserves may become less attractive.

Furthermore, Russia lacks the technology necessary for Arctic extraction, and has depended on cooperation with Western firms to explore, develop, and exploit its Arctic resources (Carlsson and Granholm 2013). Before the imposition of post-Crimea Western sanctions on Russia, Moscow emphasized a 'cooperation first' strategy that prioritized energy development through foreign investment and expertise sharing (Laruelle 2014). Jack Farchy reported that over 80 percent of oil technology used offshore in the Arctic was Western (*Financial Times*, October 29, 2014). However, the West's imposition of sanctions has meant that Western firms are prohibited from exporting goods, services, and technology to Russian Arctic, deepwater, and shale projects. Key firms such as ExxonMobil and BP have suspended cooperation with Russia on deep sea and offshore Arctic projects. This seriously undermines Russia's ability to exploit its Arctic resources, since Russian firms currently lack the technical expertise to develop resources in such harsh conditions.

Amid setbacks and delayed production in two of Russia's biggest Arctic developments—the Shtokman and Prirazlomnoye fields—along with low energy prices and Western sanctions, the future of Russian Arctic resource exploitation seems far from certain in the short term. It is unlikely that Moscow's vision of the Arctic as a major resource base by 2020 will come to fruition. The unpredictability of Arctic extraction is highlighted in the case of the Shtokman field. In 2008, Gazprom entered into an agreement with Statoil and Total to extract gas in the Shtokman field, which lies in the Barents Sea 600 kilometres north of the Kola peninsula, and has confirmed reserves of 3.9 trillion cubic metres of natural gas and 53 million tons of condensate—making it one of the richest gas deposits in the world (Laruelle 2014). After several years of development and technology transfers, however, exploitation was paused indefinitely in August 2012 when the financial viability of the project came into question. Commercial production was meant to have started in 2013, but is currently postponed until 2018 at the earliest (ibid.). Despite the major setback Russia faced with the Shtokman project, Russia began exploitation of its first commercial offshore

Arctic drilling project in December 2013, in Gazprom's Prirazlomnoye oil field in the Pechora Sea. The Prirazlomnoye field, which is estimated to contain over 70 billion tons of recoverable oil, began production in 2014 after several delays, and is touted by the Kremlin as an example of future Arctic projects. In the longer term, it is clear that both the Kremlin and energy firms expect Arctic resource extraction to be profitable. Despite sanctions, Exxon, a major Arctic player in Russia (in partnership with Rosneft) recently increased its Russian holdings from 11.4 million acres in 2013 to 63.7 million acres in 2014, with exploration rights expiring between 2017 and 2023 (*Bloomberg News*, March 3, 2015).

Transit and the Northern Sea Route

As polar ice melts and global trade increases, the Northern Sea Route (NSR) will almost certainly become a more heavily utilized shipping passage. For instance, a voyage from Shanghai to Hamburg via the NSR is roughly 30 percent shorter than traveling via the Suez Canal, and offers the advantage of avoiding heavily pirated waters (Council on Foreign Relations 2014). The NSR is open for navigation from June to November and depends on extensive infrastructure, including a fleet of icebreakers, ice-class cargo ships, port facilities, aerial reconnaissance and meteorological stations (Roi 2010). Very few cargo vessels currently use the route, but the number is increasing: from five in 2009 to 70 in 2013 (Council on Foreign Relations 2014). Recognizing the impending increase in polar sea traffic, the International Maritime Organization adopted the Polar Code in November 2014, which lays out provisions related to safety and the environment for all vessels in polar waters. However, major issues remain for vessels traveling via the NSR, namely unpredictable weather, unpredictable costs levied by the Russian government, and the expense of a mandatory icebreaker escort (Lloyd's of London and Chatham House 2012).

According to its Arctic Strategy, Russia considers the Northern Sea Route (NSR) to fall within its national borders. Russia has claimed the NSR as part of its EEZ under Article 234 of UNCLOS.[2] The Strategy outlines the Kremlin's vision for the "use of the North Sea passage for international maritime navigation within the jurisdiction of Russian federation and in accordance with Russia's international agreements" (President of the Russian Federation 2008). Moscow's characterization of the NSR as a national transportation route within Russian jurisdiction reflects the increasing trade significance Moscow expects the NSR to have in the medium to long term (Zysk 2010). However, the largest problem facing Russia's development of the NSR is the absence of both land-based and naval infrastructure

(Carlsson and Granholm 2013). To expand the NSR's capacity for major shipping, Russia needs to develop a modernized icebreaker fleet, create better infrastructure along the route, and enhance its Arctic search and rescue capacity. The majority of Russia's currently operational icebreakers are to be decommissioned by 2020, and it is uncertain whether the current rate of fleet renewal will be sufficient to promote Russia's interests along the NSR (ibid.). Many of the ports along the NSR do not have sufficient depth to receive large ships, so major deep-sea port infrastructure development is also needed (ibid.).

Finally, Moscow must codify a schedule of costs for icebreaker escorts and other services rendered along the NSR. Shipping executives have cited the worry that the Kremlin could unexpectedly hike NSR access and transit fees, which will likely deter any major increase in NSR use (ibid.). Moreover, populations in Russia's Arctic regions are declining, which could complicate the construction and maintenance of regional infrastructure.

Militarization of the Arctic

The media often points to the Arctic as the site of a "new Cold War," particularly since Russia is the only non-NATO member of the five littoral Arctic states.[3] However, this narrative remains premature. Although Moscow has demonstrated an increasing willingness to protect Russia's economic and trade interests in the Arctic through military posture, especially in the past several years, its Arctic military capacity remains limited and will continue to face the same challenges that confront Russia's overall military modernization plan (Heininen et al. 2014). Although Russia's Northern Fleet's remaining ballistic missile submarines retain a strategic deterrence function, Russia's military presence and infrastructure in the Arctic has significantly degraded since the fall of the Soviet Union, and its military assets are currently limited to protecting its own Arctic interests rather than making encroachments on other Arctic states (Roi 2010). However, efforts are currently underway to bolster Russia's Arctic military presence, and the Kremlin's December 2014 Military Doctrine was the first such document to specifically highlight the importance of "ensuring the national interests of the Russian Federation in the Arctic" (Office of the President of Russia 2014).

According to its Arctic Policy, Russia seeks "the protection and defense of [its] national boundary…and the provision of a favourable operating environment in the Arctic zone for the Russian federation, including the preservation of a basic fighting capability of general purpose units" (President of the Russian Federation 2008). There is no doubt that the Kremlin

is making serious efforts to boost its military capacity in the Arctic. At the end of 2014, Russia established a new strategic military command for the Arctic, the Northern Fleet-Unified Strategic Command, and outlined plans to build or modernize military bases, airfields, and radar sites in the region (*Itar-Tass*, December 1, 2014). Its Northern Fleet is due to receive 40 new ships by 2020, including six multi-role nuclear and conventional submarines (*Itar-Tass,* April 8, 2014). Russia has also increased military exercises in the Arctic in recent years, announcing in 2014 that its Marine Infantry Brigade would undergo Arctic training in 2015 (Stratfor Global Intelligence 2015). In March 2015, President Putin called snap military exercises involving over 40,000 troops in the Arctic regions. According to Defense Minister Sergei Shoigu, the drills were meant to assess combat readiness of the Northern Fleet in ensuring Russia's Arctic security (*Itar-Tass*, March 16, 2015). NATO members have observed an increase in Russian long-range air patrols in the Arctic space since Russia's annexation of Crimea.

Finally, Putin recently established Russia's Arctic Commission, tasked with coordinating federal and regional authorities in the implementation of Russia's Arctic policy (*Kommersant*, March 13, 2015). While the purpose of the Commission is ostensibly to coordinate primarily economic and development-related affairs, it will be headed by Dmitry Rogozin, Deputy Prime Minster for military-industrial affairs. Rogozin, who recently referred to the Arctic as "Russia's mecca," is well-known for his bellicose nationalism; he recently raised Oslo's ire when he visited Norway's Svalbard island unannounced on an Arctic tour, despite Western sanctions prohibiting him from doing so (*RFE/RL*, April 19, 2015). Putin's decision to appoint Rogozin, with well-established ties to Russia's defense sector and security services, signals the Kremlin's increasing propensity to explicitly link military and economic issues in the Arctic.

Despite plans for a military build-up in the region, most commentators contend that Russia's military capabilities in the Arctic will be limited for quite some time. Russian forces are based solely in the European part of the Arctic, meaning that there are vast expanses further east with very limited military presence (Carlsson and Granholm 2013). Russia's ability to finance and complete these additions by 2020 is questionable, and modernization plans may be undercut by increasing isolation from the West—for example, France has refused to fulfill the scheduled delivery of two Mistral-class amphibious assault ships to Russia following its annexation of Crimea. Additionally, Laruelle (2014) notes that "the (very relative) military revival is part of a particular geopolitical context, one

marked by the absence of Arctic institutions to deal with strategic issues," since the Arctic Council expressly prohibits discussion of hard security matters. Tacitly addressing the gap between Russia's stated aims and its capabilities to project military power across its vast Arctic territory, Putin signed a law in April 2014 that permits oil and gas companies to establish their own 'protection units,' thus perhaps implicitly relieving Russia of the responsibility of matching natural resource investment with corresponding military investment (*Barents Observer*, April 23, 2014).

Russia's ability to militarize the Arctic will be seriously constrained by the multitude of factors that hamper the broader modernization of its military: lagging technological innovation, declining demographic trends, and a general lack of financial resources to finance far-reaching reform, particularly given the impact of low global energy prices on Moscow's state budget. However, it is certain that Russia will continue to expand its military capacity in the region as its Arctic economic interests expand. Thus far, Russia's Arctic military build-up has been aimed mainly at protecting coastlines and offshore energy installations. Other Arctic states, including Norway and Canada, have also enhanced their Arctic military capabilities in recent years. Rather than making alarmist declarations of an Arctic Cold War, however, Western policymakers should watch for more provocative actions, which would indicate a shift toward a more confrontational posture. Such actions might include deploying expeditionary forces to territorially disputed areas, refusing to recognize decisions or authority of international organizations, or withdrawing from organizations and conventions pertaining to the Arctic (Gorenburg 2014).

Outlook and Conclusions

There are three major Arctic issues that may stymie the realization of Arctic interests for Russia and other Arctic players in the medium to long term. The first such issue is the possibility of a breakdown in the existing institutional and legal frameworks that have governed the Arctic space to date. For example, worsening relations between Russia and NATO members could lead to increased tensions within existing institutional frameworks such as the Arctic Council and the UN CLCS; should there be a significant breakdown in the dialogue and decision-making bodies of the Arctic, the possibility for confrontation would increase. Thus far, all states have resolved Arctic territorial disputes through the CLCS mechanism. However, in light of worsening relations between Russia and the West over the conflict in eastern Ukraine, it is not unthinkable that an increasingly belligerent Russia would seek to stake its Arctic claims

through more coercive measures.

Second, the unpredictability of natural resources extraction and volatile global energy markets will render Arctic resource extraction unviable in the short to medium term, potentially resulting in an unsatisfied Russian public. Baev (2012) highlights the fact that only about one third of voters in Murmansk Oblast—which is home to the Northern Sea Fleet—supported the ruling United Russia party in the 2011 Duma elections. Several Arctic regions, including Murmansk and Arkhangelsk, could prove troublesome should expectations over regional investment or hydrocarbon wealth go unmet, especially in light of nationalist rhetoric and slow delivery on promises made. Murmansk is home to the delayed Shtokman project, and Arkhangelsk may experience discontent related to delays and cuts to the shipbuilding program there (ibid.). More broadly, considering that seventy percent of Russia's export earnings come from its hydrocarbon wealth, and that existing Siberian oil fields are yielding diminishing returns, Moscow needs its Arctic resources to sustain growth. However, if energy prices remain low in the medium term, making Arctic extraction unfeasible, then broader domestic dissatisfaction with the country's economic development may result, presenting the potential for widespread unrest and a challenge to President Putin's re-election.

Finally, the increasing role that non-Arctic states want to play in the region's management is sure to be an issue of contention between Arctic and non-Arctic states in the future. The 'Arctic Eight' are now vying with non-Arctic international players who contend that they, too, should have a voice in Arctic affairs. Beijing, which now characterizes China as a "near-Arctic state," is particularly focused on gaining recognition as an actor in Arctic affairs, given its rising domestic energy demands and its desire to gain access to Arctic shipping lanes (Council on Foreign Relations 2014). For Moscow, the growing voice of China and other non-Arctic states in the polar region is a development to be prevented, particularly as Moscow feels Beijing pays "only superficial respect to… [Russia's] sovereignty" in the Arctic region (Baev 2013b). Moscow is currently ensuring its privileged Arctic role by adhering strictly to UNCLOS regulations and advocating the resolution of Arctic issues within the Arctic Council framework, where its power is institutionalized (Putin 2014). However, as relations with other Arctic nations sour in the wake of the annexation of Crimea and the conflict in Ukraine, continuing institutional cooperation is not guaranteed.

Thus far, Russia's Arctic policy has been pursued largely along two divergent tracks—the first of which prioritizes international cooperation through established institutions (such as UNCLOS, UN CLCS, the Arctic

Council, and the International Maritime Organization) to settle border disputes and to develop Arctic resources through cooperation with Western firms (Gorenburg 2014). The second policy narrative is more stridently nationalistic, and is aimed at boosting domestic approval of the Kremlin. This discourse seeks to highlight Russia's sovereignty in the region, and emphasizes domestic military build-up. The "lack of alignment between these strategic and policy positions…is an important challenge for Russia's leadership," even more so as Russia's foreign policy becomes increasingly confrontational on other issues, and low energy prices and Western sanctions damage Russia's economy (ibid.).

Above all, the Kremlin views the Arctic as a major symbol of its international status as a great power, and a vehicle to propel economic prosperity (Laruelle 2014). Russia's ambitious Arctic plans, as outlined in major policy documents such as Moscow's Arctic Strategy, Energy Strategy, and National Security Strategy, envision the region as a major driver of Russia's economic growth in the coming years. Nonetheless the severe conditions and high risks associated with all activities in the Arctic have led to delays and problems in the implementation of Russia's Arctic policy thus far. Currently, it seems nearly impossible that the Arctic will provide Moscow with the strategic economic base it envisions by 2020; however, the Arctic's importance for Russia will only increase in the longer term.

The outlook for international cooperation in the Arctic is currently relatively positive, despite worsening relations between Russia and other Arctic states on other issues. Importantly, no "littoral Arctic state has expressed the desire to redraw Arctic land boundaries" (Laruelle 2014). Despite occasionally bombastic rhetoric, Russia's past behavior on Arctic matters demonstrates recognition that cooperation will yield better results than confrontation. Nevertheless, according to Roi (2010) "Moscow is equally determined to assert its status as the greatest Arctic power," and its willingness to push against the West and international bodies during the Ukrainian crisis may be a harbinger of a more assertive stance in the Arctic and around the region.

NOTES

[1] To a maximum of 350 nautical miles. In the extended EEZ, the rights of the coastal state are limited to control over the non-living resources on and under the seabed (Carlsson and Granholm 2013, 17).

[2] UNCLOS article 234 "states that the coastal state has the right to adopt and enforce non-discriminatory laws in the EEZ if it is characterized by ice cover and a severe climate, which could make navigation difficult. The claims on the Northern Sea Route are complicated by the fact that it consists not of a single

shipping lane but of many, some of which are partly on the high seas" (Summers 2010, 29; see also Carlsson and Granholm 2013, 19).

[3] Sample headlines include: "Arctic Cold War is Heating Up" (Moscow Times); "Preventing an Arctic Cold War" (New York Times); "Cold War Echoes Under the Arctic Ice" (WSJ); etc.

BIBLIOGRAPHY

Åtland, Kristian. 2010. "Security implications of climate change in the Arctic." *0*, no. 18: 15.

Baev, Pavel K. 2012. "Russia's Arctic Policy and the Northern Fleet Modernization." Russie.Nei.Visions no. 65.

_____. 2013a. "Putin's Blurred Arctic Vision." PONARS Eurasia, 15 August. <http://www.ponarseurasia.org/article/putins-blurred-arctic-vision>

_____. 2013b. "Russia's Arctic Ambitions and Anxieties." Current History 112 (756): 265.

_____. 2013c. "Sovereignty is the Key to Russia's Arctic Strategy." Strategic Analysis 37(4): 489-493.

Carlsson, Marta and Niklas Granholm. 2013. "Russia and the Arctic: Analysis and Discussion of Russian Strategies." Swedish Ministry of Defense. www.foi. se/ReportFiles/foir_3596.pdf.

Cohen, Ariel. 2011. "Russia in the Arctic: Challenges to US Energy and Geopolitics in the High North," in Blank, Stephen, ed. *Russia in the Arctic.* Carlisle, PA: Strategic Studies Institute, U.S. Army War College (July).

Council on Foreign Relations. 2014"The Emerging Arctic: A CFR InfoGuide Presentation." New York: Council on Foreign Relations. http://www.cfr.org/ arctic/emerging-arctic/p32620#!/.

Economy, Elizabeth. 2014. "Beijing's Arctic Play: Just the Tip of the Iceberg." New York: Council on Foreign Relations(April).http://blogs.cfr.org/asia/2014/04/04/ beijings-arctic-play-just-the-tip-of-the-iceberg.

Fenenko, Aleksei. 2012. "Russia and the Competition for the Redivision of Polar Spaces." *Russian Politics and Law* 50(2): 7-33.

Gorenburg, Dmitri. 2014. "How to Understand Russia's Arctic Policy." PONARS Eurasia (February). http://www.ponarseurasia.org/article/how-understand-russia's-arctic-strategy.

Heininen, Lassi, Alexander Sergunin and Gleb Yarovoy. 2014. "Russian Strategies in the Arctic: Avoiding a New Cold War." *Valdai Discussion Club.* . http:// valdaiclub.com/publication/72820.html.

Konyshev, Valery and Aleksandr Sergunin. 2012. "The Arctic at the Crossroads of Geopolitical Interests." *Russian Politics and Law* 50 (2): 34-54.

Kovalev, S. and L. Gainutinova. 2012. "Opening Up the Arctic: Economic and Geopolitical Aspects." *Russian Politics and Law* 50 (2): 78-87.

Laruelle, Marlene. 2014. *Russia's Arctic Strategies and the Future of the Far North*. Armonk, NY: M.E. Sharpe.

———. 2011. "Russian Military Presence in the High North: Projection of Power and Capacities of Action" in Blank, Stephen, ed. *Russia in the Arctic.* Carlisle, PA: Strategic Studies Institute, U.S. Army War College.

Lloyd's of London and Chatham House. 2012. "Arctic Opening: Opportunity and Risk in the High North." London: Chatham House. http://www.lloyds.com/~/media/Files/News%20and%20Insight/360%20Risk%20Insight/Arctic_Risk_Report_webview.pdf.

Masters, Jonathan. 2013. "The Thawing Arctic: Risks and Opportunities." New York: Council on Foreign Relations (December). http://www.cfr.org/arctic/thawing-arctic-risks-opportunities/p32082.

Ministry of Energy of the Russian Federation. 2009. "ЭНЕРГЕТИЧЕСКАЯ СТРАТЕГИЯ РОССИИ на период до 2030 года [Russian Energy Strategy up to 2030]." http://energystrategy.ru.

President of the Russian Federation. 2008. "Основы государственной политики Российской Федерации в Арктике на период до 2020 года и дальнейшую перспективу [Principles of the Russian Federation's Policy in the Arctic until 2020 and beyond]." President of the Russian Federation. 18 September 2008. http://www.scrf.gov.ru/documents/98.html.

Office of the President of Russia. 2014. "Военная доктрина Российской Федерации [Military Doctrine of the Russian Federation]." http://www.rg.ru/2014/12/30/doktrina-dok.html

Piskunova, Ekaterina. 2010. "Russia in the Arctic: What's lurking behind the flag?" *International Journal*: 851-864.

Putin, Vladimir. 2014. "Meeting of the Security Council on state policy in the Arctic" (transcript). Website of the President of Russia. http://eng.kremlin.ru/news/7065.

Roi, Michael L. 2010. "Russia: The Greatest Arctic Power?" *The Journal of Slavic Military Studies* 23(4): 551-573.

Stratfor Global Intelligence. 2015. "Russia's Plans for Arctic Supremacy." https://www.stratfor.com/analysis/russias-plans-arctic-supremacy.

Russian Federation. 2013. "The Russian Arctic Strategy for the Period up to 2020." http://www.star.nesdis.noaa.gov/star/documents/meetings/Ice2013/dayOne/Sokolov_Russian.pdf.

Summers, Christopher. 2010. "Arctic Solutions: The Frozen (Thawing) Relations of the High North." Paris: IFRI (Institut Francais des relations internationales).

Trenin, Dmitri. 2014. "Five Issues at Stake in the Arctic." Moscow: Carnegie Moscow Center.

Trenin, Dmitri, and Pavel K. Baev. 2010. "The Arctic: A View From Moscow." Washington, DC and Moscow: Carnegie Endowment for International Peace.

United Nations. "Commission on the Limits of Continental Shelf Concludes Thirty-Fourth Session." United Nations Press Release. 13 March 2014. http://www.un.org/News/Press/docs/2014/sea1999.doc.htm.

Voronkov, L. 2012. "Russia's New Arctic Strategy." *International Affairs* (Moscow) 2: 140-154.

Voronov, Konstantin. 2012. "The Arctic Horizons of Russia's Strategy: Current Trends." *Russian Politics and Law* 50 (2): 55-77.

Zysk, Katarzyna. 2010. "Russia's Arctic Strategy: Ambitions and Constraints." *Joint Force Quarterly* 57 (2): 103-110.

_____. 2011. "The Evolving Arctic Security Environment: An Assessment." in Blank, Stephen, ed. *Russia in the Arctic.* Carlisle, PA: Strategic Studies Institute, U.S. Army War College.

3

MEDICAID ENROLLMENT AS A CONDITION OF DRUG COURT PARTICIPATION IN NEW JERSEY

Abby McCartney

In New Jersey, drug courts are a successful and growing tool for reducing incarceration and recidivism of non-violent drug offenders by redirecting them into treatment programs. However, funding and capacity constraints have limited the expansion of these programs. The recent expansion of Medicaid in New Jersey will make many more participants eligible for health benefits, largely funded by the federal government. This paper argues that drug court participants who qualify should be required to enroll in Medicaid as a condition of their participation. Medicaid benefits can then be used to cover much of the cost of substance abuse treatment, freeing up state funds to enhance support services and expand capacity for mental health and substance abuse treatment in New Jersey.

Repeated incarceration of people who struggle with substance abuse is a vicious cycle that has plagued American communities for decades. Since "tough-on-drugs" laws took effect in the late 1970s and early 1980s, millions of people have been incarcerated for possession, sale, or manufacturing of illicit drugs (Boyum and Reuter 2005). Incarceration, in turn, can

Abby McCartney is a 2015 graduate of the Master in Public Affairs program at Princeton University's Woodrow Wilson School of Public and International Affairs. She can be reached at abby.m.mccartney@gmail.com. Special thanks to Heather Howard, Sara Bencic, Evan Goldstein, Katie Greene, and Emily Black for their helpful guidance and feedback.

make it more difficult to find and hold a job, since many employers are reluctant to hire candidates with criminal records. This leaves parolees with few options beyond returning to drug use or criminal behavior. As a result, recidivism rates are stubbornly high, with nearly half of released prisoners being rearrested within a year of their release (Visher et al. 2008).

The population affected by these policies is massive: in 2013, there were 1.5 million arrests for drug crimes in the U.S. (13.2 percent of all arrests); as of 2012, there were over 210,000 drug offenders in state prisons (Federal Bureau of Investigations 2013; Carson 2014). According to a 2004 survey of incarcerated populations, over half of all prisoners met the medical definition of substance abuse dependence or abuse problems at the time of their arrest (Franco 2010). Over the last 30 years, the New Jersey prison population has increased from 6,000 to 27,000. The re-arrest rate of released prisoners is 53 percent within three years of release. New Jersey prisons cost taxpayers over $900 million per year, or $34,600 for each incarcerated prisoner (Office of Transitional Services 2014).

Drug courts arose as an alternative-to-incarceration program that attempts to reduce incarceration and recidivism rates by redirecting drug offenders into community treatment programs. Since the first drug court began operating in Florida in 1989, the model has been replicated to include 2,361 courts across the country, including 21 in New Jersey (Franco 2010; Travis 1995). There are many variations of these courts focused on specific populations, such as juveniles, veterans, and tribal communities; they are referred to by the general term "problem-solving courts." The typical model involves a nonviolent drug offender opting to participate in an in-patient or out-patient treatment program, pass frequent drug tests, be supervised by a special drug court parole officer, and participate in other support services such as housing and job training, in exchange for a suspended prison sentence.

The case may be processed either under deferred prosecution (also known as diversion) or post-adjudication. In the first case, prosecution of the case is suspended while the offender participates in drug court; if the program is successful, the charges are dropped, but if the participant fails to complete the treatment, he or she can be prosecuted for the original offense. Under post-adjudication, the participant first pleads guilty to the charge(s), but the sentence is deferred or suspended in exchange for drug court participation (Franco 2010). In both cases, offenders who fail to complete the requirements can face the same sentences they would have been subject to in lieu of drug court participation. In addition, judges have the discretion to impose a variety of sanctions, including fines and short

periods of incarceration (sometimes known as "flash incarceration").

A Government Accountability Office meta-analysis of a number of program evaluations found that drug courts significantly reduce recidivism, and a multi-site evaluation by the National Institute of Justice (NIJ) found significant drops in drug use (Franco 2010; US Government Accountability Office 2011). Drug courts look especially appealing when compared to traditional incarceration: the NIJ evaluation found that after eighteen months, 46 percent of drug court participants reported any drug use in the past year, versus 68 percent of the comparison group, and 36 percent of drug court participants had been involved in a drug-related criminal activity, versus 50 percent of the comparison group (Franco 2010). Incarceration and drug use make a dangerous combination: in the first two weeks following release, a returning prisoner's chances of dying from a drug overdose are 129 times that of the general population (La Vigne et al 2008). According to an Urban Institute analysis, drug courts generate $2.21 in economic benefits for every dollar of spending, for a net annual benefit of $624 million, mostly due to reduced recidivism costs (Franco 2010).

There are limits to drug courts' effectiveness. Only four to ten percent of eligible offenders actually participate in drug courts nationwide (Franco 2010). In most places, only non-violent offenders are eligible, and people may be disqualified for previous convictions for other offenses, including theft, fraud, prostitution, domestic violence, or even marijuana use. In addition, capacity constraints limit participation. Critics have alleged that drug court participants often face logistical barriers to meeting program requirements such as transportation or financial obstacles; sanctions can be so harsh that offenders can end up spending more time in prison than they would have under a traditional sentence (Riggs 2012).

Nonetheless, New Jersey has recently expanded its commitment to drug courts as an alternative to incarceration. Drug court graduates in New Jersey have a re-arrest rate of only 18 percent within three years, compared to 53 percent statewide (Chesler 2013). A bipartisan bill passed in 2013 expanded eligibility to people who had a previous record of certain crimes, such as armed robbery, and allowed judges in certain courts to require drug court participation as part of an offender's sentence. The law, championed by Republican Governor (and former prosecutor) Chris Christie, also made New Jersey the first state in the nation to allow mandatory sentencing of drug court participation. The following year saw a sharp jump in the number of people participating in drug court. Since the policy change, there have been only five mandatory sentences, but the number of volun-

tary participants jumped from 129 in the second half of 2012 to 267 in the same time period in 2013 in the courts affected (Wichert 2014).[1]

The main barriers to program expansion are finding a sufficient number of appropriate treatment providers and maintaining a high level of quality. State funding for drug treatment programs is limited, and in some cases, participants are held in jail while the state searches for a spot in a treatment program, which could undermine the expected positive effect of the alternative sentence (although it also may prevent dangerous overdoses in the short term) (Wichert 2014). Nonetheless, drug courts play an important role: they are currently the only state-subsidized drug rehabilitation program in New Jersey (Chesler 2013).

IMPLICATIONS OF MEDICAID EXPANSION

As part of the Affordable Care Act (ACA), New Jersey recently expanded Medicaid to cover single adults without dependents earning up to about $15,000 per year (along with several other populations) (Gould 2013). This expansion has major implications for people in need of substance abuse treatment. A study by the Substance Abuse and Mental Health Services Administration found that nationwide, 59.6 percent of people who sought substance abuse treatment were uninsured. Among people referred by the criminal justice system, that figure was even higher: 67.5 percent. Of the people who sought but did not receive treatment, unaffordable cost was the most common reason (Substance Abuse and Mental Health Services Administration 2014).

There are two main implications of Medicaid expansion for the New Jersey criminal justice system. First, the vast majority of prisoners being released from correctional facilities will be eligible for Medicaid. Across the country, many states are developing processes to enroll re-entering prisoners as part of their parole process; for instance, Massachusetts enrolls eligible paroled prisoners automatically and gives them their MassHealth card upon release, which has increased the percentage of covered parolees from 13 percent to 60 percent (La Vigne et al 2008). The New Jersey Office of Transitional Services already has a process in place to connect released prisoners to social services, which could be modified to include automatic Medicaid enrollment (Office of Transitional Services 2014). Similar programs have generated political controversy in other states: some conservatives, in particular, object to spending taxpayer resources on convicted criminals, rather than more sympathetic portions of the Medicaid-eligible population (Berry 2014). However, the eventual cost savings to taxpayers in reduced risk of overdose, relapse, and re-arrest in

the period immediately following parole make it a responsible investment. Second, many drug court participants are newly eligible for Medicaid and can be enrolled as part of their treatment protocol, leading to lower costs for the state and better continuity of care for participants. Because the Medicaid expansion is fully funded by the federal government until 2016 and Medicaid is required to cover substance abuse and mental health treatments, drug court offenders can obtain treatment under Medicaid, freeing up state funds that can be put to use providing wraparound support services (such as housing and job training) or improving capacity in the substance abuse treatment system more broadly.

This proposal is much less straightforward than the reentry enrollment proposal discussed above and will be the focus of the remainder of this paper. The next section will unpack some of its anticipated benefits and potential obstacles. The final section will discuss likely political support and opposition.

Benefits and Obstacles of Medicaid Enrollment for Drug Court Offenders

There are two main benefits to requiring eligible drug court participants to enroll in Medicaid as a condition of their participation: continuity of care and reduced costs to the state.

Continuity of Care

The first benefit to requiring Medicaid enrollment as a condition of drug court participation is that it could improve the continuity of care for participants. Mandatory Medicaid enrollment would address the low insurance coverage rates of the population receiving substance abuse treatment. The justice-involved population constitutes a significant segment of the patients receiving substance abuse care: nationally, about 40 to 50 percent of referrals come from the criminal justice population in some way (Trick and Sannah 2009). Over two-thirds of this group is uninsured, the highest rate of any referral source (Substance Abuse and Mental Health Services Administration 2014). Even among New Jersey drug court graduates – a group that has navigated the criminal justice and drug treatment systems relatively successfully – only 51 percent of participants had medical benefits at the time of their drug court graduation.

Drug courts have a mixed record of preventing relapses after program completion (Franco 2010). It is not surprising that participants who respond well to the highly structured environment of treatment and drug court, which includes frequent accountability checks, might have a difficult

time sustaining the same level of commitment once the program ends. This difficulty is compounded by losing access to a regular source of care. Providing care through Medicaid would ensure that participants could keep the same providers after their drug court programs end, including medical professionals with whom they already have a relationship. This could improve the long-term effectiveness of the treatment program.

In addition, it is worth noting that the Affordable Care Act also requires private insurance plans to cover mental health and substance abuse treatment services as part of the required package of essential health benefits (Folger 2013). This means that drug court participants who have access to private insurance can also use those benefits to cover the costs of their treatment. However, the population of drug court participants covered by private insurance is likely to be relatively small compared to the population eligible for Medicaid, making this a tangential rather than central strategy for improving continuity of care.

New Jersey should not expect to completely solve the problem by enrolling participants in Medicaid or private insurance. A study of three states that have undertaken extensive efforts to expand insurance access (Massachusetts, Vermont, and Maine) found that 20 to 30 percent of those receiving substance abuse treatment were uninsured, compared with 2 to 8 percent of the general population (National Association of State Alcohol/ Drug Abuse Directors 2011). Even with aggressive Medicaid enrollment efforts, then, New Jersey should not expect that 100 percent of drug court participants would end the program with insurance. However, reducing uninsurance rates in these populations would not only expand access to care and improve consistency of treatment, but would also provide a more stable source of funding for treatment providers, allowing them to increase their capacity.

Reduced Costs to the State

The state of New Jersey currently spends an average of $11,379 per drug court participant each year. This is substantially less than the cost of incarceration ($34,600), but still a significant investment of state resources. The highest expenses come in the first year of the program, when participants receive either residential or intensive outpatient therapy (of varying lengths, depending on the situation) and appear weekly in court. This phase can cost up to $25,813 per participant. The drug court program lasts for several years and diminishes in intensity, concluding with a probationary period that costs only $3,133 per participant per year (New Jersey Courts 2010).

Drug courts are currently funded from a variety of sources, including

state substance abuse block grant funding, grant or community funding, participant self-pay, negotiated contracts with treatment providers, and existing private or public health insurance. Medicaid is already a substantial source of funding for participants who are eligible. However, the changes brought by the Affordable Care Act will make a much larger percentage of the drug court population eligible and will significantly reorder the funding scheme in states participating in the Medicaid expansion (Frescoln 2014).

Even if every participant were eligible for Medicaid and enrolled in the program, Medicaid reimbursements would not cover the total costs. New Jersey has relatively low Medicaid reimbursement rates that do not equal the full cost of care in most cases (Jeffers 2014). Medicaid places some limits on covered services, including a 1965 regulation that prohibits billing for residential services received in facilities with more than sixteen beds; other state and federal funds will still be needed to cover these gaps (Frescoln 2014). In addition, the total cost figure includes the cost of legal counsel, court appearances, probation monitoring, and support services such as helping participants obtain a driver's license and employment, which are not medical services and therefore would not be covered by Medicaid.

However, providing treatment through Medicaid would lead to substantial cost savings. For instance, suppose a participant needs 30 days of inpatient substance abuse therapy in their first year of participation, followed by six months of intensive outpatient care (three sessions per week) and then one year of regular outpatient care (one session per week). Medicaid would pay $135 per day for the inpatient care and $55 per appointment for therapeutic care in the community (New Jersey Medicaid Management Information System 2013). This would add up to $4,050 for 30 days of inpatient care, $3,960 for the intensive outpatient period, and $2,860 for the period of regular outpatient care. In total, Medicaid would reimburse providers for $10,870 over two years, which is about 48 percent of the total cost of drug court participation over that time period.

There are many possible uses for these savings. The major limit on the expansion of drug courts and other substance abuse treatment programs in New Jersey is the lack of qualified providers who can provide the relatively intensive services needed. New Jersey currently has 351 substance abuse treatment facilities, 56 percent of which receive some kind of public funding (Substance Abuse and Mental Health Treatment Administration 2008). Because New Jersey's Medicaid reimbursement rates are low and private insurance may not cover substance abuse and mental health treatment, there is little funding to support the larger mental health provider workforce that is needed (Jeffers 2014). The surplus created by using Medicaid funds

for current drug court treatments could therefore be used to expand treatment capacity, perhaps by establishing a start-up fund to help non-profits create new treatment centers or by creating scholarships for people who want to become licensed counselors. In addition, they could be used to raise Medicaid reimbursement rates for mental health and substance abuse treatment, which would create a steady stream of funding that would make serving low-income populations more financially feasible in the long run. Alternatively, the money could be used to expand the wraparound support services offered to drug court participants, such as job training, education, and assistance finding affordable housing (*Cleveland Plain Dealer*, May 20, 2013).

Obstacles

There are several potential obstacles to this proposal in addition to political resistance, which will be discussed in the next section.

First, while the regulations governing the drug court and Medicaid programs are state-level decisions that could be modified without state or federal legislation, Medicaid is a joint federal-state program. The Medicaid expansion is currently fully financed by the federal government, which may resist unilateral attempts by states to transfer funding commitments onto the federal budget (Kaiser Family Foundation 2015).[2] Thus far, the federal government has been generous in granting states flexibility in how they implement their Medicaid programs, and eligible drug court participants frequently enroll in Medicaid benefits as part of their treatment protocol, although no state has yet made it a condition of participation (Bureau of Justice Assistance Drug Court Technical Assistance/Clearinghouse Project 2014). The usefulness of Medicaid funds was quite limited before the ACA, since eligibility was largely limited to individuals with disabilities and women with dependent children. Now, many drug court participants are entitled to Medicaid benefits on the basis of their income, including single adults without dependents, making the funding stream much more valuable to problem-solving courts.

Attempts to use Medicaid funds to treat incarcerated populations have already met with resistance from some federal lawmakers, who see states as bending the rules of the program to avoid their financial obligations.[3] Senator Kent Conrad (D-North Dakota) has criticized the use of Medicaid funds to pay for medical costs of incarcerated prisoners, which states are legally obligated to cover, saying, "It starts to look a little like a scheme by the states and local jurisdictions to avoid responsibilities that are really theirs" (Chakraborty 2014). Although drug court participants

are not incarcerated, Medicaid is meant to be a "payer of last resort," so an explicit proposal to shift drug court costs to Medicaid could meet with similar opposition.

Medicaid's coverage requirements also do not align perfectly with the drug court system. In order for Medicaid to cover a service, it must be voluntary and medically necessary (Oregon Addictions and Mental Health Division 2007). While the vast majority of drug court participants in New Jersey volunteer for the program, state law now allows judges to sentence offenders to drug court, which could make them ineligible for Medicaid coverage, since their participation is no longer voluntary.

Medical necessity and provider choice present further complications. While providers, rather than the court, should always determine a participant's treatment plan, criminal justice officials, medical providers, and insurance agencies can disagree about what constitutes a medically necessary service. For instance, insurers are sometimes reluctant to pay for inpatient treatment for addictions that do not require medical detoxification (Frescoln 2014). Furthermore, Medicaid regulations require patients to have a choice of providers; drug courts may struggle to offer patients a range of providers that are in their network and have an established relationship with the program, especially if participants are enrolled in Medicaid managed care plans, which have more limited networks (Frescoln 2014).

The federal Center for Medicare and Medicaid Services (CMS) could therefore decide that drug court treatment was not eligible for Medicaid coverage, either because it is currently funded by the state or because it does not meet their definition of eligible medical care. For this reason, close coordination (or negotiation) with CMS would be necessary for the success of this proposal.

Although some counties have already made efforts to use Medicaid benefits to pay for a greater percentage of drug court treatment, so far these initiatives have been scattered across the country and have not attracted much attention. As the Medicaid-enrolled population grows and more states make concerted efforts to link Medicaid enrollment with other state services, CMS may need to issue guidance about the circumstances under which Medicaid can be used to replace or supplement state-funded substance abuse treatment.

In addition, there could be practical problems with moving drug court participants into Medicaid. Drug courts already have established relationships with treatment providers, some of whom may not currently accept Medicaid as payment due to its low reimbursement rates. Providers might be resistant to the proposal, as Medicaid is likely to pay lower rates for their

services. Although the state should agreed to "hold harmless" providers by making up the difference between Medicaid rates and current payments, a dual payment system would still create a logistical burden for providers and program administrators. Some states have reported administrative difficulties with Medicaid reimbursement, including problems with interruptions in coverage stemming from incarceration (Bureau of Justice Assistance Drug Court Technical Assistance/Clearinghouse Project 2014). Smaller providers may struggle with Medicaid's complex billing process and lags in reimbursement (Frescoln 2014).

These administrative challenges are complicated by the fact that not all drug court participants are eligible for Medicaid, even under the expansion. The court could not require enrollment for people who are ineligible, so providers would have to manage two separate systems of payment. Of course, many providers already manage separate procedures for public and private insurance. On the whole, these problems are offset by the benefits to providers of serving a newly insured population, which could create more stability of funding and provide incentives for providers to partner with drug courts in order to access a population that they might not otherwise be able to reach. In addition, drug court participants can choose to continue substance abuse and mental health treatments from the same providers even after being formally discharged from drug court, creating a long-term pool of potential clients.

Political Concerns

Political support

Political support for this proposal would most likely come from advocates of criminal justice reform, advocates for mental health and substance abuse treatment, and state leaders who support expanding the drug court program. Criminal justice reform currently has broad appeal across the political spectrum, due to widespread agreement that mass incarceration has been ineffective at fighting drug use and violence. New Jersey political leaders from Democratic Senator Cory Booker to Republican Governor Chris Christie have supported drug courts as an alternative to incarceration and a way to save the state money, and, as noted above, Christie championed a bill expanding the program's eligibility that passed the state legislature with bipartisan support in 2012 (Chesler 2013). Because this proposal would substantially reduce the operating costs of the program from the state's budgetary perspective, it would make it possible to expand drug courts to serve many more eligible offenders, a stated goal of Governor Christie.

Mental health and substance abuse advocates would also likely support

the proposal because of its potential to increase the amount of treatment available across the state, including for people outside the criminal justice system. While these facilities might be reluctant to accept Medicaid's lower reimbursement rates, if they were assured of receiving the same level of funding as under the current policy, they would likely support an expansion of drug court programs, especially if it came with an additional pot of money to help them expand their services.

Although CMS has some reason to be resistant to this policy change, it also has a political interest in expanding Medicaid to as many people as possible. The extensive media coverage given to enrollment numbers and the declining uninsurance rate over the last year illustrates the political benefit of expanding coverage. Medicaid is already being used to cover substance abuse treatment for some participants, so this change can be presented as an expansion and formalization of existing practice. Drug courts also present a built-in opportunity to reach a population that is unlikely to seek out health insurance independently, as well as an opportunity to provide continuous access to care for a population that desperately needs it. Consistent substance abuse treatment could also reduce long-term Medicaid costs if it keeps participants out of the emergency room. CMS therefore has several reasons to support the policy change as well as reasons to oppose it.

Political opposition

This proposal could meet with political opposition from several sources. First and most basically, requiring enrollment in a health insurance program as part of a criminal sentence could be controversial, both because it could be seen as an infringement on personal liberty and because it frames health insurance as a sanction rather than a benefit. Although the ACA contains an individual mandate for insurance coverage that has been declared constitutional by the Supreme Court, that decision rested on the option to "opt out" of insurance coverage by paying an annual tax (*National Federation of Independent Business et al. v. Sebelius et al.* 2012). Making Medicaid enrollment part of a criminal sentence would remove that option and potentially create backlash. However, most drug court participants already opt into the program voluntarily, and Medicaid charges very low fees compared to private insurance. For these reasons, the requirement is unlikely to attract widespread resistance from program participants.

Opposition from outside political groups is a more serious concern. After a study found that up to one third of people newly eligible under the Medicaid expansion could be people with a criminal record, conservatives

began to protest, arguing that a program created to serve the "deserving" poor is now being used to pay for health care for criminals (Chakraborty 2014). Given the politically charged nature of anything having to do with the ACA, there is a real risk of a political firestorm over using Obamacare to pay for drug treatment for criminals. (Never mind that the state is already paying for some of this treatment out of its own pocket.) This could be enough to discourage Governor Christie from offering his political support, given his campaign for president in 2016: he may fear that his support will open his campaign up to politically damaging attacks about helping drug users access Obamacare. In the past, Christie has supported drug courts because of their cost savings, but there is no guarantee that this support will continue as he prepares for a national campaign.

In addition, libertarians and liberals who advocate for criminal justice reform sometimes criticize drug courts for doing little to change the underlying "war on drugs" laws that criminalize non-violent behavior (Riggs 2012). They could oppose this proposal on the grounds that it would merely put a "Band-Aid" on the problem, allowing politicians to claim credit for improving the situation without changing the discriminatory dynamics of the criminal justice system. Many advocates favor changing the underlying sentencing laws that mandate long terms of imprisonment for repeat offenders, rather than providing alternatives for only a subset of drug offenders.

Conclusion

New Jersey drug court administrators should require new participants to enroll in Medicaid as part of their treatment program and transfer greater financial responsibility for treatment to Medicaid. They will need to work closely with both CMS and Governor Christie to ensure that Medicaid will support the transition and that the policy has the Governor's political support. Both parties, however, have reasons to like the policy change: increased enrollment numbers for CMS signals success for the ACA, and lower costs for Governor Christie reduces pressure on the state budget.

Cost savings from this change should be used to address the most pressing issue in substance abuse treatment in New Jersey: the limited capacity of treatment providers. There are several ways to do this, including building workforce capacity, providing start-up funds to new facilities, or increasing Medicaid reimbursement rates. However, advocates should fight to keep the cost savings within the drug court or substance abuse treatment systems, rather than applying them elsewhere in the state. It would be easy to divert the funds to other state needs, but the drug court system

serves only a small fraction of those eligible, and expanding it should be a priority.

Expanding drug courts and health insurance coverage for participants has the potential to help many people in New Jersey by giving them the opportunity to address the root cause of their problems, avoid incarceration, and retain continuous access to their treatment providers even once their involvement with the criminal justice system has ended. Despite the political and logistical challenges, it has enormous potential benefits for both the state and the people it serves.

Notes

[1] The policy change is being rolled out on a regional basis, with three New Jersey vicinages adding mandatory sentencing options each year.

[2] After 2016, states will be accountable for an increasing percentage of the cost of Medicaid expansion, reaching 10 percent of the total cost by 2020. This means that the state will have to cover part of the cost of expanding Medicaid to drug court participants, but 90 percent of the funding will come from the federal government, which is still a significant improvement over the status quo.

[3] The ACA Medicaid expansion applies most directly to released prisoners. States are still responsible for most medical costs while prisoners are incarcerated. However, Medicaid can be used to pay for some services for incarcerated people, such as hospitalizations of over 24 hours, including stays in a psychiatric facility.

References

Berry, Susan. 2014. DOJ: At least 35% Americans eligible for Medicaid under Obamacare have criminal histories. *Breitbart.com.* March 17. http://www.breitbart.com/big-government/2014/03/17/doj-at-least-35-americans-eligible-for-medicaid-under-obamacare-have-criminal-histories/.

Boyum, David and Peter Reuter. 2005. An Analytic Assessment of U.S. Drug Policy. The *AEI Press.*

Bureau of Justice Assistance Drug Court Technical Assistance / Clearinghouse Project. 2014. Frequently Asked Questions: Medicaid Coverage for Substance Abuse and Related Services for Drug Court Clients. August 26. http://jpo.wrlc.org/bitstream/handle/11204/847/ACA-Medicaid%20Reimb.8.27.14.pdf?sequence=1.

Carson, E. Anne. 2014. Prisoners in 2013. Bureau of Justice Statistics. September.

Chakraborty, Barnini. 2014. Inmates getting coverage under Obamacare, as states shift cost to feds. *Fox News Politics.* April 6. http://www.foxnews.com/politics/2014/04/06/states-sign-up-inmates-for-obamacare-shift-costs-to-federal-government/.

Chesler, Caren. 2013. New Jersey's Drug Court Program: Making the Sentence Fit the Crime. *New Jersey Spotlight.* October 22. http://www.njspotlight.com/stories/13/10/22/new-jersey-s-drug-court-program-making-the-sentence-fit-the-crime/?p=all.

Federal Bureau of Investigations. 2013. Crime in the United States, 2013: Persons Arrested. http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/persons-arrested/persons-arrested.

Folger, Jean. 2013. Essential Health Benefits Under the Affordable Care Act. *Forbes.* October 11. http://www.forbes.com/sites/investopedia/2013/10/11/essential-health-benefits-under-the-affordable-care-act/.

Franco, Celinda. 2010. Drug Courts: Background, Effectiveness, and Policy Issues for Congress. Congressional Research Service. October 12.

Frescoln, Kirstin. 2014. Engaging with the Affordable Care Act: Implications and Recommendations for Adult Drug Court Professionals. National Association of Drug Court Professionals. May. http://www.ndcrc.org/sites/default/files/17673_nadcp_ntk_aca_v2_2_2.pdf.

Gould, Jessica. 2013. Medicaid expanding in New Jersey, but who will have access? *WNYC News.* December 30. http://www.wnyc.org/story/medicaid-expanding-new-jersey-who-will-have-access/.

Jeffers, Racquel. 2014. Author interview. April 22.

Kaiser Family Foundation. 2015. Medicaid Moving Forward. March 9. http://kff.org/medicaid/fact-sheet/the-medicaid-program-at-a-glance-update/.

La Vigne, Nancy, Elizabeth Davies, Tobi Palmer, and Robin Halberstadt. 2008. Release Planning for Successful Reentry: A Guide for Corrections, Service Providers, and Community Groups. The Urban Institute Justice Policy Center. September. http://www.urban.org/UploadedPDF/411767_successful_reentry.pdf.

National Association of State Alcohol/Drug Abuse Directors. 2011. Policy Brief: Health Reform Implementation Priorities. January. http://nasadad.org/wp-content/uploads/2010/12/NASADADs-Issue-Brief-on-Priorities.pdf.

National Federation of Independent Business et al .v. Sebelius et al. 567 US 32 (2012).

New Jersey Adult Drug Court Program. 2014. New Jersey Statistical Highlights. November 10. http://www.judiciary.state.nj.us/drugcourt/njstats.pdf.

New Jersey Courts. 2010. A Model for Success: A Report on New Jersey's Adult Drug Courts. October.

New Jersey Medicaid Management Information System. 2013. Medicaid Fee for Services. September 1.

Office of Transitional Services, New Jersey Department of Corrections. 2014. Frequently Asked Questions. http://www.state.nj.us/corrections/SubSites/OTS/OTS_faq.html.

Oregon Addictions and Mental Health Division. 2007. Treatment Courts and Medicaid Services. *The A&D Clarifier*. April. http://www.oregon.gov/oha/amh/publications/al-drug-clarifier.pdf.

Riggs, Mike. 2012. Want to go to drug court? Say goodbye to your rights. *Reason*. August 17. http://reason.com/archives/2012/08/17/want-to-go-to-drug-court-say-goodbye-to.

Substance Abuse and Mental Health Services Administration. 2008. New Jersey: States in Brief. http://www.samhsa.gov/data/StatesInBrief/2k9/NEW_JERSEY_508.pdf.

Substance Abuse and Mental Health Services Administration. 2014. Health Insurance Status of Adult Substance Abuse Treatment Admissions Aged 26 or Older: 2011. February 6. http://www.samhsa.gov/data/2k14/TEDS134/sr134-health-insurance-2014.htm.

Travis, Jeremy. 1995. The Drug Court Movement. National Institute of Justice. July.

Tribble, Sarah Jane. 2013. Could Medicaid expansion decrease drug court costs, save local taxpayer dollars? Cleveland judge says yes. *Cleveland Plain-Dealer*. May 20.

Trick, Marcia and Jaclyn Sappah. 2009. Results of Criminal Justice Inquiry. National Association of State Alcohol and Drug Abuse Directors. January. http://nasadad.wpengine.com/wp-content/uploads/2015/03/Results-of-Criminal-Justice-Inquiry-2009.pdf.

United States Government Accountability Office. 2011. Adult Drug Courts. December.

Visher, Christy, Sara Debus, and Jennifer Yahner. 2008. Employment After Prison: A Longitudinal Study of Releasees in Three States. The Urban Institute Justice Policy Center.

Wichert, Bill. 2014. Drug Court admissions on the rise as state looks to expand treatment services. *The Star-Ledger*. January 19. http://www.nj.com/somerset/index.ssf/2014/01/voluntary_admissions_to_drug_court_on_the_rise_in_wake_of_legislative_changes_mandatory_sentence_rul.html.

4

GENDERED AFTERSHOCKS: WOMEN'S EXCLUSION FROM POST-EARTHQUAKE RELIEF AND RECONSTRUCTION IN HAITI

Emily A. Wiseman

Women and girls are more adversely affected than men both during and in the aftermath of rapid-onset natural disasters. The international community has repeatedly called for women's voices to be included in relief and reconstruction efforts in both conflict and natural disaster settings to reduce this vulnerability. Despite this, the case of the 2010 earthquake in Haiti demonstrates that these calls have gone largely unheeded. Viewed more as victims than agents of change and excluded from post-disaster relief and reconstruction efforts, the exclusion of women from relief and reconstruction processes serves to perpetuate, and sometimes exacerbate, gender inequality.

In the wake of rapid-onset natural disasters,[1] it is a common belief among humanitarian organizations that disasters present the opportunity to "build back better" and reduce the exposure of vulnerable groups to the impact of future disasters. Following a disaster, the ways in which priorities are set can

Emily A. Wiseman completed her Ph.D. in International Relations at the Graduate Institute of International and Developments Studies, Geneva in January 2015. This paper is part of a larger dissertation project on gender mainstreaming and humanitarian response. She would like to give special thanks to Professor Elisabeth Prügl for her insightful comments throughout the research process and additional thanks to the Swiss National Science Foundation and the Weatherhead Center for International Affairs at Harvard University for their support. She can be reached at emily.wiseman@graduateinstitute.ch.

either accelerate a country's emergence from disaster or potentially inhibit recovery. One of the most critical factors that will determine the success of reconstruction is the extent to which gender concerns are brought to the fore. Women and girls are often more adversely affected than men during and after natural disasters (Neumayer and Plümper 2007, 551). This is particularly true in low-income countries and among the poor (UNISDR 2009). In the 2004 Indian Ocean Tsunami, women were between four and fourteen times more likely to die than men. In the 1991 Bangladesh cyclone, almost five times as many women died than men (Neumayer and Plümper 2007; Oxfam 2005).[2]

A failure to recognize gender inequalities in the design of post-disaster interventions and relief and reconstruction efforts has been found to increase the vulnerability of women to future disasters (Enarson 2000, vii). As natural disasters increase in frequency and scale, assessing how international organizations respond to known gender inequalities and whether they are reduced or reproduced through post-disaster interventions is important.[3] Through an analysis of the international response to the 2010 earthquake in Haiti, this paper finds that humanitarian interventions marginalized gender concerns. As a result, women were largely excluded from post-disaster relief and reconstruction efforts, and in many cases, this served to not only perpetuate but also exacerbate inequality. This paper concludes that a gender-sensitive approach to disaster reconstruction that recognizes and responds to gender-based inequalities and includes women in relief and reconstruction processes is required to reduce future gender-based vulnerabilities in and following disasters.

Gendered Vulnerabilities and Natural Disasters

The finding that natural disasters do not affect men and women equally was highlighted in a 2007 study that examined 141 countries from 1981 to 2002. The study, by Neumayer and Plümper, found that natural disasters on average kill more women than men or kill women at a younger age than men, and that the stronger the disaster the more women are killed or killed at a younger age (Neumayer and Plümper 2007, 551). Additional factors such as social and cultural inequality, inequalities in exposure and sensitivity to risk, and inequalities in access to resources, capabilities, and opportunities have been found to systematically disadvantage women and girls in disasters (ibid.; Oxfam International 2009, 3). Women's experiences and the impact of disasters are also not universal but are shaped by critical differences grounded in class, caste, age, sexuality, race, ethnicity, and religion

(Enarson et al. 2007, 133; Neumayer and Plümper 2007, 551; Beck 1992, 23; Betts 2010, 363; Hunter 2005, 296). Furthermore, Hannan (2002) and Ginige et al. (2009) highlight that the more limited their access to decision-making, leadership positions, information, and training, the more vulnerable women are to disasters. Women and girls are therefore deemed to be more at risk in disasters not because of their sex but because of social norms and roles that can limit their capacity to respond (Cottrell 2010, 8).

Research has also revealed that natural disasters reinforce, perpetuate, and increase gender inequality and that the potential contributions of women in disaster response are often overlooked. For example, after a disaster, women frequently constitute a disproportionate number of the unemployed. This is because of their more limited mobility stemming from care responsibilities or discrimination, as well as their disproportionate roles in the informal labor market and agricultural sector, which are often most impacted by disaster (Rosenberg 2011, 13). Ultimately, a lack of understanding of such imbalances in disaster interventions can result in the increased economic and social vulnerability of women to future disasters (UNISDR 2009, iv; Enarson 2000, vii). Thus, including women in post-disaster reconstruction processes and disaster risk reduction as both participants and beneficiaries is essential for mitigating this vulnerability and promoting sustainable recovery (Rosenberg 2011, 5).

Ensuring gender equality in disaster interventions requires conducting a gender analysis in the immediate aftermath of the disaster, assessing the risks and vulnerabilities for women and men and opportunities for their inclusion in the reconstruction process. This involves, for example, collecting sex- and age-disaggregated data to target responses appropriately and identifying and promoting inclusiveness with local women's groups and civil society organizations as stakeholders in recovery initiatives. Doing so makes it possible to assess if specific and targeted outreach is required to access a more disenfranchised population, such as women and girls, and how to appropriately tailor such interventions to be culturally and socially responsive and not disenfranchise other vulnerable groups. The World Bank furthermore recommends that during reconstruction, women's leadership capacity be developed by recognizing and supporting the essential contributions women make to family and community recovery, and that training be provided to improve and expand their roles (Rex and Trohanis 2012, 8). Taking such an approach requires humanitarian organizations to recognize that although disasters are often deeply disempowering for women, they also create potential spaces for women's empowerment (Horton 2012; Enarson and Morrow 1998).

Building Back for Half? Relief and Reconstruction in Post-Earthquake Haiti

On January 12, 2010 at 4:53 p.m. local time a large earthquake, measuring 7.0 on the Richter scale, reduced a nation already struggling with the historical weight of slavery, underdevelopment, and internal divisions to rubble. One in seven people was rendered homeless, while approximately 316,000 people died (Zéphyr 2011, 3; Schuller and Morales 2012, 1). An estimated 1.7 million people converged into approximately 1,300 spontaneously and informally built camps, established on both public and privately owned land, primarily near Port-au-Prince (Protection Cluster 2010).

Within hours, humanitarian organizations and aid groups descended upon the capital. With the Haitian government's capacity badly damaged, these organizations were given almost entirely unchecked authority – leading the United States Institute of Peace (USIP) to ask if Haiti had become "A Republic of NGOs" (USIP 2010). Once at full capacity, international organizations were criticized for operating in a manner that was almost entirely disconnected from the population. Operations by the UN Office for the Coordination of Humanitarian Affairs (OCHA), for example, took place behind the heavily guarded walls of the UN Logistical Base in Port-au-Prince, an action that was perceived to reinforce the message that Haitians were "others," dangerous, and must be kept out. Furthermore, aid workers required protection from UN or U.S. soldiers during the distributions of lifesaving food and water, and were often restricted from walking in the streets or through the camps they were serving (Miles 2012, 46).

This separation was further reinforced when, at the International Donors' Conference "Towards a New Future for Haiti" in March 2010 in New York City, the $10 billion dollar commitment made by international donors to rebuild Haiti was kept in the hands of foreign agencies. Following a rush of planning and documentation dominated by foreign experts, the Government of Haiti ceded power to the Interim Commission for the Reconstruction of Haiti (ICRH) (Schuller and Morales 2012, 5).[4] Although the UN Guiding Principles on Internal Displacement call on governments to consult with women and ensure their participation in decisions that impact their lives, women's civil society groups were noticeably absent from the ICRH. The commission was furthermore criticized for being primarily non-Haitian, broad in mandate, and undermining the capacity of the Haitian state (Gros 2011).

A number of factors contributed to women's exclusion. Women faced male-dominated relief agencies, loss of medical and other services, increases

in sexual and gender-based violence, and unclear bureaucratic processes. Often, men received recognition for their roles in search and rescue and reconstruction, while women's roles as caretakers and organizers of informal networks remained invisible and undervalued (Horton 2012, 299). Ultimately, this lack of representation was indicative of a broader missing voice in Haiti's long-term reconstruction prospects and projects. The World Bank and Inter-American Development Bank, for example, dedicated $2.4 million to targeted gender programs, 0.14 percent of the $1.75 billion in total funding allocated for programming. While these organizations also have commitments to mainstream gender in all projects, potentially adding to this total, further analysis by the Gender Action Network found few references to gender or gender-based needs in non-targeted programming (Gender Action 2013, 6).

Numerous strategies exist to include women's diverse experiences and facilitate their participation in post-disaster reconstruction. Among the mechanisms that should be considered are quotas, reserved seats, or special appointments at international planning conferences, camp committees, and within the government (Cupples 2007, 159; Gender Action 2013, 33). Additional avenues include conducting consultations with local beneficiaries and gender-focused civil society organizations, and including women in damage and needs assessments before any action takes place in policy formulation and programming (Gender Action 2013, 33; Rex and Trohanis 2012, 8).

Gendered Vulnerabilities and Post-Earthquake Haiti

In the case of post-earthquake Haiti, while few gender-disaggregated mortality statistics exist, the scale of gender-based needs following the earthquake became rapidly apparent. The earthquake amplified years of systemic gender discrimination in Haiti, which had historically exposed women to higher rates of poverty and violence. Women were over-represented in camp populations and responsible for caring for the vast majority of infants, children, the elderly, and the thousands of newly disabled people (Horton 2012; Enarson et al. 2007, 135). As often occurs in disaster contexts, this outcome reflected pre-earthquake inequalities. Prior to the earthquake, women were the heads of nearly half of Haiti's households, served as the primary caregivers of children, represented 75 percent of the informal labor force, and made up the majority of the workforce in staple crop production (Haiti Equality Collective 2010, 5; Maguire 2012, 2). Yet, as a result of legal, societal, and cultural norms, women were often disenfranchised,

representing less than 20 percent of public sector employees, occupying only 3.6 percent of Haiti's seats in parliament in 2009, and on average earning less than half of men's wages (Rosenberg 2011, 6).

In failing to conduct a gender analysis or consider the cultural needs of the population, the repercussions of the international community's oversight were significant (Mazurana et al. 2011, 73). With regard to water and sanitation, eight months after the earthquake, a study of 90 families in six different camps found that bathing and toilet facilities were poor and considered dangerous for young women and girls. Men were found to try to keep women locked in the toilet and poor security meant that women and girls, who had not been consulted about where latrines were placed, were too frightened to use them (Plan International 2013, 54). Furthermore, pregnancy rates in Haitian camps were found to be three times higher than the previous average urban rate. Although an increase in pregnancy is common after a disaster, two-thirds of the pregnancies in Haitian camps were found to be unplanned and unwanted (ibid., 33). Rape was also cited as the cause for many of these pregnancies, with 14 percent of Haitians reporting that a family member had been raped or sexually abused since the earthquake (CHRGJ 2011, 1; Human Rights Watch 2011, 1). An additional concern facing Haitians living in camps was the precarious economic status that resulted in the increased sexual exploitation of women and girls. In some camps, where male-dominated committees controlled aid distribution, "transactional" or "survival" sex, where women and girls were forced to negotiate sexual favors to meet basic needs and obtain access to money, protection, or shelter, became a common phenomenon and a survival strategy (Patrick 2011; CHRGJ 2011, 6). Women leaders linked post-earthquake economic hardship to a rise in the number of women and girls engaging in sex work (Horton 2012, 302). Finally, women composed the majority of camp residents, a disparity that began immediately after the earthquake and continued three years later (Amnesty International 2013).

Haitian women are historically the *poto mitan,* or center posts, of society, central to revolution and attempts for democratization, serving as heads of the household, pivotal in their role in the family, and acting as community mobilizers. At the time of the earthquake, a strong and vital women's movement existed, born out of years of political upheaval, attempts to achieve justice for female victims of political violence, legal reform, and economic equality (Charles 1995). Yet women were often sidelined, and their valuable knowledge not utilized. The deaths of three of Haiti's advocacy leaders working on behalf of women and girls in the

earthquake were often used as justification for not initially engaging with the local women's movement, which was characterized as being in shambles. This effectively limited the women's movement's involvement in relief and reconstruction plans, as the international community largely failed to consult local women's groups and include them in the reconstruction processes (Horton 2012).

INTERNATIONAL COMMITMENTS FOR INCLUDING WOMEN IN RECOVERY AND RECONSTRUCTION

The exclusion of women from relief and reconstruction goes against international best practices commonly accepted and advocated for by international organizations around the world and grounded in UN Security Council resolutions. In 1998, the United Nations Economic and Social Council requested that a gender perspective be included in all humanitarian activities and policies. Additionally, in 1999 the UN Inter-Agency Standing Committee (IASC) background report provided guidance and direction on why it was necessary to include a gender perspective in humanitarian aid (IASC 1999, 1). This report stated that complex emergencies and natural disasters have a differentiated impact on men and women, which often adversely influences their realization of rights. It further stated that field practice had shown that gender-sensitive humanitarian assistance could help mitigate the different and negative effects of complex emergencies and natural disasters on men and women (ibid.; Van Dijkhorst and Vonhoff 2005, 28). The report called for the further participation of women and women's organizations in capacity building in humanitarian response, as well as in the rehabilitation and recovery phase (IASC 1999, 2). Perhaps most significant is United Nations Resolution 1325, the cornerstone of a requirement to mainstream women's needs and abilities in post-disaster situations. The resolution, passed in October 2000, emphasizes the importance of women's "equal participation and full involvement in all efforts for the maintenance and promotion of peace and security" (United Nations 2000). The resolution expressly called for all parties to take into account the needs of women and girls in the design of refugee camps and settlements, increase the representation of women at all decision-making levels, increase attention to the particular needs of women, and institute special measures to protect women and girls from sexual and gender-based violence. Furthermore, the resolution called for the prominent and meaningful participation of women in reconstruction efforts by expressly calling upon all actors to support and facilitate communication with local women's initiatives (ibid.). Yet, the case of Haiti demonstrates that such

calls have gone largely unheeded, with significant implications for post-disaster reconstruction efforts and success, gender equality, and sustainable long-term recovery. Understanding why this lack of inclusion is occurring may shed light on how to improve women's participation in reconstruction.

Gender and the Post-Disaster Needs Assessment in Haiti

During and immediately after a crisis, national and international actors focus primarily on meeting immediate life-saving needs. These interventions are usually characterized by the deployment of rapid response teams, an assessment of the situation, and quick and technical responses to human suffering. The primary goal of this phase is to "save lives," alleviate suffering, and "protect human dignity" (CWGER 2008, 9). Gender analyses and programming are often foregone in a belief that such considerations and the resultant programming are not necessary for saving lives or that it can be done later (Byrne and Baden 1995, 42). Yet the World Bank maintains that in recovery, the promotion of gender equality is profoundly affected by the degree to which early recovery efforts include such considerations in their initial needs assessments, planning, and programming (Rex and Trohanis 2012, 2). In the case of Haiti, the humanitarian community learned a critical protection lesson when the Inter-Agency Real Time Evaluation highlighted, three months after the earthquake, that agencies that adopted such a position rarely came back to "fix" gender concerns later (Global Public Policy 2010). Ultimately, despite calls by international organizations such as Oxfam International for women and other vulnerable groups to not be forgotten and to be actively included in decision-making based on rapid assessments done with communities, gender was often not included in the rapid assessment phase. This made addressing gender-based needs in the transition to recovery and reconstruction all the more challenging (Oxfam International 2010, 3).

In the weeks and months that followed the earthquake, most individual agencies conducted their own needs assessments, but each had different standards and methodologies, limiting their usefulness for overall analysis or planning. Later, more comprehensive needs assessments done at the cluster level, and complemented by the European Union, World Bank, Inter-American Development Bank, and UN-led Post Disaster Needs Assessment and Recovery Framework (PDNA), culminated in Haiti's National Plan of Action (Patrick 2011, 3). The PDNA was to be a blueprint for Haiti's reconstruction efforts and resource allocation. The assessment was designed to expose the substantial gaps in Haiti's economy, infrastructure,

governance system, environment, and social services, and was intended to offer detailed and constructive recommendations on how to rebuild and improve existing systems. Although the PDNA emphasized the importance of civil society consultation, local voices were often discounted, as it provided no structural framework for their inclusion. Furthermore, while it emphasized the need to clarify the roles and responsibilities of stakeholders so that each could participate and ensure the decision-making process took into account the different factors of vulnerability, it did little to address how to incorporate gender concerns (Haiti Equality Collective 2010, 11). For example, no priority was placed on rebuilding the grassroots movement, community facilities, women's facilities, or the networks of human rights groups. Furthermore, no mechanisms were established that would have required meetings to be participatory, inclusive, democratic, and planned for times and places that accommodated all individuals, including women with children. Such efforts would have allowed for a more inclusive approach. As the 2010 Gender Shadow Report[5] stated, all recovery programs should have been based on empirical evidence about pre-disaster norms and social patterns, rather than on assumptions, which led to exclusion (ibid., 12).

Comprised of eight themes, the PDNA only addressed gender explicitly in one theme – that of "Cross-Cutting Issues" (ibid., 2). Here, the PDNA recognized problems related to gender-based violence rising in IDP camps. This was attributed in part to insufficient police presence. It further emphasized the importance of protecting vulnerable groups, including unaccompanied children and women, against sexual violence, and recognized that much of the political and social unrest and distrust of governance systems following the earthquake correlated with the government's inability to meet the needs of women and children in the camps. Despite attention to these gendered security needs, an analysis of the root cause of these concerns and a comprehensive review of gender-focused governance gaps remained absent from the report (ibid., 3). The report ultimately failed to consider the gender dimensions of reconstructing macroeconomic, social, and environmental policies, as well as infrastructure and governance. The UN's Senior Representative for the PDNA deemed the PDNA's attention to gender as insufficient and consultations with civil society, human rights advocates, and women's networks as incomplete (AWID 2010). Furthermore, in October 2010 Oxfam outlined how the PDNA failed to recognize the role of women, and would be improved by fully recognizing the gender division of labor, particularly in agriculture, in order to promote gender equality (Oxfam International 2010a). A

failure to do so "would exclude women and rural farmers, on whom the development of the nation's rural economy depends," and so the organization called upon donors and governments to invest in the plan as an essential poverty reduction strategy (ibid., 19). They further argued that donors and the government needed to increase the participation of women in reconstruction, from the community level to the highest reaches of government, and develop women's greater economic capacity through the design of projects that enabled them to participate on an equal basis with men through, for example, appropriate childcare and support structures, training, and capacity building (Oxfam International 2010b, 3). Finally, it was argued that rebuilding Haiti should draw on successful initiatives that focused on women and girls, such as microfinance loan opportunities (Oxfam International 2010b, 16).

Ultimately, urgency became the enemy of equality as gender concerns were not seriously analyzed or addressed. As a result of the exclusion of a gender analysis from the reconstruction plan, the Haiti Equality Collective and OECD found that the training, jobs and income generation provided by infrastructure projects mostly went to men and that reconstruction projects advanced without strong consultations from women's groups (Patrick 2011, 4; Maguire 2012, 3; Haiti Equality Collective 2010). The Haiti Equality Collective argued that such assessments did not integrate the voices and participation of women into planning and implementation, ultimately widening the economic gap (ibid., 27). It was also found that little evaluation was done by international organizations to determine the effectiveness of the international response in terms of addressing women's empowerment and the specific needs of Haitian women, men, girls, and boys (ibid.; Patrick 2011). Anecdotal reports indicated that basic "good practices," such as involving female heads of household in food distribution, were not effectively integrated into the response. Although the OECD believed that, following the PDNA, practical steps were eventually taken to include women's groups, there appeared to be no strategic approach to integrating gender considerations, including support services to address violence against women (Patrick 2011, 2). Additionally, several reports surveyed by the OECD found "disturbing" gaps in protection of the rights and safety of children, women and the disabled; the report concluded that in Haiti there had been an over-emphasis on delivering aid safely (protecting convoys of food) to the detriment of basic human safety, including protection from sexual violence (ibid., 4).

Local Action: Haitian Women's Groups

Although the official reconstruction plan and the international community largely failed to include the voices of women's organizations, Haitian women's groups were nonetheless active participants in response, recovery, and reconstruction. Despite their exclusion, the post-earthquake period saw a surge in grassroots, often ad hoc, networks of women. They drew on the Haitian tradition of "one helping the other" and collective work groups that were created in response to the limited assistance provided for women by the Haitian state and NGOs (Horton 2012, 304). Haitian women's and grassroots groups actively coordinated with newly formed IDP and tent communities and helped identify and recruit camp residents to protect women and girls from violence. Women were also instrumental in pushing for collective cooking and feeding strategies and advocating for relief providers to buy local food from female market vendors in order to deliver more nutritious food to residents (Haiti Equality Collective 2010, 9). These organizations worked to bring attention to gender issues in relief and recovery efforts, such as sexual and gender-based violence in the IDP camps, denounced processes that excluded women, and provided their own alternative policy recommendations such as the "Haiti Gender Shadow Report" in response to deficiencies identified in processes such as the ICRH and PDNA (Haiti Equality Collective 2010; Horton 2012, 305). They furthermore took to the streets in protest when rumors surfaced following the 2011 presidential elections that the Ministry of Women's Affairs might be dissolved, stopping any such action from taking place (Maguire 2012, 2).

By 2012, leaders in Haiti's women's organizations began to emphasize the need to move beyond the immediate crisis response and transition to a focus on strategic gender interests (Horton 2012, 305-306). This latter call is where the divergence between local grassroots organizations and the international humanitarian community became most evident. Haitian women's organizations focused on issues such as education and reform of the police and judicial system in order to address women's needs. They also sought to address gender inequalities in Haiti's legal code, including campaigning for a responsible paternity law. Finally, they engaged the state in lobbying for more women to occupy positions of power in political parties, the parliament, and the executive branch (ibid., 305). To this end, a 2011 constitutional amendment to set a minimum quota that women should represent 30 percent of the Haitian legislature was promising (Maguire 2012, 3). Additionally, three years after the earthquake, Haitian

women's organizations were focused on the need to build coalitions and engage in advocacy and education in multiple arenas that included both civil society and the state. This latter point is important as post-disaster funding policies tended to strengthen and intensify the role of international NGOs in Haiti, but not necessarily the state. In contrast, women's organizations viewed medium- to long-term engagement with the state as an essential complement to NGO and civil society work (Horton 2012, 305-306). Finally, local women's groups highlighted historical patterns in emergency response in Haiti, where emergencies have led to abrupt shifts in international donor funding priorities and, as a consequence, undermined local women's efforts to carry out sustained programs to address strategic gender interests such as women's longer-term empowerment and disaster risk reduction, which would have contributed to a more holistic and gender-equal approach to reconstruction (ibid., 300).

Conclusions from Post-Earthquake Haiti

It is well documented that disasters amplify existing social inequalities, and that the exclusion of women from the reconstruction process only serves to amplify this further (Enarson 2000). Post-disaster strategies that ignore the gendered effects of disaster inevitably fail to reduce the inequalities and vulnerabilities that led to such gender disparate outcomes. As the case of Haiti demonstrated, although international resolutions have been established and gender policies and frameworks adopted within humanitarian operations, challenges in implementation remain. Gender-sensitive analyses have yet to permeate humanitarian response operations and become fully institutionalized as a necessary component of the humanitarian and reconstruction ethos. In this context, the implementation of gender analyses and gender-responsive programming is limited.

This occurred in Haiti despite the humanitarian community's documented recognition of the importance of including women in reconstruction efforts and that limiting women's access to decision-making makes them more vulnerable to disaster (Hannan 2002; Ginige et al. 2009). Despite Haiti's strong history of women's mobilization, women were largely excluded from the official reconstruction process. This is both worrisome with regard to gendered social relations but also for the subsequent disasters that have struck Haiti since the earthquake. The work of international and local organizations on gender issues and the exclusion of women leaders in Haiti from relief and reconstruction demonstrate the need to examine the longer-term implications of gender-neutral aid and situate the earthquake and its gendered impacts within a broader context of not only the nation but also

humanitarian and reconstruction discourses relating to women and gender equality more broadly (Horton 2012; Amnesty International 2013).

Policy Recommendations for Enhancing Haitian Women's Participation

Initial reconstruction policies must focus on meeting women's immediate needs: food, clean water, and security. At the same time, however, all reconstruction efforts must be designed with a view toward the future and enhancing women's capacities in ways that foster positive spillover effects (Rosenberg 2011, 19). Resources, financial and human, must be allocated to support women and women's groups who can then help contribute to rebuilding the country. To overcome the unequal outcomes of reconstruction, Haitian women require and are legally entitled to a policy architecture that endorses the full range of their human rights, including social and economic rights. For example:

- Training in new skills, literacy, credit, and business support to help women take part in the economy and support themselves;
- Revision of land ownership policies to help women gain land title;
- Greater access to public services such as housing, healthcare and education; and
- A reformed and responsive judicial system that will both prosecute rape and exploitation and tackle the underlying causes of gender-based violence

(Haiti Equality Collective 2011, 54). Projects and reconstruction plans should include clear gender targets for the participation of women in project activities. For example, women's leadership and caregiving work should be recognized and supported by policy and program mandates and clear resource commitments that enable women to play meaningful, sustained, and formal roles in all stages of the relief and recovery process are necessary (Shuller and Morales 2012, 224).

Furthermore, a more complex understanding of the role of women in Haiti would allow for a more comprehensive understanding of the gender-based needs and gendered vulnerabilities that need to be overcome in assistance. Haitian women should therefore be recognized for their ability to contribute to reconstruction, as it is not possible to for Haiti to "build back better" if over half of its population is excluded and more vulnerable to future disasters and their outcomes. Disasters such as the 2010 earthquake amplify existing social inequalities and the exclusion of women from the reconstruction process perpetuates such negative gender outcomes. It is therefore crucial that a gender perspective be integrated into

all redevelopment policies and planning if gendered vulnerabilities are to be overcome. This requires clear, gender-equal, sex disaggregated indicators to be designed to measure performance at all stages of the project cycle. As previous disaster studies have shown, a failure to do so risks repeating and perpetuating past inequalities and further exacerbating the impact of natural disasters on the most vulnerable populations.

Notes

[1] While the large-scale human displacement in post-disaster and post-conflict context are similar, deliberate destruction and targeted actions are more likely in post-conflict contexts as are the need for peace agreements and the establishment of transitional justice law frameworks (OHCHR 2010).

[2] A study by Oxfam International found that in North Aceh district, 77 percent of deaths in villages were female. Similar trends were found in India and Sri Lanka (Oxfam International 2005; Mazurana et al. 2010).

[3] The number of reported disasters has increased over time, from an average annual total of 90 in the 1970s to almost 450 per year since 2000 (Mazurana et al. 2012, 17).

[4] The ICRH was proposed by the Haitian government "to provide effective coordination and deployment of resources and to respond to the concerns about accountability and transparency." It was set up to approve or reject proposed projects on the basis of criteria that were never published (Willems 41, 2012).

[5] Written by women from diverse backgrounds working both in grassroots communities in Haiti and in the international arena, the Gender Shadow Report was written in an effort to offer stakeholders a set of human rights-based gender interventions for redevelopment efforts and achieve greater inclusion (Haiti Equality Collective 2010).

References

d'Adesky et al. 2010. "Haiti Gender Shadow Report: Ensuring Haitian Women's Participation and Leadership in All Stages of National Relief and Reconstruction." Gender Action: Institute for Development Studies. http://www.bridge.ids.ac.uk/global-resources/resource/A58658.

Amnesty International. 2013. "Haiti: Forced Evictions Worsen the Already Dire Lot of Earthquake Homeless." http://www.amnesty.org/en/news/haiti-forced-evictions-worsen-already-dire-lot-earthquake-homeless-2013-04-23.

Association for Women's Rights in Development (AWID). 2010. "Where are the Women in Haiti's Reconstruction?" http://www.awid.org/Library/Where-are-the-women-in-Haiti-s-Reconstruction.

Byrne, Bridget and Sally Baden. 1995. "Gender, Emergencies and Humanitarian Assistance." Institute for Development Studies. http://www.bridge.ids.ac.uk/sites/bridge.ids.ac.uk/files/reports/re33c.pdf.

Charles, Carolle. 1995. "Gender and Politics in Contemporary Haiti: The Duvalierist State, Transnationalism, and the Emergence of a New Feminism (1980-1990)." *Feminist Studies* 21 no. 1: 135.

Center for Human Rights and Global Justice (CHRGJ). 2011. "Sexual Violence in Haiti's IDP Camps: Results of a Household Survey." March. http://www.chrgj.org/press/docs/Haiti%20Sexual%20Violence%20March%202011.pdf.

Cluster Working Group on Early Recovery (CWGER). 2008. "Guidance Note on Early Recovery." https://docs.unocha.org/sites/dms/Documents/Guidance%20note%20on%20Early%20Recovery.pdf.

Cottrell, Alison. 2010. "Women's Vulnerability to a Seasonal Hazard: Their Capacity to Adapt and Their Resilience." *Journal of Pacific Rim Psychology,* 3:1.

Enarson, Elaine. 2000. "Gender and Natural Disasters." *In Focus Programme on Crisis Response and Reconstruction*, International Labour Organization. http://natlex.ilo.ch/wcmsp5/groups/public/@ed_emp/@emp_ent/@ifp_crisis/documents/pub lication/wcms_116391.pdf.

———. 2012. *Women Confronting Natural Disaster: From Vulnerability to Resilience*. Boulder: Lynne Rienner Publishers.

Enarson, Elaine and Betty Hearn Morrow. 1998. *The Gendered Terrain of Disaster: Through Women's Eyes*. Westport: Praeger.

Enarson, Elaine, Alice Fothergill and Lori Peek. 2007. "Gender and Disaster: Foundations and Directions." *Handbook of Disaster Research*. New York: Springer.

Etienne, Yolette. 2012. "Haiti and Catastrophes, Lessons Not Learned." In *Tectonic Shifts, Haiti Since the Earthquake,* edited by Mark Schuller and Pablo Morales. Sterling: Kumarian Press.

Faedi, Benedetta. 2008. "The Double Weakness of Girls: Discrimination and Sexual Violence in Haiti." *Stanford Journal of International Law* 44.

Global Public Policy. 2010. "Global Public Policy Institute Report on Haiti 2010." March 2014. http://www.gppi.net/approach/consulting/haiti_rte/.

Haiti Equality Collective. 2010. "A Gender Shadow Report. Ensuring Haitian Women's Participation and Leadership in All Stages of National Relief and Reconstruction. A Coalition Shadow Report of the Haiti PDNA." Accessible: http://www.genderaction.org/publications/2010/gsr.pdf.

Hannan, Carolyn. 2002. "Mainstreaming Gender Perspectives in Environmental Management and Mitigation of Natural Disasters." Presented at the Roundtable Panel and Discussion Organized by the United Nations Division for the Advancement of Women and the NGO Committee on the Status of Women, New York, 17 January.

Horton, Lynn. 2002. "After the earthquake: gender inequality and transformation in post-disaster Haiti." *Gender & Development*, 20 (2): 295-308.

Human Rights Watch. 2011. "World Report: Haiti." http://www.hrw.org/world-report-2011/haiti.

Inter-Agency Standing Committee (IASC). 2007. "IASC Handbook for Gender Equality in Humanitarian Action: Women, Girls Boys & Men Different Needs – Equal Opportunities." http://www.who.int/hac/network/interagency/news/gender_handbook_draft/en/.

Inter-American Commission. 2011. "Inter-American Commission on Human Rights." Organization for American States. http://www.oas.org/en/iachr/decisions/precautionary.asp.

IRIN. 2010. "Haiti: Women Demand Role in Reconstruction." http://www.irinnews.org/report/88662/haiti-women-demand-role-in-reconstruction.

Jauhola, Marjaana. 2013. *Post-Tsunami Reconstruction in Indonesia: Negotiating Normativity Through Gender Mainstreaming Initiatives in Aceh*. London: Routledge.

Lauterbach, Claire. 2013. "Building Back by Half? Gender Issues in IFI Investments in Post-Earthquake Haiti." Gender Action.http://www.genderaction.org/publications/buildingbackbyhalf.pdf.

Lonergan, Steve. 1998. "The Role of Environmental Degradation in Population Displacement." *Environmental Change and Security Report* 4: 5-15.

Maguire, Robert. 2012. "Haitian Women: The Centerposts of Reconstructing Haiti." *United States Institute of Peace Peace Brief* 119.

Mazurana, Dyan, Prisca Benelli, Huma Gupta, and Peter Walker. 2011. "Sex and Age Matter: Improving Humanitarian Response in Emergencies." Feinstein International Center, Tufts University.

Miles, Melinda. 2012. "Assumptions and Exclusion: Coordination Failures During the Emergency Phase." In *Tectonic Shifts, Haiti Since the Earthquake,* edited by Mark Schuller and Pablo Morales. Sterling: Kumarian Press, 2012.

Neumayer, Eric and Thomas Plümper. 2007. "The Gendered Nature of Natural Disasters: The Impact of Catastrophic Events on the Gender Gap in Life Expectancy, 1981-2002." *Annals of the Association of American Geographers*, 97: 551-566.

N'Zengou-Tayo, Marie-José. 1998. "'Fanm Se Poto Mitan': Haitian Woman, the Pillar of Society." *Feminist Review* 59.

OHCHR 2010. "Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik." http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-42.pdf.

Oxfam International. 2005. "The Tsunami's Impact on Women." http://www.oxfam.org/en/policy/bn050326-tsunami-women.

_____. 2010a. "Planting Now: Agricultural Challenges and Opportunities for Haiti's Reconstruction." October. *Oxfam Briefing Paper* 140.

_____. 2010b. Haiti: A Once-in-a-Century Chance for Change. Beyond Reconstruction: Re-envisioning Haiti with Equity, Fairness, and Opportunity. *Oxfam Briefing Paper* 135. March. https://oxfam.qc.ca/sites/oxfam.qc.ca/files/aonceinacenturychanceforchange.pdf.

_____. 2011. "Haiti Progress Report January-December 2011." Accessible: http://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/20120110-haiti- progress-report-en_4.pdf.

Patrick, Jonathan. 2011. "Haiti Earthquake Response: Emerging Evaluation Lessons." OECD Evaluation Insights. http://www.oecd.org/countries/haiti/50313700.pdf.

Pittaway, E., L. Batolomei, and S. Rees. 2007. "Gendered dimensions of the 2004 tsunami and a potential social work response in post-disaster situations." *International Social Work* 50: 307-19.

Plan International. 2013. "The State of the World's Girls 2013: In Double Jeopardy: Adolescent Girls and Disasters." http://plan-international.org/girls/reports-and-publications/the-state-of-the-worlds-girls-2013.php.

Protection Cluster. 2010. "Haiti Protection Cluster. Haiti Earthquake: Key Protection Activities and Issues." http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Haiti/files/Haiti_PC_Key_Protection_Activities_Issues_2010_EN.pdf.

Rex, Helene Carlsson and Zoe Trohanis. 2012. "Making Women's Voices Count: Integrating Gender Issues in Disaster Risk Management: Overview and Resources for Guidance Notes." Washington, DC: World Bank. http://documents.worldbank.org/curated/en/2012/10/16875436/making-womens-voices-count-integrating-gender-issues-disaster-risk-management-overview-resources-guidance-notes.

Schuller, Mark. 2012. *Killing with Kindness: Haiti, International Aid, and NGOs*. New Brunswick, N.J.: Rutgers University Press.

Schuller, Mark and Pablo Morales. 2012. *Tectonic Shifts: Haiti Since the Earthquake*. Sterling: Kumarian Press.

United States Institute of Peace (USIP). 2010. "Truth Commission: Haiti." http://www.usip.org/publications/truth-commission-haiti.

United Nations. 2000. Resolution 1325. Office of the Special Advisor on Gender, "Landmark resolution on Women, Peace and Security." http://www.un.org/womenwatch/osagi/wps/.

UNISDR. 2009. "Gender and Disaster Risk Reduction." http://www.unisdr.org/we/advocate/gender.

Van Dijkhort, Hilde and Suzette Vonhof. 2005. "Gender and Humanitarian Aid: A Literature Review of Policy and Practice." *Disaster Studies.* Wageningen University.

Zéphyr, Pierre, Martin Dominique, Abby Córdova Guillén, Hugo Salgado, and Mitchell A. Seligson. 2011. *Haiti in Distress: The Impact of the 2010 Earthquake on Citizen Lives and Perceptions*. United States Agency for International Development. Nashville, Tennessee: Vanderbilt University.

5

Safe Passage: Private Security and the Decline of Somali Piracy

Jordan Dantas

Pirate attacks off the coast of Somalia have declined precipitously since 2011. Various causes may have driven this outcome, including responses by international and national navies, changes in Somalia's domestic politics and government, vessel improvements, and actions by private shipping companies. This article examines an overlooked and critical causal factor in the decline of piracy: the rise of private armed security teams embarked on shipping vessels. Surveying trends in each category of potential causes, it finds embarked security teams to be the most successful in both directly repelling pirate attacks and deterring piracy more generally. Moreover, private security teams reduce piracy at dramatically lower costs. Following these conclusions, the article offers an analysis of continued traditional counter-piracy approaches by the United States and recommends a more cost effective, efficacious strategy based on the success of embarked security units.

On October 11, 2013, the Hong Kong flagged tanker Island Splendor was transiting in international waters approximately 230 nautical miles east of Hobyo, Somalia. At 9:20 a.m., two white and blue skiffs crewed by men

Jordan Dantas is a Masters in Security Policy Studies candidate at George Washington University's Elliott School of International Affairs with concentrations in U.S. National Security Policy and Transnational Actors. He can be reached at jdantas167@gwu.edu.

with rifles and rocket-propelled grenade launchers approached the tanker. Island Splendor's officer of the watch raised the ship's alarm. The Chinese crew alerted the United Kingdom Marine Trade Operations (UKMTO), which relayed the distress call to U.S. Naval Forces Central Command, the European Naval Forces, NATO's counter-piracy task force, and the Yemeni Coast Guard. As the international military response mobilized, Island Splendor's armed security team took up defensive positions and fired warning rocket flares toward the approaching skiff. Ignoring the flares and two subsequent warning shots, one of the pirate skiffs closed to within 250 meters and fired small caliber rounds at the tanker. The armed security team then fired directly on the skiff, causing both vessels to abort their attack and speed away (International Maritime Organization 2015).

The frequency of pirate attacks off the Horn of East Africa has dropped precipitously since 2011, but the Island Splendor's experience was not unique. Between 2013 and 2014, there were 25 reported attempts of piracy on large merchant ships in international waters off the coast of East Africa and in the Arabian Sea (International Maritime Organization 2015). None of those attempts succeeded, and 23 were thwarted by an embarked private security team.

Despite the remarkable decline of Somali piracy, the reasons for it have received minimal academic consideration. The International Maritime Bureau (IMB) provided a comprehensive, politically correct list of causal factors explaining it, mentioning international navies, the hardening of vessels, the use of private armed security teams, and the stabilizing influence of Somalia's central government (International Maritime Bureau 2013). Though all these factors may have played a part, the IMB takes no stance on which was most significant. Based on the examination of 172 case studies from the International Maritime Organization's (IMO) database of attempted commercial hijackings, this paper will discuss the extent to which each factor contributed to the decline of Somali piracy. It will then argue that the presence of private security teams on commercial shipping vessels has been the primary factor in deterring Somali piracy. Finally, this paper will assert that combating piracy with international naval forces is not cost-effective, and that the United States should abandon this traditional counter-piracy approach.

EXAMINING THE DECLINE OF SOMALI PIRACY

The Somali Government

Though Somalia has seen some political change over the last few years, it is unlikely that internal dynamics are responsible for the fall in piracy.

When piracy peaked in 2011, Somalia ranked last amongst 215 nations in government effectiveness, political stability, rule of law, and control of corruption (Kaufmann et al. 2014). In September 2012, Somalia elected Hassan Sheikh Mohamud president. Mohamud talked tough on piracy, saying in February 2013, "Somalia has been plagued by piracy for many years now and these criminals have badly affected global shipping. Piracy has to end" (Bahadur 2013, 1). Perhaps Mohamud's greatest achievement has been the pirate amnesty program, which exonerates and provides rehabilitation for pirates who agree to give up the trade. Mohamed Tiiceey, president of the autonomous central Somali regions of Himan and Heeb, claims that through the new amnesty program, he has taken 949 pirates away from piracy, including one of Somali piracy's founding fathers, Hassan Afweyne, known more commonly by his nickname, "Big Mouth."

Despite the perceived success of Mohamud's amnesty program, the conditions within Somalia that fostered the rise of piracy persist. As piracy declined between 2012 and 2014, Somalia continued to rank at the bottom in every metric of governance, showing only marginal improvements in political stability and control of corruption, while government effectiveness and rule of law actually worsened (Kaufmann et al. 2014). Chalking up the decline of piracy to improved maritime security measures, Rory Lamrock, an intelligence analyst with the security firm AKE, remarked: "The gains are all reversible, because the main conditions on the land, such as poverty, insecurity, the distribution of firearms and a lack of institutional development, remain largely unchanged. If [private, embarked] security measures are rescinded it would be very easy for pirate syndicates to resume their activity to similar levels of recent years" (*The Guardian*, October 23, 2012). Bashir Yusuf, the legal officer for the Ifiso Independent Vetting Coalition, a civil society group within Somalia, corroborated Lamrock's position: "The piracy problem is still happening because the conditions that Rory Lamrock describes are still in place. I am afraid that the problem is not yet over. As long as these conditions are not positively addressed and as soon as existing security measures are relaxed, piracy will bounce back" (ibid.).

International Organizations

The international community has supplemented the response of the Somali government and the commercial shipping industry by creating several counter-piracy organizations including the UN Contact Group on Piracy off the Coast of Somalia, the UNODC Counter Piracy Programme, the IMO Djibouti Code of Conduct, and the Regional Cooperation Agreement on

Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP). UKMTO has focused on anti-piracy and marine security operations since 2007. Vessels are encouraged to report to the UKMTO when transiting through high-risk areas, and it acts as "the primary point of contact for merchant vessels and liaison with military forces in the region and it is the primary point of contact during an attack" (BMP4 Best Management Practices For Protection Against Somali Based Piracy 2011, 6). While the UKMTO and other international organizations have assisted mariners in applying best practices on protecting against pirate attacks, their ability to prevent piracy already in progress depends on national navies.

The Role of Militaries

The annual budgets of the four international anti-piracy organizations mentioned above sum to an estimated US$24.5 million annually, but maintaining an international naval force to combat piracy is significantly more expensive (Bowden 2010). Combined Task Force 151 includes 30 nations and a fleet of more than 40 warships operating in conjunction with NATO and the European Union Naval Force (EU NAVFOR). Its mission in the Gulf of Aden "is to disrupt piracy and armed robbery at sea and to engage with regional and other partners to build capacity and improve relevant capabilities in order to protect global maritime commerce and secure freedom of navigation" (Combined Maritime Forces 2014). Additionally, the EU reportedly spends $735 million annually on counter-piracy to supplement the CTF 151 (Bateman 2010). Factoring in administrative budgets of NATO, CTF 151, and EU NAVFOR, as well as additional expenditures from other nations, an estimated $2 billion is spent by the U.S., EU, and allied nations on military counter-piracy operations in the Horn of Africa region every year (Bowden 2010).

And yet, this may be inadequate. Bateman suggests that the most serious limitation of the CTF 151 "is the lack of resources in terms of the number of ships…covering the piracy-prone waters off the Horn of Africa" (Bateman 2010, 20). This shortcoming may not reflect a lack of will among the international community so much as the vast size of the ocean and evolution in piracy tactics. Pirates have extended the range at which they can operate. Before hijacking large commercial ships or tankers, pirates often hijack smaller, slow-moving fishing dhows capable of storing multiple speedboats with outboard engines. Using dhows as mother ships, pirates can stay at sea for weeks at a time and travel greater distances.

Another issue is that even when naval forces are close enough to respond to pirate attacks, "Most warships have restrictive rules of engagement and

they lack national legal authority to arrest pirates and bring them to trial" (Bateman 2010, 20). Some pirates have capitalized on these restrictions, navigating the line between international and territorial waters and taking advantage of poor coordination between international coalition forces and state coast guards.[1] Others, when facing capture, disable their boat engines and toss weapons and other pirating tools overboard, obligating international naval forces to render assistance pursuant to Article 98 of the United Nations Convention on the Law of the Sea.[2] Coalition forces have tracked down pirate skiffs only to end up providing the pirates a free ride back to Bosaso, Somalia, where nothing stops them from pirating again.

Shipping and Private Security Industries

The fourth edition of "Best Management Practices for Protection against Somalia Based Piracy," published in August 2011 by a coalition of companies and international interest groups, highlights several preventative measures shipping companies may exercise to mitigate threats posed by maritime pirates. Vessels, for instance, are encouraged to provide additional lookouts for each watch, have night vision optics, invest in Kevlar jackets and helmets, outfit the bridge with blast resistant film, embark security teams, use physical barriers including electric fences or razor wire, equip water cannons, wire closed circuit television cameras, and invest in Citadels or safe rooms (BMP4 Best Management Practices For Protection Against Somali Based Piracy 2011). Of course, all of these counterpiracy measures come at a cost to the global shipping industry – if the industry were to adopt all recommended methods of counter-piracy protection, the cost would be up to $2.5 billion annually (Bowden 2010).

The private security sector, working with the shipping industry, has had the most success in countering maritime piracy. It has also helped close the gap between the demand for counterpiracy intervention and the supply nation-states are able or willing to provide. As piracy peaked in 2011 and international militaries failed to respond adequately, private security firms across the world capitalized. By August 2012, more than 200 companies were specializing in protecting commercial ships from pirate attacks (Erwin 2012). According to Michael G. Frodl, head of the maritime consulting firm C-LEVEL Maritime Risks, "Hiring armed crews today is the most economical option for shippers because there is so much competition for the business" (Erwin 2012). Though the private sector has also developed private escort capability, Kevin Doherty, CEO of Nexus, a security company that specializes in providing armed security teams to the shipping industry, believes armed detachments are more effective: "private

navies don't work…they are cost prohibitive" (Erwin 2012).

Empirical evidence suggests private security firms are more successful in thwarting pirate attacks than any other security measure. No ship with an armed security detachment has ever been hijacked. Nevertheless, many ship owners decline to embark armed guards (Donald 2011). In 2011, only about 25 percent of shipping vessels passing off the Horn of Africa carried security teams.

Dominick Donald (2011) identifies several concerns with embarking an armed security force: Armed security teams have always cost more than any notional reduction in additional premiums, and sometimes may actually increase them (in the absence of a quality measure for security providers, an armed contractor may be a more immediate danger to the vessel, particularly an oil or gas tanker, than pirates); some states do not permit armed teams on board vessels flying their flags; and any owners understand that armed teams may be the indirect cause of obstructions to their business (for instance, through vessels being delayed waiting for teams to embark, or being impounded as a result of incomplete weapons documentation). Many owners are also anxious about the prospect of their vessel being engaged in a firefight that could end up doing much more damage to the vessel and its cargo than six months at anchor with no maintenance off Somalia.

Though these concerns about armed security detachments may very well have discouraged ship owners from employing them, a close analysis of Somali pirate attacks from 2011-2014 shows that private security teams have become increasingly common on shipping freighters. The data also show that this proliferation of embarked security teams was responsible for effectively ending piracy in the region.

WHAT HAPPENED ON THE HIGH SEAS BETWEEN 2011 AND 2014? A CLOSER LOOK

To pinpoint the main reason for the decline of attempted and successful acts of piracy in East Africa, this author examined 172 case studies from the IMO database of attempted commercial shipping hijackings in the Arabian Sea and East Africa from July 2011 through December 2014 (International Maritime Organization 2015). These cases all occurred in international waters patrolled by multinational counter-piracy task forces, specifically CTF 151, CTF 508 (another joint naval task force), and EU NAVFOR assets. Multinational naval forces do not typically render assistance to vessels under threat of piracy in coastal waters; thus, such

cases were excluded to ensure that in the sample multinational forces and private security forces had equal opportunity to repel or deter the threat.

2011

Of the 80 commercial shipping hijacking attempts in the Arabian Sea and off the coast of East Africa from July 2011 to December 2011, only four (5 percent) were successful. None of the four hijacked vessels employed an armed security team. International naval forces thwarted eight (just under 11 percent) of the unsuccessful attempts. In two of the eight cases, the attacked ship also employed an armed private security team. In two other cases, the commercial ship was boarded prior to receiving assistance from international military forces. In one of those instances, the crew had secured itself in the ship's citadel and the pirates abandoned the ship before international help arrived. Ship crews on their own thwarted 24 acts of piracy (32 percent of the total), and embarked security teams stymied 44 piracy attempts (57 percent). Compare this to only eight preventions associated with naval forces – of which only five were clearly due to naval assistance.

2012

The next year saw 67 attempted acts of piracy on commercial shipping in the Arabian Sea and waters off the coast of East Africa. Four were successful, and 40 (almost 64 percent) were directly thwarted by armed security teams. None of the hijacked commercial vessels employed a private armed security team. Only eight attacks (almost 13 percent) were prevented by international naval forces, and in two of the eight cases, the commercial ship was boarded before receiving assistance from the Iranian Navy. Ship crews repelled the other attacks on their own (almost 24 percent).

2013

Piracy fell dramatically in 2013. The year saw 25 Arabian Sea or Horn of Africa piracy attempts, none of which were successful. Twenty-three of those attempts (92 percent) were thwarted by armed embarked security teams. Only one hijacking attempt was repelled by a navy (in this case a Pakistani Coast Guard vessel), and one was prevented by the ship's crew.

Trends

These 172 cases demonstrate that private security contractors have been the most effective inhibitor of Somali piracy in the Arabian Sea and off the coast of East Africa. Given their success, it is unsurprising that more commercial shipping companies are embarking armed teams on their

tankers. While approximately 25 percent of all merchant traffic transiting high-risk areas near the Horn of Africa in 2011 embarked private armed security teams, that number increased to 40 percent in 2012 and to 60 percent by 2013 (*The Economist*, April 14, 2012).

The number of counter-piracy naval vessels deployed in the region, meanwhile, saw little year-on-year change. The One Earth Foundation estimates that in October 2011 there were 18 vessels patrolling international waters off East Africa and in the Arabian Sea from NATO, EUNAVFOR, and CTF 151, comprising force contributions from 30 nations (Bowden 2010). In 2012, there were 21-30 vessels deployed on any given day off the Horn of Africa. Those numbers did not change significantly in 2013.

It might appear that the marginal increase in ship presence in 2012 contributed to the decline in piracy attempts, but the number of pirate attacks thwarted by international navies increased by only 2 percentage points year-on-year. Given that the number of warships deployed remained constant from 2012 to 2013, military presence does not explain the significant drop in piracy attempts along the East African coast and Arabian Sea between those two years. In fact, there appears to be little correlation between the number of warships deployed and acts of piracy prevented by those warships. Though the international military presence may have deterred some pirates, there is no evidence that the presence of warships significantly reduced the reward factor and drove pirates to change their behavior.

We can say with certainty that private security teams thwarted the lion's share of pirate attacks, and we can speculate with justification that they had a deterrent effect as well: As embarked armed security teams became more common and prevented a greater percentage of attacks, piracy attempts decreased. Private armed security teams reduced rewards for Somali pirates. And when pirating ceased to pay, Somali pirates disappeared.

The Future of Counter-Piracy: A More Cost-Effective Approach

The success of privately owned armed security detachments in preventing piracy has led many to question the utility of maintaining a large, multi-national military force to police sea lanes against pirates (Murphy 2011). This paper recognizes that the United States may have an interest in maintaining a naval presence abroad to execute other mission sets, but it has demonstrated that conventional navies are not the best deterrents of maritime piracy. If the U.S. government is interested in combating piracy in the most cost-effective manner, this paper recommends that it reach the same conclusion reached by the private sector. Rather than deploy war-

ships at the operating cost of $82,794 per ship, per day, the Navy would better serve the counter-piracy mission and the American taxpayer if it deployed force protection personnel on board U.S.-flagged merchant ships and charged those merchant ships for its services, perhaps at a subsidized rate (Bowden 2010). The U.S. shipping industry would benefit from the security guarantee, and the U.S. government would receive compensation for a service it already provides for free. In addition to maintaining a robust counter-piracy task force, the Navy has a force protection training program capable of producing armed security detachments and would not need to significantly alter existing bureaucracies or create new ones to meet mission requirements.

With defense budgets shrinking and East Africa piracy declining, it is time the United States reevaluated its role in the counter-piracy mission. O'Hanlon and Singer (2004) note the glaring gap between the demand for humanitarian intervention and the supply of states willing or able to intervene. With respect to counter-piracy, the private sector has more than adequately filled the gap, but the U.S. government continues to throw taxpayer dollars at the problem. The U.S. Navy has repeatedly justified maintaining and even increasing its budget based on the threats pirates pose to commercial shipping interests, international security, and the global economy (Bateman 2010). Though the United States may have security interests in stationing ships off the East Africa coastline, the threat of piracy should not be considered one of them. Yet today, even as military service members are asked to sacrifice via reductions to pay raises and benefits once thought untouchable, there is virtually no debate regarding the efficacy of maintaining a robust, U.S.-led, counter-piracy task force in the waters off East Africa. There should be.

Notes

[1] Article Two of the United Nations Convention on the Law of the Sea states: "The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea… Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention" (United Nations Convention on the Law of the Sea, 27).

[2] Article 98 of the United Nations Convention on the Law of the Sea states, "Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:

(a) to render assistance to any person found at sea in danger of being lost;

(b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him;

(c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.

2. Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose" (United Nations Convention on the Law of the Sea, 60).

REFERENCES

Anning, Stephen and M.L.R. Smith. 2012. "The Accidental Pirate: Reassessing the Legitimacy of Counterpiracy Operations." *Parameters* 42, no. 2: 28-41. http://strategicstudiesinstitute.army.mil/pubs/parameters/Articles/2012summer/Anning-Smith.pdf (accessed November 20, 2014).

Bahadur, Jay. 2013. "The Somali Federal Government and Counter-Piracy: New Government, New Possibilities." 3rd UAE Counter Piracy Conference. September 11, 2013. http://www.counterpiracy.ae/upload/2013briefing/Bahadur Jay Sec4Ch2-Final Briefing Paper-En-Website.pdf (accessed February 20, 2015).

Bateman, Sam. 2010. *Sea Piracy: Some Inconvenient Truths*. UNIDIR-United Nations Institute for Disarmament Research, Disarmament Forum. http://www.unidir.org/pdf/articles/pdf-art2960.pdf (accessed November 20, 2014).

BMP4 Best Management Practices For Protection Against Somali Based Piracy. 2011. Edinburgh: Witherby Publishing Group.

Bowden, Anna et al. 2010. "Economic Costs of Maritime Piracy." *One Earth Future Working Paper*. Decatur: One Earth Foundation. December.

Combined Maritime Forces. Website. http://combinedmaritimeforces.com/ctf-151-counter-piracy/ (accessed December 1, 2014).

Donald, Dominick. 2011. "Sanctuary, Ship Owners and Paying Ransoms." *The RUSI Journal* 156, no. 6.

Edeko, Sunday. 2011. "The Security Implications of Maritime Piracy in Somalia." *African Journal of Social Science* 1, no. 3.

Erwin, Sandra I. 2012. "Security Firms Divided Over How to Succeed in the Anti-Piracy Business." *National Defense*. August 1, 2012. http://www.nationaldefensemagazine.org/archive/2012/August/Pages/SecurityFirmsDividedOverHowtoSucceedintheAnti-PiracyBusiness.aspx (accessed December 2, 2014).

Gwin, Peter. 2007. "Dangerous Straits." *National Geographic*. October, 2007. http://ngm.nationalgeographic.com/2007/10/malacca-strait-pirates/pirates-text (accessed November 28, 2014).

International Maritime Bureau. 2013. "Piracy and Armed Robbery Against Ships." Annual Report.

International Maritime Organization. 2015. "Reported Incidents of Piracy and Armed Robbery." *GISIS Piracy and Armed Robbery*. April 3. https://gisis.imo.org/Public/PAR/Incident.aspx?Action=View&ID=6511 (Accessed March 9, 2015).

Kaufmann, Daniel, Aart Kraay, and Massimo Mastruzzi. 2014. Worldwide Governance Indicators. http://info.worldbank.org/governance/wgi/index.aspx (accessed March 28, 2015)

Keating, Joshua. 2014. "The Decline and Fall of Somali Piracy." *Slate*. January 16, 2014. http://www.slate.com/blogs/the_world_/2014/01/16/the_decline_and_fall_of_somali_piracy.html (accessed December 1, 2014).

Koburger Jr., Charles W. 2010. "Selamat Datang, Kapitan." *Piracy and Maritime Crime*, Naval War College Newport Papers, edited by B.A. Elleman, A. Forbes, D. Rosenberg. Newport: Naval War College Press.

Mudric, Miso. 2011. "Armed Guards on Vessels: Insurance and Liability." *Academia.EDU*. November 16, 2011. http://www.academia.edu/1336577/Armed_Guards_on_Vessels_Insurance_and_Liability (accessed November 28, 2014).

Murphy, Martin. 2011. "Somali Piracy." *The RUSI Journal* 156, no. 6.

O'Hanlon, Michael and P.W. Singer. 2004. "The Humanitarian Transformation: Expanding Global Intervention Capacity." *Survival* 46, no. 1: 77-100.

Shortland, Anja. 2012. "Treasure Mapped: Using Satellite Imagery to Track the Developmental Effects of Somali Piracy." *Africa Programme Paper AFP PP 2012/01*. London: Chatham House.

Smith, David, and Clar Ni Chonghaile. 2012. "Somali Pirates Hijacking Fewer Ships." *The Guardian*. October 23, 2012.

United Nations Convention on the Law of the Sea. United Nations.

United Kingdom Marine Trade Operations (UKMTO). 2014. Website. http://oceansbeyondpiracy.org/matrix/united-kingdom-marine-trade-operations-ukmto (Accessed December 1, 2014).

"What Happened to Somalia's Pirates?" 2013. *The Economist*. May 19. http://www.economist.com/blogs/economist-explains/2013/05/economist-explains-11 (accessed December 1, 2014).

Willett, Lee. 2011. "Pirates and Power Politics: Naval Presence and Grand Strategy In the Horn of Africa." *The RUSI Journal* 156, no. 6.

6

DEPORTED OR SUPPORTED: AN ANALYSIS OF DEPORTATIONS IN THE OBAMA ADMINISTRATION

Stephanie Leutert

Throughout President Obama's time in office, his deportation policy has simultaneously earned him both the title of "Deporter in Chief" and accusations of being soft on immigration enforcement. To untangle what is actually occurring, this paper uses U.S. Department of Homeland Security data to map and analyze the various deportation narratives circulating in the media. The paper finds that the number of individuals deported from the United States actually fell during the Obama administration, but the consequences for many of the deported became much harsher. It also argues that the administration's prioritization of recent border crossers could ultimately reduce deportations' strain on communities. Finally, the paper concludes that while the Obama administration is indeed targeting criminals for deportation, it is important to keep in mind the wide range of crimes—including immigration and non-violent offenses—that can constitute criminality.

On November 20, 2014, President Obama announced a new round of executive actions aimed at protecting over four million undocumented immigrants from deportation. These controversial moves built on Obama's previous actions in 2012 and targeted individuals living in the United

Stephanie Leutert is a master's candidate at Yale University's Jackson Institute for Global Affairs, where she focuses on economic development in Latin America. She can be reached at stephanie.leutert@yale.edu.

States for the previous five years or more who have at least one American citizen child (Obama 2014).[1]

By shielding these migrants from possible deportation, the executive actions conflict with earlier depiction of Obama in the news as the "Deporter in Chief," ruthlessly deporting an unprecedented number of undocumented immigrants and tearing apart families and communities. Yet these narratives—as well as the ones put forth by the Obama administration in its own defense—often mislead more than they clarify. They are more representative of the general confusion surrounding deportation policy than of reality.

Understanding deportation trends is critically important not just for the creation of federal policy, but also for the estimated 11.2 million undocumented individuals—78 percent of whom are from Latin America or the Caribbean—living in the United States (Pew Research Center 2014). Their lives, as well as their families and friends, communities, and the countries receiving such deportees, will be affected by the outcomes.

Using the Department of Homeland Security's annual data, it is possible to identify shifts in who is getting deported and how. This paper will map out how deportation policy has evolved during the Obama administration and delve into three significant questions surrounding deportation: How many people are actually being deported? Are deportations shredding U.S. communities' social fabric? Is the administration really targeting criminals?

The Framework for U.S. Deportations

Deportations are the policy through which a foreign individual is expelled from one country for violating specific immigration policies or laws and sent back to his or her country of origin (Moloney 2012). The United States has a long history of deportations. For the most part, however, they remained low in number through the first half of the twentieth century, with periodic mass deportations such as the forced Mexican Repatriation during the Great Depression or the return of over one million Mexicans in Operation Wetback in 1954 (Dredge 2014).

To guide deportations, the United States has a legal framework first outlined under the 1952 Immigration and Nationality Act (INA) under which it can expel individuals who are undocumented immigrants or Legal Permanent Residents (LPRs) who violate specific immigration related or federal rules (Public Law 414 1952). In 1996, this framework was dramatically revamped with the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). In response to the then increasing influx of undocumented Mexican immigrants (hundreds of thousands of individuals

were arriving each year), IIRIRA increased the number of offenses that could make a migrant eligible for deportation, streamlined the deportation system, and expanded the country's deportation capacity (Pew Research 2014). The legislation also allowed Customs and Border Protection (CBP) officers to deport individuals who fall into specific categories without a ruling from an immigration judge, which had historically been required for formal removals. This was a significant change because immigration judges' limited availability had historically constrained the number of migrants who could be formally deported.

Today there are five different ways an individual can be deported from the United States: judicial removals (also called notice to appear), expedited removals, reinstatement of final orders, administrative removal, and returns (Rosenblum and McCabe 2014):[2]

Deportations by Type, 2003 – 2013	
Judicial Removals	**1,284,563**
Non-Judicial Removals	**2,391,596**
Expedited Removal	1,170,402
Reinstatement of Final Orders	1,093,818
Administrative Removal	127,376
TOTAL REMOVALS	**3,676,159**
TOTAL RETURNS	**7,742,562**

Table 1: Formal Removals include both Judicial and Non-Judicial Removals. Non-Judicial Removals include Expedited Removal, Reinstatement of Orders, and Administrative Removal (Rosenblum and McCabe 2014; U.S. Department of Homeland Security 2014c).

Removals, as opposed to returns, take two forms: judicial and non-judicial. Judicial removals are what most Americans imagine when they hear about deportations. These removals are proceedings in which undocumented migrants appear before an immigration judge, who decides whether or not that migrant is eligible for deportation. These removals are quite expensive, with each costing around $23,482 (Fitz et al. 2010). Judicial removals are most common in the U.S. interior, where they constitute 61 percent of total removals (Rosenblum and McCabe 2014).

Removals can also occur in a non-judicial form, which occurs when an individual is deported without an immigration judge's review (as mentioned above). These types of proceedings include expedited removal, reinstate-

ment of final orders, and administrative removal. Expedited removal is for migrants apprehended within two weeks of entering the country and who are within 100 miles of a land or sea border. Reinstatement of final orders is for migrants who are caught for a second time after being deported at least once. Administrative removal is for migrants who have committed aggravated felonies, including crimes such as murder, rape, and money laundering (ibid.).

Non-judicial removal measures are most common in border areas, where they make up 84 percent of removals (ibid.). Similar to judicial removals, non-judicial removals create consequences for migrants, making it difficult for a deported individual to apply again for a visa by making them ineligible for roughly ten years. Migrants deported under the reinstatement of final orders cannot apply for a U.S. visa for twenty years.

In total, including both judicial and non-judicial removals, roughly 6.6 million individuals have been formally removed from the United States since 1892. Over half (3,676,159) were formally removed between 2003 and 2013 (U.S. Department of Homeland Security 2014c).

However, for much of the past century, people were generally expelled from the United States through returns, not removals. A migrant is returned when, after being apprehended, he or she is allowed to voluntarily return to his or her country. In a return, there are no fingerprints taken or criminal records and, in short, no legal consequences for the migrant (Caplan-Bricker 2014). This type of expulsion was often favored over formal returns given the amount of money and personnel required to hold an immigrant, process him or her formally, complete legal paperwork, and have a sufficient number of immigration judges to oversee all the cases. Since 1892, there have been 47.7 million returns, with 7.7 million returns between 2003 and 2013 (U.S. Department of Homeland Security 2014c).

TRENDS IN DEPORTATION

The following sections identify three major deportation trends under the Obama administration. As identified by Rosenblum and McCabe (2014), there have been an increasing number of removals alongside falling returns and a prioritization of recent border crossers over interior deportations. Using data obtained from a *New York Times* Freedom of Information Act request, this paper further examines the wide range of crimes that constitute a criminal deportation.

Deportation Trend 1: Returns are Falling While Removals are Increasing

Over the past few years, news articles and immigration advocacy groups have repeatedly denounced the Obama administration for its high number of deportations. For example, in December 2012, *USA Today* published an article titled "Obama Administration Sets Deportation Record." In January 2014, PBS followed suit with "Obama Administration Tops Its Own Deportation Record," (Tam 2014) and *The Economist* published its own article in February 2014 with the title, "Barack Obama, Deporter-In-Chief" (The Economist 2014). However, these accounts, while not technically false, confuse more than they clarify.

Today, the number of people expelled from the United States (returns and removals combined) is far from a historic high. In 2013, returns (178,371) plus removals (438,421) totaled 616,792 individuals deported from the country. By comparison in 2000, the total returns plus removals was almost three times higher, at 1,865,343 (U.S. Department of Homeland Security 2014c). Graph 1 outlines these trends.

It is important to note that declining deportation numbers (returns plus removals) over the past decade should not be confused with the implementation of a more merciful or improved deportation policy, as some commentators have tried to argue (Rosenberg 2014). Instead, it primarily represents the lower number of undocumented immigrants apprehended along the United States' southern border in recent years, even with higher numbers of border patrol agents, leading to a smaller pool of migrants to be returned or removed.
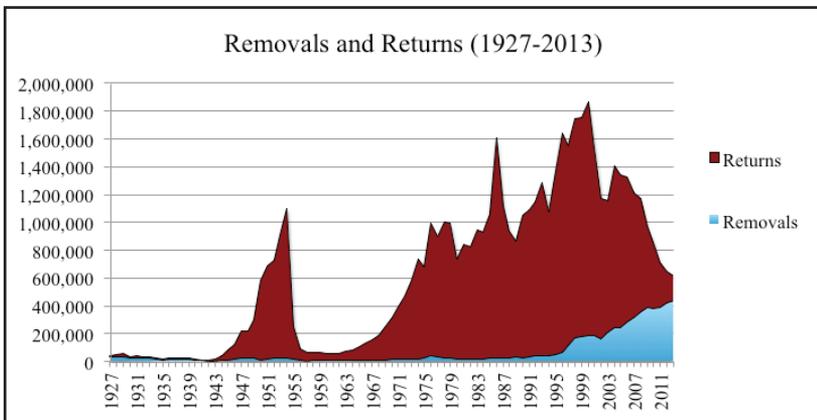

Graph 1: Data from "Yearly Immigration Enforcement Report," U.S. Department of Homeland Security.

As Graph 2 below illustrates, apprehensions along the southwest border and total deportations (removals plus returns) have followed a similar trajectory over the past fifty years (U.S. Border Patrol 2013). Addressing why there are fewer undocumented immigrants apprehended along the southern border over the past decade is beyond the scope of this paper, but likely reflects a confluence of factors including: increased enforcement at the border, making it more expensive and dangerous to cross; fewer children per family in Mexico, falling from seven children on average in the 1960s to about two today; Mexico's economic stability; and the United States' economic downturn in 2008-2009 (O'Neil 2013). This drop in migrants from Mexico has been only slightly offset by growing numbers of Central American migrants over the past three years (U.S. Border Patrol 2013).

Given this trend, why do so many articles point to higher deportation numbers? The answer is that most analysts and commentators generally count only judicial and non-judicial formal removals in their statistics, neglecting returns in their analyses since they have less serious legal consequences for deportees (Caplan-Bricker 2014). Over the past two decades, policy shifts have increased the number of removals relative to returns. As more individuals who would have been returned are entered into the formal deportation system and "removed," the deportation number that most analysts use (formal deportations) has appeared to grow.

This shift began in 1996, when IIRIRA created the non-judicial removal methods—expedited removal, reinstatement, and administrative remov-
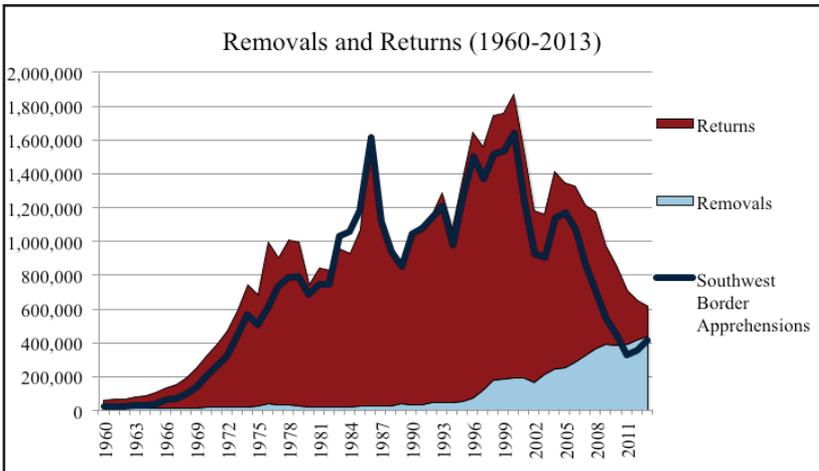
Graph 2: Removals and returns, 1960-2013; numbers closely track apprehensions at the Southwest Border (U.S. Department of Homeland Security 2014c).

al—which alleviated some of the deportation system's largest bottlenecks. Right after IIRIRA passed, these non-judicial removals constituted roughly 3 percent of all removals, but their usage rose steadily (Rosenblum et al 2014). By 2013, expedited removals and reinstatements of final orders made up 83 percent of all removals, helping push up the overall number of removals (as evident below in Graph 3) (Simanski 2014).
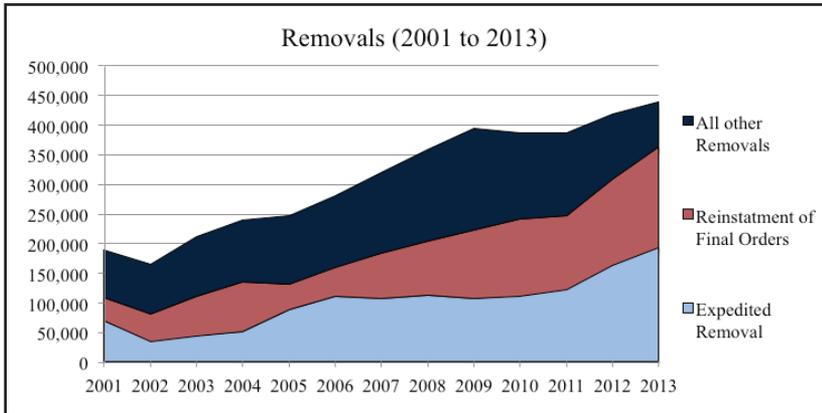
Graph 3: Removals by type, 2001-2013. Data only available since 2001 for Reinstatement of Final Orders (U.S. Department of Homeland Security 2014c).

The expedited removal provision has been the primary driver of rising numbers of removals. When it was originally designed in 1996, it allowed the U.S. Customs and Border Protection agency to directly remove undocumented migrants if they were caught at ports of entry. However, a series of government announcements in 2002 and 2004 expanded the statute to include migrants caught within two weeks of entering the country and who were within 100 miles of a land or coastal border (Rosenblum et al 2014). In the past, many of these individuals would have likely been returned—pushed back across the border with little more than a slap on the wrist. Thus, they would not have been counted under common deportation measures. Yet from 1997 to 2013, roughly 1,587,000 immigrants were subject to expedited removals and thus counted under the formal deportation measures that news articles have cited (Simanski 2014; U.S. Department of Homeland Security 2011; Dougherty et al. 2006). In 2013, 44 percent of all formal removals were processed under this provision (Simanski 2014).

In October 2005, a local border initiative, Operation Streamline, further expanded the use of formal deportations for border crossers who would

have previously been returned. This program was an inter-agency effort—including the U.S. Customs and Border Protection, U.S. Attorneys, and District Court judges—and set up in the Del Rio, Yuma, Tucson, Laredo, and Rio Grande Valley sectors (Light et al. 2014). Operation Streamline's objective was to speed up the deportation process by allowing up to forty criminal defendants to present their cases at the same time rather than individually and to create formal consequences through criminal charges for all apprehended migrants (Rosenblum et al. 2014).[3]

Operation Streamline allowed authorities in the various sectors that adopted the program to plow through their bureaucratic backlog. Up until this point, immigrants who were apprehended along the border were almost always returned, given the resource constraints listed above. But with Operation Streamline, immigrants apprehended in these sectors were entered into the formal deportation system, subject to criminal charges, and listed as removals. As Operation Streamline was put into action, the number of overall returns in the United States fell dramatically—from 80 percent of all deportations in 2005 to 29 percent in 2013 (U.S. Department of Homeland Security 2014c).

Taken together, the data make clear that the total number of individuals being expelled from the country is not higher than in the past—in fact, deportations are at their lowest since 1972—but that those who are being deported face much steeper consequences since they are now removed rather than returned.

Deportation Trend 2: Renewed Focus on the Border

A second narrative in the media is that Obama's deportation policy severely damages communities, separating families and leaving children without their parents. These social effects are very real for many immigrants—resulting in negative health, security, and economic consequences. Yet, the effects of deportations on all individuals cannot be neatly summed up by a blanket statement, because this does not distinguish between deportations of migrants who truly do have deep roots within their adopted communities and those who are recent arrivals.

To get at the question of who is being deported, it is possible to separate out migrants apprehended along the border and those who were arrested in the country's interior by looking at the agency making the arrest. As the Migration Policy Institute points out, Customs and Border Protection conducts border apprehensions, while Immigrations and Customs Enforcement focuses on interior apprehensions (Rosenblum and McCabe 2014). The difference is significant because those who are caught at the border

tend to be recent arrivals. Over the past decade, 90 percent of border apprehensions were of migrants who had been in the United States for less than two weeks (ibid.). These individuals are unlikely to have deep ties with their communities in the United States, and thus their removal is unlikely to have the same impact on communities as would the removal of long-term residents. Conversely, over 89 percent of interior apprehensions were of migrants who had been in the United States for longer than two weeks: 50 percent had been there longer than two years (ibid.). For these migrants—who are likely employed, paying rent, and whose families are more embedded in local communities—deportation will have much higher costs.

Historically, immigration enforcement has taken place both along the United States' borders and within the country's interior. After September 11, 2001, there was a push to secure the U.S. borders. Under President George W. Bush, the number of Border Patrol agents doubled from 9,821 in 2001 to 20,119 in 2009, while the agency's budget increased from $1.1 billion to $2.6 billion over the same time period (U.S. Border Patrol 2014a; U.S. Border Patrol 2014b).

Eventually this border focus was expanded to include tougher immigration enforcement in the country's interior. From 2003 to 2009, interior removals as a percent of all removals tripled from 14 to 46 percent (Rosenblum and McCabe 2014). This largely corresponded with a declining number of immigrants apprehended along the border (given lower levels of immigration from Mexico), but also reflected a crackdown on undocumented immigration in all parts of the country.

Interior enforcement continued throughout the Obama administration's first two years, until a series of policy shifts and prioritizations began to change who was being targeted for deportation. In 2009, Obama began shifting immigration enforcement strategy by adjusting ICE's focus from undocumented employees to the employers that hired them. The shifts went further in 2010, when ICE's then assistant secretary issued a memo prioritizing certain categories of individuals for removal: those convicted of a crime, recent border crossers, and those who did not follow immigration court orders. By highlighting recent border crossers as a priority for greater focus than non-criminals who had been in the country for years, this policy shifted enforcement resources away from the interior and back to the border.
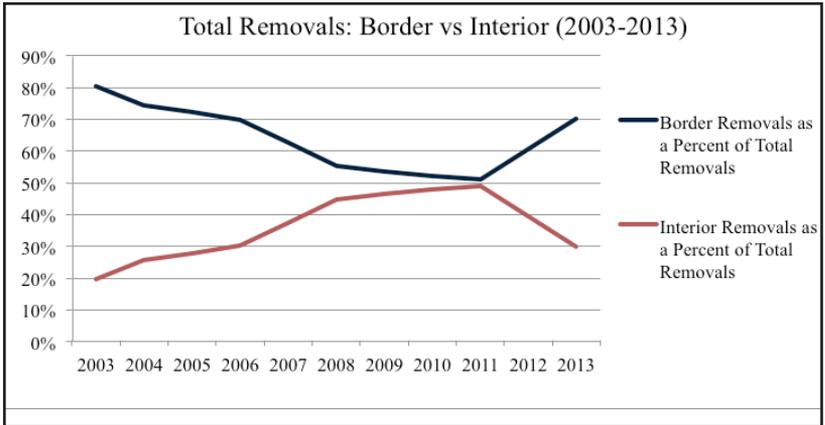
Graph 4: Total removals by location of apprehension (Rosenblum and McCabe 2014). Border apprehensions are considered those made by Customs and Border Protection, while those made by Immigration and Customs Enforcement are considered interior apprehensions. In 2003 the locations are unknown for 27 percent of the recorded removals, in 2004 it is 20 percent, in 2005 it is 18 percent, and in 2006 it is 11 percent. The proportion with unknown locations falls to below 10 percent of total removals in the following years.

In June 2011, ICE announced another policy that softened deportation enforcement for many immigrants in the interior, saying that it would review its deportation caseload using factors such as the length of time an immigrant had been in the United States, whether the immigrant had a U.S. education, and if the immigrant had a family member who was a U.S. citizen. Using these criteria, ICE reported finding over 20,000 cases (out of over 350,000), which met its requirements. Of these cases, just over 7,000 were subsequently closed, providing deportation relief for these individuals (Rosenblum et al 2014).

In 2012, Obama went even further to protect undocumented migrants who may have deep roots in their communities through the Deferred Action for Childhood Arrivals (DACA) program, a far-reaching executive action. DACA allowed children who had entered the United States before they turned sixteen, who had resided in the country since 2007, and who met a series of qualifications, including taking classes and not having a criminal record, to be protected from deportation and allowed to work legally in the United States for two years. As of November 2014, almost 587,000 young, undocumented migrants had been accepted into the program (Rosenblum and McCabe 2014).

The combined result of these prioritizations and executive actions has

been a decrease in interior removals, especially for individuals who have not been charged with a crime. Non-criminal removals in the interior fell from 77,364 in 2009 to 16,824 in 2013, which is just below 2004 levels (shown in Graph 5 below) (ibid.). Criminal deportations in the interior, which rose between 2003 and 2009, have since tapered off. This trend is largely because of the 2008 Secure Communities program, in which local law enforcement were trained to report any likely undocumented individuals to ICE for deportation.
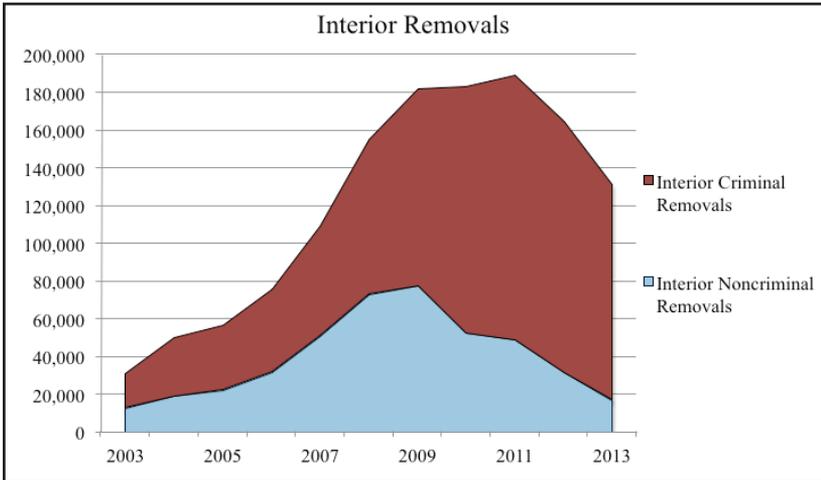
Graph 5: Removals of migrants apprehended by U.S. Immigration and Customs Enforcement, by criminal status (Rosenblum and McCabe 2014).

While non-criminal removals in the interior—and more recently criminal removals—have been falling, the number of individuals formally deported along the border (both of criminals and non-criminals) has been growing. The rise has been pushed upward by Operation Streamline, which was gradually adopted in an increasing number of sectors along the border and charged all undocumented migrants who are apprehended with criminal offenses related to immigration. The increase also results from the rise in expedited removals.
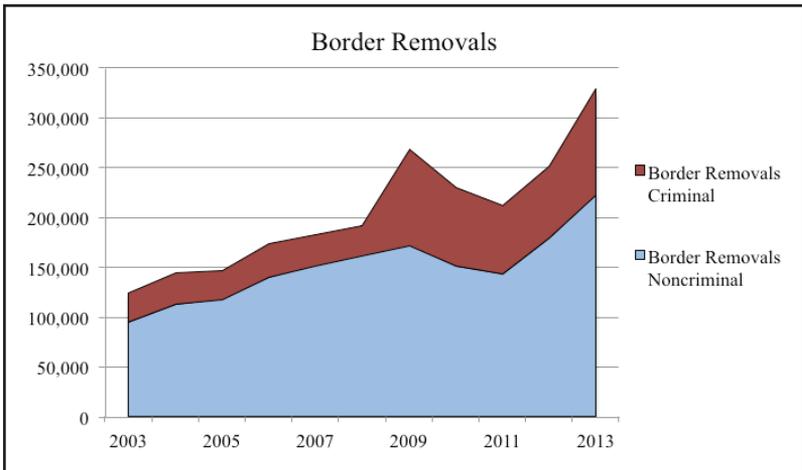
Graph 6: Removals of migrants apprehended by Customs and Border Patrol, by criminal status (Rosenblum and McCabe 2014).

The trend toward increased attention and resources at the border continues to intensify. In June 2014, the Obama administration announced it would be moving resources from the interior to the border. It later stated that this shift included moving Border Patrol agents and ICE officials to the southwest border and asking the U.S. Department of Justice to order court dockets to prioritize recent border crossers (White House 2014). As part of the November 2014 executive actions, President Obama also announced that the administration would be "shifting resources to the border and recent border crossers" and creating a new Southern Border Approaches and Campaign Plan with Joint Task Forces (including the Coast Guard, ICE, U.S. Customs and Border Protection, and U.S. Citizenship and Immigration Services) (Johnson 2014). The Southern Border Approaches and Campaign Plan will be designed to address ten objectives, with the third being to "interdict people and goods attempting to enter illegally between ports of entry" (U.S. Department of Homeland Security, Southern Border and Approaches Campaign 2014).

The push toward the border and the prioritization of recent crossers will likely spare more established immigrants and limit the effects for communities across the country. However, the impact of this shift should not be overstated. For over one hundred thousand immigrants who continue to be deported each year from the country's interior, serious consequences remain.

Deportation Trend 3: Rise in Criminal Deportations, Especially for Recent Arrivals

Over the previous year, the Obama administration has attempted to popularize its own narrative regarding deportations, claiming to be focusing its efforts on immigrants who were convicted of crimes. In his November 2014 Address to the Nation, Obama highlighted that "over the past six years, deportations of criminals are up 80 percent" (Obama 2014). Expelling criminals was where the United States should be focusing its attention, he advocated, promising to deport "Felons, not families. Criminals, not children" (CNN 2014). It is true that since 2008, there has been an increase in the number of criminal deportation cases (shown in Graph 7 below) (U.S. Department of Homeland Security 2014c). Simply being in the United States without papers is a civil (not criminal) offense and is regulated through civil proceedings. However, improper entry can be a misdemeanor charge (punishable with up to six months in jail) and reentry after a previous removal, which is the second most common designation, is considered a felony punishable with up to two years in jail. Being in possession of falsified documents also constitutes a felony.
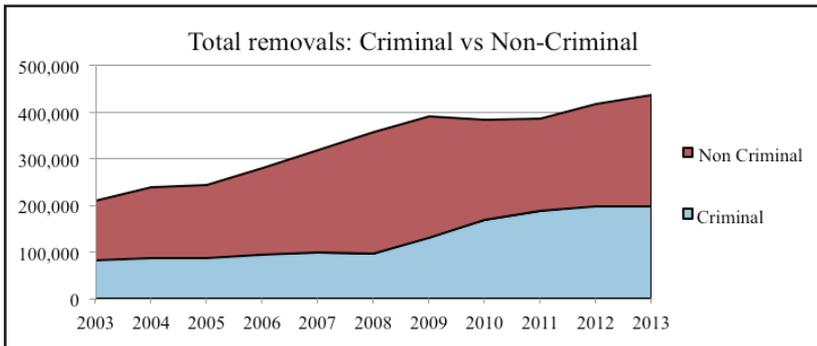
Graph 7: Total removals 2003-2013, criminal and non-criminal (U.S. Department of Homeland Security 2014c).

However, with rising criminal deportations, it is important to ask: what constitutes a criminal? The answer is not entirely straightforward. According to data obtained from the U.S. Department of Homeland Security by the *New York Times* through a Freedom of Information Act request, deportees were charged with over 400 different crimes in the past decade, varying from murder to bird conservation (Rosenblum and McCabe 2014).

In categorizing criminals, ICE separates crimes into three levels: Level 1, Level 2, and Level 3. The most serious level, Level 1, includes aggravated felonies, defined by the U.S. legal code to include violent crimes such as murder, rape, or sexual abuse of a minor and others such as money laundering, weapons trafficking, or two or more crimes punishable by over two years of jail time (U.S. Department of Homeland Security 2014c). Individuals convicted of Level 1 crimes totaled 18 percent of all removals during the past decade (Rosenblum and McCabe 2014).

Level 2 crimes can be either violent, such as an assault or hit and run, or nonviolent, including drug possession, fraud, or traffic crimes (U.S. Department of Homeland Security 2014a). In total, 7 percent of deportees have constituted this category over the past decade, split approximately equally between violent and nonviolent crimes (Rosenblum and McCabe 2014). Level 3 includes misdemeanors carrying jail time of up to a year. Some 16 percent of total removals over the past decade have been for Level 3 crimes (ibid.).
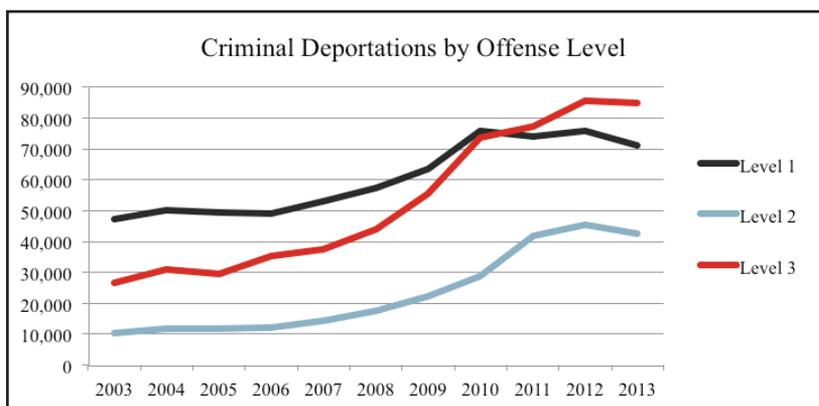
Graph 8: Criminal deportations by offense level, 2003-2013 (Rosenblum and McCabe 2014).

In May 2008, ICE stepped up its targeting of criminals through the Secure Communities program. The program's objective was to identify individuals (through their fingerprints) in U.S. jails who may be eligible for deportation. By 2013, some 3,181 communities were participating in Secure Communities, with police officers trained in how to identify, detain, and process suspected undocumented immigrants who had committed crimes (Immigration Policy Center 2014; Hagan, Rodriguez, and Castro 2011).

However, while the program was set up to target violent offenders, only 26 percent of all Secure Communities deportations during the last three years were for Level 1 convictions. Instead, the majority (55 percent) was for Level 3 or immigration crimes. These deportations boosted the number of migrants deported for less severe crimes (as seen in Graph 8 above). In total, the program led to some 200,000 more criminal deportations (Rosenblum and McCabe 2014).

In September 2014, professors from the New York University School of Law and the University of Chicago Law School published a study debunking the claim that the Secure Communities program had positive security effects for participating communities. They found only slight reductions in motor vehicle thefts and burglaries, and no effect on violent crime (ostensibly the program's central focus). The authors concluded that many of those deported through the program were not serious criminals but were caught for minor offenses (Miles and Cox 2014). Their findings also affirmed most social science studies' findings that immigrants commit fewer crimes on average than native-born Americans (Semple 2014). On November 20, 2014, Obama and the head of ICE quietly shut down the Secure Communities program, citing that it had "attracted a great deal of criticism, is widely misunderstood, and is embroiled in litigation" (Johnson 2012).

When most individuals hear that the Obama administration is deporting criminals, they may imagine the types of crimes designated as Level 1 crimes, such as murder and rape. However, the single largest category of crimes is immigration crimes, totaling an average of 18 percent of criminal removals and 8 percent of total removals from 2003 to 2013 (Rosenblum and McCabe 2014). In 2013 alone, some 60,500 people were removed for immigration crimes (14 percent of all deportations), compared to 9,250 in 2003 (4 percent of all deportations) (Rosenblum and McCabe 2014).

The increase in migrants being charged with immigration crimes has taken place largely through Operation Streamline in border districts. The number of immigrants apprehended along the border who were charged with a crime rose from 3 percent in 2005 to 22 percent in 2013, and half of all these criminal cases were from Operation Streamline, increasing the number of individuals labeled as criminals (Rosenblum 2013; Rosenblum et al 2014). Similarly, those who were removed can also face criminal charges or federal immigration charges if they cross back into the United States without papers.

At least one objective of these criminal charges for recent border crossers is deterrence, and here the policies do seem to be fulfilling their aim. Among immigrants who were deported under Operation Streamline (and

therefore charged with a crime), there was a 9.3 percent recidivism rate in 2013, compared to 28.5 percent for those migrants who were returned without consequences (Rosenblum et al 2014).

This is not to say that immigration or other non-violent charges should not be considered serious crimes. Rather, it is worth remembering that when the Obama administration highlights its criminal deportation numbers, this category encompasses not just violent and dangerous criminals, but also a wide range of non-violent offenders.

Conclusion and Policy Recommendations

The political nature of deportations fuels much of the misinformation surrounding this policy issue, especially among the growing number of Latino voters. For many Hispanics living in the United States, deportation is highly personal, as about a quarter of Hispanic adults know someone who was detained or deported in the past twelve months (Pew Research 2013). It is also a contentious topic—in March 2014, 60 percent of surveyed Hispanics reported that they did not approve of what they perceived to be an increased number of deportations (Krogstad 2014). As numbers of eligible Hispanic voters increase—right now Hispanics constitute 11 percent of all possible voters but this number is projected to grow—these opinions will matter even more (Lopez et al 2014).

Beyond the political repercussions, deportations have also been shown to create social, health, and economic consequences for those who are deported and for their families and communities (Hellerstein 2013; Inter-American Human Rights Court 2013). Deportees, particularly those who have resided in the United States for a longer period of time, leave behind their jobs, friends, and families, finding themselves back in their country of origin to start anew. These difficulties are complicated by criminal elements in receiving countries who prey on or recruit the newly deported, especially in Mexico, Guatemala, Honduras, and El Salvador—countries that constitute places of origin for 95 percent of those removed (U.S. Department of Homeland Security 2014c). Some immigration analysts blame recent crime spikes within these countries on the influx of deportees (Chardy 2014).

All of these reasons combine to underscore the importance of crafting the best possible deportation policy. To achieve this requires a strong, informed national conversation. Yet the lack of clarity surrounding the Obama administration's deportation policies has allowed political actors, organizations, and individuals to, at times, politicize deportation policy and mislead the public in one way or another.

To address this issue, the Obama administration should begin by publishing more of the Department of Homeland Security's deportation data. The Department of Homeland Security collects a vast amount of information but publishes only broad summary data about annual returns, removals, apprehensions, and criminal versus non-criminal deportations in its "Yearbook of Immigration Statistics" (U.S. Department of Homeland Security 2014c). Much of the data analyzed in this paper comes from numbers obtained by the *New York Times* through a Freedom of Information Act.

By publishing more deportation data in an easy-to-use database, the government would allow researchers to gain a more accurate and nuanced understanding of who is being deported, how they are being deported, how long they were in the United States, and the reasons behind deportations. Open information would not only bring greater transparency to an often-opaque process, but also allow for research investigations on specific questions.

Second, members of the Obama administration need to clearly explain their deportation policies to the public. Given the tendency for these explanations to be politicized rather than straightforward presentations of competing issues, nonpartisan think tanks and other organizations, along with the media, can play an important supporting role. In many cases, independent organizations are already capably filling this void, but even the best reports can be complicated and technical or reflect political biases over comprehensiveness.

One possible solution to this would be to have a page on the Department of Homeland Security's website that would offer clear succinct definitions of terminology, links to databases, texts of legislative or executive changes, transcripts for recent congressional hearings on deportation, and contact information for those responsible for answering questions. This would need to be organized thematically and chronologically in order to keep it simple and useable. Through this type of one-stop shop, researchers, journalists, and regular citizens would be empowered to better understand deportation categories, data, and overall U.S. policy.

While most Americans of all political stripes agree on the profound importance of U.S. deportation policy, the first step is making sure the media and citizenry understand the policies—both in their historical and current forms. This may sound straightforward; however, misleading information has circulated in high profile outlets. With so many individuals' lives affected by deportation policies, understanding what is happening is and will continue to be critically important.

Notes

[1] This is all contingent on whether the migrants pass a criminal background check and are willing to pay taxes.

[2] Much of the data in this table comes from the Migration Policy Institute reports. These reports also have tables that include similar information.

[3] The number of migrants who present their cases at the same time in front of an immigration judge varies. Immigrants are also allowed to plead guilty to a misdemeanor illegal entry charge, which most accept.

Bibliography

Caplan-Bricker, Nora. 2014. Deportations Under Obama vs. Bush: Who Deported More Immigrants? *New Republic*, April 17. http://www.newrepublic.com/article/117412/deportations-under-obama-vs-bush-who-deported-more-immigrants.

Chardy, Alfonso. 2014. Deportation of Criminals Blamed for Exodus from Central America. *Miami Herald*, August 3. http://www.miamiherald.com/news/local/community/miami-dade/article1978299.html.

CNN. 2014. Transcript: President Obama's Immigration Address, November 21. http://www.cnn.com/2014/11/20/politics/obama-immigration-speech-transcript/index.html.

Dougherty, Mary, Denise Wilson and Amy Wu. 2006. Immigration Enforcement Action: 2005. U.S. Department of Homeland Security, November. http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2005/Enforcement_AR_05.pdf.

Dredge, Bill. 1954. Wetbacks Herded at Nogales Camp. *Los Angeles Times,* June 20.

Hellerstein, Erica. 2013. How Deportation Impacts the Health of Families. *Chronicle of Social Change*, July 23. https://chronicleofsocialchange.org/news/how-deportation-affects-families-mental-and-physical-health/3514.

Hagan, Jacqueline Maria, Nestor Rodriguez and Brianna Castro. 2011. Social Effects of Mass Deportations by the United States Government, 2000-10. Ethnic and Racial Studies Vol. 34 No. 8, August. http://www.actionresearch.illinois.edu/courses/FAA391_Spring12/Hagan_2011.pdf.

Immigration Policy Center. 2014. Secure Communities: A Fact Sheet. http://www.immigrationpolicy.org/just-facts/secure-communities-fact-sheet (accessed December 15, 2014).

Johnson, Jeh Charles. 2012. Memorandum: Secure Communities. U.S. Department of Homeland Security, November 20. http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf.

_____. 2014. Southern Border and Approaches Campaign. U.S. Department of Homeland Security, November 20. http://www.dhs.gov/sites/default/files/publications/14_1120_memo_southern_border_campaign_plan.pdf.

Krogstad, Jens Manuel. 2014. Americans Split on Deportations as Latinos Press Obama on Issue. Pew Research Hispanic, March 11. http://www.pewresearch.org/fact-tank/2014/03/11/americans-split-on-deportations-as-latinos-press-obama-on-issue/.

Light, Michael T, Mark Hugo Lopez and Ana Gonzalez-Barrera. 2014. The Rise of Federal Immigration Crimes. Pew Research Hispanic Trends Project, March 18. http://www.pewhispanic.org/2014/03/18/the-rise-of-federal-immigration-crimes/.

Lopez, Mark Hugo, Jens Manuel Krogstad, Eileen Patten and Ana Gonzalez-Barrera. 2014. Latino Voters and the 2014 Midterm Elections. Pew Research Hispanic, October 16. http://www.pewhispanic.org/2014/10/16/latino-voters-and-the-2014-midterm-elections/.

Miles, Thomas and Adam Cox. 2014. Does Immigration Enforcement Reduce Crime? Evidence from "Secure Communities." *Journal of Law & Economics*, August 21.

Moloney, Deirdre. 2012. *National Insecurities: Immigrants and U.S. Deportation Policy Since 1882*. Raleigh-Durham: University of North Carolina Press.

Obama, Barack. 2014. Remarks by the President in Address to the Nation on Immigration. White House, November 20.

O'Neil, Shannon. 2013. *Two Nations Indivisible: Mexico, the United States, and the Road Ahead*. New York: Oxford University Press.

Pew Research Center. 2006. Modes of Entry for the Unauthorized Migrant Population, May 22. http://www.pewhispanic.org/2006/05/22/modes-of-entry-for-the-unauthorized-migrant-population/.

_____. 2013. A Nation of Immigrants: A Portrait of the 40 Million, Including the 11 Million Unauthorized, January 29. http://www.pewhispanic.org/2013/01/29/a-nation-of-immigrants/.

_____. 2014. Unauthorized Immigrant Population Trends for States, Birth Countries and Regions, December 11. http://www.pewhispanic.org/2014/12/11/unauthorized-trends/.

Public Law 414: Immigration and Nationality Act. 1952. H.R. 5678, June 27.

Rosenblum, Marc. 2013. Border Security: Immigration Enforcement Between Ports of Entry. Congressional Research Service, May 3.

Rosenberg, Simon. 2014. Thoughts on the New ICE Enforcement and Removals Report. NDN, December 19. http://ndn.org/blog/2014/12/thoughts-new-ice-enforcement-and-removals-report.

Rosenblum, Marc, Doris Meissner, Claire Bergeron and Faye Hipsman. 2014. The Deportation Dilemma: Reconciling Tough and Human Enforcement. Migration Policy Institute, April.

Rosenblum, Marc and Kristen McCabe. 2014. Deportation and Discretion: Reviewing the Record and Options for Change. Migration Policy Institute, October.

Semple, Kirk. 2014. Deportations Have "No Observable Effect" on Crime Rate, Study Concludes. *New York Times*, September 3.

Simanski, John. 2014. Immigration Enforcement Actions: 2013. U.S. Department of Homeland Security, September. http://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2013.pdf.

Tam, Ruth. 2014. Obama Administration Tops its Own Deportation Record. PBS Newshour, January 27. http://www.pbs.org/newshour/rundown/obama-administration-tops-its-own-deportation-record/.

The Economist. 2014. Barack Obama, Deporter in Chief. February 8. http://www.economist.com/news/leaders/21595902-expelling-record-numbers-immigrants-costly-way-make-america-less-dynamic-barack-obama.

Inter-American Human Rights Court. 2013. The Psychological Impact of Detention and Deportation on U.S. Migrant Children and Families. Prepared for the Inter-American Human Rights Court, August.

USA Today. 2012. Obama Administration Sets Deportation Record: 490,849. December 21. http://www.usatoday.com/story/news/nation/2012/12/21/record-2012-deportations/1785725/.

U.S. Border Patrol. 2013. Total Illegal Alien Apprehensions by Fiscal Year.

_____. 2014a. Border Patrol Agent Staffing by Fiscal Year (as of September 20, 2014). http://www.cbp.gov/sites/default/files/documents/BP%20Staffing%20FY1992-FY2014_0.pdf.

_____. 2014b. Enacted Border Patrol Budget by Fiscal Year, December 11. http://www.cbp.gov/sites/default/files/documents/BP%20Budget%20History%201990-2014_0.pdf.

U.S. Department of Homeland Security. 2011. Immigration Enforcement Action: 2010, June. https://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement-ar-2010.pdf.

_____. 2014a. Secure Communities: Standard Operation Procedures. https://epic.org/privacy/secure_communities/securecommunitiesops93009.pdf.

_____. 2014b. Southern Border and Approaches Campaign, November 20. http://www.dhs.gov/sites/default/files/publications/14_1120_memo_southern_border_campaign_plan.pdf.

_____. 2014c. Yearbook of Immigration Statistics: 2013. http://www.dhs.gov/yearbook-immigration-statistics.

White House. 2014. FACT SHEET: Immigration Accountability Executive Action, November 20. http://www.whitehouse.gov/the-press-office/2014/11/20/fact-sheet-immigration-accountability-executive-action.

7

WHAT LEADS TO A MOBILE BANKING PROGRAM'S SUCCESS?: A COMPARISON OF M-PESA AND EKO INDIA FINANCIAL SERVICES

Lauren Dunn

Use of mobile information and communications technology is spreading rapidly around the globe and mobile systems are gaining popularity as a tool to curb poverty and to "bank the unbanked." But while some mobile banking programs have been extremely successful in increasing access to traditional banking services, others struggle with slow uptake and low volume of transactions. This paper compares two such programs, M-Pesa in Kenya and EKO India Financial Services, to explore what makes a mobile banking program successful. An analysis of each program finds that there are three key differences that best explain their success or lack thereof: contextual, structural, and program design differences. The paper details these factors while exploring the promise of mobile banking as a tool for financial inclusion and poverty alleviation. To promote the success of future mobile banking efforts in low income communities, the paper outlines a set of policy recommendations targeted at these key differences.

Lauren Dunn is a 2015 graduate of the Master in Public Affairs program at Princeton University's Woodrow Wilson School of Public and International Affairs, where she concentrated on domestic policy and received a certificate in Health and Health Policy. Her work focuses on a broad array of anti-poverty initiatives including in education, human services, health systems, financial inclusion, and economic development. She can be reached at lauren.p.dunn@gmail.com.

Development advocates in the West often promote mobile banking, also referred to as mobile money, mobile payment, m-banking or m-money, as a crucial tool in the fight to end persistent global poverty. An estimated 3.3 billion people worldwide are mobile phone users (Medhi, Ratan, and Toyama 2009). Of those, an estimated 1.7 billion are unbanked (CGAP 2014). As advocates correctly point out, the fact that more people have mobile phones than have bank accounts indicates that there exists enormous potential to make great strides in the fight against poverty. Promising programs that combine financial inclusion efforts with information and communication technology are expected to "benefit humanity and spark global change" (EKO India Financial Services).

The first mobile banking program, SMART Money in the Philippines, was launched in 2003. It allowed for small mobile transactions made through a pre-paid, re-loadable payment card that was linked to a cell phone as well as a MasterCard payment system and the customers' personal bank accounts (Lallana 2004). Since then, more than 72 mobile money initiatives or programs have been launched in 42 developing countries (Tobbin 2012).

It is no mystery why advocates expect mobile banking to reach such heights of popularity in the developing world: it is incredibly cost effective for both suppliers and consumers. Branchless bank models are on average 19 percent cheaper than the traditional brick-and-mortar banks (CGAP 2014). They also lower costs for the customer by increasing the proximity of users to the bank and lowering other barriers to entry into the system including identification requirements, initial deposit requirements, and transaction fees. The "anywhere, anytime" nature of mobile phone service makes it a natural vehicle for branchless financial services. The most successful m-banking program today, M-Pesa in Kenya, has enjoyed quick uptake, a large and growing number of active users, and an immense volume of annual transactions. Introduced in March of 2007 as a simple remittance program, M-Pesa attracted more than 1.1 million registered users within eight months (Mbiti and Weil 2011). Just two and a half years later, in September 2009, their numbers had increased to over 8.5 million Kenyans registered and nearly 10 percent of Kenya's GDP – U.S. $3.7 billion – had been transferred through the system. As of 2011, an estimated 40 percent of Kenyans had used M-Pesa and more than two-thirds of Kenyan households had at least one member who used the service (Mbiti and Weil 2011; Jack and Suri 2011).

When one compares M-Pesa with another m-banking program also introduced in 2007, EKO India Financial Services, it becomes clear that

the Kenyan program's popularity and success is unique. Lauded by the Western media and the development funding community for its potential to curb poverty, EKO boasts a meager 180,000 users and only 700 "branches" throughout three states (Delhi, Bihar, and Jharkhand). Heavily backed by Western funders such as the World Bank's Consultative Group to Assist the Poor (CGAP) Technology Program and co-funded by the Bill & Melinda Gates Foundation, EKO has managed to slowly increase its market share over the past six years. But EKO's average monthly transactions pale in comparison to M-Pesa's: 300-400 transactions per month for an average EKO branch versus 1,000 transactions per month for an average M-Pesa agent (Gupta 2013).

Why has M-Pesa enjoyed such immense uptake and success while usage of EKO India Financial Services has been slow to spread? What explains this difference and what are the potential policy implications for future mobile banking platforms in similar contexts? Three key differences best explain the diverging fates of M-Pesa and EKO:

1. Contextual Differences: While Kenyan banks have only recently begun expanding to serve low-income communities, state-sponsored efforts to bank the unbanked have been underway for over four decades in India. M-Pesa entered the Kenyan financial services scene while there was still a gaping hole in the market. EKO, on the other hand, is just one of many pathways for the unbanked to enter the financial services arena.

2. Structural Differences: Trust in traditional banks is lower than trust in mobile network operators (MNOs) throughout the developing world. M-Pesa experiences a "telecomm advantage" over EKO because it is run by an MNO rather than a bank or a bank partner. When customer trust in the lead institution is higher, participation will be higher and growth will be faster.

3. Program Design Differences: While some clients report using M-Pesa to save or securely carry money, M-Pesa is designed solely to send and receive money. By keeping the services simple and focusing only on the transfer of remittances, M-Pesa was able to quickly capture a large market and sustain participation. EKO, although it was modeled off of M-Pesa's design, did not initially offer money transfer as part of its financial services package. Subsequently, it missed the opportunity to meet the modern poor's greatest financial service need and gain mass clientele.

FILLING THE UNBANKED'S MARKET NEED

Beginning in the early 1970s, India's government has long led efforts to

promote financial inclusion among the rural poor nationwide (CGAP 2010). As the banks were nationalized, the state implemented pro-poor lending policies such as setting a ceiling for interest rates on loans to the poor (Burgess, Pande, and Wong 2005). India also implemented a 1:4 branch license policy that required four branches to be opened in rural, "unbanked" markets for every one branch that was opened in already "banked" markets (ibid.). These policies were in place from 1969 until the 1990s, during which the total number of bank branches countrywide increased from 8,262 to 63,092 (King 2012). These policies increased access to bank loans while reducing reliance on informal and unreliable lending mechanisms, and the rural poverty rate decreased by 50 percent during the same period (Burgess et al. 2005). Since then, while a substantial portion of the rural adult population remains unbanked (61 percent), microfinance institutions have proliferated throughout the country to provide yet another route to loans and asset building for the poorest Indians (Nandhi 2012). Thus, EKO India Financial Services entered a competitive banking scene that was already littered with both traditional and innovative banking options for low-income individuals.

On the other hand, efforts to bank the unbanked in Kenya were only undertaken in earnest within the past decade and led primarily by the private sector, rather than the government. Equity Bank, a private for-profit bank, began targeting under- and unbanked populations, particularly in rural, less densely populated areas, as part of its expansion plan in the mid-2000s (Allen et al. 2013). From 2006 to 2009, Equity Bank increased its market share from 17 percent to 44 percent and during approximately the same time period, the country saw a 46 percent increase in the number of bank branches nationwide (King 2012). Not only did these financial inclusion efforts focus on increasing the proximity of the poor to the banks, but they also included lowering traditional barriers to entry such as requiring only a national ID and photo to open an account and not requiring a minimum balance at sign up.

While expansion of Equity Bank was successful in increasing the probability of the poor having a bank account, by 2009, only 970 traditional bank branches existed across Kenya (Allen et al. 2013; Beck and Cull 2013). Physical distance from a bank branch continued to be a large, costly barrier to having a bank account (King 2012). Extremely low ATM penetration remained a major financial services challenge. This gaping hole in the market of available services for the unbanked provided a perfect opportunity for M-Pesa to enter the scene. As early as 2001, researchers noted that in multiple African countries mobile phone airtime was being

traded as a "virtual currency" (Batchelor 2012). With support from the United Kingdom Department for International Development and the International Development Research Centre in Canada, researchers connected with Vodafone at Safaricom to introduce the mobile remittance service in 2007. By September of 2009, M-Pesa had flourished into a network of 23,000 service locations (Jack and Suri 2011). By 2012, it had multiplied even further to 35,000 agents (Beck and Cull 2013). M-Pesa's massive early uptake indicates that the traditional banking sector had left a key market underserved. The lack of a history of a strong public leadership role in promoting financial inclusion left plenty of customers who had long awaited the simple financial services offered by both M-Pesa and Equity Bank during the 2000s.

The Telecom Advantage

In addition to having a greater unmet market demand for banking services, M-Pesa has a key structural advantage over EKO Financial Services India: it is run by a national MNO rather than a state-run bank. A company's leadership structure is a critical characteristic in developing nations where civilian trust in governments, both local and national, as well as civil institutions is often low and damaged by past failures.

In a study of the challenges of banking the rural poor in Kenya through traditional banks, Pascaline Dupas and her co-authors (2012) found that even when initiation fees were waived and ID requirements were lowered, uptake in savings and loan services remained low. Additionally, they found that while trust in mobile banking is high, trust in traditional banks is very low (ibid.). The collapse of the banks in the 1990s remains a salient experience in the minds of many Kenyans and prevents them from placing full confidence in large, countrywide institutions.

While M-Pesa is backed by three commercial banks, it is owned and operated by Safaricom, an affiliate of the MNO Vodafone. This small difference may be key to its success. This is because customer perception of the provider is critical to their participation. In a study of rural Ghanaians and banking, Peter Tobbin (2012) finds that the majority of participants said they trusted MNOs more than the banks. This was particularly true among those who are less educated. They stressed that they were more likely to find a mobile operator anywhere they go in Ghana while the banks were less accessible, particularly the rural banks. Frequency of exposure may also be crucial: regular, reliable use of mobile phones has reinforced their trust of MNOs.

EKO exploits the ubiquitous presence and the convenience of mobile

phones to provide services to a broader spectrum of clients but it is run by a business partner of the largest state-run banks, not an MNO. It is important to note that in Tobbin's study, many of those surveyed had an existing relationship with an MNO but had no previous experience with banks. Given that EKO is targeting its services to individuals who are unlikely to have past relationships with banking institutions, it is plausible that slow uptake may be a symptom of community unease with and mistrust of state-run institutions.

Additionally, m-banking programs run by MNOs may benefit from the intrinsic advantage of existing marketing structures and agent networks in which the companies have already invested heavily and through which they can advertise mobile money programs. Efforts led instead by banks or bank partners must develop new agent networks or partner with MNOs to utilize their networks (Tiwari and Deepti 2013). While M-Pesa had a readymade agent network and existing marketing opportunities through Safaricom, EKO had to figure out how to start both from scratch after an initial partnership with MNO Airtel fell through (CGAP 2010). Additionally, as a start-up back in 2007, EKO had a very limited marketing budget that went entirely to "street marketing": distributing handouts, hanging fliers, performing impromptu street plays, and setting up demonstration canopies in markets to promote the new program (Nandhi 2012). Without a larger statewide or national advertising presence, it is no wonder that the majority of Indians has never heard of m-banking channels (Medhi et al. 2009).

Keeping Service Simple: Money Transfer

Finally, program design differences have contributed to M-Pesa's success over EKO. As mentioned earlier, EKO was modeled directly off of M-Pesa's program design and the two programs continue to enjoy many similarities. Both are easy to join and easy to use. M-Pesa's registration requires only a mobile phone and a valid ID (national ID or passport). Both also employ a simple design that serves the needs of illiterate or less-educated populations. EKO's platform, SimpliBank, works with any type of phone and requires only basic numeric literacy for dialing numbers. Both programs have relatively low transaction fees and simple, straightforward fee structures, charging slightly discounted rates for larger transactions. The cost of sending money through these programs is approximately half the price of other formal and secure providers like the Post Office or Western Union (Medhi, Ratan, and Toyama 2009). Additionally, both programs benefit from proximity to low-income residential areas. A study of mobile money transfer user interface designs found that in Kenya traveling to the

nearest M-PESA agent was faster than traveling to the nearest post office or bank branch for most of the study participants (ibid.). Similarly in India, the study found that for 75 percent of EKO users the proximity of the EKO agents was a key characteristic that attracted them to participate in the program.

Regardless of all of these similarities, the program design characteristic that is critical for success is a focus on money transfer services rather than other banking offerings. M-Pesa is decidedly not a banking program. It serves as a partial substitute for the formal banking system (Mbiti and Weil 2011). EKO, on the other hand, was designed to be a banking program and it offers access to savings as well as credit. According to EKO's website, customers are now able to "open a savings account, deposit and withdraw cash from the account, send money to any part of the country, receive money from any part of the world, buy mobile talk-time or pay for a host of services."

While EKO offers money transfer services today, their remittance product, named "Tatkal," was not actually introduced until 2010, three years after the launch. By 2012, the service was contributing over 75 percent of the company's gross transactions and 70 to 80 percent of its revenue (Nandhi 2012). Even so, according to a 2013 blog post on the CGAP website, the money transfer market remains untapped in India (Tiwari and Deepti 2013). The informal money transfer system "hawala" remains "the predominant form of payment in remittance corridors" (ibid.). CGAP cites a recent study by Centre for Microfinance at IFMR Research that found that 57 percent of families from major migrant corridors used "hawala" or other informal transfer methods even though nearly half of them had access to bank accounts at the time (ibid.).

This program design may be attributable to the regulatory environment in India, which permits mobile transactions only if they are linked to a registered bank account (ibid.). Thus, a money transfer-only program like M-Pesa could not be implemented in India. This is a lost opportunity, since M-Pesa is a promising gateway to more traditional banking services for those who are unbanked or initially uncomfortable with the traditional banking system.

Regardless, not offering a remittance service from the start was a major mistake in EKO's business model. They could have captured the remittance market and uptake would have increased much more quickly. In addition, other banking services could have been phased in over time as customers grew accustomed to the service and gained exposure to savings and loan products. For example, while M-Pesa does not offer formal savings and

credit opportunities, studies have shown that it does decrease the use of informal savings mechanisms like storing funds in a secret place or with a friend. In fact, the existence of M-Pesa in a community was found to increase the proportion banked by almost 11 percentage points. The study authors point out that this represents a 58 percent increase over the pre-M-Pesa banking level (Mbiti and Weil 2011). Although it does not aspire to be a formal banking program, M-Pesa has been shown to improve the ability of households to smooth risks, just as savings accounts do (Jack and Suri, 2010). M-Pesa has acted as a gateway to a larger arena of financial series as interest-bearing savings programs like M-Kesho are being introduced to supplement existing M-Pesa accounts (Mbiti and Weil 2011).

Conclusion and Policy Implications

Through a comparison of M-Pesa and EKO India Financial Services it is clear that mobile banking is a promising tool for financial inclusion and poverty alleviation but there are a number of structural, programmatic, and contextual characteristics that an m-banking program must consider in order to have a chance at success. Non-profit, private sector and government entities that wish to promote financial access through ICT can learn from M-Pesa's popularity and success as well as EKO's struggle to gain momentum.

Programs must remove the most immediate barriers to entry for the unbanked by offering very limited or no transaction fees as well as minimal ID requirements and initial deposits. M-banking programs must adopt simple platforms that are easy to use for low- and non-literate populations.

New m-banking programs should be launched and promoted as primarily mobile remittance programs. Additional financial services can and should be made available to all users, but the initial goal should be to meet the large need for money transfer services.

Additionally, new and existing m-banking programs must embrace the telecom advantage. MNOs must be a leader in the program development and implementation and have a stake in its success. MNO partners should play a major role in the marketing of m-banking opportunities to existing clientele. MNO agent networks should be tapped for distribution of the programs services.

To that end, any legal or regulatory barriers to MNO participation in m-banking must be removed. Regulatory environments that reinforce the traditional banking system, such as requirements to link mobile money use to existing bank accounts, risk reinforcing the divide between poor, unbanked communities and the more affluent.

Finally, potential m-banking programs should consider any existing public sector leadership in promoting financial inclusion. If strong government-led efforts have been undertaken in the past, then the market demand for banking services among the unbanked may be smaller than data suggests. If there are current expansion efforts underway in the traditional banking sector, then an m-banking program should build off of those efforts with an MNO partner at the table.

References

Allen, Franklin, Elena Carletti, Robert Cull, Jun "Qj" Qian, Lemma Senbet, and Patricio Valenzuela. 2012. "Improving Access to Banking: Evidence from Kenya." SSRN 2109492.

Banerjee, Abhijit, Esther Duflo, Rachel Glennester, Cynthia Kinnan. 2013. "The Miracle of Microfinance: Evidence from a Randomized Evaluation." *National Bureau of Economic Research Working Paper No. 18950*. May.

Batchelor, Simon. 2012. "Changing the Financial Landscape of Africa: an Unusual Story of Evidence-Informed Innovation, Intentional Policy Influence, and Private Sector Engagement." *IDS Bulletin* 43: 5. September.

Beck, Thorsten and Robert Cull. October 2013. "Banking in Africa." *The World Bank Development Research Group Working Paper No. 6684.* October.

Bold, Chris. 2011. "Does Branchless Banking Reach Poor People? Evidence from India." *Consultative Group to Assist the Poor* blog, July 17. http://www.cgap.org/blog/does-branchless-banking-reach-poor-people-evidence-india.

Borgonovi, Veronica, Simon Meier, Manjari Sharda, and Lalitha Vaidyanathan. 2011. "Creating Shared Value in India: How Indian Corporations are Contributing to Inclusive Growth While Strengthening Their Competitive Advantage." *FSG.* http://www.fsg.org/Portals/0/Uploads/Documents/PDF/India_CSV.pdf. October.

Burgess, Robin, Rohini Pande, and Grace Wong. 2005. "Banking for the Poor: Evidence from India." *Journal of the European Economic Association* 3.2-3: 268-278.

Consultative Group to Assist the Poor (CGAP). 2014. "Mobile Banking." http://www.cgap.org/topics/mobile-banking.

_____. 2010. "Technology Program Country Note – India." http://www.cgap.org/sites/default/files/CGAP-Technology-Program-Country-Note-India-Nov-2010.pdf.

Dupas, Pascaline, Sarah Green, Anthony Keats, and Jonathan Robinson. 2012. "Challenges in Banking the Rural Poor: Evidence from Kenya's Western Province." *National Bureau of Economic Research Working Paper No. 17851*. February.

EKO India Financial Services website. 2014. "About Us." http://eko.co.in/about-us/awards/.

Gupta, Sunil. 2013. "The Mobile Banking and Payment Revolution." *The European Economic Review* 3–6.

Jack, William and Tavneet Suri. 2011. "Mobile Money: The Economics of M-Pesa." *National Bureau of Economic Research Working Paper No. 16721.* January.

King, Michael. 2012. "Is Mobile Banking Breaking the Tyranny of Distance to Bank Infrastructure?" Evidence from Kenya. *Institute for International Integration Studies iiisdp412, IIIS.*

Lallana, Emmanuel C. 2004. "SMS in business and government in the Philippines." *ICT4D Monograph Series* 1.

Mbiti, Isaac and David N. Weil. 2011. "Mobile Banking and the Impact of M-Pesa in Kenya." *National Bureau of Economic Research Working Paper No. 17129.* June.

McKay, Claudia. 2012. "Do Poor People Use Branchless Banking Services?" *Consultative Group to Assist the Poor* blog, March 8. http://www.cgap.org/blog/do-poor-people-use-branchless-banking-services.

Medhi, Indrani, S. N. Gautama, and Kentaro Toyama. 2009. "A comparison of mobile money-transfer UIs for non-literate and semi-literate users." In *Proceedings of the SIGCHI Conference on Human Factors in Computing Systems* 1741-1750.

Medhi, Indrani, Aishwarya Ratan, and Kentaro Toyama. 2009. "Mobile-banking adoption and usage by low-literate, low-income users in the developing world." *Internationalization, Design and Global Development* Springer Berlin Heidelberg 485-494.

Nandhi, Mani Arul. 2012. "Impact of EKO SimpliBank on the Saving Behaviour and Practices of Low Income Customers: The Indian Experience." *IMFR Research Centre for Micro Finance.* http://www.ifmrlead.org/cmf/wp-content/uploads/attachments/csy/3164/Impact%20of%20EKO%20-%20Savings%20Behavior.pdf. October.

Tiwari, Mudita and K.C. Deepti. 2013. "Mobile Payment Systems: What can India adopt from Kenya's success?" *Consultative Group to Assist the Poor* blog, April 2. http://www.cgap.org/blog/mobile-payment-systemswhat-can-india-adopt-kenya's-success.

Tobbin, Peter. 2012. "Towards a model of adoption in mobile banking by the unbanked: a qualitative study." *info* 14.5: 74-88.

American University
School of International Service

Carleton University
Norman Paterson School of International Affairs

Columbia University
School of International and Public Affairs

Denver University
Josef Korbel School of International Studies

Georgetown University
Edmund A. Walsh School of Foreign Service

Graduate Institute of International and Development Studies, Geneva

George Washington University
Elliott School of International Affairs

Harvard University
John F. Kennedy School of Government

London School of Economics and Political Science

Princeton University
Woodrow Wilson School of Public and International Affairs

Syracuse University
Maxwell School of Citizenship and Public Affairs

Tufts University
Fletcher School of Law and Diplomacy

University of California San Diego
Graduate School of International Relations and Pacific Studies

University of Michigan
Gerald R. Ford School of Public Policy

University of Southern California
Annenberg School for Communication and Journalism

University of Texas Austin
Lyndon B. Johnson School of Public Affairs

Yale University
Jackson Institute for Global Affairs