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Extended Report: Statelessness and the delegation of migration functions to private actors

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This research programme focuses on a range of issues related to the wellbeing and recognition of people who traverse continents devoid of citizenship. Issues related to refugees remain crucially unanswered in debates and policies surrounding migration. In the wake of acknowledgement within the academy that it is not always possible to isolate refugees from migrants, this programme analyzes a range of contexts where dignity and human rights are compromised through the absence of legal and political recognition. By focusing on situations of extreme vulnerability and on lives lived on the borderline, this research programme seeks to articulate and address urgent needs with regard to the stateless migrants who have entered Europe.

Extended Report: Statelessness and the delegation of migration functions to private actors

Summary 4

1. Categories of delegation 4

2. Explicit delegation of migration control functions: Visa management 6

    2.1. Data collection, storage and decision-making 6

    2.2. Implications for stateless persons 9

    2.3. Who decides? 10

3. Explicit delegation of migration functions: Security companies 11

    3.1. Private security companies and migration detention 12

    3.2. Securing external borders 16

    3.3. Stateless persons 18

4. Implicit delegation of migration functions: Carrier sanctions 18

    4.1 Modern carrier sanctions 19

    4.2. Implications for stateless persons 21

5. Humanitarian obligations of private companies 24

    5.1. International Code of Conduct for Private Security Providers *25*

    5.2. United Nations Global Compact *28*

    5.3. Guiding Principles on Business and Human Rights *29*

    5.4. Role of states *30*

Conclusions and recommendations 31

References 33

Appendix 1: States where some form of private visa processing companies are used (where known) 37

Appendix 2: States not covered by visa information capture companies 40

Summary

Migration control functions are increasingly being delegated to private actors, a phenomenon which particularly affects stateless persons. This report discusses two forms this takes. First, there is *explicit* delegation, through contracts with private actors to carry out roles that would otherwise be fulfilled by the state. This includes using information management companies in the processing of visa claims, and private security companies in the management of migration detention and border security. The second sort of delegation is *implicit*. This involves placing sanctions upon private actors in their dealings with migrants. While there are many forms of this type of delegation, this report focuses on carrier sanctions. It identifies an increasing privatization of migration control functions and asks what are its impacts on the most vulnerable migrants, particularly stateless persons and potential refugees. When migration control functions are delegated in this way, the line of responsibility for decisions and actions can be obscured. This report examines emerging measures in this area and concludes with some policy recommendations.

1. Categories of delegation

This report offers a summary overview of a study into the ways in which migration control measures are delegated to private actors and the impact of this on the condition of statelessness. This is part of a larger phenomenon of delegation of migration control functions, including delegation to intergovernmental bodies, to local elected authorities and to non-governmental organisations (e.g. Lahav 2000).[1] The delegation to private agents can be usefully examined in four categories: Implicit, Explicit, Direct and Indirect, though this report is built around the Implicit and Explicit delegation categories. This section expands upon these categories and then shows how they may intersect. This will provide the structure for the report.

Explicit delegation of migration control functions will be understood here to mean the direct contracting of non-state agents to carry out traditionally state-held migration control functions. Explicit delegation involves direct contracting by the state, usually through payment for services rendered in the area of migration management. This is on a continuum with implicit delegation. Implicit delegation of migration control functions occurs when a state imposes sanctions or awards on non-state actors, making them, in effect, take charge of migration control functions. This includes carrier sanctions, which will be discussed in this report. Other forms of implicit

[1] For the results of an extensive study into this, see Guiraudon and Lahav (2000).

delegation in this area include putting constraints on doctors treating foreign patients and on landlords offering accommodation, for example. As will be presented here, these implicit forms of delegation can lead to significant relocations and obfuscations of decision-making.

While sometimes this delegation may be direct, involving relationships directly between the private agent under discussion and a state, sometimes they may be indirect. Indirect delegation of migration control functions takes place when the private agents to which the state has delegated migration control functions themselves delegate certain functions. This might include, for example, the situation in which a carrier company, avoiding sanction, hires a security company to take charge of potential travellers while the carrier arranges for their return.

This report will examine explicit and implicit delegation in detail, but as the table below shows, these may interact with the other categories discussed here. The table gives examples for each sort of delegation. These examples are discussed in more detail elsewhere in the current report.

Table 1: Examples of explicit, implicit, direct and indirect migration control function delegation

	Explicit	Implicit
Direct	State hires private company to undertake some aspect of visa processing.	State imposes sanctions on carriers carrying persons with incorrect documentation.
Indirect	State hires private company to undertake migration detention functions. This is then delegated to the company's child company.	Carrier hires private security company to guard persons with incorrect documentation while their return is arranged, in order to avoid sanction.

This report begins by examining two main types of private actor to whom migration control functions are explicitly delegated: visa management, and security companies. It then presents one form of implicit delegation: carrier sanctions. The penultimate section summarises emerging discussions relating to the humanitarian obligations of private companies, and the final section offers some policy recommendations arising from the findings presented. The research for this initial report has primarily been conducted using resources available online. It has not been possible to examine documents not written in English, French or Spanish. This is a limitation of the work.

2. Explicit delegation of migration control functions: Visa management

This section focuses particularly upon the data capture and management firms hired to support states in their visa decision-making. Although, as Appendix 1 indicates, this is currently an international phenomenon, it has been led by certain states, with early adoption in the US and, more recently, by the UK's large-scale use of private firms to establish 'entitlement eligibility' of visa applicants.

While it is still considered to be a crucial sovereign right of states to decide who may enter the political and territorial community, it is apparent that the enactment of this decision-making is often delegated both beyond the physical borders, and to non-state actors (Bigo and Guild 2005 234). These powers are now delegated increasingly to a small number of multinational companies. Some key players will be discussed here. Worldbridge Service process visa applications to the UK, Australia and Germany, while their parent company, CSC (Computer Sciences Corporation) largely provides services to the US. VFS Global supports 41 client governments in the area of visa biometric testing and has, according to their own figures, processed over 55 million visa applications. Visa applications to 14 different countries made from Pakistan are processed by Gerry's. Meanwhile, Steria's major contracts in this area are with organs of the European Union. Appendix 1 gives a country by country break-down of these companies and their fields of operation. This is intended to provide an indication only and does not claim to be exhaustive.[2]

2.1. Data collection, storage and decision-making

The companies discussed here are large and powerful, with long-standing relationships with some client governments. They own the software that enables the mass processing of data necessary for many states' modern systems of border management, and their existing and growing global infrastructures make contracts attractive to new client governments. For example, according to their website, WorldBridge Service works directly with the UK Government, the Australian Government (to process claims from France, Jordan and Lebanon) and the German Embassy in Qatar.[3] As part of the UK Border Agency contact with WorldBridge Service, 30 Visa Application Centres were established in 14 countries, with 'information services through

[2] Unless otherwise stated, the results in this report are correct as of the end of 2013.

[3] https://www.visainfoservices.com/Pages/dest_org.aspx (accessed 25/07/2013

websites, email and multilingual call centres to an additional 87 countries'.[4] Once these centres are established, they can be used to support other client governments.

In 2009, CSC, WorldBridge Service's parent company, reported a large, and large-ranging, portfolio of migration function contracts. This includes the maintenance of more than 20 major US citizenship and immigration services, the provision of the Belgium National eID card, the French national health card, and the Italian Sistema Informativo Frontiere, as well as providing 'strategic consulting' for the Australian Department of Immigration and Multicultural Affairs (CSC 2009 2). In February of 2013, CSC won a contract to work with the US Department of Homeland Security (DHS)'s Coast Guard, following on a 'nearly 10-year partnership with DHS'.[5] They also describe the long-running SAVE (systematic alien verification entitlement) programme, which has enabled 'automated employment eligibility status verification' (CSC 2009 1). They also offer governments solutions for '[i]mmigration services delivery and enforcement'.[6]

Established in 2001, VFS Global describes itself as 'the world's largest outsourcing and technology services specialist for diplomatic missions and governments worldwide'.[7] On their website, they keep a moving tally of the number of applications processed since 2001 (over 64.7 million), the number of client governments (44), the number of countries of operations (89) and the number of visa application centres (908).[8] The services offered are: Biometrics, Information Services, Operations Solutions, Financial Solutions, Logistics Solutions, and Verification Services. Its 'Verification Services' division was launched in 2008.

VFS have set up offices in 89 countries. This means that when new client governments want to employ the services of VFS in a particular country, they can then do this through the company's existing offices. As a result, the VFS office in Bahrain, for example, will be processing applications for a range of

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[4] http://www.csc.com/success_stories/flxwd/78768-case_study?article=http://www.csc.com/uk/success_stories/34870-securing_the_uk_s_extended_borders.js&searched=immigration (accessed 25/07/2013)

[5] http://online.wsj.com/article/PR-CO-20130215-907094.html?mod=crnews (accessed 25/07/2013)

[6] https://www.csc.com/public_sector/offerings/16609/16818-border_and_immigration_solutions (accessed 25/07/2013)

[7] http://www.vfsglobal.com (accessed 25/07/2013)

[8] Figures as of July 2013

client governments (Australia, Bulgaria, Denmark, Spain, UK), while the offices in India will be processing visas to considerably more destinations.[9] That is, client governments, or their embassies, can then contract VFS to carry out visa application verification work in their existing countries of operation.

Unlike other companies, which are spread across a number of countries, Gerry's works specifically in Pakistan, supporting visa applications to 14 countries.[10] The visa application form, supporting documents, and biometric data, are submitted to Gerry's application centres in Islamabad, Karachi, Lahore and Mirpur, where call centres for enquiries are also located.

Steria has been used by the European Union for two biometric systems: the European Union's asylum finger print data base, EURODAC and the Visa Information System, VIS. VIS, the Visa Information System, was designed to enable 'member states to grant Schengen visas and combat visa fraud' (Steria 2013 5). This is presented as separate from EURODAC, which Steria describes as follows:

> … as border controls are relaxed across Europe, the task of policing illegal migration has grown in tandem. Steria is helping to alleviate this pressure. We implemented the EURODAC (European fingerprint database for identifying asylum seekers and irregular cross-border travellers) biometry system on a European scale for the European Commission. It processes immigration application requests and allows member countries to check if asylum has already been sought in another member country. A single registration takes a few minutes and negates the need for lengthy investigations every time asylum is sought (Steria 2013 5).

The establishment of the EURODAC system was agreed in 2000, in Council Regulation (EC) Number 2725/2000.[11] The objective of the system is to compare 'fingerprints of asylum seekers and some categories of illegal

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[9] Full details are compiled in Appendix 1.

[10] "Visa Processing Services," Gerry's Group, http://www.gerrys.com.pk/visa-main.asp

[11] Available in multiple languages from the EUR-Lex database: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000R2725:EN:NOT (Accessed 29/07/2013)

immigrants'.[12] Although this is not overtly mentioned in the EC documentation of the project, the company responsible is also Steria.[13] They are responsible for the AFIS fingerprint recognition system adopted by EURODAC and EURODAC+, as well as for the set-up and maintenance of National Access Points (NAPs) in 23 countries. In the same discussion on their website, they also mention the use of the AFIS system by the Belgian police. The Schengen Information System (SIS) which forms the root of this is currently run by Steria across the Schengen area and is aiming to cover all 29 Schengen states (Steria 2013).

2.2. Implications for stateless persons

While some persons may not notice the existence of the private visa decision-making companies, some may feel their presence strongly. For example, several of the countries require persons to fill in visa application forms directly on the website of the visa management companies. These websites may be opaque, with little opportunity for appeal, especially as they can be located far from the destination states themselves. They can offer telephone helplines managed by the visa management companies, connected neither to the states nor to their diplomatic missions.

Because of the efficiency saving, biometric traveller identification systems are also widely used on a voluntary basis by passengers to certain countries such as through PreCheck and Global Entry in the US and Nexus in Canada (IATA 2013 23). Indeed, the International Air Transportation Association (IATA) note that about 1.4 million persons have already signed up voluntarily to Global Entry, which they argue 'highlights passenger willingness to share data for a defined benefit' (IATA 2013 23). It also emphasizes the two-tier nature of a biometric system. While it makes travel easier for some, it makes it more difficult for those who have been deprived of a documented identity to move (e.g. see Webber 2012 65).

To try to understand the role of visa-management firms, it is useful to consider in which states company offices are *not* located. These are listed in Appendix 2. While it may be that in some cases, the visas from these countries are processed in nearby countries, it is still useful to examine commonalities between those countries in which visa processing company offices are not located. Table 2 provides some summary information on the

[12] http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33081_en.htm (accessed 29/07/2013)

[13] https://www.steria.com/sharing-our-views/client-references/client-references-detail/?cr_uid=185 (accessed 29/07/2013)

states in Appendix 2. It indicates that company offices are not present in the very poorest states. This makes sense, as Table 2 also shows that migrants from these states mainly go to less developed countries, which may not pay private visa management companies (as can be seen in Appendix 1). Comparing Appendices 1 and 2 shows that, while some states with situations of extreme violence are omitted, others are included. This suggests that a situation of extreme violence is not what stops a company from having an office in a particular country. It is interesting to note the presence of such companies specifically in countries with *large outflows* of persons escaping widespread violence.

Table 2: Summary information about the 47 states where visa management services of the companies discussed here do not operate

Total GDP 2012 (in millions of USD)[14]	Total Population 2012[15]	Average HDI ranking 2012[16] [17]	Total emigrant population 2010[18]	Proportion in less developed regions 2010[19] [20]
340,079	403,120,945	138.79	17,919,281	66.99%

2.3. Who decides?

The use of visa-management companies could be seen to remove elements of the decision-making process from the state where the accountability is located, so that it becomes more difficult to critique. This means, for example, that it is more difficult for persons in a situation of statelessness to have their applications to travel considered on a case-by-case basis. Meanwhile, as the migration decision-making is delegated to the private sector, automated validation of potential visa-holders becomes more justifiable, since carried out by profit-motivated private agents.

[14] According to World Bank ranking 2012
http://databank.worldbank.org/data/download/GDP.pdf (accessed 30/07/2013)

[15] According to World Bank indicators 2012
http://data.worldbank.org/indicator/SP.POP.TOTL (accessed 30/07/2013)

[16] According to UNDP's HDR 2012

[17] Empty cells have been discounted.

[18] According to UNDESA International Migrant Stock Revision 2012 Table 7
http://esa.un.org/MigOrigin/ (accessed 30/07/2013)

[19] Calculated from UNDESA International Migrant Stock Revision 2012 Table 7
http://esa.un.org/MigOrigin/ (accessed 30/07/2013)

[20] Empty cells have been discounted.

On the websites of Gerry's and WorldBridge, it is reiterated that these companies do not make visa decisions. For example, the WorldBridge Service website contains the disclaimer:

> Your visa application will be processed and decided by the relevant visa issuing body of the country you wish to travel to. Neither WorldBridge nor any of our staff play any part in or influence the outcome of your visa application.

However, CSC,[21] WorldBridge Service's parent company, a technology consultancy, seems to suggest otherwise. In a brochure for their Border and Immigration Solutions Centre of Excellence, the services offered are explained in more detail, and among the listed fields of expertise, is 'entitlement credentialing':

> Our expertise includes: privacy-centric management of personally identifying information; identity assessment; entitlement credentialing; risk assessment; intelligence and information sharing; case management; workflow automation; biometrics and identity management; and enterprise architecture (CSC 2009 1).

More research is needed to establish the exact nature of the entitlement credentialing process and its role in decision-making.

3. Explicit delegation of migration functions: Security companies

It is increasingly common for private security companies to perform roles previously performed by state and multi-state agents (e.g. Abrahamsen and Williams 2010 62). This includes the guarding of key state and regional buildings, the running of prisons and participation in peacekeeping and other operations of the United Nations. Included among such companies are G4S and ArmorGroup (which has been a child company of G4S since it was bought in 2008[22]), as well as Finmeccanica. Such companies also carry out activities related to migration control for individual states, as well as for regional groupings like the European Union. This section considers the role

[21] http://www.csc.com/uk/ (accessed 25/07/2013)

[22] http://www.g4s.com/en/Media%20Centre/News/2008/05/07/G4S%20Completes%20Acquisition%20of%20ArmorGroup%20International%20plc/

of private security companies in migration control functions such as migration detention and border security, and the effects of this on stateless persons.

3.1. Private security companies and migration detention

Administrative detention refers to arrest and detention by state authorities outside criminal law (HRC 2010 21).[23] Migration detention represents one form of this, and involves the arrest and detention of non-citizens in order to carry out various administrative functions relating to their migration status. This includes, for example, the establishment of their identity, of the veracity of a claim to asylum, or the effectuation of a deportation order. In the case of stateless persons, as noted in a UNU-GCM report on the matter (Bloom 2013), administrative migration detention is particularly problematic, as their identity may be difficult to establish and, more importantly, it may often be impossible to deport them, so that detention 'pending deportation' can become indefinite. When migration detention is increasingly carried out by security companies who boast experience in criminal and even military contexts, the criminal / administrative detention distinction can be lost. The emphasis of such actors is upon security rather than care, and they are not accountable in terms of the conditions of care required by international law for either potential asylum seekers or stateless persons. Indeed, as migration detention is administrative, this can even further remove it from the usual state scrutiny of criminal detention, such as judicial review and access to services (Bloom 2013). This section discusses some examples of the use of non-state agents in migration detention globally.

The academic discussion of private immigration detention often focusses on the US, Australia and the UK, possibly because these were the first countries "to delegate operations of imprisonment facilities to private entities" (Flynn and Cannon 2003 3; quoting McDonald 1994 29). The Global Detention Project, which researches immigration detention facilities in 56 countries, notes that as of 2009, an increasing number of countries have employed non-governmental agencies within their immigration detention institutions, including: the US, Sweden, South Africa, Canada, the UK, Japan, Australia, the Czech Republic, Luxembourg, Ireland, Estonia, Italy, France, Portugal, Finland and Germany (Glynn and Cannon 2009 4). This includes the use of not-for-profit organizations in Portugal and France, the Red Cross in Italy[24],

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[23] UNU-GCM Policy Report 02/03 defines the situation of administrative migration detention and its particular effects on stateless persons in more detail

[24] For example, in Italy, while 'Welcome Centres' are run by state and local public authorities, some 'Expulsion Centres' are run by th eItalian Red Cross, as well as a number of smaller charities and organisations (Flynn and Cannon 2009 9).

and a small private security company in one detention centre in Germany, for example.

In 1998 the Australian Government contracted a subsidiary of Wackenhut Corrections Corporation (WCC) to manage immigration detention centres in the country (Glynn and Cannon 2009 5). After heavy criticism of WCC, in 2003 the government moved its contract to the company now called G4S – though it is interesting to note that in 2002, G4S had in fact bought WCC and then demerged three months before this change in contract (Glynn and Cannon 2009 5). Following criticism of conditions, and despite improvements in 2006, the Australian Government terminated its detention contract with G4S and took up a 5-year contract with Serco in 2009 (e.g. see Australian National Audit Office 2013).

Wackenhut Corrections Corporation is now part of a much larger company, GEO group, which claims to work in four countries (USA, Australia, South Africa, and the UK[25]). Among a vast range of penal services, GEO provides seven 'International Services Facilities' in the US, with a total of 7,149 beds.[26] In the UK, they are responsible for two immigration removal centres. Indeed, according to their Annual Report for 2012, immigration detention represents 16% of the company's profits for that year (14% for the US Immigration and Customs Enforcement and 2% for the 2 removal centres in the UK; GEO 2013 1).

According to the Global Detention Project, South Africa has only one dedicated immigration detention centre (set up by a charitable subsidiary of the African National Congress in 1996), making use instead of prisons, police stations and camps (Flynn and Cannon 2009), though other sources seem to indicate others immigration detention centres.[27] In 2007, South African private security firm Bosasa (Pty)Ltd.[28] was given a 10-year contract to manage the facility, and have been heavily criticized for corruption and bad

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[25] In some places they also cite facilities in Canada, though this has not been corroborated.

[26] http://www.geogroup.com/locations (accessed 29/07/2013)

[27] Bosasa's website describes the Lindela Centre as 'one of South Africa's largest facilities for the holding of undocumented migrants', which suggests that there are others http://www.bosasagroup.com/content/1361/1275/lindela-repatriation-centre (accessed 29/07/2013). Information could not be found about others.

[28] Bosasa run a range of facilities in South Africa, including 'Youth Development Centres' for Young offenders which advertise 'secure care' and successful 'high density accommodation' http://www.bosasagroup.com/content/1365/1275/bosasa-youth-development-centres (accessed 29/07/2013)

treatment of detainees. This privatization of immigration detention was followed by privatization of prisons, and by 2001, South Africa had negotiated contracts with Wackenhut and G4S to run penal institutions.

G4S has 'operations in more than 125 countries', working in various aspects of security enforcement (G4S 2012 1). Almost a quarter (23%) of their turnover for 2012 came from the provision of security management for governments (G4S 2012 2). According to their own figures, G4S hold an 8% market share of the global security industry market (G4S 2012 15). G4S's main client governments are the UK, Australia and the US, with contracts also in Brazil, India, China and the Middle East, and thoughts about expanding into Eastern Europe and other developing security markets (G4S 2012 18). G4S notes that 'we aim to encourage more governments to outsource services to the private sector' in the coming years (G4S 2012 22).

G4S describe their work in homeland security as '[s]ecuring international borders and efficiently managing the flow of legitimate visitors',[29] offering two case studies: one of the UK (G4S 2010); and the other of the USA (G4S 2009). In discussing their work with the UKBA, G4S writes:

> Better enforcement around illegal immigration and illegal working plays a key role in the delivery of the UK government's commitment to protect the public; ensure newcomers earn their citizenship by paying taxes and obeying the law; and support British workers in the labour market. Without it, there may be serious consequences for UK communities and public services (G4S 2010 1).

Though they emphasize the need to treat individuals detained and removed 'with dignity and respect' (G4S 2010 1), it is apparent from the literature of G4S that both the qualifications needed and the training given relate primarily to security. This indicates that the emphasis on security is considered more likely to attract client governments than that the company will assist in the fulfillment of convention obligations, for example. The UK has eight privately-run immigration removal centres, of which four are run by G4S and the other four are run by MITIE, GEO Group Ltd, Reliance, and

[29] http://www.g4s.com.cy/en/Corporate/What%20we%20do/Sectors/Government/Homeland%20security/ (accessed 25/07/2013)

Serco Ltd. Of the remaining four removal centres, three are run by the UKBA and one by the Prison Service[30].

In the US, G4S has been used to replace the withdrawn federal agents who were responsible for the transport and secure hand-over of irregular migrants found along the 600-mile border with Mexico (G4S 2009 2). The agents for this task are, according to G4S, given a high level of training and are required to have 'criminal justice degrees or background and experience in law enforcement and/or elite military units' (G4S 2009 3). There is no mention of knowledge of immigration and asylum law.

The Council of Europe's Committee for the Prevention of Torture (CPT) has commented that:

> The care and custody of foreign nationals whom the State deprives of liberty under immigration law is an important public responsibility. When a public authority delegates its custodial functions to a private entity, the public authority should maintain a presence, to ensure compliance with standards and timely corrections of any breaches. Otherwise a complete absence would amount to an abdication of responsibility (Felice 2010 7).[31]

Indeed, in Sweden, after heavy criticism of immigration detention and deportation in the 1990s, reforms were introduced in 1997, which included the removal of privately contracted security companies from immigration detention centres (Flynn and Cannon 2009 12). A central element of these reforms was the recognition that those in immigration detention were not criminals and so should not be treated as such. In many countries, however, the private companies hired to manage migration removal centres are still often also those used for criminal correctional prisons and other criminal justice activities.

The South African Lawyers for Human Rights noted in a report on South Africa's immigration detention facility that:

> By pointing to Bosasa as the entity responsible for the treatment of detainees, DHA seeks to avoid accountability under the provisions of the Constitution and the Bill of Rights, South African

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[30] http://www.ukba.homeoffice.gov.uk/aboutus/organisation/immigrationremovalcentres/ (accessed 25/07/2013)

[31] Reference suggested by Flynn and Cannon (2009 7).

> administrative law, and international human rights instruments. At the same time, enforcement of these provisions against Bosasa is hindered by the status of Bosasa as a private entity that is not eager to cooperate in human rights monitoring and oversight efforts" (LHR 5, quoted in Flynn and Cannon 2009 11).

Irrespective of whether it is intentional or not, the use of private companies does obscure some of the chains of accountability between States and stateless persons.

3.2. Securing external borders

The physical enforcement of states' external borders is also increasingly outsourced to private companies. As with the other privatized measures, the UK, the US and the EU are notable for their wide use of private actors. Private companies are also employed, to different extents, in a variety of countries. This subsection discusses some of the companies employed for these measures and the range of services they provide. It also notes the particular problems that this raises for stateless persons.

Delegation of the security of external borders can take a number of forms. This includes using employees of private companies on the ground to perform specific roles at border posts, along borders, and in the transportation and capture of migrants. Private security firms may also be hired to support the development of security and surveillance infrastructure connected with the protection of the state's external borders. These different types of role will each be touched upon in turn, and some instances of indirect delegation to such security firms will be mentioned. Some private companies may provide staff to man frontier posts. One controversial example of this is that of Modiin Ezrahi, which was hired in 2008 to perform migration control functions at crossing points between Israel and the West Bank.[32] This example is interesting because the openly contested nature of these particular border points makes clear a concerning legitimacy problem that could be raised regarding the use of private companies in this area more generally.

Frontex's EUROSUR migration information sharing programme has cost the European Commission an estimated 338 million Euros, though some estimates are three times that amount (Fotadis and Gobanu 2013). This money has gone in large part to the private companies that Frontex employs. Defence represents 7% of the 2012 revenues for Finmeccanica (Finmeccanica

[32] See press coverage from 2008 discussed in Gammeltoft-Hansen 2011 161. The Financial Times records a longer running and wider use of this company (Buck 2008).

2012 2), supplied through subsidiary companies OTO Melara, WASS and MBDA. MBDA is a company part owned by three global security firms: BAE systems, EADS and Finmeccanica. EADS rose to brief fame when it was recognized as the company responsible for building Saudi Arabia's anti migration fence, to stop migration from Iraq in 2009. More recently, Boeing gained a contract in 2007 to build a high tech fence on the Arizona-Mexico border (the project was shelved in 2011).

Such security companies do not only supply the hardware, the staff and the expertise for such border control measures. They also have political influence in the states and regions that hire them. For example, Finmeccanica boasts influence at the seat of the European Parliament in Brussels, through formal and informal contacts (Finmeccanica 2014). When it comes to Homeland Security, Finmeccanica has two further subsidiary companies, Selex ES (Finmeccanica 2012 109) and DRS (Finmeccanica 2012 110). It is quite difficult to find details about the projects carried out by these companies. Commentator, Lemberg-Pederson, argues convincingly that the pervasive use of such security companies, particularly in European border management, has been partially responsible for the increased militarization of the border (Lemberg-Pedersen 2013).

There are companies that own airports, seaports, and other frontier infrastructure such as bridges. These companies may in turn hire security staff and others. In terms of the basic security procedures in airports, checks are now often undertaken by employees of private companies (Abrahamsen and Williams 2010 52). For example, the company Prosegur boasts provision of airport support in Spain, Portugal, France and Peru (Prosegur 2012 43,4).[33] Though there is evidence that some of this has been taken back under the control of state officials following fears of terrorism (Abrahamsen and Williams 2010 52; Gammeltoft-Hansen 2011). Fears and anger famously led part-private Kasumbalesa border post joining Zambia and the Democratic Republic of Congo to be closed by Zambian truckers in 2013 following the violent death of a Zambian citizen in the DRC. A number of border posts, like Kasumbalesa, are now constructed in this manner, on what is called a 'Build Operate and Transfer' scheme. Examples include also internal border control posts, such as the large number implemented by Maharashtra Border Check Post Network Limited[34] in India (where crossing between Indian states can, in some ways, be likened to crossing between countries; e.g. MacAuslan 2011).

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[33] Elsewhere, they report airport operations in twelve countries www.prosegur.es/ES/SolucionesIntegrales/Aeropuertos/SeguridadenAeropuertos/index.htm

[34] www.mbcpnl.co.in

Security companies may be hired directly by governments (or rather, by those government departments with the mandate for migration control), or by private businesses running airports and ports, for example. The discussion in this report primarily relates to contracts held directly with client governments, but it is important to note also the migration-related activities that may be involved in the securing of ports and airports which are themselves privately owned. The Italian company, Finmeccania, works in seventy-two countries worldwide, makes a self-declared profit of 11billion Euros and employs 72 thousand people (Lemberg-Pedersen 154). G4S is, at the time of writing, the world's largest security company, with (according to their published figures) 620,500 employees,[35] and contracts in 120 countries. More work is needed to understand the policy implications of this infrastructure.

3.3. Stateless persons

This explicit direct delegation forces companies in effect to take responsibility for both state security on the one hand and humanitarian concerns on the other, as part of the implications of taking state contracts in the area of migration control. Abrahamsen and Williams, for example, note the pressure felt by security firms at the liability they would have if something were to go wrong (2010 44). Apart from any other considerations, if responsibility for allowing a perpetrator of some grievous attack to be free in a state could be traced to the operation of some private visa processing or security firm, that would severely damage that company's ability to continue to find client governments. On the other hand, preventing a vulnerable person who has a valid claim to protection from entering the state is not as risky in a business sense. As a result, the shifting of responsibility for some elements of the migration control process might have some impact on how migration policy is put into effect. This is something that needs further study.

4. Implicit delegation of migration functions: Carrier sanctions

Aside from these more explicit forms of delegation of a state's migration control functions, through the direct hiring of private agents, there is also implicit delegation through the imposition of sanctions. Among such 'private enforcers' are 'employers, landlords, and school administrators' (Pham 2008 783; Lee 2009 1103). This section focuses on one common such measure with particular impact on conditions for stateless persons: carrier sanctions. Carrier sanctions effectively increase the hurdles that stateless persons must

[35] http://www.g4s.com/en/Who%20we%20are/Our%20people/Our%20employees/

overcome if they are to be able to travel. They also move the responsibility for this onto private agents, with the threat of financial penalty if humanitarian decisions are not recognized by the receiving state.

4.1 Modern carrier sanctions

Carrier sanctions refer to penalties imposed on carrier companies (airlines, shipping companies, road and rail transport firms[36]) for carrying persons without appropriate proof of their legal eligibility to cross borders. These penalties will usually be financial, but they may also include the responsibility to return persons to their place of origin, the accommodation of those persons prior to removal, and also the loss of some benefits such as landing privileges. Such policies have been around for a long time. Britain required ships to declare information about foreigners onboard to avoid a fine as long ago as 1793 (Dummett and Nicol 1990 83) and America's 1902 Passenger Act can be seen as an early example of contemporary carrier sanctions (Guiraudan and Lahav 2000 185). Modern carrier sanctions developed in earnest from the late 1970s, escalating in the 1980s and early 1990s (e.g. see Amnesty International 1997). It is this modern instantiation that is examined here.

The modern use of carrier sanctions is usually traced to two articles of the 1944 Chicago Convention: Article 13 and Article 29:

> Article 13: The laws and regulations of a contracting State as to the admission to or departure from its territory of passengers, crew or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine shall be complied with by or on behalf of such passengers, crew or cargo upon entrance into or departure from, or while within the territory of that State.
>
> Article 29: Every aircraft of a contracting State, engaged in international navigation, shall carry the following documents in conformity with the conditions prescribed in this Convention: (f) If it carries passengers, a list of their names and places of embarkation and destination.

[36] Note: the EU defines a carrier specifically to be 'any natural or legal person whose occupation it is to provide passenger transport by air' (http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l14582_en.htm, accessed 02/08/2013)

There is debate about how to interpret this. Some argue that Article 13 imposes a requirement on individual passengers to ensure that they are travelling with the appropriate permissions. Others argue that it is an obligation upon the carrier to enforce visa requirements (e.g. see Abeyratne 1998).

Imposing carrier sanctions enables the pre-screening of migrants before they leave their home countries, thus avoiding repatriation costs and the possibility that those without the required documentation will be able to abscond upon arrival. It also enables states to avoid the illegal practice of *refoulement*, the return of persons to a place where they are facing persecution of the sort laid out in the 1951 Refugee Convention and its 1967 Protocol. This is because, first, if persons do not leave a place, they are not being returned. Further, the initial decision about the likelihood of a successful humanitarian claim to migration may in effect be being made by airline staff rather than state officials.

Carrier sanctions also enable information and enforcement to take place in locations and ways that are not open to state officials. In effect, it sets up border posts in the airports of foreign states, with carrier staff making migration decisions as to who to allow to board a plane. The setting up of border posts in foreign states does happen occasionally, but it is the result of much diplomatic work. The imposition of carrier sanctions makes this possible without the diplomatic implications.

Apart from the requirement to decide whether or not to allow persons to board carriers, there is also an obligation on air carriers to communicate passenger data to government authorities (e.g. European Council Directive 2004/82/EC). Forty-two countries impose Advance Passenger Information requirements, with a further 28 countries considering imposing them (IATA 2013 20). Nine countries also require access to Passenger Name Record data, with another 25 preparing to enforce this requirement in April 2013 (IATA 2013 20). Meanwhile, IATA campaigns for the setting and maintenance of global standards on such security measures. They are also developing a 'Checkpoint of the Future', which uses biometric data for the efficient 'identification of passengers and their risk levels' (IATA 2013 21). Trials have already taken place at Geneva, London Heathrow and Amsterdam Schiphol, making it increasingly difficult for stateless persons to move.

Carrier and Employment sanctions are different to the other privatization routes discussed here. This is because, when a private data management or security company is hired to carry out tasks usually undertaken by state

officials, the relocation of power is explicit. The same task is being done, but it is being done by someone else (albeit possibly with different norms and potential differences of practice). However, in the case of carrier sanctions and employment sanctions, the activity taken on by these bodies is not paid for and it is not explicitly a migration function. Indeed, several commentators mention this as primarily a (not necessarily successful) money-saving exercise (e.g. Lee 2009 1138; Pham 2009 826).

4.2. Implications for stateless persons

As with the explicit delegation of migration control discussed above, carrier sanctions are particularly problematic for those persons who are unlikely to be able to obtain the required paperwork for travel. This includes those who are moving in an emergency situation, such as potential refugees, and those who are *de jure* or *de facto* stateless. As with the explicit delegation, it moves elements of migration decision-making into the private sector, where decisions are most likely to be profit-motivated. This subsection focuses on two particular elements of this. First, there is the tension between business and humanitarian concerns. Second, there is the fact that unqualified private individuals may end up making immigration decisions.

Such sanctions may lead companies making financially-wise decisions to exclude, and even to be more excluding than required by the rules of the state itself, in order to avoid the possibility of sanction. Tally Kritzman-Amir has put it,

> While carriers are threatened with sanctions if they err and allow entry to undocumented migrants, they are not subject to any sanction if they effectively deny entry and admission of asylum seekers (Kritzman-Amir 2011 203).

This becomes particularly problematic when such carriers represent the only safe means of travel for persons denied usual paperwork, particularly potential refugees and stateless persons. Feller has noted:

> A high risk-taking and profit-oriented transport carrier cannot reasonably be expected to make humanitarian decisions based only on a possibility that sanctions will later be waived [if the person's case *is* found to be humanitarian], particularly where the burden of proof is on the carrier (Feller 1989 57).

Carrier sanctions, then, represent a particular problem for stateless persons, as untrained carrier staff can end up checking migration paperwork and

making decisions on the possibility of entry to a territory based on economic reasoning and an interpretation of complex and changing state-made conditions for entry. Such sanctions may also lead low-paid individual carrier company employees to be tasked with making decisions about refusing tickets or the possibility of boarding to stateless persons, for example, for fear of personal financial sanction (e.g. see Pham 2008 778 discussing US bus firm, Greyhound).

The Swiss Government estimated in the 1980s that if all the world's visa and passport requirements were put into one document, it would require 1200 pages (Feller 1989). Since then, the International Air Transport Association (IATA) have developed tools to support carriers with the complexities of this role. The IATA have 240 member airlines (IATA 2013 4), and have created 'TimaticWeb 2', which they refer to as 'the database of Passport, Visa and Health regulations' (IATA 2013 52).[37]

The IATA also provide training in the 'tools to identify forged documents and potentially disruptive passengers'.[38] The course, which is aimed at operations staff from both airlines and ground service providers, as well as airline staff working at airports, passenger-handling agents and supervisors, and airport terminal staff, lasts 24 hours, and is spread over three days costing between 1,330 USD and 1,900 USD. IATA claim to train more than 10,000 aviation professionals annually and work with Harvard Business Publishing, Nanyang Technological University, Stanford Center for Professional Development and Université de Genève. At a conservative estimate, this suggests a 13.3 million USD industry in training on entry requirements, without the involvement of state migration authorities.

For obvious and understandable reasons, the IATA is focused on the reduction of the economic costs related to these migration control measures created by states. As such, in 2012, 'Timatic Autocheck' was launched as 'a product that automates the document compliance process'. The system is explained:

> Timatic Autocheck is integrated into booking and departure control modules to increase customer service and to reduce fines by automatically checking every international passenger for proper documents and certificates prior to boarding (IATA 2013 52).

[37] http://www.iata.org/publications/Pages/timaticweb-travel-requirements.aspx (accessed 02/08/2013)

[38] http://www.iata.org/training/courses/Pages/passenger-document-checks-tapp34.aspx (accessed 02/08/2013)

In this development can be seen a connection back to the visa management companies' roles discussed above, and also to the earlier note that such companies are also, themselves, employed by companies taking deleted roles from state governments, thus adding further layers of private input into the migration enforcement process. The fact is that *in effect*,

> …those persons who are required to carry out controls (i.e. the personnel of transport companies) are neither qualified nor permitted to take into account the human rights obligations of the Member States (quoted in Nicholson 1997).

This is problematic, both in terms of the deprivation of stateless and other vulnerable persons, and in terms of the lack of scrutiny and accountability that is available.

Discussions about the legality of carrier sanctions tend to focus on the impacts upon refugees. For example:

> By preventing migration at the source and therefore making sure that would-be asylum-seekers do not reach the territory of receiving countries, governments no longer have to refuse possible asylum-seekers and other migrants at the border. They no longer need to expel failed asylum claimants – with the risk of violating the prohibition against *refoulement* – they simply make sure they cannot reach the border (Scholten and Minderhoud 129).

Some (e.g. see the EU Schengen Implementation Agreement) have made special arrangements to avoid some of the impacts upon potential refugees. For example, not to impose a fine if the person applies for asylum, irrespective of outcome. However, this is not the case everywhere, and does not include protections for stateless persons.

On the one hand, carrier sanctions could be seen as just another of the constraints that states impose on multinational corporations that want to do business within their borders. On the other hand, they can be seen to force private companies to take on explicit state roles, and to be responsible for taking humanitarian decisions that are within the proper remit of states. In 1990, Lufthansa, Swissair, Iberia and Alitalia refused to pay carrier sanction fines to the UK, claiming that they were being asked to 'act as immigration

officers' (Cruz 72). Some states provide immigration officers to support the carriers in decision-making.

One case UK case shows that this does not always mean that correct decisions are made, though it does mean that there is someone with official responsibility for decision-making. In the case of *Farah v British Airways and Home Office*, in 2002, a family of Somali asylum seekers had attempted to board a plane in Cairo. One family member had a passport, and the other four had identity documents issued by the British Embassy in Addis Ababa (Clayton 2006 245). The Immigration Liaison Officer advised British Airways that the persons did not have appropriate paperwork. He did not say that the family should not be allowed to board, but made this recommendation and they were deported to Ethiopia. It was later argued that the immigration officer had acted with negligence. The rare case that was brought was not against airline employees or the airline staff, but the state official even though the actual decision was taken by the carrier.

Bido and Guild note of the delegation of border management and the distancing from the actual territory of the state that:

> … the danger for civil liberties are [sic.] less and less located at the actual borders. Instead, they are far from where the civil rights activists are watching. They are less visible and restructure the world into two spheres: one composed of people allowed to travel and a second one, of people who are banned from it without any possibility to protest since they have no appeal against the decisions and are miles away from the border because they cannot even board a plane or leave their own country (Bido and Guild 2005 235).

The implicit delegation of migration control functions through carrier sanctions will be most problematic for stateless persons, and represents a situation which needs to be addressed with urgency.

5. Humanitarian obligations of private companies

Privatization, as has been discussed throughout this report, can obscure the accountability for the actions taken. Private security firms' activities in the enforcement of migration control are currently largely unregulated and unaccountable except to the customer, the State, which is in turn accountable to the international community (Mini 2010 13), and to the

international conventions to which it has acceded. This section presents recent developments in terms of voluntary international corporate social responsibility initiatives in the area of human rights (OHCHR 2013 25). It examines in particular three main international instruments that codify the way in which responsibility in the area of human rights may fall to private companies in some areas, and how this may be applicable to the case of the delegation of migration functions discussed here. It will suggest that, while states have the ultimate responsibility for the protection of human rights and for the fulfillment of convention obligations, private companies have a responsibility to respect human rights. It will also be examined whether there is a distinction between situations of explicit and implicit delegation. This section argues that there is still a long way to go to develop consistency between norms and enforceability. The field of international private company accountability is young. The measures described here date form around 2000 at the earliest, but have particularly gained in momentum since 2011. As such, much work is still needed to examine in more detail the implications of ongoing developments to the delegation of migration control functions.

5.1. International Code of Conduct for Private Security Providers

The International Code of Conduct for Private Security Providers (ICOC-PSP)[39] is 'a multi-stakeholder initiative', organized by the Swiss Government.[40] It sets out a set of principles for the protection of human rights in the range of practices carried out by private security companies. The process that has led to the current Code started with a 2006 exploratory meeting, leading to the 2008 Montreux Document (UNGA 2008), which focused on the activities of private military and security companies in armed conflict situations, and formed the basis of the Code of Conduct, along with the 'Respect, Protect, Remedy' framework of the Special Representative of the UN Secretary General on Business and Human Rights and the UN Human Rights Council (ICOC-PSP 2010 A.2, discussed below).

According to the Montreux Document, the sorts of entities under consideration are:

[39] http://www.icoc-psp.org/uploads/INTERNATIONAL_CODE_OF_CONDUCT_Final_without_Company_Names.pdf (accessed 19/12/2013)

[40] International Code of Conduct for Private Security Service Providers' Association: Articles of Association, Article 1.1. http://www.icoc-psp.org/uploads/ICoC_Articles_of_Association.pdf (accessed 19/12/2013)

> …private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice or training of local forces and security (UNGA 2008 6).

This document, then, focuses on the way in which private security companies are involved in conflict situations. However, migration is not discussed, apart from in Article E22, which states:

> PMSCs are obliged to comply with international humanitarian law or human rights law imposed upon them by applicable national law, as well as other applicable national law such as criminal law, tax law, immigration law, labour law, and specific regulations on private military or security services (UNGA 2008 10).

Migration is not mentioned in any other place in this document, neither relating to asylum or refugee law, nor relating to trafficking. As will be seen below, trafficking is now mentioned in the Code.

The context of the Code has now broadened, as has the range of countries and private security companies that have signed up. On 20 September 2013, the ICOC Association was established. According to the Articles of Association there are three types of entities that can sign up to the Association of the Code:

- Private Security Companies and Private Security Service Providers (PSCs);
- Civil Society Organizations (CSO); and
- Governments.

This has changed the structure of the ICOC-PSP. Whereas before, companies could be signatories to the code, now they will be expected to become members of the Association. This transitional process will end in 2014, and the data discussed here is based on the old system of signatory companies and states.

On 1 September 2013, it was announced that there were 708 Signatory companies to the ICOC-PSP. A regular email newsletter has been sent to all Signatory companies from the outset, and the wording of these emails is

useful in understanding the process. The first such email, sent on 26 November 2010 (by which point there had been 58 Signatories), opens:

> As a Signatory Company, you have publically affirmed your responsibility to respect the human rights of, and fulfill humanitarian responsibilities towards, all those affected by your business activities, and as a Signatory Company you have committed to operate in accordance with the Code.[41]

Migration per se is not mentioned specifically in the Code. However, two articles may be of specific interest in this Policy Report. Article 33 considers Detention and Article 39 of the Code specifically refers to Human Trafficking. These state:

> Article 33: Signatory Companies will only, and will require their Personnel will only, guard, transport, or question detainees if: (a) the Company has been specifically contracted to do so by a state; and (b) the Personnel are trained in the applicable national and international law. Signatory Companies will, and will require that their Personnel, treat all detained persons humanely and consistent with their status and protections under applicable human rights law or international humanitarian law, including in particular on torture or other cruel, inhuman or degrading treatment or punishment.

> Article 39: Signatory Companies will not, and will require their Personnel not to, engage in trafficking in persons. Signatory Companies will, and will require their Personnel to, remain vigilant for all instances of trafficking in persons and, where discovered, report such instances to Competent Authorities. For the purposes of this Code, human trafficking is the recruitment, harbouring, transportation, provision, or obtaining of a person for (1) a commercial sex act induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or (2) labour or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, debt bondage, or slavery.

[41] http://www.icoc-psp.org/uploads/ICoC_Information__1_to_Signatory_Companies_-_26_November__2010.pdf (accessed 19/12/2013)

There is nothing relating to the special treatment of migrants in administrative detention, for example, or of the obligations regarding the asylum procedure.

Of the private security companies discussed in this report, only two are listed as Signatory companies in the September 2013 listing.[42] G4S was one of the early companies to sign up to the Code, in Geneva in November 2010. Reliance signed in April 2012. Of the Wackenhut Group, only Wackenhut Pakistan has signed the Code, in October 2012.

It is concerning that so few of the private security companies supporting the migration infrastructure have signed up to the Code. It is more concerning that the Code does not deal sufficiently with the special matters relating to migration. For those engaged in border control activities, it is crucial that security companies are aware of the law in this area and of the reasons why people may be migrating. In the case of companies supporting migration detention, there needs to be explicit acknowledgement of different types of detention, for example.

5.2. United Nations Global Compact

The United Nations Global Compact seeks to create voluntary obligations to respect certain core United Nations values among private companies. The Secretary General, Ban Ki-moon, states on the Global Compact website that:

> The Global Compact asks companies to embrace universal principles and to partner with the United Nations. It has grown to become a critical platform for the UN to engage effectively with enlightened global business.[43]

While the Global Compact has arguably been supplanted by the Global Principles (below), it still represents an important forum for debate and a useful way to examine the international community's priorities in the area of the ethical interaction between business and states.

Initiated in the 1990s as a key corporate social responsibility initiative, the Global Compact is now generally regarded as spineless. Indeed, its own website recognizes that 'the UN Global Compact is more like a guide dog

[42] http://www.icoc-psp.org/uploads/Signatory_Companies_-_September_2013_-_Composite_List-1.pdf (accessed 19/12/2013)
[43] http://www.unglobalcompact.org

than a watch dog'.[44] This guiding, rather than enforcement, role, was recognized already in Kell and Ruggie (1999) and continues to be criticized by OHCHR, which laments that 'companies with poor human rights records participate in such forums to demonstrate that they act responsibly' (OHCHR 2013 25).

The first two of the ten principles of the UN Global Compact are particularly relevant here:

1. Businesses should support and respect the protection of internationally proclaimed human rights; and
2. Make sure that they are not complicit in human rights abuses.

Of the twelve companies mentioned in this report that are still functioning independently, two have signed with the Global Compact. Steria has been party to it since 30th March 2004, and G4S has been party since 16th February 2011 (interestingly, Steria's Spanish branch, Steria Iberica, joined on the same date as G4S; however, at the time of writing, they have not yet fulfilled the documentary requirements of membership).

5.3. Guiding Principles on Business and Human Rights

The Guiding Principles on Business and Human Rights were first issued to the Human Rights Council in March 2011 (HRC 2011 3). Later that year, the OHCHR published the Guiding Principles, explicitly locating it within the UN 'Protect, Respect and Remedy' Framework (OHCHR 2011). This document grounds the Guiding Principles in three considerations which are also crucial in the current Policy Report (OHCHR 2011 1):

(a) States' existing obligations to respect, protect and fulfill human rights and fundamental freedoms;
(b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
(c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.

The emphasis clear in this document is that the primary obligation for ensuring human rights falls to states:

[44] http://www.unglobalcompact.org/AboutTheGC/faq.html

> States individually are the primary duty-bearers under international human rights law, and collectively they are the trustees of the international human rights regime (OHCHR 2011 7).

However, private companies also carry responsibility, and this responsibility 'exists over and above compliance with national laws and regulations protecting human rights' (OHCHR 2011 13). Unlike ICOP-PSP, the Guiding Principles do directly address specific needs arising from migration, referring in II.A.14 to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. They also refer to the fact that access to effective remedy may be affected, for example, in cases where the rights of certain groups, such as migrants, are less recognized by a particular state (OHCHR 2011 29, 14). Although these Principles, as is clear from their name, are still only intended for guidance, they are more explicit about the role of the private sector. It is noted that private companies have a responsibility to respect human rights, even when states do not do so, and one may extend, even when asked by states to perform tasks that would contravene this responsibility.

5.4. Role of states

In the delegated migration control functions described here, the matter of responsibility can appear murky, especially where the delegation is implicit or indirect. In the contexts described here, it has become more difficult to identify the actions of the state and the actions on behalf of the state, and where the responsibility for these actions lies. The Articles on the Responsibility of States for Internationally Wrongful Acts are not directly relevant to the cases examined here, but they do provide a useful explanation of two ways in which State responsibility may arise (e.g. discussed in Gammeltoft-Hansen 2011 180):

- Private actors are empowered to exercise government authority (Article 5); or
- States authorize, direct or control private conduct (Article 8).

Within this wider framework, it becomes clearer that delegated migration control comes within state responsibility, as the primary power-holders in the international system. Furthermore, in the context of this report, migration control functions are specific to the sovereignty concerns of *states*.

This is not to absolve the private sector participants of responsibility, but to recognize that delegation of function does not also constitute a delegation of responsibility. It has been presented throughout this report that the modus

operandi of companies now involved in providing migration control functions may affect the way in which policy is formulated and enacted, from involvement in policy-making structures, to supplying expertise, and complex internal delegations. Thus, while the State has the responsibility to *protect* the rights of migrants and to fulfill their convention obligations (both in word and in spirit), private actors have the responsibility to *respect* those rights and not to work to impede the state's fulfillment of its obligations.

This report has drawn attention to some concerns relating to the use of private companies in border management and the effects of this on the most vulnerable migrants. It argues that the use of private actors to carry out state functions in these processes can remove scrutiny from the most problematic aspects – the remote visa decision-making, the access to migration options for those in desperate need, and the detention and removal of those that the state does not want on its territory. It has not argued that such delegation should or should not occur, but that work is urgently needed to establish implications for policy and for responsibility.

Conclusions and recommendations

Much of the critical analysis of aspects of the delegation of migration functions to private actors has focused on effects on the asylum system. This is largely because it is in the asylum system that there are already generally agreed-upon obligations concerning entry. The case for stateless persons is also problematic. With this in mind, Thomas Gammeltoft-Hansen's 2011 comment can be seen as referring also to stateless persons:

> In the case of carriers, it is already well documented that the control carried out by employees of these companies constitutes a major impediment for any asylum-seeker wishing to reach his or her country of refuge by air or sea. About other types of private migration control knowledge is still scarce, yet it is safe to assume that similar problems may occur where asylum-seekers are refused entry by contracted migration officers or private groups carrying out border control on their own initiative (Gammeltoft-Hansen 2011 205).

Stateless persons are particularly vulnerable to these privatized migration measures in two ways. Their political vulnerability means that the measures can affect them most powerfully and that it will be easiest for the privations to take place unscrutinized.

This means that stateless persons are prevented in greater numbers from travelling. If they do make it to state borders, they will, therefore, most likely be travelling irregularly and therefore be vulnerable to the activities of the private security companies that patrol external state borders. If stateless persons cross into states employing these measures they then may have difficulty working, given employer sanctions, or obtaining health care and other basic services. Working irregularly, stealing in order to eat, or even just peacefully coming to the attention of the authorities, can lead to deportation orders and pre-deportation detention. Stateless persons are then further disadvantaged by the fact that it will be difficult for them to be deported, so that they are at risk of periods of indefinite migration detention.

This situation is problematic. It was already recognized by the drafters of the UDHR that statelessness was a significant deprivation, and the right to a nationality was enshrined as a fundamental Declaration right. In 1954, the deprivations experienced by stateless persons were acknowledged and the Statelessness Convention aimed to provide them with access to basic services in the same way as other aliens, or even citizens. The 1961 Statelessness Convention recognized that the condition of statelessness need not persist. It identified measures that could enable persons to be allocated to a state. Despite all of these measures, there are still persons who are stateless and they continue experience extreme levels of deprivation.

This report has aimed to provide more information about the practice of delegation of migration control functions, though it provides only an initial summary of research findings and recognizes that substantially more work is needed in this area. It has argued that the employment of private migration enforcement companies in the ways described in this report overwhelmingly affects stateless persons, and does so in ways that fall below the radar of international law and other forms of scrutiny. With these considerations in mind, the following recommendations are made:

- States bear the ultimate responsibility for human rights and for securing the protections of the Conventions to which they have acceded. This is not removed by delegation, though it can become more opaque. Openness and clarity is needed, therefore, regarding the delegation of migration control functions to non-state actors.

- Private actors should not be taking on functions properly held by a state. Work is needed to establish whether any migration control functions fall within this category.

- Urgent work is needed to examine the impact on policy of such delegation, including examination of explicit, implicit, direct and indirect forms of delegation.

- Discussions relating to the protection of vulnerable migrants need, therefore, to take into account not only state policy but who are the ones enacting this policy.

- The role of private actors in migration control needs to be discussed at the level of ICOOC-PSP and the Guiding Principles. Companies involved in migration control functions, and those employed by them, should be aware of law in this area (including Refugee and Asylum Law) and understand the consequent responsibilities of their client states and their own staff.

- The international cooperation initiatives on international migration need to take the phenomenon of the delegation of migration control functions into account. This includes informed debate in the High-Level Dialogue process, the Global Forum on Migration and Development, and now the upcoming Global Forum on Statelessness.

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Appendix 1: States where some form of private visa processing companies are used (where known)

Destination Country (rows) / Country of Residence (columns)

Destination Country	Albania	Algeria	Andorra	Angola	Antigua and Barbuda	Argentina	Armenia	Australia	Austria	Azerbaijan	Bahamas	Bahrain	Bangladesh	Barbados	Belarus	Belgium	Belize	Bolivia	Bosnia and Herzegovina	Brazil	Bulgaria	Cambodia	Cameroon	Canada	Cape Verde	Chile	China	Colombia	Costa Rica	Cote D'Ivoire	Croatia	Cuba	Cyprus	Czech Republic	DPR Korea	Denmark	Dominica	Dominican Republic	Ecuador	Egypt	El Salvador	Equatorial Guinea	Estonia	Ethiopia	Fiji	Finland	France	Gambia	Georgia	Germany	Ghana
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Vfs = Vfs Global
WB = WorldBridge Services
G = Gerry's
C = CSC
Blue shading = Steria in EURODAC area

Appendix 2: States not covered by visa information capture companies

State	GDP 2012 (in millions of USD)[45]	Total Population 2012[46]	HDI ranking 2012[47]	Total emigrant population 2010[48]	Proportion in less developed regions 2010[49]	Other information
Afghanistan	18,034	29,827,536	175	4,845,806	92.5%	
Benin	7,557	10,050,702	166	571,085	96.2%	
Bhutan	1,780	741,822	140	146,140	99.3%	
Botswana	14,441	2,003,910	119	43,281	92.4%	
Brunei Darussalam	16,954	412,238	30	17,971	47.3%	
Burkina Faso	10,441	16,460,141	183	1,897,460	98.8%	
Burundi	2,472	9,849,569	178	379,807	95.8%	
CAR	2,139	4,525,209	180	147,211	53.3%	
Chad	11,018	12,448,175	184	280,853	97.8%	
Comoros	596	717,503	169	93,016	76.7%	
Congo	13,678	4,337,051	142	117,618	31.5%	
DPR Korea	-	24,763,188	-	191,112	89.8%	
DRC	17,870	65,705,093	186	807,448	85.4%	
Djibouti	1,186	859,652	164	10,009	50.4%	
Eritrea	3,092	6,130,922	181	630,645	89.5%	
Gabon	18,661	1,632,572	106	17,946	35.3%	
Guinea	6,768	11,451,273	178	387,440	87.0%	
Guinea Bissau	897	1,663,558	176	134,602	40.9%	
Kiribati	176	100,786	121	3,745	4.4%	
Kyrgyzstan	6,473	5,582,100	125	554,502	5.5%	
Lao PDR	9,299	6,645,827	138	490,873	37.0%	
Lesotho	2,448	2,051,545	158	244,393	99.4%	
Madagascar	9,975	22,293,914	151	71,938	26.1%	
Maldives	2,222	338,442	104	2,435	68.2%	
Mali	10,308	14,853,572	182	903,865	90.7%	

[45] According to World Bank ranking 2012 http://databank.worldbank.org/data/download/GDP.pdf (accessed 30/07/2013)

[46] According to World Bank indicators 2012 http://data.worldbank.org/indicator/SP.POP.TOTL (accessed 30/07/2013)

[47] According to UNDP's HDR 2012

[48] According to UNDESA International Migrant Stock Revision 2012 Table 7 http://esa.un.org/MigOrigin/ (accessed 30/07/2013)

[49] Calculated from UNDESA International Migrant Stock Revision 2012 Table 7 http://esa.un.org/MigOrigin/ (accessed 30/07/2013)

Marshall Islands	187	52,555	-	11,146	13.3%
Micronesia	327	103,395	117	11,653	98.1%
Myanmar	-	52,797,319	149	1,318,870	81.7%
Nauru	-		-	1,264	15.9%
Niger	6,568	17,157,042	186	329,969	97.8%
Palau	228	20,754	52	12,943	78.6
Papua New Guinea	15,654	7,167,010	156	32,715	6.0%
St Kitts and Nevis	748	53,584	72	28,366	50.0%
Samoa	677	188,889	96	135,290	15.1%
Sao Tome and Principe	264	188,098	144	40,186	37.5%
Seychelles	1,032	87,785	46	23,607	6.4%
Solomon Islands	1,008	549,598	143	2,944	11.6%
South Sudan	9,337	10,837,527	-	-	-
Swaziland	3,747	1,230,985	141	86,567	98.8%
Timor Leste	1,239	1,210,233	134	51,455	57.6%
Togo	3,814	6,642,928	159	721,434	93.4%
Tonga	472	104,941	95	55,138	3.7%
Turkmenistan	33,679	5,172,931	102	232,684	8.5%
Tuvalu	37	9,860	-	3,394	30.7%
Uzbekistan	51,113	29,776,850	114	1,661,572	24.0%
Vanuatu	785	247,262	124	8,201	73.7%
Zambia	20,678	14,075,099	163	158,682	68.7%
Overall	Total: 340,079	Total: 403,120,945	Ave[50]: 138.79	Total: 17,919,281	Ave[51]: 66.99%

[50] Empty cells have been discounted.

[51] Empty cells have been discounted.

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