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REFUGEES AND STATELESS PERSONS IN LIMBO

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Introduction

Betwixt and Between: Refugees and Stateless Persons in Limbo

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The refugee experience is far from over upon arrival in a place of asylum. Indeed, in many ways, the struggle to create a new life has only begun. As refugees can attest to, the process of fully normalizing their lives – reuniting with family members, securing local education for themselves and their children, finding appropriate employment, and participating in the political life of their new countries – is one fraught with legal and procedural difficulties, a process that leaves many in "limbo" long after their new lives should be well under way.

Similar limbo is experienced by the stateless, those denied the basic yet essential right of nationality. Like refugees, stateless people face often insurmountable difficulties in securing the core protections of the state in which they reside. And, as is the case for refugees, the existence of international treaties aimed at assuring their protection far from guarantees their physical or legal security.

It was a privilege to be invited to be guest editor of this special of issue of *Refuge*. Citizens for Public Justice (CPJ) has been involved in Canadian policy related to refugees in limbo for a number of years. Our focus has been to effect policy change — to ensure that the Right of Landing fee (dubbed a head tax) would no longer be charged to Convention refugees, to ensure that Convention refugees and other protected persons can access government loan programs for university, and to propose a policy of automatic landing or permanent residency once a person has been deemed a Convention refugee. Seeking policy change to allow refugees to get on with their lives is often slow, frustrating, and sometimes tedious. But the stories which those in limbo tell — of their flight, of their life today, and of their incredible perseverance – demonstrate the requirement for at least as much perseverance to ensure justice is done.

What has become increasingly clear, as we do this policy work, is the need to understand, compare and contrast Canadian policy and approaches with what is occurring in other countries. Together, all of the authors in this issue of *Refuge* give us a picture of different kinds of limbo in different parts of the world. Two of the articles also show how statelessness is its own form of limbo. Waiting, betwixt and between, perhaps recognized – but not yet truly accepted – perhaps not even recognized. This is the nature of limbo experienced by refugees and stateless persons the world over.

Included in most of the articles are the voices of persons caught in limbo situations. The expressions of frustration and often painful separations from loved ones make more poignant the reality that policies and practices which cause limbo are not just items for political or academic study; rather, real people are suffering real hardships which need to be alleviated.

For some, limbo begins at the first point of asylum, in a refugee camp. Representative of a situation found in many camps, Awa Abdi's article about 130,000 Somali refugees in camps in Kenya provides a compelling picture of this type of limbo. For well over a decade, these Somali refugees have been able neither to return home nor to move on to a new country of asylum. The emergency need for the camp during a crisis has turned into a semi-permanent limbo situation, with all the familiar consequences of limbo. Inability to procure work, epidemic violence (especially against women), and continuing insecurity leave these refugees in constant dependency on aid from international organizations. It is a picture which often continues as people move beyond these camp situations seeking further asylum.

Distinctive barriers are also faced by stateless persons, who may find themselves without formal status, rights to seek employment, access to health care, or education for

their children. With neither the right to remain nor anywhere to return to, they are truly betwixt and between. The political determination of statelessness, its distinction from refugee status, and the complexities surrounding this type of limbo are described in the next two articles of this issue.

After a careful review of the unique history of Palestinians who have sought asylum in neighbouring countries such as Egypt, Oroub El Abed argues that Palestinians in Egypt remain stateless until there is a Palestinian State. In limbo in Egypt, Palestinians lack formal UNHCR protection and are not assisted adequately by the United Nations Relief and Works Agency. They have difficulty renewing their residence permit in Egypt, without which they can be deported or imprisoned. Residence permits also give access to travel permits without which travel abroad (or more, re-entry to Egypt) is nearly impossible. Children have no access to free education at any level, and adults have no right to work in the public sector and have restricted rights in the private sector. Rights to ownership are also restricted. The author calls for renewed attention to various UN resolutions, the United Nations Conciliation Commission for Palestine, the 1951 Refugee Convention, and the 1954 and 1961 Conventions on Statelessness for possible durable solutions for these persons in limbo.

Carol Batchelor, of UNHCR, lays out, in depth, the history and interpretation of the 1954 Convention relating to the Status of Stateless Persons and discusses its current implementation within the European Union. The complexity of determining statelessness ("proving a negative") and the inconsistent process for determination of statelessness across EU States cause Batchelor to carefully sort out how the Convention could be interpreted and its implementation harmonized among these European States. Throughout, Batchelor describes how the Convention attempts to promote the acquisition, by stateless persons, of a legal identity and thus legal status as a basis for access to social and economic rights. She systematically reviews how the articles of the Convention can address the limbo situation of recognized stateless persons – issues from residency, to employment, religious freedom, right of association, education, and so on – all typical of the limitations faced by persons in limbo.

Refugees who seek asylum beyond "emergency" camps face, in many countries, indeterminacy and delay at every stage of the process – at the outset, when attempting to gain access to the determination system; once refugee status is granted, while awaiting more permanent residency or equivalent status; and for some, at the tail end of the system, when status is denied, but risks in the country of origin prevent their return home. State-imposed barriers such as security reviews, identity document requirements, and processing fees prolong and exacerbate the challenges of the refugee experience.

The final set of limbo-related articles in this issue documents this aspect of asylum seeking in Britain, Australia, and Canada.

Asylum seekers in Britain, those at the front end who are seeking access to a process to determine their refugee status, are the subject of Anthony Richmond's article. The late 1990s brought increased numbers of asylum seekers, but also increased restrictions. Asylum claims from a specific list of countries were rejected outright as "presumed manifestly unfounded," and there was talk of deporting asylum seekers to "safe havens" on the borders of countries from which they fled. Most recently, proposed legislation would reduce access to an appeal of decisions, and factors such as lack of documentation, travel through a safe third country, and delay in applying would reduce the credibility of a claim. In addition, deterrent measures such as reduced welfare benefits, detentions, and dispersion across the country have been introduced, including a controversial attempt to deny benefits to anyone seeking asylum "in-country." Richmond concludes that barriers such as Britain imposes on asylum seekers, tellingly similar to those in other countries, create more refugees in limbo, as they search for a safe haven somewhere in the world.

Louise Humpage and Greg Marston tackle Australia's temporary protection visa. They describe the situation in Australia, all too typical for those seeking asylum, as distinguishing

> between "good" refugees and "bad" refugees. The former are selected overseas, usually after referral from the United Nations High Commissioner for Refugees, and enter Australia with a visa that entitles them to permanent residency (and to apply for citizenship after the prescribed waiting period). "Bad" refugees, on the other hand, are asylum seekers arriving in Australia by boat without "authorization"; that is, a visa and/or a valid passport.

The latter are determined to be refugees, but are not given permanent protection and are left in limbo. What is insightful about this article is its theoretical discussion of the impact of public rhetoric and the sense of belonging for those in limbo. The stigma of a "temporary" protection visa, the article argues, requires a more sophisticated understanding of social integration and consequent resettlement approaches, policies, and programs for those in limbo.

The significant personal and national costs of leaving refugees in limbo is the subject of a study by Tim Coates and Caitlin Hayward. They review various barriers to inte-

gration of those refugees in legal limbo in Canada. Personal costs related to integration, education, family separation, mental health, and travel are highlighted. The authors also document the monetary costs to the welfare system, labour markets, and the medical system of people who cannot get on with their lives. They also demonstrate that there is very likely over $334 million dollars in lost earnings among this population. While pointing to the need for further research, they are able to already conclude that leaving refugees in limbo is a huge cost to Canada.

Andrew Brouwer, in turn, makes a careful legal argument for how Canada's current policy could be amended to end limbo for those who are protected persons, but who have not yet been granted permanent resident status. The article details the barriers faced by refugees in this situation, barriers which range from the inability to unite with family to difficulties acquiring employment. Then, drawing on opportunities in, and arguments from, current Canadian law, as well as from international law, Brouwer reasons that the current policy is neither necessary nor just, and is counterproductive to the integration of those seeking a safe home in Canada. He thus proposes that Canada dispense with a redundant second screening and automatically grant permanent residence to those determined to be protected persons.

The final article in this issue does not directly discuss refugees in legal limbo... but examines what is perhaps limbo of a different kind. The authors, Kevin Pottie, Judith Belle Brown, and Samuel Dunn, present a powerful and moving study of the emotional stress of Central American men resettling in Canada. It is a reminder of the very personal and painful impact of being forced to leave one's home and to try to create a new home and find a new sense of belonging.

Betwixt and between — this is the nature of the limbo experienced by refugees and stateless persons the world over. As one of the refugees in Humpage and Marston's article, states: "Once we got to Australia we thought we would be safe and protected... and then we got this temporary protection visa, we thought we were slowly dying again because we started a new form of suffering." Or as a Somali refugee interviewed by Awa M. Abdi in a camp in Kenya goes so far as to contemplate, "The other conflict [remaining in Somalia] might have been better; at least we could get out, we could move around even if a bullet hits you. And now we miss that. ... now we cannot move around. You just sit around."

A new sense of belonging, a new sense of home for those in limbo will require changes to, and implementation of, both domestic and international policy, law, and practice. Recognition of the personal and economic costs of leaving people in limbo will require mindfulness to justice in ensuring that refugees and stateless persons truly have the opportunity to create a new life.

Harry J. Kits has been Executive Director of Citizens for Public Justice since 1988. Citizens for Public Justice undertakes Canadian public policy advocacy based on its understanding of the biblical call to justice and mercy. Harry Kits has been involved in the organization's policy work on issues ranging from child poverty to aboriginal rights to refugees in limbo. Most recently he has spearheaded efforts to ensure that refugees in limbo in Canada are able to access government loan programs in order to attend university and college.

In Limbo: Dependency, Insecurity, and Identity amongst Somali Refugees in Dadaab Camps

Awa M. Abdi

Abstract

The Somali civil war of 1991 left thousands of refugees scattered in neighbouring countries. This article examines the situation of the 130,000 Somalis in their second decade in Dadaab camps in Kenya, with a particular focus on the role and responsibilities of the refugee regime and the host state. It is argued that these camps are characterized by deprivations of both material and physical security. Research found that refugees' dependency on inadequate aid is due to lack of alternative livelihoods rather than "dependency syndrome." However, participants expressed diminished "self-esteem" resulting from their prolonged encampment. Finally, the paper presents a critique of the failure to explore solutions for protracted refugee situations on the part of the international refugee regime.

Résumé

La guerre civile de 1991 en Somali a laissé des milliers de réfugiés éparpillés dans les pays avoisinants. Cet article examine le sort des 130,000 somaliens qui sont à leur deuxième décennie dans les camps de Dadaab au Kenya, avec une emphase particulière sur le rôle et les responsabilités de la convention sur les réfugiés et du pays hôte. L'article soutient que ces camps sont caractérisés par un manque de sécurité tant au niveau physique que matériel. Des études ont démontré que la dépendance des réfugiés sur de l'assistance – quoique cette assistance est elle-même insuffisante – découle d'une absence de voies alternatives pour gagner sa vie plutôt d'un syndrome de dépendance. Toutefois, les participants ont exprimé un sens diminué d'estime de soi, résultant de leur séjour prolongé dans le camp. Pour terminer. L'article examine de façon critique le fait que la convention internationale sur les réfugiés ait failli dans son devoir de rechercher des solutions alternatives pour des gens se retrouvant comme réfugiés pour un laps de temps prolongé.

Protracted political limbo still prevails in Somalia as it enters its fourteenth year of "statelessness." Despite the precarious situation of Somali refugees scattered across many parts of the world, both the country and the plight of its refugees remain off the radar of world media. The atrocities committed in the process of tumbling Siad Barre's regime in 1991, and the clan-based power struggles that followed, led to the displacement of hundreds of thousands of Somalis. The refugees initially fled to the neighbouring countries of Ethiopia, Djibouti, and Kenya, subsequently moving on to countries near and far. Those who were fortunate enough to escape the trials and tribulations inherent in exile in countries such as Kenya, where existing resources are barely able to meet the basic needs of the native population and where most refugees still remain in closed camps, moved on to more prosperous countries where they obtained refugee status. Most refugees were not so fortunate, however.[1]

The focus of this paper is on the approximately 130,000 Somali refugees who remain in limbo in camps in the North Eastern Province of Kenya (NEP).[2] Dadaab, a name given to three camps (Hagadera, Ifo, and Dhagahley), is located about 100 kilometres from the Somali-Kenya border. These camps were created in mid-1992 after it became almost impossible for the international humanitarian regime to run the camps in Liboi, a border region too close to south-

ern Somalia where violence was still occurring on a daily basis. Security concerns for international staff, refugees, and humanitarian supplies all led to the creation of new camps further inside Kenyan territory. The region where Dadaab camps are located is semi-arid and was sparsely populated by nomadic Somali-Kenyans before the arrival of refugees fleeing the war. Hostilities between Kenya and Somalia, which claimed the Somali-inhabited Northern Frontier District (NFD) as a missing Somali territory and supported regional independence movements, persisted since independence in the early 1960s. Due to this tension, Kenya kept NFD, now known as North Eastern Province of Kenya (NEP), and its population under a permanent state of emergency from independence until 1992.[3]

The scale of the refugees fleeing across the Kenyan border in the early 1990s overwhelmed both the small local nomadic population and the available scarce natural resources of the area. The presence of international organizations nevertheless brought this previously marginalized region some attention with the provision of services such as boreholes, hospitals, and schools. By March 2003, about 160,000 of the more than 400,000 Somali refugees who fled to Kenya at the height of the war remained in Kenya. Of these, 130,000 were in the three Dadaab camps, with a smaller numbers in the Kakuma camps in Northwestern Kenya, and the remainder living in urban centers such as Nairobi. United Nations High Commissioner for Refugees (UNHCR) administers the camps, with CARE responsible for social services, WFP (World Food Program) for food, and MSF (Médecins Sans Frontières) for health care.[4]

While cognizant of the role the failed state of Somalia and warlords still engaged in power struggles played in the plight of Somali refugees, the central theme of the paper is the role and responsibilities of those charged with caring for refugees after they are in refugee camps in neighbouring countries. The paper argues that encampment and protracted refugee situations leave thousands of men, women, and children living in limbo, resulting in wasted human capacity and deprivations of human dignity. Research in Dadaab found that refugees are dismayed by their dependency on inadequate aid, and express diminished self-worth due to their inability to better their situation or to escape from the conditions of camp life. The failure of the host state and the international community to bring about any effective intervention to free refugees from this limbo state is also examined. Here the emphasis is on the neglect of the Kenyan government, as a signatory state to many human rights and refugee covenants, to enforce the refugees' legal rights under international law. Any positive and proactive commitment on the part of this government, the paper argues, would have gone a long way to alleviate the refugees' predicament. Finally, I argue that the international refugee regime's mantra of durable solutions – reintegration, resettlement and repatriation – as the only viable options often translates to no solution and leads to a protracted state as demonstrated by the situation in which refugees find themselves. Refusal to explore other options of addressing the refugee crisis, other than care and maintenance, to end the limbo status of these refugees causes devastating consequences for displaced populations.

Encampment: Dependency, Deprivations, and Refugee "Persona"

Humanitarian organizations upon their arrival in disaster zones rarely have the luxury to assess whether camps are the best option to address human catastrophes.[5] Once camps are created, however, the initially hoped temporality often turns out to have been wishful thinking, as demonstrated by the many cases of protracted refugee situations in the last two decades.[6] Examples of refugees in limbo for over a decade include "Tigrayans and Eritreans in Sudan, Afghans in Pakistan and Iran, Salvadorians in Honduras, Cambodians and Laotians in Thailand, Mozambicans in Malawi, Angolans in Zaire, and Vietnamese boat people in different countries in Southeast Asia."[7] We should add Rwandan refugees in Tanzania and Somalis in Ethiopia, Kenya, Djibouti, and Yemen. On paper, UNHCR claims that "the establishment of refugee camps must be only a last resort. A solution that maintains and fosters the self-reliance of the refugees is always preferable."[8] Nevertheless, camps become the first choice to "manage" a refugee crisis. Certainly difficulties abound for the humanitarian community in managing and assisting people dispersed over a vast land in emergency situations; yet, as will be demonstrated by this paper, camps as the only solution for the administration of humanitarian assistance neglect the short-term and long-term detrimental effects on refugees.

Camps often established in peripheral regions lead to segregation and marginalization of refugees.[9] The international humanitarian organizations administering these camps function under different norms of culture, languages, and politics than the refugees they aid. Refugees in the crisis phase welcome the assistance strangers bestow on them and remain acquiescent to camp regimentation. However, once the emergency period passes, with camp entering a care and maintenance phase, refugees experience few changes in the routines of scheduled ration distributions, head counts, and visits of international dignitaries. Resentment and conflict towards the aid apparatus follows.[10] Aggravating these inadequacies further is the prohibition of freedom of movement to which refugees in closed camps are subjected, a constraint that greatly hampers

refugees' ability to seek alternative livelihood strategies outside camps. Coupling this last restriction with the difficulties international humanitarian organizations experience in raising sufficient funds to continue to administer the camps with adequate provisions beyond the emergency phase renders camps domains of material scarcity.

Arguments against this type of encampment include that camps engender passivity, *breaking down all initiatives* and *self-worthiness* of refugees. Hand-to-mouth arrangements of awaiting others to provide all one's needs eventually translate to complete dependency on donations.[11] However, while acknowledging the need for these rations for refugees whose other options are constrained both by the environment of camp locations, and also by national laws prohibiting or limiting employment prospects, some researchers contest this "dependency syndrome."[12] Instead, Kibreab, using Somali-Ethiopian refugees in Somalia in the 1970s and 1980s as an example, argues:

> [t]he majority of refugees in the camps were willing to expend their labour on economic activities, often for very small return, and also, in some cases, to take the risk of relinquishing their ration cards for the uncertain alternative of self-sufficiency. Among the able bodied refugees, there was no evidence at all that the refugees' willingness to take initiatives and to work hard either to earn an income or to augment their diet was negatively affected by prolonged dependency on handouts.[13]

Clark also refutes the concept of a dependency syndrome. Instead, he asserts that "the apparent dependency of refugees derives from their removal from their social, political and economic coping systems."[14] While dependency is acknowledged here, the reasons why refugees may become dependent are contested: instead of "laziness" or "welfare mentality," this argument partly blames the structural constraints to which refugees are subjected in camps, equated with Goffmanesque "total institutions."[15] Despite the different rationales for refugee dependency, a consensus exists within the literature of the sufferings of refugees in "closed camps" living in limbo and dependent on dwindling rations for years. Due to the disruption of refugees' social and economic networks, long-term encampment further negatively impacts on the future reintegration of refugees into their home countries.[16]

Research with Afghani refugees in Pakistan found that more than the social dislocation of being outside of their home country, "what is disruptive and potentially most threatening to Pakhtun refugees is not social dislocation so much as the contradictions posed by the framing experience of becoming _ in multiple senses of the word _ refugees."[17] This last finding emphasizes the disempowerment refugees experience when they no longer toil on their land and survive on their sweat but wait around for food distribution, perceived as non-reciprocal charity bestowed on them. Acceptance of these donations is perceived as being contradictory to the Pakhtun culture. Also research with Vietnamese refugees in Southeast Asian camps demonstrates that more than the enclosure and fences surrounding the camps, what is most damaging about closed camps is the uncertainty of their prospects of leaving the camps, and the camp administration's expectation for refugees to self-represent themselves as "helpless supplicants under suspicion."[18]

Data collected from Somali refugees in Dadaab confirms the deprivations refugees experience in protracted refugee situations. Interviewees detail the precariousness of their day-to-day lives, which is unfortunately also substantiated by camp administration reports. For example, WFP often raises alarm bells about the impending starvation of refugees in Dadaab or in Kenya. The food WFP is able to secure for these refugees always falls short of the daily calorific requirement, with reduction of both the quantity and quality of rations. Refugees expressed to this author their frustration with this situation. Foodstuffs distributed are actually often scorned. Many argue that the quality of the grains distributed is "not fit for humans." Moreover, most research participants dwelled on the lack of variety in their rations, and also the cultural inappropriateness of maize as the main staple provided. "The food distributed per person has now been reduced to three kilograms of maize per person per fortnight" is a statement that was reiterated by all refugees. Flour, a staple most Somalis utilize to prepare *anjero* (flat bread), is rarely found in their bimonthly rations. By the end of my first trip to Dadaab, August 2001, refugees had not received flour for almost a whole year. The refugees contrast this with the rations they received at the beginning of their arrival in the camps, which were not only double what they were in 2001, but also included a variety of grains. During those days, refugees were able to sell some of the rations to buy other food items such as meat, milk, and vegetables that are not provided by the camp administration.

Refugee diet, which should in theory include pulses and vegetables, rarely contains these, and often results in high rates of malnutrition amongst women and children. During my first trip to Dadaab in summer 2001, MSF reported a dramatic increase of 172 per cent in the malnutrition rate of Somali refugee children within a period of six months due to a 35 per cent decrease in the general food distribution in the camps.[19] Only a small number of refugees receiving remittances from the diaspora and those involved in petty trade/business are able to supplement these meager rations.

Affording "meat and milk" (*cad iyo caano*), two words that together signify subsistence in the Somali language and originally comprising nomads' main foodstuffs, is a luxury very few refugees can afford. An interesting item illustrating the precariousness of refugee life is the price of food items in Dadaab. A woman who sells some of her grain to buy milk for a baby would sell her maize for 5 Kenyan shillings per kilogram. However, one glass of milk costs 10 Kenyan shillings.[20] For a mother to provide this one glass for a small child, she would have to sell two kilos of the maize she received that morning, accounting for two-thirds of the main ration the child receives for two weeks.

Despite the deprivations discussed above, the dependency identified in Dadaab resembles more that discussed by Clark, namely loss of "social, political and economic coping systems,"[21] rather than any "welfare mentality" or laziness. Refugees' discussions highlight their lack of alternatives to rations distributed. Refugees repeatedly dwell on how employment and/or gaining one's livelihood is desirable but impossible in the camp settings. Lack of material resources and employment prospects obliges most to rely solely on the bimonthly rations. For most refugees who are not involved in trade and who don't receive remittances, dependency on aid remains the only option. However, in spite of camp constraints, I found that refugees desire and hope to be freed from the "beggarly" positions they occupy as dependents on insufficient aid. One interviewee reported that she cleaned the premises of one of the NGOs for free for weeks, until some NGO staff took notice and a small remuneration was offered to her. This permitted her to supplement the meager distributed rations for her and her four children. This woman, among others, demonstrated a tenacity to better her situation in an environment of scarce resources. All around the camps, one sees women selling small pockets of sugar or spices to make just enough to buy a glass of milk for the smallest children. Thus, as much as camp appearances portray people always waiting for something, the desire to provide for one's family was expressed by almost all refugees. And this challenges the claim that refugees become dependents on aid because of unwillingness to provide or work for their sustenance.

Self-Perception: Refugee Identity

Another theme often coupled with dependency syndrome is loss of self-worthiness that may result from protracted refugee situations. This author's research in Dadaab significantly supports this argument. Refugees' self-representation as "refugees" was often very negative. Most refer to themselves as "*qoxooti*,"[22] often portrayed as a dreaded "identity," and often only associated with others.

> A refugee is a fenced person. (Hawa M. Ali)[23]
>
> The word refugee, in my opinion, in our heads, it means a weak individual; that is how we see ourselves. We ourselves don't like it when we are called "refugees"; we are not happy with it. But what can you do? It is a weak person, a person whose country was destroyed; it means a poor person, who has nothing, who is begging food that is handed down. That is what it means to me. (Sa'ida M. Farah)
>
> A person who is sitting somewhere as if he/she was handicapped! There are no men who are employed in this block, who go to work in the morning and who gain a living. They are sitting around the house. They are unemployed. Nowhere to find jobs! (Aliya S. Abdi)
>
> Refugee is poverty and hunger. A loser standing around, that is a refugee. I think of poverty, praying to Allah: "Allah, take us out of this misery," this suffering and hardship, carrying water on your bare back, searching for wood in the bushes, lack of milk for your children, unemployment, that is it. (Hodan F. Abdirahman)
>
> A refugee is someone suffering. A refugee is someone who is in need. A refugee is someone who has nothing. That is how I interpret the word refugee. If we had any way of freeing ourselves, we would not be in this refugee camp tonight. (Halima K. Bile)
>
> "Refugee" is not a pleasant word. When someone is told, "you are a refugee," it is a word that hurts. A "refugee" is a person who abandoned his habitat, who lives in a territory that is not his, and who lives miserably and desperately, constantly worrying. Hence, "refugee" is a word that bothers us. And when someone is called a refugee, it hurts us. I mean you are seen as someone who is less than others, who is worst. So, as refugees, when we are told, "you are a refugee," we see it as if we are despised, weaker and less than other people. It depresses us every time the word is used. I see it as weak, someone who is not capable of anything. That is how I see the word refugee. (Kaha A. Bihi)

Refugees frequently refer to the constraints on their freedom of movement in closed camps. People use metaphors drawn from nomadic animal herding: "fenced like livestock." "Living in a prison where the sky is open" is another way refugees illustrate their condition. Fencing symbols suggest hindrances to refugees' capacity to escape the dearth of material conditions and the deprivations in the camps. Many refer to their wish or hope one day to be freed from the conditions of "refugeehood." To this end, both

men and women often recited prayers. A refugee persona, however, as much as it is despised, as illustrated by the images of "refugee" above, is also assumed when recounting the harshness of camp life. As Harrell-Bond and others have argued, refugees assume this "victimized" persona after a certain time in camps.[24] In fact the conditions existing in Dadaab render it very easy for refugees to internalize this persona. Deprivation of both material and physical security characterizes Dadaab camps, and one discerns in refugees' narratives a denial of being the definitions they associate with the identity "refugee." These definitions embody refugees' ambiguity towards this identity: what they perceive as an undesirable identity, "*qoxooti*," and that they are "*qoxooti*" in Dadaab camps.

Insecurity: Fenced for the Enemy?

Instead of hospitality, refugees in limbo often experience exploitation, extreme insecurity, and constant harassment, not only from local populations, but also from national authorities and policies fueling unfavourable sentiments towards the newcomers.[25] This hostility may partially stem from the deprivation persisting in refugee-hosting areas. Local populations in these regions often end up more marginalized than the refugees, who receive international humanitarian aid which at least permits them to meet subsistence needs. When excluded from this aid, host populations tend to resent refugees and view the newcomers as "enemies" or competitors. Scarce resources, such as firewood and water, become contested when the sudden population increase leads to high consumption of limited resources.[26] However, I argue that conflict with refugees in this situation should not be interpreted as hostility towards refugees *per se*; rather, conflict in areas where water and pasture scarcity prevails is often the norm. For example, in the North Eastern province of Kenya where the Dadaab camps are located, local Somali Kenyan populations historically and presently experience clan conflicts due to pasture and water paucity. To expect "hospitality" beyond the short-term for refugees, even if amongst co-ethnics, when the local populations persistently experience violent confrontations, is unrealistic. Rather, in an environment of scarcity, a "survival-of-the-fittest" mentality translates to refugees often being victimized in the relationship with host populations.

The persistence of insecurity in Dadaab camps illustrates this often-tense relation between locals and refugees. Highlighting the scale of this concern, UNHCR reported that, at the height of gender-based violence, there were 200 documented rapes in Dadaab in 1993. In the subsequent four years, the number of officially recorded rapes averaged between 70 and 105. But rapes again increased to 164 in1998, fell to 71 in 1999, rose again to 108 in 2000, 72 in 2001.[27] Given the stigma attached to rape within the Somali culture, reported rapes fall far short of the actual number of cases.[28] Most of the rapes in Dadaab occur in the outskirts of the camps. Depletion of firewood in this semi-arid region obliges women to travel further and further in search of fuel for cooking. UNHCR documented over 100 rapes from February to August 2002.[29] Most of the perpetrators are allegedly Somali nomads from the area, *deegaanka,*[30] often referred to as "shiftas."[31]

Another example of insecurity reported by refugees is bandits raiding the camps. These incursions coincide with material donations such as plastic bags distributed to cover refugees' makeshift houses, and/or bimonthly ration distributions. The bandits often rob refugees of any valuables they may have, targeting those suspected of owning material goods and those receiving remittances, and even robbing poorer refugees of their rations. It was reported that the *shiftas* use the women to transport the rations, subsequently raping and at times killing them in the outskirts of the camps.

One-woman interviewee referred to a rape she witnessed:

> I saw it with my own eyes. She was caught and raped at the door, her pants[32] pulled off, a girl of 15 years old, a gang, vagabonds, losers and *shiftas*, there you are, you are watching it, you scream, but you cannot free her from them, you are standing at your door. The conflict we fled, yesterday when NGOs (*hay'adihii*), assisted us, when we got settled, assisted us well, we thank them for it, we thank Allah for it, when we settled, our children started schools, when we would have done something for ourselves, an enemy was born (*cadow baa dhulkii oo dhan ka dhaqaaqay*). The other conflict might even have been better; at least we could get out, we could move around even if a bullet hits you. And now we miss that. In that one, we could move around, during the conflict, we could move; now we cannot move around. You just sit around (*waaba saas u yuurur*). (Ebla A. Hersi)

Additionally, the Kenyan police stationed in the camps to protect the refugees reportedly commit violence against and rapes of refugees. Banditry, coupled with fear and distrust of those responsible for their protection, renders the situation of refugees, especially women refugees, doubly oppressive. Amelioration of the security situation in Dadaab is minimal, as is clear from the statistics above. The scope of this crisis is clearly illustrated by Verdirame, who in his assessment of the human rights abuses in Kenyan camps accuses UNHCR of "administering the camps in ways which often appear to be blatant disregard of international human rights standards."[33]

A comparison of the incidents of rape in Dadaab, where a population of 130,000 resides, to those reported in 2002 for Mogadishu, the most dangerous and violent city in Somalia for the past decade with a population of over one million, illustrates the magnitude of insecurity prevailing in Dadaab. A Somali human rights group active in Mogadishu, the Dr. Ismael Jumale Human Rights Centre (DIJHRC), documented 32 rape cases in Mogadishu for 2002.[34] Again this number is probably a gross underestimation of the actual number of rapes committed by militias in Mogadishu; it nevertheless underscores the seriousness of insecurity women in Dadaab camps experience. The high incidence of violence in Dadaab is also a clear indication of the failure of the host state to protect refugees on its territory.

Role of the Host State in a Refugee Crisis

The host state plays a crucial role in the reception and type of settlement offered to refugees: either integration with the host population or in limbo in peripheral regions. Geopolitics often is key to these decisions. For example, Western nations encouraged refugees from the eastern bloc during the Cold War whereas, following the end of the East-West divide, reception of refugees, *i.e.*, those from the Balkan wars, was tepid at best. Furthermore, regional conflicts can encourage or discourage refugee flows from neighbouring countries, either to discredit the other side, or to avoid a spillover of political turmoil in neighbouring countries. The latter is especially the case when the nations in the host state include peoples of the same ethnic group(s) as the refugees. For instance, neighbouring countries with historical border disputes such as Somalia and Ethiopia each encouraged refugees from the other side in the 1970s and 80s, whereas Kenya, with the collapse of Somalia in 1991, was hostile to the refugee influx. In the last case, the Kenyan government's encampment policies are closely tied to its apprehension of refugees acting as a destabilizing force. Containment of refugees in closed camps facilitates the monitoring of undesirable activities within that space.

State policies towards a refugee crisis are also partially dictated by the pressures states experience from the Western powers, which control the funds for "aid" and "loans." Kenya, for example, already facing reduction of aid due to its human rights record, used the Somali refugee crisis to negotiate for a continuation of international aid. "On the one hand, the presence of large numbers of Somali refugees in Kenya was held as evidence of Kenya's improved human rights record. On the other, Kenyan authorities threatened to return these refugees forcibly if a renewal of aid was not forthcoming."[35] Governments in addition influence how the greater host population perceives refugees. Scapegoating refugees as responsible for all the social and economic ills, often in reality preceding the refugee arrivals, often fuels resentment of an already disfranchised populace within the host population who might perceive neighbouring "enemy" citizens on their territory as foreign and undesirable.[36] The situation of Somali refugees in Kenyan camps is therefore intrinsically tied to the colonially inherited border disputes between post-independence Somalia and Kenya, and the marginal position Somali-Kenyans occupy within the Kenyan state.

Finding solutions for protracted refugee situations, such as refugees in Dadaab camps, remains a challenge for the international community. However, as discussed in the next section, narrow definitions of how and what the best course to address refugee crisis are results in the persistence of limbo state for millions of refugees.

Durable Solutions: Prospects of Integration, Resettlement, and Repatriation for Dadaab Refugees

Almost all refugees in Dadaab are familiar with the three preferred solutions for refugee crisis as stipulated by the international refugee regime: integration into the host society, resettlement in a third country, or repatriation to the country of origin. Of the 130 refugees who participated in consultations with Adelman and Abdi during a 2003 CARE Canada consultancy field trip in Dadaab, almost all reiterated the need to implement one of these options to terminate their encampment.[37] However, these solutions have so far translated to guaranteed permanence of a limbo state for Somali refugees in Kenyan camps.

As our discussion of the Kenyan government's treatment of Somali refugees illustrates, integration into the host country for Somali refugees has not been tried as a viable option, because if tried, it would have met very vocal opposition from landless locals. This is especially so given the scarcity of arable land and the conflict about its ownership in Kenya. Economic and political challenges confronting Kenyans eliminate any provision of land and acceptance of integration for these refugees on Kenyan territory. Furthermore, Kenya's reluctance to pass a refugee bill that has been under discussion for years now, despite hosting very large numbers of Somali and Sudanese refugees starting in the 1980s, testifies to its ambivalence towards refugees. UNHCR assumes responsibility for all refugees in Kenya, who still lack any legal recognition within the Kenyan political system, despite its ratification of the refugee conventions of both the UN and the Organization of African Unity (OAU).

If integration is not a viable alternative, both resettlement and repatriation have also remained elusive so far for

Somali refugees in Dadaab camps. The percentage of resettled refugees worldwide amounts to a dismal number. Of the over twenty million persons dispersed around the world in 2002, 55,500 or just about 0.3 percent of these refugees were resettled in a third country.[38] The numbers of Somali refugees resettled by traditional refugee-receiving countries such as Canada, the United States, and Australia have further diminished since the September 11 terrorist attacks in the U.S. For example, the 2002 UNHCR Annual Statistical Report shows that the number of resettled Somali refugees for that year was 640: 295 went to the U.S., 159 to New Zealand, 116 to Canada, and smaller numbers to the Netherlands, Norway, and Sweden.[39] The current "terrorist" rhetoric dominating immigration policies of most Western nations, and the incidents of bombings in Kenya in which Somalis were implicated, account for this decrease. These dismal numbers highlight the limited opportunities for resettlement that exist for refugees in general, and for Somali Muslim refugees since the September 11, 2001, attacks.[40] This also underscores the problematic nature of this option as a solution to end the limbo state of large numbers of refugees.

Repatriation has also remained impossible for most refugees in Dadaab. Here, however, lies a dilemma. Refugees and UNHCR differ on the feasibility of this option as a solution to the limbo state of refugees. A small percentage of the thousands in Dadaab who signed up for voluntary repatriation in 2001 with UNHCR have so far returned, mainly to the Puntland region of Somalia. Unlike Somali refugees in Ethiopian camps, the majority of whom are already repatriated to Somaliland, UNHCR reports 220 refugees repatriated from Dadaab camps in 2002 and about 500 for 2003.[41] UNHCR claims funding constraints hinder its ability to repatriate the Somali refugees in Dadaab. Adelman and Abdi's consultations with refugee groups in Dadaab overwhelmingly supported voluntary repatriation provided they get some financial assistance to restart life.[42] Despite the fact that many refugees in Dadaab come from minority clans and/or rural backgrounds in the southern regions of Somalia, most expressed a willingness to repatriate to other regions, mainly to the northeast and northwest of Somalia, if provided with some financial assistance to do so. Many insisted that they are very aware of the material and physical insecurities existing in many parts of Somalia. However, they also argued that worse material and physical insecurities persist in Dadaab camps. Refugees cited the Somali proverb "*laba kala daran mid dooro*" (choosing the best of two bad situations). Regardless of the risks involved in life in Somalia, refugees argue they would at least have freedom of movement and freedom to seek employment opportunities. But with diminishing funding for all other aspects of administering the camps, UNHCR claims that it is unable to fulfill the desires of thousands of refugees.

Adelman *et al.* proposed an alternative to the costly yet inadequate care and maintenance provided to refugees in Dadaab for the last twelve years. This proposal argues that repatriation for most Somali refugees should seriously be considered:

> We recommend that a meeting be held of donors so that they pledge to give the same monies they now give for camp operations over the next five years, but an appropriate committee of international agencies be given authority to use those guarantees to obtain present funding for repatriation in flexible ways to find the various durable solutions for the different groups of refugees and different choices refugees make. The refugees will return, but with conditions, conditions that deal with their material security and security of education for their children.[43]

This proposal emphasized giving refugees real choices. Here it is important to highlight that resettlement is not a viable choice for most refugees, as illustrated by the statistics above. This will, however, be encouraged for small groups of refugees, such as some minority groups who feel they cannot return to Somalia, vulnerable women and their children, etc. As Kumin argued in her address at the 2003 G78 Annual Policy Conference, options such as the one proposed here actually fit well with the current High Commissioner's proposed "Convention Plus." Consistent with Adelman and Abdi's insistence on avoiding the narrowly defined mantra of "durable solutions," "Convention Plus" is about "develop[ing] new tools for today's problems." These tools include:

> [C]omprehensive plans of action to ensure more effective and predictable responses to mass influx or to protracted refugee situations; development assistance targeted to achieve more equitable burden-sharing and to promote self-reliance of refugees and returnees; multilateral commitments for resettlement of refugees; and the delineation of roles and responsibilities of countries of origin, transit and destination. The underlying premise is that specific commitments will lend themselves better to binding agreements than broad policy exhortations.[44]

Durable solutions as they stand now are no more than exhortations, often amounting to no commitment from the international community. Exploring other options, and freeing refugees from "imaginary" solutions for their plight, should be at the top of the agenda of refugee-assisting organizations. Also these options should include international concerted effort to contribute to peace-building

initiatives in the refugee-producing regions, which will go far in expediting the end of refugee limbo state.

Conclusion

The above analysis attempted to highlight the constraints refugees in limbo face in their protracted camp life. It was argued that dependency on aid in Dadaab remains the main option open to most refugees, not because of lack of initiative to provide for one's family, but rather due to lack of alternative livelihoods for the majority. In addition, research clearly indicates that the refugees' self-worth was affected by their refugee status. "Refugee" identity is painted as dreaded and undesirable. Moreover, violence, especially gender violence, remains epidemic in Dadaab, and insecurity remains a top concern for all refugees. With Dadaab in its second decade of existence, and world attention currently on the war on "terrorism" and the aftermath of the war in Iraq, securing funding for refugees in protracted situations in peripheral regions is becoming extremely hard for international organizations.

Given the grim picture painted by these findings, it is paramount that states signatory to UN covenants on human rights endorse national legislation for the rights of refugees in agreement with international laws. This would certainly go a long way towards reducing the desperate protracted situations of refugees in many parts of the world. Even if governments are ultimately responsible for settlement policies, and not international organizations which have "no army to or access to coercive power to act on behalf of refugees,"[45] international organizations can and should do more to use their presence in host countries. Regrettably, once the emergency phase passes, inertia of the international humanitarian bodies administering the camps and the international community's will to find solutions sets in leaving refugees in a desperate state of limbo. Yet literature provides us with enough case studies, with lessons to be implemented for future crisis, to avoid repeating the same old scenarios: creation of camps as temporary solutions to crisis; camps turning to semi-permanent settlements where inadequate livelihoods and insecurities persist. The long-term consequences of closed camps where people are segregated from the general host population, where freedom of movement is highly curtailed, where a state resembling a "total institution" prevails, where state of limbo in all areas of daily life persists, are underestimated. It is time for the international community and national and international organizations working with refugees to explore other alternatives to address protracted refugee situations.

Notes

1. This paper draws from two periods of field research in Dadaab in 2001 and 2003: the first included twenty in-depth interviews with women refugees, focus groups with refugee community workers of both sexes, and consultations with NGO staff; the second, conducted with Dr. Howard Adelman, involved extensive community consultations with both refugee groups (youth, women, men, elderly, and religious leaders), and NGO personnel working with refugee serving agencies both in Dadaab and in Nairobi.
2. About 97 per cent of refugees in Dadaab are Somali. However, there are some claims that up to 20 per cent of these are actually Kenyan Somalis who settled within the Somali refugees. The rest comprise a small number of Ethiopians and Sudanese.
3. Abdisalam M. Issa-Salwe, *The Collapse of the Somali State: The Impact of the Colonial Legacy* (London: Haan Publishing, 1996).
4. MSF pulled out of Dadaab in 2003 and GTZ (German Technical Cooperation) is currently running the health services of these camps.
5. Camps in this paper refer to UN-supervised regimented centres, where refugees are mainly dependent on international aid, and where little prospects for self-sufficiency exist.
6. See Jeff Crisp, "No Solution in Sight: The Problem of Protracted Refugee Situations in Africa" (Working Paper No. 75, New Issues in Refugee Research, Evaluation and Policy Unit, UNHCR, 2003).
7. Wim Van Damme, "Do Refugees Belong to Camps? Experiences from Goma and Guinea," *Lancet* 346 (1995): 362.
8. UNHCR 1982:57, cited in Sydney Waldron and Naima A. Hasci, "Somali Refugees in the Horn of Africa: State of the Art Literature Review," *Studies on Emergencies and Disaster Relief* No. 3 (Sweden: Nordiska Africkainstitutet, 1995),19.
9. See Crisp; Johnathan Bascom, "The New Nomads: An Overview of Involuntary Migration in Africa," in *The Migration Experience in Africa*, ed. J. and T. A. Aina (Sweden: Nordiska Afrikainstitutet, 1995), 197–219
10. For detailed discussion of the schisms between refugees and those who manage camps, see Linda Hitchcox, *Vietnamese Refugees in Southeast Asian Camps* (London: Macmillan, 1990); Jennifer Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism* (Minneapolis: University of Minnesota Press, 2000).
11. B.E. Harrell-Bond, "Pitch the Tents," *New Republic* (1994): 15–19; in Van Damme, "Do Refugees Belong to Camps?" 1995:361; Waldron and Hasci, 19.
12. Gaim Kibreab, "The Myth of Dependency among Camp Refugees in Somalia 1979–1989," *Journal of Refugee Studies* 6 (1993): 321–49.
13. *Ibid*., 346–47.
14. L. Clark, "The Refugee Dependence Syndrome: Physician Heal Thyself" Washington, D.C.: Refugee Policy Group, 1985), 1–3, cited in Waldron and Hasci, 19.
15. Waldron and Hasci, 19–20; Hitchcox, 148–76.

16. L. Clark and B. Stein, "Older Refugee Settlements in Africa: A Final Report" (Washington, D.C.: Refugee Policy Group, 1985), cited in Barbara Harrell-Bond, "Camps: Literature Review," *Forced Migration Review* (August 1998): 22–23.
17. David Busby Edwards, "Marginality and Migration: Cultural Dimension of the Afghan Refugee Problem," in "Refugee Issues and Directions," special issue, *International Migration Review* 20, no. 2 (1986): 325.
18. Hitchcox, 113.
19. IRIN, "Alarming Increase in Refugee Malnutrition," NAIROBI, 27 June (2001), online: IRIN Homepage <http://www.irinnews.org> (date accessed: 13 January 2002).
20. These prices were those of summer 2001.
21. Clark 1985.
22. This word literally means "refugee." Prior to the 1991 Somali crisis, '*qoxooti*' was a word intrinsically associated with Somali-Ethiopian refugees who fled to Somalia in the 1970s and 1980s. In common Somali parlance, it carries multiple negative connotations. Refugees in Dadaab often referred to this past, regretfully claiming that they never thought they would find themselves in such a position, and in retrospect sympathizing with Somali Ethiopians who sought refuge in Somalia.
23. All refugee names in this paper are pseudonyms.
24. B.E. Harrell-Bond, *Imposing Aid: Emergency Assistance to Refugees* (Oxford: Oxford University Press, 1986).
25. Gaim Kibreab, "Erithrean and Ethiopian Refugees in Khartoum: What the Eye Refuses to See," *African Studies Review* 39, no. 3 (1996): 131–78.
26. Beth Elise Whitaker, "Refugees in Western Tanzania: The Distribution of Burdens and Benefits among Local Hosts," *Journal of Refugee Studies* 15, no. 4 (2002): 342; Jeff Crisp, "A State of Insecurity: The Political Economy of Violence in Kenya's Refugee Camps," *African Affairs* 99 (2000): 601–32.
27. UNHCR, "Security Analysis Paper" (Sub-Office, Dadaab 2003a).
28. See Africa Watch and Women's Rights Project, "Seeking Refuge, Finding Terror: The Widespread Rape of Somali Women Refugees in North Eastern Kenya," *Africa Watch (Human Rights Watch)* 4, no. 14 (1993); Human Rights Watch 1997, "International Failures to Protect Refugees: Protection of the Rights of Refugee Women," online: HRW Homepage <http://www.hrw.ort/reports/1997/gen3/general.htm (date accessed: 7 January 2002).
29. "Somalia: 2002 Country Report on Human Rights Practices," (U.S. Department of State, Bureau of Democracy, Human Rights and Labor, 31 March 2003), 6.
30. This word means "locals." Refugees in Dadaab often use it to refer to the Somali local population inhabiting the Dadaab region.
31. This is a term originating from the Kenyan government's conflict with the NFD independence movements in the 1960s. It is now widely used by Somali refugees and humanitarian organizations to refer to lawless bandits who allegedly terrorize refugees and local populations.
32. A recent phenomenon with Somali women is the addition of pants, often worn under long dresses, to women's attire. This is a phenomenon that commenced with the civil war, as rapes against women increased. Also with flight and the chaos of daily live in war zones, the pants increased both modesty and the number of layers an attacker needs to remove in an attack, with the hope that help might arrive before the attacker rapes the woman.
33. Guglielmo Verdirame, "Human Rights and Refugees: The Case of Kenya," *Journal of Refugee Studies* 12, no. 1 (1999):75.
34. "Somalia: 2002 Country Report on Human Rights Practices," 5.
35. Opondo 1994, cited in Waldron and Hasci, 13.
36. Kibreab, 1996, 131–78; Waldron and Hasci, 13.
37. Howard Adelman and Awa M. Abdi, "How Long Is Too Long: Durable Solutions for Dadaab Refugees," (Report for CARE Canada, 2003), 97.
38. UNHCR,"Refugees by Numbers," 2003b, online: UNHCR Homepage <http://www.unhcr.org/> (date accessed: 24 October 2003).
39. UNHCR, "UNHCR 2002 Annual Report: Somalia, 2003c," 23 July, online: <http://www.unhcr.org/> (date accessed: 17 January 2004). This report does not state whether these are resettlements under family reunification or on humanitarian grounds. Also it is not clear where these refugees resided prior to resettlement.
40. It is important to highlight that resettlement of about 10,000 Somali-Bantu refugees to the United States has started. These have already been moved from Dadaab camps to Kakuma in the Northwestern region of Kenya. However, the events of September 11, 2001, still negatively impact on this group given the stringent security measures enacted in the U.S. for all migration proceedings which will prolong the time it will take to resettle 10,000 people.
41. UNHCR 2003c.
42. Adelman and Abdi, 106–16.
43. *Ibid.*, 15.
44. Judith Kumin, "The Misery of Refugees," UNHCR Canada Representative Address to the G78, Ottawa , April 29, 2003; online: <http://www.hri.ca/partners/G78/English/Global/refugees.shtml> (date accessed: 1 February 2004).
45. B.E. Harrell-Bond, 1986, 162.

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Palestinian Refugees of Egypt: What Exit Options Are Left for Them?

Oroub El-Abed

Abstract

This paper, based on personal interviews, analysis of Egyptian administrative regulations, and observation of practice of international and regional agreements on refugees, considers the effects of displacement on the Palestinians' legal status and hence on the way they have conducted their livelihoods in Egypt. While Arab countries have offered to provide temporary protection to Palestinian refugees, as a result of political developments, including relations between the PLO and the host states, the rights afforded to Palestinians in Arab host states have varied greatly over time.

Palestinians in Egypt, since 1978, do not receive assistance from the government of Egypt and do not have access to any of its public services. Palestinians also do not receive any assistance or protection from UN bodies in charge of refugee issues. Both regional and international pledges and agreements have not been respected. The ambiguous legal status of Palestinians has affected their livelihoods in many ways. It has rendered their residence insecure and in many cases illegal. This has affected employment and education opportunities, as well as freedom of movement and association. The deprivation of rights and the unstable legal and economic conditions of Palestinians in Egypt has placed them in a state of "limbo."

Résumé

Cet article est fondé sur des interviews personnelles, sur une analyse des règlements administratives égyptiennes et sur une observation de la manière dont le droit international et les accords régionaux sur les réfugiés sont mis en pratique, et examine l'effet qu'a eu le déplacement sur le statut légal des Palestiniens et, par conséquent, sur la façon dont ils ont pu mener et gagner leur vie en Égypte. S'il est vrai que les pays arabes ont offert de fournir une protection temporaire aux réfugiés palestiniens, à cause des développements politiques, y compris les relations de l'OLP avec les pays d'accueil, les droits concédés aux Palestiniens dans les pays hôtes arabes ont varié grandement au cours des années.

Depuis 1978, les Palestiniens qui se trouvent en Égypte ne reçoivent plus d'assistance du gouvernement égyptien et n'ont pas accès aux services publics. En plus, les Palestiniens ne reçoivent aucune assistance ou de protection des organismes onusiens en charge des questions des réfugiés. Les promesses et les accords, tant régionaux qu'internationaux, n'ont pas été respectés. L'ambiguïté du statut légal des Palestiniens a affecté leur capacité de gagner leur vie de diverses façons. Elle a rendue leur résidence précaire, souvent même illégale. Cela a affecté leur possibilité de trouver de l'emploi et d'avoir accès à l'éducation, ainsi que leur capacité de se déplacer et de s'organiser librement en groupe associatifs. Privés de droits et légalement et économiquement en situation précaire, les Palestiniens d'Égypte se retrouvent dans un état indéterminé.

Based on reports of massacres, evidence of villages and towns being cleared of their populations, and a well-founded fear of further persecution from Zionist guerrilla troops and later the Israeli Defence Forces, Palestinians fled their homes in Palestine in 1948 and in 1967 to seek shelter in neighbouring countries.

Much has been written on the causes of their flight and on their living conditions in what are known as "host countries."[1] Little, however, has been written about those who fled to Egypt, numbering 13,000 in 1948 and 33,000 in 1969.[2] This paper is based on research which was conducted over two years (2001–2003) under the auspices of the Forced Migration and Refugee Studies Programme (FMRS) of the American University in Cairo (AUC). This paper,

based on personal interviews with eighty Palestinian families (401 persons), considers the effects of displacement on their legal status and hence on the way they conducted their livelihoods in Egypt. Several factors affected their adjustment to the new environment – the personal resources they had to "reconstruct" in their lives and the attitude of the host country itself to them and their legal status.

This research approached the "field" from a descriptive perspective based on a qualitative case-study approach. Statistical sampling and quantitative data collection would not have been possible given the fact that the exact number of Palestinian refugees in Egypt is not known and the results of the census conducted by the government in 1995 are not available. A snowball method was used in reaching Palestinians dispersed all over the governorates of Egypt. When arriving in the area, the research team would ask a shopkeeper for a Palestinian resident. After finding the first Palestinian household, it would then make referrals to other households. The research team used an open-ended questionnaire which permitted Palestinians to elaborate on their answers and to clarify their coping strategies in Egypt.

Research into Palestinians in Egypt has the aim of providing an understanding of the difficulties they face and laying the foundation for possible projects or actions to benefit this community since it is neither protected nor assisted by any United Nations body. Until Palestinians can return to Palestine, these endeavours are intended to ensure them a decent life while they remain outside Palestine. Assistance efforts being considered include income-generation and educational skills training projects. Calling for an amelioration of Palestinians' living conditions in Egypt does not mean denying their right of return. On the contrary, the objective is to ensure their socio-economic rights and an acceptable legal status, wherever they are residing, meanwhile supporting their legal and political right to return to their homeland.

Why Did Palestinians Go to Egypt?

Palestinians went to Egypt either fearing persecution in Palestine or for socio-economic reasons and were denied access to Palestine as a result of occupation. The first category includes 1948 arrivals who are "Palestinian refugees" as well as those who fled to Egypt as a result of the Israeli occupation of the West Bank and Gaza in 1967, the so called "displaced Palestinians." The second category consists of those who were outside Palestine during the 1956 and 1967 wars and would not return to their homes and properties. This category includes those who sought employment and educational opportunities in Egypt between 1954 and 1967 but as a result of the 1967 occupation of the West Bank and Gaza Strip, many of them could not return to Palestine and have had to remain in Egypt.

Refugees and Displaced Persons

The United Nations Relief and Works Agency (UNRWA) defines a "Palestine refugee" as "any person whose normal place of residence was Palestine during the period June 1, 1946 to May 15, 1948 and who lost both home and means of livelihood as a result of the 1948 conflict." This definition was made solely to enable UNRWA to determine eligibility for the agency's assistance programs in its five field operations: the Gaza Strip, the West Bank, Syria, Lebanon, and Jordan.[3]

Of Palestinians who sought refuge in Egypt, some lived temporarily in Gaza and registered with UNRWA, while others went directly from their homes in Palestine to Egypt so could not register with UNRWA. The majority of Palestinians in Egypt are from the latter group. Egypt's Department of Nationality and Passports had its own definition of them for the purposes of accommodating them in temporary refugee camps and providing relief through the Egyptian Higher Committee for Palestinian Immigrants. "Palestinian immigrants" were defined as those persons who sought refuge in Egypt from 1948 to 1950.[4]

During the 1967 War, more Palestinians, most of them registered with UNRWA, fled from Gaza to Jordan and then Egypt. This displacement included two groups: "refugees-displaced" and "displaced" coming from Gaza.[5] The "refugees-displaced" had been forced to flee Palestine for the second time, the first time being when they left their homes in Palestine for Gaza and the second time being when they left the territories occupied in 1967, which included Gaza. The "displaced" are original inhabitants of Gaza who were displaced for the first time by the 1967 War. Despite the fact that some were registered with UNRWA, those who arrived in Egypt did not receive assistance from any United Nations (UN) agency.[6] The Egyptian Administrative Office of the Governor of Gaza, initially based in Gaza and later moved to Cairo, was the only administrative body dealing with Palestinians in Egypt. The office is still in existence.

Socio-Economic Displacement

After the Rhodes Armistice was signed in February of 1949 on the Greek island of Rhodes, Egypt assumed military and administrative control of Gaza.[7] In 1954, when Gamal Abdel-Nasser became president, work in trade, industry, and transport between Gaza and Egypt was permitted.[8] At the outbreak of the 1967 War, Palestinians who had been involved in these activities settled in Egypt because of the social and professional networks they had established there.

In 1962, economic conditions in Gaza were deteriorating and unemployment increased. In response, Nasser called for Palestinians from Gaza with high school diplomas or college degrees to apply to work in public institutions in Egypt and regulations were issued to facilitate their employment. Those who responded were unable to return to Gaza when the 1967 War erupted and Israelis occupied Gaza. In addition, many Palestinians, as interviews revealed, sought education in prominent Egyptian universities. Again, due to the 1967 War, they were unable to return to Gaza. Other Palestinians went to Egypt as part of Red Cross efforts to reunite families that had been living in Gaza and whose relatives lived in Egypt.

Socio-Economic Conditions Changed

The policies implemented by Nasser beginning in 1954 welcomed Palestinians and treated them as if they were Egyptian nationals. Palestinians were able to enhance their livelihoods during this era and to access state services. Work was permitted and education, including university level was free. Most important, the administrative laws were amended so that the word "foreign" no longer applied to Palestinians.

Political events in the late 1970s marked the end of the golden era for Palestinians in Egypt. The Camp David peace accords and the killing of the Egyptian Minister of Culture Youssef al-Sibai in 1978 by a Palestinian faction group of Abu Nidal al-Banna had a negative impact on Egyptian policy toward Palestinians in Egypt. Laws and regulations were amended to treat Palestinians as foreigners. Their rights to free education, employment, and even residency were taken away from them. University education now has to be paid for in foreign currency. For example, according to a study conducted by Yassin from 1965 to 1978, Palestinian students studying at universities had numbered 20,000, but by 1985 the number had dropped to 4,500. Those enrolled in public universities between the years 1997–1998 and 2000–2001 were 3,048.[9]

Those who had established themselves earlier in the public and the private sector were able to remain in their positions. Government employees or professionals, such as doctors and lawyers, kept their posts. No new Palestinians were hired by the state, however. With access to government jobs gone, they are left with the private sector and the informal economy. The private sector requires skills, which, without education, Palestinians are unable to obtain. It also requires work permits, considering that, in Egypt, the number of foreigners may not exceed 10 per cent of the workforce in each workplace. Palestinians are forced to find work in such sectors as driving trucks and taxis for others, bicycle repair shops, petty trade in commodities such as used clothing on the street, and suitcase merchants who take items from various parts of Egypt to sell in Gaza but now even this trade has stopped because of the second Intifada.

The situation is better for the employees of the Palestine Liberation Organization (PLO), the Palestine Liberation Army, and current and former Egyptian government employees. They are ensured regular income, and, later, a regular pension. In addition to the education of their children, they are exempted from 90 per cent of university fees.

While socio-economic conditions brought some Palestinians to Egypt, war prevented them from returning home. In September 2002, the United Nations High Commissioner for Refugees (UNHCR) reinterpreted Article 1D of the 1951 Convention relating to the Status of Refugees.[10] UNHCR had previously viewed the article as excluding Palestinian refugees because they receive assistance from UNRWA; it now emphasized the second paragraph, which clarifies that Palestinian refugees are *ipso facto* refugees and are to be protected by UNHCR if assistance or protection of another UN body ceases.[11] By this action, it has included Palestinians, particularly those not living within UNRWA fields of operation, within its protection mandate. The fact that these Palestinians are in dire need of protection is reflected in the numbers of young Palestinian men who are detained in Egyptian prisons indefinitely because they lack residence permits. Their choices are limited – find a country that will take them in or find a way of being deported to Gaza. But given the current Intifada and as Israel has the final decision on permitting entry, getting to Gaza has been impossible. Despite the recent reinterpretation of the Refugee Convention, Palestinians in Egypt still lack formal UNHCR protection and they are not assisted by UNRWA. The paper highlights the urgent need for international intervention to better protect the legal rights of Palestinians. Until there is a Palestinian state and Palestinians are able to go there, the Egyptian government should reconsider its policies on Palestinians and try to provide basic services for them.

Legal Rights of Palestinians in Egypt

Arab host states responded to the plight of displaced Palestinians by offering them temporary protection until they could return to Palestine. However, as a result of political developments, including relations between the PLO and the host states, the rights afforded to Palestinians in Arab host states have varied greatly over time. While the previous sections discussed the effects of changing administrative policies on the daily livelihood of Palestinians in Egypt, this part examines the legal status granted to Palestinians in Egypt.

As a result of their legal difficulties in Egypt, many Palestinians sought a way out. The establishment of the Pales-

tinian Authority in Gaza and the West Bank revived hopes of returning to Palestine. For many, return to the homeland meant the materialization of a dream of reconstructing broken family ties and ties to the land, but most importantly, it meant securing legal status in a place where they belong. However, due to the Intifada and the continued occupation of the Palestinian territories and as a result of the international conventions and Arab league protocols that were not respected by Egypt, Palestinians' legal status is today "in limbo."

Legal Status

For the purpose of granting assistance in Egypt, the Egyptian Higher Committee for Palestinian Immigrants defined Palestinian refugees as persons who sought refuge in the country from 1948 to 1950. To prove this, a person was required to have an identity card for temporary residence in Egypt issued by the Egyptian Department of Passports and Nationality. A ministerial decision was promulgated to allow issuing of the temporary residence identity documents (IDs) for Palestinian refugees. The decision stipulated that the IDs should not be renewed for more than one year and should indicate the material assistance that its holders were receiving. Meanwhile, the Government of All Palestine (GAP),[12] a civil administrative government, moved its offices to Egypt in late 1948 and began issuing Palestinians with travel documents and birth certificates. Holders of GAP passports were granted one-year residence permits in Egypt but were not permitted to work. Written directly on the document were the words "work for or without wages is forbidden,"[13] GAP papers and passports were largely symbolic, as was GAP itself.

In 1960, during the brief period of unity between Egypt and Syria, Decision No. 28 was issued stipulating the provision of travel documents for Palestinians. In order to receive such a document, a Palestinian had to prove refugee status by producing the ID issued earlier by the Egyptian Department of Passports and Nationality and also had to prove legal residence in Egypt. Article 2 prohibited the holder of the travel document from travelling between the northern (Syrian) and the southern (Egyptian) regions without having a visa as well as a return visa. Meanwhile, Egypt reassured Palestinians residing in its territories that they would not lose their Palestinian nationality. Interior Minister Zakaryia Muhi El-Din sent instructions to the Department of Immigration and Passports and Nationality emphasizing the need for the preservation of Palestinian nationality for Palestinians residents of the United Arab Republic (UAR) because they will return to their original homeland after its liberation.[14]

In 1964, Decision 181 was issued. Article 1 said that Palestinian refugees should be given temporary travel documents upon request but required applicants to provide proof of refugee status and have a valid Egyptian residence permit. Article 4 stated that the travel document would be valid for two years and could be extended for another two years, followed by one additional year for a maximum validity of five years. Article 5 stipulated that the travel document did not permit its holders to enter or transit through Egypt without a visa, transit visa, or return visa.

On September 11, 1965, Egyptian Foreign Minister Mahmoud Riyad ratified the protocol on the treatment of Palestinians in Arab states. While confirming the preservation of Palestinian nationality, the Arab states agreed to grant Palestinians living in host countries the right to work and be employed as nationals and the right to leave and return to the host country freely, and agreed to grant them valid travel documents upon request.[15]

Arab Government Policies

The League of Arab States resolutions on Palestinian refugees indicate the member states' commitment to finding a solution to the Palestinian plight by "ensuring their return to their homes and confirming preservation of their properties, their money, their life and their freedom," as stated in Resolution 205-17-3-1949. Concerning the treatment of Palestinian refugees, Resolution 391-10-1951 states,

> The Council of the League approves the decision of the political committee with reference to the decision of the Palestinian permanent council to discuss all refugees' affairs thoroughly and to consider their need to work, to travel and to remain in the host countries. The council requires the committee to prepare a financial report on the needs for Palestinian refugees.

In 1952, the Arab League established the Administrative Office of Palestine. It has two sections: political and legal matters and refugee affairs. In addition, the political committee of the Council of the Arab League dealt with Palestinian refugee matters by approving a number of resolutions. Resolution 424-4-9-1952 stipulated that unified travel documents were to be issued to dispersed Palestinian families. This was later ratified when the Council decided to approve the issuing of unified travel documents to Palestinian refugees in Resolution 714-27-1-1954. Article 1 of this resolution stated,

> The governments of state members at the League have agreed that each government should issue the Palestinian refugees residing in its territory, or falling under its care, temporary

travel documents upon their request and in accordance with the provisions of the following articles unless they have obtained citizenship from one of the states."

In Resolution 462-23-9-1952, Article 1, the political committee advised Arab governments to postpone efforts to settle Palestinian refugees and called on the United Nations to implement resolutions concerning the return of Palestinian refugees to Palestine and to compensate them for damage and property losses. In Article 2, it recommended that Arab countries hosting refugees create projects employing Palestinians and help them better their living conditions. While requesting Arab countries to coordinate with UNRWA in employment projects for Palestinians, the political committee confirmed that these projects would not permanently settle Palestinians and would preserve their right of return and right to compensation. In Article 3, the committee required Arab governments to co-ordinate efforts facilitating the travel of Palestinians and to co-operate for their temporary stay in host countries. The Arab League efforts culminated in 1965 with the adoption of the Casablanca Protocol on the Treatment of Palestinians.

The Arab League's Casablanca Protocol called on Arab governments to grant Palestinians residence permits, the right to work, and the right to travel on a par with citizens while at the same time emphasizing the importance of preserving Palestinian identity and maintaining the refugee status of Palestinians residing in host countries. At least on paper, the members of the Arab League expressed their solidarity with and sympathy for Palestinians and their rights. However, in practice, the Casablanca Protocol was ignored.

Realizing that the rights referred to in the protocol were not always being upheld in Arab host states and in view of the various problems facing Palestinian refugees, in December 1982 the Arab League called a meeting of the Council of Arab Ministers of the Interior, which adopted a "special resolution on the treatment of Palestinians in the Arab countries." Its operative paragraphs contain a number of important clarifications on the status of Palestinians in Arab League member states.

Paragraph 1 stipulated that the travel documents issued for Palestinians by any Arab country should be granted on an equal basis with the national passports issued to its own citizens. Paragraph 2 stated that bearers of such documents "shall be accorded the same treatment as nationals of the state issuing this document, as regards freedom of residence, work and movement." In addition, "special measures needed for the implementation" of the first two paragraphs were to be co-ordinated with the PLO. Lastly, Paragraph 4 contained a provision that had not been included in the Casablanca Protocol nor in any previous resolution: "If a Palestinian perpetrates a crime in any Arab country, the laws of the country of his residence will be applicable."[16]

The Arab League Secretariat was keen to monitor the problems experienced by Palestinians in host countries and the extent to which the protocol had been implemented. Because of Palestinian support for Iraqi President Saddam Hussein during the 1990–1991 Gulf War, the treatment of Palestinians in Arab countries worsened. The 46th session of the Conference of Supervisors of Palestinian Affairs in the host countries in August 1991 called Arab countries to abide by their pledges in the treatment of Palestinian refugees in Arab states and reminded with the spirit of Arab brotherhood to overcome the negativity of the Gulf War.[17]

Nevertheless, Palestinians in Egypt were punished as a result of the PLO's position on Iraq. Shiblak considers two factors affecting the treatment of Palestinians in Arab countries.[18] Firstly, the commitment of Arab states to Arab League resolutions varied and was influenced by politics within these states. Secondly, the treatment of Palestinian refugees in host countries was not governed by clear guidelines or legislation. Stateless Palestinians in Egypt were victimized by such politics.[19] Despite the fact that Palestinians have a home, they remain stateless until there is a Palestinian state. Palestinians in Egypt who are holders of Egyptian travel documents have had no basic human rights since 1978. They have no access to free education (except for children of PLO officers), have no right to work in the public sector, and their work in the private sector is conditional on regulations set for foreigners. Palestinians have no right to free university education. Their rights to ownership are quite limited, except for those fields which come under the investment law.

Validity of Egyptian Travel Documents

Since 1960, Egypt has been issuing the "Egyptian Travel Document for Palestinian Refugees," valid for five years. Its validity, however, is contingent on the renewal of one's residence permit. Renewal requirements vary according to the year of arrival. The Department of Passports and Nationality categorizes the residence renewal period as follows, by arrival year:[20]

- before 1948, renewable every five years, or every ten years with proof of ten-year continuous residence in Egypt;
- 1948, every five years;[21]
- 1956, every three years;
- 1967, every three years;
- after 1967, every three years, or may vary according to the conditions of entry into Egypt.

Finding a Residence Permit Guarantor

Despite Palestinians in Egypt being refugees or displaced persons and unable to go back to Palestine due to its occupation, being granted residence permits is conditional on providing a reason for remaining in Egypt. This could be for education, licensed work, marriage to an Egyptian, or business partnership with an Egyptian. As the following interview shows, an official document, proving that the applicant lives in Egypt for one of these reasons, must be provided.

> I sometimes rush around for days to finish paperwork to renew my children's and husband's residence permits. I am in charge of all the paperwork for travel documents and schools. All have three-year residence permits. The children get their residence permits based on the fact that I am Egyptian and my husband gets his based on a letter from a factory claiming that he works there and a letter from the Labour Union. Although he does not work in a factory, the owner was kind enough to give him this letter on a yearly basis. The renewal of the residencies cost us LE 500 for seven persons – my husband and my six children. I sometimes run out of money and borrow from my family to help pay the fees (P22, Faisal, Cairo, June 15, 2002).[22]

Those working with or those who had worked with the Egyptian government, the Office of the Governor of Gaza, or the PLO have the fewest problems renewing residence permits. A letter from their workplace proving employment or retirement facilitates renewal. The majority of Palestinians in Egypt who work in the informal sector without work permits or stable jobs, however, face the greatest obstacles. Many have found their own ways of overcoming this problem.

> Getting a work permit as a taxi driver is much easier than getting it as an owner of an electrical repair workshop. That would require providing proof of commercial registration, insurance and licences for the shop. All this requires money and permits that I can't provide. If an inspector comes to the workshop, I would need to give him five to 10 pounds so that he won't report that the workshop is not registered (8/11, Shubra Al-Khaima, Cairo, June 12, 2002).

When performing illegal or unlicensed work, Palestinians often present a taxi driver's licence to the authorities when they renew their residence permits. These licences are not difficult to obtain. Alternately, an agricultural labour licence, which can be obtained with a letter from the labour union, may also be used for proof of being an unskilled labourer.

> An agricultural labour permit usually costs one or two pounds. For a permit as a shop owner, I may need to pay 16 pounds a month as insurance. In the past, I was able to get an agricultural labour permit easily but now it is not as easy. The administration at the *Mogamma* (a government complex that includes all bureaucratic departments) in Cairo may ask to look at my hands and see that I don't have the hands of a farmer (7/37, Faqous, Sharqieh, July 14, 2002).

A major concern of interviewees was the renewal of residence permits for young men. They can be deported at age 18 if they had to drop out of school because of inability to pay private school fees—since, as foreigners, they have no right to free school education, or at age 21 if they graduate from university and cannot find licensed work. Many in such positions are forced to live illegally until they can provide the authorities with an official reason for their stay.

> My son became an illegal resident when he turned 21. The officer at the *Mogamma* – a complex that includes all bureaucratic departments – in Cairo told me that he would soon be deported. My son had never gone to school because he had a fever when he was a baby that affected his brain. His sisters and I get our residencies renewed based their father's pension as a former PLO fighter (P24, Wailey, June 24, 2002).

If no justification for one's stay in the country can be provided, a bank statement showing a balance of at least LE 20,000 may be accepted by the *Mogamma.*

> We had to deposit 20,000 pounds to get a residence permit for my eldest son when he turned 21. Now, we have to deposit another 20,000 for our younger son (AP2, Hilmiat Al-Zaytoun, Cairo, August 5, 2002).

Stateless Palestinians living in Egypt without legal residence or renewed travel documents not only risk illegal stay for themselves but also for their children. For example, Rania's residence permit depends on her Egyptian mother as a guarantor. Despite the fact that her husband works in a business, he has no work or residence permit.

> My second daughter is married to a Gazan who runs a business for a Saudi. He has neither a residence permit nor a work permit. He put 20,000 in the bank to get a residence permit but it has not been issued (P22, Faisal – Cairo, June 15, 2002).

For many young Palestinian men and women, early marriage to Egyptian partners is a means of obtaining a guarantor to legalize one's stay in Egypt.

> My son will soon turn 21. His father and I are thinking of getting him married soon. We have asked for the hand of my niece, an

Egyptian, but her parents refused because my son is Palestinian. We have ensured the situation of our two daughters who are both engaged to Egyptians. Eventually they will get Egyptian nationality (8/3, Abu Zaabal- Qaliubieh, June 30, 2002).

While an Egyptian man can naturalize his Palestinian wife and her children since the nationality law stipulates that the wives and children of Egyptian men are automatically granted Egyptians nationality, women married to Palestinian men are not able to do the same.[23] A committee was formed in September 2003, in a response to President Mubarak's call, to amend the law and enable Egyptian women to naturalize their children; the law however, excluded Egyptian women married to Palestinian men from passing on their nationality to their children.[24]

Moreover, fees for renewing the residency for poor Palestinian families without regular income are a major concern. In case of any delay in renewing the residence permit, they may be threatened with fines.

I was once late in renewing permits for me and my six children because I did not have enough money. They wanted to fine me LE 315. I submitted an appeal and was exempted from the fine. They renewed the residencies as usual (7/30, Belbeis- Qaliubieh, July 2002).

Statelessness is a critical obstacle to the enjoyment of basic rights. Palestinians who have Egyptian travel documents are *de facto* stateless. The travel document does not designate nationality; it is merely a *laissez-passer*.

Ahmed: "We have not renewed our residence permits for more than 14 years. Our mother is Jordanian – (Jordanian women cannot pass on their nationality to their children) and our father, who looked after these issues, used to travel with the PLO army. It was only when my father was put in prison that we realised that we should renew our travel documents and had to pay a penalty of 2,000 pounds."

Um Ahmed: "Seeing how difficult it was to renew the travel documents, I went with my daughter to the 'republican palace' and we pleaded with the head of the 'republican guard' to help. He promised to help and said there was no need to meet with the president. He told us to go to the Zaqaziq Passport Section. When I sent my son, they renewed his travel document but refused to renew the documents of his five brothers. If we aren't soon able to obtain a travel document for my daughter, she may lose her fiancé. She needs legal status to register her marriage."

Ahmed: "I am rarely worried about not having a residence permit. When I am stopped, I show them my unrenewed document. I know they can't read and don't understand the travel document details" (7/25, Abu Hammad, Sharqieh, July 10, 2002).

Difficulties Faced Using an Egyptian Travel Document

Article 3 of the Arab League's Casablanca Protocol states, "When their interests so require, Palestinians presently residing in the territory of (…) shall have the right to leave the territory of this state and return to it." However, the situation for those leaving the country differs from the protocol statement. Palestinians who leave Egypt can ensure their return in two ways. They must either return every six months or provide papers proving they are working or documents stating educational enrolment abroad. In this case, a one-year return visa may be granted. Any delay in return beyond this date, however, results in denial of entry.

Two of my children have been denied re-entry to Egypt. I have not seen them since they left. One is a lawyer in Libya and the other has a photocopy centre. Neither has as work contract in Libya (7/36, Faqous, Qaliubieh, July 14, 2002).

Due to the limited work opportunities in Egypt, many Palestinians seek work in Gulf countries, Libya, or elsewhere. They may be reluctant to do so, however, because of the possibility that their return to Egypt may be denied.

I used to go to Libya when the borders were open and travel was easy. The problem is that I had to come back to Egypt every six months to keep my Egyptian residence permit. I was unable to apply for a one year return visa because I never had official contracts in Libya and was working in various places. In 1995, I decided to come back after seeing what happened to my brother when he returned from Yemen. He was detained at the airport for several days and then deported back to Yemen despite the fact that he had an Egyptian travel document and regularly renewed his residence (7/37, Faqous, Qaliubieh, July 14, 2002).

Palestinians returning to Egypt from abroad, particularly after the 1990–1991 Gulf War, encountered many problems as a result of the PLO's stance on the Iraqi invasion of Kuwait. Egyptian newspapers published reports on Palestinian students registered at Egyptian universities being prevented from entering Egypt.[25] There were also reports of Palestinians held in airports and then deported to Sudan.26 Many who had Egyptian travel documents and who lived in Kuwait or elsewhere in the Gulf were denied re-entry to Egypt.

My son, who was studying in Poland, graduated in 1991 and tried to come back to Egypt. In the airport, he was prevented

from entering. That was a result of the Palestinian position on the Gulf war. He was forced to go to Sudan and then to Yemen, where he is now (P16, Ain Shams, Cairo, June 8, 2002).

After the 1990–1991 Gulf War, Gulf countries also restricted the entry of Palestinians holding Egyptian travel documents. Um Mohamad's family is one example.

My son is working in the Emirates [where he was working before the Gulf War]. He has an Egyptian travel document. Surprisingly, three years ago, when trying to join her husband, his wife and her children [who are also holders of the Egyptian travel documents] were sent back [to Egypt] from Dubai airport, she was refused permission to enter the country despite the valid visa in her passport. She came back and has been living with us for the last three years and her husband comes to Egypt every six months to renew his residence and see her (AP2, Hilmiat Al-Zaytoun, Cairo, August 15, 2002).

Further problems arose for Palestinians when Libyan President Muammar Qadhafi in 1995 ordered all Palestinians residing in Libya to go to Palestine as a means of pressuring Israel to accept all Palestinian refugees returning to their properties after the Palestinian Authority was established. This was intended to put pressure on Israel to repatriate them. As a result, some Palestinians trying to get to Palestine via Egypt were stranded for two years on the Egyptian-Libyan borders at Salloum Camp.

My brother used to live in Libya. He was among those stranded at the border. For nine months he remained in the camp but he managed to get smuggled back into Libya. He worked illegally as a teacher in a private school and his salary was given to him as an allowance [per hour worked] but not as a salary. He then managed to find a way to get smuggled into Egypt. Today, he has a bakery registered in his wife's name and lives illegally in Egypt (7/27, location held for security reasons,July 10, 2002).

Detaining Palestinians at the border is a common occurrence, particularly for those who are stateless and have only the Egyptian travel document. One example is Abu Saqer, born in Cairo in 1976 and carrying an Egyptian travel document, who had been living in Moscow. When his Russian residence permit expired, he decided to go to Egypt to see his family and then reapply to return to Moscow. On arrival at Cairo airport in August 2001, he was denied entry and was returned to Moscow. In turn, the authorities in Moscow prevented him from entering Russia because of his expired residence permit. He was stranded at the Moscow airport for at least fourteen months.[27] (*Al-Hayat*, Raed Jaber, November 9, 2002). Eventually, he was granted asylum in Sweden.[28]

Detention of Stateless Palestinians in Egypt

As has been described, being stateless and only holding an Egyptian travel document is problematic for many reasons and stateless Palestinians may be detained for indeterminate periods of time.

My son has a category H travel document. He is able to renew his residence with his Egyptian wife as a guarantor. Last year, he went with his friends to summer camp. His friends were calling my son, 'Pasha, Pasha!' [a title given to a high ranking officer at the military]. An officer who was passing by overheard them and asked my son to show his ID. As he did not have his travel document with him, he was accused of forging the identity of an officer (since he was called by his friends as Pasha) and he was put in prison for 11 months. (7/29, Abu Kbir, Sharqieh, July 2002).

When arrested, Palestinians may be sentenced or deported, regardless of the grounds for arrest. In some cases, state security officials require the family of the person arrested to apply for visas to countries that may accept him or her.

Finding a Way Out

With the establishment of the Palestinian Authority in the West Bank and Gaza in 1993, many Palestinians applied to Palestinian embassies in various countries to return.[29] Return to Gaza and the West Bank was seen as a way of escaping the humiliating illegal status many of them endured in exile. At the discretion of Israeli authorities, some were permitted to return. Palestinians granted permission to return from Egypt were given Palestinian identity cards on arrival in Gaza and were issued Palestinian travel documents that are renewable every three years. Palestinian women whose parents still lived in Gaza were able to apply for their children and husbands to join them through the family reunification program.[30] Other Palestinians were able to go to Gaza by applying for a visiting permit, or *tasrieh zyara,* through families living in Palestine. The permit is usually valid for three months and is issued by the Israeli authorities, who continue to control the borders of Palestinian Authority areas.

My wife and children in Palestine got Palestinian travel documents. It was easy because my wife has an ID and applied for us under the family reunification programme. My papers for the Palestinian travel document were halted as a result of the Intifada. However, I know many people who left here and are now there [Gaza] with no IDs or any legal papers and have over-

stayed the time permitted…I wonder how they live there. I personally want to go live and work there. But I do not want to go unless all my papers are processed. I have even applied to the police force in Gaza. I used to be an officer in the PLO Liberation Army...Taking the [Palestinian] ID resulted in losing my three-year residence permit in Egypt and now I have only a one-year residence (P5, Dar Al-Salam, Cairo, May 18, 2002).

Many of those who returned to Gaza from Egypt had been part of the PLO. When interviewed, many Palestinian families in Dar Al-Salam and Wailey (in Cairo) referred to family members and acquaintances who had left Egypt for Palestine. Some of those who left kept their houses in Cairo. Others moved everything to Gaza. However, not everyone was lucky enough to be allowed to enter Gaza and they expressed their dismay, wondering when their troubles in exile would end.

As far as I know, those who used to work for the PLO were the ones able to apply for a Palestinian ID. I would love to have any passport other than this [Egyptian] travel document. Even when I ask to marry a woman, I am refused because the parents do not want to see their grandchildren suffer as I suffer (8/2, Ishbin Al-Qanater, Qaliubieh, July 4 2002).

The Palestinian passport (*laissez-passer*) issued by the Palestinian Authority to Palestinian Arabs living in the West Bank and Gaza is recognized by more than eighty states.[31] In spite of this, it is not recognized as proof of citizenship and most countries require visas. These can be difficult to obtain because of lack of mobility between Palestinian cities and into Jerusalem. Permits may be obtained from Israel to travel to an embassy or consulate in Jerusalem or Tel Aviv and these permits are not always granted by the Israeli authorities. However, the Palestinian passport has certainly helped many to travel outside Palestine. Palestinians from the West Bank must have both the Palestinian document and a valid Jordanian passport. It is also problematic for Palestinians who went back to Egypt because it rendered them *de facto* and *de jure* foreigners.

I hold the Palestinian travel document since I was given a Palestinian ID. I thought it would be better to have a Palestinian travel document. It turned out to be more difficult. Life in Egypt became more expensive for us. With the Egyptian travel document, we had some privileges, especially since I am a former Ain Jalout officer. My children were able to go to public schools. But now we are considered foreigners (P11 Ain Shams, Cairo, May 28, 2002).

Regardless of the duration of their stay in Egypt and whether or not they once held an Egyptian travel document, Palestinians with Palestinian travel documents are required by Egypt to apply for residence permits as foreigners. The "privileges" they used to have in Egypt have been lost.

My father, who now works with the PA, issued us all Palestinian IDs, but we kept our Egyptian travel documents. Since we came back from Palestine, the governor of Gaza has not agreed to renew our residence permits using the Egyptian travel document. They require us to get a Palestinian travel document on which basis the residence will be given since we now have Palestinian IDs (7/46, Menya Al-Qameh, Qaliubieh, July 11, 2002).

Further Difficulties for Stateless Palestinians

Many who spoke to us said that young Palestinians who had problems renewing their residence permits at age 21 and who had problems in finding employment were more likely to try to leave for Gaza. Many young Palestinian men in Egypt have applied to join the Palestinian Authority (PA) in Gaza in the hopes of earning a regular income and regularizing their legal status. Those who were not able to join the PA still tried to move to Gaza. Some applied for a visitor's permit through family in Gaza or the West Bank. Once they arrived in Gaza, some Palestinians would overstay their permits. Leaving Gaza would then be difficult because they could be penalized or jailed by the Israeli authorities. In many cases, returning to Egypt became impossible since their residence permits for Egypt would have expired after six months. During interviews, many of the Palestinian women who married in Gaza told us that they had subsequently lost their legal status in Egypt. Today, many live illegally in Gaza as stateless persons. The outbreak of the Intifada in 2000 further delayed the processing of applications for IDs for the family reunification program.

I know many people who left here and now live there [Gaza] with no IDs or legal papers and who have exceeded their stay…I wonder how are they living there (P5, Dar Al-Salam, Cairo, May 18, 2002).

For many, living illegally in Palestine has been the only solution. For some, it offers hope of being at "home with the family."

My son was living in Libya when the authorities confiscated his house and asked him and his family to leave in 1997. Through his cousins, he was able to get a permit to visit Gaza. He went to live there illegally with no papers. He obviously lost his residence permit in Egypt when he was in Libya and was then

> deported from Libya. He was given a visit permit for Gaza and this has also expired.... At least he is living with his family in the homeland "Palestine" (AP3, Alexandria, August 2002).

Assistance and Protection under International Refugee Law

Relief and assistance are urgent needs for refugees who have left their properties and homes in search of asylum. However, protection of the refugee's basic human rights is of the utmost importance. The degree to which these rights are respected varies depending on the politics of the state and the conventions and protocols ratified by the host country. While agreeing to shelter Palestinian refugees on a temporary basis, Arab countries have been keen to place responsibility for the Palestinian refugee problem on the "international community"; calling for UN Resolution 194 (1948) became the means to remind the world of its responsibilities *vis-à-vis* the refugees. Arab countries have reminded the international community of the moral necessity of keeping the issue on the agenda and have reiterated the need for implementing international resolutions concerning this group of refugees. Considering that the United Nations adopted Resolution 181 in 1947, which created the State of Israel and displaced Palestinian refugees from their homeland, Arab countries have called for the implementation of other UN and international conventions to protect the rights of Palestinian refugees and to ensure their return to their properties in Palestine.

United Nations Resolutions on Protection

As the situation worsened after the adoption of GA Resolution 181 and more than half a million Palestinians were forced to leave their homes, the General Assembly established the United Nations Mediator for Palestine, which in June 1948 established a UN Disaster Relief Project (UNDRP) in an attempt to coordinate aid efforts amongst local governments and relief organizations and to mediate and promote a truce. UNDRP had a sixty-day mandate to coordinate aid to the refugees from governments and non-governmental organizations. It was succeeded in November 1948 by the UN Relief for Palestine Refugees (UNRPR), which later became UNRWA.[32]

> According to the terms of reference of GA Resolution 186 of May 14, 1948, the Mediator was given the task of promoting a peaceful adjustment of the future situation in Palestine. Additional tasks included arranging for the operation of common services necessary for the safety and well being of the population in Palestine, protection of the Holy places, directives to co-operate with Truce Commission for Palestine, and to invite assistance and cooperation of additional agencies for the promotion of the welfare of the inhabitants of Palestine.[33]

The mediator also dealt with Palestinian refugees and suggested to Israel that it allow a number of refugees to return to their homes. In his September 1948 report, Count Folke Bernadotte, the United Nations emissary to Palestine, called for the return of Palestinians as a "right": "From the start, I held the firm view that, taking into consideration all circumstances, the right of these refugees to return to their homes at the earliest practical date should be established." Bernadotte recommended that the General Assembly establish a conciliation commission to supervise a final settlement of the claims of Palestinian refugees. His mediation efforts ended with his assassination by Jewish terrorists on September 17, 1948, only one day after he submitted his last progress report.

United Nations Conciliation Commission for Palestine (UNCCP)

In view of the mediator's recommendations, on December 11, 1948, the General Assembly established the United Nations Conciliation Commission for Palestine (UNCCP) to "assist the Governments and authorities concerned to achieve a final settlement of all question outstanding between them." The Commission was formed with the adoption of Resolution 194 (III) and replaced the late mediator's mandate in resolving all aspects of the conflict by taking on his previous functions of facilitating a peaceful settlement. The Commission was also responsible for the direct protection of refugees' rights and interests and for implementing the durable solution of repatriation, resettlement, and rehabilitation while at the same time ensuring a peaceful settlement. Paragraph 2 of the resolution included the following:

> *Resolves* that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible;
>
> *Instructs* the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations.

Terry Rempel argues that the UNCCP was assigned with a dual mandate: a broad mandate for conciliation of all outstanding issues between the parties, and a specific mandate for the protection and promotion of a durable solution for Palestinian refugees.[34] This dual mandate created a conflict of interest for the commissioner, making it difficult if not impossible to protect and promote the specific rights of refugees. Due to Israel's opposition to repatriation, the protection of refugees' right to return home became difficult. Attempts at peace demanded a compromise the conflicting parties were not ready to make. This placed an insurmountable obstacle in the way of the Commission's mandate and hampered any progress to achieve a framework for a durable solution for Palestinian refugees.

The UNCCP was hard-pressed to provide protection and facilitate implementation of the durable solution for Palestinian refugees. It established two bodies – the technical committee and an Economic Survey Mission (ESM) – to investigate ways of determining refugee choices and improving their immediate situation. By June 1949, the UNCCP charged the technical committee with the task of gathering the necessary data for the implementation of durable solutions set down in Resolution 194 (III) related to repatriation and payment of compensation. In its report, the technical committee based its recommendations on the assumption of resettling large numbers of refugees outside Israel. The committee also dismissed the idea of determining individual refugee choices as "premature," stressing that repatriation, unlike resettlement, was a "political decision."[35]

Later, in November 1949, the ESM, which was established to "facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees," made a recommendation:

> [t]o reintegrate the refugees into the economic life of the area on a self-sustaining basis within a minimum period of time; and to promote economic conditions conducive to the maintenance of peace and stability in the area.

The ESM's recommendations focused on resettlement and advocated finding job opportunities for refugees in host countries.

> They [Palestinians] believe, as a matter of right and justice, they should be permitted to return to their homes, their farms, …They are encouraged to believe this remedy open to them because the General Assembly of the United Nations said so in its resolution of 11 December 1948…
>
> But repatriation of Arab refugees requires political decisions outside the competence of the Economic Survey Mission.
>
> Why do not the refugees go somewhere else? Why not resettle them in less congested lands?...In these circumstances, the only immediate constructive step in sight is to give the refugees an opportunity to work where they now are.[36]

The UNCCP failed to achieve its goals. Israel considered the establishment of an Arab-Israeli agreement to be a prerequisite for repatriation. The Arabs, in turn, considered the right of return as essential for making peace with Israel. Neither Israel nor the Arab countries neighbouring Israel wanted to compromise, and the hopes for resolving the refugee problem diminished.

Under U.S. pressure, Israel finally agreed to repatriate 100,000 refugees but expected Syria and Jordan to settle the rest. The Commission did not agree to these conditions and refused to present the offer to the Arabs, who in principle were opposed to dividing repatriation. However, the UNCCP did attempt to facilitate the repatriation of refugees who wanted to return to Israeli-controlled areas. It approached the government of Israel to secure the return of the former inhabitants of the no-man's land in the north Gaza region, refugees in Egyptian-administered Gaza, and refugees in the Gaza zone originating from the Beersheba area. Only small groups were returned, however. Refugees from Abasan and Akhzah were permitted to return to cultivate land. Others were permitted to return if the family breadwinner had remained in Israel. In December 1948, a total of 800 dependents from Lebanon and Jordan rejoined their families in Israel and 115 came back from Gaza.[37]

In addition to securing the return of these refugees, though few in number, the UNCCP was also successful in the protection of refugee properties. The commission called for the annulment of Israel's 1950 absentees' property law, under which refugee property had been expropriated. The UNCCP also called for the suspension of all measures of requisition and occupation of Arab houses and for the unfreezing of *Waqf* (religious endowment) property.[38] In 1950, it established a Refugee Office to determine the ownership, interest, and nature of each refugee property. The office also prepared an initial plan for the individual assessment of refugee properties relying on detailed information collected from refugees. By 1964, the office had collected 453,000 records amounting to 1,500,000 individual refugee holdings.[39] The UNCCP maintains the most comprehensive records of Palestinian refugee properties. However, within four years of its formation, the UNCCP devolved from an agency charged with the "protection of the rights,

property and interests of the refugees" to little more than a symbol of UN concern for the unresolved Arab-Israeli conflict.[40]

Article 1D 1951 Refugee Convention: Applicability to Palestinian Refugees

The *Travaux Préparatoires* of the 1951 Geneva Convention relating to the Status of Refugees state, "the shared intention of the Arab and Western states was to deny Palestinians access to the Convention-based regime so long as the United Nations continues to assist them in their own region."[41] UNRWA was created to provide assistance for the refugees based on UN Resolution 302 (IV) of 1949, while UNCCP had been expected to provide for their protection based on UN resolution 194 (III). Hence, Palestinian refugees who are assisted by UNRWA are not included in the 1951 Convention relating to the Status of Refugees. The Convention establishes specific rights of refugees and prescribes certain standards for their treatment. As a minimum standard, the Convention states that refugees in the country of asylum should receive at least that treatment which is accorded to aliens in that country.[42] Once recognized by the UNHCR, the refugee should be treated on a par with nationals in the country of refuge and should be granted basic rights, including rights to education, association, wage-earning employment, and access to the courts.

The 1951 Convention defines a refugee as a person who:

> ... owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself to the protection of that country; or who, not having a nationality and being outside the country of former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

The Convention contains provisions whereby certain persons, otherwise having the characteristics of refugees as defined in Article 1A, are excluded from UNHCR's mandate. One such provision, as stated in Paragraph 1 of Article 1D, applies to a special category of refugees for whom separate arrangements have been made to afford protection or assistance.

> This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations (UN) other than the UNHCR protection or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the UN, these persons shall *ipso facto* be entitled to the benefits of this Convention.

In a note on the applicability of Article 1D of the 1951 Convention on Palestinian Refugees, the UNHCR (2002) said:

> Paragraph 1 is in effect an exclusion clause, and this does not mean that certain groups of Palestinian refugees can never benefit from the protection of the 1951 Convention. Paragraph 2 of the Article 1D contains an inclusion clause ensuring the automatic entitlement of such refugees to the protection of the 1951 Convention if, without their position being definitively settled in accordance with the relevant UN General Assembly resolutions, protection or assistance from UNRWA has ceased for any reason. The 1951 Convention hence avoids overlapping competencies between UNRWA and UNHCR, but also, in conjunction with UNHCR's Statute, ensures the continuity of protection and assistance of Palestinian refugees as necessary.[43]

Palestinians living in Egypt, who do not receive the relief and assistance provided by UNRWA, fall, therefore, within Paragraph 2 of Article 1D and should automatically be entitled to the benefits of the 1951 Convention and fall within the mandate of the UNHCR, "providing of course that Article 1C, 1E and 1F do not apply."[44] However, the Convention has not been consistently applied to Palestinians outside UNRWA's mandate. Susan Akram analyzes the article's "protection or assistance" and "*ipso facto*" phrases, which intended to provide Palestinian refugees with continuity of protection under various organizations and instruments.[45] In a regime of heightened protection, Akram argues, two agencies have been set up for Palestinian refugees: UNRWA, which was to be the assistance agency, and the UNCCP, which was to be the protection agency.[46] Article 1D's function was to ensure that if for some reason either of these agencies failed to exercize its role before a final resolution of the refugee situation, that agency's function was to be transferred to the UNHCR and the Refugee Convention would fully and immediately apply without preconditions to the Palestinian refugees.

According to Takkenberg, Egypt ratified the Convention in 1981 but was

> reluctant to become bound by the 1951 Convention, apparently out of a perceived conflict between the status favoured by the Arab League and that of the Convention, and also because for many years the PLO had opposed providing individual Palestinian refugees with the status of the 1951 Convention because this was considered prejudicial to the inalienable rights of the Palestinian people.

Hence, despite the fact that since 1981 Palestinians in Egypt fall under the mandate of the 1951 Convention, they have been treated according to the Arab League's special status designations. In Egyptian administrative offices, for example, separate sections are responsible for different groups of refugees; one is for Palestinians refugees and another is for 1951 Convention refugees.[47]

Arab countries were instrumental in bringing about the unique role of the United Nations in relation to Palestinian refugees. The UN recognizd that it was partially responsible for creating the refugee situation through General Assembly Resolution 181 which recommended the partition of Palestine.[48] However, Arab states advocated Palestinian exclusion from the 1951 Convention and from UNHCR's mandate primarily because they were concerned that, if included under the UNHCR mandate, Palestinian refugees "would become submerged [within other categories of refugees] and would be relegated to a position of minor importance.[49] This concern was based on political rather than legal considerations. In many Arab League meetings, governments voiced fears that the Palestinian plight would not be adequately addressed if UNHCR's durable solutions such as resettlement to a third country or settlement in the first country of asylum were applied.[50] The Palestinian refugee problem, they argued, was to be resolved on the basis of a special formula of repatriation and compensation rather than the formula commonly accepted for refugees at the time, which was resettlement in a third country.[51]

Given that the UNCCP's ability to offer protection to Palestinians was weakened by its dual mandate, and because the 1951 Convention continues in large part not to be applied to Palestinians, Palestinians have been left with no agency to protect their legal rights. This has had particularly dire consequences for stateless Palestinians who have been denied rights in host countries. Due to the fact that Palestinians who fled to Arab countries were not granted citizenship and lost their citizenship in Palestine, many Palestinians are now stateless.[52]

Statelessness

Two international conventions are relevant to Palestinians who are stateless refugees and to whom the 1951 Convention has not been applied – the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. To benefit from these two conventions, "a person must be determined to be stateless, that is a person who is not considered a national by any state under the operation of its law."[53]

The determination of statelessness involves a mixture of legal definitions and factual circumstance. A stateless person is defined as a person who is not recognized as a citizen by the laws of any state, *i.e., de jure* stateless. This category includes Palestinians who hold travel documents, such as Egyptian, Lebanese, and Syrian travel documents, temporary Jordanian passports (Gazans and West Bankers) and those who hold Palestinian passports which are only travel documents, or *laissez-passer*.

In addition to the legal implications, statelessness results from a particular set of historical events and may be perpetuated by inability to acquire a new nationality, *i.e.*, *de facto* stateless. As a product of the British Mandate's authority, Palestinian citizenship ended along with the mandate and with the proclamation of the State of Israel. Thus, those Palestinians who lost their citizenship then and did not or could not acquire new citizenship fall into this category. Also included within this group of *de facto* stateless persons are those who were born in a country of residence and denied citizenship and the rights it entails. For instance, this group includes the children of a mother who holds the nationality of the host country and whose husband is a stateless Palestinian. Even if the children were born or lived most of their lives in their mother's country, they are deprived of citizenship. A large number of those persons are said to be found in Egypt. Hala Abdel-Qader estimates the number of Egyptian women married to foreigners to be 286,000.[54] According to her unofficial estimates, the number of stateless children born to these women exceeds one million. Despite the fact that Egypt has signed the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the government has refused to ratify the second section of Article 9 of CEDAW, which stipulates that: "States Parties shall grant women equal rights with men with respect to the nationality of their children."[55]

The two conventions on statelessness relate to Palestinians who are refugees and are stateless but to whom the 1951 Refugee Convention does not apply. The 1954 Stateless Convention has a clause similar to the 1951 Convention stipulating it "shall not apply to persons who are at present receiving help from organs or agencies of the United Nations other than the United High commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance."[56]

The limited applicability of this article to Palestinian refugees and th e previously mentioned conventions has excluded Palestinians from enjoying all of their basic human rights. It is noteworthy that the basic definition of "stateless persons" is now considered part of international customary law and is therefore binding even on states that are not party to one or other of these conventions.[57] Notwithstanding the articles of the Universal Declaration of Human Rights, which recognises the inherent dignity and

the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world, Palestinians have been labelled as not having the "the right to have rights"[58] In principle, Palestinian resident non-nationals should acquire vested rights and should be treated on a par with nationals in host countries.

National Protection

Two main principles have influenced the attitudes of Arab League member states to *vis-à-vis* Palestinian refugees. The first is their support for the Palestinian cause, on which basis they agreed in the Casablanca Protocol, which Egypt ratified in 1965, to grant Palestinian refugees residence and the right to work and travel on the same footing as citizens. The second principle refers to their vow to preserve Palestinian identity and maintain the refugee status of Palestinians in order to hold Israel responsible for the creation of the Palestinian refugee plight. Hence, Palestinians were to be granted basic rights but not naturalised. One exception is Jordan where Palestinians were granted citizenship. Small numbers of Palestinians in Lebanon and Egypt were also granted citizenship. However, no clear pattern was found to justify the grounds under which the citizenship was granted.

In Egypt, as of the end of 1970s, Palestinians were treated as foreigners and were deprived of the basic rights and equal treatment they had been promised. While Egypt's political stance on the Palestinian issue is seen as important and supportive, in practice no basic rights have been provided for Palestinians as a result of political events and strained relations between the Egyptian government and the PLO. This, in turn, has affected the livelihood of Palestinians in Egypt.

Ambiguous Legal Status Needs Rectification

Since 1952, the UNCCP has failed to provide Palestinian refugees with basic international protection. Owing firstly to the inability of the UNCCP to reconcile the internal contradictions involved in its mandate and due to its inability to take "political decisions", refugee protection has been limited to those issues about which there was the least amount of disagreement, namely the documentation and evaluation of refugee properties for payment of compensation.

Although very few Palestinians have been assisted by UNHCR to date, those who live outside UNRWA's area of operations are included in the 1951 Refugee Convention and should be recognised under the revised interpretation of the exclusion and inclusion clauses in Article 1D of the Convention. In addition, Egypt needs to commit itself to fully respecting the basic human rights of Palestinian refugees in light of the Casablanca Protocol and its commitment to alleviating the plight of Palestinians, particularly the Palestinian refugees and displaced persons residing in its territories.

The ambiguous legal status of Palestinians has affected their livelihoods in many ways. It has rendered their residence insecure and in many cases illegal. This has affected employment and education opportunities, as well as freedom of movement and association. As a signatory to the Universal Declaration of Human Rights and several other covenants on civil and political rights, Egypt should provide basic rights to Palestinians regardless of political circumstances. The deprivation of rights and the unstable legal and economic conditions of Palestinians in Egypt rendered them "in limbo".

Notes

1. "Host countries" are defined as those areas in which UNRWA operates: Jordan, Syria, Lebanon, the West Bank, and Gaza. Although Egypt received Palestinians, it does not define itself as a host country as such due to the fact UNRWA did not operate within it.
2. Maha Dajani, *The Institutionalization of Palestinian Identity in Egypt*, Cairo Papers in Social Science, vol. 9, monograph 3 (Cairo: AUC Press, 1986), 41.
3. In 1993, new eligibility rules were issued that widened the categories of Palestinians that could be served by the UN agency. According to the initial definition, only those in need of assistance could apply to UNRWA. The reformulation of the rules in 1993 eliminated the condition of need in order to allow groups of non-registered Palestinians who left Palestine in 1948 to apply. This acknowledged the fact that applying for Palestinian refugee status with UNRWA had certain political implications for the peace negotiations and right of return. This wider interpretation, however, does not include Palestinian refugees in Egypt or in other Arab counties. Yet, this may in the future be used in the permanent status negotiations. See Lex Takkenberg, *The Status of Palestinian Refugees in International Law* (Oxford: Clarendon Press, 1998).
4. Nadera Sarraj, *et al*., *Arab Palestinians in Egypt* (Cairo: Dar Al-Mustakbal, 1986).
5. "Population displacement" is defined as the process of collective dislocation and/or settlement of people away from their normal habitat by a more powerful force.
6. UNRWA expanded its assistance to "other persons in the area who are at present displaced and are in serious need of immediate assistance as a result of the recent hostilities" (UNGA Resolution 2252 (ES-V), July 4, 1967, in Takkenberg, 82). Hence, although UNRWA expanded its assistance to those displaced by the 1967 War, it never expanded its working definition of a Palestine refugee.
7. For more details, see <http://www.mfa.gov.eg/getdoc.asp?id=131>.
8. This was possible upon request of an entry permit to Egypt; some restrictions were imposed on mobility between Gaza and Egypt.

9. Abdul Qader Yassin, "Palestinians in Egypt," *Samed El Iqtisadi* [journal; published in Amman, Jordan]18, no. 106 (1996).
10. UNHCR, "Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees," *International Journal of Refugee Law* 14, no. 2–3 (2002): 450–56.
11. See below at page 26 for the text of both Article 1A and 1D of the Convention Relating to the Status of Refugees.
12. As noted earlier, in July 1948, the political committee of the Arab League called for the formation of a civil administrative government responsible to the Arab League. In September 1949, the Government of All Palestine was declared as the official government representing Palestinian; see Sarraj *et al.*
13. Laurie Brand, *Palestinians in the Arab World* (New York: Columbia University Press, 1988), 51.
14. News clipping, *Al-Ahram*, April 20, 1960.
15. The Arab states that ratified the protocol without reservation are: Jordan, Algeria, Sudan, Iraq, Syria, Egypt, and North Yemen. Kuwait and Lebanon ratified the protocol with reservations. Morocco and Saudi Arabia did not ratify the protocol. Other Arab states were not yet independent.
16. Takkenberg, 147.
17. The Paragraph 7, Resolution 5093, September 12, 1991, reads as follows:

    > Having taken notice of the memorandum presented by the delegation of Palestine, the Conference expresses the hope that all Arab states, in a spirit of brotherhood and solidarity, will seek to abide by the Protocol relating to the Treatment of Palestinians [Casablanca Protocol] *in accordance with the rules and laws in force in each state*, and calls upon the Arab states to overcome the negative impact of the Gulf crisis, as regards the implementation of this Protocol in respect of the Palestinian people. [Citation taken from Takkenberg, 149.]

18. Abbas Shiblak, "Residency Status and Civil Rights of Palestinian Refugees in Arab Countries," *Journal of Palestine Studies* 25, no. 3 (1996): 36–45.
19. A stateless person is someone not considered a national by any state under the operation of its law, as defined by Article 1 of the 1954 Convention relating to the Status of Stateless Persons.
20. A, B, and C permits and travel documents are processed at the *Mogamma*, a government complex that includes all bureaucratic departments, in Cairo. Category D and H papers are processed by the Governor of Gaza in Madinet Naser.
21. After the age of 50, one's residence permit can be renewed free every five years (P17, Ain Shams, June 8, 2002).
22. After each interview quoted in this paper, the number of the interview appears in parentheses (in figures or in letters according to files of the researcher), together with the district, the governorate in Egypt, and the date of the interview.
23. Only recently, a few Arab countries started considering changing the law and permitting women to pass on their nationalities to their spouses and children. By the end of 2003, both Jordan and Egypt, supported by their first ladies, amended the laws but very little has been observed at the practical level.
24. <http://weekly.ahram.org.eg/print/2003/663/eg4.htm>.
25. *Al-Sha'b*, October 9, 1990.
26. *Al-Ahali*, Tharwat Shalabi, September 11, 1991.
27. *Al-Hayat*, Raed Jaber, November 9, 2002.
28. UNHCR Representative, Egypt, personal communication, May 29, 2003.
29. According to some, through negotiations it may be possible to reach an agreement on a quota of 40,000 refugee immigrants to Israel over a period of five years. In any event, it was agreed that Israel has the sovereign right to decide who will enter the territory and who will be barred from entering. See: <http://www.arts.mcgill.ca/MEPP/PRRN/prmepp.html>.
30. Israeli conditions for the right of residence are that the person: (1) that the person was registered in the Israeli census in the newly Occupied Territories in 1967, (2) holds an Israeli identity card, and (3) has been visiting the territories regularly, at least every six years, since the census was conducted; see Hovdenak *et al.*, *Constructing Order: Palestinian Adaptations to Refugee Life* (Oslo: Fafo, 1997), 67. The family reunification program was carried out through those who had Israeli identity cards which later became Palestinian IDs (and were approved by the Israeli authorities).
31. Abbas Shiblak, "The League of Arab States and Palestinian Refugees' Residency Rights," Shaml Monograph Sereies (Ramalla: 1998).
32. UNRWA, *UNRWA Past, Present and Future: A Briefing Document* (Vienna: United Nations Relief and Works Agency for Palestine Refugees in the Near East, 1986).
33. Terry Rempel, "The United Nations Conciliation Commission for Palestine, Protection, and a Durable Solution for Palestinian Refugees," Information and Discussion Brief, issue no. 5 (Bethlehem: Badil, 2000).
34. *Ibid.*
35. *Ibid.*
36. Takkenberg, 25–26.
37. Rempel.
38. *Ibid.*
39. The office estimated that a total of 17,167 square kilometres out of 26,320 square kilometres (the total area of pre-1948 Palestine) were determined to be refugee lands; see Salman Abu Sitta, "The Right of Return: Sacred, Legal and Possible," in *Palestinian Refugees: The Right of Return*, ed. Naseer Aruri (Pluto Press, 2001), 195–207.
40. Susan Akram, "Temporary Protection and Its Applicability to the Palestinian Refugee Case," Information and Discussion Brief, issue no. 4 (Bethlehem: Badil, 2000).
41. James Hathaway, *The Law of Refugee Status* (Toronto and Vancouver: Butterworths, 1991), cited in Takkenberg, 90.
42. *Ibid.*
43. A similar provision to Article 1D of the 1951 Convention is continued in UNHCR's Statute, paragraph 7(c) of which stipulated that the competence of the High Commissioner shall not extend to a person who "continues to receive from other organs or agencies of the United Nations protection or assistance."

44. The fact that such a person falls within paragraph 2 of Article 1D does not necessarily mean that he or she cannot be returned to UNRWA's area of operations, in which case, once returned, the person would fall within paragraph 1 of Article 1D and thereby cease to benefit from the 1951 Convention (Note on Applicability 2002).
45. Susan Akram, "Reinterpreting Palestinian Refugee Rights under International Law and a Framework for Durable Solutions," in *Palestinian Refugees: The Right of Return*, ed. Naseer Aruri (London: Pluto Press, 2001), 165–94.
46. *Ibid.*
47. Takkenberg, 125.
48. Akram, 2001, 173.
49. Takkenberg, 66.
50. The review of the preparatory work has also revealed that the international community did not decide to exclude Palestinian refugees from the general legal regime for the protection of refugees. Although the Arab states did not consider themselves primarily responsible for financing the relief effort, they were concerned that assistance or protection be extended to the Palestinian refugees irrespective of whether relief by the United Nations would continue to be provided. They, therefore, made it clear that the provision, included upon their request in the draft convention, was only to exclude Palestinian refugees temporarily See Takkenberg, 66.
51. Akram, 2001, 173.
52. Until a Palestinian state is established and Palestinian passports of that state can be issued for Palestinians in the diaspora, they will remain stateless.
53. Article 1 of the 1954 UN Convention relating to the Status of Stateless Persons.
54. Hala Abdel-Qader, "Statelessness in Egypt," paper presented at the regional workshop Statelessness in Arab World, Ayia Napa, Cyprus (Ramalla: Shaml, 2001).
55. In the first week of May 2001, independent MP and civil society activist, Fayza Al Tahnawi, presented a draft law to the People's Assembly calling for the modification of Article 2 of the Nationality Law (26/1975), which stipulates that only Egyptian men can pass on their nationality to their children. According to the same article, women have the same right only if the father is unknown or stateless. See: Hossam Bahgat, "Living on the Margins: A Parliamentary Proposal Brings the Long-Ignored Issue of Citizenship to the Fore," *Cairo Times*, 10–16 May, 2002.
56. "Unfortunately, adherence to the 1954 Convention is far more limited than in respect of the 1951 Convention," according to Takkenberg. As at September 29, 1994, based on information provided by the Centre for Documentation on Refugees, only three member states of the Arab League are party to the Convention: Algeria, Libya, and Tunisia. See Takkenberg, 186.
57. Akram, 2000.
58. Takkenberg, 195.

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The 1954 Convention Relating to the Status of Stateless Persons: Implementation Within the European Union Member States and Recommendations for Harmonization

Carol Batchelor

Abstract

This article provides an assessment of the implementation of the 1954 Convention relating to the Status of Stateless Persons as of 2003 within the fifteen European Union Member States. The study provides a brief overview of the history, object, and purpose of the 1954 Convention, analyzing the definition of statelessness and methods for practical implementation. Approaches taken by EU Member States to the identification and recognition of stateless persons on their respective territories are assessed, and recommendations aimed at furthering harmonization of approaches as between States are outlined.

Résumé

Cet article propose une évaluation de la mise en application de la Convention de 1954 relative au statut des apatrides à la date de 2003 dans les 15 États membres de l'Union Européenne. L'étude fait un bref survol de l'historique de la Convention de 1954, de son contenu et de son objectif, analysant la définition de l'apatridie et des façons d'appliquer la convention dans la pratique. Elle évalue les approche adoptées pas les divers États membres de l'Union Européenne pour l'identification et la reconnaissance des personnes apatrides sur leur territoires respectifs et fait des recommandations pour harmoniser les approches entre États.

I. Executive Summary

Within the European Union, thirteen of the fifteen current Member States are party to the 1954 Convention relating to the Status of Stateless Persons. Therefore, there is a potential legal framework within the EU for identifying cases of statelessness and for furthering appropriate solutions at the national level which are compatible with EU policy and legal principles. This study has been undertaken to provide an overview of the tools and mechanisms in place, or needed, to promote the implementation of the 1954 Convention within EU Member States and to outline any additional steps recommended for harmonization.

The study provides a brief overview of the history, object, and purpose of the 1954 Convention. Article 1 defining a stateless person is analyzed and methods for practical implementation considered. The study reviews the approaches taken by EU Member States to the identification and recognition of stateless persons on their respective territories. The implications of recognizing someone as stateless, and the approaches taken by various EU Member States to providing access to the rights outlined in the Convention, are assessed. Recommendations concerning implementation of the 1954 Convention within Member States aimed also at furthering harmonization of approaches as between States are outlined below.

The 1954 Convention attempts to resolve the legal void in which the stateless person often exists, by identifying the problem of statelessness, promoting the acquisition of a legal identity, and providing for a legal status which will serve as a basis for access to basic social and economic rights. The Convention is the primary international instru-

ment adopted to date to regulate and improve the legal status of stateless persons and to ensure to stateless persons fundamental rights and freedoms without discrimination. For those persons who are stateless refugees, who have a well-founded fear of persecution, the 1951 Convention and related legal regime is the relevant reference point. The 1954 Convention was adopted to cover those stateless persons who are not refugees and who are not, therefore, covered by the 1951 Refugee Convention.

UNHCR has a particular role to play concerning statelessness. The Office advocates globally for enhanced co-operation between States to assess situations of statelessness and to further appropriate solutions aimed at ensuring that all stateless persons have a legal status. Over the past decade, UNHCR has expanded its activities worldwide to work with States toward the prevention and reduction of statelessness. Problems continue to persist, nevertheless, and until international efforts result in the abolishment of statelessness, persons affected should have access to procedures designed to identify their particular problem of statelessness, to documentation and a legal identity, and to a minimum standard of rights to ensure their security. It is against this backdrop that the 1954 Convention is highly relevant in Europe today.

The 1954 Convention provides the internationally recognized definition of a stateless person in Article 1 of the instrument. This is the basis on which States can determine at the national level to whom the Convention will apply. It is also an appropriate basis for harmonization of approaches as between States by providing a common reference point defining statelessness. Each State Party determines through its own procedures whether a person fits the definition of a stateless person outlined in Article 1. Clearly, the first criterion for application of the Convention to an individual is that the person is found by the State concerned to be stateless.

As concerns the recognition of stateless persons and the approach to solutions, practice in the EU varies, with very few of the Member States possessing a specialized procedure dedicated to examining an applicant's claim of statelessness. If, however, States do not approach Article 1 with a common interpretation or application, it will be difficult to harmonize implementation of the Convention overall or, indeed, for decisions taken by one State party to be recognized as between States parties. This could mean that a single case will arrive at various results depending on the State in which the stateless person lodges an application. As such, the lack of specialized procedures may be a compelling factor in pushing individuals from one jurisdiction to the next, or from one procedure to another within the same State. As one of the key objectives of the 1954 Convention is to promote the acquisition of a legal identity for a stateless person in one State, which will be widely recognized by other States, a lack of harmonized interpretation or implementation of Article 1 risks limiting the benefits of this instrument for both States and individuals concerned. The lack of specialized procedures also makes it impossible to determine the magnitude of the problem of statelessness within EU Member States, as there may be many cases of statelessness which go unnoticed or unidentified.

The possibility, in appropriate cases, for a stateless person to secure residence is of particular importance given that it is essentially through this that the individual will be able to access the full rights and benefits provided for in the 1954 Convention. In European Union Member States, rights and benefits available to stateless persons are often attached to the type of residence permit granted. Those granted leave to remain on humanitarian grounds may receive rights equivalent to those of recognized refugees. In other States, economic and social rights may not be granted to persons permitted to stay on humanitarian grounds or under temporary leave to remain. Family reunification rights may vary depending on the type of stay granted.

Many of the social and economic benefits outlined in the Convention are provided for within the national legal systems of EU Member States, although they may be tied to grant of a residence permit. Once a foreigner has residence in an EU Member State, social and economic rights are similar to those for nationals of the Member State concerned, although certain distinctions may be found such as the extent of social welfare. Certain rights may also be linked to the grant of permanent rather than temporary residence. It must be noted, however, that there is no common EU approach to the determination of statelessness under Article 1 of the 1954 Convention. Consequently, there is a lack of harmonization specific to recognized stateless persons of the remaining provisions of the 1954 Convention. Therefore, variations between States will inevitably arise with regard to who is considered stateless as well as in responses adopted to address statelessness. Moreover, under certain provisions of the 1954 Convention, recognition within one State is expected to give rise to entitlements in all other Contracting Parties. However, without harmonization of approaches, discrepancies in the implementation of these entitlements and, therefore, regulation of the movement of persons between Member States are also possible.

For purposes of this study, a key objective was to analyze the tools and mechanisms in place to address issues of statelessness. Without the tool or mechanism in place to identify and recognize stateless persons *specifically with regard to their statelessness*, the remaining provisions of the

Convention will be available to stateless persons only insofar as they are available to populations generally. The lack of a framework specific to stateless persons is, in fact, a key finding of the study and the basis on which recommendations have been elaborated. Nonetheless, there are various best practices noted at the national level which could guide on approaches to harmonization between Member States. These have served as a backdrop to the recommendations outlined below.

II. Recommendations

- States are encouraged to adopt a designated procedure under Article 1 of the 1954 Convention, designed to facilitate access to the statelessness determination process and to identify stateless persons.
- In facilitating solutions, States are encouraged to adopt legislation regulating the transit or entry, as well as the rights and duties, of recognized stateless persons.
- Specialized units with dedicated decision makers are needed as an integral aspect of application of the 1954 Convention. States, in co-operation with UNHCR, are invited to introduce specialized training and to disseminate guidelines on the implementation of the 1954 Convention and on identification of stateless persons.
- As far as possible, States should ensure information exchange, legal assistance, translation services, and other administrative support to facilitate procedures, including personal interviews with the applicant where applicable.
- Decision-making authorities are encouraged to adopt collaborative approaches in receiving and analyzing relevant information as it pertains to the determination of an individual's claim concerning statelessness.
- States are invited to introduce mechanisms to promote the acquisition of lawful stay, in appropriate cases, for recognized stateless persons, in particular for those who have no alternate option. Consultations concerning the type of procedure and status granted by each EU Member State should be promoted with a view to harmonization.
- Efforts should be made to facilitate the documentation of stateless persons, to issue the Convention Travel Document where appropriate, and to establish procedures for the recognition of such documentation as between EU Member States.
- In cases where readmission agreements are concluded, States should pay particular regard to ensuring a legal status is secured for stateless persons in the country concerned.
- Efforts should be made to harmonize approaches to those specific provisions of the 1954 Convention which stipulate treatment equal to that of national in the State of habitual residence as well as in other EU Member States.
- UNHCR and States are invited to enhance co-operation and exchange of information concerning the determination of statelessness and with regard to the most appropriate solutions.
- Those EU Member States which have not yet acceded to the 1954 Convention are encouraged to give renewed consideration to early ratification of this instrument.

III. Introduction

In recent years, statelessness has arisen in a number of contexts within Europe. In some instances, statelessness has been associated with displacement and has overlapped with refugee flows. Statelessness issues have been relevant to conflict prevention and to post-conflict resolution. Significant challenges arose in the context of the succession of States and the determination of nationality[1] status within States emerging from dissolution. Equally, States regaining independence were faced with how to address nationality questions arising on their territory. Events such as these impact not only the State concerned, but also States to which individuals might travel or with which persons have prior links.

While many States are diligent in ensuring persons born on their territories or born abroad to their nationals are not rendered stateless under national laws, problems of statelessness may still arise in the context of aliens entering or residing in their territories. In consultations with the European Union held under the Spanish Presidency in January of 2002, the Office of the United Nations High Commissioner for Refugees (UNHCR) outlined the problem of statelessness in the context of the scope and content of international protection. Participants noted that the problem of statelessness has taken on new dimensions in the European context.[2]

Within the European Union, thirteen of the fifteen current Member States are party to the 1954 Convention relating to the Status of Stateless Persons.[3] In principle, therefore, there is a legal framework within the EU for identifying cases of statelessness and for furthering appropriate solutions at the national level which are compatible with EU policy and legal principles. This study has been undertaken to provide an overview of the tools and mechanisms in place, or needed, to promote the implementation of the 1954 Convention within the current fifteen EU Member States and to outline any additional steps recommended for harmonization.[4] The findings of the study will, moreover, be relevant for purposes of harmonization of approaches within future Member States as well.

The study provides a brief overview of the history, object, and purpose of the 1954 Convention, shedding light on how the instrument should be interpreted and applied. An

analysis of Article 1 defining a stateless person is outlined with methods for practical implementation considered. The study reviews the varied approaches taken by EU Member States to the identification and recognition of stateless persons on their respective territories. The implications of recognizing someone as stateless and the approaches taken by various EU Member States on providing access to the rights outlined in the Convention are considered. Recommendations to support the full implementation of the 1954 Convention within each Member State, and to promote harmonization of approaches as between States, have been outlined.

The project has been funded with support from the European Commission. Collaboration with partners, such as the European Commission, in promoting implementation of the 1954 Convention within the EU will help to address particular problems faced by stateless persons and to reduce such cases.

A. History of the 1954 Convention

In 1948, the Economic and Social Council of the United Nations requested the Secretary General to undertake a study and to make recommendations on the situation of stateless persons.[5] This study led to the formation of an Ad Hoc Committee on Statelessness and Related Problems considering, *inter alia*, the desirability of a revised convention relating to the status of refugees and stateless persons.[6] In February 1950, the Ad Hoc Committee completed its work with the adoption of a Draft Convention relating to the Status of Refugees and an accompanying Protocol relating to the Status of Stateless Persons.

Consequently, the United Nations General Assembly decided to convene a conference of plenipotentiaries, which adopted in 1951 the Convention relating to the Status of Refugees.[7] The draft Protocol relating to the Status of Stateless Persons was not adopted at the Conference. Instead, it was communicated by the UN Secretary General to governments with the request that they comment on those aspects of the 1951 Convention they would be prepared to extend to non-refugee stateless persons.

In 1954, after the 1951 Convention had already come into force, a new Conference of Plenipotentiaries was convened in New York to revise the Draft Protocol on the Status of Stateless Persons. During the Conference, however, the delegates decided to sever the Protocol from the 1951 Convention as it became clear that a separate instrument would be needed.[8] The end result was the completion of a distinct Convention completely separate from the 1951 Convention, which was opened for signature on 28 September 1954.[9]

The overlap between problems of statelessness and refugee flows was considered substantial in post-war Europe, requiring preparation of a legal framework designed to address both problems. Yet not all stateless persons actually become refugees or necessarily cross borders. Moreover, States have well-established approaches to the determination of nationality which, while not problematic internally, may inadvertently collide with the established and equally legitimate approaches of another State. Hence, some cases of statelessness arise as oversights or conflicts in legal approaches and are not the result of discrimination or deliberate denial of human rights. For such reasons, a comprehensive legal framework specifically tailored to the problem of statelessness was deemed necessary and, accordingly, was prepared under the auspices of the United Nations.

B. Object and Purpose of the 1954 Convention

The 1954 Convention attempts to resolve the legal void in which a stateless person often exists by identifying the problem of statelessness, promoting the acquisition of a legal identity, and providing, in appropriate cases, for residence which will serve as a basis for access to basic social and economic rights. The 1954 Convention relating to the Status of Stateless Persons is the primary international instrument adopted to date to regulate and improve the legal status of stateless persons and to ensure to them fundamental rights and freedoms without discrimination. For those persons who are stateless refugees, who have a well-founded fear of persecution, the 1951 Convention and related legal regime is the relevant reference point.[10] The 1954 Convention was adopted to cover those stateless persons who are not refugees and who are not, therefore, covered by the Refugee Convention.[11]

The international community has long since seen the need to promote the avoidance and reduction of cases of statelessness, as aspects of conflict prevention, post-conflict resolution, and reduction of cases of displacement, and as part of the protection of the human rights of individuals. Article 15 of the 1948 Universal Declaration of Human Rights declares each person has an inherent right to a nationality.[12] The challenge is in determining *which* nationality a person may have a right to. Mechanisms for the application of Article 15 were given concrete form by way of two international instruments concerning statelessness, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.[13]

These Conventions outline a comprehensive legal framework to avoid the creation of cases of statelessness (1961 Convention) and to ensure that, at a minimum, individuals are granted a legal status which provides them with a measure of stability and, in appropriate cases, normalizes their

stay in a given country (1954 Convention). This, in turn, significantly decreases the potential for displacement. It also provides a reference point for resolving cases which might arise between States. In brief, the 1954 and 1961 Conventions provide a ready-made framework for addressing one of the consistent challenges to effective protection arising both in and between States. By seeking to ensure everyone has their right to a nationality in practice, this legal framework places emphasis on securing national protection for persons who might otherwise be in need of international protection. It must be noted that if all States actively applied the provisions of the 1961 Convention, there would be a decrease in the number of cases arising in relation to the 1954 Convention.[14] In this regard, comprehensive efforts to promote the avoidance of statelessness altogether will necessarily be coupled with increased efforts to secure and protect a nationality for all persons through the effective application of nationality laws globally.[15]

C. UNHCR's Role Concerning Statelessness

UNHCR has been requested to undertake specific activities to assist States in avoiding and reducing cases of statelessness globally.[16] In 1974, the United Nations General Assembly requested UNHCR to assume temporarily the responsibilities foreseen in Article 11 of the 1961 Convention, of a body to which a person claiming the benefit of the Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority.[17] In 1976, this role was renewed and extended indefinitely.[18]

In 1995, UNHCR's Executive Committee in its Conclusion No. 78 on statelessness requested UNHCR to promote accession to the 1954 and 1961 Statelessness Conventions and to provide technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States.[19]

UNHCR advocates globally for enhanced co-operation between States, in consultation with other concerned organizations and civil society, to assess situations of statelessness and to further appropriate solutions aimed at ensuring that all stateless persons have a legal status. Increased accessions to and implementation of the Statelessness Conventions will help to address the particular problems faced by stateless persons and to reduce such cases.

While progress has been made in identifying cases of statelessness and in promoting appropriate solutions, numerous cases of statelessness continue, with new cases arising due to various factors such as: conflicts of laws between States; transfer of territory; laws relating to civil status and marriage; administrative practices; discrimination and denationalization; lack of registration or documentation of births and marriages; inheritance of statelessness; renunciation or loss of nationality without the acquisition of an alternative nationality; and automatic loss due to residence abroad.[20]

Over the past decade, UNHCR has expanded its activities worldwide to work with States toward the prevention and reduction of statelessness. Problems continue to persist, nevertheless, and until international efforts result in the abolishment of statelessness, persons affected should have access to procedures designed to identify their particular problem of statelessness, access to documentation and a legal identity, and access to a minimum standard of rights to ensure their security. It is against this backdrop that the 1954 Convention is highly relevant in Europe today.

IV. Determining Statelessness

The 1954 Convention provides the internationally recognized definition of a stateless person in Article 1 of the instrument.[21] This is the basis on which States can determine at the national level to whom the Convention will apply. It is also the appropriate basis for harmonization of approaches as between States. Each State Party determines through its own procedures whether a person fits the definition of a stateless person outlined in Article 1. Clearly, the first criterion for application of the Convention to an individual is that the person is found by the State concerned to be stateless.[22]

If the person is found not to be stateless, the Convention will not be applicable. Existing State practice in the EU varies, with very few of the Member States possessing a specialized procedure dedicated to examining an applicant's claim of statelessness. If, however, States do not approach Article 1 with a common interpretation or application, it will be impossible to harmonize implementation of the Convention overall or, indeed, for decisions taken by one State party to be recognized as between States parties. This could mean that a single case will arrive at varying results depending on the State in which the stateless person makes an application. As one of the key objectives of the 1954 Convention is to promote the acquisition of a legal identity for a stateless person in one State which will be widely recognized by other States, a lack of harmonized interpretation or implementation of Article 1 risks limiting the benefits of this instrument for both States and individuals concerned.

A. Definition of a Stateless Person

The definition, set out in Article 1(1) provides that a stateless person is one "who is not considered as a national by any State under the operation of its law." This is the definition used at the international level and is incorporated into the nationality laws of many States.[23] By indicating that a

stateless person is someone who is not considered a national by any State *under the operation of its law*, the drafters refer to a legal bond between an individual and a State which is based on the internal laws of the State concerned. The Convention, thus, covers cases of *de jure* statelessness, as determined with reference to the internal law of relevant States.[24] The Convention does not ask whether that nationality is effective, whether a person *should* or *could* be a national of a particular State based on its legislation, but rather whether the person *is* a national.[25]

A clear tenet of international law is that each State is sovereign in determining which persons are its nationals.[26] In order to determine whether an individual is stateless, therefore, reference must be made to the internal law of each of the States in which an individual could have acquired a nationality. States generally attribute nationality at birth either to persons born on their territory (*jus soli*), or to persons born to their nationals regardless of place of birth (*jus sanguinis*). States normally incorporate at least one, although in some cases both, of these rules. Thus, in a typical situation, an individual will acquire a nationality at birth *ex lege* by descent or by being born in a particular country. Each nationality law will contain the provisions determining who automatically acquires nationality of that particular State at birth. States generally also allow foreigners to acquire nationality when certain conditions or links have been established, such as marriage to a national or continuous residence in the country. An individual, although born stateless, might acquire a nationality in this manner, that is, by naturalization.

Proving statelessness is like establishing a negative. The individual must demonstrate something that is *not* there. A person may fail to acquire a nationality at birth, or later in life lose nationality and become stateless through, for example, deprivation or renunciation of nationality or as a consequence of a territorial change. The former has been referred to as "original" or "absolute" statelessness, and the latter "subsequent" or "relative" statelessness.[27] Regardless of the manner in which a person becomes stateless, the 1954 Convention definition would encompass all those who currently do not have the nationality of any State with reference to relevant laws. Moreover, the term "by operation of law" encompasses loss of nationality whether it occurs through the application of law or by an act of the executive authorities.[28]

In practice, UNHCR has noted the importance not only of reading another State's internal laws in assessing whether an individual might be stateless, but also of undertaking dialogue with the State concerned to determine how the laws are interpreted and how they are applied. For instance, the phrase "acquisition at birth" has fundamentally different meaning from one State to the next. It might refer to acquisition through *jus soli* in some States, and to acquisition through *jus sanguinis* in other States. It might also mean an automatic acquisition *ex lege* in some States, while in other States certain administrative procedures will be required without which the person concerned will not acquire the State's nationality. In yet other instances, the State itself may not consider the individual to actually fall within the target category defined by the law, but there will be no way to know this without confirmation of how that State interprets its laws.

The phrase "operation of law" must, therefore, be implemented within the context of international legal principles. Each State decides which persons are its nationals and, as not all States use the same approach, a reading of laws without further consultation can lead to findings of statelessness when a person actually *is* a national, or presumption of nationality when the person is actually stateless. The assessment of statelessness and the standard of proof are, therefore, pivotal concerns with which States are confronted during the examination of the application. It is necessary that the decision maker examine the internal law and its practical implementation in States where an apparent link exists to determine whether there is a legal bond of nationality. Relevant reference points could include any State in which the applicant previously held nationality, State of birth, the place(s) of previous habitual residence, States in which a parent held nationality, and States in which a spouse or children are nationals.[29]

It should also be noted that those who appear to be eligible for citizenship, but who must lodge an application, are generally not considered to be nationals "by operation of law" as the acquisition of nationality is not automatic but, rather, discretionary. Nationality granted on a discretionary basis by definition presumes that a State can grant its nationality, but can also reject the application. When discretion exists, only after the application has been approved and nationality conferred can the individual be considered a national of that State.[30]

B. The Burden and Standard of Proof

As noted, establishing statelessness is like proving a negative. Rather than proving that the legal bond exists with one particular country, establishing statelessness requires a demonstration of no legal bond with any relevant country.[31] The drafters of the 1954 Convention were aware that difficulties might arise in establishing proof, and members of the conference anticipated extending "the benefits of the proposed instrument to as many persons as possible."[32]

Documentary evidence from a responsible State authority certifying that the person concerned is not a national is normally a reliable form of evidence for purposes of estab-

lishing statelessness. However, such documentary evidence will not always be available, in part precisely because States will not necessarily feel accountable for indicating which persons do *not* have a legal bond of nationality. The relevant authorities of the country of origin or former habitual residence may refuse to issue certified documentation that the applicant is not a national, or may not reply to inquiries. From a practical perspective, it might be assumed that if a State refuses to indicate that a person *is* a national, this itself is a form of evidence which could have a bearing on the claim because States normally extend diplomatic services and protection to their nationals. Nonetheless, in such cases, the State trying to determine statelessness under the Convention may need to review other types of evidence, including available documentation and reliable witnesses.[33]

> If the definition in Article 1 were not to cover all instances in which the person involved actually lost or was deprived of nationality but has no official confirmation, the Convention would contain a discrimination against those persons whose claims to the status of a 'stateless person' is stronger than that of persons who gave up the protection freely – an alternative for which no basis exists. It must therefore be assumed that the definition contained in Article 1 covers, in substance, all persons who either never possessed or lost their nationality; the question of proof is to be adjusted to this intention.[34]

In establishing proof of statelessness, States should be prepared to: review the relevant legislation of States with which the individual has prior links; undertake consultations and request evidence from these States as needed;[35] and request the full co-operation of the person concerned in providing all relevant facts and information. UNHCR can provide support in furthering consultations between States as appropriate, as well as technical information on the laws in various States globally.

C. Exclusion

Article 1(2) of the 1954 Convention defines persons who, despite falling within the scope of the definition contained in Article 1(1), and thus being stateless, will be excluded from the application of the Convention for particular reasons. There are three broad categories of persons to whom the Convention shall not apply despite the fact that they are stateless.

Article 1(2)(i) refers to those:

> who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance as long as they continue to receive such assistance.

This clause was drafted with, *inter alia*, the mandate of the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) in mind. Created in 1949 to assist Palestinians displaced from the conflicts in Palestine from 1 June 1946 to 15 May 1948, UNRWA's mandate was later expanded to include Palestinians displaced from the Arab-Israeli conflict in 1967.[36] UNRWA is the only UN agency relevant today to the exclusion envisaged under Article 1(2)(i) of the 1954 Convention.

Few jurisdictions within the European Union have interpreted Article 1(2)(i) of the 1954 Convention. The Federal Administrative Court in Germany has, by way of example, found that some Palestinians can receive the benefits of the 1954 Convention, while others are excluded if they themselves are directly responsible for the impossibility of their return to an UNRWA area.[37] Nonetheless, the practice varies greatly, with several States within the European Union granting Palestinians different categories of stay on humanitarian grounds, without necessarily making a finding as to their nationality status or to possible exclusion under Article 1(2)(i). This is an area where States may benefit from reviewing approaches with an eye to harmonization.

The second provision leading to exclusion from the 1954 Convention is outlined in Article 1(2)(ii), covering:

> persons who are recognised by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

The object and purpose of the Convention is to provide stateless persons with a legal identity and to secure, as far as possible, access to basic social and economic rights. If a stateless person has already secured legal residence in another State and is provided with rights greater than those provided for in the 1954 Convention overall, particularly full economic and social rights equivalent to those of a national and protection against deportation and expulsion, then there is no need to apply the Convention to that person.[38] In principle, this provision would not apply unless the individual has the right to return and remain, or the State concerned is willing to reinstate these rights.

Moreover, the fact that someone may fall within a category of persons to whom such treatment could be extended does not mean that the person should necessarily be obliged to seek entry to that State if never previously resident there because the article is conditioned on having prior residence. Additionally, there may be instances in which it is inappropriate to require a person to seek entry to a State they have never previously been resident in and with which they have

no specific connection. In cases where a person has established residence but is denied re-entry, this is a clear demonstration that any rights accorded are *not* equal to those attached to the possession of the nationality of that country. Each case will need to be assessed as to its particular facts to find the most appropriate solution.

Article 1(2)(iii) provides that the Convention shall not apply:

> to persons with respect to whom there are serious reasons for considering that:
>
> a. they have committed a crime against peace, a war crime, or a crime against humanity, as defined in international instruments drawn up to make provisions in respect of such crimes;
>
> b. they have committed a serious non-political crime outside the country of their residence prior to their admission to that country;
>
> c. they have been guilty of acts contrary to the purposes and principles of the United Nations.

All three crimes listed under subparagraph (a) are included in the statute of the International Criminal Court. Subparagraph (b) is intended to exclude persons who have committed egregious criminal acts in another jurisdiction, the seriousness of which must be weighed against a number of factors. Subparagraph (c) would include, for example, serious violations of the principles and purposes of the United Nations, often thought to be limited in application to persons closely linked with the highest authorities in a State or State-like entity. These clauses should be applied restrictively. The State will still be required to examine the case in light of the prohibition of *refoulement* contained in Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)[39] and Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).[40]

D. Termination of Statelessness Status

There is only one durable solution to the problem of statelessness, and that is the acquisition of a nationality. The condition of being stateless will *ipso facto* terminate when one acquires a nationality. With regard to the *status* which is given to a stateless person under the 1954 Convention, and the fact that the majority of rights provided for flow from the grant of some form of legal stay, there may be circumstances when a State decides to withdraw or cancel the legal status the stateless person has in its territory. In Spain, for example, the statelessness status granted will cease automatically if:

- the stateless person has acquired Spanish nationality;
- the stateless person has been considered a national of another State or another State of fixed residence grants rights and obligations which are equivalent to the possession of the nationality of that State;
- another State has documented the person as stateless and granted permanent stay on its territory.[41]

This approach provides that in cases where a nationality has been acquired, the status of stateless will be removed as it is no longer needed. Likewise, in cases where an individual takes up residence in another State and either acquires nationality or is accorded a legal status and rights including permanent lawful stay, then the status of stateless will be removed in Spain as it is no longer needed. This framework ensures that in all other cases, the statelessness status is safeguarded. This is an area where harmonization of approaches between Member States of the European Union would prove useful, not least as it could help to ensure that persons who leave a State's territory temporarily, and who do not acquire such rights elsewhere, do not have their statelessness status inadvertently withdrawn. Harmonization would also assist in avoiding situations of multiple statuses in various States.

V. Existing Legal Framework in EU Member States

A. Determining Statelessness

Thirteen of the fifteen EU Member States are parties to the 1954 Convention. The definition of a stateless person found in Article 1(1) is, in principle, reflected in the legal framework of all of these States. Moreover, although Austria, for example, is not a State Party to the 1954 Convention, the Convention's definition of a stateless person is accepted as part of Austria's legal system.[42] While there is largely a common reference point for defining a stateless person, the *process* of identifying persons who meet this definition varies significantly from State to State. An obstacle for some EU States may be the lack of implementing regulations or defined procedures.

In some Member States, the legal system permits the direct application of international instruments, while others have enacted ratification laws making the Convention part of the national law.[43] In dualist systems, an incorporation law is necessary, which in some States has not yet been done.[44] Regardless of the manner in which the Convention becomes part of the municipal legal order, it does not dictate the procedure for identifying an individual as stateless. Thus, to make it workable in a national structure, some form of implementing legislation setting up a recognition procedure will be necessary. Adopting legislation enabling a designated decision maker and guiding the manner in

which to recognize a stateless person, as well as setting out the consequences of such recognition, is in the interests of both the Contracting State and the persons to whom the Convention might apply.

Some EU Member States, while lacking specific legislation establishing a procedure, nevertheless have an authority, either administrative or judicial, that has competence for recognizing that an individual is stateless. At present, Spain is the only country in the EU with a sub-legislative act dedicated to defining a procedure by which the designated authority may examine an application for recognition of stateless status. The Aliens' Law provides that the Minister of Interior will recognize as stateless those foreigners who meet the requirements of the 1954 Convention and grant status accordingly. The procedure for doing this is regulated by a Royal Decree.[45]

The implementing decree foresees that applicants may approach police stations, Offices for Foreigners, or the Office for Asylum and Refuge (OAR), or that the OAR may initiate the procedure *ex officio* when it has knowledge, facts, or information indicating that a particular foreigner is stateless. The OAR carries out the procedure, during which the applicant must fully co-operate by providing documentary and oral evidence. The OAR may request reports from other governmental or international bodies. Upon conclusion of the investigative phase, the OAR forwards its reasoned proposal for recognition or non-recognition through the General Directorate for Aliens' and Immigration Issues to the Minister of the Interior. Rejections can be appealed, while a positive resolution results in the granting of the status of stateless person under the terms foreseen in the 1954 Convention. The recognition also includes the right to permanent residence and to seek employment.

In France, a procedure for the recognition of statelessness status exists within the French Office for the Protection of Refugees and Stateless Persons [Office français de protection des réfugiés et apatrides (OFPRA)], although it is not regulated by a legislative or sub-legislative act. "Law n° 52-893 of 25 July 1952 concerning the right of asylum" (formerly named the "Law concerning the creation of an Office for the protection of refugees and stateless persons") gives OFPRA the mandate to provide for the juridical and administrative protection of stateless persons.[46] French administrative practices and principles extracted from jurisprudence have led to the rules governing France's stateless recognition procedure. An applicant must apply directly to OFPRA, which will take the decision concerning possible statelessness and recognition as a stateless person.

In Italy, an implementing decree to the Nationality Law gives the Ministry of the Interior the authority to recognize the stateless status.[47] When the matter is uncomplicated and a simple examination of available documentation will suffice to show that the applicant is no longer a national of the particular State in question, the procedure is run by the Ministry of Interior. If the applicant does not have required documentation and the matter involves an examination of foreign legislation, the applicant's case must be addressed to the civil courts, which can also recognize a person to be stateless.

In Belgium, on the other hand, because the matter is not regulated by law, the Tribunals of First Instance have asserted their jurisdiction in the determination of the personal status of an individual.[48]

Other countries, such as Germany, have procedures by which a person can apply for a 1954 Convention Travel Document, thereby requiring relevant authorities to examine the question of whether the person is stateless. The matter may also arise when the applicant requests a residence permit. Yet, possibly because there is no specific procedure for determination of whether statelessness exists, the authorities do not issue a specific decision on the question of whether the individual is stateless. In Austria, the question of statelessness usually arises incidentally to efforts to try and establish the identity of a foreigner. Once procedures have been exhausted, and in cases where no nationality can be established, the person may be considered stateless.

In other countries having no specific recognition procedure for stateless persons, the matter arises in asylum procedures or as a subsidiary question when applications for residence permits or travel documents are made.[49] More often than not, it seems that if the question arises in the asylum procedure, the matter of determining whether the applicant is in fact stateless only becomes prominent if the person's asylum claim is rejected. In such cases, the question of permission to remain on other grounds may arise. This can include stay on humanitarian grounds due to length of stay in the country, the existence of school-age children who have integrated, or the fact that removal from the country is not possible because there is no country to which to send the person. The latter situation arises frequently in cases of statelessness, even though no specific finding of statelessness has necessarily been undertaken.

While this may result in the State granting leave to remain on humanitarian or non-removability grounds, it does little to identify cases of statelessness generally and, therefore, misses an opportunity to address the broader question of identifying increased flows of stateless persons due to changed circumstances in their countries of origin. Harmonization of approaches in this area and sharing of information on general trends concerning population displacement due to statelessness could serve as a critical

early-warning mechanism to help both States of origin and receiving States address unfolding root causes of statelessness.

It is unclear why so many EU Member States lack a specific legal framework, including a procedure, by which statelessness can be determined. A possible reason may be that in the majority of these States, stateless persons tend to show up in refugee status procedures and are dealt with in this framework, including the framework for humanitarian or subsidiary protection. Certainly, for stateless persons with claims of persecution, the asylum framework is *the* appropriate channel in which to present themselves to the authorities. Yet, in instances where no laws or specific procedures exist to implement the 1954 Convention, it appears that States are grappling nonetheless with the issue of stateless individuals on their territories and are finding *ad hoc* approaches to addressing it. To some extent, stateless persons may be obliged to channel their application through the asylum framework specifically because there is no other procedure available. Moreover, without specific procedures aimed at identifying stateless persons, it remains unclear how many cases are left unnoticed and unidentified within the EU. It is, therefore, impossible to determine the magnitude of the problem of statelessness within EU Member States as there is no consistent way of identifying cases.

B. Elements of Proof

As concerns providing evidence to support a claim of statelessness, generally the burden is on the applicant to provide documentation from the Embassy or Consular authorities of the "country of origin" – often the country of birth or a country which issued a prior travel document – confirming that the applicant is not a national.

In Italy, when the applicant is able to provide such documentation certifying his or her statelessness, the Ministry of Interior will take a decision on the case. If, however, the matter is more complicated and demands an inquiry into the nationality laws of other States, then a civil court must examine the case. Thus, in the procedure before the Ministry of Interior, the applicant is requested to submit a request enclosing a birth certificate, documentation certifying residence in Italy, and either documentation effectively demonstrating statelessness status or a declaration by the Consulate of the country of origin or residence. If the person does not have all documentation requested, then an application will have to be submitted to the competent ordinary judicial authority with a procedure in "*Camera di Consiglio.*" The applicant will have to prove statelessness with whatever elements of proof are available, including review of relevant nationality laws, witnesses, and declarations of third parties. If recognized by the court, a decree recognizing the statelessness of the applicant will be issued and notification of this will be forwarded to the Provincial Police Headquarters (*Questura*).

In Belgium, the burden of proof in providing sufficient facts to demonstrate statelessness is on the applicant. The courts and tribunals consider one's statelessness sufficiently proven if the person can demonstrate not to have the nationality of countries of substantial links, including the country of birth, country in which a parent or spouse has nationality, and so on. In many cases, however, it is difficult for the applicant to produce sufficient evidence or documentation for the establishment of statelessness status. In Germany, the burden of proof is on the applicant while in France the claimant has to provide evidence of a lack of nationality, either documentary or by other means which would clearly indicate statelessness.

In Austria, statelessness is determined on the basis of available evidence, including relevant documents, and credible statements by the person concerned or others. In cases in which no documents are available, the determining officer may use the statement of the alien, but given that the issue arises in the context of an application for a residence permit or in an asylum procedure, the finding will not lead to a status as stateless. In yet another State, the practice suggests that if the applicant is unable to provide such certificates, the Contracting Party will not make an assessment as to statelessness and will not approach other States for information unless trying to deport the applicant.

Clearly there is room here for developing a more consistent approach to the problem of statelessness and to the implementation of the 1954 Convention within EU Member States. The search for information may require a collaborative approach between various departments and ministries within a government, as well as with other States. For example, the implementing decree in Spain sets out that while carrying out its investigative function, the OAR may request as many reports as it deems appropriate from the central administrative bodies as well as from any other national or international entity, a positive practice which could be furthered in other jurisdictions.[50] Additionally, while an individual may typically have the burden of proof, the criteria for establishing proof may vary from State to State. There is, therefore, a risk that a person recognized as stateless in one State will not be recognized as between States.

C. Designated Decision Maker

Another area which would lend itself to harmonization of approaches is that of a designated decision maker. As the majority of States in the EU have not adopted legislation to

provide for specific recognition procedures, it also follows that there are often no designated decision makers. In States where the procedure is in place, it has been accorded to bodies which also deal with asylum issues: in France, the Office français de protection des réfugiés et apatrides and, in Spain, the Office for Asylum and Refuge within the Ministry of Interior.

In Germany, the local aliens' authorities make determinations on residence permits and 1954 Convention Travel Documents, while if the issue arises in Austria, it is also local authorities or aliens' police who deal with the matter insofar as it concerns determining the individual's identity.

In Italy it is within the competency of the Ministry of Interior to assess applications for the status of a stateless person, unless the matter is complex, at which point it goes before a civil court. On the other hand, in Belgium the Tribunal of First Instance is competent for recognizing an individual as stateless. The Court of Appeal has held that this decision is not within the jurisdiction of the Minister of Justice, given that there is no legislative act assigning such responsibility. Although a Commissariat Général aux Réfugiés et aux Apatrides exists, its enabling legislation gives it competence to deliver documents stipulated in Article 25 of the 1954 Convention only.[51]

In all other States, with the possible exception of Luxembourg, it is the authorities responsible for foreigners and immigration or asylum who deal with stateless persons; that is, either the Ministry of Interior or the Ministry of Justice, depending on the country.[52]

Given the specialized nature of the determination required under the 1954 Convention, a clearly identified authority (where possible, a single central authority), having expertise in the field of statelessness is an intrinsic aspect of the procedure.[53] Qualified and specialized personnel who can make an impartial and objective examination of the application should have the responsibility to determine the claim, distinct from any claim for asylum.

A central designated authority would reduce the risk of inconsistent decisions being taken at the local level and would also aid in the collection and dissemination of country-of-origin information for similar caseloads. Moreover, a designated authority would have better opportunity to develop its competence and expertise in statelessness matters. Those officials a stateless person might approach, such as border officials or immigration officers, should have clear instructions on handling such cases and on referrals to the designated authority. Liaison with other States normally does require co-operation with and through the Ministry of Foreign Affairs, and to some extent such co-operation must also be centralized with regard to agencies, such as UNHCR, which have expertise in this area. Harmonizing approaches both within and between States is, therefore, an essential component of fully implementing the 1954 Convention in EU Member States.

The determination of statelessness requires the collection and analysis of laws, regulations, and practice of other States. Even without a central authority, decision makers will benefit from a collaborative approach that systematizes the use of existing contacts and areas of expertise within the government structure and as between States.

D. Access to the Procedure and Due Process of Law

The 1954 Convention does not impose on States an absolute obligation to admit to their territory stateless persons who are not asylum seekers and who have no particular connection with the State. However, an evaluation of nationality status may nonetheless be a precursor to identifying solutions once a person is within a State's jurisdiction. If the individual is indeed stateless, and if there is no possibility of return to the country of former habitual residence or if there is no such country, then admittance to the territory and some type of legal stay may be the only solution. Indefinite detention would contravene human rights principles. *In any case, it should be noted that under the 1954 Convention, lack of legal admission is not a bar to determining whether an individual is stateless. Moreover, a finding of statelessness does not dictate the solution to be adopted.*

France, Belgium, and Italy do not bar an individual from requesting recognition as a stateless person although not formally admitted to the State's territory. In Spain, where a procedure framework has been set out, the implementing decree specifies a one-month time limit after entering Spain for lodging the application, unless the foreigner has legal stay. If lodged after a month of irregular stay in the country, or only after an expulsion order has been issued, then the claim is presumed to be unfounded.[54]

The Convention is silent as to whether legal stay shall be granted while the request for recognition as a stateless person is being assessed. The practice in States with a dedicated procedure varies. In Spain and Italy, for example, the applicant can receive a temporary residence permit while the claim is being examined,[55] while in France there is no right to temporary residence and the applicant could be removed before the application has been decided.

Similarly, in Belgium the Aliens' Office does not automatically grant a temporary residence permit to an individual while the Tribunal of First Instance or the Court of Appeal is examining the application. Yet, before the Tribunal decides on the case, the applicant cannot be expelled, thus leaving the applicant in the incongruous situation of illegally staying in Belgium without the possibility of removal. The Tribunals and Courts have on several occasions

issued an injunction to the authorities to grant a temporary residence permit to applicants in the determination procedure;[56] nevertheless, in practice only when a judicial decision is taken on an individual case will a permit be issued. The courts have examined the requests in the light of the subjective right to recognition of one's stateless status as well as with reference to Articles 3 and 6 of the European Convention on Human Rights and Fundamental Freedoms.[57]

If an application has been made, or if the authorities are trying to determine whether an individual is stateless, then it may be necessary to provide for temporary stay while the process is underway. In any event, the individual will in most cases remain factually present and may be left in a clandestine situation for a significant period if the procedure is lengthy.

The principle of due process requires that applicants be assured certain guarantees. Such guarantees should include the right to an individual examination of the claim with the participation of the applicant; the right to objective treatment of the case; limitations as to the length of the procedure; access by the claimant to information on the procedure in a language which is understood; access to legal advice; an interpreter; the right to confidentiality and data protection; delivery of a decision with the rationale; and the possibility to challenge the legality of that decision.

Countries in the EU have generally adopted mechanisms to ensure procedural guarantees connected to administrative procedures, including those involving questions related to the stay and status of aliens. In Spain, certain procedural rights are embodied in the implementing decree, including specific rights for minors and the right to an interpreter. General provisions are contained in the aliens' legislation and in the Law on Administrative Procedures. However, Spain's implementing decree sets out that statelessness status may be decided upon written submissions made by the applicant and does not give a right to an individual interview. Given that the applicant will be a key source of information, facts might best be collected through an individual interview with the applicant wherever possible.

In France, although without specific legislation to regulate its statelessness procedure, procedural rights are governed by the administrative law and the *principe du contradictoire* from which every person benefits. Applicants submit an application to the OFPRA, after which they are called for an individual interview.[58]

In some countries, there is no right to *pro bono* legal advice during the administrative procedure but only on appeal, and in certain instances conditioned on being indigent or having a claim that is likely to succeed. However, in Italy, when the recognition procedure is before the courts, the Italian Refugee Council and other Non-Governmental Organizations may, at times, provide some support. In Spain, the implementing legislation provides that recognized associations for the advice and aid of stateless persons may issue reports to the authorities in support of applications for stateless status.

Certain categories of applicants for stateless status, particularly unaccompanied children, may have special needs requiring distinct procedural provisions. Although few of the EU States have legislation which addresses the specific issue of unaccompanied *stateless* children,[59] most of these States have special procedural guarantees for unaccompanied children generally. These include the appointment of a guardian to represent or assist the unaccompanied child during an administrative procedure. Other States are in the process of amending their legislation in order to ensure that a guardian is made available to unaccompanied children, although in at least one EU Member State there is no particular protection for unaccompanied children *unless* they apply for asylum.

The right to an effective remedy is a key principle of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The right to an appeal or review mechanism is found in most of the Member States, although this can vary depending on the administrative law standards applicable. Regardless of whether the statelessness procedure is specifically defined, or is part of a procedure to acquire a residence permit or a travel document, a right of review is generally included. Nevertheless, in some jurisdictions where no procedure exists and, rather, a discretionary power is used to grant a stay of deportation or temporary or exceptional leave to remain to someone that is or could be stateless, there are no rights of review. Harmonization on this point would help to avoid different results from jurisdiction to jurisdiction.

VI. The Effect of Recognition

A. Admission and Legal Status

If a person is found to be stateless, the question of granting lawful admission will become relevant. This arises with regard to admission based on statelessness and the need for the person to acquire a legal status, rather than admission solely on the grounds of non-removability. The 1954 Convention actually provides for several legal categories because it is intended to address a variety of situations which might arise within a State as well as between States. Questions of implementation will arise with regard to: the situation of stateless persons lawfully admitted to the State; the situation of stateless persons lawfully admitted to another State Party and any ensuing implications arising between States Parties; and the situation of stateless persons who have not been granted lawful admission.[60]

In short, the 1954 Convention does not require a State, even when it finds a person to be stateless, to grant entry. The reference point for treatment of stateless persons generally is Article 7(1), which stipulates that except where the Convention explicitly contains more favourable treatment, "a Contracting State shall accord to stateless persons the same treatment as is accorded to aliens generally." This is the underlying base and, as is required of aliens generally, adherence to immigration laws is also required of stateless persons. This is reinforced in Article 6, which provides that requirements which a non-stateless person in the same circumstances would have to fulfill for the enjoyment of a right provided for in the Convention, a stateless person is equally expected to fulfill, with the exception of requirements which by their nature a stateless person cannot fulfill. While this article is not addressing the question of entry *per se*, it indicates that the drafters were holding stateless persons to standards expected of all persons insofar as this is possible.[61] Again, it should be noted that as there is no well-founded fear of persecution at issue, there is no equivalent in the 1954 Convention to Article 31 of the 1951 Refugee Convention.[62]

This approach is reinforced in the object and purpose of the Convention itself. The goal of the international community in drafting the 1954 and 1961 Statelessness Conventions was principally to ensure, under the 1961 Convention, that statelessness is avoided and the number of cases reduced. In instances where statelessness nonetheless occurred, the objective was to promote the recognition of the person as stateless under the 1954 Convention and access to basic rights and freedoms without discrimination. The acquisition of a legal status at the national level could serve as a platform for normalizing stay in a given country and for potentially acquiring nationality. However, this does not translate into an absolute entitlement to legal stay in any country. It should also be borne in mind that the 1954 Convention assumes the individual concerned does not have a well-founded fear of persecution, as any such cases would necessarily fall under the asylum regime and the 1951 Refugee Convention.

For those who are found to be stateless and are not excluded under Article 1(2), the starting point is Article 7(1), which establishes that treatment should be no less favourable than that granted to aliens, which would include basic notions of human rights which are not dependent on legal status in a given country (for example, prohibitions against torture). This is reinforced by Article 2, which provides that every stateless person "has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order." This would include conformity to the immigration laws and regulations of a country.[63]

This does not mean to say that a person should be automatically excluded because of unlawful presence, not least because what constitutes lawful or unlawful stay may be difficult to attribute to the individual him or herself. For example, a person may enter a country with a valid passport and required visa. If the country in which that person holds nationality arbitrarily strips that person of nationality while the individual is abroad, and the person is consequently unable to leave before the expiration of the visa, that person will be "unlawfully" in the country. Yet, the individual should not be held accountable for acts of the State of nationality particularly where they run counter to international legal norms.

In such a case, a State Party to the 1954 Convention can choose to review the case and determine whether the person is stateless, and then has several options. First amongst these might be to determine the appropriateness of trying to negotiate a reinstatement of the individual's nationality, particularly in cases where it has been arbitrarily removed.[64] The State Party can apply Article 7(1) and may decide against legalizing the stay of the person concerned. In this case, it would be appropriate for the Contracting State to provide the stateless person with a travel document so as to seek entry to another State. The State Party could also admit the person for either temporary or permanent stay.

Within the EU, those States with statelessness determination procedures defined by law foresee the possibility of granting residence. Those without such procedures nevertheless often find that there is no other alternative but to grant a form of stay. Leaving an individual indefinitely in an illegal position is not a viable option and if a removal order cannot be enforced because of the statelessness, there are few alternatives. Even when removal from the territory is feasible, if a State does not have a statelessness determination procedure which incorporates the exclusion clauses outlined in Article 1(2), then they will not necessarily have exhausted the options concerning any potential country of former residence which will readmit the individual or which would meet the requirements outlined in Article 1(2)(ii). In this sense as well, ensuring an effective procedure is in place promotes the use of a broader set of options for the State Party.

Particular guarantees would need to be confirmed before return to a State should be pursued. If nationality has been renounced or deprived leaving the person stateless, then automatic reacquisition would be the most appropriate solution. If the person had lawful residence which is still recognized, and has access to social and economic rights equivalent to that of a national or at a minimum equal to

those outlined in the 1954 Convention, then return may be possible. Certain persons may, nonetheless, have established significant links making return inappropriate on humanitarian grounds (for example, where they have been present for many years in the Contracting State and are highly integrated, or in case of family ties). When the return of a stateless person is included in a readmission agreement, guarantees should be sought such as reacquisition of nationality or permanent residence as appropriate.

A State having recognized an individual to be stateless may decide not to grant residence if another Contracting State has already made the same determination. If the latter State has granted permanent residence, then a right of return should exist. By issuing a Convention Travel Document (CTD), the Contracting State is required to entitle the bearer to re-enter during the period of its validity, unless a provision to the contrary has been recorded in the document.[65] Thus, while the CTD is valid, the right of return exists. Yet, possibilities could be explored for the readmittance of the stateless person even after expiry of the CTD. Such situations would require negotiations between States in order to ensure a possibility to return and the continuing entitlement to residence in the first State of recognition. This is a clear area where harmonization of approaches between EU Member States would be of assistance.

As earlier noted, the majority of countries in the EU do not anticipate an automatic right to residence based on recognition as a stateless person. Those countries with designated statelessness determination procedures do provide for residence based on recognition as a stateless person.[66] In the majority of other States, stateless persons tend to receive permission to stay on humanitarian grounds, often granted without a formal finding of statelessness.[67] This may be done when the stateless person is unable to leave the country for reasons beyond their control.[68]

In those countries having a dedicated procedure, including France, Italy, and Spain, recognition as a stateless person leads to residence. Spanish legislation grants permanent residence to stateless persons, while in Italy, the residence permit is granted for a period of two years.[69] In France, the aliens' legislation provides that those who obtain the status of stateless persons are granted a one-year *carte de séjour temporaire* conferring the right to work. The residence will be renewed if the stateless person continues to fulfill the conditions upon which the permit was originally granted.[70] After three years, the holder and family can receive residence permits for ten years, unless they constitute a threat to public order.[71]

In those countries not having specific procedures for identifying stateless persons, the approach varies. A common thread is that most countries in the EU have a mechanism to grant a form of stay, whether on humanitarian grounds or other, with reference to the aliens' and asylum frameworks. In one country, however, while the humanitarian basis exists, it is not often used in practice to grant residence to stateless persons, thus leaving them in a state of legal limbo.

Leave to remain on asylum or humanitarian grounds may be granted for either definite or indefinite periods. In situations where it is of a temporary nature, particularly if renewal is not automatic but left to the discretion of the issuing authority, the recognized stateless person is left in continued uncertainty until able to apply for permanent residence, which can range from three to five years depending on the country.[72]

The European Council recently reached agreement on the "Draft Directive concerning the status of third country nationals who are long-term residents,"[73] which sets five years as the period of legal and continuous residence following which Member States shall grant long-term residence status. This Directive will not apply to refugees or those who are authorized to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation, or the practice of Member States, or to those who have applied for authorization to reside on such basis. Of concern is the fact that in some Member States, the status received by stateless persons is considered a subsidiary form of protection, and would thus be outside the Directive, while in others it is not considered a subsidiary form of protection. Here is an area where harmonization of approaches to residence should relate to harmonization of approaches to the determination of statelessness, as the current situation will lead to varying results depending on the State in which a person is recognized.

Other States make the issuance of a residence permit conditional on the stateless person being unable to leave due to reasons beyond the individual's control. Voluntary renunciation of nationality or refusal to seek confirmation of a nationality would, therefore, exclude issuance of the permit.[74] Even where the individual is unable to leave, there may be a time period before the residence permit can be issued.[75] The decision in this regard may be left to the discretion of local authorities, leading to a variety of approaches depending on the region.

In some EU Member States, stateless persons have sought to regulate their stay through periodic regularization procedures concerning migrants.[76]

The grant of residence is of particular importance given that it is essentially through this that the stateless person will be able to access the full rights and benefits provided for in the 1954 Convention. In the European Union, rights

and benefits available to stateless persons are often attached to the type of residence permit that is granted. Those granted leave to remain on humanitarian grounds may receive rights equivalent to those of recognized refugees, depending on the legislative framework or State practice. In other States, economic and social rights may not be granted to persons permitted to stay on humanitarian grounds or temporary leave to remain. Family reunification rights may vary depending on the type of stay granted.

B. *Access to Rights and Benefits: Overview of Convention Provisions*

Many of the Convention provisions concern social and economic rights covered, within the EU, by national laws and relating also to European Union Directives, jurisprudence of the European Court of Justice, and other sources. Once a foreigner has residence in an EU Member State, social and economic rights are similar to those for nationals of the Member State concerned, although distinctions may be found. Certain rights may also be linked to the grant of permanent residence. It must be noted, however, that as there is no common EU approach to the determination of statelessness under Article 1 of the 1954 Convention, there is a consequent lack of harmonization of the remaining provisions of the 1954 Convention specifically with regard to recognized stateless persons.

For purposes of this study, a key objective was to analyze the tools and mechanisms in place to address issues of statelessness. Without the tool or mechanism in place to identify and recognize stateless persons *specifically with regard to their statelessness*, the remaining provisions of the Convention will be available to stateless persons only insofar as they are available to populations generally. The lack of such a framework is, in fact, a key finding of the study and the basis on which recommendations have been elaborated.

Nonetheless, an overview of the provisions of the Convention will shed light on which measures are needed to ensure both implementation of the instrument and harmonization of approaches as between States. This assessment has been made to facilitate development of such frameworks.

In instances where lawful stay is granted, a Contracting State will need to ensure that the recognized stateless person has access to rights, at a minimum, on par with those outlined in the Convention.[77] There are also obligations for the individual. Article 2 of the Convention stipulates that a stateless person has "duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order." As such, the Convention is stipulating that a stateless person will, in addition to any rights provided by the State, have duties and obligations toward the State based on the legal framework. Moreover, further to Article 6, certain entitlements specify that a stateless person must fulfill any requirements which other persons in similar circumstances, including aliens generally, would be required to fulfill unless they are requirements which a stateless person by definition cannot fulfill.

There are certain fundamental human rights that apply to all persons regardless of their status or type of stay in a particular jurisdiction. These rights must be respected and protected by the State in whose territory an individual is present. The principle of non-discrimination is one of these rights and guides the implementation of the provisions of the 1954 Convention. This principle has developed extensively since the drafting of the 1954 Convention, and thus its application would extend beyond the factors of race, religion, and country of origin specifically enumerated in Article 3.

Notably, the International Covenant on Civil and Political Rights (ICCPR)[78] provides in Article 26 that all persons are equal before the law and are entitled without any discrimination to equal protection of the law. The law of the States Parties shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The ICCPR provides for protection against arbitrary detention and torture, and the right to recognition everywhere as a person before the law.

Other international and regional human rights instruments also reinforce the principle of non-discrimination, which forms part of the legal system of all EU Member States. In Europe, the human rights of stateless persons are also protected by the ECHR.[79] In this context, standards of treatment of stateless persons or those seeking this status should, *inter alia*, be consistent with provisions relating to the prohibition of inhumane or degrading treatment and the principle of non-discrimination.

Article 4 of the 1954 Convention provides for the right to freedom of religion.[80] This right is widely respected by the constitutions and legal systems of the Member States of the EU. The 1954 Convention requires the Contracting Party to accord stateless persons rights as favourable as those accorded to nationals with respect to freedom to practice their religion and freedom regarding the religious education of their children.

The fact is that once a person has acquired lawful status in one of the EU Member States, most of the provisions concerning economic and social rights will fall into place

although, as noted earlier, this will depend to some extent on the type of stay granted. Article 7(1) of the Convention outlines the general rule that the Contracting States shall accord to stateless persons the same treatment as is accorded to "aliens generally" unless the Convention contains more favourable provisions. According to Robinson:

> The reason is that the term 'aliens generally' contains in itself all restrictions which could result from either of the aforementioned requirements. If an 'alien generally' is accorded certain rights without the requirement of residence (permanent or temporary) in the country concerned, a stateless person will enjoy these same rights; if, to be accorded a right, the 'alien generally' must fulfil certain requirements which are contained in the expression 'in the same circumstances', a stateless person not fulfilling them cannot enjoy them under the treatment accorded by paragraph 1 because he is not supposed to be treated more favourably than the hypothetical 'alien generally'. The same must be true of 'illegal' stateless persons: if an alien illegally in a country enjoys certain rights, the same rights must be accorded to a stateless person.[81]

Thus, the general framework outlined by Article 7 is that stateless persons should have access to rights and benefits at a minimum equal to those guaranteed to aliens generally.

Under Article 7(2), a recognized stateless person will be exempt from legislative reciprocity after residing three years in the territory of a Contracting State. States often accord certain rights to aliens based on how their own nationals are treated in the State in which the alien is a national, hence the notion of reciprocity. A stateless person, having no country of nationality, cannot benefit from broader rights granted to certain aliens unless an exemption to this rule is made. This provision was not meant to apply to rights conferred on particular nationals by way of treaties between States; therefore the drafters included the word "legislative." Article 7(3) requires States not to impair existing rights already accorded on the basis of reciprocity only, while Article 7(4) requires States to consider favourably the possibility of granting even broader rights.

Article 8 provides that if the Contracting State invokes exceptional measures against the person, property, or interests of nationals or former nationals of a foreign State, such measures should not be applied to a stateless person solely because of prior possession of the nationality concerned. Article 9 outlines that nothing in the Convention shall prevent a Contracting State from taking provisionally measures which are considered necessary in time of war, for example, in the interests of national security. Article 10 addresses cases of displacement of stateless persons in the context of the Second World War, while Article 11 encourages Contracting States to give sympathetic consideration to the plight of stateless seamen serving as crew members on ships flying the flag of the State concerned. Articles 7 to 11, therefore, provide a general outline to Contracting States of how to approach specific issues which might arise in relation to stateless persons under their jurisdiction.

Article 12 addresses the personal status of stateless persons, that is, the legal system which is relevant for purposes of their civil status and previously acquired rights. This is particularly important for stateless persons, as matters concerning personal status are often determined by the law of the country of nationality. Uncertainty in matters of personal status severely affects not only the stateless person, but also others who may wish to enter into a legal relationship with the individual, including marriage. Article 12(1) provides that the law of the country of domicile will take precedence and, absent a country of domicile, the country of residence. Article 12(2) requires that previously acquired rights (such as marriage) shall be respected by the Contracting State, provided that the right in question is one which would be recognized by the Contracting State had the individual not become stateless. An example would be the prohibition against polygamous marriages in Europe.

Article 13, concerning movable and immovable property, provides that stateless persons should receive treatment as favourable as possible and no less favourable than that accorded to aliens generally in the same circumstances. National legislation pertaining to aliens does not normally place conditions on the acquisition of movable property. However, national legislation might regulate acquisition or leasing by foreigners of immovable property. Since the minimum standard against which the right of the stateless person should be measured is that which is applied to aliens generally, the implementation of this article should not be at issue in the EU Member States. Efforts may, however, be needed to harmonize a more consistent approach to the issue at the Community level with particular regard to the situation of stateless persons.

A need to harmonize approaches arises with regard to Article 14 concerning artistic rights and industrial property, in particular because the rights accorded to a recognized stateless person with habitual residence in a Contracting State must, under this Article, be equivalent to those accorded to nationals. While in the territory of any other Contracting State, the recognized stateless person shall be accorded the same protection as is accorded in that territory to nationals of the country in which the person has habitual residence.

This means that a stateless person recognized and habitually resident in Spain, for example, would be entitled to treatment equal to that extended to Spanish nationals while

in Spain, and equal to that of Spanish nationals while in the territory of France, Sweden, or any other Contracting State. Certainly the regulation of artistic rights, industrial property, and intellectual property represents a legal sphere of its own with highly sophisticated systems in place. At a very general level, Article 27(2) of the Universal Declaration of Human Rights provides: "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he is the author."[82] In implementing the 1954 Convention and particularly with a view to harmonization of approaches, EU Member States may need to pay particular regard to this provision.

Under Article 15 concerning the right of association as regards non-political and non-profit-making associations and trade unions, a Contracting State shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, at a minimum, the treatment granted to other aliens. Human rights instruments accord to all persons the right of association.[83] The right of association is generally provided for in the Constitutions of EU Member States.

Another fundamental principle found in the legal systems of the Member States of the EU is that any person within a State's jurisdiction will have unimpeded access to courts of law in order to enforce their legal rights.[84] Constitutions of EU Member States generally protect this right, in line with Article 16(1) providing that a stateless person shall have free access to the Courts of Law on the territory of all Contracting States. As regards *Articles* 16(2) and (3) concerning access to the Courts and including legal assistance, a stateless person should be treated on par with nationals in the place of habitual residence when in the State of residence as well as when in another Contracting State. As noted above, this will have particular implications within and between EU Member States and will require harmonization of approaches to ensure the implementation of the Convention.

Article 17 concerning wage-earning employment provides that stateless persons lawfully staying in a Contracting State's territory be granted treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances. The phrase "wage-earning employment" is meant to include any paid employment and should be understood in its widest sense.[85]

State Parties are also requested to give sympathetic consideration to assimilating the rights of stateless persons to those of nationals with regard to wage-earning employment.

Article 18, concerning the right to engage in self-employment, stipulates that a Contracting State shall accord to a stateless person lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances. Activities possibly falling into the category of self-employment include agriculture, handicrafts, and commerce and establishment of commercial and industrial companies. In the European Union, the right to work is normally guaranteed to aliens holding some form of legal residence. In France, even though only temporary residence is given to a stateless person upon recognition, the right to work is still accorded.

Under Article 19, a Contracting State shall accord to stateless persons lawfully staying in their territory who hold diplomas recognized by the competent authorities of the State treatment as favourable as possible and not less favourable than that accorded to aliens generally in the same circumstances. National authorities determine liberal professions, although these typically could include medicine, law, and engineering. Such mechanisms are generally provided for in national legislation of EU Member States as applicable to foreigners, and are regulated within the EU. Section 37(1) of Italy's LD 286/1998, for example, provides that lawfully resident foreigners who hold qualifications legally recognized in Italy which entitle them to exercise a profession are entitled to register with the professional Rolls or Councils, an exception to the general provisions requiring Italian nationality.

While approaches are largely harmonized within the EU as concerns recognition of diplomas and practicing professions for nationals of EU Member States, no such system exists with regard to stateless persons *specifically* who have been recognized by a Member State, meaning such persons fall into the system in place for aliens overall. In instances where the Convention suggests treatment "as favourable as possible" because the person is stateless, there will often be no way of actually identifying the individual for more favourable treatment, and no legal reference point for extending such treatment if the stateless person is identified from amidst aliens generally. This area would require further development for full implementation of Article 19.

Article 20 provides that where a rationing system exists which applies to the population at large and regulates the general distribution of products in short supply, stateless persons shall be accorded the same treatment as nationals. Article 20 is not applicable to the allocation to specific groups, such as indigent persons, large families, or those on social welfare, of products which are in supply and provided at more favourable conditions or prices. Article 7(1) would apply in such circumstances, which requires the Contracting State to accord to stateless persons the same treatment as accorded to aliens generally.

Article 21 provides that in countries where housing is regulated by law or is subject to the control of the public authorities, stateless persons should at a minimum be accorded the same treatment as aliens generally in the same circumstances, although more favourable treatment is recommended. This article deals with rent control and assignment of premises and must be observed by all public authorities.[86] Laws applicable to foreigners generally regulate this issue within individual EU Member States.[87]

Concerning Article 22 and the right to primary education, this is a recognized human right[88] and one that is integrated into the legal systems of all Member States of the EU. The 1954 Convention requires that State Parties shall treat stateless persons the same as nationals with respect to elementary education. Beyond the level of primary education, the Convention requires that stateless persons are treated as favourably as possible, and not less favourably than aliens generally in the same circumstances. Legal stay of the stateless person is not at issue with regard to primary education, while if aliens generally are required to be legally resident in order to access secondary or other education, then the same requirement could be applied as a minimum standard to stateless persons. In principle, all EU Member States implement the standards required in the Convention on the Rights of the Child and have made secondary education compulsory for all children regardless of the reasons for their stay.[89]

Article 23 is concerned with public relief. Although the meaning of "public relief" is to be defined by national legislation, it should encompass notions of social and medical assistance, including hospitalization, emergency treatment, and social security benefits. The Contracting Party is required to accord the same treatment to stateless persons lawfully staying on their territory as is accorded to their nationals with respect to public relief and assistance.

Germany has made a reservation to this Article, and only stateless refugees will receive the same treatment as nationals. For other stateless persons, public relief is provided to the extent provided for in national legislation concerning aliens. According to German legislation, however, there are only slight differences between the extent of public relief provided to nationals and refugees as compared to aliens. Stateless persons do obtain a number of social rights and may benefit from social aid and medical services. The amount of social aid may be reduced or allocated in kind, however, and after three years social aid will be equivalent to that received by nationals. Certain specific provisions are reserved for nationals, such as allowances for children and certain grants for study purposes. Once the stateless person has obtained permanent residence, they will receive public relief rights equivalent to that of nationals.[90]

In Italy,

> Foreigners holding a permanent residence card or residence permit with a duration of not less than one year, together with minors entered on their permanent residence card or residence permit, shall be treated on a par with Italian nationals for the purpose of benefiting from social welfare services, such as financial assistance, including that provided for persons suffering from Hansen's disease or tuberculosis, the deaf and mute, blind and disabled civilians and the destitute.[91]

Under Article 24, Contracting States are required to accord to stateless persons lawfully staying in their territories treatment equal to that of nationals in the field of labour rights and social security. This includes all rights associated with labour and employment, such as remuneration, conditions of work, employment benefits, social security schemes, pension schemes, disability and unemployment rights, as well as rights of beneficiaries residing outside the Contracting State to collect on compensation in event of the death of the stateless person. According to Weis, "The principle of equality of treatment between nationals and aliens as regards labour law can be regarded as universally adopted. The same principle as regards social security is becoming more and more widely spread."[92]

Again, the legal framework concerning labour laws and social security is highly advanced within the European Union Member States. Nonetheless, special regard should be paid to Article 24(3), which provides that Contracting States shall extend to stateless persons the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, *subject only to the conditions which apply to nationals of the States signatory to the agreements in question.* In order to implement this provision, it would be necessary that all Contracting States within the EU are able to identify stateless persons *and* have a mechanism in place to identify stateless persons recognized by other Member States, so as to be able to extend to them the benefits of such agreements.

Article 25 provides that administrative assistance be rendered by the Contracting State in which the stateless person has residence in cases where the individual would normally require the assistance of authorities of a foreign country if recourse cannot be made to authorities abroad. Stateless persons may not in all circumstances be impeded from approaching their countries of origin or former habitual residence; however, the authorities of another country may require that the request pass through official channels, and the country of the stateless person's residence should have a designated authority for these purposes. In certain situ-

ations, it may be unreasonable to expect that a stateless person can receive administrative assistance from the authorities of their country of former nationality or residence, at which point the administrative services of the country of residence will be critical for providing documents or certifications which would normally be delivered by national authorities.

In terms of administrative assistance, Spain, France, and Belgium have, for example, designated particular bodies responsible for providing the administrative assistance envisaged in Article 25 of the Convention.[93]

Article 26 provides that stateless persons lawfully in the State's territory have the right to choose their place of residence and to move freely within the territory, subject to any regulations applicable to aliens generally in the same circumstances. Human rights principles generally are also relevant to freedom of movement and choice of residence, including Article 13 of the UDHR, Article 12(1) of the ICCPR and Article 2 of Protocol No. 4 of the ECHR.

The entitlement to an identity card under Article 27 is a key aspect of the 1954 Convention. Under Article 27, any recognized stateless person who is physically present in the territory of the Contracting State should receive identity papers if they do not possess a valid travel document. This is a mandatory requirement; however, not all Member States of the EU are implementing this provision and the practice varies greatly. Certainly if there is no procedure in place specifically designed to identify cases of statelessness, there will be instances in which stateless persons remain undocumented.

One State has made a reservation to this Article.[94] In Belgium, recognized stateless persons receive an attestation certifying that they have been granted such status. In others States, such as Spain, an identity document is given entitling the bearer to permanent residence, while in France, the residence authorization (*carte de séjour*) acts as the identity card.

If a residence authorization is granted, then most legal systems in EU Member States provide for the issuance of aliens' identification to those with lawful residence. In Ireland, for example, persons who are granted temporary leave to remain receive an alien identification card, known as a green card, which is distinguished according to the status of the bearer.[95] Overall, this is an area which would greatly benefit from efforts to harmonize approaches, both to ensure that stateless persons have some evidence of their identity regardless of residence or lawful stay, and to ensure that as between EU Member States, documents issued under Article 27 will be recognized.

Article 28 of the 1954 Convention requires Contracting States to issue travel documents to recognized stateless persons lawfully residing on the territory of the State. This document, according to paragraph 5 of the Schedule, should have a validity of not less than three months and not more than two years. Issuance of a Convention Travel Document (CTD) obliges the Contracting State to readmit the stateless person during the validity of the document.[96]

In the EU Member States, the practice varies as to whether a recognized stateless person receives a 1954 CTD or an alien's passport. In certain States, the aliens' legislation provides for the issuance of a 1954 Convention or alien's travel document to stateless persons.[97] Other States directly implement Article 28 of the 1954 Convention, with the relevant authority issuing a CTD.[98]

In Germany, for example, CTDs are regularly issued in accordance with Article 28 of the Convention. Section 14(2) Nr.2 of the Decree implementing the Aliens' Act provides for their acceptance.[99] Several German court decisions have clarified that the term "lawfully staying" requires a residence permit. A toleration permit is not sufficient.[100]

Other States in the European Union generally issue travel documents to foreigners who may be stateless and who have lawful residence on their territories. Thus, in some cases, it appears that an alien's passport is given when there is no exact procedure to recognize statelessness but the individual has been granted residence on humanitarian grounds.[101]

As stated above, the Convention sets out guidelines for the validity of travel documents which are not less than three months and not more than two years. The validity of travel documents could be set for a longer period, and this is done in certain EU states.[102] Article 5 of the Convention provides for rights beyond those outlined, and as the Convention aims to grant stateless persons as many rights as possible, a Contracting State is free to issue a travel document with a validity of more than two years. Notably, however, there is no harmonization amongst EU Member States on this point, and little information concerning the recognition of the various types of travel documents which might be issued to stateless persons by Member States.

The second part of Article 28 invites the Contracting States to issue travel documents to stateless persons who are present in their territory, even if without lawful residence. In particular, States are asked to give "sympathetic consideration" to issuing CTDs to stateless persons who are in their territory and who are unable to obtain a travel document from their country of lawful residence. Given that many stateless persons may not have a country of lawful residence, this provision is of particular importance, as a Contracting State can grant the individual a travel document which will facilitate both identification of the person

and the possibility of seeking entry to an appropriate State. The CTD is, therefore, a precursor to onward movement in certain instances.

According to paragraph 15 of the Schedule, the issuance of the CTD does not determine or affect the status of the holder, particularly as regards nationality. Moreover, as per paragraph 16, the CTD does not in any way entitle the holder to the diplomatic or consular protection of the country of issue, and does not *ipso facto* confer on these authorities the right of protection in this regard.

Under Article 29(1), stateless persons should not be subject to duties, charges, or taxes of any kind that are other or *higher than those imposed on nationals of the Contracting State. Nonetheless, Article 29(2)* allows the Contracting State to apply to stateless persons the same laws and regulations concerning charges with regard to issuance to aliens of administrative documents including identity papers.

Article 30(1) outlines an obligation for Contracting States to permit a stateless person to transfer assets brought to the territory to another country where the individual has been admitted for resettlement. In this context, resettlement should be understood as immigration or entry to a territory for permanent stay. The transfer should take place in conformity with laws and regulations. Such laws and regulations should not impede the actual transfer, but rather *regulate* how it takes place.[103]

Article 30(2) requests that the Contracting State give "sympathetic consideration" to the transfer of assets in any location, including another country. The phrase "sympathetic consideration" connotes a discretionary election, but with an obligation to address such requests and not to refuse them without good reason.[104]

Article 31 concerns protection from expulsion of a stateless person lawfully in the territory of a Contracting State unless there are national security or public order grounds and the decision has been reached in accordance with due process of law. "Lawfully in the territory" includes persons who may be present temporarily without the intention of permanent stay.[105] Due process of law requires that procedural guarantees be in place to permit the stateless person to answer to and submit evidence concerning any accusation, to be represented by legal counsel, and to be granted the right of appeal. The term "public order" should not permit the expulsion of stateless persons on social grounds, such as indigence, illness, or disability.[106] If expulsion does take place, according to Article 31(3), the Contracting Party should not act immediately after a final decision has been reached, but must allow sufficient time for the stateless person to seek legal admission to another country.

Even if not lawfully in the territory, the protection from *non-refoulement* is relevant under customary international law. The Final Act of the 1954 Convention stipulates that the drafters did not find it necessary to include a direct reference to the principle of *non-refoulement,* as they believed the principle is generally accepted. The principle of *non-refoulement* is relevant to human rights instruments such as the Convention against Torture and the European Convention for the Protection of Human Rights and Fundamental Freedoms. The principle of *non-refoulement* is incorporated into the legislation of all EU Member States.

Harmonization of Article 31 in EU Member States will, as is the case with other provisions, depend on the approach adopted, if any, to stateless persons generally. Spain, for example, has elaborated in its implementing decree that expulsion of a recognized stateless person must be under the terms foreseen in Article 31 of the 1954 Convention and in accordance with procedures established by the general aliens' legislation. Italy has incorporated the Convention into Italian Law; thus its provisions are directly applicable.[107] States, in general, take the view that expulsion of aliens will take place if a threat to national security or public order has been established, provided there is no risk of *refoulement*. In some countries, only those aliens who have been granted permanent residence are protected against expulsion. Thus, in States where temporary stay is granted but not automatically renewed, a stateless person could be in jeopardy of expulsion if the temporary stay is not prolonged.

Article 32 concerns the facilitation, as far as is possible, of the assimilation and naturalization of stateless persons.[108] Facilitated access to nationality for recognized stateless persons will be determined by each State and is subject to the relevant laws of the State concerned, including residence. Such facilitation could include expediting of naturalization proceedings and a reduction of fees. EU Member States have taken different approaches in this regard, in some cases reducing the number of years of required residence for stateless persons as compared to other foreigners.[109] Some States reduce or waive naturalization fees for stateless persons. In Ireland, the designated Minister has the discretion to waive normal naturalization conditions in the case of stateless persons.[110]

The Convention also requests States to facilitate as far as possible the "assimilation" of stateless persons. This term refers to the integration of stateless persons into the economic, social, and cultural life of the country.[111] Member States of the European Union generally provide for integration programs for *legally resident* foreigners.[112]

C. Family Reunification

The right to family reunification is not specifically covered by the 1954 Convention. Nevertheless, the right to family

unity is a principle that is enshrined in the ECHR and other human rights instruments. In the context of the European Union, the right to family reunification of foreigners is regulated by the aliens' legislation, including in regulations concerning specific groups such as refugees. Under the aliens' legislation, the right to family reunification is most often linked to the type of stay, typically permanent residence, unless the person has been granted refugee status. For aliens in general, conditions are very often placed on the applicant, such as a minimum period of stay, sufficient living space, employment, and the financial means to sustain family members.

With regard to stateless persons, family reunification tends to follow this pattern. In Spain, for example, the specific legislation governing the procedure and the rights to which a stateless person is entitled grants the right of family reunification with those family members stipulated in the Aliens' Law. It would appear that stateless persons in Spain are exempt from other preconditions applied to resident foreigners.[113] In France, the entitlement of a *carte de séjour* qualifies a recognized stateless person to family reunification under the same conditions as other foreigners, including sufficient space and regular employment. In Italy, recognized stateless persons are treated as other legally resident foreigners. Family reunification is permitted for foreigners holding a permanent residence card or residence permit with duration of not less than one year, issued for employment, self-employment, asylum, and educational or religious reasons. Foreigners applying for family reunification must demonstrate the availability of sufficient accommodation and income.[114]

In Germany, if the stateless person has legal residence he or she may apply for family reunification if not receiving social welfare and sufficient living space is available. Family reunification for those with temporary residence is up to the discretion of the aliens' authorities and will not be granted if the family can be reunited elsewhere, in particular in cases where reunification can take place in a country where the spouse has legal residence. For those with permanent residence, there is an entitlement to family reunification provided the housing and employment conditions are met. In Greece, aliens must legally reside in the country for two years before being permitted to request family reunification. In order to qualify, the applicant must have income to support family members, suitable shelter, and health care insurance.

When leave to remain on humanitarian grounds is granted, rights are normally commensurate with those of refugees, including that of family reunification. In Ireland, where temporary leave to remain can be granted to a stateless person, their situation is largely assimilated to that of refugees (for example, with regard to family reunification entitlements, right to work, social welfare, and so on). In the United Kingdom, the nature of the right to family reunification will depend on whether the person is granted refugee status, humanitarian status, or a discretionary right to remain.

Article 33 requests Contracting States to communicate to the Secretary-General of the United Nations the laws and regulation which they may adopt to ensure the application of the Convention. It would appear that no State Party from the EU Member States has undertaken this step, although notably it would be useful information for furthering the full implementation of the instrument and for sharing best practices within the UN system. Article 34 provides that any dispute between Contracting States which cannot be settled by other means shall be referred to the International Court of Justice. To date there has been no such referral. If States can co-operate in recognizing and harmonizing procedures adopted under this instrument the potential for any need to resort to the International Court of Justice will be greatly reduced.

Contracting Parties to the 1954 Convention should in principle accept the recognition of statelessness made by another Contracting Party. Nonetheless, paragraph 9 of the Schedule indicates that even in cases of individuals who have been recognized as stateless by another State and who are in transit to the territory of final destination, visas for transit can be refused by a State party "on grounds which would justify refusal of a visa to any alien."[115]

VII. Conclusion

Awareness of the problem of statelessness has become more global. While in some instances statelessness and refugee problems overlap, in others statelessness is unrelated to refugee situations and requires a qualitatively different response and expertise. An international legal framework tailored to the problem of statelessness is available in the context of the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. These instruments provide the essential elements needed to identify cases of statelessness and to promote solutions.

One of the primary aims in detaching the Protocol relating to the Status of Stateless Persons from the 1951 Refugee Convention, and making it the independent 1954 Convention, was to ensure that statelessness in all its aspects was dealt with in its own right as a problem requiring unique and independent solutions. The 1954 and 1961 Conventions were intended to set in motion the consistent and methodical identification of problems of statelessness and to provide the tools for the eventual elimination of cases of

statelessness. Ironically, a decrease in the level of attention given to the problem of statelessness actually followed the drafting of these instruments, with periodic reactions in relation to severe and sweeping changes such as the dissolution of States in the last decade. The operational activities requested of UNHCR by the UN General Assembly in 1995 represent both recognition by the international community that the problem of statelessness is not a periodic one and an effort to ensure these instruments, and the solutions they provide, are increasingly promoted and effectively used in addressing statelessness.

The importance of an international framework for the protection of stateless persons and, therefore, of the Statelessness Conventions is clear: they define statelessness, they provide mechanisms for identifying statelessness, they outline appropriate solutions, and they advocate specific national approaches only insofar as is necessary to achieve the reduction of statelessness and to provide a legal status for stateless persons. The 1954 Convention relating to the Status of Stateless Persons is an important tool for States in addressing the issue of statelessness. In practice, and so as to ensure full implementation of this instrument, States need to adopt mechanisms for identifying statelessness and for ensuring stateless persons are provided a legal status in an appropriate country.

Within the European Union, there is generally a common understanding of the legal definition of statelessness, although the approaches adopted to identify and to address individual cases vary from one country to the next. This study has broadly identified mechanisms States have in place to implement the 1954 Convention. Areas where there may be gaps in full implementation of the Convention have been highlighted, with specific mention made of those areas recommended for harmonization of approaches between EU Member States. UNHCR supports the efforts underway to identify any gaps in this regard, and will continue to strengthen co-operation with States and the European Commission toward full and effective implementation of the 1954 Convention relating to the Status of Stateless Persons.

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Notes

1. The word "nationality" is used throughout this paper as a synonym for the term "citizenship." "Nationality" refers to a legal bond between a person and a State.
2. See *Revista de Documentaciòn del Ministerio del Interior,* Scope and Content of the International Protection, Madrid, 8–9 January 2002, Ministerio del Interior, N. Especial – Diciembre 2002.
3. *Convention relating to the Status of Stateless Persons*, 1954, 360 U.N.T.S., No. 5158, 117. EU Member States which are party to the 1954 Convention include the United Kingdom, Germany, Spain, France, Belgium, the Netherlands, Luxembourg, Italy, Greece, Ireland, Sweden, Finland, and Denmark. Austria and Portugal are not States Parties to the 1954 Convention.
4. This paper has been prepared by C. Batchelor, Senior Legal Officer Statelessness, Department of International Protection, with temporary research and drafting assistance from B. Goddard, Legal Officer.
5. *A Study of Statelessness* (New York: United Nations, August 1949) E/1112; E1112/Add.1.
6. N. Robinson, *Convention relating to the Status of Stateless Persons: Its History and Interpretation* (Institute of Jewish Affairs, 1955; reprinted by the Division of International Protection of the United Nations High Commissioner for Refugees, 1997) [Robinson Commentary], 1–2.
7. *Convention relating to the Status of Refugees*, 28 July 1951, 189 U.N.T.S. 2545, 137.
8. *Ibid*.; see also Robinson Commentary, *supra* note 6.
9. See C. Batchelor, "Stateless Persons: Some Gaps in International Protection" (1995) 7:2 IJRL 232, for an analysis of how the 1954 and 1961 Statelessness Conventions were adopted and following implications for approaching the problem of statelessness at the international level.
10. "[I]f one and the same person qualifies as a 'refugee' (under the terms of the Refugee Convention) and as a 'stateless person' (in accordance with [the 1954] Convention) the state must apply … the more favourable provisions of the Refugee Convention." (Robinson Commentary, *supra* note 6 at 8).
11. *Information and Accession Package: The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness* (UNHCR, Division of International Protection, January 1999).
12. *Universal Declaration of Human Rights*, UNGA Res. 217 A(111) (10 December 1948).
13. *Convention on the Reduction of Statelessness*, 1961, 360 U.N.T.S. 5158, at 117, and 989 U.N.T.S. 14458 at 175.
14. Toward this end, it is noteworthy that only eight of the fifteen EU Member States are parties to the 1961 Convention on the Reduction of Statelessness. The 1997 European Convention on Nationality (Eur. T.S. 1977 No. 166) is also relevant for some States in Europe, and the instrument contains provisions designed to promote the avoidance and reduction of statelessness. Only five of the current fifteen EU Member States are party to this instrument.

15. UNHCR has recently conducted a global survey of States on steps they have taken to avoid and reduce statelessness and to provide protection to stateless persons. See the *Preliminary Report concerning the Questionnaire on Statelessness Pursuant to the Agenda for Protection* (UNHCR, Department of International Protection, September 2003).
16. Executive Committee of the High Commissioner's Programme [ExCom], Conclusion No.78 (XLVI), 'Conclusion on the Prevention and Reduction of Statelessness and the Protection of Stateless Persons', 1995, endorsed by UNGA Res. 50/152 (9 February 1996). See also ExCom Conclusion No. 90 (LII) of 5 October 2001, which encouraged states "to cooperate with UNHCR in identifying measures to reduce statelessness and in devising appropriate solutions for stateless persons who are refugees, as well as for stateless persons who are not."
17. UNGA Res. 3274 (XXIX) (10 December 1974) See also UN Doc. A/CONF.9/15, 1961.
18. UNGA Res. 31/36 (30 November 1976).
19. *Ibid.*; see also ExCom Conclusion No. 78, *supra* note 16.
20. *Ibid.*; also, *Information and Accession Package*, *supra* note 11 at 5.
21. Article 1 of the 1954 Convention defines a stateless person as "a person who is not considered as a national by any State under the operation of its law."
22. UNHCR can provide technical and advisory services to States in review of the status of persons. In some States, UNHCR has observer status in the statelessness status determination procedure.
23. The 1961 Convention does not contain a definition of a stateless person and it is generally recognized that the 1954 Convention definition is applicable. The explanatory notes to the 1997 European Convention on Nationality state that: "As regards the definition of statelessness, reference is made to Article 1 of the 1954 Convention relating to the Status of Stateless Persons." See Council of Europe, Eur. T.S. 1977 No. 166.
24. In 1948, the Economic and Social Council of the United Nations requested a study "of the existing situation with regard to the protection of stateless persons." The study was to make recommendations "...on the interim measures which might be taken by the United Nations [and] as to the desirability of concluding a further convention on this subject." See P. Weis, "The Convention relating to the Status of Stateless Persons" (April 1961) 10 ICLQ 255–64. In the report prepared by the Secretary General of the United Nations, it was proposed, *inter alia*, that an international convention concerning the legal status of stateless persons, whether *de jure* or *de facto*, be concluded (*ibid.* at 256). During the 1954 Conference of Plenipotentiaries, however, it was decided that the Convention should apply to *de jure* stateless persons only. A non-binding recommendation was included in the Final Act concerning *de facto* stateless persons, or those who technically have a nationality although it is not effective [see Robinson Commentary, *supra* note 6 at 11]. If the Contracting State recognizes as valid the reasons for which a person has renounced the protection of the State of which he or she is a national, the recommendation is to consider sympathetically the possibility of according to that person the benefits of the Convention. The drafters were working under the assumption that cases of *de facto* stateless persons who were not refugees would be unlikely to arise.
25. In practice, UNHCR has found that the problem of *de facto* statelessness is broader and more frequent than the drafters of the 1954 Convention had anticipated, and may include persons who have no claim to asylum, but who nonetheless are without an effective nationality or whose nationality cannot be definitively established. See C.A. Batchelor, "Statelessness and the Problem of Resolving Nationality Status" (1998) 10:1/2 IJRL 156.
26. See Article 1 of the *Convention on Certain Questions relating to the Conflict of Nationality Laws*, 179 L.N.T.S. 89, 99.
27. P. Weis, "The United Nations Convention on the Reduction of Statelessness, 1961" (October 1962) 11 ICLQ 1073–1096 at 1074.
28. Statement by the President of the Conference, Robinson Commentary, *supra* note 6 at 16.
29. C.A. Batchelor, *supra* note 25 at 174.
30. *Ibid.* at 171:

    > [T]he fact that an individual *does* fit the category of persons who, with reference to the law, is normally granted nationality does not mean that *that* particular person was granted such status, as there may always be exceptions to the legislation, variances between the written word and the implementation of the law, or inadvertent actions on the part of either the individual or the State which result in a failure to acquire nationality. Thus, consultations with the State concerned are imperative for verification of nationality status."

31. Robinson (Robinson Commentary, *supra* note 6 at 11), who observes that it is the lack of nationality which must be provable and proven.
32. A statement by the British representative to the Conference; see Robinson Commentary, *supra* note 6 at 16.
33. *Ibid*. at 16–17.
34. *Ibid*. at 17.
35. Due regard for principles of data protection is in all cases relevant.
36. UNRWA's working definition of a "Palestinian refugee" has been refined since the early 1950s to read: "[Palestinian refugee] shall mean any person whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who lost both home and means of livelihood as a result of the 1948 conflict." Since 1967, UNRWA has also been authorized to assist certain other persons in addition to Palestinian refugees; see UNHCR, "Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees." See also L. Takkenberg, *The Status of Palestinian Refugees in International Law*, (Oxford: Clarendon Press, 1998) at 77–83.
37. BverwG, 1C 18.90 of 21.1.1992, InfAuslR 92,161.

38. Having the rights and obligations which are attached to the possession of the nationality of a country without actually having the nationality is, to some extent, an irreconcilable concept. By definition, if one does not have the same rights, including civil and political rights, as those accorded to nationals, and cannot be obliged to perform civil service such as in the military, then the rights and obligations will not be the same as those "attached to the possession of the nationality of a country." However, reading the article in the context of the 1954 Convention suggests the interpretation outlined above, that provided a person is accorded basic rights normally reserved to nationals, and that these rights exceed those outlined in the 1954 Convention, then it would not be necessary in principle to apply the Convention in such cases. As an aside, the phrase should not be confused with differences in treatment *as between nationals*. In the latter case, while some nationals may have more rights than others, all of the persons concerned are still nationals. As such, these differences are technically not relevant to the 1954 Convention which is concerned only with cases of statelessness (although they may be of concern with regard to *de facto* statelessness). See P. Weis, "Statelessness as a Legal-Political Problem" in *The Problem of Statelessness* (British Section of the World Jewish Congress, July 1944), and C. Batchelor, *supra* note 25 at 159, footnote 5.
39. *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 1950, Eur. T.S. No.5.
40. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984, U.N.T.S.
41. *Real Decreto Nº 865/2001, de 20 de julio, por el que se aprueba el Reglamento de Reconocimiento del Estatuto de Apátrida* [Royal Decree 865/2001 of 20 July approving the Regulation for the Recognition of the Status of Stateless Persons].
42. Bilateral agreements relating to social security matters concluded by Austria refer to the 1954 Convention Definition. This is, for instance, the case for Article 3 of the "Abkommen über Soziale Sicherheit mit Dänemark" (Agreement on Social Security with Denmark of 1998). Similarly, the Final Protocol between Austria and Germany on insurance for unemployment benefits (Schlussprotokoll zu dem Abkommen zwischen Österreich und Deutschland über Arbeitslosenversicherung) of 1979 also refers to the 1954 Convention Definition: "Zu (...) Staatenlosen im Sinne des Artikels 3 (Anm. des Arbeitslosenversicherungsabkommens) gehören (...) Staatenlose im Sinne des Artikels 1 des Übereinkommens vom 28. September 1954 über die Rechtstellung der Staatenlosen". ["… stateless persons within the meaning of Article 3 (of the Agreement on insurance for unemployment benefits) include … stateless persons within the meaning of Article 1 of the Convention of 28 September 1954 relating to the Status of Stateless Persons"].
43. Germany and Italy, for example.
44. Ireland and the United Kingdom for example, although the United Kingdom does, nonetheless, have provisions to issue 1954 Convention Travel Documents.
45. *Supra* note 41.
46. See the Web site of the OFPRA, online: <http://www.ofpra.gouv.fr.htlm>.
47. Article 17 of D.P.R. 12 October 1993, No. 572, *Regolamento di esecuzione della legge 5 febbraio 1992, n. 91, recante nuove norme sulla cittadinanza* [Implementing Regulation to the Law of 5 February 1992, No. 91, including new provisions on citizenship]; hereinafter DPR 572/93.
48. In Luxembourg, jurisdiction over stateless persons appears to rest with the Ministry of Foreign Affairs, which is responsible for the issuance of 1954 CTDs.
49. It appears that this is the practice in Denmark, Finland, Greece, Ireland, Sweden, the United Kingdom, the Netherlands, and Portugal.
50. Article 8(3) of the Regulation for the Recognition of the Status of Stateless.
51. Article 57/6 of Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (Moniteur Belge 31 décembre 1980).
52. For example, in Greece, the Ministry of Public Order; in Finland, the Directorate of Immigration within the Ministry of Interior; in Sweden, the Immigration Board; and in Britain, the Immigration and Nationality Directorate within the Home Office.
53. In Germany, for example, as noted it is the local aliens' authorities who make decisions. In addition to being widely dispersed, they may not have access to country-of-origin information, such as that which is at the disposal of the authorities dealing with asylum claims.
54. This would not, however, alter the fact of statelessness if indeed a person is not considered a national by any State under the operation of its law.
55. See Article 5 of *Real Decreto Nº 865/2001,* Spain's Regulation for the Recognition of the Status of Stateless Persons, *supra* note 41; in Italy, see the Protocol of the Ministry of Interior 300/C/2003/996/P/15.8.1/1a Div. Direzione Centrale.
56. The Brussels Court of Appeal, 4 May 1999. A summary of the Décision is found at (1999) 103 *Revue du Droit des étrangers* at 243:

> [*l'appelant*] *soutient dès lors à très juste titre que dans l'attente d'une décision concernant la reconnaissance de la qualité d'apatride, il se voit dans l'impossibilité d'exécuter l'ordre de quitter le territoire qui lui a été décerné, faute de connaître le pays qui pourrait l'accueillir, et qu'il se trouve condamné à vivre dans l'illégalité et la clandestinité, en Belgique ou ailleurs, avec le risque toujours présent, d'être arrêté, refoulé ou détenu à cette fin (…) sans possibilité d'aller et venir librement ni pourvoir légalement à sa propre subsistance (…) La Commission européenne des droits de l'homme a appliqué cette notion de traitement inhumain et dégradant à la situation des réfugiés dits « sur orbite », c'est à dire condamnés à errer d'un État à l'autre à la recherche d'une terre d'accueil (…) La Cour estime qu'en l'occurrence, la situation de l'appelant est assimilable à celle d'un « réfugié sur orbite », et qu'en étant contraint de vivre dans l'illégalité et la clandestinité, sans ressources ni moyens de s'en procurer*

(…) l'appelant qui, prima facie peut se voir reconnaître la qualité d'apatride, se trouve soumis à un traitement dégradant au sens de l'article 3 CEDH.

57. *The European Convention on Human Rights and Fundamental Freedoms* [ECHR], Eur. T.S. No. 5.
58. *Supra* note 46.
59. Spain's *Real Decreto Nº 865/2001*, *supra* note 41, sets out specific provisions for minors who are in the statelessness procedure. If declared to be in a vulnerable situation, the child will be given to Minor Protection Services. During the procedure, the minor's residence in Spain will be authorized and a public guardian will represent the child's interests.
60. This category would not include those stateless persons entering to seek asylum. See Article 31 of the 1951 Refugee Convention.
61. This does not mean to say that a Contracting State is limited to this framework should they wish to provide more extensive entitlements. Article 5 stipulates that: "Nothing in this Convention shall be deemed to impact any rights and benefits granted by a Contracting State to stateless persons apart from this Convention." Moreover, an assessment of what is practically possible for a stateless person would reveal that it is difficult to request a visa for lawful entry if an individual has no identity or travel document to submit to authorities.
62. Article 31 of the 1951 Refugee Convention provides:

    The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

63. It should be noted that in certain instances, stateless persons will be presumed to be lawfully present in a State. For example, in the case of State succession, should persons who were nationals of the predecessor State find themselves, following the succession, living on the territory of a successor State although they themselves have not changed place of residence, there would be a legal presumption of lawful stay unless treaties or other laws compatible with international legal norms specifically regulate otherwise. Moreover, it should be recalled that the 1954 Convention is addressing cases of statelessness which the Contracting State *has not itself created*. If the Contracting State has denationalized or otherwise rendered someone stateless, the appropriate legal reference point is the 1961 Convention on the Reduction of Statelessness.
64. As earlier noted, UNHCR can advise on approaches to these cases and can assist in consultations in appropriate instances.
65. Paragraph 13(1) of the Schedule to the 1954 Convention.
66. For France, see Article 12bis (10) of the *Ordonnance nº 45-2658 du 2 novembre 1945 relative aux conditions d'entrée et de séjour des étrangers en France*; for Italy, see Article 11(1)(c) of D.P.R. No. 394 of 31 August 1999; and for Spain, see Article 34 of the Aliens' Law 4/2000 as amended by 8/2000, Article 13 of the *Real Decreto Nº 865/2001*, and Article 42 of the Implementing Decree to the Aliens' Law.
67. This appears to be the case in Ireland, Sweden, Denmark, Finland, and the UK. For example, in Denmark, legislation does not contain a specific provision providing permission to stay for stateless persons. Thus, a stateless person can remain in Denmark only if granted permission to stay within existing provisions of the Aliens' (Consolidated) Act; that is, if recognized to be a refugee within the provisions of the 1951 Convention, as provided for in Article 7(1); to risk receiving the death penalty or being subject to torture or inhuman or degrading treatment or punishment if returned to the country of origin as provided for in Article 7(2); or to be granted a residence permit if found to be "in such a position that essential considerations of a humanitarian nature conclusively make it appropriate to grant the application" under Article 9(b)(1).
68. For example, in the Netherlands and Germany.
69. Stateless persons may apply for permanent residence under the general section of the Aliens' legislation; that is, Section 9 of LD 286/1998. This section prescribes that foreigners who have lawfully resided in Italy for at least six years and hold a residence permit issued for a reason which allows an indefinite number of renewals, and who demonstrate that their income is sufficient to support themselves and their families, may apply for permanent residence for themselves, their spouse and children. Permanent residence is granted for an unlimited period. Act No. 91 of 5 February 1992, pertaining to nationality matters, states in Article 16 that: "A stateless person who is legally resident in the territory of the Republic is subject to Italian law as far as the exercise of civil rights and the obligation to perform military service are concerned."
70. Article 12 bis paragraph 10, Ordonnance nº 45-2658 du 2 novembre 1945 (relative aux conditions d'entrée et de séjour des étrangers en France).
71. Article 15, paragraph 11, Ordonnance nº 45-2658 du 2 novembre 1945. NB: This is about to change in France; the three-year period is going to be increased to five years for foreigners, including stateless persons, who fall into this group. Refugees have a different set of rights, with automatic acquisition of permanent residence.
72. In Ireland, you must be legally resident for five years before being able to apply for long-term residence. In France, after three years of having a *carte de séjour*, you can receive the *carte de résidence*. French legislation is about to be amended to a five-year period.
73. See online: <http://europa.eu.int/rapid/start/cgi/guesten>. Notably, the EU Commission is beginning work on a separate proposal which would include refugees and those with subsidiary forms of protection. Harmonization with regard to stateless persons would be usefully reviewed in these undertakings.
74. See, for example, section 30(3) of the German Act Concerning the Entry and Residence of Aliens in the Territory of the Federal Republic (Aliens' Act) of 1 January 1991, which holds that:

> An alien who has received a final order to leave the country may be issued with a residence authorization, notwithstanding the provisions of sections 8, para.1, if the conditions prescribed in section 55, para.2, for the grant of a temporary consent are met, where for reasons beyond his control he cannot leave voluntarily and cannot be deported.

Section 55(2) prescribes that: "An alien will be granted a temporary consent to remain as long as his expulsion is impossible on legal or factual grounds, or has to be stayed pursuant to section 53, para.6, or section 54."

75. Section 30(4) of the German Aliens' Act holds that:

> In other instances an alien who has been under a final order to leave for at least two years, and who holds a temporary consent, notwithstanding the provisions of section 8, paras.1 and 2, may be issued with a residence authorization, unless the alien refuses to comply with reasonable requests for the removal of the bar to deportation.

76. Belgium, for example: Loi du 22 décembre 1999 relative à la régularisation de séjour de certaines catégories d'étrangers séjournant sur le territoire du Royaume (M.B. 10 janv. 2000).
77. Again, with reference to Article 5, there is no bar to extending rights exceeding the level outlined in the Convention should a State wish to do so.
78. International Covenant on Civil and Political Rights [ICCPR], U.N.T.S. 1966.
79. See Article 1 of the ECHR.
80. Article 18 of the ICCPR; Article 9 of the ECHR.
81. Robinson Commentary, *supra* note 6 at 34–35.
82. Universal Declaration of Human Rights, U.N.T.S., 1949.
83. See also Article 11 of the ECHR; Article 20, UDHR; Article 22 of the ICCPR.
84. See also Articles 2 and 14 of the ICCPR.
85. Robinson Commentary, *supra* note 6 at 62; and also P. Weis, *The Refugee Convention, 1951* (Cambridge: Cambridge University Press, 1995) at 147–48.
86. Robinson Commentary, *supra* note 6 at 67; and also P. Weis, *The Refugee Convention, 1951*, *supra* note 85.
87. Section 40(4) of Italy's LD 286/98:

> Legally resident foreigners may obtain access to social, collective or private housing provided in accordance with the criteria laid down in regional legislation by the municipalities with the largest foreign populations, voluntary associations, foundations or organisations or other public or private agencies in the ambit of accommodation structures, mainly organised in the form of hostels, open to Italians and foreigners alike, which are designed to offer decent accommodation on payment of a subsidised price until permanent ordinary housing can be obtained.

88. Article 28 of the *Convention of the Rights of the Child*, (U.N.T.S. 1989) requires States to make primary education compulsory and available free to all. See also Article 26 of the UDHR, Article 2 of Protocol No. 1 of the ECHR, and Article 13 of the *International Covenant on Economic, Social and Cultural Rights*, U.N.T.S. 1966.
89. In Belgium, education is compulsory until 18 and even illegal aliens must attend. Free access until 18 is guaranteed in several states, including Luxembourg and the UK; see UNHCR, "Reception Standards for Asylum Seekers in the European Union," July 2000, 15. In Italy, school attendance is compulsory for foreign minors present in Italy; see Section 38(1) of the Consolidated Immigration and Foreigners' Act, Legislative Decree No. 286/1998, as amended by Laws No. 182/2002 and 106/2002 and by Presidential Decree No. 115/2002.
90. According to Section 27 of the German Aliens' Law, to obtain indefinite residence, which is possible after eight years of temporary residence, you must not be dependent on social aid.
91. Legislative Decree 286/98, Section 41(1).
92. *Ibid.;* also Weis, *The Refugee Convention, 1951*, *supra* note 85.
93. In Spain, the Office for Asylum and Refuge (Art. 13(3) of the *Real Decreto Nº 865/2001*); in France, the OFPRA (Art 4 of the Loi nº 52-893 du 25 juillet 1952 relative au droit d'asile); in Belgium, the Commissariat Général aux réfugiés et aux apatrides (Article 57/6 of Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers).
94. Germany.
95. Refugees and those with temporary leave to remain are issued cards with "Stamp No. 4."
96. Paragraph 13 of the Schedule to the 1954 Convention. If the Contracting State specifies return within a period shorter than the validity of the CTD, it must be at least three months unless the State to which the individual intends to travel does not insist on the travel document according the right of return.
97. Article 13.2 of Spain's *Real Decreto Nº 865/2001* prescribes that the recognized stateless person will be issued with the travel document foreseen in Article 28 of the 1954 Convention; according to Section 10 of Sweden's *Aliens' Ordinance* (1989:547): "A travel document shall be issued in cases referred to in the Convention of 28th July 1951 Relating to the Status of Refugees or the Convention of 28th September 1954 Relating to the Status of Stateless Persons, or the Convention of 23rd November 1957 Relating to Refugees who are Seamen." In Portugal, Article 20 of Legislative Decree 264-C/1981, containing provisions governing entry, stay, and departure of aliens and their expulsion from Portuguese territory, stipulates that an alien's passport may be granted to the following persons: a person who, being a resident in Portuguese territory, is stateless or is the national of a country without diplomatic or consular representation in Portugal or who demonstrates his inability to obtain another passport. In Finland, an alien's passport could be issued, a question determined by the Directorate of Immigration. Section 5(1) of Finland's Aliens' Act allows the Directorate to issue the travel document to an alien who is resident in Finland if he is unable to obtain a passport from the authorities of his country of origin or should there be other special grounds for doing so.
98. For example, France, Germany, Greece, Italy, and the United Kingdom.

99. AuslG1990DV.
100. BverwG 1 C 30.93 of 16.7.1996, InfAuslR 97, 58. If the stateless person has a residence permit in Germany, and not merely a toleration permit, then CTDs are regularly issued. If the applicant does not have a residence permit, then the CTD is difficult to obtain, particularly if the applicant voluntarily renounced nationality or has tried to acquire a travel document from another country.
101. Article 76(1) of the Austrian Aliens' Act states that when it is in the interest of the Republic, an alien's passport (*Fremdenpasse*) may be issued, upon application, to a stateless person whose nationality is unclear and who does not possess a valid travel document. Italy issues a CTD to *de jure* stateless persons by direct application of the 1954 Convention, while *de facto* stateless persons may be issued with an Alien's Travel Document. Both Denmark and Finland provide that the Minister may issue an Alien's travel document to a resident foreigner who is unable to obtain a passport from the country of origin or when there are other special grounds for doing so; see Article 39(5) of the Danish Aliens' (Consolidated) Act No. 608 of 17 July 2002 and Section 5(1) of Finland's Aliens' Act of March 1991.
102. CTDs issued in Spain and Italy are issued for a period of two years. The Aliens' Ordinance of Sweden stipulates that the Swedish Immigration Board shall issue a travel document to cases referred to in the 1954 Convention relating to the Status of Stateless Persons for a certain period. Finland, for example, can issue an alien's passport for a maximum of ten years. In Austria, an alien's passport can be issued for a period of five years, or shorter if appropriate.
103. Robinson Commentary, *supra* note 6 at 94–95.
104. *Ibid.* at 48; see also P. Weis, *supra* note 85 at 84.
105. *Ibid.*; see also Robinson Commentary, *supra* note 6 at 64.
106. *Ibid.* at 98.
107. See Legge 1 Febbraio 1962 n.306 – Ratifica ed esecuzione della convenzione relativa allo status degli apolidi adottata a New York il 28 settembre 1954. The consolidated LD 286/1998 provides in Section 9(5) that:

> Administrative deportation of the holder of a permanent residence card may only be ordered for serious reasons of public order or national security or if the holder belongs to one of the categories specified in section 1 of Statute no. 1423 of 27 December 1956, as replaced by section 2 of Statute no. 327 of 3 August 1988, or in section 1 of Statue no. 527 of 31 May 1965, as replaced by section 13 of Statute no. 646 of 13 September 1982, provided that one of the measures referred to in section 14 of Statute no. 55 of 19 March 1990 is applied, even on a precautionary basis.

Stateless persons are currently eligible to apply for permanent residence after six years, like other foreigners legally residing in Italy.

108. Facilitated naturalization of lawfully and habitually resident stateless persons is also provided for in the 1997 European Convention on Nationality, relevant in certain of the EU Member States.
109. In Belgium, stateless persons may naturalize after two years instead of three for regular foreigners (Article 19 of the Belgian Code of Nationality); in Germany, naturalization of stateless persons is possible after six years instead of eight (Administrative Guidelines to the Law on Nationality). Denmark requires nine years of residence, but it is possible for stateless persons to naturalize after eight (see Danish Ministry for Refugees, Immigration and Integration Affairs Web site, online: <http://www/inm.dk)>. Greek legislation allows a stateless person to naturalize after five years instead of ten [Article 58, para. 2(a) of Law 2910 (Aliens' Law)]. Italian law permits naturalization of stateless persons after five years instead of ten (Article 9(e) of Act No. 91). In Sweden, stateless persons may apply to naturalize after four years of residence instead of five (Section 11 of the Citizenship Act of 1 July 2001). Finland has recently amended its Nationality Act, which now includes facilitating naturalization for stateless persons. According to information obtained on the Directorate of Immigration Web site, the amended Nationality Act, which came into effect on 1 June 2003, prescribes that the normal residence period for naturalization is six years. However, if "you have refugee status in Finland or a residence permit based on your need for protection or you are stateless against your will, the required period of residence is: the last four years without interruption; or a total of six year since your 15th birthday, with the last two years without interruption. See online: <http://www/uvi.fi>.
110. Section 16(g) of the Irish Nationality and Citizenship Act, 1956, No. 26 of 1956, as amended by the Irish Nationality and Citizenship Act 2001 (No. 15 of 2001) holds that:

> The Minister may, in his absolute discretion, grant an application for a certificate of naturalisation in the following cases, although the conditions for naturalisation (or any of them) are not complied with: (g) where the applicant is a person who is a refugee within the meaning of the United Nations Convention relating to the Status of Refugees of the 28th day of July, 1951, and the Protocol relating to the Status of Refugees of the 31st day of January, 1967, or is a stateless person within the meaning of the United Nations Convention relating to the Status of Stateless Persons of the 28th day of September, 1954.'

111. Robinson Commentary, *supra* note 6 at 102.
112. The main implementing decree to Spain's Aliens' Act (Real Decreto Nº 864/2001, de 20 de julio, por el que se aprueba el Reglamento de Ejecución de la Ley Orgánica 4/2000 sobre derechos y libertades de los extranjeros en España y su integración social, reformada por la Ley Orgánica 8/2000) holds in Article 145 that, in order to implement the objectives of the social integration of aliens, the Ministry of Labour and Social Affairs will set up a public network of Migration Centres to carry out functions of assistance, reception, social intervention, and if necessary appropriate counselling of aliens under asylum-seeker status, displaced status, refugees

and stateless persons or of immigrants in vulnerable situations or who are under risk of social exclusion. Section 40(1) of Italy's LD 286/1998 prescribes that: "Regional councils, in liaison with provincial and municipal councils and voluntary associations and organisations, will set up reception centres designed to accommodate foreigners who are legally resident for reasons other than tourism and are temporarily unable to provide for their own accommodation and subsistence…". Section 40(1bis) of the same Act provides that "Access to social integration measures is reserved for foreigners who do not belong to European Union countries and prove that they have complied with the provisions governing residence in Italy contained in this Consolidated Act and with the current legislation and regulations on the subject."

113. Article 14 of the Regulation for the Recognition of the Status of Stateless Persons prescribes that "stateless persons are entitled to request family reunification with the family members mentioned in Art. 17.1 of the Aliens' Law." Article 17.1 describes those family members, such as spouse, unmarried children under 18 or unmarried disabled children and dependent parents. Article 18 of the Aliens' Act contains stipulations to be met before family reunification can take place, such as adequate housing and sufficient means of support.
114. Section 29(3) of Italy's LD 286/1998.
115. Moreover, refusal of a Contracting State to allow an individual, admitted only temporarily on the travel document of another Contracting State, to prolong stay beyond the period provided for, was not considered by the drafters to constitute expulsion.

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Citizenship, Naturalization, and Asylum: The Case of Britain

Anthony H. Richmond

Abstract

Citizenship and naturalization procedures in the UK are examined in historical perspective. Recent legislation is reviewed in the light of global change. The implication of membership in the European Union is examined. The differential treatment of Commonwealth citizens and former colonial subjects is reviewed, as well as human rights questions raised by the treatment of asylum seekers. As a result of globalization, Britain is experiencing the same contradictory forces as other advanced industrial societies. Demographic and economic forces promote immigration, which is resisted for a combination of security fears and ethnocentric attitudes.

Résumé

Cet article examine les procédures pour l'obtention de la citoyenneté et de la naturalisation au Royaume Uni dans une perspective historique. À la lumière de changements qui interviennent au niveau global, il passe en revue les lois adoptées récemment. Il examine aussi les implications de l'adhésion du pays à l'Union Européenne. Il passe ensuite en revue le traitement préférentiel accordé aux citoyens des pays du Commonwealth et des anciennes colonies, ainsi que les questions de droits humains soulevées par le traitement réservé aux demandeurs d'asile. La globalisation expose la Grande Bretagne aux mêmes vents contradictoires qui affectent les autres sociétés industrielles avancées. Les forces démographiques et économiques promouvoient l'immigration, alors qu'une combinaison de peurs sécuritaires et d'attitudes ethnocentriques suscite de la résistance.

The combined effects of globalization, the end of the "Cold War," and demographic pressures have given rise to unprecedented population movements in the last decade. When terrorism and security concerns are added to the picture, there is growing pressure to impose strict measures to control admission to advanced industrial countries. The growing number of asylum seekers raises questions of citizenship, naturalization, permission to remain, and the right to work, as well as eligibility for social services, including education, health, and welfare. Nowhere is the consequent crisis more evident than in Britain. Delays in processing asylum applications and tough measures designed to deter so called "economic migrants" raise fundamental issues concerning due process and human rights.

Citizenship and Naturalization

Britain may be understood as the United Kingdom, including England, Scotland, Wales, and Northern Ireland, but excluding the Channel Islands, former colonies, dependent territories, and independent members of the Commonwealth. Originally, Britain used the term "subject" rather than "citizen." The latter term has its roots in the republican tradition, rather than the monarchical system. Subjects have legal obligations to a sovereign power. Citizens may have obligations, but they also have rights enforceable by law. In some cases they may be able to appeal beyond their own country's courts to a higher authority that has been recognized by treaty. In the case of Britain, this includes the UN, the European Union, and the European Commission on Human Rights, which has a recognized jurisdiction.

Before 1948, all people born in countries that were once part of the British Empire were "British subjects" and had the same legal status. The first legislation using the term "citizenship" was the British Citizenship Act of 1948, which created the status of "Citizen of the United Kingdom and Colonies." Under this Act people from former colonies and self-governing countries of the Commonwealth such as

Canada, Australia, New Zealand, Ireland, India, and Pakistan could register as Citizens of the UK and Colonies. Granting citizenship by registration was so that an adult citizen of self-governing countries of the Commonwealth, Ireland, and the colonies, who needed to ordinarily reside in the United Kingdom, and had done so for at least twelve months prior to registration, could remain in the country and exercise the franchise, etc. This applied to everyone born in Britain and in British colonies, former colonies, and dominions, whether or not they also had citizenship in their own countries (such as Canada and Australia), or newly independent ones such as India and Pakistan. Initially, this gave the right of entry to and residence in Britain, but this was amended by later immigration legislation.

The Nationality Act of 1981, which came into force in 1983, abolished the category of "Citizen of the United Kingdom and Colonies." Three new categories were created, introducing a significant element of discrimination against former colonial subjects. These were: (a) British citizenship (which applied to those with a close connection with the United Kingdom but not necessarily to everyone born there); (b) British Dependent Territories citizenship (which included Gibraltar and the Falkland Islands); and (c) British Overseas citizenship (which applied to those former citizens of the UK and colonies who had no close connection with the United Kingdom itself). Other categories included British protected persons. Meanwhile, immigration controls had been introduced, so that admission to Britain by former colonial subjects ceased to be a right and became subject to regulation.

The 1981 legislation set out requirements for naturalization.[1] In summary, each applicant must:

- be aged 18 or over;
- have completed five year's continuous residence
- either meet the "five years residence" requirements or be employed overseas in Crown service under the UK Government;
- be of good character;
- have a sufficient knowledge of the English language (or Welsh or Scottish Gaelic);
- not be of unsound mind; and
- intend, when naturalized, either to live in the UK, or to be employed abroad in Crown service (working directly for Her Majesty's UK Government) or by an international organization of which the UK is a member, or by a company or association established in the UK.

In the year 2000 there were approximately 90,000 applications for citizenship of the UK and over 60,000 decisions. In practice, the process is a bureaucratic one requiring the completion of forms and the payment of fees but, until recently, no formal ceremony. It is also time-consuming, with delays up to twenty months for a decision. Consequently, there have been notorious cases of wealthy individuals, with the right political influence, endeavouring to "jump the queue." The Nationality, Immigration and Asylum Act, 2002 amended the provisions of the 1981 Act concerning naturalization. Henceforward a person applying for naturalization must pass a test demonstrating a sufficient knowledge of English (or Welsh or Gaelic). They must also demonstrate a knowledge of life in the United Kingdom. There is now a citizenship ceremony modelled closely on that used in Canada, including taking an oath of allegiance. (In the presence of the Prince of Wales, the first such ceremony was held in February 2004.) Persons obtaining citizenship through marriage will also have to fulfill language and knowledge requirements. The 2002 legislation also provides for the deprivation of citizenship under certain conditions.[2]

Britain recognizes dual citizenship, and accords some privileges to Commonwealth citizens and to European Union members. Commonwealth citizens who have a parent or grandparent who was born in the UK are permitted to enter, reside in, and work in Britain without special permits. In May 2004, the European Union was expanded to include a number of former eastern and central European states. The number of countries whose members are free to move and live anywhere in Britain and Europe was increased from fifteen to twenty-five, with other countries possibly becoming eligible at a later date.[3]

Citizens of the United Kingdom and other EU countries have the following rights:

- freedom of movement and residence on the territory of member states;
- the right to vote and to stand for office in local elections and the European Parliament elections in the state of residence;
- the right to diplomatic protection by the diplomats of any EU state in a third country; and
- the right to petition the European Parliament and the possibility of appealing to an ombudsman.

As noted by Castles and Davidson,[4]

> The first striking characteristic of the new citizenship is how it severs citizenship rights from national belonging. Already there is a push to extend the right to vote to national elections as well as local and European elections. It thus goes further than does the multicultural citizenship of nation-states, in which there is still a residue of the old demand for national belonging.

The prospect of ten new members joining the European Union on 1 May 2004 caused concern in the tabloid press

with exaggerated estimates of the numbers who would seek entry to the UK in search of jobs and social benefits. The opposition Conservative Party, together with the minority British National Party and the UK Independence Party (which is critical of Britain's involvement with Europe) all called for stricter controls to prevent abuse of the immigration system. There was particular hostility to the possible influx of Roma from eastern and central Europe.

Immigration Controls

Entry to Britain, including the need for a visa, length of stay, permission to work, and the right to permanent residence are subject to complex regulations that have changed over time. The earliest controls were introduced with the Aliens Act 1905, which was designed mainly to limit the entry of Jews suffering persecution in eastern Europe at that time. The Aliens Restriction Act of 1914, as amended in 1919, introduced passports. Immigration from Commonwealth countries remained open until 1962, when new laws limited immigration from the Indian subcontinent and from the Caribbean. Further restrictions came into force in 1968, at the time of the East African (Uganda and Kenya) crisis concerning Asian residents in that region. A quota system was introduced to limit numbers admitted annually. The nationality legislation of 1981, to which reference has been made, served to limit the right of entry for former British subjects in dependent territories, and made it possible to limit the numbers of Hong Kong Chinese who could emigrate to the UK when the colony was incorporated into mainland China in 1997.

Due to the growth in tourism, business travel, and asylum applications, control of borders has become a serious concern for the UK government, particularly since the opening of the Channel Tunnel. In the year 2002, there were approximately 89.3 million entries to the country. The majority of these were UK or EU citizens. British citizens carry an EU passport which enables them to travel freely throughout the European Economic Area (EEA). By the same token, EU nationals from other countries can enter Britain freely and work there. Visas are required before admission to the UK by residents in most other countries outside of the EU. There are 165 UK visa sections around the world. In 2002, an estimated 12.6 million entrants were from outside the EEA; the majority of these were tourists or business travellers admitted temporarily. Approximately 369,000 students were admitted. There were 120,115 work permit holders and their dependents. In 2002, 50,360 people were refused entry at the port, including 3,730 asylum seekers.[5]

With the prospect of increased immigration from new EU countries after 1 May 2004, the government announced a system of registration of those from the new member states who were seeking employment in the UK. However, this was criticized as discrimination against new EU members, since no permits or registration applied to existing EU members. A scandal arose in March 2004 when it was revealed that, without ministerial authority, officials had been issuing work permits, or permission to start a business, to people already in the UK from the EU countries about to be admitted who would otherwise have been deported as illegal immigrants. Earlier, the press had noted the absurdity of deporting people from eastern and central Europe who would shortly have a legal right to return to Britain.

Refugees and Asylum Seekers

The debate over immigration policy in Britain became heated in the late 1990s and early in the twenty-first century, mainly because of concerns arising from the growth in numbers of asylum seekers. A government policy statement in 1998, "Fairer, Faster and Firmer," and the Asylum Act 1999 which followed, endeavoured to reduce delays and backlogged applications for asylum. It also introduced a system of "vouchers" for welfare benefits, which were at a lower rate than that for British citizens and stigmatized the recipients. Asylum seekers were dispersed across the country. Following a government report, *Secure Borders, Safe Haven: Integration and Diversity in Modern Britain*, in 2002, other measures were introduced to deter applications and penalize carriers who, knowingly or not, brought illegal immigrants into the country. However, these measures failed to stem the flow of people applying for asylum, whether they had entered the country legally or illegally. Acceptance rates fluctuated according to the nationalities involved and the global crises at the time, averaging 41 per cent over the decade 1993-2002, but only 19 per cent received full Convention refugee status, the remainder being given "Exceptional Leave to Remain." With growing numbers of asylum applicants "in limbo" because they were not allowed to work or settle permanently in Britain, various measures to reduce delays in processing and remove the backlog in applications were adopted. In 1998, indefinite leave was given to 10,000 cases and a further 20,000 received "special consideration." In 2003, 15,000 families, who had been in the country more than three years without a final determination of their status, were give indefinite leave to remain in the UK.

In the year 2002, the UK received 84,130 applications. The leading countries of origin were Zimbabwe, Afghanistan, Somalia, and China. Out of those processed, only 10 per cent were initially approved for Convention refugee status and a further 24 per cent were given a temporary

U.K. Asylum Decisions 2000 – 2003
(excluding dependants)

Number of Principal Applicants

	2000	2001	2002	2003
Application s Received	80,315	71,025	84,130	49,370
Decisions	101,645	120,950	83,540	64,605
Granted asylum	10,605	11,450	8,270	3,880
Granted Exceptional Leave to Remain	11,475	20,190	20,135	7,107
Refused Asylum and ELR	67,910	89,310	55,130	53,510
Appeals Received by Appellate Authority	46,190	74,365	51,695	79,575
Appeals determined	19,395	43,415	64.405	81,725
Appeals allowed	3,340	8,155	13,875	16,070
Total granted asylum, ELR or appeal allowed	35,7405*	39,795	42,280	27,057*
Removals and voluntary departures	8,980	9,285	10,740	12,490

***** Includes some granted asylum or ELR, under backlog criteria.
Source: *Asylum Statistics* (United Kingdom, Home Office, 2003).

residence status (i.e., exceptional leave to remain). In that year, there were 64,405 appeals determined, of which 22 per cent were allowed to stay. Overall in 2002, 50 per cent of those about whom final decisions were made were allowed to remain in the UK, on a permanent or temporary basis. Excluding dependents, there were 10,740 asylum removals, including voluntary departures.[6] The number of applications fell to 49,370 in 2003; altogether 64,605 initial decisions were made (removing some of the backlog); 6 per cent of these were given refugee status and 11 per cent either exceptional leave to remain or one of two new categories: Humanitarian Protection or Discretionary Leave.[7] In 2003, 81,725 appeals were heard, of which 20 per cent were allowed. Overall, 42 per cent of those about whom decisions were reached were allowed to stay. Somalia had the largest number of successful applicants; 1,660 were given refugee status and a further 550 exceptional leave to remain or temporary protection. Excluding dependants, 12,490 failed asylum seekers were removed, or required to depart, in 2003. When dependents are included the number was 17,040 persons. Leading countries of failed asylum seekers were Serbia and Montenegro, the Czech Republic, Afghanistan, Romania, and Albania.

In February 2003, referring to new legislative and administrative measures designed to deter applications for asylum, the Home Secretary stated:[8]

> These measures are not yet fully reflected in the statistics, although we are seeing some early indications of success with a fall in applications from Zimbabwe, where we have imposed a visa regime. There are also fewer from the Czech Republic and Poland which contributed to significant increases in the middle of the year until we introduced the list of countries from which claims would be presumed manifestly unfounded....
> We have always said that we expect the measures introduced as part of the NIA Act to build over time. Those measures are now in place, but their full impact will not have been felt over the latter part of the year. The figures published today give us a clear benchmark to measure what we expect will be very significant progress over the next six months and indeed the coming years.

The popular press continued to represent most asylum seekers as bogus and, after September 11, 2001, linked them to terrorist threats. Human rights questions also came to the fore early in 2003 when the UK government, in consultation with other EU countries, explored the possibility of deporting many asylum seekers to "safe havens" on the borders of the countries from which they had fled. It was alleged that the cost of doing so would be less than providing for them in the UK. Deportation of failed asylum seekers to countries where they might face torture or death threats was also considered, despite the breach of UN and EU human rights conventions that this would entail. The following is a summary of the concerns expressed by the UNHCR:[9]

- "Safe third country" criteria are below the standard needed to ensure effective protection'
- Lack of minimum protection standards at borders
- The denial of right to remain while appeals are heard
- Accelerated procedures will threaten fair hearing
- Permissible grounds for detention not limited or defined
- Restricted access to legal assistance and representation
- Absence of gender sensitivity procedures

Recent Changes to the U.K. Asylum and Immigration Appeals System

New legislation, introduced in November 2003, gave authorities the power to tag asylum seekers electronically, rather than place them in detention, when their applications have been rejected. The Home Secretary proposed to adopt a new kind of tag, employing satellite technology to pinpoint the wearer's location, to be used within twelve to eighteen months. People who would be tagged would mostly be unsuccessful asylum seekers, but would also include those who had no justifiable claim and who were waiting removal..

New measures will also reduce asylum seekers' access to an appeals process more severely than had previously been expected. The UK Government proposes to replace the current two-tier structure with a single appeal to a new single-tier tribunal, the Asylum and Immigration Tribunal, headed by a president. The proposed abolition of the former Immigration Appeal Tribunal would limit access to the higher courts. However, proper judicial review is a necessary check on illegality, breaches of natural justice, and abuse of powers. Lord Chief Justice Wolf condemned the proposal, describing it as "fundamentally in conflict with the rule of law." Following this criticism the clause was amended.[10]

Measures will also be introduced to ensure that asylum seekers who arrive without valid documents or a good explanation, or who have travelled through a safe third country and/or applied for asylum late, would have the credibility of their claim reduced. Two new criminal offences are proposed for being undocumented without good explanation and failing to co-operate with re-documentation. There is also a proposal to require carriers to take copies of passengers' identity documents before they travel.

These measures will penalize genuine refugees and expose them to risk of prosecution. Increased border controls, including the extension of visa requirements to refugee-producing countries, carrier liabilities, and juxtaposed controls, have reduced options for a safe and legal transit to the EU for the purpose of asylum. The right of appeal, on Convention and European Convention on Human Rights grounds, for individuals being removed to a "safe third country," will be limited. In negotiations over the draft EU Directive on asylum procedures, the UK sought a definition of "safe third country" that would have allowed transfer to a country which the asylum seeker had no link with and had never set foot in. Asylum seekers could be removed to a "zone of protection" for processing a claim. In negotiations over the EU Directive on asylum procedures, which came into force in 2004, the UK sought unsuccessfully to follow the Australian precedent to have asylum seekers removed to a "zone of protection" for processing the claim outside the country. The UK Government also proposed to remove support from families required to leave the UK. Support under Section 20 of the Children Act 1989 will not be available to asylum-seeking families. In some circumstances, children of failed asylum seekers will be separated from their families, which could be a further breach of human rights.

The new Asylum and Immigration Act, which received Royal Assent in July 2004, will also give immigration officers new powers to arrest people for offences that fall outside normal immigration crimes. They will be able to arrest without a warrant on suspicion of bigamy, fraud, and theft. The government has also announced plans to limit asylum seekers' access to legal aid, and will restrict access to the High Court, for appeal against deportation. Other recent UK Government actions designed to tackle the perceived widespread abuse of the asylum system include:

- radical reform through the Nationality, Immigration and Asylum Act, including: setting up a list of countries presumed to be safe, whose nationals have no right of appeal in the UK; restrictions on benefits for asylum seekers; and a clampdown on social benefit shopping;
- ending of "exceptional leave to remain" and replacing it with a new narrower category of humanitarian protection;
- the sealing of the Channel Tunnel at Coquelles and Fréthun in France;

- closure of Sangatte (i.e., the French refugee centre; 67,000 people had passed through its gates);
- the introduction of freight searching and UK immigration controls in France and along the European coast as needed;
- stopping asylum seekers working and stepping up action on illegal working;
- imposing a visa regime for Zimbabwe; and
- introduction of universal identity cards.

The Home Office announced that a six-month trial of new "high-tech" passports would lay the foundations for a compulsory identity card scheme. A pilot scheme will involve 10,000 volunteers receiving personalized "smart-cards" containing biometric information – initially, a digital image of their faces based on passport photographs. The immigration minister stated it was a preparation for compulsory identity cards. It was claimed that linking biometric data to a national database would help to prove eligibility for services, preventing identity fraud, immigration abuse, illegal working, and organized crime. Concern with these issues was intensified in February 2004, when nineteen Chinese immigrants were drowned picking cockles at night in Morecombe Bay. Investigative journalists subsequently drew attention to the widespread employment by "gangmasters"of illegal immigrants, including failed asylum seekers, in the agricultural and construction industries.

Entitlement to Services

While the United Kingdom itself participates in the broader political unit of the European Union, it has also devolved powers, including those relating to education and social services, to Scotland and Wales, which have their own legislatures. This has led to some variation in social policies. Further differences exist between the UK and other EU countries. In the context of contemporary "welfare societies," dual citizenship and freedom to live and work in other countries raises questions of entitlement. Education, health services, housing, unemployment, and other social benefits, including children's allowances and old-age pensions, may be paid for out of taxation or compulsory insurance. Theoretically, no-one should be destitute and homeless when living in a contemporary advanced society with a developed welfare system, whether they are citizens or not. Bloch and Schuster note that: "All legally resident migrants in Western European states are in principle entitled to most of the welfare provisions of other citizens. However, the welfare state is a site of both inclusion and exclusion."[11] In some cases, reciprocal arrangements may be made between countries that have similar systems. Periods of working and paying taxes in one country may be counted toward eligibility for benefits in another. In practice, most countries fall short of this ideal. Much of the resentment against immigrants and asylum seekers concerns their alleged dependence on state support and "jumping the queue" for housing and other entitlements. When a xenophobic fear of "foreigners," racism, and religious prejudices are added to terrorist threats, however unfounded, a climate of hate is created that right-wing extremist and nationalist parties are able to exploit. This has been clearly the case in Britain where the popular press has stirred up resentment against asylum seekers, and immigrants in general, and the extreme right-wing British National Party has succeeded in winning seats in some local elections.

Following the Immigration and Asylum Act, 1999, the UK Government created a National "Asylum Seekers Support Service" which assumed responsibilities for housing and welfare, previously undertaken by local authorities. A system of vouchers, of lower value than regular welfare benefit rates, replaced monetary support, and also made the asylum seekers more visible and open to expressions of abuse. The Nationality, Immigration and Asylum Act, 2002, not only amended British nationality legislation, but, under Section 55, it also removed the entitlement to any financial support for those who made a claim for asylum "in country," *i.e.,* after being allowed to enter or entering in a clandestine manner. Only those actually making an asylum claim at the border (mainly airports) and having a *prima facie* case would be able to claim any social benefits. This would disqualify the two-thirds of all asylum seekers who filed their applications after arrival in Britain. The rule was meant to have a deterrent effect and make Britain seem less of a "soft touch" to potential refugees and economic migrants. In February 2003, this regulation was subject to a judicial appeal on human rights grounds. In some cases financial support and housing had been refused to people who had been in the country less than twenty-four hours. A High Court judge held that this was in breach of European human rights legislation. Subsequently, the government amended the rule to "as soon as reasonably practicable." However, research conducted by the Refugee Council showed that many asylum seekers were forced into homelessness and begging as a consequence of the enforcement of the rule.[12]

Other controversial issues concerned the detention of newly arrived asylum seekers in secure accommodation which ranged from former army camps to hotels. Local residents expressed strong opposition to these plans. While waiting for the asylum verdict, applicants and their families were dispersed from London and the southeast of the country, where they had been concentrated, to public housing in northern towns. Applicants whose cases were rejected were housed in prison-like accommodations run by private

contractors. There were many complaints about conditions and a notorious incident in which a custom-built centre burned down, following a protest organized by some of the inhabitants. At the end of 2003, 80,120 asylum seekers were receiving welfare under the National Asylum Support System, including 49,760 who were housed. In December 2003, 1,285 asylum seekers were in detention, and in the calendar year 2003, 17,040 persons, including dependants, were deported.[13]

Conclusion

The contemporary world system may be a "global village" in many respects but it is one in which, to use an Orwellian phrase, some are "more equal than others." Citizenship accords special rights and privileges but those may overlap, or conflict with, more general human rights as defined in the Universal Declaration of Human Rights, the European Human Rights Code, the UN Refugee Convention, the I.L.O. Conventions on Migrant Workers, and other treaties that a country enters into. Inequalities, within and between countries and continents, become more evident and less tolerable as a result of globalization. The recently increased threat of terrorism has led to heightened levels of military security, as well as new powers to the police, immigration authorities, and the courts, that threaten fundamental freedoms and human rights.

Globalization has brought about inherent contradictions within the world system. New forms of social exclusion have occurred.[14] Ease of travel and communication, together with worldwide trade, have brought people closer together and made it easier to enjoy the benefits of dual, or multiple, citizenship together with fuller participation in the political systems that transcend the boundaries of former "nation-states." However, this process has generated aspirations for self-determination by regional entities and ethno-religious minorities. It has also fuelled fear and insecurity, leading to heightened levels of prejudice, and sometimes violence, against visible minorities and "newcomers," irrespective of the legitimacy of their claims to full inclusion in the country they have chosen, or have been forced, to live in.. Britain's engagement in the war with Iraq exacerbates the fears that globalization had already generated. In turn this leads to a regression into jingoism, on the one hand, and protest against the war, on the other. As Falk states:

> The idea of citizenship is increasingly applied to other political communities, supporting the notion of a European citizen and even a world citizen. One impact of globalization and the rise of regional political communities is to establish multiple identities and a non-exclusive sense of citizenship. War is a throwback to simpler times of exclusivity, a tribal sense of passionate solidarity that is incapable of objectivity.[15]

Britain is experiencing the same contradictory forces as Canada, Australia, the United States, France, Germany, and other advanced industrial societies are experiencing in the face of globalization. While international trade and migration bring the countries of the world closer together, they also generate conflicting interests. Political and economic insecurities exacerbate prejudice against ethnic minorities and "foreigners," including those fleeing war or seeking protection from persecution. In turn, majorities and minorities alike have an ambivalent attachment to the wider society and a nostalgia for the sense of belonging to a more homogeneous community. The result is more "refugees in limbo" unable to find a safe haven.

Notes

1. For a guide to details of naturalization requirements see: <http://94203.40/default.asp!pageid16>.
2. For details see: <http://www.legislation.hmso.gov.uk/acts>.
3. Original members of the European Union are Belgium, Germany, France, Italy, Luxembourg, the Netherlands, Denmark, Ireland, the UK, Greece, Portugal, Spain, Austria, Finland, and Sweden. The European Economic Area (EEA) includes all EU members plus Norway, Iceland, and Liechtenstein. Those joining the EU on 1 May 2004 were Poland, the Czech Republic, Hungary, Slovakia, Lithuania, Latvia, Slovenia, Cyprus, Malta, and Estonia. Candidates for future membership include Romania, and Bulgaria.
4. Stephen Castles and A. Davidson, *Citizenship and Migration: Globalization and the Politics of Belonging* (London: Palgrave, 2000), 176.
5. For details see: Jill Dudley, Gill Turner, and Simon Woollacott, *Control of Immigration: Statistics United Kingdom, 2002* (London: Home Office, 28 August 2003).
6. See: Tina Heath, Richard Jeffries, and Adam Lloyd, *Asylum Statistics: United Kingdom 2002* (London: Home Office, 28 August 2003).
7. *Exceptional Leave to Remain* was replaced in mid 2003 by two new categories. *Humanitarian Protection* is defined as: "though not refugees would, if removed, face in the country a serious risk of life or person arising from the death penalty, unlawful killing or torture, inhuman or degrading treatment or punishment." Will be granted three years leave and then, if still in need of protection, may apply for settlement in the UK. *Discretionary Leave* is given to those who "do not otherwise qualify for leave. Periods of three years or less may be granted. After which a person will be able to apply for a further period of leave, but not for settlement."
8. See Home Office News Release Ref. 058/2003; for a critical commentary see: <http://www.refugeecouncil.org.uk/news/feb2003/relea103.htm>.

9. See: *Directive on Minimum Standards on Procedures for Granting and Withdrawing Refugee Status*, Aide Memoire (Geneva: UNHCR, 18 November 2003). In April 2004, the UNHCR expressed concern that new European Union legislation could lead to breaches of international law. The new EU Asylum Procedures Directive designates so-called "safe third countries" to which asylum seekers may be returned and introduces rules which allow countries to deport people before appeals are heard. Asylum seekers can be denied a hearing if they have passed through a so-called safe country, including any other EU member state. See: *UNHCR News*, 30 April 2004.
10. See "Top Judge Attacks Asylum and Legal Reforms," <http://www.timesonline.co.uk> (accessed 3 March 2004). In the face of much criticism, the government withdrew the clause limiting access to the appeal courts during debate in the House of Lords, 15 March 2004. An administrative court will have oversight.
11. Alice Bloch and L. Schuster, "Asylum and Welfare: Contemporary Debates," *Critical Social Policy* 22, no. 3 (2002): 393–414.
12. See "The Impact of Section 55: Inter-Agency Partnership Survey of Asylum Seekers It Supports," Refugee Council report, February 2004; online: <www.refugeecouncil.org.uk> (accessed 3 February 2004).
13. For demographic details see: <http://www.homeoffice.gov.uk/rds/pdfs2/hosb803.pdf>.
14. See Anthony H. Richmond, "Social Exclusion: Belonging and Not Belonging in the World System," *Refuge* 21, no.1, (November 2002): 40–48, and "Socio-Demographic Aspects of Globalization: Canadian Perspectives on Migration," *Canadian Studies in Population* 29, no.1 (2002): 123–49.
15. Richard. Falk, "Testing Patriotism and Citizenship in the Global Terror War," *Worlds in Collision: Terror and the Future of Global Order*, ed. K. Booth and T. Dunn (London: Palgrave, 2002), 32.

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Contested Belonging: Temporary Protection in Australia

Louise Humpage and Greg Marston

Abstract

This paper utilizes an analytical distinction between three modes of social belonging to explain the ambiguous resettlement experiences of refugees granted a temporary protection visa (TPV) in Australia. Findings from two qualitative studies indicate that the dominance of a public discourse that depicts asylum seekers as "illegals" inhibits their sense of belonging at the national level. Yet belonging has been facilitated locally through relational networks within communities and the establishment of associations based on cultural or legal categories. Importantly, these successes have provided a basis from which to contest the continued lack of recognition faced by TPV refugees within a nationalistic public discourse.

Résumé

Cet article fait appel à une différence analytique entre trois modes d'appartenance sociale pour expliquer l'expérience ambiguë de la réinstallation vécue par les réfugiés qui obtiennent un TPV (« visa de protection temporaire ») en Australie. Les conclusions de deux études qualitatives indiquent que la dominance d'un discours publique représentant les demandeurs d'asile comme des « clandestins », bloque leur sens d'appartenance au niveau national. Au niveau local cependant, l'appartenance a été facilitée à travers des réseaux de relations à l'intérieur des communautés et l'établissement d'associations basées sur les catégories culturelles ou légales. Ce qui importe encore plus c'est que ces succès ont fourni une base à partir de laquelle il est maintenant possible de contester le manque de reconnaissance confrontant les réfugiés TPV dans l'environnement crée par un discours publique nationaliste.

Introduction

The introduction of the temporary protection visa (TPV) in Australia has had important repercussions for the resettlement experiences and citizenship status of refugees. Having already spent considerable time in transit, refugees issued a TPV are forced into a continued state of limbo by the policy of mandatory detention. Once finally released into the Australian community, their visa status provides few settlement services and even fewer rights. Despite these hurdles, many such refugees have developed a sense of belonging at the local level and, according to the goals of many refugee resettlement policies, might be considered "integrated." This sense of belonging is, however, continually contested at the level of public discourse where political rhetoric justifies the temporary protection offered to such refugees by representing them as "illegals" or "queue jumpers." In making sense of this ambiguous outcome, the paper builds on growing awareness that we need to understand social integration and belonging as far more complex and multi-faceted than resettlement policies and programs typically acknowledge. This is particularly the case for "unauthorized" asylum seekers who are subject to greater stigmatization than refugees accepted through conventional offshore programs.

To this end, the first section of the paper draws upon Calhoun's distinction between relational networks, cultural or legal categories, and discursive publics as modes of social belonging that represent citizenship.[1] Doing so allows us to deconstruct traditional understandings of belonging and integration in a way that provides an explanation for the ambiguous resettlement experiences of refugees granted a TPV and living in the state of Victoria, Australia. The second section of the paper maps out the political context in which temporary protection policies were introduced in Australia, as well as the specific entitlements and restrictions that accompany the TPV. This draws attention to a dominant public discourse, which contests the ability and

right of refugees on TPVs to belong. The third and final section of the paper explores the experiences of refugees on TPVs, as documented in two qualitative research studies undertaken by the authors. In this discussion, emphasis is placed on both the continuing effects such a negative public discourse has had upon refugees on TPVs and the successes achieved by a Melbourne community-based organization in facilitating a sense of belonging amongst refugees on TPVs at the local level. Consequently, this sense of belonging and partial security has provided the support needed to challenge the continued lack of recognition confronting refugees due to dominance of a public discourse that demonizes and devalues them.

Extending the Debate around Integration and Belonging

The notion of refugee integration is not easily defined, although this term usually refers to a long-term process that results in refugees being able to participate in all aspects of the host society where they now live, without having to give up their own cultural identity.[2] The refugee studies literature demonstrates that the integration process is one complicated by numerous variables. A distinction is commonly made, for example, between economic and cultural or social aspects of integration. Typical refugee programs, not surprisingly, tend to concentrate their often meagre resources on the former because the functional issues of housing, employment, and education are regarded as the fastest means for integrating refugees within the community.[3]

There is, however, widespread recognition within the literature that successful resettlement also requires attention to be paid to the cultural and social needs of refugees, which are multiple and complex. Berry, Kim, and Boski for example, have identified that cultural adaptation involves physical, biological, cultural, and social change within refugee individuals,[4] while Liev has developed an integrated model indicating that refugees adapting to a host society experience stress at the individual, familial, group, or organizational levels.[5] Nevertheless, Bihi highlights that many models of refugee integration focus predominantly on psychological interpretations of displacement.[6] This can lead to the misunderstanding that refugees are unable to adjust because of previous suffering, when policy and program failure may be a major contributor to their ill- adjustment.

Korac's comparative research in the Netherlands and Italy provides compelling evidence that the official resettlement policies adopted by different countries have a significant impact on integration, not only in relation to the functional concerns of housing, employment, and education, but also in regard to the social participation of refugees in wider society, which influences their sense of identity, belonging, recognition, and self-respect.[7] She documents how refugees in the Netherlands were unable to overcome a sense of detachment from their host society that developed during prolonged stays in asylum centres, despite receiving relatively high degrees of formal assistance with employment and housing. They were thus largely unsuccessful in establishing closer ties with Dutch citizens. In contrast, refugees in Italy received minimal assistance through self-help systems established within refugee and migrant networks. As a result, they became not only more self-sufficient, but also better integrated into Italian society. Although experiencing considerable difficulties with housing and work in their initial phase of resettlement, in addition to remaining clustered in predominantly low-paying jobs, most of the refugees in Italy felt a greater sense of belonging than those living in the Netherlands.

These ambivalent results led Korac to conclude that spontaneous and individualized encounters between refugees and host society members help avoid negative, hierarchical perceptions of the "other" and encourage a mutual process of learning and shifting from which both groups can gain.[8] Yet, refugee assistance programs often treat refugees as having "immature social identities" in need of cultural and social re-education. This has resulted in language acquisition and cultural adaptation being used as the key indicators when assessing levels of integration. Korac argues that strategies for building the kind of "bridging social capital" which provides refugees with a sense of rootedness and wider belonging are more useful than those that regard integration as one-way assisted process. This is because the latter treats refugees as policy objects, rather than as a vital resource in the integration process.

These findings go some way to explaining the experiences of refugees on TPVs living in Australia. In exploring the meaning of this ambivalent space, we have found Calhoun's discussion of the different modes of social belonging that represent citizenship useful in extending the debate around issues of social or societal integration.[9] Calhoun argues that there has been a lack of attention paid to distinctions between three different modes of social belonging. First, belonging exists as the level of "communities," which consist of relatively small groups that are primarily constituted through informal, directly interpersonal relationships rather than formal political-legal institutions. "Categories," on the other hand, are commonly comprised of large numbers of people who are not knit by the dense interpersonal relationships that constitute communities, but develop a sense of belonging around their shared culture or legal status. Calhoun suggests that the rhetorics of culture and community are problematic ones by which to grasp political rights. He thus argues that we need to recog-

nize "publics" as a third distinctive mode of social belonging. These are quasi-groups constituted by mutual engagement in discourse aimed at determining the nature of social institutions, including nation-states. Here belonging is not based on dense webs of common understandings or shared, taken-for-granted social relations but, as Calhoun has noted elsewhere, on "socially sustained discourses about who it is possible or appropriate or valuable to be."[10] This can lead to problems of recognition for those who do not match dominant discourses regarding valued social identities.

Calhoun's intention in making these distinctions is to highlight theoretical weaknesses in current approaches to citizenship, particularly the way in which discourses of political community are deeply shaped by nationalism. He argues that this has resulted in our using terms like "community" as though there is no problem in making them refer to local, face-to-face networks at the same time as whole nations conceived of categories of culturally similar persons. Yet:

> Membership in a society is an issue of social solidarity and cultural identity as well as legally constructed state citizenship. This is all the more important to recognize in an era shaped by new cultural diversities and new challenges to the abilities of states to maintain sharp and socially effective borders.[11]

We believe that the distinction between belonging in terms of relational networks, cultural or legal categories, and discursive publics is extremely valuable for understanding the rather ambiguous resettlement process experienced by refugees on TPVs in Australia. In indicating both the catalysts for, and obstacles to, their sense of belonging, we demonstrate the utility of making analytical distinctions between modes of social belonging when planning, implementing, and assessing policy and programs aimed at enhancing refugee integration. In turn, we hope to inform what Castles calls a sociology of forced migration that understands "exile, displacement and belonging" as a part of social process in which human agency and social networks play a major role, if in the context of global social transformation.[12]

Public Discourses around Temporary Protection

Public discourse is an area of debate dependent on the competing articulation of differences of ideas, opinions, and identities. In this way, it is also the site of explicit and implicit attempts at persuasion.[13] Castles notes that asylum and other forms of forced migration have become major themes of political debate in many countries as the numbers of people displaced each year has grown through the 1990s.[14] It is beyond the scope of this paper to consider the economic uncertainty and security concerns that have produced this result, but it is clear that refugees and asylum seekers have been regarded as physically embodying an external threat to jobs, living standards, welfare, and the dominance of the nation-state as the focus of social belonging. The issue of forced migration has, as a consequence, become increasingly marked by heated public debates and competition between the political parties as to who is the toughest on "illegals."

Given the enormous political and financial resources that can be used to support them, the highly politicized discourses promoted by governments frequently dominate the public domain. This has certainly been the case in Australia, where political rhetoric around the issue of asylum and temporary protection has attempted to influence public opinion regarding the Australian Government's immigration and border protection policies by playing on existing public fears and insecurities. Australia has historically enjoyed a positive international reputation for its interpretation of the 1951 United Nations Convention relating to the Status of Refugees and 1967 Protocol. Certainly, an estimated 650,000 refugees have been accepted as permanent residents since 1945 and 12,000 places are currently set aside each year for the humanitarian component of its permanent immigration program.[15] Yet, Australia has long demonstrated a preoccupation with controlling its borders to prevent entry of others. The most obvious example is the "White Australia" sentiment that dominated policy from 1901 to the early 1970s.[16]

Although such explicitly racist policy has officially been abandoned, Australia continues to be a nation that demonstrates hostility towards its immigrant foundations. The most recent manifestations of such hostility are the controversial policies on mandatory detention, border protection, and temporary protection. These have established a distinction between "good" refugees and "bad" refugees. The former are selected overseas, usually after referral from the United Nations High Commissioner for Refugees, and enter Australia with a visa that entitles them to permanent residency (and to apply for citizenship after the prescribed waiting period). "Bad" refugees, on the other hand, are asylum seekers arriving in Australia by boat without "authorization"; that is, a visa and/or a valid passport.

This distinction was established in 1989 when the Keating Labor government began automatically detaining unauthorized arrivals, a practice formalized by the Migration Amendment Act 1992.[17] However, the temporary protection visa introduced by the Howard Liberal-National government in October 1999 further entrenched this division between "good" and "bad" refugees. It also marked a shift

towards dealing with asylum seekers in terms of border protection policy, rather than human rights protection under the 1951 Convention and 1967 Protocol. Unauthorized arrivals found to be refugees are now granted TPVs for a period of three years (in some cases, five years) instead of the permanent protection visas (PPVs) formerly offered.

Prior to September 2001, refugees with TPVs due to expire could apply for a PPV, which would grant them Australian residency status. Since that date, unauthorized arrivals assessed as meeting the refugee classification are no longer able to seek a PPV if, since leaving their home country, they resided for at least seven days in a country where they could have sought and obtained effective protection. According to present policy, refugees granted TPVs since 2001 may consequently have the right to seek another TPV, but will never be able to seek permanent protection in Australia.[18]

Australia's TPV regime was founded on real concerns about the increasing misuse of Australia's onshore protection arrangements by organized people smugglers and owes its continuing existence to the political belief that it discourages the illegal entry of asylum seekers into Australia.[19] Its introduction coincided with and has manipulated an existing public discourse representing asylum seekers as queue jumpers who offend the Australian sense of "fair play." With the weight of the Australian Government behind it, this discourse has overwhelmed counter-stories indicating that the selection of refugees for resettlement is more like a lottery than an orderly queue process[20] and that making a formal application is neither practical nor possible for most refugees.[21] This was certainly the case for most of the 8,860 refugees who had been granted a TPV in Australia by October 2003. For instance, 3,658 were from Afghanistan and 4,254 from Iraq, both troubled nations where formal refugee applications were impossible to make.[22]

Importantly, the majority of refugees on TPVs are also single males or married men who left their families at home or in another country and are practicing Muslims. These ethnic, gender, and religious characteristics have worked against refugees on TPVs as together they have been portrayed as representing a "threat" to Australia's social cohesion. Marr and Wilkinson conclude that the Australian Government's border protection policy combines a crude racism with genuine concern for the security of the country that is best described as "race wrapped in the flag."[23] This racism builds on existing understandings of "Australian Muslims" and "mainstream Australians," which Nebhan suggests are positioned along different sides of an imaginary border that separates two seemingly totalized "cultures."[24] The events of 11 September 2001 did nothing to either discourage such beliefs or improve the image of refugees, who have been branded as a sinister transnational threat to national security even though none of the September 11 terrorists were actually refugees or asylum seekers.[25]

Indeed, this attack on the United States appeared to support the Australian Government's depiction of refugees seeking asylum as unable to leave conflict at home behind, even when opposition to what the Prime Minister, John Howard, calls "evil and terrorism" was a key factor in their departure.[26] The Minister for Defence, Peter Reith, explicitly suggested that terrorists might be lurking amongst "boat people."[27] Meanwhile, the Minister for Immigration, Phillip Ruddock, characterized asylum seekers arriving by boat as "those who have the money, those who are prepared to break the law, those who are prepared to deal with people smugglers and criminals."[28] The bogus "children overboard" incident[29] nonetheless provides the most striking demonstration of the way in which "bad" refugees have been represented as lacking the required (yet ill-defined) values Howard's government wishes to muster and affirm. Howard, in referring to the alleged child-throwers, stated: "I don't want people like that in Australia. Genuine refugees don't do that … They hang onto their children."[30]

Political concern about national security and integrity has fuelled a public discourse which casts refugees as a "deviant" problem that should be expelled from Australia's national borders. This category of "refugee" is constructed as being incapable of possessing the qualities a person must have in order to be considered a "real" citizen.[31] This has had repercussions not only for the recognition of asylum seekers as refugees but also for the resettlement of those deemed to meet these criteria. While refugees granted a PPV are able to begin their resettlement process immediately and have access to a variety of resettlement programs and services, those arriving without official documents are sent to one of several detention centres around the country. Mandatory detention may have helped alleviate growing social and political pressures caused by Australia's fear of being "swamped" by newcomers.[32] But there is evidence to suggest that the poor conditions and prison-like nature of detention in Australia have detrimental effects upon the physical, social, and psychological health of refugees on TPVs.[33] In addition, although many refugees on TPVs have been in Australia for up to five years, their resettlement has been effectively delayed from anywhere between a few months to a few years.

After being released from detention, refugees on TPVs continue to be treated as "second-class citizens" in terms of access to settlement services. The accompanying table provides a snapshot of the different entitlements that refugees on TPVs are able to access in comparison to refugees granted a permanent protection visa.[34]

Entitlements Associated with Temporary Compared to Permanent Protection Visas

Entitlement	Permanent Protection Visa *Arrived onshore without a visa &/or valid passport*	Temporary Protection Visa *Selected through offshore refugee program*
Residency status	Permanent, right to apply for Australian citizenship.	Temporary (usually 3 years), no right to permanent protection (and thus Australian citizenship) if spent 7 days or more in a country where effective protection could have been sought and obtained (since Sept 2001).
Travel	Same ability to leave the country and return as other permanent residents.	Travel, even if permitted, voids any protection submission.
Family Reunion	Able to bring immediate family members.	No family reunion rights, even for spouse and children.
Settlement Support	Access to full federally funded settlement services, including Migrant Resource Centres, interpreter service and integration assistance.	Not eligible for most federally funded services, except for health screening and referral.
Housing	Assistance with public housing included within settlement services.	Not entitled to on-arrival accommodation. Limited access to public housing.
Work rights	Permission to work.	Permission to work but job search assistance severely restricted.
Income Support	Immediate access to the full range of federal social security benefits.	Access only to Special Benefit for which criteria apply.
Education	Same access to education as other permanent residents.	Access to primary, secondary and vocational education subject to state policy (access granted in Victoria). Effective exclusion from tertiary study due to imposition of international student fees.
English classes	Eligible for 510 hours of federally funded English language training.	Not eligible for federally funded English language programs or translating and interpreting services, although since Jan 2003 Special Benefit recipients have some access to basic Language, Literacy and Numeracy Programs.
Medical Benefits	Same eligibility for Medicare and Health Care Card as other permanent residents.	Eligible for Medicare and Health Care Cards.

The above table is adapted from Brotherhood of St Lawrence, "Seeking Asylum: Living with Fear, Uncertainty and Exclusion," *Changing Pressures Bulletin* 11 (November 2002)

There are literally thousands of such "temporary citizens" whose lives are curtailed by their limited access to basic rights and services, as well as the more fundamental personal freedoms detailed above. The next section suggests, however, that many refugees on TPVs are beginning to integrate and belong, despite the continuing uncertainty, shame, and lack of control that result from the negative discursive representations that dominate the public arena.

Beginning to Belong: Refugees on Temporary Protection Visas in Victoria

An analytical distinction between modes of belonging at the levels of community, cultural or legal categories, and discursive publics has been established to draw attention to the complexity of social integration. Findings from two qualitative research studies offer evidence that belonging consists of sets of overlapping and interconnected processes that take place differently in various sub-sectors and spheres of receiving societies and have various outcomes.[35] First, an action research project conducted in 2002–2003 highlights the continuing and negative impact that the dominant public discourse surrounding the TPV regime has had on refugees.[36] Second, a further 2003 interview study highlights the way in which an innovative community organization has assisted refugees on TPVs to develop a sense of belonging at the community and category levels.[37]

This in turn has provided a basis for such refugees to contest the public discourse that both devalues and demonizes them.

Devalued and Demonized: The Effects of a Public Discourse

Without a doubt, the highly politicized public discourse dominating debate around the TPV regime has negatively impacted upon the resettlement of refugees. The material hardships faced by refugees on TPVs were an important theme in the first research study, which involved in-depth interviews with fifty-one refugees on TPVs and fifteen service providers living in Melbourne or regional centres of Victoria. The majority of the TPV refugees survived on very limited incomes, lived in insecure housing, had ongoing health problems, and were restricted in their access to educational opportunities. These issues, although common to other refugees, were discovered to be profoundly connected with their legal and rhetorical positioning in the dominant public discourse.

Labour market participation, for example, was inhibited by the temporary nature of the protection offered by the TPV. Refugees told of direct discrimination by employers, who frequently mistook the TPV to be a form of tourist visa (which does not allow employment) or were wary of employing someone granted only temporary status. A participant in a regional group interview proclaimed: "I can't get a job around here. They look at my visa and they say no straightaway. The boss says no!" Others spoke of the indirect effects of holding a TPV. These included the inability to gain proficiency in English (due to federally funded English-as-a-second-language (ESL) providers being restricted from enrolling refugees on TPVs) and to receive assistance in gaining domestic work experience or to have their qualifications recognized (due to limited access to Job Network services).

These obstacles, established by federal government policy, disguised the desire of many TPV holders to participate in and contribute to society to a degree far greater than their limited visa status allows. For example, an Iraqi expressed his wish: "Just to be able to do something, to work, to contribute to this society, to feel that I'm doing something and not on Special Benefit." Yet, the poverty traps and work disincentives associated with the Special Benefit, a discretionary payment for those in severe financial need due to circumstances outside their control, resulted in reported Centrelink debts for about a quarter of the fifty-one refugees interviewed. This raises fundamental policy questions about whether the Special Benefit is the right payment for people who are living in Australia for at least three years and who are both keen to work and highly motivated to gain greater financial independence.

Given the many practical obstacles faced by refugees on TPVs, it is telling that refugee participants considered their most significant barrier to resettlement to be the ongoing psychological uncertainty and distress caused by the TPV and mandatory detention regimes. The participants indicated that the limited freedom and sense of isolation associated with the legal conditions of their visa far outweighed material concerns about access to resettlement services. A female refugee noted in a focus group:

> But all of these things result from the very important matter, which is really affecting the situation of TPV holders, the psychology of the situation, resulting from the temporary living situation. Okay, yeah, all of these other things … the services that we are not eligible for, produce a very bad environment, a psychological environment. So this is the thing that we have to focus on, which is why we are always talking about the temporary protection visa.

All of the refugees interviewed made a direct connection between their temporary visa status and their feelings of stress, anxiety, hopelessness, and uncertainty: "I just think about it and I feel depressed, you know, a lot of pressure, thinking about everything." The deep uncertainty associated with the TPV severely restricts the capacity of refugees to recover from a traumatic past, as well as to dream and hope for a better future. As a result, many described the TPV as a "secondary form of punishment," similar to living like "an island cut off from the mainland." While the emotional, spiritual, and mental resilience among the refugee research participants was inspiring, the reality of living with a TPV on a day-to-day basis represented the final straw. They described the experience of shrinking hope:

> Once we got to Australia we thought we would be safe and protected … and then we came to this … and then we got this temporary protection visa, we thought we were slowly dying again because we started a new form of suffering.

In particular, they could not make sense of how they had been recognized as genuine refugees, yet still had to live with such uncertainty, as an Iraqi participant suggested:

> First of all we are discriminated as a group of people who are not equal to the others [refugees granted PPVs], and at the same time, we have the same condition as the others – they got refugee status and a whole right.

This situation caused some to hold deep fears about forcibly being deported to the country they have fled: "Three years, and what's next, deportation, back to detention centres, or back to our country to the serious death or jail."

Not surprisingly, the pivotal hope for research participants centred on attaining permanent residency, which they believed would give them the psychological security and material stability needed to plan for a future free from political persecution, torture, and trauma. They indicated that permanent protection would enable refugees on TPVs to regain a sense of control over their own lives, defined in terms of autonomy and agency in regard to securing residency, family reunion, employment, health, education, and participation in cultural and public activities. Yet, the future of the refugees as permanent residents and everything that flows from this state of ontological and legal security is currently subject to an external decision of a governmental authority. The powerlessness felt by TPV holders as a result has been exacerbated by the way in which expiring TPVs have been replaced by an automatically issued special three-year Class XC visa until immigration officials redetermine the refugee status of each visa holder. More than 90 per cent have applied for further protection visas, but so far only 350 decisions have been made and 342 were refused.[38] A "freeze" has been placed on Iraqi applications, presumably until the situation in their homeland improves enough for them to be returned without an international outcry.

The devalued citizenship status offered to refugees on TPVs, which has led to continuing discrimination, uncertainty, and powerlessness, was a humiliating experience for many participants. One young Iranian said: "I feel I'm not equal or normal person like others here, unusual in this community. Sometimes I try to hide my identity as a TPV because I feel ashamed." But, importantly, many recognized that they were simply pawns in a political game. For example, one refugee highlighted the way in which he believed refugees had been demonized to deny them any claim for justice:

> The Minister of Immigration, whenever he comes to the media, he created bad image or serious type of propaganda against us, that's all he did for us. He never mentioned anything about our suffering and the way that the Iraqi regime, how bad they've been treating the Iraqi people, and our stories, why we are here, individual or in general … they forgot everything about that.

The next section demonstrates that, alongside assistance provided by innovative community organizations and sympathetic individuals, this political awareness has enabled refugees on TPVs to contest the official public discourse that devalues and demonizes them. Yes, the TPV regime, which has had such a significant impact on the hearts and minds of thousands of refugees in Australia, illustrates the way in which the construction of social identities shapes people's capacities for mobility.[39] To focus on these negative experiences alone, however, would tell only part of the story regarding the integration of refugees on TPVs in Australian society.

Involved and Empowered: The Effects of an Innovative Refugee Program

According to Calhoun's analysis, two other modes of social belonging sit beside that which develops at the level of discursive publics. We concentrate first on belonging at the level of communities, which Calhoun defines in terms of informal, directly interpersonal relationships, because these have had an enormous effect on the integration process of refugees on TPVs. The refugee participants who spoke of uncertainty, shame, and powerlessness in the last section also highlighted how they overcame some of the material barriers to their resettlement through access to a well-informed community advocate and supportive informal networks. For instance, many refugee participants told how they managed to overcome difficulties obtaining rental accommodation only with the assistance of an advocate:

> So I'd been rejected twenty times by agents and that was very hard for me. I had no rental history. I was thinking of going back to Adelaide because I couldn't stay any longer with my friend and his children. Then someone from a local migrant group came with me to the agent and she talked to them, and he was a Muslim man, so didn't have the same discrimination as the others. And that's how I got my unit, but it's not in very good condition.

Many organizations assisting refugees provide the direct advocacy highlighted here themselves or arrange a community "sponsor" to provide advice and practical help in the first few weeks or months of refugee resettlement. Some of these formal relationships turn into friendships. But the artificial and temporary manner in which refugees and sponsors are matched, along with the pressing needs of newly arrived refugees, often result in such friendships being based largely around practical issues, such as finding and furnishing a house or providing an introduction to the health and welfare system.

As a consequence, a community-based Neighbourhood House and adult learning centre in Melbourne called the Fitzroy Learning Network has attempted to establish more "natural" settings for friendships to develop, in addition to the considerable social welfare and material assistance provided by its paid staff. The Network offers a range of innovative social activities where past and present students, volunteers, staff, and "friends" of the Network can mingle informally. The most important of these are: weekly community lunches; social events to celebrate important dates, such as the end of the school term and the arrival of refugees long

detained on Nauru; regular excursions, including three weekend-long trips to rural Victoria; and theatrical productions developed to feature refugees and their survival stories.

A research study involving focus groups with twenty-five refugees, as well interviews with volunteers and refugee support workers, indicated that the Network's activities have enabled some refugees on TPVs to develop a strong sense of belonging at the community level.[40] Real friendships have emerged between refugees, as well as between refugees and Australian citizens. For instance, a small number of the men are in relationships with Australian women while others have found an "Australian Mum." These friendships have been crucial given that most refugees on TPVs are dislocated from their biological families and are denied the right to family reunion. For a refugee on a TPV from Syria, the Network itself provided a "family" for him:

> The Fitzroy Learning Network has changed my life. Here I found my family, my friends, and my community; here I found my life …. I like to spend all my time at the Network because I feel very isolated in my flat. Here I talk to people, practice my English and ask them for help if I need something like using the Job Network or other services. Maybe I will never see my real family again but these people are here for me forever.[41]

Trust, a quality often difficult for refugees to regain, has been developed through such relationships. For example, having shared food and accommodation for several days on a Network camping holiday, refugees on TPVs – most of whom travelled to Australia on a leaky boat from Indonesia – found themselves able to participate in a yachting trip with the support of friends whom they trusted. Such trust is mainly at the local level, but is spreading because the relational networks in which refugees on TPVs have become embedded are spatially extensive. For instance, a recent weekend visit to the town of Daylesford saw locals billet the Network's refugees. As a result, refugees on TPVs in Melbourne now have friends in regional Victoria. This enhanced awareness of an alternative public discourse, one gradually gaining momentum as the thousands of Australians embarrassed by their government's TPV and mandatory detention regimes begin to speak out, has encouraged a sense of hope and alleviated some of the shame felt by refugees on TPVs.

In addition, the Network's activities have enabled refugees on TPVs to forge alliances with sympathetic individuals in positions of power, including members of parliament and policy makers, which are beginning to have important legal and political repercussions. This is illustrated by a friendship that developed between a retired Australian teacher and an Afghan refugee after they met at a Network social event. The refugee visited each weekend for help with his English language study and called frequently to ask advice on a whole range of everyday matters. In return, he brought the Australian food and did maintenance jobs around her house. This friendship soon extended to the Afghan's wife, child, and brother, who were detained on the island of Nauru as part of the Australian Government's "Pacific Solution" policy, when the Australian and her friends began sending letters and parcels.[42] More importantly, the Australian acted as an important middle person between the refugee, lawyers, and political advisors as they together fought for nine women and fourteen children on Nauru to be reunited with their husbands who had been granted TPVs in Australia. As a result of this collective effort, the Afghan, his family and several other families separated by the Pacific Solution have now been reunited and are living as permanent residents in New Zealand.

In addition to developing social belonging at the community level, many refugees on TPVs have also established less dense and directly interpersonal ties between groups of people who share a cultural similarity or legal equivalence. This sense of belonging at the category level has been facilitated by several of the Network's activities. For instance, two theatrical productions developed to feature refugee survival stories brought together refugees from a range of backgrounds to work as a team and acknowledge the experiences they share as a group. A refugee who took part noted:

> I always wanted to tell my story and speak with people but I was afraid. The play made me face my fears of communicating with the others and helped me out of my isolation …. We are all connected through our experiences despite our different backgrounds.[43]

In addition, the Network has actively supported refugees on TPVs in establishing voluntary associations based on their shared cultural identifies or their legal status. For instance, organizations representing the Afghan and Iraqi communities have been established. These include a separate Hazara Association which allows Afghans from this persecuted tribe to have their own voice in Australia, as was impossible in Afghanistan. Not necessarily reflecting a strong sense of community amongst refugee groups, such associations have created space for recognition at the category level in order to enter into dialogue with policy makers and politicians.[44] The formation of the Al Amel TPV Holders Association is a classic example. "Al Amel" means "hope" in Arabic, a title reflecting the shared desire to cross cultural, national, and linguistic boundaries to work towards a shared goal: the granting of permanent protection to all refugees on TPVs. In this role, Al Amel advocates for change in immigration law, liaises with other groups, and assists with health, employment, and legal issues.

In addition to responding to the sense of urgency and anxiety that surrounds the real threat of deportation for temporary citizens, such associations based on either cultural or legal categories have provided a vehicle for reclaiming and respecting the cultural and political identities of refugees. The considerable advocacy work conducted by refugees on TPVs with the Network's encouragement has also achieved this end. Most advocacy has been at the local level and includes school talks, media interviews, participation in research that documents the harmful effects of the TPV regime, and speech-making at pro-refugee rallies. However, some refugees have also been involved in direct political lobbying at the state and federal levels. For instance, several of the Network's refugees stood alongside employers, regional and rural mayors, and refugee supporters to tell their stories and call for a review of the TPV regime during a delegation to the Federal Parliament in November 2003. Importantly, the campaign was called "Refugees say THANK YOU to Australia," emphasizing their appreciation that many individuals and communities had made them feel welcome in the face of extremely unwelcoming government policy.

Whether at the local, state, or federal level, such activism has attempted to subvert dominant discursive representations by raising awareness about the TPV regime and countering the rhetoric that suggests that refugees on TPVs are not valid candidates for permanent citizenship. Given that public discourses are not static and identities may be created or changed in public interaction, this challenge to their representation as "bad" refugees has brought a sense of belonging to a disparate group of refugees whom government policy has tried to render powerless.[45] The findings in Melbourne thus support Korac's comparative research, which highlighted the importance of active agency in successful social integration for individual refugees.[46]

Conclusion

In this paper we have emphasized the importance of deconstructing conventional notions of integration and belonging to reveal a far more nuanced interpretation of the "social" than normally acknowledged by refugee resettlement policy and programs. A differentiation between relational networks, cultural or legal categories, and discursive publics has assisted in explaining the ambiguous and ambivalent resettlement experiences of refugees on TPVs in Australia. Findings from two qualitative research studies have offered evidence to suggest that the politics of belonging consist of sets of overlapping and interconnected processes that take place differently in various sub-sectors and spheres of receiving societies and have various outcomes. In this way, it has been possible for refugees on TPVs in Australia to show strong signs of social integration and belonging in terms of relational networks and cultural or legal categories, as well as active resistance to negative representations at the public level, while at the same time feeling the material and psychological effects of the divisive public discourse that demonizes refugees on TPVs.

Social integration is clearly not a singular, stage-sequential process. There is consequently a need to reassess refugee policy and programs which tend to be based on such an assumption. We support Korac's call for strategies to be implemented that build the kind of relationships and networks which facilitate wider social belonging and integration.[47] We also agree that there needs to be greater acknowledgment of refugees as social actors, instead of policy objects or targets. This is particularly the case when the paper indicates that such a sense of belonging at the community and category levels is a crucial factor in developing the trust and empowerment necessary to challenge the negative representations of asylum seekers that currently dominate public discourse in Australia.

Notes

1. Craig Calhoun, "Nationalism, Political Community and the Representation of Society: Or, Why Feeling at Home is Not a Substitute for Public Place," *European Journal of Social Theory* 2, no. 2 (1999): 217–31.
2. See Canadian Council for Refugees, "Best Settlement Practices: Settlement Services for Refugees and Immigrants in Canada (Montreal: Canadian Council for Refugees, 1998); and John Berry, "Acculturation and Psychological Adaptation amongst Refugees," in *Refugees – The Trauma of Exile: The Humanitarian Role of Red Cross and Red Crescent*, ed. D. Miserz (Dorprecht: Martinus Nijhoff, 1988), 97–110.
3. See Robert Heipel, "Refugee Resettlement in a Canadian City: An Overview and Assessment," in *Refugee Policy: Canada and the United States*, ed. Howard Adelman (Toronto: York Lanes Press, 1991), 344–55; and Maja Korac, "Integration and How We Facilitate It: A Comparative Study of the Settlement Experiences of Refugees in Italy and the Netherlands," *Sociology* 37, no. 1 (2003): 51–68.
4. John Berry, Uichol Kim, and Pawel Boski, "Psychological Acculturation of Immigrants," in *Cross-Cultural Adaptation: Current Approaches*, ed. Y.K. Kim and W. Gudykunst (Newbury Park: Sage, 1988), 62–89.
5. Man Hau Liev, "Well-being and Cultural Maintenance," in *Refugee Resettlement and Wellbeing*, ed. M. Abbott (Auckland: Mental Health Association of New Zealand, 1989), 1–6.
6. Abdi Bihi, "Cultural Identity: Adaptation and Well Being of Somali Refugees in New Zealand," (M.A. Research Paper in Development Studies, Victoria University of Wellington, 1999).
7. Korac, 59–63.
8. *Ibid*., 56–62.
9. Calhoun, 1999, 219–20.

10. Craig Calhoun, *Social Theory and the Politics of Identity* (Oxford: Blackwell, 1994), 20–21.
11. Calhoun, 1999, 219.
12. Stephen Castles, "Towards a Sociology of Forced Migration and Social Transformation," *Sociology* 37, no. 1 (2003): 13–34.
13. Calhoun 1999, 223.
14. Castles, 14–15.
15. Mary Crock and Ben Saul, *Future Seekers: Refugees and the Law* (Sydney: Federation Press, 2002).
16. See James Jupp, *From White Australia to Woomera: The Story of Australian Immigration,* (Cambridge: Cambridge University Press, 2002).
17. Katherine Betts, "Immigration Policy under the Howard Government," *Australian Journal of Social Issues* 38, no. 2 (2003): 169–92.
18. Department of Immigration and Multicultural and Indigenous Affairs, *Fact Sheet 64: Temporary Protection Visas* (Canberra: DIMIA, 2002). New developments in the run-up to the 2004 Federal election suggested that refuges holding TPVs would be able to apply for permanent residency through mainstream immigration processes. At the time of writing, it appeared most would not be able to meet the strict criteria guiding permanent residence decisions. It was also unclear whether this change in policy would automatically apply to those previously denied any right to permanent protection due to the "seven-day rule."
19. See Marcus Einfeld, "Is There a Role for Compassion in Refugee Policy," *UNSW Law Journal* 23, no. 3 (2000): 303–14; and Catholic Commission for Justice, Development and Peace, *Forgotten People, Asylum in Australia*, Occasional Paper No.10 (Melbourne: Catholic Commission for Justice, Development and Peace, 2001).
20. Peter Mares, *Borderline*, 2nd ed. (Sydney: University of New South Wales Press, 2002), 18.
21. See Refugee Council of Australia, *Frequently Asked Questions*, <http://www.refugeecouncil.org.au/html/facts_and_stats/facts.htm l> (accessed on September 8, 2003).
22. Michelle Grattan, "Fighting to Let Refugees Stay," *The Age*, November 12, 2003, 15.
23. David Marr and Marian Wilkinson, *Dark Victory* (Crows Nest: Allen and Unwin, 2003), 176.
24. Katy Nebhan, "Identifications: Between Nationalistic 'Cells' and an Australian Muslim *Ummah*," *Australian Journal of Social Issues* 34, no. 4 (1999): 371–85.
25. Castles, 16.
26. John Howard, "Strength through Diversity" (Address at Multicultural Policy Announcement, Adelaide, October 16, 2001).
27. Cited in Marr and Wilkinson, 214.
28. Cited in Mares, 16.
29. This refers to claims made by the Australian Government suggesting that asylum seekers on a boat intercepted by the Australian Navy in October 2001 had begun to throw their children in the water to avoid their boat being escorted out of Australian waters. These claims were proved false only after the Liberal-National government was returned to power in the Federal election of November the same year.
30. Cited in Marr and Wilkinson, 189.
31. See Patricia Harris and Vicki Williams, "Social Inclusion, National Identity and the Moral Imagination," in *The Drawing Board: An Australian Review of Public Affairs* 3, no. 3 (2003): 205–22.
32. See Korac, 62.
33. See Brotherhood of St Lawrence, "Seeking Asylum: Living with Fear, Uncertainty and Exclusion," *Changing Pressures Bulletin* 11 (November 2002): 1–8; Mares; Greg Marston, *Temporary Protection, Permanent Uncertainty: The Experiences of Refugees Living on Temporary Protection Visas* (Melbourne: Centre for Applied Social Research, RMIT University, 2003); Fethi Mansouri and Melek Bagdas, *Politics of Social Exclusion: Refugees on Temporary Protection Visa in Victoria* (Melbourne: Deakin University, 2002).
34. This table was adapted from Brotherhood of St Lawrence, 3.
35. Korac, 54.
36. Marston.
37. Louise Humpage with the Fitzroy Learning Network, *Opening Doors to Our Community: A Framework for Engaging Victoria's Newest Residents – Refugees, Temporary Protection Visa Holders and Asylum Seekers* (Melbourne: Centre for Applied Social Research, RMIT University, 2004).
38. Grattan, 15.
39. See John Clarke, "A World of Difference? Globalization and the Study of Social Policy," in *Rethinking Social Policy*, ed. G. Lewis, S. Gewirtz ,and J. Clarke (London: Sage Publications, 2000); Richard Sennett, *Respect: The Formation of Character in an Age of Inequality* (London: Allen Lane, 2003).
40. Some of these refugees also participated in the earlier research conducted by Greg Marston.
41. Fitzroy Learning Network, *Opening Doors to Our Community: Annual Report 2002* (Melbourne, 2002), 18.
42. The "Pacific Solution" has involved the Australian Government detaining asylum seekers from intercepted boats on the island-state of Nauru and Papua New Guinea's Manus Island in an effort to deny them access to the Australian legal system.
43. *Ibid.*, 12.
44. See Lynnette Kelly, "Bosnian Refugees in Britain: Questioning Community," *Sociology* 37, no. 1 (2003): 35–49.
45. Calhoun, 1999, 223.
46. Korac, 62.
47. Korac, 51–54.

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The Costs of Legal Limbo for Refugees in Canada: A Preliminary Study

Tim Coates and Caitlin Hayward

Abstract

This paper is designed to provide a preliminary understanding of the barriers facing refugees in legal limbo in Canada. In particular, it will focus on the economic implications, for both protected persons and Canadian society at large, of maintaining tens of thousands of individuals in this difficult situation for extended periods of time. The findings are preliminary, and designed to indicate future avenues of research, as well as potential roadblocks to research in this area. The paper also includes some of the results of a survey of Convention refugees and the refugee-supporting organizations, conducted by the Public Justice Resource Centre. The initial conclusions indicate that the costs of limbo are large enough to warrant serious reconsideration of this stage of Canada's refugee determination policy. The rationale for this study was to help key decision makers see the futility and the unnecessary cost to the government of keeping refugees in limbo.

Résumé

Cet article vise à fournir une compréhension initiale des obstacles confrontant les réfugiés qui se retrouvent dans un état juridique indéterminé au Canada. Il se penchera en particulier sur les implications économiques à la fois pour les personnes protégées et la société canadienne en général de garder des dizaines de milliers d'individus dans cette situation difficile pendant des périodes étendues. Les résultats sont encore préliminaires et sont conçus pour indiquer les voies de recherche pour l'avenir, aussi bien que les obstacles possibles à la recherche dans ce domaine. L'article propose aussi des extraits des résultats d'un sondage effectué auprès des réfugiés et d'organismes de soutien aux réfugiés par le Public Justice Resource Centre (Centre de ressources pour la justice publique). Les conclusions initiales indiquent que les coûts de cet état indéterminé sont suffisamment élevés pour justifier une sérieuse remise en question de cette étape dans la politique de reconnaissance des réfugiés. Le raisonnement pour entreprendre cette étude était d'aider les décisionnaires-clés à voir la futilité et le gâchis superflu de garder les réfugiés dans un état indéterminé.

Preface

Fleeing the devastating consequences of twenty years of civil war and the repressive Taliban regime, Khalida fled to Canada from Afghanistan in early March 1999.[1] To Khalida, Canada was a utopia of hope and as a refugee she wished to forget her past, start fresh, and be reunited with her children who had fled the year before and were staying with family in Toronto. But for Khalida the benevolent and welcoming Canada she expected has not been the country she experiences.[2]

In night I sometimes can not sleep and I just walk and walk around the lobby [of my apartment building]," she says. Her stress is palpable. She is not old but frail from the stress that characterizes her eyes and marks her face. Khalida is a Convention refugee and has applied for permanent resident status in Canada with her husband also on her application. When she is granted status her husband will be able to join them in Canada. However, it has been four years since she was granted Convention refugee status, much longer than official timetable of six to twelve months for determining status stated on the Citizenship and Immigration Canada Web site. She has not heard from the government officer assigned to her case in six months. When she does hear, they repeat a mantra now all too familiar to the family – they are waiting on security checks.

They are "not giving any response, but we need our dad as soon as possible," Khalida's daughter and oldest child tells me. His absence is a large part of our conversation and

obviously has a depressing effect on the family's mood. "The stress of my mom is being too much for us and it is because my dad is not here," the daughter continues. "One person is supposed to stay with my mom but I can't because I have to work." Khalida concurs, "I can no longer take care of my children when they're missing all the time their father. They need their father. Even sometimes my family asking 'where is he' and other kids at [my children's] schools are asking."

The situation of Khalida and her family is not uncommon in Canada. Over twenty thousand Convention refugees like her are awaiting permanent resident status, or what used to be called "landed immigrant" status. They are unable to get on with their lives while issues relating to criminality, security, and identity documents are sorted out. In the process, the government spends millions of dollars unnecessarily. For refugees, for the government and therefore the Canadian taxpayer, it is a lose-lose situation. During this stage in their refugee determination process, refugees are in limbo. They are withheld rights that Canada must provide under its international obligations. Refugees encounter barriers to employment, mobility, training programs, and access to adequate health care and democratic rights, ones that someday will eventually be theirs since refugees may not be removed from Canada.

Introduction

This paper was designed to provide a preliminary understanding of the barriers facing refugees in legal limbo in Canada – those awaiting, often for years, permanent resident status. In particular, we wished to focus on the economic implications, for both protected persons and Canadian society at large, of maintaining tens of thousands of individuals in this difficult situation for extended periods of time. Such research would provide an important element of a broader argument, most frequently articulated on humanitarian grounds, that suggests that the costs of limbo are large enough to warrant serious reconsideration of this stage of Canada's refugee determination policy. The rationale for this study was to help key decision makers see the futility and the unnecessary cost to the government of keeping refugees in limbo.

As of 2003, there were over 16,200 cases of refugees in "limbo," involving almost 22,000 people.[3] For many refugees, limbo in Canada is not a short-term affliction. While there is no official statistic from Citizenship and Immigration Canada (CIC), several people in the refugee support community have stated that the current wait is *at least* eighteen months.[4] A variety of factors contribute to a significantly longer waiting period. Some refugees interviewed for this study have been in limbo for eleven, twelve, even thirteen years.

This study is a preliminary attempt to compare the costs and benefits to Canada of keeping refugees in limbo. This, as we anticipated and subsequently confirmed, is very difficult to quantify. Cost studies in general are complex; they demand sophisticated technical skills and training in methodology and economics. Attempts to quantify social and economic phenomena often require assumptions so that information fits reality. This study is built around the assumption that being trapped in limbo directly and indirectly creates extra costs and it is possible to quantify barriers to refugee integration. These were found through interviews with settlement agencies and our Convention refugee questionnaire. At this point an important caveat needs to be added: The economic costs to Canada found in this study are above what would normally be incurred through the refugee determination system, *without* an extended period of limbo as currently exists.

Our findings point to clear evidence of significant costs both to Canada as a whole and to refugees themselves who are left in legal limbo. The difficulty of obtaining information, however, makes this a preliminary study which will require further work should a policy change not be forthcoming.

This paper is divided into four sections. The first part will review the state of refugees in Canada and how the process for In-Canada Refugee Protection operates, what has changed since September 11, 2001, and how these changes open a window of opportunity for necessary policy changes. Section two briefly discusses our research methodology and outlines gaps in the literature of economic research in refugee issues. During limbo, refugees face many barriers to integration. These will be analyzed in the third part, while the final section presents the economic costs these barriers produce.

Part 1. Refugees: Yesterday and Today

Canada has a reputation as one of the most "refugee friendly" of all the world's nations, with innovative programs and compassion for the displaced. In 1986, UNHCR awarded Canada the prestigious Nansen Medal (the only occasion in which it has been given to a country), for its "major and sustained contribution to the cause of refugees." Since World War II, nearly a million refugees have found a new home in Canada.

While a majority of Canada's history with non-Western European immigration has been marked by high barriers and racism, policies and attitudes changed in the late twentieth century. Large changes occurred with the emergence of the Immigration Act in 1976. Selection criteria for independent immigrants were broadened while refugees were identified as a separate class from immigrants. The Immigration and Refugee Board was created in 1988 to review claims of refugee claimants and select them based on estab-

lished criteria. More recently, since September 11, 2001, and the Immigration and Refugee Protection Act (IRPA), which came into force on June 28, 2002, sweeping changes have been made to the asylum determination procedures, the impact of which is still to be assessed. One of the most troubling of IRPA's features is the greatly expanded powers granted to authorities to detain foreign nationals without a warrant if there's "reasonable grounds" to believe the person is a threat to the public.[5]

IRPA and September 11, 2001

Canadian immigration and refugee policies have come under intense scrutiny in the aftermath of September 11, 2001. Many American officials and media outlets have pointed fingers at Canada, accusing Canada of being soft on terrorism and stating that its immigration and refugee policies are gifts to terrorists trying to enter the U.S.[6] Even Canadian Daniel Stoffman, in his book *Who Gets In*, says, "Canada is indeed a terrorist threat, both to itself and to its neighbors."[7] He quotes an American immigration think-tank, saying, "Terrorists from all over the world have been using Canada's asylum system… You can come in [to Canada] with no documents, or fake documents, and say you want asylum and they let you in."[8]

This is the harsh environment refugees encounter when arriving in Canada and the politics refugee workers must sift through in order to do their job. However, any serious analysis of the refugee determination system will find that it *does not* pose any terrorist threat. A 2001 report prepared for Citizenship and Immigration Canada on undocumented refugees found that out of a group of 2,161 undocumented persons who applied for permanent resident status, only one failed the criminal check.[9] *Only one* involved a person with crimes sufficient to warrant a denial of landing.[10] A further discussion on the images and portrayal of refugees post-September 11 is beyond the scope of this paper. However, it is worth quoting a passage from a recent piece by Howard Adelman at length:

> It is clear that terrorism aimed at North America is a real threat and both aggressive and defensive measures must be taken to combat it. Though some of those defensive measures include enhanced immigration controls, *there is virtually no evidence linking global terrorism with refugees*. … There is even more evidence that the security threat – which is real and palpable – has been used as a cover to cut down on the entry of refugee claimants coming to Canada whether through visa controls or through the proposed implementation of a safe third-country system. If there are justifications for this indirect cutback by greater restrictions on access to the system, one of them is not security; the security issue is a rationale rather than a reason.[11]

Refugee and Protected Persons in Canada

Two types of refugees are recognized by Canada. Those sponsored overseas by the government or a private group and brought to Canada are called "resettled refugees," and are granted permanent residency (formerly known as landed status) immediately upon arrival in Canada. The second group, those individuals who go through the inland refugee determination system, are those who enter Canada by land, sea, or air and claim asylum from persecution. Under the IRPA, the latter group is included in the new category of "protected persons," which includes, but is not strictly limited to, Convention refugees. For the purposes of this article, we are concerned with people whose refugee claims have been accepted in Canada but who have not yet achieved permanent resident status. The following is a brief summary of the refugee determination system.[12]

Upon arrival in Canada, the refugee claimant makes a claim at a border point or from within Canada for asylum. Citizenship and Immigration Canada receives the claim and decides within three days whether or not the claimant is eligible. Claimants for asylum in Canada are not eligible if they:

- are found to have made a refugee claim in Canada before;
- are recognized by another country as a refugee;
- came to Canada through a "safe third country";
- have been determined to be inadmissible because of security, criminality, organized criminality, or violating human or international rights.

If eligible, the claimant is referred to the Refugee Processing Division (RPD) of the Immigration and Refugee Board (IRB) and has twenty-eight days from the time of the claim to complete and send a Personal Information Form (PIF) to the IRB. The IRB is an independent quasi-tribunal that hears and makes a determination with regard to the credibility of a claim for refugee status.

A claimant accepted by the IRB becomes a protected person and can apply for permanent residence. A claimant refused by the IRB can apply for judicial review to the Federal Court and also for a Pre-Removal Risk Assessment. This study is concerned only with those claimants accepted by the IRB and hence deemed protected persons. They now enter a state often referred to as "legal limbo." They may have peace of mind in knowing they can not be sent home and enjoy more rights and opportunities as claimants, but face numerous obstacles and delays prior to enjoying the rights and privileges of permanent residents.

As stated above and explored further below, without permanent resident status, refugees must endure unnecessary hardships. The Canadian Council of Refugees (CCR) identifies three main reasons why Convention refugees can experience long delays in waiting to become permanent residents.[13]

*1. Identity documents.*A legislative amendment introduced in 1993 requires Convention refugees to produce "satisfactory identity documents" before they can be granted permanent residence. The lack of identity documents for Afghanis and Somalis helps explain why many of them remain in legal limbo. Citizens of Sri Lanka have also been heavily affected: indeed, Convention refugees from Somalia, Sri Lanka, and Pakistan combine to make 36 per cent of all refugees in limbo (see box 1.1). To accommodate the growing number of refugees without IDs, undocumented claimants arriving in Canada can use section 178 of the IRPA regulations, which allows statutory declarations that attest to a person's identity to replace the need for presenting an official ID.

2. Fees. Refugee claimants can expect to pay significant fees in order to become permanent residents. Since 1994 all Convention refugees must pay a $550 processing fee per adult and $100 per child.

3. Security Checks. After passing the IRB, a Convention refugee's background is checked again before being approved for permanent residence. The Canadian Security Intelligence Service (CSIS) and the Royal Canadian Mounted Police (RCMP) perform background checks using different systems, and must also coordinate with officials in the originating country as well as those in any other country of previous residence. Performed on different systems and largely uncoordinated between organizations, security certificates expire every eighteen months, and must be revalidated after this time, amounting to more delays.

These security checks are an exact repeat of what now occurs at the point of making a claim and the IRB determination process. They are effectively redundant. In any case, there are methods available to the government should a recognized refugee or permanent resident be found to have lied on their original application or be otherwise deemed ineligible. Under the IRPA and the Citizenship Act, the Minister can revoke both permanent resident and refugee status, providing effective safeguards for mistakes earlier in the system.[14]

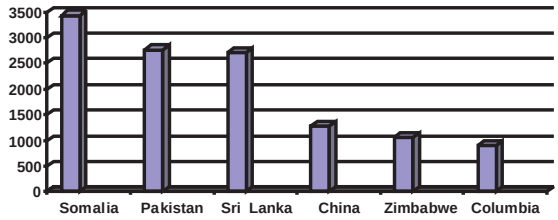
Several other reasons can lead to limbo delays, including pressure from the system itself. If a refugee fails to apply for landing within 180 days of being granted Convention refugee status (with the accompanying $550 fee) they then may apply for permanent residency only under the humanitarian and compassionate stream (H&C) of the immigration procedure – where documentation guidelines and other conditions are much more stringent.

Part 2. Methodology and Research Notes

Refugee Economics

Immigration issues have been a frequent topic of academic, policy, and political studies and discussions; nevertheless, there is a surprising dearth of economic studies concerning refugees. While it is a topic of frequent political and media discussion, the economic impact of refugees has been infrequently and unevenly studied.[15] This may be due to the scarcity of quantitative and statistical information concerning refugees. The Canadian census, the most regular and comprehensive source of data, does not distinguish between immigrants and refugees, leading to the frequent "lumping together" of these two groups for the purposes of academic and policy studies.

Box 1.1
Origin Country of Limbo Refugees in Canada 2002



Another problem with studying this topic is that much of the current research does not focus on the impact of protected persons on host countries. Most studies do not distinguish labour migrants, family migrants, and resettled (overseas determined) refugees from protected persons (including Convention refugees). A recent American study points out that most of the economic integration and impact research in Canada, the U.S. and Australia focuses on resettled refugees, "with little attention to the experiences of those entering through the asylum system."[16] There are, however, studies that analyze trends and economic consequences of immigration. These studies provide a broad picture of the effects immigration has on host countries in term of per capita output (small net gains but their distribution may be uneven), unemployment (no impact), and impact on government expenditures and revenues (negligible).[17] Refugees are included in these analyses but their specific impact is unknown and most likely an extremely small factor. In any given year "in Canada" refugees compose a very small proportion of total immigration. In 2001, refugees represented 12.5 per cent of total immigration. Over the past decade this number has fluctuated slightly but remained between 9 and 15 per cent: a very small population.[18]

The most thorough example of research on the impacts of refugees *vis-à-vis* other forms of migrants on receiving countries, conducted through the United Nations University, discusses the factors that determine the impact of asylum, as distinct from other forms of migration, and

discusses factors such as the number of asylum seekers/refugee claimants, government policies, and socio-economic characteristics. As might be suspected, their conclusions suggest that the impact differs depending on the country involved and their respective policies.[19] Government policies for determining refugee status impact the host countries in various ways. If policies are complex with many administrative layers, fiscal costs increase. The impact of refugees will vary depending on the skills and on the socio-economic and demographic characteristics of claimants and Convention refugees. The level of integration into the host country (including issues such as work permits; access to social welfare programs, including health and financial aid; education; and language training) will also significantly change the picture. The authors conclude that: "depending on the nature and effectiveness of some of the policies, those granted asylum or complementary protection may become quickly self-supporting or languish for lengthy periods of time on public assistance."[20]

Methodology

The lack of quantitative research in refugee issues presented several problems for this study. As a result, after a broad literature review and focus on academic and governmental information, a survey for Convention refugees was designed and interviews conducted with selected refugees as well as with various settlement agencies located in Toronto, Ontario, during July and August of 2003.

Interviews

Approximately 60 per cent of all newcomers to Canada settle in the Greater Toronto Area (GTA). Much of the support these newcomers receive comes from a pre-existing community of immigrants and refugees in Toronto, as well as multicultural and faith-based organizations. These settlement agencies have specific programs to assist new immigrants and refugees integrate into Canadian society and have knowledge of the obstacles faced by refugees during their first few years in Canada. Our primary researcher met and interviewed either the executive director or the director of settlement services of fifteen settlement agencies in the GTA. The interviews served to gain a more in-depth understanding of problems in integration faced by Convention refugees as a whole.

Refugee Survey

The survey was sent to, and completed by, Convention refugees from each region of Canada and from various countries of origin. While there are other types of limbo that exist, this study is focused on Convention refugees who have not yet been granted permanent residence in Canada, and so is limited to those who meet that criterion. Many refugees were located with assistance from the settlement agencies with which the interviews had been conducted. As predicted, most of the surveys were completed by those persons who have been in limbo for a considerable period of time.

Surveying began in early July 2003 and ended in August 2003. Both snowballing and cold calls were used to connect with Convention refugees. Surveys were answered by personal interviews with the researcher or settlement worker and via phone interviews. Attempts were made to match survey respondents with national refugee demographics. After the first week the survey was updated, refined for clarity, and translated into French and Spanish.

Research Findings

Interviewing refugees poses unique challenges that include language barriers, fear that information could be used against them, and misunderstandings. We also encountered more general difficulties. We had to discard about ten surveys because they were not properly completed. For reasons of time as well as in the interests of broader results, volunteers were used to conduct the survey. While we attempted to brief everyone in a similar way, there is little doubt that this affected results.

With a response rate of between 30 and 40 per cent, fifty-eight surveys were completed. Given the preliminary nature of this research, we were pleased with these results, but realize that in order for the conclusions to be used more broadly, a larger sampling needs to be done.

There were also some research and data sets that we did not receive for various reasons. Questions about the average time spent in limbo remain unanswered: our survey suggests slightly over four years. However, there were a large number of Somalis in our survey group; as a group, their lack of documentation places them at an increased risk for longer periods in limbo. Citizenship and Immigration could not provide us with their statistics, nor with information on how many refugees use the "Aden Agreement declarations" (now section 178 of the IRPA regulations) for landing purposes, which may increase time spent in limbo.

Perhaps the most frustrating part is the lack of appropriate data collection by Statistics Canada and other data organizations. The distinction between" immigrants" and "refugees" is not consistently used, forcing researchers into generalizations and suppositions. Particularly in a field marked by rhetoric and a significant amount of confusion among the general public, consistent and accurate data would go far in increasing understanding amongst all involved.

The preliminary results below are based on our interviews and the limited other information currently available. It creates a framework for further, more detailed research.

Part 3. Barriers to Integration

The central concern that informs this research is the cost of keeping people in the category of protected persons for an extended period of time prior to granting them permanent residence. This section will briefly look at some of the major areas in which this limbo impacts the Canadian public, including the impact on "Canadians-in-waiting" – protected persons. The purpose is to provide some preliminary findings and to delineate areas for further research of the economic costs and benefits of this element of the refugee system in Canada.

As previously stated, protected persons have more rights in Canada than do refugee claimants, but are also marked by particular restrictions and barriers usually absent from the experience of permanent residents and citizens. The authors of this paper argue that these barriers – which affect areas as diverse and important as employment, mental health, finances, and personal privacy and security – are detrimental to both the individual refugee and host country.

Barriers manifest themselves in various forms. Some are the result of deliberate policies regarding protected persons, designed and implemented by the various levels of government. These include financial, personal, and social restrictions. Protected persons cannot sponsor family members overseas and are faced with particular mobility restrictions. In the same vein, they are not eligible for various government and social services, including domestic tuition rates at universities and colleges in several provinces. Other types of impediments are not in themselves policies, but are the foreseeable and negative consequences of immigration decisions that have been aggravated by the increasing time spent in limbo. Chief among the latter are employment and health concerns; while it is illegal, there is some evidence to suggest that protected persons are subject to exploitation by less-than-scrupulous employers, who are aware of their somewhat precarious situation.[21] The strain of limbo, in particular family separation as well as the stresses of seeking refuge in a foreign country, is also a considerable factor in relation to mental and physical health. Protected persons are ineligible for bank loans and various other forms of credit, while simultaneously being required to raise money to pay their landing fees.

Labour Market

Labour market barriers are the easiest to identify and also the most important for successful integration into Canadian society. In 2002, Citizenship and Immigration Deputy Minister Michel Dorais wrote that newcomers to Canada "experience difficulty entering the labour market. The absence of effective credential assessment and recognition process, as well as insufficient supports for work related language training, contributes to the gap between immigrant earnings and employment rates and those of Canadian-born workers."[22] Dorais recognizes that having the ability to work in Canada is the most important way to integrate into Canadian society.

For Convention refugees, finding work can be extremely difficult and frustrating. Many factors impede refugees from having the same access to employment as permanent residents and citizens, so many settle for low-paying, service industry positions. Racism, stereotypes, lack of training opportunities, language, work ethic misconceptions, and a 900-series Social Insurance Number (SIN)[23] all are impediments to employment.[24] Certain jobs are out of reach because the necessary licensing (*i.e.*, for truck drivers) is only available to permanent residents and Canadian citizens.

> If I have landing I have better job, life will be much different. Always have problem with my children, for their summer vacation they like to go on vacation but I have no vacation and must work…I'm fed up with CIC…my kids are always asking when I will get my landing. I send lots from my lawyer and many different letters, [I'm] always doing something, do medical check, do this, do that but always same, never landed. – A Somalian Convention Refugee

The most thorough study done on this subject to date came from the University of Alberta, which surveyed 525 refugees and their experiences in Alberta between 1992 and 1997. It found major employment barriers that included limited English language skills, discrimination on the part of employers, lack of Canadian work experience, and an unwillingness on the part of professional bodies to recognize foreign training or work credentials. Interestingly, professionals, the most skilled and educated of all refugees, faced the most austere barriers from licensing bodies like the Canadian Medical Association, which would not recognize their credentials. Three out of four Convention refugees were not able to obtain managerial/professional employment after coming to Canada.[25]

The conclusions of the University of Alberta study are very instructive about conditions refugees face upon arriving in Canada. According to the study, "refugees are also much more likely than the Canadian workforce as a whole to be employed in non-standard jobs, which typically pay less, offer fewer fringe benefits, and have much less job security."[26] Many refugees need training programs to improve upward mobility. Presently these are available

through the government for Canadian citizens and permanent residents only.

Family Reunification

Convention refugees who have not been landed are not able to sponsor spouses or dependent children to Canada until they themselves become permanent residents. A united family gives the refugee further support to cope with the stresses of resettlement and an increased flexibility to adjust to a new country and culture. Khalida (see preface) is a perfect example of the effects of family separation gone too long. She and her children have not seen their husband and father for six years. She is ill from the compounded stress of adapting to a new country, single parenting, financial problems, and anxiety concerning her spouse in Afghanistan. Her health has deteriorated to the point where she needs assistance with simple day-to-day activities.

Mental Health

This separation of family leads to another major problem area facing the refugee community – mental health. One of the tenets of mental health is that a period of rapid and significant change places increased strain on an individual's mental health.[27] In a letter to the editor in the *Toronto Star*, Alejandro Ferrino wrote that:

> ...during the past 13 months, my Argentinean wife, whom I married in Toronto in 1999, and I have had to deal with emotional stress and economic struggles as we performed a number of steps required for her to become a resident. The waiting period became a nightmare full of anxiety, anguish, irritability, apathy and frustration…to be left in limbo seems an arbitrary price to pay.[28]

One worker from an ethno-racial mental health centre estimated that 90 per cent of all refugees experience anxiety, stress, distress, or depression.[29] However, it is important to recognize that the assumption that the entire refugee population is mentally disturbed and in need of psychiatric care needs to be avoided. Many refugees are very resilient and adaptive and have managed to navigate the refugee process without requiring significant aid from mental health networks.

> If I look over the general criteria to diagnosis Mental disorders – Dissatisfaction with one's characteristics, abilities and accomplishments, ineffective or unsatisfactory relationships, dissatisfaction with one's place in the world or confusion coping with live events and lack on personal grown – I see I was mental illness. Example when people talk to me about what matters I start crying. I could not have any long conversation with any body because the teardrops came out. – Refugee in New Brunswick]

In a recent article regarding refugees and resettlement, Dr. Ralph Masi, founder of the Canadian Council of Multicultural Health, notes that:

> There are issues specific to particular ages and genders. Young people may have difficulty fitting in with peers because they speak differently or lack the same cultural reference points….Women and seniors may face a loss of independence and social support structures.[30]

By virtue of their status as someone seeking refuge, refugees are likely to have experienced trauma and extreme stress, which may place them at a higher risk for mental health problems. They may be in need of professional treatment but seeking and finding a physician or psychiatrist to work with refugees presents particular difficulties. While there remains a persistent stigma attached to seeking counselling and mental health care within Canadian society at large, there are also specific concerns, such as language barriers, cultural norms, and a fear of jeopardizing the immigration process, which can make it more difficult for protected persons to seek the necessary help. The timing is also important: the mental health agency with whom we spoke only saw cases where the mental health effects had become debilitating to the individual. Help sought earlier may have decreased the seriousness of the symptoms and of the care necessary.

Yet remarkably, a study conducted for the Centre for Addiction and Mental Health found no evidence to confirm the expectation that refugees were at a higher risk for mental health problems *due to their experiences prior to arrival in Canada*. It concluded that "while the refugee situation undoubtedly creates a situation of risk for mental health, risk is not destiny."[31] Experiences that occur prior to arriving in the new country have a smaller effect than what happens to refugees during resettlement. Being trapped in limbo and separated from family, possessing inadequate language skills, facing employment discrimination and discrimination from Canadian nationals pose a greater risk of developing future mental health problems than their experience of fleeing persecution.[32]

Mobility

Convention refugees are not afforded Canadian passports, and undocumented persons are often denied travel documents. This effectively prevents refugees from travelling

abroad to visit family members. Given that many refugees in Canada send money abroad to support family members, contact between family members in these situations is critical to be sure money is being received and that they are healthy. The CCR notes that even when a family member is sick and dying, travel documents can be difficult to obtain.[33] Refugees may also fear they will be refused entry to Canada on their return. Under new regulations, permanent residents are given a permanent resident card, a standard and "normalized" document which serves as a substitute for a Canadian passport. This is the card and status for which refugees in limbo are waiting.

Political Rights

Only Canadian citizens are entitled to vote in Canada. As the time between the granting of protected person status and permanent residence increases, so does the time between arrival and full citizenship rights. Such rights are pivotal to the development of refugees as new Canadians: as Nobel Prize-winning economist Amartya Sen states in his book *Development as Freedom*, political freedom arises with the right to vote. "The rulers have the incentive to listen to what the people want if they have to face criticism and seek their support in elections. Political rights…are not only pivotal in inducing social responses to economic needs, they are also central to the conceptualization of economic needs themselves."[34] By lengthening the period in which individuals are denied meaningful participation in the political system, we may also be increasing the risk that these people will remain removed from such participation, even as full citizens.

Landing Fee

As mentioned in the first section, protected persons are required to pay a $550 landing fee for each adult seeking permanent residence, and $100 for each dependent child. While these costs may not appear prohibitive to many settled, employed, and fully entitled citizens, they present an early and serious obstacle to the landing process. Refugees are not eligible for bank loans and credit cards, as well as various other forms of credit, making access to large sums of money – needed for the landing fee as well as furniture, rent, transportation, clothes, and other necessities – difficult.

Security and Medical Checks

Security and criminality checks performed by CSIS and the RCMP, as stated above, are uncoordinated. Each check is performed separately and each organization works with different organizations overseas. If and when CSIS sees something incongruent, flags are raised and the process can stretch from weeks to months, even to years. The RCMP also wants a second set of fingerprints – already taken during the front-end screening process – for a separate criminal database.

Medical certificates and security checks can play an insidious game of cat and mouse, leaving the Convention refugee trapped in a cycle. Medical checks expire after twelve months while Security checks expire after eighteen. Often the medical will expire before the security process is complete. The medical will have to be redone only to have the security check expire. This cycle can be very frustrating as well as potentially confusing, leading to increased risk of mistakes and bureaucratic delays.

Procedural Changes and Discretion

There has been significant criticism of the Canadian refugee determination process from many fronts, some of which was addressed with the new IRPA legislation. However, there remain many areas in which the discretion of one individual, employed either by the Ministry of Citizenship and Immigration or the IRB, can delay or severely stall the landing process. While the system designed under the IRPA has some measures to counteract this, several of them (including the refugee appeals board for the IRB) have not been implemented. The number of changes which has occurred over the past few years has also increased confusion within the system, felt by government officials, advocacy and legal workers, settlement agencies, and the refugees themselves.

Part 4. Economic Impacts

The flip side of finding the economic impacts to Canada of keeping refugees in limbo is the direct cost of Canada's refugee determination system. Again, due to lack of full information available, these findings are preliminary.

Labour Market

Costs to Convention refugees in limbo due to barriers in the labour market are the easiest to quantify. Refugees discriminated against or limited because of legal status incur opportunity costs of labour. The Conference Board of Canada has completed the best research in this area with a study entitled *Brain Gain: The Economic Benefits of Recognizing Learning and Learning Credentials in Canada.* This study focussed on three groups who would gain the most if their learning credentials were recognized, with immigrants being the largest group. Their major finding is that, if Canada were to eliminate the learning recognition gap, it would give Canadians an additional $4.1 to $5.9 billion in income annually.[35] From this study, which makes no distinction between immigrants and refugees, we can deduce an estimate of forgone income due to unrecognized learning for refugees.

The authors of the *Brain Gain* study estimated that the number of people in Canada that are affected by unrecognized foreign credentials equates to 344,723 people. In order to provide a rough picture of the lost earnings for refugees in limbo, we assumed that refugees follow Canadian employment characteristics.[36] Based on the number of refugees in this state, and applying the estimate of forgone earnings to the figures, results in an overall estimate of potential earnings from reducing the barriers of limbo of over $334 million dollars.

Social Assistance

In terms of social assistance, there is a large difference between immigrants and refugees, as the former have more choices in terms of employment and mobility. For statistical purposes, as Convention refugees move through the system and gain landed status, they are grouped with immigrants as the legal status of the two converges. A great deal of information can be deduced by comparing the situations of immigrants and Convention refugees. Our survey asked Convention refugees what government services they used while in limbo. By far the most frequent response was welfare with 81 per cent having received social assistance for at least one month. Most refugees reported being on welfare prior to being deemed a Convention refugee, as well as afterward. However, there is a drastic drop in the numbers once landed status has been gained, with only 17 per cent of all immigrant families receiving some form of government assistance.[37]

To measure welfare spending by the government on Convention refugees, average annual rates of government transfers to Convention refugee households were found. The proportion of Convention refugees on welfare, 81 per cent, was then used to measure the total number of limbo refugee households on welfare and multiplied through by the annual average each household receives. The monetary figures that correspond to this are staggering. According to our survey, Convention refugees in 2002 received an estimated $129,115,689 in welfare payments.[38] Assuming 17 per cent of immigrant households remain on government assistance, the number of cases in Canada was divided by 17 and multiplied by average social assistance payments. This found that after refugees are landed, their welfare needs decrease substantially to an estimated total of $27,437,084, a savings of over $101 million dollars.

Mental Health

As discussed in the previous chapter, protected persons face a variety of stresses that can affect their well-being and place them at risk of mental health problems. Nevertheless, based on the lack of research (also previously discussed), it is difficult to ascertain the costs of this increased risk. The estimated total burden to Canada of mental health problems is among the costliest conditions in Canada at $14.4 billion.[39] However, information specific to the refugee situation is not available. Research to estimate an accurate refugee-specific economic cost is beyond the scope of this paper and is an area where further research is sorely needed.

Administrative Costs

Accurate estimates of the costs of the refugee system itself are hard to find. Not knowing an accurate breakdown of costs within the refugee determination system has been problematic for this study. Several pieces of information critical for a rigorous analysis are simply not available. Public data collection capabilities need to be improved for further research.

To begin to quantify the administrative costs of keeping seventeen thousand or more case files in the system for periods as long as a decade is formidable. A study of this nature would require significant research and the collection of mass data as well as its analysis, which is not available for this project. However, it seems safe to assume that in terms of government effort, there would be a significant cost, both in terms of human resources and budget, involved in keeping all of these files current.

Conclusion

Canada has traditionally been one of the most welcoming countries in the world for refugees. However, this reputation is quickly eroding in the post-September 11 era, being challenged by changes to Canada's immigration policy and heightened global and national security concerns. The number of refugees landed in Canada is declining every year – from 12,991 in 2000 to 10,544 in 2002 – and this will certainly continue if Canada and the U.S. implement the Safe Third Country agreement.[40] A July 2003 BBC news report said, "it seems Canada is moving more towards, rather than away from, a stricter system like Australia's, in which civil servants decide claims and more people will be detained."[41]

Convention refugees in Canada experience long delays in achieving permanent resident status. During this time they experience many impediments blocking integration into Canadian society. Direct barriers are felt in the labour market where quality employment is difficult to find. Refugees cannot open bank accounts or gain access to credit while some Convention refugees cannot afford the necessary fees. Indirect effects include a deterioration in one's mental health caused by needing to adjust to a new culture and dealing with family separation and/or poverty.

Economic research with regard to refugees is difficult to find. Most importantly, we tried to find the cost of main-

taining a refugee system in Canada. While we could not find an actual figure, there is a strong and general perception in Canada is that it must be very high, maybe even *too* high. In his book *Who Gets In,* nominated for the annual Donner Prize for best book on Canadian public policy in 2003, Daniel Stoffman claims that Canada's refugee program "no doubt accounts for a major portion of the $4 billion-a-year cost of immigration…"[42] Unfortunately, this figure can't be sourced to any government publication. Even more disconcerting is how the statement misleads readers into thinking that the only associated costs are government expenditures. We hope this study alters this parochial way of thinking. This research finds that there are other costs related to the refugee determination system. A process that hinders refugee integration poses undue costs to Canada in the form of suppressed labour market activity, debilitation from mental duress, excessive use of social assistance, and other barriers. An effective and efficient system will greatly mitigate most of these costs.

Our preliminary research estimates show that Canada's refugee system is highly inefficient and likely impedes refugee integration. We find that Canada spends over an estimated $129 million on government transfers to Convention refugees in limbo. With automatic landing, government transfers would decrease dramatically with an estimated savings of over $101 million. Our research also finds that refugees lose over $334 million in forgone income due to barriers in the labour market. Racism, stereotypes, lack of training opportunities, and language are all impediments to employment. These large costs only account for two barriers, albeit two larger ones. Further study into the economic costs of these and other barriers is an area in dire need of attention.

Our findings and estimates were limited by resources, timeframe, and information availability. A more thorough investigation, unhindered by these factors, is required for a clearer picture of the economic costs of delaying landing for refugees. A more rigorous analysis would ideally include several reports on the economic consequences of specific barriers. For example, mental health problems in refugees are extensively studied by psychologists and psychiatrists but rarely with an economic focus. The refugee community is sorely in need of this type of research to buttress their arguments and to refute some of the anti-immigrant, anti-refugee claims in the media.

The lack of research into Canada's refugee system prevents the dissemination of information that could bolster arguments made by Canada's refugee community, that immigration is a boon, or at the very least, entails zero cost to Canada. Canada's refugee community draws largely on moral and legal arguments for advocacy but there is a need for a different perspective. Economic studies have proven to be a very effective means of garnering attention to issues (for example, poverty and its effect on the health care system) and we hope this study provides a similar impetus for refugee issues. This research can be used as a springboard for such further research.

To our knowledge this study is the first attempt to place an economic value on a particular aspect of Canada's refugee determination system. Being the initial study, several issues were encountered that should be discussed. One of the reasons refugee research may not be prevalent could be the poor condition of data sources. As mentioned earlier, Statistics Canada does not separate refugees from immigrants in their data tables. Citizenship and Immigration Canada has basic information on the number of Convention refugees entering Canada annually but nothing more detailed.

Through our research we found that Convention refugees in limbo face challenging circumstances. Every day, refugees must negotiate a new culture with a hard journey behind them and a hard journey ahead. There is much that can be done to ease the plight of refugees in Canada. Of greatest importance is to grant permanent resident status simultaneously with Convention refugee status at the Immigration and Refugee Board hearing. The first step for this becoming a reality is to understand the consequences limbo places on Canada and refugees. This research starts to take us there.

Notes

1. Names have been changed to protect individuals.
2. Interview, by T. Coates, Toronto, Ontario, July 16, 2003.
3. Citizenship and Immigration Canada (2004).
4. The figure of eighteen months is based on interviews with refugee-serving agencies and refugees in limbo. It was the consensus that, with the backlog of cases, eighteen months is the fastest one could pass through the system. A faster processing time was never conveyed by any of the agencies with which we spoke.
5. *IRPA*, s. 55.
6. J. Bissett, "Canada's Asylum System: A Threat to American Security?" (Washington, D.C.: Center for Immigration Studies, 2002), online: <http://www.cis.org/articles/2002/back402.html> (date accessed: May 18, 2004).
7. D. Stoffman, *Who Gets In: What's Wrong with Canada's Immigration Program and How to Fix It* (Toronto: Macfarlane, Walter and Ross, 2002), 54.
8. *Ibid.*, 59, quoting Mark Krikorian.
9. This study was done under the old system, in which undocumented refugee claimants were grouped as Undocumented Convention Refugee in Canada Class (UCRCC). Such a class no longer exists.
10. T.K. Gussman Associates Inc., *Summary Assessment of the Undocumented Convention Refugee in Canada Class, Draft Report,* 2001.

11. H. Adelman, "Refugees and Border Security Post September 11," *Refuge: Canada's Periodical on Refugees* 2, no. 4 (2002): 5–14.
12. Summary of the refugee determination process is taken from the Canadian Council for Refugees, "State of Refugees in Canada," 2002, online: <http://www.web.net/~ccr/state.html> (date accessed: May 18, 2004).
13. Canadian Council for Refugees, "Refugees in Limbo: A Human Rights Issue," 1999, online: <http://www.web.net/%7Eccr/limbo.htm> (date accessed: May 18, 2004).
14. *The Citizenship Act*, s. 10 and *IRPA*, s. 44, 45, 46, 109. For a more complete discussion, see Andrew Brouwer's article, "Permanent Protection: Why Canada Should Grant Permanent Residence Automatically to Recognized Refugees," in this issue of *Refuge.*
15. For a more in-depth discussion of the field of economics and refugee policies, see D. Fisher, S. Martin, and A. Schoenholtz, "Impact of Asylum on Receiving Countries," Discussion Paper 2003/24 (Helsinki: United Nations University, World Institute for Development Economics Research, 2003).
16. *Ibid.*
17. "Trends in Immigration and Economic Consequences," Working Paper No. 284 (Organisation for Economic Co-operation and Development, 2001).
18. Refugees accepted in 2001 (both inland and sponsored overseas) amounted to 0.09 per cent of the Canadian population. Numbers are from Citizenship and Immigration Canada and Statistics Canada.
19. *Supra* note 15.
20. *Ibid*., 3.
21. H.S. Mohamed and A. Hashi, *Beyond Settlement: Economic and Occupational Adjustment of the Somalis in the Ottawa-Carleton Region: Report of the Task Force on Employment Project for the Somali Community* (1998).
22. M. Dorais, "Immigration and Integration through a Social Cohesion Perspective," *Horizons* 5, no. 2 (2002): 4–5.
23. In Canada, only protected persons have a Social Insurance Number (SIN) beginning with "9." An individual's SIN is required for, among other things, employment, health, and social assistance purposes.
24. *Supra* note 22.
25. H. Krahn, T. Derwing, M. Mulder, and L. Wilkinson, "Educated and Underemployed: Refugee Integration into the Canadian Labour Force," *Journal of International Migration and Integration* 1, no.1 (2000): 59–84.
26. *Ibid.,* 72.
27. M. Beiser, "After the Door Has Been Opened: The Mental Health of Immigrants and Refugees in Canada," in *The International Refugee Crisis: British and Canadian Responses* (London: MacMillan, 1993), 213–27.
28. A. Ferrino, letter to the editor, "Re: Who Will Take Care of Our Children?" *Toronto Star,* August 10, 2003.
29. Interview, by T. Coates, Toronto, Ontario, July 15, 2003.
30. "Q & A: Resettlement Issues of Immigrants and Refugees," *Journal of Addiction and Mental Health* 4, no. 6 (2001): 13.
31. *Supra*. note 27 at 217.
32. *Ibid*., 217–21.
33. *Supra* note 13.
34. A. K. Sen, *Development as Freedom* (London: Oxford University Press, 1999), 52.
35. M. Bloom and M. Grant, *Brain Gain: The Economic Benefits of Recognizing Learning and Learning Credentials in Canada* (Ottawa: Conference Board of Canada, 2001).
36. In Canada as of 2003, there are 22,532 working age (18–55) Convention refugees. By Canadian labour force measures, 11,376 would be working full-time, 2,641 would be working part-time and 1,171 would be unemployed.
37. T. Coates and C. Pullenayegem, "Results of Convention Refugee Questionnaire" (unpublished, for the Public Justice Resource Centre, Toronto, 2003).
38. This measure is a snapshot estimate of welfare payments to convention refugees. Refugee numbers fluctuate every year and will cause this estimate to change.
39. T. Stephens and N. Joubert, "The Economic Burden of Mental Health Problems in Canada," *Chronic Diseases in Canada* 22, no. 1 (2001), online: <http://www.hc-sc.gc.ca/pphb-dgspsp/publicat/cdic-mcc/22-1/index.html> (date accessed: May 18, 2004). This figure comprises direct costs of hospital, physician, and other institutional care and prescription medications. Indirect costs were made up of short-term sick days, long-term disability, and premature death.
40. A safe third country is a country through which a refugee has passed, which is also deemed safe for refugees. Under the Canada/U.S. agreement, a refugee coming from the U.S. will not be allowed protection in Canada since they can find protection in the U.S., and vice versa. Critics say that U.S. regulations are more severe than Canada's and, if implemented, Canada's regulations would most likely move closer to those of the U.S.
41. L. Carter, "Canada's Refugee Policies in Flux," BBC News, July 21, 2003; online: <http://news.bbc.co.uk/1/hi/world/americas/3078743.stm> (date accessed: May 18, 2004).
42. *Supra* note 7 at 164.

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Permanent Protection: Why Canada Should Grant Permanent Residence Automatically to Recognized Refugees

Andrew Brouwer

Abstract

In order to achieve secure status in Canada, asylum seekers must go through a lengthy, three-stage procedure involving (1) eligibility determination, (2) refugee status determination, and (3) application for permanent residence. Applicants are screened for security and criminality at both the first and third stages. During the third stage, which can take upwards of eighteen months, refugees find themselves in "legal limbo": as recognized refugees they have the right to remain in Canada, but beyond that their rights are significantly curtailed.

The author argues that the repeat screening at the permanent resident stage is unnecessary and redundant, and that the resulting delay in access to basic rights violates Canada's international obligations. The article concludes with a proposal that permanent resident status be granted automatically to refugees upon recognition as refugees.

Résumé

Pour obtenir un statut sûr au Canada, les demandeurs d'asile doivent se soumettre à un long processus de sélection, comprenant (1) la détermination d'éligibilité, (2) la détermination du statut de réfugié, et (3) la soumission d'une demande pour le statut de résident permanent. Les candidats subissent une procédure de sélection sur dossier axée sur des considérations de sécurité et de criminalité à la première étape et, de nouveau, à la troisième étape. Durant la troisième étape, qui peut prendre jusqu'à 18 mois, les réfugiés se retrouvent dans un état juridique indéterminé : en tant que réfugié reconnu, ils ont le droit de rester au Canada; mais mise à part ce fait, leurs droits sont sensiblement restreints. L'auteur soutient que l'examen au peigne fin une nouvelle fois, au stade de résident permanent, est superflu et redondant, et que le délai à l'accès aux droits fondamentaux qui en découle fait que le Canada enfreint ses obligations internationales.L'article conclut avec une recommandation que le statut de résident permanent soit automatiquement octroyé aux réfugiés dès l'instant où ils sont reconnus comme réfugiés.

Introduction

In 2003, the Government of Canada selected 7,505 women, men, and children seeking asylum from persecution and brought them to Canada from overseas. Churches and other private groups sponsored a further 3,247 refugees, while 11,250 refugees who claimed protection after coming to Canada on their own were granted permanent residence in 2003, along with 3,958 of their dependants overseas.[1]

For those refugees brought to Canada by the government or sponsoring groups, arrival at the border generally marks the end of a long road. Upon arrival they are granted permanent resident status and can apply for Canadian citizenship three years later. For those who make it to Canada on their own and seek asylum at the border or within the country, however, arrival in Canada marks the beginning of a whole new ordeal.

Canada's refugee program is rooted in international law. The individual right to asylum is enshrined in the *Universal Declaration of Human Rights* (UDHR), which states: "Everyone has the right to seek and to enjoy in other countries asylum from persecution."[2] The 1951 *Convention relating to the Status of Refugees*[3] and its 1967 *Protocol*[4] give content to the right guaranteed by the UDHR, by setting out the

obligations of states with respect to asylum seekers. States that have become parties to the *Convention* are bound by Article 33 not to expel or return ("*refouler*") a refugee "to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."[5] The prohibition on *refoulement* specifically to torture is also provided for in Article 3 of the 1984 *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*,[6] and Article 7 of the 1966 *International Covenant on Civil and Political Rights.*[7] So well entrenched is the principle of *non-refoulement* to torture that it has evolved into a customary norm of international law,[8] applicable to states regardless of whether they are parties to one of the relevant conventions.

As a result of the principle of *non-refoulement*, states parties are obliged to consider the claims of those who request asylum in their territory or at their frontier. Canada's *Immigration and Refugee Protection Act*[9] (*IRPA*) reflects these principles by providing for the conferral of refugee status, or "protected person" status.[10] In order to receive such protection, claimants must meet a refugee definition based on the *Refugee Convention*, or show they face a risk of torture, a risk to life, or a risk of cruel and unusual treatment or punishment, as set out in the *Convention Against Torture*. They must also meet certain eligibility and admissibility criteria, as discussed below. Once they have been formally recognized as refugees and granted Canada's protection, refugees are entitled to remain in Canada.[11]

Recognition as a refugee or protected person, however, does not result in refugees receiving equal treatment with other residents of Canada. While protection from *refoulement* is generally the most immediate concern for most refugees upon arrival, other key rights protections are not available to them even after refugee protection has been granted. In order to enjoy the full range of rights enjoyed by other residents of Canada, refugees must apply for and be granted "permanent resident" status. Only after such status has been granted are refugees in a position to become full and (nearly) equal[12] participants in Canadian society.

Three steps to permanent status

Refugee protection claimants seeking Canada's permanent protection must proceed via a three-step process of (1) eligibility, (2) refugee status determination, and (3) permanent residence.[13]

Step 1: Eligibility Determination

Under the *Immigration and Refugee Protection Act* (*IRPA*), protection claimants must pass an "eligibility" determination before their protection claim may be heard by the Refugee Protection Division of the Immigration and Refugee Board (IRB). Eligibility determination includes both administrative matters and a criminality and security screening. Under section 100(1) of *IRPA*, immigration officers have three working days (seventy-two hours) from receipt of the claim to determine whether the claim is eligible to be referred to the Refugee Protection Division. If the three days pass without a determination by the immigration officer who received the claim, then the claim is "deemed to be referred."[14] (It is worth noting, however, that in the event that information comes to light after referral, the immigration officer retains the power to reclassify the claim as ineligible, suspending and eventually terminating consideration of the claim by the Refugee Protection Division.[15])

Further to a January 2003 directive issued by Citizenship and Immigration Canada (CIC), officials must interview all refugee claimants arriving at the border to elicit information for admissibility, security, and criminality screening. The policy is to have "a full and complete front-end screening (examination) before the claimant is allowed into Canada."[16] Where, due to high volumes of arrivals or insufficient resources, officers find they are unable to complete the eligibility determinations within the stipulated three working days, the directive instructs them to detain[17] or "direct back" claimants as measures of last resort. *IRPA* gives immigration officers discretion to detain a refugee claimant, without a warrant, in a variety of circumstances, including:

- in order to complete an examination,[18] or
- if the officer has "reasonable grounds to believe" the person is inadmissible and poses a danger to the public,[19] or
- if the officer has "reasonable grounds to suspect" the person is inadmissible on grounds of security or for violating human or international rights,[20] or
- if the officer "is not satisfied of the identity of the foreign national…"[21]

Until their claim has been referred to the Refugee Protection Division, claimants have no legal status in Canada and are extremely vulnerable. Not only may they be detained without a warrant (this may also happen after referral), they are also ineligible to work, study, or receive social assistance or publicly funded medical care.

Step 2: Refugee Status Determination

Claims that are found or deemed eligible are referred to the Refugee Protection Division of the IRB, a quasi-judicial tribunal. A one-member panel[22] makes a determination of the merits of the protection claim, usually following an oral hearing.[23] While the lion's share of the Refugee Protection Division's work involves assessing whether a claimant

should be granted protection, it should be noted that the Division also applies the "exclusion clauses" of the *Refugee Convention*. The exclusion clauses allow states to deny refugee status to claimants for whom, though they may meet the definition of a Convention refugee, there are serious grounds to believe they have committed a crime against peace, war crime, crime against humanity, serious non-political crime, or "acts contrary to the purposes and principles of the United Nations."[24] This is a second opportunity to screen out persons believed to pose a security or criminal threat to Canada or Canadians. In addition, if evidence later comes to light indicating that refugee protection was obtained fraudulently, the Minister may at any time seek to revoke ("vacate") that status.[25]

The average processing time by the Refugee Protection Division is approximately twelve to sixteen months. During this period, claimants may apply for and are generally granted a temporary, renewable student authorization.[26] If they are unable to otherwise support themselves, claimants may apply for, and are generally granted, a temporary, renewable employment authorization.[27] There are, however, restrictions on the types of employment in which refugee claimants may engage.

While refugee claimants do not have access to provincial health insurance programs, they are covered by the Interim Federal Health (IFH) program, which covers emergency and essential health services, essential prescription medications, contraception, prenatal, and obstetrical care.[28] There is no charge for the IFH coverage. Depending on their province of residence,[29] refugee claimants may also be eligible for social assistance, provided they demonstrate that they have obtained or at least applied for an employment authorization and that they are looking for work.[30] As well, refugee claimants seeking college or university education are generally charged tuition at foreign student rates, upwards of twice the rate charged to domestic students.[31] They are usually ineligible for public or private loans and credit cards, and may face difficulty in securing rental accommodation or employment, as landlords and employers are often wary of their insecure and temporary status in Canada.

Upon being found to be a protected person by the Refugee Protection Division, a person may apply for a status document indicating her/his new status.[32] Protected persons may not be removed to their country of origin except in very exceptional circumstances relating to national security or public safety.[33] Protected person status is thus generally more secure than refugee claimant status. Protected persons are eligible for full provincial health insurance, usually after a three-month waiting period, during which they continue to be covered by IFH.[34] They continue to be eligible for (restricted) work and study permits without cost. Post-secondary institutions in some provinces charge domestic tuition rates to protected persons, and as of August 2004 protected persons are also eligible for federal and in most provinces provincial student loans.[35]

Though better off than claimants, protected persons remain very vulnerable. While they have Canada's protection against *refoulement* and have access to many basic rights and privileges, their status is temporary and their rights and access to services are narrowly proscribed. As will be discussed further below, they face significant legal restrictions in employment and mobility and are unable to sponsor close family members including spouses and children.

Step 3: Permanent Resident Status

Upon recognition as refugees, protected persons are eligible to apply for permanent resident status[36] (previously known as "landed immigrant" status). This policy reflects Article 34 of the *Refugee Convention*, which obliges states to "as far as possible facilitate the assimilation and naturalization of refugees." Permanent resident status confers many of the rights and privileges available to Canadian citizens,[37] and enables holders of the status to apply for Canadian citizenship after three years.[38] Protected persons seeking permanent resident status in Canada must file a written application, along with the required processing fees, within 180 days of the positive determination by the IRB.[39] Applications are generally approved, provided they are not found to be inadmissible. These inadmissibility grounds are nearly identical to the grounds for ineligibility, which are considered at the front end of the process

Under the previous legislation, CIC's call centre reported that permanent residence applications took twelve to twenty-four months to process.[40] The application kit explained that "these time frames include the 90-day application processing period" at CIC, but that CIC "has little control over the time it takes to complete medical, criminal and security checks."[41] This would suggest that the bulk of the waiting time (everything beyond the ninety days for processing) was caused by the background checks. Where processing extends beyond eighteen months, criminality clearances have to be renewed – a process that could in itself take a further six months. Similarly medical clearances, which lapse after twelve months, may need to be renewed, which requires re-examination by a physician. The delays caused by trying to synchronize the validity of these two certificates alone cause additional hardship and frustration to refugees.

Despite the new front-end screening procedures, little seems to have changed in the processing of permanent residence applications. Permanent residence application

kits produced after the implementation of *IRPA* provide no guidance on processing times, aside from the following general acknowledgement:

> The length of time it takes to receive permanent resident status varies considerably depending on individual cases. Factors such as if you have dependent children residing outside Canada or if you have lived in several countries may lengthen the process. CIC has little control over the time it takes to complete medical, criminal, and security checks.[42]

It seems, therefore, that the timeline continues to be determined primarily by the inadmissibility screening process – a process rendered largely redundant by the dramatic new emphasis on front-end screening.[43] For applicants who have included family members abroad in their application or who lack identity documents, the time it takes to get permanent resident status can stretch on indefinitely.[44] There are no enforceable public standards for processing of permanent residence applications, nor is there a formal complaint or review mechanism where timelines become unreasonable.[45] During this indefinite processing and background check period, refugees remain in "legal limbo."

Life in Legal Limbo

While in general recognized refugees may expect to proceed relatively quickly to permanent resident status, the reality for many is that it takes a year or longer. The United Nations High Commission for Refugees has expressed concern that "the inability to obtain permanent residence status can be a serious impediment to integration into Canadian society."[46] Indeed, life in Canada while waiting for permanent resident status is, in many ways, life on hold.

The single most painful and damaging aspect of life in legal limbo is prolonged, agonizing, and often unforeseen family separation. It is widely recognized that due to the many barriers facing asylum seekers, refugee families are often split up, one parent attempting the perilous journey alone while the other remains behind with the children in the country of origin or the country of first asylum.[47] Upon gaining asylum in Canada, then, family reunification becomes the main concern of most refugees; indeed, the newcomer community generally does not consider anyone settled in Canada until their family is here.

As will be discussed below, international human rights law protects the integrity of the family and recognizes the universal right of children to be with their parents. Nevertheless, until they are granted permanent resident status, protected persons including Convention refugees are prohibited from bringing their children and spouses to live with them in Canada. This means that, even in a straightforward case, refugees will not be reunited with their family in Canada for almost two and a half years.

In some cases, overseas dependants are not included in the original application for permanent residence. The reasons for this vary, from bad advice to an inability to locate the dependants within the 180-day period in which the permanent residence application must be filed. While keeping overseas dependants off the original application will facilitate faster processing of the refugee's permanent residence, it may have the drawback of significantly delaying acquisition of permanent resident status for the refugee's dependants. Dependants who were not included in the refugee's original application for permanent residence have one year from the day the refugee was granted permanent resident status to appear at a visa office and request permanent residence. They will be processed as part of the refugee's application. Failing that, the refugee who was granted permanent residence will have to begin the process of sponsoring their dependants under the Family Class. (In some cases, the dependant will have surpassed the age limit for sponsorship by this time, and will become ineligible to be sponsored.) As well, they will be required to pay the $975 Right of Permanent Residence fee if they take this route (refugees are exempted from this fee for their own applications). According to CIC, Family Class sponsorships take anywhere from six months to twenty months, or longer. Thus refugee families are routinely separated for three years or more if they are not all on the same permanent residence application. Any extended family separation has consequences for emotional and financial health. Psychological problems experienced by families that have suffered severe trauma are exacerbated.[48]

Until recently, Convention refugees who had not yet been granted permanent resident status also faced significant barriers to travel outside Canada. They were generally not given Canadian travel documents and were thus not guaranteed re-entry to Canada if they left the country. While refugees who had "satisfactory identity documents" could seek an exception to this rule on humanitarian and compassionate grounds, undocumented refugees were denied even this possibility.[49] With the implementation of the new *IRPA* in 2002, however, protected persons became eligible to apply for a Convention Refugee Travel Document (CRTD), after first acquiring a Protected Person Status Document. The CRTD is valid for travel to any country except the refugee's country of origin. While this should in principle eliminate concerns about refugees' ability to travel, there are reports that undocumented refugees continue to find themselves denied a CRTD, though they may under exceptional circumstances be granted a tempo-

rary permit for emergency travel, valid for a single re-entry to Canada.[50]

Refugees who have not yet been granted permanent residence face several obstacles to employment. To begin with, they must apply for and regularly renew temporary work permits. Delays in processing applications at CIC often result in gaps in coverage.[51] Some refugees have reported being laid off during these gaps; others have been fired when their employers discovered their authorization was not valid. Further, refugees have long reported that they face discrimination by potential employers because their Social Insurance Number, which begins with a "9", indicates their temporary status in Canada. Some find it more difficult to get employment that requires training, because employers are unwilling to invest resources training workers who they assume may only be in Canada temporarily.[52] Other refugees report that they are more vulnerable to exploitation by employers because employers know the difficulty refugees face in finding stable and adequately paid work. Without permanent resident status, protected persons are denied access to certain professions and to some types of employment that require specific insurance, including employment in the education and health care sectors. They are also ineligible for government training programs. Lack of permanent resident status also restricts access to bank loans, thereby limiting self-employment or entrepreneurship opportunities.

This exclusion and marginalization of refugees from mainstream society as a result of these restrictions has social and economic costs not just for the individuals directly affected, but also for their communities and for broader society. With respect to the social costs, it is important to recognize that refugees are by definition people who have suffered and/or have grounds to fear serious persecution. Many have been tortured or seen loved ones tortured or killed. They have come to Canada to seek refuge and to rebuild their lives. The sooner they are allowed and encouraged to do this fully, the sooner they will become fully functioning and self-supporting participants in Canadian society. On the other hand, the longer they are kept in limbo, the more entrenched they will become in marginalized communities, making it increasingly difficult to integrate into Canadian society.

International Law on the Treatment of Refugees

While there is no right to permanent resident status for refugees *per se* in either international refugee law or international human rights law, these areas of law do guarantee refugees a range of important civil, political, economic, social, and cultural rights. Unfortunately, in Canada the ability to enjoy these universal human rights is limited by a person's immigration status.

As the basic treaty on states' obligations *vis-à-vis* refugees, the 1951 *Refugee Convention* includes provisions on the treatment that states parties must provide to refugees in their territory. At a minimum, the *Convention* requires states to treat refugees as they treat aliens generally[53] and to refrain from discriminating among refugees on the basis of their race, religion or country of origin.[54] However, the *Convention* provides for higher levels of protection in several specific areas. For example, states are obliged to treat refugees at least as favourably as they do their own nationals with respect to: freedom of religion,[55] access to the courts,[56] access to elementary education,[57] public relief,[58] labour law protection,[59] and social security.[60] In other areas, refugees must be given "the most favourable treatment accorded to nationals of a foreign country, in the same circumstances" (*e.g.* non-political, non-profit freedom of association and trade unions,[61] employment[62]) or treatment "as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances" (*e.g.* property rights,[63] housing,[64] education other than elementary, recognition of foreign credentials,[65] and mobility rights[66]). In addition, the *Refugee Convention* obliges states to provide refugees with administrative assistance,[67] identity papers,[68] and travel documents.[69]

A number of the rights set out in the *Refugee Convention* are limited to refugees who are "lawfully staying" in the territory of the contracting state.[70] Canadian officials have sometimes argued that this language allows Canada to deny the rights that are qualified in this way to recognized refugees who have not acquired permanent resident status. As Guy Goodwin-Gill and Judith Kumin have pointed out, however, this interpretation of the *Refugee Convention* is incorrect.[71] Canada has a reservation to Articles 23 (public relief) and 24 (labour legislation and social security) providing that "Canada interprets the phrase 'lawfully staying' as referring only to refugees admitted for permanent residence; refugees admitted for temporary residence will be accorded the same treatment with respect to matters dealt with in Articles 23 and 24 as is accorded visitors generally."[72] This reservation was made only for those two articles, however; no such reservations were made with respect to any of the other articles that use the "lawfully staying" language. In the absence of a reservation, the other articles must be read to apply not just to permanent residents but also to recognized refugees.

The rights protections articulated by the *Refugee Convention* have been significantly supplemented by the development of the international human rights regime in the intervening fifty years, and need to be interpreted in the

light of these developments.[73] Treaties such as the 1966 *International Covenant on Civil and Political Rights*[74] and the 1966 *International Covenant on Economic, Social and Cultural Rights*[75] give legal expression to the more general commitments of the 1948 *Universal Declaration of Human Rights*. Other treaties such as the *Convention on the Elimination of All Forms of Racial Discrimination,*[76] the *Convention on the Elimination of Discrimination Against Women*,[77] and the 1989 *Convention on the Rights of the Child*[78] have combined to much more fully articulate a normative baseline of universal rights that states must respect.

The basic principle of non-discrimination lies at the heart of all of these treaties. As the UN Special Rapporteur on the Rights of Non-Citizens has observed, "The architecture of international human rights law is built on the premise that all persons, by virtue of their essential humanity, should enjoy all human rights."[79] All persons, regardless of their national or ethnic origin, immigration status, or other irrelevant criteria, are equally entitled to have their human rights respected. The *Covenant on Economic, Social and Cultural Rights* prohibits any distinction between citizens and non-citizens with respect to economic, social, and cultural rights.[80] The *Covenant on Civil and Political Rights* provides that, in times of domestic stability, differential treatment of non-citizens is not permissible except with respect to political participation rights and certain rights of entry and residence.[81]

Different treatment of non-citizens on the basis of nationality may, in some circumstances, be permissible in international law, according to the Special Rapporteur. Article 1(3) of the *Convention on the Elimination of All Forms of Racial Discrimination* provides: "Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality."[82] Criteria for differential treatment must be assessed in light of the objects and purposes of this *Convention*. As the Committee on the Elimination of Racial Discrimination, the UN expert body responsible for interpreting and monitoring compliance with the Convention, has observed in its General Recommendation 14, "In seeking to determine whether an action has an effect contrary to the Convention, [the Committee] will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin."[83]

However, immigration status may be used as a ground for differential treatment only in limited areas. For example, the *Covenant on Civil and Political Rights* may permit states to deny undocumented non-citizens freedom of movement (Art. 12), the right to choose their residence (Art. 12), and the right to certain procedural protections in expulsion proceedings (Art. 13). These provisions should, however, be read also in the light of the *Refugee Convention*, which requires that states provide undocumented refugees with identity papers. The latter provision would thus remove refugees from the group against whom the state may discriminate under Articles 12 and 13 of the *Covenant on Civil and Political Rights*.

Articles 16(3) of the *Universal Declaration of Human Rights*, 23(1) of the *Covenant on Civil and Political Rights*, and 17(1) of the *American Convention on Human Rights* all provide: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." Similar provisions may be found in the *Covenant on Economic, Social and Cultural Rights,*[84] the *African Charter on Human and Peoples Rights*,[85] and the *European Social Charter.*[86] Indeed, it has been observed that there is a "universal consensus" on the right of the family to respect and protection.[87] Recognition of the family as the "fundamental group unit of society" necessarily entails a right to family unity, for as Kate Jastram and Kathleen Newland observe, "if members of the family did not have the right to live together, there would not be a 'group' to respect or protect."[88]

Children are granted special rights and protections under international law in view of their particular vulnerability. The *Convention on the Rights of the Child* requires states to make the best interests of the child a primary consideration in all actions that concern them, and to ensure protection and care for children, taking into account the rights and duties of their parents and guardians.[89] The *Convention on the Rights of the Child* includes specific provisions for children who have been separated from their parents or guardians.[90] It requires, *inter alia*, that "applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner."[91] Further, "A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents."[92]

The importance of family unity for refugees in particular was recognized in the Final Act of the Conference that adopted the *Refugee Convention*, which provides that "the unity of the family … is an essential right of the refugee," and urges states to "take the necessary measures for the protection of the refugee's family."[93]

The right of every person to leave any country is articulated in Article 13(2) of the *Universal Declaration of Human Rights*, as well as, *inter alia*, in Article 12(2) of the *Covenant on Civil and Political Rights* and Article 22(2) of the *Ameri-*

can Declaration of Human Rights. Refugees who lack identity or travel documents, however, are often unable to exercise the right, as such documents are required both to gain entry to another country and to re-enter their country of asylum. Recognizing this pitfall, the framers of the 1951 *Refugee Convention* included a provision explicitly requiring that states parties provide the necessary documents to undocumented refugees in their territory. Article 28 of the *Refugee Convention* obliges states to "issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require." The article further requires that states "in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence."

In their analysis of previous Canadian practice with respect to refugee documentation, Goodwin-Gill and Kumin note that in the absence of a reservation, Article 28 permits few exceptions to the obligation to provide travel documents to refugees. The reference to "compelling" reasons of national security and public order as justifying an exception clearly indicates that a restrictive interpretation of this exception is called for.[94] The authors conclude that Canada's then failure to provide travel documents to Convention refugees who need them violated Canada's international legal obligation. Though as noted Canada has subsequently begun to issue Convention Refugee Travel Documents to refugees, the failure to do so for undocumented refugees constitutes an ongoing violation of this obligation.

The right to work is enshrined in numerous international human rights instruments, including Article 23(1) of the *Universal Declaration of Human Rights*, Article 6(1) of the *International Covenant on Economic, Social and Cultural Rights*, and Article 14 of the *American Declaration of the Rights and Duties of Man*. The right to work, including the right to equal access to employment and to equal treatment in the workplace, has also been elaborated in some detail through a variety of International Labour Organization instruments. The *Refugee Convention* itself requires that states treat refugees at least equally to foreign nationals with respect to employment, and encourages states to assimilate their rights with those of nationals.[95]

With respect to protected persons in Canada, however, the issue is not whether their legal right to work is formally recognized by the Canadian government – it is – but the degree to which protected persons can actually enjoy that right. The impact on employment and training opportunities of having temporary status in Canada, combined with restrictions on access to certain regulated occupations, means that refugees have less access to employment than Canadians and permanent residents. This falls afoul of Canada's international legal obligation to treat refugees without discrimination, as discussed above.

Status in Canada of International Legal Protections

Though Canada is party to all of the international human rights and refugee instruments discussed above, the federal legislature has not enacted "implementing legislation" to incorporate these instruments directly into domestic law. Government officials as well as Justice Department lawyers have traditionally argued that because the treaties have not been legally implemented, Canada is not bound to comply with them.[96] However, the law of treaty interpretation, jurisprudence of the Supreme Court, and an important new provision in *IRPA* all indicate that international obligations voluntarily undertaken are far from irrelevant – rather, Canada is obliged to comply.

The 1969 *Vienna Convention on the Law of Treaties* sets out the basic law of treaty interpretation. A core provision of the *Vienna Convention*, which is also recognized as a pre-existing peremptory norm of international law, is the principle of good faith performance, known as *pacta sunt servanda*. Article 26 of the *Vienna Convention* states: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."[97] Thus when Canada became a party to the *Refugee Convention*, the two Covenants and other human rights instruments, it took on international legal obligations to perform its obligations in good faith. That Canada must, according to international law, do what it promised to do, cannot be in doubt.

Domestic jurisprudence, on the one hand, has traditionally drawn a sharp line between international law and domestic law. Only treaties that had been explicitly and directly incorporated into Canadian law were considered by the courts to have binding authority.[98] On the other hand, however, the court has long recognized the rule that statutes should be interpreted as far as possible in conformity with international law,[99] and it is now accepted that the *Canadian Charter of Rights and Freedoms* is to be interpreted in accordance with similar international human rights norms.[100] In fact, recent case law goes further. In *Pushpanathan v. Canada (MCI)*,[101] Bastarache J writing for the majority applied the *Vienna Convention* to assess Canada's obligations under the *Refugee Convention*, noting that the Court had used the *Vienna Convention* for this purpose in two previous cases.[102] In *Baker v. Canada (MCI)*,[103] the Supreme Court ruled that immigration officers were obliged to consider the *Convention on the Rights of the Child* – an unimplemented international treaty to which Canada

is a party – in decisions affecting children. The majority cites the principle that "the legislature is presumed to respect the values and principles enshrined in international law, both customary and conventional."[104] This approach has been affirmed in numerous subsequent decisions.

Finally, and perhaps most importantly, there is a crucial new provision in *IRPA* that did not exist in the previous *Immigration Act*. Expanding on the legislative objective to "fulfill Canada's international legal obligations with respect to refugees,"[105] section 3(3)(f) provides: "This Act is to be construed and applied in a manner that … complies with international human rights instruments to which Canada is signatory." This provision unambiguously imports Canada's international human rights obligations directly to the *IRPA*. By adding this provision to the new Act the legislature signaled to the Court that it intends to be legally bound by international human rights law in the field of immigration and refugee law – in any matter governed by *IRPA*. The earlier hesitation of the Court to bind the legislature to international treaties negotiated and ratified only by the executive should be firmly dispelled by the adoption of this provision by the legislature itself. Indeed, the Federal Court appears to have recognized this fundamental change in a number of recent decisions.[106]

This has significant implications for refugees in legal limbo. While Canada is under no legal obligation, domestic or international, specifically to provide permanent resident status to recognized refugees, it nevertheless is under an international obligation to treat them without distinction based on immigration status. As laid out above, international human rights law is very specific about the rights that must be accorded to all persons without distinction. Current distinctions between refugee status and permanent resident status violate these international obligations, which, under section 3(3)(f) of *IRPA*, are now also domestic legal obligations.

Faulty Rationales

Considering the many difficulties faced by refugees awaiting permanent residence and the fact that, as noted above, the vast majority of refugees become permanent residents eventually, one must question the policy of maintaining three distinct stages. Canada has an established and clearly articulated policy of granting permanent residence to Convention refugees. CIC itself describes the application for permanent residence as "the next step"[107] for protected persons, and the *IRPA* requires that such applications be approved, so long as the applicant has not violated the regulations in applying and is not inadmissible.[108] Section 21(2) of *IRPA* provides that a protected person becomes a permanent resident:

> if the officer is satisfied that they have made their application in accordance with the regulations and that they are not inadmissible on any ground referred to in section 34 [security] or 35 [violating human or international rights], subsection 36(1) [serious criminality] or section 37 [organized criminality] or 38 [danger to public health or safety].[109]

CIC has in the past acknowledged the importance for refugees of acquiring permanent resident status as quickly as possible:

> Convention refugees who do not become permanent residents in Canada remain without legal status... They enjoy only limited protection: they have a right not to be returned to the country where they fear persecution, but they do not have a right to return to Canada once they leave.... Refugees who are not permanent residents may legally take employment only if they are in possession of an employment authorization.... It is important that they initiate the landing process as early as possible...in order to entitle them to privileges and services that are acquired with full legal status.[110]

The existence of separate steps for protected person status followed by permanent resident status does not appear to reflect an intention to maintain two separate populations in Canada. Rather, refugee or protected person status is a way-station on the road to permanent residence. It is a way-station built under the previous legislation, prior to the shift to front-end screening, and provided the government with a first opportunity to assess the admissibility (particularly with respect to security and criminality) of persons *en route* from refugee claimant to permanent resident status. This way-station is now unnecessary and redundant. The screening conducted at the front end is more than adequate to screen out those who may be inadmissible for permanent residence. Requiring protected persons to undergo a second screening before granting them permanent residence is both cruel to the individuals affected and wasteful of limited public resources.

The rationales that have traditionally been put forward to justify the current approach do nothing to diminish this conclusion. The two most compelling rationales will be briefly discussed below.

The first and perhaps most obvious justification is that asylum and permanent residence are inherently quite distinct. Asylum is an internationally recognized human right rooted in international law. As a party to the *Refugee Convention* as well as numerous international human rights treaties, Canada must grant protection to refugees, and must treat them in accordance with the *Convention* and international human rights standards for as long as they

remain on Canadian territory or are otherwise under the jurisdiction of Canadian authorities. However, Canada has no similar legal obligation to provide permanent-resident status. In contrast to the human right to asylum, permanent-resident status is considered by the Canadian government to be a "privilege" which Canada may or may not confer, according to its own policy interests.[111]

This distinction – between protection and permanent stay – is a matter of lively debate at the international level. It is argued by some that the conflation of refugee status and permanent residence is one of the reasons for the erosion in public support for asylum, and is damaging the always fragile political will of many, perhaps most, states to participate in refugee protection at all.[112] Whatever may be the merits of maintaining the distinction in other jurisdictions, however, it makes little sense in Canada.

Perhaps the most glaring legal problem with the proposed distinction between refugee protection as international law and permanent residence as sovereign Canadian domestic policy is that, as discussed, Canada does not recognize some of the rights guaranteed to refugees by the *Refugee Convention* and international human rights law until they have attained permanent residence.[113] As long as Canada continues to withhold from protected persons rights and benefits promised under the *Refugee Convention* and other international treaties, and to confer them only upon acquisition of permanent resident status, it cannot argue that permanent residence is purely a privilege that Canada is not obliged to grant to refugees under international law. While permanent residence may not be explicitly required under the *Refugee Convention* (though it is strongly encouraged by Article 34), some of the benefits that are only available upon becoming a permanent resident *are* guaranteed to refugees under such international instruments as the *Refugee Convention*, the *Convention on the Rights of the Child*, the *International Covenant on Economic Social and Cultural Rights*, and the *Universal Declaration of Human Rights.*

Canada is thus obliged either to grant permanent residence to protected persons, or to reform the existing regime to ensure that those with protected person status enjoy all of the rights and benefits to which they are entitled under international law. While the latter option would allow the government to maintain the two separate statuses, there are a number of fairly significant practical drawbacks. One is that such an approach would require amendments to a wide range of federal laws and policies that restrict certain benefits to permanent residents and citizens. It would also require negotiations with other levels of government and institutions that currently provide services, to ensure that they begin to provide their services also to protected persons.[114]

The other major argument for maintaining two separate steps relates to questions of security and serious criminality. The increased focus on terrorism in recent years has heightened concerns that terrorists might abuse the refugee determination system in order to remain in Canada to plan and raise funds for attacks against the U.S or even against Canadian targets. This fear underlies many reforms in the *Immigration and Refugee Protection Act* and associated regulations. The same concerns have led to changes in procedure introduced independently of the new legislation. Perhaps most important has been the shift in the timing of the screening procedure. Questions of security and serious criminality that were previously left for investigation at the permanent residence stage are now being addressed at the front end of the refugee determination process as well, during the eligibility stage. While such early screening makes good policy sense, the result of the introduction of front-end screening is that individuals are screened *twice* for almost identical factors.

The ineligibility and inadmissibility criteria related to criminality and security are identical in nearly every respect. To the extent that they are identical there is no need, from a security perspective, to maintain separate stages for protection and for permanent residence at least in principle. The vast majority of asylum seekers are neither ineligible nor inadmissible; those who are will be screened out at the front end. A second screening at the permanent residence stage is redundant.

Conclusion

The foregoing analysis indicates that the current three-stage refugee procedure of eligibility, refugee determination, and permanent residence is neither necessary nor just, and is counterproductive. It is unnecessary from a security perspective, and is unjust in that it delays full realization of certain basic rights that are guaranteed to refugees and their families. It is counterproductive because it delays integration for refugees, sometimes resulting in long-term costs to both the affected individuals and families and to the community at large. It is also unnecessary in view of the variety of remedial measures available to the Minister should there be cause to revoke permanent residency after it has been conferred. Indeed, if at any time an immigration officer reaches the opinion that a permanent resident is inadmissible, the Minister may refer the case to an inadmissibility hearing following which the individual may be removed from Canada.[115]

The solution to the vexing problem of refugee limbo is therefore to amend Canadian immigration policy, whether through the Act itself or via the regulations, to dispense with the second screening and to automatically grant permanent

residence to protected persons.[116] Such a move would bring Canadian policy closer to the international human rights standards it is obliged to respect, allowing refugees to enjoy without unjustifiable delay the full range of rights to which they are entitled under international law.

Notes

1. Citizenship and Immigration Canada, *The Monitor*, Spring 2004, Table 1, online: <http://www.cic.gc.ca/english/monitor/issue05/02-immigrants .html>.
2. *Universal Declaration of Human Rights*, GA Res. 217 A (III), UN Doc. A/810 (1948), online: <http://www.unhchr.ch/udhr/lang/eng.htm>. It is also included in Article 28 of *the American Declaration of the Rights and Duties of Man*, 1948, online: <http://www.cidh.oas.org/Basicos/basic2.htm>.
3. *Convention relating to the Status of Refugees,* 28 July 1951, 189 U.N.T.S. 150, Can. T.S. 1969/6 (entered into force 22 April 1954, accession by Canada 2 September 1969) [*Refugee Convention*].
4. *Protocol relating to the Status of Refugees,* 16 December 1966, 606 U.N.T.S. 267, Can. T.S. 1969/29 (entered into force 4 October 1967, accession by Canada 4 June 1969), online: <http://www.unhchr.ch/html/menu3/b/o_p_ref.htm>.
5. The *non-refoulement* provision is subject to exceptions. Article 1(C–F) sets out circumstances under which a refugee may be excluded from protection, including for having committed war crimes, crimes against humanity, serious non-political crimes, etc.
6. *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, A/RES/39/46, Can. T.S. 1987/36 (entered into force 26 June 1987, ratified by Canada 24 June 1987), online: <http://www.unhchr.ch/html/menu3/b/h_cat39.htm>.
7. *International Covenant on Civil and Political Rights*, 16 December 1966, 999 U.N.T.S. 171, Can. T.S. 1976/47 (entered into force 23 March 1976, accession by Canada 19 May 1976). [*ICCPR*], online: <http://www.unhchr.ch/html/menu3/b/a_ccpr.htm>. Article 7 refers to the right to be free from torture, but this provision has been interpreted by the UN Human Rights Committee to include a guarantee against *refoulement* to torture or cruel, inhuman, or degrading treatment or punishment (General Comment 6 of the Human Rights Committee; UN Doc. HRI\GEN\1\Rev.1 at 6 (1994).
8. E. Lauterpacht and D. Bethlehem, "The Scope and Content of the Principle of Non-Refoulement" in E. Feller, V. Turk, and F. Nicholson, eds., *Refugee Protection in International Law* (Cambridge: Cambridge University Press, 2003) at 216.
9. *Immigration and Refugee Protection Act*, [*IRPA*] R.S.C. 2001, c. 27.
10. *IRPA*, s. 95. In this paper, "refugee" and "protected person" are used interchangeably.
11. Only if they cease to require protection (for example, if the conditions that caused them to flee no longer exist) or lose their status due to misrepresentation may they be returned.
12. While permanent resident status provides a wide range of rights and benefits, full legal equality requires citizenship status, which may be conferred on permanent residents after a three-year waiting period (reduced by up to a year for refugees).
13. This paper focuses on refugees who are recognized by the Immigration Refugee Board. However those who are rejected by the Refugee Protection Division or who are determined to be ineligible to make a refugee claim have a last-chance opportunity to acquire protected person status under the Pre-Removal Risk Assessment (PRRA) just prior to being removed. The grounds for protection under PRRA are the same as those considered by the Board during refugee determination, and applicants are screened for almost identical inadmissibility criteria as are refugee claimants before they can be accepted under the program. While the acceptance rate is exceedingly low (less than 5 per cent) the few who are accepted may apply for permanent residence. Because of these and other similarities, the arguments set forth in this paper in the refugee determination context apply equally to the PRRA context.
14. *IRPA*, s. 100(3).
15. *Ibid.*, s. 103 & 104.
16. CIC Refugees and Enforcement Branches, "Instructions for Front-end processing of refugee protection claims" (27 January 2003).
17. Authority to detain refugee claimants in these circumstances is provided by *IRPA*, s. 55(3)(a).
18. Per *IRPA*, s. 55(3)(a).
19. *Ibid*., s. 55(2)(a).
20. *Ibid.*, s. 55(3)(b).
21. *Ibid.*, s. 55(2)(b).
22. There are provisions for three-member panels in certain exceptional circumstances (*IRPA*, s. 163). This is new under *IRPA*; under the previous legislation, two-member panels were the rule (again with some exceptions).
23. In exceptional cases, where the claim is clearly a winning one, the claim will be conducted informally on an "expedited" basis.
24. *IRPA*, s. 98, referring to Articles E and F of the *Refugee Convention*.
25. *Ibid.*, s. 109(1).
26. Immigration and Refugee Protection Regulations, 2002 [IRPR] SOR/2002-227, Part 8, Div 1, s. 215(1)(c)
27. IRPR, s. 206(a).
28. Citizenship and Immigration Canada, "Rights to Employment, Education and Health Care," online: <http://www.cic.gc.ca/english/refugees/asylum-5.html>.
29. Until April 2004, the province of Manitoba did not provide social assistance to claimants.
30. Canadian Council for Refugees (CCR), Refugee Rights Day Backgrounder, "Two steps forward, six steps back" (4 April 2003).
31. A. Brouwer, *Equal Access to Student Loans for Convention Refugees* (Ottawa: Caledon Institute of Social Policy, February 2000).
32. *IRPA*, s. 31.
33. *Ibid.*, s. 108, reflecting Article 1C of the *Refugee Convention.*
34. IRPR, *supra* note 26.

35. As of August 2004, all provinces that participate in the Canada Student Loan Program have harmonized their policies with that of the federal government and grant the provincial part of the loan to protected persons. Nunavut, the Northwest Territories, and the province of Quebec, which operate their own student assistance plans, do not give provincial assistance at this time, though Quebec has indicated that it plans to do so. See online: <http://www.cpj.ca/studentloans> for details.
36. Citizenship and Immigration Canada, online: <http://www.cic.gc.ca/english/refugees/asylum-2.html> (date accessed: 12 April 2004).
37. Exceptions include voting rights, access to certain public positions, the right to hold a Canadian passport, etc.
38. Recognized refugees receive a reduction of up to one year in the citizenship waiting period, to reflect the time spent in Canada after refugee determination.
39. IRPR, s. 175. At the time of filing the application, protected persons are required to pay a non-refundable processing fee of $550 for each adult family member (22 years of age and over) included in the application, as well as $150 for each dependent child included in the application [IRPR s. 301(1)(b)]. Applicants may include dependants overseas in this application. Failure to submit an application within this time limit will result in the refugee forfeiting the opportunity to be landed as a protected person. (They must apply on humanitarian and compassionate grounds, and become subject to additional landing requirements, including medical admissibility and a $975 Right of Landing Fee.) See IRPR 175(1); CIC Immigration Manual, Chapter PP 4: Processing Protected Persons' In-Canada Applications for Permanent Resident Status, s. 9.3, online: <http://www.cic.gc.ca/manuals-guides/english/pp/pp04e.pdf>.
40. Telephone call to Citizenship and Immigration Canada Call Centre by the author (March 2002).
41. Citizenship and Immigration Canada, "Applying for Permanent Residence From Within Canada: Convention Refugees," 11, online: <http://www.cic.gc.ca/english/pdffiles/kits/ KIT2.PDF> (date accessed: 8 April 2002).
42. Citizenship and Immigration Canada, "Applying for Permanent Residence From Within Canada: Protected Persons and Convention Refugees," 11, online: <http://www.cic.gc.ca/english/pdf/kits/guides/5205E.PDF> (date accessed 15 March 2003).
43. CIC maintains a Web page, updated weekly, which purports to give information on actual processing times for applications; see online: <http://www.cic.gc.ca/english/department/times/process%2Din.html >. On December 26, 2003, the Web site indicated a "current processing time" for applications for permanent residence by refugees and protected persons of 208 days, and reported that as of December 22, 2003, CIC was processing applications received *up to* June 3, 2003. There is no information on the Web site about whether this figure is an average or median processing time, or a minimum. This figure is nearly double the 116-day processing time reported less than a year ago, on March 15, 2003.
44. Another group in this position are persons who are suspected of having had some association with an organization that is suspected of having had links to terrorism.
45. The only option available is to seek a writ of *mandamus* from the Federal Court, *i.e.* an order to CIC to make a decision on the case. The lack of an effective complaint mechanism is a long-standing concern of refugee policy advocates. The Canadian Council for Refugees, the Coalition for a Just Immigration and Refugee Policy, the Sanctuary Coalition, and the Maytree Foundation have all called for the establishment of an effective, independent ombudsperson's office.
46. Letter from D. McNamara, UN High Commission for Refugees, Sharry Aiken, Canadian Council for Refugees (14 May 1997).
47. K. Jastram and K. Newland, "Family Unity and Refugee Protection" in Feller, Turk, and Nicholson, *supra* note 8 at 559.
48. Canadian Council for Refugees (CCR), *Refugee Family Reunification: Report of the Canadian Council for Refugees Task Force on Family Reunification* (July 1995) at 14–20.
49. IRPR, *supra* note 39 at 7.
50. Conversation with Chris Pullenayagem, CPJ (25 May 2004).
51. According to CIC, the current processing period for work authorizations is fifty-three days. See online: <http://www.cic.gc.ca/english/department/times/process%2Din.html> (date accessed: 26 December 2003).
52. H.S. Mohamed and A. Hashi, *Beyond Settlement: Economic and Occupational Adjustment of the Somalis in the Ottawa-Carleton Region: Report of the Task Force on Employment Project for the Somali Community* (October 1998).
53. *Refugee Convention*, Art. 7(1).
54. *Ibid.*, Art. 3.
55. *Ibid.*, Art. 4.
56. *Ibid.*, Art. 16.
57. *Ibid.*, Art. 22(1).
58. *Ibid.*, Art. 23.
59. *Ibid.*, Art. 24(1)(a).
60. *Ibid.*, Art. 24(1)(b).
61. *Ibid.*, Art. 15.
62. *Ibid.*, Art. 17.
63. *Ibid.*, Art. 13.
64. *Ibid.*, Art. 21.
65. *Ibid.*, Art. 22(2).
66. *Ibid.*, Art. 26.
67. *Ibid.*, Art. 25.
68. *Ibid.*, Art. 27.
69. *Ibid.*, Art. 28.
70. These include the right of association (Art. 15), wage-earning employment (Art. 17), self employment (Art. 18), access to liberal professions (Art. 19), housing (Art. 21), public relief (Art. 23), labour legislation and social security (Art. 24), freedom of movement (Art. 26), travel documents (Art. 28), and expulsion (Art. 32).
71. G. Goodwin-Gill and J. Kumin, *Refugees in Limbo and Canada's International Obligations* (Ottawa: Caledon Institute of Social Policy, September 2000).

72. *Refugee Convention,* "Declarations other than those made under section B of article 1 and Reservations," online: <http://www.unhchr.ch/html/menu3/b/treaty2ref.htm>.
73. *Vienna Convention on the Law of Treaties*, 22 May 1969, 1155 U.N.T.S. 331, Can. T.S. 1980/37 (entered into force 27 January 1980, accession by Canada 14 October 1970) [*Vienna Convention*] Art. 31(3). See also Jastram and Newland, *supra* note 47 at 569.
74. *ICCPR*, *supra* note 7.
75. *International Covenant on Economic, Social and Cultural Rights*, 3 January 1966, 993 U.N.T.S. 3, Can. T.S. 1976/46 (entered into force 3 January 1976, accession by Canada 19 May 1976) [*ICESCR*].
76. *Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, 660 U.N.T.S. 195, Can. T.S. 1970/28 (entered into force 4 January 1969, accession by Canada 14 October 1970).
77. *Convention on the Elimination of Discrimination Against Women*, 18 December 1979, 1239 U.N.T.S. 13, Can. T.S. 1982/31 (entered into force 3 September 1981, accession by Canada 10 December 1981) [*CEDAW*].
78. *Convention on the Rights of the Child*, 20 November 1989, Can. T.S. 1992/3 (entered into force 2 September 1990, accession by Canada 13 December 1991) [*Children's Convention*], online: <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.
79. D. Weissbrodt, *Prevention of Discrimination: The rights of non-citizens. Final report of the special Rapporteur*, UN Doc. E/CN.4/Sub.2/2003/23 (2 May 2003) at 6.
80. *ICESCR*, *supra* 75, Art. 2(2). Note the exception for states in transition, which does not include Canada, Art. 2(3).
81. Weissbrodt, *supra* note 79 at 50.
82. *CERD*, *supra* note 76, Art. 1(3).
83. United Nations Committee on the Elimination of Racial Discrimination, "General Recommendation No. 14: Definition of discrimination" (22 March 1993).
84. *ICESCR*, *supra* 75, Art. 10(1).
85. *African Charter on Human and Peoples' Rights*, 26 June 1981 (entered into force 21 October 1986), Art. 18(1).
86. *European Social Charter*, 18 October 1961 (entered into force 26 February 1965), Art. 16.
87. Jastram and Newland, *supra* n. 47 at 566.
88. *Ibid*. at 566. The authors also note: "The right to marry and found a family … includes the right to maintain a family life together. The right to a shared family life is also drawn from the prohibition against arbitrary interference with the family … and from the special family rights accorded to children under international law."
89. *Children's Convention*, Art. 3(1).
90. *Ibid.*, Arts. 9 and 10.
91. *Ibid.*, Art. 10(1).
92. *Ibid.*, Art. 10(2).
93. Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 1951, UN Doc. A/CONF.2/108/Rev.1 (26 November 1952) Recommendation B.
94. Goodwin-Gill and Kumin, *supra* note 71 at 6.
95. *Refugee Convention,* Art. 17. In addition, UNHCR's Executive Committee has issued Conclusions elaborating state obligations with respect to the employment of refugees.
96. See for example, *Ahani v. Canada* (2002), 58 O.R. (3d) 107 (C.A.). In his dissent Rosenberg J.A. summarizes the government's position with respect to its obligations as a party to the Optional Protocol to the ICCPR.
97. *Vienna Convention, supra* note 73, Art. 26.
98. The most cited case for this principle is the 1956 Supreme Court case of *Francis v. The Queen* [1956] S.C.R 618.
99. P.W. Hogg, *Constitutional Law of Canada*, 1999 student ed. (Toronto: Carswell, 1999) at 33.8(c), citing *Re Powers to Levy Rates on Foreign Legations* [1943] S.C.R. 208.
100. *Slaight Communications Inc. v. Davidson* [1989] 1 S.C.R 1038.
101. [1998] 1 S.C.R 982.
102. The cases are *Thomson v. Thomson*, [1994] 3 S.C.R 551, and *Canada (AG) v. Ward,* [1993] 2 S.C.R 689. For a discussion on this point see G. Van Ert, *Using International Law in Canadian Courts* (London: Kluwer, 2002) at 229b–c.
103. [1999] 2 S.C.R 817.
104. *Ibid*., quoting R. Sullivan, *Dreidger on the Construction of Statutes*, 3rd ed. 1994) at 330.
105. *IRPA*, s. 3(2)(b).
106. See, for example, *Martinez v. M.C.I.*, [2003] F.C.J. No. 1695; *Charkaoui (Re),* [2003] F.C.J. No. 1816; *Rimoldi v. M.C.I.*, [2003] F.C.J. No. 1877; *Li v. M.C.I.,* [2003] F.C.J. No. 1934; and. *Dennis v. M.C.I.*, [2004] F.C.J. No. 223.
107. Citizenship and Immigration Canada, online: <http://www.cic.gc.ca/english/refugees/asylum-2.html> (date accessed 12 April 2004).
108. The House of Commons Standing Committee on Citizenship and Immigration, in their report on the draft *Immigration and Refugee Protection Regulations,* called for a regulatory provision going even further: "Those granted refugee or protected person status by the IRB should be granted permanent resident status within 60 days of the receipt of their application for permanent residence, with the IRB's determination of identity considered valid for this purpose." [House of Commons Standing Committee on Citizenship and Immigration. Report on Proposed Immigration and Refugee Protection Regulations (20 March 20 2002) Recommendation 41.]
109. The specific grounds for inadmissibility will be discussed below.
110. Citizenship and Immigration Canada, *Operations Memorandum: Refugees – Time to apply for landing – Regulation 40*, IL 95-02, October 16, 1995.
111. Meeting with Gerry Van Kessel, Director General, Refugees, Citizenship and Immigration Canada (February 2001).
112. See, for example, J.C. Hathaway, "Toward the Reformulation of International Refugee Law" (1996) 15:1 *Refuge* 1–5.
113. A further legal problem with maintaining the distinction is that permanent residence is a prerequisite in Canada for naturalization, or citizenship, and Article 34 of the *Refugee Convention* obliges states to "facilitate" naturalization. While

this certainly does not in itself amount to a right to either naturalization or permanent residence, it does suggest that permanent residence is more than simply a privilege to be granted or withheld at the whim of host states. Under the *Convention*, refugees can legitimately expect Canadian policies to "facilitate" their obtaining Canadian citizenship, which necessarily includes granting them the prerequisite of permanent resident status.

114. A good example is the complicated nature of the harmonization of federal and provincial regulations and policies with respect to student loans for refugees. In spite of the announcement in the federal budget of February 2003 that protected persons were eligible to receive student loans, only in May 2004 did the province of Ontario adopt a policy that reflects this change in the province.
115. *IRPA*, s. 44–46.
116. The author and Citizens for Public Justice have put forward a number of concrete proposals in this regard. For details contact Citizens for Public Justice at cpj@cpj.ca.

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The Resettlement of Central American Men in Canada: From Emotional Distress to Successful Integration

Kevin Pottie, Judith Belle Brown, and Samuel Dunn

Abstract

Stress associated with immigration, particularly forced migration, may aggravate men's emotional distress and reluctance to seek help. This qualitative study of Central American immigrant and refugee men explored the process of coping with distress during resettlement. "Losing the way," a common theme of resettlement, was frequently a solitary struggle accompanied by anxiety, depression, and/or abusive behaviours. "Finding the way," grieving socio-cultural losses and seeking help, became possible when participants were able to accept responsibility for their behaviour. The role of "belonging" (support groups, jobs, family obligations) was a key motivating factor in the process of accepting responsibility and personal change.

Résumé

Le stress associé à l'immigration, en particulier à l'immigration forcée, peut aggraver la détresse émotionnelle des hommes et accentuer leur répugnance à rechercher de l'aide. Cette étude qualitative d'hommes immigrants et réfugiés provenant des pays de l'Amérique centrale explore comment les intéressés arrivent à se débrouiller et à faire face à leur situation. « Perdre la voie », un thème commun en matière de réinstallation, s'avère être souvent une lutte solitaire accompagnée d'angoisse et de dépression, avec ou non des comportements violents. « Trouver la voie », c.à-d. pleurer les pertes socioculturelles et rechercher de l'aide devint possible seulement lorsque les participants furent capables de prendre la responsabilité de leurs propres comportements. Le sens d'appartenance (groupes de soutien, emplois, responsabilités familiales) joua un rôle capital dans le processus de responsabilisation personnelle.

Introduction

The socio-cultural changes that accompany resettlement, particularly in cases of forced migration, are emotionally distressing.[1] Migrating men in particular face gender-specific losses and stressors[2] that may make integration and help-seeking more difficult.[3] This research paper focuses on men coping with emotional distress in the milieu of socio-cultural adaptation and provides a narrative perspective on Central American men integrating into a new country.

The Central American countries of El Salvador, Guatemala, and Nicaragua share a history of political violence and social unrest. More than 90 per cent of Central Americans living in Toronto originally fled their homeland due to political oppression and conflict.[4] Such unrest has left migrants from these countries at high risk for emotional distress[5] and in need of more innovative provision of health care.[6] Latin American immigrant men[7] frequently share a common history of trauma, torture, and violent oppression from their homeland and as a result suffer significant loss of socio-political status and struggle against language and employment barriers.

Literature Review

Psychological Distress in Immigrants and Refugees

Exposure to violence and political persecution in the country of origin, as well as language barriers, unemployment, and socio-economically deprived urban environments in the resettlement city, leave Central American immigrants particularly vulnerable to profound emotional distress. Adjusting to a new economic, social, and cultural climate is an

emotionally painful process for most immigrants. Although the experience of immigration itself does not produce mental illness,[8] the multiple processes of dislocation, movement, and resettlement may together place immigrants at risk for emotional problems.[9]

War, poverty, unequal land distribution, and political persecution in Central American countries have led to the killing, torture, disappearance, and displacement of thousands in the post-war era.[10] Refugees, many of whom have experienced war, state-endorsed terror, and political persecution, are at particularly high risk for mental health problems, such as anxiety, stress, depression, and other emotional difficulties.[11]

Salvendy[12] identifies language and cultural barriers, a large socio-economic gap between the society of origin and the host country, and previous psychosocial maladjustment as contributing to the stress of migration and resettlement. The inability for the host country to offer language and culturally appropriate health services may hinder help-seeking behaviour.[13]

Masculine Health Beliefs and Behaviours

Masculine health beliefs often promote secrecy and isolation[14] rather than help-seeking and community involvement. Men often have difficulty articulating their distress and may "act out" their emotions in an attempt to regain control or right expectations.[15] Psychological distress may therefore manifest in the form of alcohol and drug abuse, risk-taking, and physical violence.[16] Umberson *et al.*[17] suggest that violent behaviour may be an alternative expression of emotional distress that results from socio-cultural stresses. Courtney[18] argues that these masculine health-related beliefs and behaviours contribute to gender mortality (homicide, suicide) and morbidity differences; for example, the higher incidence of suicide among males.

Gender socialization influences health beliefs and behaviours.[19] Brannon[20] identified four major components of the Western male role: the need to be different from women; the need to be superior to others; the need to be independent and self-reliant; and the need to be more powerful than others, through violence if necessary. Sabo and Gordon[21] point out, however, that the root of men's higher risk for disease is not simply based in men's individual psyches but is reflected in men's roles, routines, and relations with others and that these roles are fixed in the larger historical and socio-cultural relations that constitute gender order. Political, economical, and ideological structural changes are therefore necessary if personal changes are to have any lasting benefit.[22]

Freire[23] suggests Latin American immigrant men and women differ in their "core identities"; for example, having paid work is an important "core identity" among Latino men whereas women focus more on the family. Since many of these immigrant men have difficulties finding employment in their field of expertise, due to unavailability of jobs or unrecognized credentials, they are unable to provide financially for their families, resulting in loss of socio-economic status and feelings of inadequacy.

Latino men and women also differ in their behaviour in relation to emotional problems and help-seeking behaviours. While women may present with headaches or crying as symptoms of distress, men may express distress in acting out behaviours such as marital violence or alcohol abuse.[24] Freire states that men typically "resist seeking professional services, [they] do not attempt to create or use existing support systems, and even reliance on friends tends to be minimal or nonexistent."[25] She further suggests that Latin American men have difficulty verbalizing their emotions, particularly vulnerable ones, such as fear, anxiety, and anger. Feelings of inadequacy that result from a decline in occupational status contributed to this difficulty in communication. While the women in Freire's study[26] were able to seek help or assistance for financial or health problems in Canada, men were unable to respond to these challenges in a constructive way.

Freire describes a "gender differentiated pattern of response"[27] between newcomer Latino men and women. In migrating to Western countries, Latino men must adapt to a new gender order: a culture-norm that confers more power and rights to women in relation to the traditional patriarchal societies of Central America.[28] These immigrant men confront new societal values and behaviour patterns and, unfortunately, they may lack the skills to obtain valued goals within this new society.[29]

Emotional Distress "Nervios"

Latin American immigrants in both the United States and Canada experience a wide range of emotional difficulties, including confusion, anxiety, tension, and depression.[30] Guarnaccia *et al.*,[31] in their review of the literature on Puerto Rican mental health in New York, emphasize the importance of focusing on culturally meaningful expressions of distress such as the cluster of emotional difficulties identified in the Latin American population as "nerves" or *nervios.*

According to medical anthropologist Janis Jenkins, *nervios* is "an indigenous cultural category widely used in Latin America for a variety of forms of distress and disease…and may refer to a variety of bodily and affective complaints."[32] While social theorists have argued that *nervios* is a metaphor for political oppression and poor socio-economic status[33] or a "somatization" or "embodiment" of terror,[34] it is nevertheless a sign of distress that impacts not only individual well-being but also the family

and social relations of the sufferer. *Nervios* may be expressed somatically as headaches, dizziness, and difficulty sleeping,[35] or as emotional problems such as loneliness, isolation, nostalgia, and boredom.[36] Individuals may consider the condition "normal" to the extent that "having nerves" or "being nervous" is a part of everyday life[37] and they tend not to seek help until "having nerves" is perceived as restrictive or chronic in nature.

Studies of Latin American immigrants report that men tend to avoid discussing or dealing with health problems,[38] but these studies fail to analyze the gender and cultural dynamics of care seeking. Farias,[39] studying *nervios* in both Salvadoran refugee men and women in the United States, found that women typically expressed *nervios* with symptoms of headaches and other pains, crying uncontrollably, and loss of breath. Women identified an inability to support family and a loss of community relations as associated stressors. Men predominately described nervios with symptoms of weakness, fear of losing control over violent impulses, alcohol abuse, and nightmares. Men identified loss of functional capacity, inability to provide economically, marital conflicts, and social isolation as associated stressors. Nervios, from a male perspective, was seen as an infringement on being "able-bodied" and was expressed in a variety of ways, most commonly as loneliness, isolation, and anxiety.

Methods

Study Design

This qualitative study focused on data from in-depth interviews with nineteen Central American men living in Toronto, with supplementary data from field observations and a men's focus group. Key informants' discussions helped assure culturally sensitive research.[40]

Ethics approval was obtained from the Review Board for Health Science Research Involving Human Subjects at the University of Western Ontario and the Human Participants Review Committee at the Office of Research Administration at York University.

Recruitment and Sampling

The nineteen interviewed men originated from El Salvador, Guatemala, and Honduras. These in-depth interview participants were recruited through a Hispanic social worker, key informants, and contacts of one of the authors (Pottie). This "snowball" sampling technique[41] facilitated interviewer-participant trust and allowed recruitment of participants wary and not yet connected to formal medical services.

The participants originated from El Salvador (thirteen), Guatemala (three), and Nicaragua (three). Fifty-five per cent of participants formally identified themselves as refugees, with just over half arrived in Canada prior to 1990. Fifty-eight per cent were married and 34 per cent reported being separated or divorced. The participants ranged in age from 21 to 67 years of age with the vast majority (89 per cent) being between 21 and 50 years of age. The participants showed a diverse range of educational backgrounds ranging from some elementary education to having completed university degrees, the majority (64 per cent) reporting some high school education.

All participants, refugee claimants, refugees and immigrants in Canada, were entitled to health coverage, social assistance, English- or French-as-a-second-language training, and employment and student permits. Due to the participants' high level of forced migration, this study did not specifically seek to differentiate refugees and immigrants.

Data Collection

Semi-structured in-depth interviews were used to collect data relating to participants' personal backgrounds and resettlement experiences, emotional health problems, and experiences with health care services (see Figure 1). All interviews lasted one to one and one-half hours and were conducted at a location selected by the participant.

In an effort to better understand the socio-cultural context of the participants, two of the authors (Dunn and Pottie) attended several community events (soccer matches, church services, health centre events) and recorded field notes based on informal discussions and observations. Four Spanish-speaking Latin American immigrants served as key informants (female social worker, female medical doctor, male addiction councillor, and female language teacher). These informants provided valuable culture and gender-relevant perspectives and knowledge about utilization of health care services and provided feedback on research findings. A repeat individual interview and a late-stage focus group (seven male participants) were conducted to seek feedback on the researchers' preliminary synthesis of the data.

All participants and key informants were offered an honorarium of $20 (Canadian) for in-depth interviews and focus groups. All interviews were audiotaped and transcribed verbatim in the language chosen for the interview (ten in Spanish, nine in English) or focus group (Spanish).

Data Analysis

The constant comparative method of grounded theory[42] was used in the analysis of the in-depth interviews. The iterative analysis with ongoing analytic reflections enabled the researchers to move deeper into practical and theoretical issues of masculinity and its impact on emotional distress during resettlement.

Figure 1
Sample In-depth Interview Questions

General

- Where are you from?
- How old are you?
- What is your marital status?
- What is your educational and cultural background?
- When did you come to Canada?
- Why did you come to Canada (as an immigrant, as a refugee)?

Health and illness and emotional distress

- What have been your experiences, positive or negative with your health in Canada?
- Have you had any problems with your nerves, emotional distress or depression since you have lived in Canada?
- Do you have any stories to tell about when you had difficulties with your nerves?
- In your opinion, what are the differences between nerves and mental health problems?

Utilization of mental health services

- How do you deal with problems with nerves, stress or depression?
- Do you deal with them privately or with other people?
- Where do you go to get help with nerve problems: *nervios* (priest, friend, natural healer, wife/girlfriend, family member, psychologist, family doctor)?
- What health services have you used in Canada?
- Do you have any memorable stories about when you tried to use health services?
- What difficulties do you think Central American men face with health services in Canada?

General health: perspectives, opinions and ideas

- In your opinion what is the biggest health problem Central American men face in Canada?
- How do you think this problem should be dealt with?
- What should be done to make health services more accessible for Central American men?
- Do you anything else to add with regard to *nervios* and emotional distress in the settlement of Central American men?

All generated data, in-depth interviews, analytic reflections, late-stage focus group of men, and field observations were then analyzed together. The variety of data sources allowed the researchers to compare and contrast several perspectives on men's health-related beliefs and behaviours. Ultimately an understanding of the participant's stories of adaptation and emotional distress transpired.

Trustworthiness

In-depth interviews were felt to reach saturation at nineteen and re-interviewing of three participants was conducted as an additional check for credibility and saturation (evidence of no new data). Member checking occurred through re-interviewing and a focus group of male participants.

Findings

The participants described a range of struggles and life changes ranging from personal and occupational failures, addictions, and depression, to personal growth, opportunities, and community involvement. The findings are reported under the themes of "Surviving the past," "Keeping it in," "Losing the way," and "Finding the way." Figure 2 represents a diagrammatic overview of the process of adaptation.

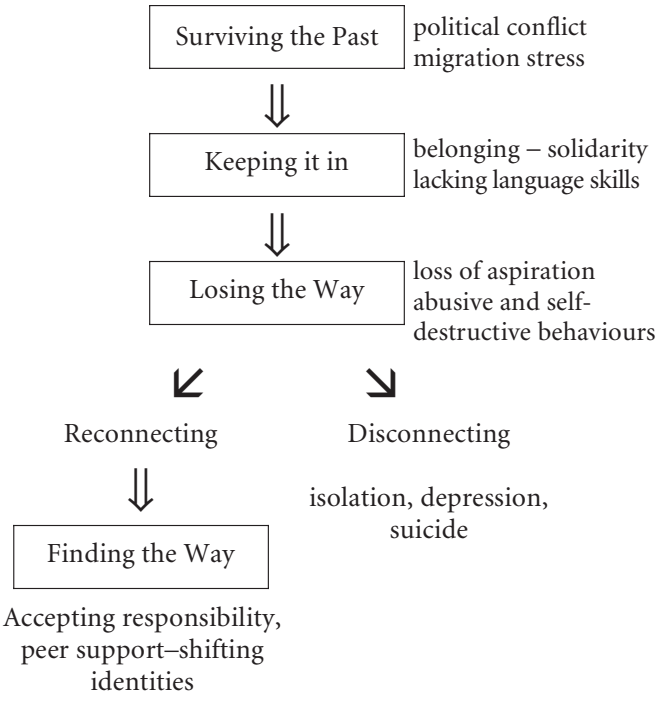
(Quotations presented in parenthesis have been translated from Spanish.)

"Surviving the Past"

Surviving war

Most of the participants had survived experiences of war and conflict and all had been affected emotionally, physically, or

Figure 2: Resettlement of Central American Man



economically by violence in their home country. Many also identified family members who were either killed or "disappeared" as a result of the counter-insurgency campaigns of government-backed armies in the region. These sociopolitical experiences with war and oppression were identified as the beginning of the adjustment process or, conversely, disconnection. Roy, coming from El Salvador stated:

> We are coming from conflicted countries, where there was war. We are coming from war, from seeing chopping, killing, torture, and some of us have been tortured. So we are coming with very high emotional and psychological problems.

Reflecting on his experiences in Guatemala in the 1970s, during the country's thirty-six year civil war, Nery stated:

> I lost a brother. They accused him that he was a collaborator in the Movement and I lost him. He was twenty-four. A lot of people died in nineteen-seventy. If you talked, the guerrillas killed you. If you didn't talk, the army killed you, so we were between the wall and the arrow, you know what I mean?

Surviving migration and resettlement

This section, concerning resettlement stressors, introduces several key and often overlapping barriers: language difficulties, loss of confidence, unemployment, and lack of familiarity with services. These barriers bring into focus the initial struggles the participants faced in starting new lives in Canada and in accessing formal or informal care when emotionally distressed.

Francisco arrived in Canada from Guatemala in 1989. A university graduate, he arrived with several positive expectations concerning life in a new society. But like several other participants in this study, he soon suffered from feelings of disappointment and inadequacy:

> I had just come to Canada. The next day I thought, I want to start working. It didn't happen. The real thing was that I had to learn English. I didn't know anything about the English language so I went to some classes. I was sitting in the chair after being in university, sitting in these classes, and not knowing anything about English. It was so sad.

Marcelo also carried a sense of hope with his migration to Canada:

> I thought it would be easy to start a new life. I was very optimistic. To find a job, hold a job, to have a girlfriend, help someone else out. I could not see at that time that the biggest barrier would be language. That is the worst thing.

Language was identified as a key barrier to finding employment. Several participants also reported difficulties communicating with health professionals in both community and hospital settings. Some participants argued that men lacked the motivation to look for services while others maintained that underutilization was a structural problem related to language barriers. Alejandro, for example, stated:

> My wife was in the hospital in 1991. There was no doctor, no psychiatrist, no nurse, nobody who could speak Spanish. I felt so bad, you know…. I was losing hope. Like ah, close to suicide, really thinking so much. But no, I never found anybody who could...who can speak [Spanish].

"Keeping It In"

Questions about problems with *nervios* or depression repeatedly elicited stories on how it is "hard to be a man" or how "people don't understand how much responsibility a man has." Conversations about alcoholism or domestic abuse were deeply entangled with the meaning of manhood. Competing narratives emerged how being a man shaped individual health or response to illness. A key finding of this study was that the underutilization of informal and formal sources of emotional support among Central Americans is linked to constructions of what it means to be a man: *ser hombre.*

Machismo as a source of belonging

Machismo was associated with a reluctance of men to seek help for health problems. Not talking about emotional difficulties, "keeping it in," was viewed as a characteristic of being a man. Being assertive, proving oneself to others, not showing weakness, and not bothering friends or family about personal problems were frequently occurring themes in the interviews and focus groups. Male participants did not seek help for emotional distress for a number of reasons: men hide or conceal health problems because of pride, they lack trust in the people around them; they consider it "unmanly" to discuss their emotions, they don't want to worry others about their health status; or they blame others for their bad health.

One participant, Miguel, attributed his reluctance to deal with health problems to an aspect of *machismo*:

> The Latino man, we have a problem. It is machismo: not letting ourselves to be less than women. Believing ourselves to be superior than women. The Latino man, we like to put up fronts. Be strong, we are the ones that take charge in the house. We are the chiefs of the house. That is the problem. That is why I think that it is easier to notice certain physical or mental weaknesses in women. Men try to hide it, not to show it but to hide it. That is machismo.

Several participants insisted that being a responsible man was "part of their culture" and that men and women had certain roles to fulfill in their daily lives. Miguel said:

> The man is the one that brings home the bread and organizes the house and the internal organization of the home revolves around the woman. So we are born with this responsibility. We were brought up with that mentality. So it is difficult to come here (Toronto) and…change overnight.

Many participants felt that "they were less *machista*" since migrating to Canada because they "were not in their culture anymore" and because women had more protection and rights in Canada than in their home country.

> I used a lot of machismo over there (home country). But I arrived here and my machismo went down. Why? Because of the law. Because of the laws that exist in this country. And now it is hard for me to change my machismo. But I am trying….

"Losing the Way"

Spiralling downward

Problems with nerves, alcohol, depression, loneliness, violent behaviours, and other forms of distress were often described by participants in terms of losing direction in life, losing a sense of personhood, or "being lost" or "disappearing." "Losing the way" and the resultant downward spiral were often associated with lack of language skills, cultural marginalization, financial resources, friends or sexual relationships, as well as being unable to fulfill goals and aspirations.

Miguel, a 42-year-old university graduate from Guatemala, said:

> In Guatemala I was always in charge, but in Canada I have to share little things. And that makes me feel like I am losing my identity; I was losing my identity as the one who brings home the money, because here [Canada] if I can't have a job, I [must] apply for Social Services. I said: "Miguel is gone, he doesn't exist anymore." So this kind of feeling made me feel lost in this country. It is very hard.

Roy, who arrived in Canada in 1994 as a refugee, said:

> When we come to Canada…we find big barriers here; for example, language, culture, money, everything is new for us. They are taking us from what you call the Third World into a First World country. The culture is very totally different the way that they both behave and act. And so it is a very great impact. And they just treat us just like animals.

Migration for political or economic reasons caused disruptions in their lives. Given that most of the men in this study migrated to Canada at between twenty and forty years of age, many had aspirations of achieving a particular occupation or establishing a family. Thus, the ways in which disruption is influenced by a past dominated by political conflict and a present influenced by conflict from traditional constructions of masculinity provide an important context for the analysis of the emotional problems faced by the participants.

Behaviours expressing psychological distress

Behaviours, rather than verbal expressions of emotions, were frequently reported by participants in relation to distress during adjustment. Many participants described struggles with alcoholism, drug addiction, weight gain, abusive behaviors, sexual promiscuity, and suicidal ideation. Like *nervios,* these behaviours were expressions of the social, cultural, and economic struggles in their lives. "Forgetting" through drinking was a common strategy employed by men to deal with unemployment, family conflicts, boredom, and loneliness. As 44-year-old Edgar described:

> ...by the second year after coming to Canada I feel so depressed, because I didn't...didn't—couldn't find a job. I start drinking.

Mario from El Salvador said:

> When I arrived in Canada this problem, or this illness was intensified. It was worse than in my country. I imagine, I am sure that it was a kind of frustration in finding myself in a new culture, a new world, and above all, with a very large barrier which was language. Upon arrival in Canada, well, I already smoked marijuana every day and several times a day for many years. I drank alcohol from the age of thirteen until I arrived here, almost every day too. But then here in Canada I started getting into cocaine. Then my illness in addiction to drugs was bigger here in Canada than in my country.

Several male participants reported substance abusive together with violent abusive behaviours toward women. Alcohol abuse and domestic violence often had existed prior to migration, but these problems either worsened or were simply not tolerated by women once in Canada. After describing his divorce from his wife and his efforts to curb his violent behaviour towards her, Francisco stated:

> My physical health was okay, but my mental health was not good; because when I went through the separation with my wife, I was kind of under restraint with Immigration…. In Guatemala you wouldn't have this kind of situation. But here I was under restraint and I tried to kill myself. I was in the bath when I tried get out by the window and run and run, and because I couldn't deal with my family problems like I did in Guatemala. So I said everybody is against me, everybody wants me to be nothing, everyone wants me to be quiet and don't say anything.

"Finding the Way"

In contradiction to stereotypes about the *macho* Latino man that emphasize sexual prowess and stubborn individuality, participants' success stories demonstrated that connecting with support groups, friends, and organizations allowed one to accept responsibility for one's behaviour. This ability to accept personal responsibility for one's behaviour was a key factor that influenced participants' ability to reconstruct their masculine identities and "move on," the term most often used by participants in reference to successful integration. Less than half of the participants described success stories in their narrative account of resettlement.

Accepting responsibility

An overwhelming number of participants asserted that "moving on" and maintaining well-being was a matter of personal responsibility. Walking, resting, reading, playing soccer, learning English, keeping busy, staying organized, eating healthy foods, and abstaining from drinking and smoking were identified as key sources of emotional well-being. Keeping composed and having control over your own body were also considered ways to maintain individual health as well as good relations with friends and family. Since most of the participants had been married or had children, meanings of manhood were often intertwined with being a husband and/or father. Ricardo said:

> I was always a man to work for his family and children. I have enjoyed being responsible for many things…, in everything. When one is responsible it is a very good thing. Because a man's responsibility has to be very effective, positive…to sow the seed for the being that is coming, for the son that is about to come, for children to grow up with a good experience, with a father that has given them good guidance that will serve them in the future.

For several participants, another important facet of "moving on" was relearning what it means to be a man. Francisco found a way to deal with his violent behaviour towards his wife by rethinking his own sense of responsibility to himself and to the people around him:

> What I wanted to do is to keep my family together and I realized that I was the one who has a problem; I was blaming my wife and my kids. I thought they didn't understand me, but I got information from the community centre. I then realized that I was the one who had problem with my dealing with my anger. And I identified that I was losing my identity as a man because I couldn't deal with the situation like I did in Guatemala.

> The first thing is to learn that we are responsible for our own behaviour; this is a main focus. You are responsible for any behaviour. Women are not responsible; she doesn't deserve to be beaten. It is not her fault if we are violent. It is not her fault if we feel sad, upset, angry, it's not her fault; it's our responsibility to express our feelings.

> I am still learning how to be a man; a different one than I was in (home country). Now, I learn how to cry. When I was a little kid my Dad used to say boys don't cry, girls cry, so I learnt how to express my feelings. I was suppressed, if we expressed our feelings we had to use violence. This is the way my Dad used to do it. So now I learn not to do it in the way I learned when I was a kid. I think that I'm not the same person.

Connecting to support groups

Connecting to social and support groups provided participants with emotional support and facilitated new constructions of masculinity. Some of the men eventually sought out emotional support through organizations such as Alcoholics Anonymous (AA) and community-based support groups.

Although the degree of social connectedness varied from participant to participant, as did the ability of different participants to meet friends and maintain friendships, having social ties was considered important in everyday life. Francisco found a way to deal with his violent behaviour by joining a parenting group.

> I had stopped going to school for a week and then I saw a sign in the hall of the school. It was about a parenting group. This group had about twelve women and I joined them. The first session I was crying. I just opened the door and I said: "This is a parenting group?" They said yes, so I started crying and they listened to me, they were saying "If you want to talk, just talk. You want to cry, just cry, but we will not judge you, we will not criticize you," and then they were listening to me. I told them that I have problems at home and I don't know how to deal with them, and it was when I realized I was under depression.

Roy described the ways in which the Spanish-speaking AA program had helped him:

> …Because in the way it is very flexible. For example, those steps are saying things like this: life is this, you can take this way, you can take this [way]. They are putting it as a mathematic. They are giving you a program and then...this is the way I'm teaching you, but then if you find another way that can go to the same result, that's fine.

Imanuel struggled for several years to learn English and find a job:

> Canada was really bad in the beginning. Why it was really bad is because all the time I was inside the house with my nerves, because the problem I had was that I didn't speak English, and I didn't know nothing. But after a while I go by bicycle two blocks and I find a park and there's a lot of Spanish people there, so I have friends, and then I see Canada differently.

Participants also identified male friends and social connections as important sources of well-being. Friends were a source of emotional support, as well as a source of motivation to quit drinking or smoking. Having friends is a way to counter feelings of loneliness in a new society.

In the case of Ricardo, meeting fellow Spanish-speaking men was an important step towards improving his life after problems with depression, sadness, and loneliness:

> I have over seven years of being here and life has changed a lot in me. I am not the same as the one who came here back in those times, not knowing anything. I know all of Toronto; I know the area where I live. Now I have friends, I have people with whom I share marvelous moments.
>
> My job helped me a lot and school also gave me a lot of support. But one also needs friendships, to have friends, to participate in something, something good that can be beneficial to the community.

Discussion

The rich narratives described in this study unmask the painful adjustment struggles faced by many Central American immigrant men in Canada. The findings provide insight into how disenfranchised men can accept personal responsibility and change within a supportive environment of other immigrant men, and the risk of abusive behaviours in the context of unmitigated psychological distress. The narratives reflect shifts in participants' identities and how these masculine identities are contingent on historical and changing socio-cultural contexts.[43]

This study also identified the theme of "losing the way," the spiralling downward process that preceded an effective identity reconstruction for some participants or lead to a further disconnection for others. The findings also reconfirm observations from other immigrant studies that identify language as a key barrier to community resources[44] and suggest employment[45] and support systems[46] are key facilitators to men's adjustment.

"Keeping It In:" Gender and Culture Beliefs

The participants in this study were reluctant to acknowledge or seek help for psychological distress. This may have been because participants had a fear of showing weakness or were ill-equipped to articulate their emotions, particularly negative ones such as fear, anger, and anxiety.[47] The origins of "keeping it in" and *machismo* may very well date back in Latin American history to protective and productive roles[48] and a sense of belonging among men.

It was frequently participants' prolonged unemployment and loss of social status that led to a loss of hope and aspirations; a loss of control that led to behaviours that were often violent or self-harming. Integrating into community life in Canada demanded a shift in certain masculine beliefs and behaviours, particularly a shift away from abusive behaviours toward women. Participants' responsible or irresponsible behaviours had implications for individual health and family well-being.

The findings in this study suggest a conflict between traditional *machismo* (patriarchal values) and transitional egalitarian forces within the Canadian immigrant context, terms defined by Rogler[49] that relate to marital power identity. Participants identified women as support persons, but rarely as significant agents of change. But it was often through women that the participants were confronted with the more egalitarian values of Canadian society. Partici-

pants saw themselves as the head of the family, financially and often emotionally, responsible for taking care of the needs of the family. It may have been the men's loss of power status[50] or the conflict of traditional family roles that limited the effectiveness of women alone in facilitating the men's identity adjustment.

"Losing the Way"

During the resettlement process participants frequently struggled with their changing identities, feeling lost and in emotional distress. This distress was initially expressed through unhealthy behaviours rather than through help-seeking behaviours. Perceived or real losses in social status appeared to provoke alcohol use, abusive and violent behaviours, and promiscuous sexuality. Participants often appeared to get lost during their adjustment process, and in seeking to right the way, they often acted violently toward themselves or others. The behaviours accompanying emotional distress may have been used as a means of regaining feelings of control[51] and the severity of the situation was often suggested by chronicity, intensity, and rigidity of the problems. This study suggests that abusive behaviours can play a significant role in identifying men suffering from unmitigated psychological distress.

This sense of losing the way preceded any acknowledgement of emotional problems and subsequent acknowledgement of personal responsibility. Participants who were unable to accept some responsibility were unable to reconstruct their identity and continued to descend to devastating consequences, such as disabling substance abuse or isolating depression.

These findings are consistent with the downward social movement and psychosocial distress that Bourgois[52] describes in his ethnography, *In Search of Respect*, in which he captures the struggles and suffering of Hispanic Americans in East Harlem, New York. This spiral descent also parallels the downward spiral described in narratives of chronic illness[53] and addiction.[54] Charmaz[55] describes this cycle of loss and social descent: "Serious chronic illness…results in the spiralling consequences such as the loss of productive function, financial crises, family strain, stigma, and a restricted existence…affected individuals commonly not only lose self-esteem, but even self identity." Although not all the participants had mental illness, all participants had suffered losses relating to functional capacity, family responsibility, cultural, and community ties.

"Finding the Way"

Despite participants' acknowledgement of the role of personal responsibility and self-reliance, "finding the way" was never solely an individual act; rather, it depended on connecting socially with other adjusting immigrants in the community. The participants who had managed to "find the way" had often connected to a men's support group that facilitated the acceptance of new roles and responsibilities.

The historical and cultural context of Central American men provides insight into the relevance of masculine identities and the slow and often traumatic process of shifting these identities. Rechtman[56] suggests that members of a society at war often share common values, struggles, and illnesses even though their exposures to trauma may vary. It is this belonging and solidarity, a belonging that Taylor[57] describes as a universal need, which may at once provide strength and resiliency in times of trauma in the homeland but later inhibit adaptation to a new society. The need to maintain a sense of connectedness with other Latino men suggests that reconstructing identities must take place without losing a sense of connectedness to a culture and gender group.

Peer support groups for men played a large role in helping participants shift and reconstruct their responsibilities and male identities. Belonging was a key facilitator in accepting responsibility. And being connected to a community and social support network was significant moderator of emotional distress. A study by Jarama *et al.*[58] on disabled Central Americans immigrants found that decreased social support was associated with increased anxiety and risk for depression. Another study with Latin American immigrants[59] also supports the importance of "belonging" with its finding of a significant negative association between church attendance and suicide.

Implications for Practice and Research

The findings in this study have severalimplications for clinical practice and health and social service delivery. While *nervios* may be a metaphor for the everyday struggles with emotional distress experienced by immigrants, it may also signal the onset of more serious mental illness. This study highlights the need for awareness of cultural idioms of distress among primary care professionals and program and policy planners.

The prevalent male belief in "keeping it in" suggests a need for gender-specific health and social services for Spanish-speaking immigrant men, especially those who have experienced political conflict and violence in their home countries, are unemployed, or lack English-language skills. These health and social services should reflect male gender roles through links to employment and language services and promotion of the role of fatherhood. Focusing on action rather than verbal expressions of feelings may represent a gender-targeting approach to mental health services.

Health care professionals, emergency and primary care physicians in particular, need to be aware that violent and abusive behaviours may be a sign of psychological distress. It

is important that these professionals appreciate the role of peer support groups in mitigating emotional distress and in enabling socio-cultural adaptation. A male support group may broaden a man's cultural perspective without threatening his sense of belonging to the male gender. Both formal and informal support groups should be developed and further research undertaken to explore the use of support groups in assisting immigrant men in adjusting to societal norms.

Conclusions

The participants in this study revealed a range of struggles and life changes ranging from personal failures, addictions, and depression to personal growth, opportunities and community involvement. Stories of "survival," often riddled with violence, loss, and resettlement stress, provided a context for stories in which participants invariably "lost the way." Language, lack of male-friendly services, and general lack of awareness of community services predominated as barriers to formal and informal health services. However, it was the culturally endorsed belief in "keeping it in" that was often the main obstacle to reconstructing healthy male identities. "Losing the way" frequently left the participants emotionally distressed and prone to transgressive behaviours. The inability to reconnect with society had devastating consequences such as disabling substance abuse, depression, and suicide attempts. "Finding the way," when it did occur, involved accepting personal responsibility for one's behaviour. The sense of belonging that came from associations with support groups, new friendships, and community connections was a key factor in facilitating acceptance of personal responsibility.

In summary, this study provides new insights into men's process of accepting responsibility and recovering from the losses that accompany migration and resettlement. The participants' descriptions of their struggle to adapt can guide health care professionals, service agencies, and program and policy makers in providing gender sensitive and culturally appropriate assistance to this vulnerable population.

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