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Children at Risk

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Introduction

Children at Risk

Geraldine Sadoway

Children are at risk in every part of the world today. They are at risk because of their special vulnerability as children and because the "natural" urge of most adults to protect and care for children falls far short of ensuring their protection and care. Children are particularly at risk when they are separated from their parents and families due to war, poverty, and oppression, or when their caregivers have themselves become their exploiters and persecutors. According to UNICEF's most recent *State of the World's Children* report, an estimated twenty-seven thousand children under five died of preventable causes *per day* in 2001. Jo Becker, Director of Human Rights Watch, states that "children are at risk of violence in nearly every aspect of their lives—in their schools, on the street, at work, in institutions, and in areas of armed conflict. They are beaten, tortured, sexually assaulted, and murdered, often by the very individuals responsible for their care and safety."[1]

The community and the state have often been reluctant to intervene to protect children. Paternalistic concepts of children as property—chattels of their parents, or extensions of their parents—rather than as persons in their own right are deeply ingrained. The recognized need to protect the private sphere of personal and family relations from undue state interference is another barrier. But gradually we have come to recognize basic human rights of all children and to enshrine these rights in international treaties and conventions, such as the United Nations Convention on the Rights of the Child (CRC), the most widely ratified of international human rights conventions.[2]

Almost all children have some ability to express their needs, from the infant crying to express hunger or cold, to the nine-year-old refugee from Sierra Leone who approaches a Guinean woman and asks her to take him with her because he has no one else to care for him, or the teenage refugee in Canada who recognizes the injustice and humiliation of being a "brown-paper" person because of her lack of immigration status. But having a voice is one thing, having the power to escape from oppression and persecution is another. Children lack power in our society and are therefore dependent upon adults to recognize their needs and act to ensure their care and development, as well as their safety and protection.

In this issue of *Refuge* we have an opportunity to examine what is happening in different parts of the world to the most vulnerable members of the world community. The essay "Hidden Children" by Moller and Minard describes the situation of separated refugee children from Sierra Leone who are being fostered by families in neighbouring Guinea. This can be compared, ironically, to the predicament of children who have reached the "golden mountain" of the United States, only to find themselves imprisoned in the "care" of the INS while their status is adjudicated. It is not surprising to discover that the attention lavished on little Elián Gonzalez, the shipwrecked six-year-old from Cuba, is far from typical. As Morton and Young point out in their piece, in the year 2000, while the battle for Elián raged in the media, "the INS took nearly five thousand children into its custody, some as young as eighteen months old."

Closer to home, Denov and Campbell reveal the ravages of internal displacement on a community and the grievous toll taken on its children. In their searing account of the Innu people of Davis Inlet, we learn that the Innu, who have twice been relocated by the Canadian government, are the "most suicide-ridden people in the world" and that "an Innu child is between three and seven times more likely to die before the age of five than the average Canadian child." Internal displacement occurs worldwide. In the report by Mahalingam, Narayan, and van der Velde, we gain insight into effective strategies developed by UNICEF for working with IDP children in a range of different countries, from Sri Lanka to Colombia, strategies that include empowering adolescent youth in refugee camps to becoming involved in

resolving the challenges facing their own refugee population.

The issue of what constitutes "persecution" of children, in terms of the UN Convention for the determination of refugee status, continues to challenge adjudicators. The plight of children facing forced conscription, sexual exploitation, and female genital mutilation is beginning to gain recognition as persecution of children. Yet the more commonplace forms of ill-treatment, such as domestic servitude in private homes, may not be as readily recognized as such. The heartbreaking account by Irdèle Lubin of Haitian children given up by poor families to become domestic servants, in return for their room and board and the promise of education, and who become little slaves, mistreated, humiliated, and worked to death, is a harsh reminder of the utter vulnerability of such children and the need for effective state protection. In a summary of Indian jurisprudence by Veerabhadran Vijayakumar, we are given a glimpse of the role of the courts in defending the rights of refugee children and of curbing certain forms of persecutory treatment of children such as bonded or dangerous labour, slavery, trafficking, prostitution, and pornography.

In Canada, treatment of separated refugee children still leaves much to be desired, but the UNHCR, International Social Service (ISS), and the Child Welfare League have brought this issue to the forefront with a National Roundtable on Separated Refugee Children in October of 2001. Judith Kumin and Danya Chaikel review this important meeting in "Taking the Agenda Forward." They set out recommendations for action by federal immigration authorities and provincial child welfare providers if Canada's obligations under the UN Convention on the Rights of the Child are to be met. Catherine Montgomery's piece on the experience of unaccompanied refugee children in Quebec, "The 'Brown Paper Syndrome'," captures the voices of refugee youth, frustrated and confused by the refugee determination system in Canada and by the haphazard array of social services they must navigate successfully in order to survive. This research is a poignant reminder of the need to involve children themselves in the solution, underlining article 12 of the CRC, the right of the child "to express his or her own views freely in all matters affecting the child" and the assurance that the views of the child will be "given due weight in accordance with the age and maturity of the child." Sarah Crowe's article deals with protecting the rights of refused refugee children, again emphasizing the value of participation by the children themselves in the plan for their return to the country of origin, when return is the appropriate or unavoidable outcome. She also describes the important role of NGOs such as International Social Service in negotiating a long-term solution for the children affected.

This collection gives us a sense of the depth and nuances of the problems facing children at risk in the twenty-first century. And reading about the work that has been done already, we are inspired with hope for solutions through greater understanding of the challenges and with the continued dedication of concerned people and organizations that are engaged throughout the world in protecting the most vulnerable and precious of human resources.

Notes

1. "Death of 27,000 children barely noticed," *The Toronto Star*, 1 October 1 2001; "Worldwide abuse of children 'global scandal,' group says," *The Toronto Star,* 28 September 2001.
2. The United Nations Convention on the Rights of the Child, adopted by the United Nations in November 1989, has been ratified by 191 countries; only the United States (which has signed the Convention indicating its intention to ratify it) and Somalia (which has had no recognized government since 1991) have not ratified the UNCRC. See Convention on the Rights of the Child <http://www.unicef.org/crc/convention.htm>.

Geraldine Sadoway received her LL.B. from Osgoode Hall Law School in 1981 and was called to the Ontario Bar in 1983. From 1983 until 1997 she was a lawyer in private practice in Toronto, specializing in immigration and refugee law. From 1995 to 2000 she taught the immigration law course for Queen's University Faculty of Law. Since 1997 she has been the staff lawyer for the immigration law group at Parkdale Community Legal Services in Toronto, supervising law students in the Osgoode clinical law program at PCLS.

Hidden Children: Refugee Fostering in Guinea

International Rescue Committee, Host Country Foster Care Project in Guinea

Catherine Moller and Courtney Sara Minard

Abstract

One of the most vulnerable yet overlooked groups within situations of forced migration is that of refugee children who have been separated from their families as a result of armed conflict and subsequently absorbed by foster families in the countries to which they have fled. Based on extensive field-based research, this paper presents protection problems and poses solutions for such refugee children in Guinea, West Africa, including their access to rights such as family tracing; cultural and linguistic continuity; and education, health, and well-being. The paper also considers long-term integration options for refugee children living in Guinean foster families. The paper concludes by analyzing the use of a human rights framework to alleviate human suffering in this particular situation of forced migration.

Résumé

L'un des groupes les plus vulnérables, quoique des plus négligés, parmi tous ceux qui se trouvent poussés à la migration forcée, est celui d'enfants réfugiés séparés de leurs familles par des conflits armés et qui ont éventuellement été absorbés par des familles d'accueil dans les pays où ils ont fui. Se fondant sur des recherches approfondies conduites sur le terrain, cet article aborde les problèmes de protection et propose des solutions pour des enfants pareils se trouvant en Guinée, Afrique de l'Ouest, y compris leur accès à certains droits, comme par exemple pour retracer leurs familles, la continuité culturelle et linguistique, ainsi que l'éducation, les soins de santé et le bien-être. L'article considère aussi les options possibles menant à des solutions durables pour des enfants réfugiés vivant dans des familles d'accueil guinéennes. L'article conclut avec une analyse de l'utilisation d'une approche des droits de la personne pour soulager les souffrances humaines dans la situation en espèce de migration forcée.

1. Introduction

> *During the rebel attack in Freetown [Sierra Leone], my mother was running with me and the rebels shot her in her head and she died. I didn't know where my father and brother were. Then, I saw people running and I followed them and we came to Guinea. When we came to Forecariah, I was suffering, begging people for food. When I saw this mother [current foster mother], I . . . explained to her that I had nobody there to take care of me and I asked her to take me along and she accepted.*
>
> — Mohamed Kamara, age 9, refugee from Sierra Leone[1]

One of the most vulnerable yet overlooked groups within situations of forced migration is that of refugee children who have been separated from their families as a result of armed conflict.[2] This is especially true for those children who are subsequently absorbed by foster families in the countries to which they have fled. Their human rights and the standards for their care are detailed in the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, as well as *Refugee Children: Guidelines on Protection and Care*, which is published by the United Na-

tions High Commission for Refugees (UNHCR).[3] But how do these established rights and standards actually improve the lives of these children?

The civil wars in Sierra Leone and Liberia have led to the exodus of more than five hundred thousand refugees to Guinea since 1989. As indicated by the story of Mohamed Kamara, armed attacks separate refugee children from their parents, leaving them vulnerable and alone in Guinea. Refugee families in and around refugee camps eventually take most of these "separated" children into informal foster care arrangements. Other separated refugee children are cared for by Guinean families or survive on their own in the streets of Guinean towns and villages. Some of these children are well taken care of by their foster parents, but others have been trafficked for domestic or manual labour, sexually exploited, or forcibly recruited into militia groups.[4] Few of these separated refugee children are actually orphans, and many have parents or family members who are looking for them. It is estimated that there are from ten thousand to twenty-five thousand separated refugee children in Guinea today.[5]

Around the world, separated refugee children who are absorbed into host-country foster families—such as Sierra Leonean children in Guinean families—face a distinctive set of short- and long-term protection problems. These problems have hitherto lacked adequate attention by the international community because such children are usually undocumented, not in refugee camps, and randomly dispersed throughout large areas. They are "hidden" in a sense and cannot benefit from the services of international organizations and governments.

Access to separated refugee children in host country foster families is also problematized by the personal and political sensitivities surrounding these fostering arrangements: sometimes host country foster families are reluctant to declare the presence of refugee children in their care, and governments may be hesitant to allow aid organizations to assist refugees who are outside of officially designated areas. As in other situations concerning separated refugee children in host country foster homes, little is known about how many Sierra Leonean refugee children are in Guinean foster families, how these children came to be there, and the extent to which they endure human rights violations.

In early 2001, the International Rescue Committee launched a research project to better protect separated refugee children in host-country foster families, taking Guinea, West Africa, as a case study. IRC, an international humanitarian relief organization, provides family tracing and other services to separated refugee children around the world, and has worked in Guinea since 1991. This paper presents the preliminary findings of IRC's ongoing research, which is a part of a larger consortium of research projects made possible by the Social Science Research Council's Forced Migration and Human Rights Project with funds provided by the Andrew W. Mellon Foundation. The Forced Migration and Human Rights Project will be publishing the final results of its research projects later this year.

This paper details protection problems faced by separated refugee children from Sierra Leone who are living with foster families in Guinea; compares data collected from Guinean foster families with Sierra Leonean refugee foster families; and suggests interventions aimed at improving the protection environment for these children. The paper concludes with an analysis of using a human rights framework to alleviate human suffering in this particular situation of forced migration.

Data collected includes focus group discussions with Guinean and refugee communities and interviews with United Nations officials, Guinean government representatives, Guinean non-governmental organizations (NGOs), and international humanitarian assistance workers. One hundred fifty-eight in-depth household interviews were conducted with 34 Guinean foster parents, 24 Sierra Leonean refugee foster parents, and 101 Sierra Leonean refugee children whose average age was eleven. Only homes in which both natural children and foster children resided were included in the study in order to allow for comparison in treatment. All of the foster households were poor, the average size was eleven people, and nearly all supported themselves with informal-sector work activities. The length of time a foster child had been in a foster home ranged from a few months to over a decade, and the average amount of time was about three and a half years.

The research was limited to families living in Conakry, the capital city, due to recent political and military instability in Guinea. Starting in September 2001, a series of regionally based rebel attacks destabilized the country, killed hundreds, and displaced countless civilians and refugees, many of whom fled to Conakry. Due to this violence as well as widespread anti-refugee sentiment, thousands of refugees were rounded up and harassed, and over thirty-five thousand refugees spontaneously returned to Sierra Leone where their safety was not assured.[6] Between 10 and 15 per cent of the refugee children we interviewed in Conakry had been separated from their previous caregivers and found themselves in foster care situations with new families as a result of this recent instability.[7] It should be noted that information gathered in an urban environment differs from that which could be collected in the countryside or in a refugee camp, where the majority of separated refugee children actually live. Data collection in such non-urban environments will be a focus of the continuing research in the future.

2. Protection Problems and Interventions

We found in our research that nearly all foster parents in both Guinean and Sierra Leonean foster families spoke fondly of their foster children and said they were willing to care for them for years to come. Yet when human rights standards for separated refugee children are applied, it is clear that these children face a host of human rights problems. In the discussion below, data from focus group discussions and household interviews illustrates the children's access to various rights such as family tracing and documentation; cultural and linguistic continuity; and standards for interim care like education, health, and well-being. Suggested interventions—also based on human rights standards—are presented as well. The question of long-term integration for separated refugee children fostered in Guinean homes is taken up in Part 3.

Family Tracing and Documentation

As per the Convention on the Rights of the Child (CRC), to which Guinea is a signatory, every child has the right to know and be cared for by his or her parents, and governments must assist in tracing and reunification efforts (articles 7, 10, 20 and 22). Similar rights are enumerated in articles 13 and 15 of the African Charter on the Rights and Welfare of the Child, to which Guinea is also a signatory. When asked, most of the refugee children in our household survey indicated that they would like some sort of family tracing services.

However, identifying and documenting these children so that they can be provided with such services is a challenging task. It is expensive and time-consuming, and current assistance commitments from donor governments are insufficient to support the needed response. Moreover, foster families are sometimes reluctant to declare the presence of their charges—they may fear that they will be punished or shamed for taking in a refugee child or blamed for not looking for the natural parents. They may desire to keep the child for reasons that range from love to labour exploitation. In our household interviews most of the foster families expressed the view that they consider the refugee children to be "theirs" and that they wanted to keep them, although most also thought that it was a good idea to search for the children's families.

Identification is also made difficult by the lack of awareness of the problems faced by separated refugee children in foster homes. Many foster families believe that in the African cultural context of the extended family, there is simply no such thing as foster child who is not cared for appropriately. There are long-standing West African traditions of taking in orphaned or less fortunate children by extended family members or other families for purposes of training and/or basic care, and such children are often not provided the same benefits as the biological children. Separated refugee children are likely absorbed into foster families along the lines of these long-standing practices.

Access to separated refugee children becomes even more problematic when they are cared for by Guinean foster families. Some Guineans believe refugee children are categorically better off if they are sheltered in a Guinean home, even if they are not able to go to school or are treated in an inferior manner to the natural children. The recent insecurity and anti-refugee sentiment in the country may be prompting some Guineans to conceal their refugee children out of a concern for their security: in our household surveys, about a quarter of the Guinean foster parents remarked that their neighbours are wary or suspicious of the refugee children because their origins are unknown or because they might be "rebels." In contrast, the majority of the Sierra Leonean foster families stated that their neighbors had positive and sympathetic reactions to their foster children and only about 10 per cent reported any negative reaction. Access to refugee children in Guinean homes is also complicated by issues of legitimacy: whereas organizations like UNHCR and IRC have clear mandates for refugee matters and refugee foster families are acclimated to their authority, Guinean families and local officials are not accustomed to such representatives visiting Guinean households and can be less responsive to them.

Although international law on documenting refugee children and providing them with tracing services is clear, overcoming the impediments discussed above is less straightforward. In the course of the research, IRC found that community-based sensitization workshops were helpful to raise awareness about the rights of the child, including family tracing. During and after the workshops, local people and officials became more sympathetic to the cause of separated refugee children and helped to identify them. Human rights are used in the course of such sensitizations to good effect, particularly among officials. However, IRC research staff found that drawing upon personal experience and African and religious traditions is a more compelling method of persuasion for the average Guinean and Sierra Leonean than appeals to international law.

Other potential interventions to assist tracing and documentation efforts include public education campaigns conducted via posters, radio, television, newspapers, and mosques. Legal and policy measures, such as a new law or declaration by the Guinean government, could officially acknowledge the existence of separated refugee children in Guinean foster homes and the rights of these children under the CRC. Such a law or policy might also compel Guinean families to declare the presence of refugee children and allow designated officials into Guinean homes.

Cultural and Linguistic Continuity

UNHCR's guidelines for refugee children recommend that separated refugee children should be fostered in a family of the child's own community, with "persons from the same areas of origin and intended areas of return, in anticipation of voluntary repatriation, and to ensure linguistic and cultural continuity" (127). This is based on article 20.3 of the CRC and article 15 (2.b.1) of the African Charter, which state that when considering interim care for a separated refugee child, "due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background." However, the guidelines do not recommend removal of a refugee child from a mixed ethnic foster care situation for that reason alone (126–27).

Focus group discussions with Guinean and refugee communities and household data collected suggest that problems of religion, language, and adaptation, as well as loss of identity and culture, occur with separated refugee children in foster households. Only about 30 per cent of all foster families shared the same ethnic background of the refugee children in their care. Moreover, over half of the children responded that they did not know anyone of their ethnic group in their neighbourhood. More than a third of the children stated that their mother tongue was one of the languages that they spoke best, but some do not know people with whom they can speak it. Fourteen per cent of the foster children reported that their religion or their biological parents' religion was different than that of their foster families.

Almost half of the foster children surveyed had been given new names by their foster parents, which can obscure the child's ethnic identity and hinder tracing efforts, and is in violation of a child's right to the preservation of identity (CRC Article 8.1). However, the caregivers usually stated that they had to provide new names for the refugee foster children because they did not know the children's given names or that they wanted to help the children to integrate into the family and the community. In a few cases, foster parents said that they gave the children new names in order to conceal the children's identity or to "make the children their own."

Some data suggests that refugee children in Sierra Leonean foster families have better opportunities for cultural and linguistic continuity than in Guinean foster families. In Guinean foster families, only a quarter of the foster parents had the same ethnic identity as their foster children, compared to over 40 per cent in Sierra Leonean foster families. About 40 per cent of children in Guinean foster families have someone in their neighbourhood that speaks their mother tongue, in comparison to two-thirds of foster children in Sierra Leonean families. However, about 40 per cent of the children had been given new names by their Guinean foster parents as opposed to nearly 60 per cent in Sierra Leonean foster families.

International child rights law and standards provide little guidance other than paying "due regard" to cultural and linguistic continuity. However, ethnic and linguistic ties can be maintained or rekindled for separated refugee children in foster homes through special events—such as sport or play—and education programs can help them to learn more about or stay in touch with their background. Public education campaigns and sensitization programs can help foster parents be aware of the negative consequences of changing a refugee child's name and religion.

Interim Care

As stated in the CRC and the African Charter: "Each child temporarily or permanently deprived of his or her family environment is entitled to special protection and assistance" (article 20.1 and article 23.1, respectively). The two instruments additionally prohibit discrimination, abuse, neglect, or exploitation, and state that each child has the right to the highest attainable standard of health, an adequate standard of living, care necessary for well-being, and education. UNHCR's guidelines on refugee children include the provision of love and nurturance as a standard of care for separated refugee children in foster families, monitoring to ensure that the children's needs are met, and intervention in cases of abuse or neglect; the possibility of family reunification must remain open (126–27).

A large majority of the parents in our study described their foster children in affectionate and approving terms and/or described their natural children closest in age in a similar manner. When refugee children were asked to characterize how they feel about staying with their foster family, nearly all used terms like "safe," "happy," or "relieved." For the most part, those conducting the household interviews observed what they considered to be normal family behaviour of the foster children towards their foster family and vice versa, and neighbors who were interviewed often reconfirmed the good care that refugee children were receiving. Almost all foster parents surveyed indicated that they expect the child to be a part of their family fifteen years from now.

Some foster families struggle to overcome severe poverty in order to provide for their foster children and love them like their natural children. In such families, there may be no effective difference between the foster children and their natural-born foster siblings—their treatment is predicated only by the economic position of the family which, for example, may be too poor to send either the foster child or the natural children to school.

However, our household data also suggested that other refugee children face discriminatory treatment in

regard to education, health, food, basic care, and punishment. Approximately two-thirds of the separated refugee children of school-going age (age six or above) whom we surveyed were not attending school. More than half of these children had foster brothers and sisters, the natural children of the family, who attended school regularly. In about 15 per cent of the households, foster children were reportedly not learning any income earning skills—such as a trade or engaging in apprenticeship—while the natural children of the family were learning such skills. In about 20 per cent of the households, there were refugee children who were in bad health who had not had access to a medical facility, yet the natural children of that family had accessed such services.

In about one third of the households surveyed, the children reportedly either did not eat with their foster family and/or were not allocated equal amounts of food as their foster siblings. Likewise, the refugee children in about a fifth of the households stated that they did not have a covering for themselves when they slept, while the natural children of the household did. In almost 40 per cent of the cases, those conducting the household interviews judged that the foster children were noticeably worse off than their foster siblings in terms of their appearance of health, body cleanliness, or quality of clothing. In nearly 20 per cent of the households, it seemed the foster parent or child perceived that the foster children misbehaved more frequently than the natural children, and in a little over 10 per cent of the households, it seemed that the foster children were punished more harshly. There was also evidence of discrimination in the allocation of household tasks or income-earning work in about a third of the households visited. In these cases, the foster children did the most work - from tasks like cleaning the toilet to minding the family shop - relative to the natural children.[8]

Evidence of discrimination was evident in approximately equal amounts among Sierra Leonean and Guinean households, but some data suggests that foster children might encounter poorer treatment in Sierra Leonean households. According to the researchers' observations, foster children in Sierra Leonean households seemed worse off than natural children in terms of health, body cleanliness, and clothing by as much as 15 per cent. Sierra Leonean foster families were more than three times more likely to report that their foster children misbehaved more than their natural children. A third of the refugee children in Sierra Leonean foster families reported that they did not have anything with which to cover themselves when they slept at night while the natural children did, as opposed to just 8 per cent of the children in Guinean homes. These results are unexpected given the assumed dynamics of host country and refugee communities—one is tempted to think that refugee children would be better cared for by fellow refugee families—but greater levels of poverty and social discrimination faced by Sierra Leoneans as compared to Guinean foster families may be causal factors. These and other potentially explanatory variables will be explored in future research.

We identified two key issues in the course of our research to help improve interim care for foster children: increasing household resources and community-based approaches.

Guinean and refugee communities in focus-group discussions identified economic status as a primary source of protection problems, and the interim care of foster children, as well as their own children, could arguably be improved if the foster family had more resources to devote to them. But an assistance strategy that simply transferred additional resources to foster parents would not help foster children in all situations. These additional resources might be allocated toward family needs that in no way benefit the refugee child due to discrimination and could also lead to corruption, false cases, community resentment, and the establishment of a precedent for future financial support that would likely not be sustainable. Nonetheless, if appropriate oversight, public relations, and implementation could be maintained, a referral system of services could be offered to qualifying foster families, such as education scholarships and income generation programs. Another approach would be to avoid targeting refugee children directly, but rather to aim assistance at the poorest families within a given community that is known to have a high concentration of separated refugee children. By using objective poverty indicators as the criteria for assistance and not the presence of a refugee foster child, a large portion of the desired population group could be served with a lower incidence of perverse consequences such as false cases and community resentment.

As discussed above, foster parents, especially Guineans, can be reluctant to allow designated officials into their homes to monitor refugee foster care. One practice usefully employed in other parts of the world is to encourage the foster family to sign a "temporary care agreement," which outlines the responsibilities of the foster parents toward their foster children and includes promises to allow designated officials to have access to the children, return them to designated officials if required, and/ or to give them up should children wish reunification with family members. But such temporary care agreements must be introduced carefully. Local communities may feel that international standards are being unfairly imposed on them without adequate consideration of their culture and the help they have extended to refugee children, and this could even

contribute to anti-refugee sentiment among Guinean communities. Our research showed that legitimacy for international standards can be effectively built by drawing upon local norms—there are a host of West African religious and social practices that support international human rights principles such as providing teaching, love, and nurturance to all children and prohibiting abuse and exploitation. Although gaps between local and international norms need to be negotiated, group discussion and consensus building among foster families can develop locally appropriate rules for treatment of their charges, and sensitization to child rights can help these local solutions to best approximate international standards.

3. Long-Term Integration

Providing refugees access to a "durable solution"[9] is essential for the fulfillment of refugees' human rights. According to UNHCR's guidelines on refugee children, long-term solutions for separated refugee children should be based on an individual child's best interests and family reunification should be the first priority (130). With international assistance and when security conditions allow, separated refugee children in Guinea whose families are successfully traced in Sierra Leone are currently voluntarily repatriating to Sierra Leone, and many other separated refugee children in refugee foster families are spontaneously repatriating with their foster families as well.

But what about those separated refugee children in Guinean families who do not want to be reunified or whose families cannot be traced? It might not be in their best interests to return to Sierra Leone when that is not their wish; their links to the country such as language, culture, and family have been severed; and they are well cared for and attached to their foster families and more recent surroundings. Local integration may be the best durable solution option for some separated refugee children in Guinean foster homes, but they may confront a number of problems such as a lack of legal status and discrimination in marriage and inheritance. Adoption, formal guardianship, and best-interest committees are some of the possible interventions discussed below which can help address their long-term integration needs.

Nationality and Legal Status

Under article 8 of the CRC and article 24.3 of the International Covenant on Civil and Political Rights, it is a human right to have a nationality. UNHCR guidelines on refugee children specify that all refugee children should have the same access to services as national children in order to realize the durable solution of local integration, and an "effective nationality"—at the least a permanent and clear legal status that brings with it an array of human rights—is fundamental to that goal (106, 144).

Refugee children living in Guinean foster homes lack such a clear legal standing. They do not have prima facie refugee status because they are not living in designated refugee camps, and there is no specific reference to refugee children in the Guinean Civil Code. However, there are some relevant legal provisions which can be applied towards their protection: the Civil Code does permit naturalization and dual citizenship, as well as a degree of civil rights for foreigners. Article 79 of Guinea's Loi Fondamentale specifies that international treaties approved by the government have a superior authority to national laws, and thus refugees are protected by every international human rights agreement signed by the Guinean government.[10] Under the Economic Community of West Africa States (ECOWAS) Agreement, citizens of member states such as Sierra Leone who are living throughout Guinea have a host of economic, social, cultural, and civil rights, and they may obtain an ECOWAS residence card/ permit.

Despite the explicit nature of these laws, they currently do not seem to have much practical meaning for refugees nor do most adequately ensure rights and access to state services on the level of Guinean nationals. Guinea's judicial system is still developing, and international laws in particular have limited impact and acceptance. Moreover, it is not known how difficult it would be in practice for refugee children to access such legal provisions or what real benefits accompany the provisions. Legal assistance will be required for those separated refugee children in whose best interests it is to access the Guinean naturalization process or their rights under the ECOWAS Agreement. These children will also require information and counselling to understand these possible options.

The Guinean government may consider creating some sort of special legal status and/or simplified procedures to access citizenship for separated refugee children living in Guinean foster homes. This would be a welcome move that would safeguard a host of children's rights under the CRC in a timely and cost-effective manner. UNHCR's guidelines on refugee children state, "Keeping children in limbo regarding their status hence their security and their future, can be harmful to them" (100).

Social Discrimination

Non-discrimination of rights is one of the fundamental tenets of the children rights regime and is spelled out in article 2 of the CRC and article 3 of the African Charter.

Even if separated refugee children can attain all of their legal rights, they may still face social discrimination. According to some consulted during this research and focus group discussions, separated refugee children in Guinean foster homes will face protection problems

as they grow up as a result of negative social attitudes. They argue that a child whose origin is not known or is foreign is a less desirable marriage partner due to cultural and religious norms, although this has less impact on women who assume the identity of the family into which they marry and can also be somewhat mitigated if the marriage partner has an education or job bringing high status or income. In our household survey, 40 per cent of the foster parents in both Guinean and refugee foster homes responded that they thought their foster children might have more difficulties in marrying than their natural children due to the fact that they are refugees from Sierra Leone.

It was also argued by some consulted for this research that in the Guinean Muslim context, and in a society where polygamy is widely practiced, typically only natural children can inherit the belongings, name, and status of the family. Less than half of the foster parents surveyed had given their foster children the surname of the foster father. But surprisingly, the majority of the respondents stated that their foster children would inherit some of their belongings, and most of the other responses were "maybe."[11]

Although such cultural notions are strongly held, sensitization programs can help to raise awareness concerning discrimination faced by separated refugee children in Guinean society as well as their legal rights. A community-based strategy and sensitization programs, such as the ones described above, would again be appropriate. Protection problems stemming from social discrimination in marriage and inheritance could also be somewhat mitigated by interventions which helped these grown children to become more economically viable, such as skills training and micro-credit programs. This is in keeping with the UNHCR guidelines for refugee children which recommend "assistance towards self-sufficiency," including vocational training and job assistance, in order to help further local integration as a durable solution (144).

Adoption and Guardianship

According to UNHCR guidelines on refugee children, if family tracing is not successful after at least two years of continuous and concentrated efforts, and if there is no reasonable hope for successful tracing in the future, only then can separated refugee children be considered for other long-term solutions such as legal adoption and guardianship (130).

However, Guinean laws on adoption are restrictive. Although Guinea's civil code specifies that an adopted child can be a foreign national and may take the name of the adopted family as well as inherit from them, the law states that a couple that wishes to adopt together must be married for at least ten years without having produced a child together. Legal adoption also runs counter to local cultural norms and is rare to the point of being virtually unknown in Guinea. Legal adoption of a child from another country seems to be an even stranger concept.

Formal guardianship specified in Guinea's civil code includes a council of advisers to look after the interests of a child when a child remains without a father, mother, or guardian chosen by his father. Like legal adoption, these laws are also rarely applied, but, unlike adoption, they are not restrictive and are often followed because they reflect customary practices of the Guinean people. However, it was felt by some consulted for this research that Guineans would not necessarily find such customs applicable to separated refugee children because the children are foreigners.

Our research showed that some foster parents treated their foster children in ways consistent with legal adoption, such as by providing non-discriminatory interim care, passing along their family name, and making provisions for inheritance. Although legal adoption is restrictive, it might be worthwhile to test some cases in order to explore other legal interpretations and draw upon the liberal aspects of the law, observing relevant international standards for adoption in the process.[12] If successful, legal precedents could be established which would pave the way for other qualifying refugee children to be adopted.

Formal fostering and guardianship systems are integral to the protection of separated refugee children in Guinean families and need to be developed. Although some Guineans may not find traditional practices immediately applicable, fostering systems based on such practices bear exploration because they are usually implemented with the greatest ease and legitimacy. Such interventions should meet UNHCR's standards of care, discussed above, and each child should receive appropriate legal status evidencing their identity and nationality. Formal fostering and guardianship systems should include a comprehensive orientation for caregivers as well as foster care/ guardian agreements that are recognized by local authorities.

Best-Interest Committees

In human rights law, the "best interests" of the child are always a primary consideration and should guide all interventions for separated refugee children. But how can the long-term best interests of separated refugee children in Guinean foster care be determined? Based upon standards set by the CRC, decisions on durable solutions for separated refugee children must be taken by competent bodies that include experienced child welfare personnel, a legal guardian for the child, and the child's opinion; and

cases must be thoroughly assessed on an individual basis.[13]

In Guinea, such best-interest committees could be organized by the existing National Committee on Child Protection and could include authorities from government, NGOs, the UN, and refugee communities, as well as case workers, the child's guardian, and/or the child himself or herself. Durable solutions options considered by the committees could include: adoption, formal guardian or fostering arrangements, voluntary repatriation, the acquisition of Guinean citizenship, ECOWAS registration, and measures such as providing micro-enterprise programs as a means to future economic independence. The committees would develop and/or be equipped with criteria for when these options should be applied and procedures for bringing them about so that the child's best interests remain of primary importance.

However, what constitutes the "best interest" of an individual child is not always immediately clear and involves complex questions. In addition to the child's expressed wishes weighted by age and maturity, best-interest determinations must take into account the child's physical safety, options for local integration, immediate and long-term needs, and social and emotional considerations. The length of time, and from what age, spent with a foster family and degree of attachment also need to be considered. Criteria for applying durable solutions options should be based on the child's rights under the CRC, such as family reunification, cultural continuity, nationality, survival and development, access to health services and education, protection from abuse and neglect, and an adequate standard of living. At times, such rights can conflict and so all considerations must be carefully weighed on a case-by-case basis.

4. Conclusion

Using human rights standards such as the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child to analyze the situation of separated refugee children in foster families in Guinea has provided an understanding of their broad range of short- and long-term needs, ranging from a lack of access to family tracing, to limits on cultural continuity, to discrimination of treatment by their foster families, and to a lack of a permanent legal status.

Strategically, we found in our research that human rights language provides a common vocabulary for articulating the problems of separated refugee children and sets the agenda for response, allowing us to focus more quickly on the nuts and bolts with local partners rather than discussing general best practices. It was clear, for example, that family tracing services need to be extended to separated refugee children in foster families and that foster situations need to be monitored. We were thus allowed to use our time to consider ways to overcome obstacles in the practical implementation of such overarching goals.

As has often been pointed out, human rights also helps strengthen the justification for humanitarian assistance programs—and resources for those programs—turning "beneficiaries" of assistance into rights-holders with internationally recognized legal rights. Action on their behalf becomes a matter of law, not simply because they have needs that "should" be met. Additionally, this created space for the exploration of responses that could address human rights standards on, for example, cultural and linguistic continuity, long-term solutions such as adoption, and the right to a nationality, that may have otherwise been trumped by the immediate and more widely acknowledged interim assistance needs of children like food, health, and education.

A human rights framework was helpful in our research to raise awareness of standards and influence behavior, but this also had practical shortcomings. For instance, human rights concepts were used among Guinean and refugee communities in community meetings to identify separated refugee children, and our research indicated that similar limited appeals to human rights could be useful in public education campaigns and in signed foster care agreements. However, as noted, we found that references to African traditions and personal experience proved to be more effective than appeals to human rights, as the latter pose the potential to provoke adverse local reactions if communities feel that their specific cultural norms are not being adequately acknowledged. Community-based strategies are needed to ensure international standards are placed in an appropriate local context.

Human rights also had only partial utility in the implementation phase of our research due to the fact that they are general in nature. While they are critical in setting standards for intervention, this is only the first step. Practically speaking, for instance, what is the meaning of paying "due regard" to a child's ethnic, religious, cultural, and linguistic background? How can deeply held cultural notions be changed so that refugee children will not face social discrimination in marriage and inheritance?

And lastly, it is often time consuming and expensive to realize human rights standards such as family tracing, monitoring of foster care, and effective nationality. The international community does not offer enough resources to meet all of these needs, and the human rights framework provides little guidance on how to prioritize among competing protection problems when faced with the reality of scarce resources. For instance, would the numerous human rights standards that must be weighed in the case-by-case determination of best interests ham-

string best-interest committees? Should the option of adoption be ruled out because it may be too difficult and may prove necessary to introduce a lengthy process of developing new national legislation?

Our research has sought to provide unprecedented documentation of the short- and long-term protection situation of separated refugee children in foster families in Guinea and propose practical solutions. IRC seeks to continue this work in the future by undertaking similar investigations in a rural setting in Guinea and testing potential interventions which can help address the long-term integration needs of refugee children in Guinean households.

Notes

1. A pseudonym has been used to protect confidentiality.
2. For more information on children affected by armed conflict, please see <http://www.reliefweb.int/ocha_ol/civilians/resources/resou rces11.html> and <http://www.un.org/special-rep/children-armed-conflict/>.
3. United Nations High Commission for Refugees, *Refugee Children: Guidelines on Protection and Care*.
4. Human Rights Watch, "Forgotten Children of War, Sierra Leonean Refugee Children in Guinea," 1999.
5. Precise demographic information on refugees in Guinea is not available. However, according to UNHCR, the number of refugee children accidentally separated from their families during flight generally represents 2–5 per cent of the displaced population in any emergency.
6. Human Rights Watch, "Refugees Still at Risk: Continuing Refugee Protection Concerns in Guinea," 2001.
7. Guinean children have also been displaced due to the security problems, and some are living with foster families. Like refugees, these children require special attention and protection assistance.
8. Work allocation was deemed discriminatory when it seemed out of sync with the age and gender division of labour typically found in households of similar socio-economic situations.
9. Durable solution options for refugees typically include voluntary repatriation, access to "third country" asylum, or local integration. Voluntary repatriation is the option most refugees ultimately pursue, and third country resettlement and local integration are often options available only to a comparative few.
10. International human rights instruments ratified by Guinea include the Convention on the Rights of the Child, African Charter on the Rights and Welfare of the Child, Convention Relating to the Status of Refugees and its 1967 Protocol, International Covenant on Civil and Political Rights, International Covenant on Economic and Social Rights, Forced Labour. Convention, OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, and the African (Banjul) Charter on Human and Peoples' Rights.
11. It should be noted, however, that even if foster parents want their refugee foster children to inherit, the inheritance might not necessarily occur. Because customary and religious law is commonly interpreted to prohibit inheritance by non-natural children, relatives could be successful in. overturning the stated preferences of the deceased and may receive support in their efforts from local and traditional authorities.
12. United Nations General Assembly 41/85: Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally (1986); The Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption. (May 1993). 41/85: Declaration on Social and Legal Principles.
13. *Refugee Children: Guidelines on Protection and Care*, 126, 137, 146–47.

Catherine Moller is manager at the International Rescue Committee's Protection Department, based in New York City. Her background includes various posts in human rights, development, and relief work as well as an MPA from the Woodrow Wilson School, Princeton University, and a BA in cultural anthropology from Barnard College.

Courtney Sara Minard is an MIA candidate at Columbia University, New York City.

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Children Asylum Seekers Face Challenges in the United States

Andrew Morton and Wendy A. Young

Abstract

This article outlines U.S. policy toward children asylum seekers. It highlights the gaps in U.S. detention and asylum policy which jeopardize the protection of children. It also discusses advances made in recent years, such as issuance of the U.S. "Guidelines for Children's Asylum Claims" which establish evidentiary, procedural, and legal standards for asylum adjudicators dealing with children's claims. Finally, it suggests reforms that are necessary to bring the United States into compliance with international law and to ensure that children are provided the refuge they deserve.

Résumé

Cet article donne les grandes lignes de la politique des États-Unis vis-à-vis des enfants demandeurs d'asile. Il met en exergue les lacunes de la politique américaine sur la détention et le droit d'asile, qui constituent une menace pour la protection des enfants. Par ailleurs, il discute aussi des progrès accomplis au cours des dernières années, comme par exemple, la délivrance par les États-Unis des « Directives concernant les demandes d'asile soumises par des enfants », document qui établit des normes procédurales, juridiques et en matière de preuves à l'intention des juges pour le droit d'asile appelés à statuer sur des demandes soumises par des enfants. Pour terminer, il propose des réformes nécessaires pour amener les États-Unis en conformité avec le droit international et pour assurer aux enfants la protection qu'ils méritent.

Introduction

Carlos (a pseudonym) fled his home country of Honduras in search of refuge in the United States. Instead, he found jail. The United States Immigration and Naturalization Service ("INS" or the "Service") apprehended Carlos in south Texas, where he was first held in a children's detention center. The agency later transferred him to a juvenile jail in Liberty County, Texas, several hours away from the legal services program which was planning to represent Carlos after he expressed a fear of returning to Honduras. While he was locked up in the Liberty County jail, the INS instead persuaded Carlos to voluntarily depart the United States. Carlos was deported before an immigration judge had even considered his asylum claim.

Carlos is just one of thousands of unaccompanied children who arrive in the United States each year. In 2000 alone, the INS took nearly five thousand children into its custody, some as young as eighteen months old. Increasingly, among these numbers are children fleeing abuses such as forced military recruitment, female genital mutilation, forced marriages, child labour, and life as street children. Others may enter the United States because they have been abused, abandoned, or neglected by their parents or other caregivers, while some are seeking to reunify with family members who already have entered the United States. These children range in age from toddlers to teenagers, and an untold number are asylum-eligible. The INS does not track the types of relief from deportation sought by children in its custody, and therefore many children are not necessarily even aware that they may pursue refugee protection.[1]

U.S. policy toward children asylum seekers reflects a certain ambivalence. In recent years, the U.S. asylum system has progressed in terms of its recognition of the

unique forms of persecution that children face around the world and the need to offer children a full opportunity to articulate their claims to asylum. On the other hand, the system falls short of providing the resources children need to assist them in their claims in the form of legal representation and the appointment of a guardian *ad litem*. Moreover, children asylum seekers are often detained for long periods of time, often in secure facilities, with little regard for their best interests.

Detention of Unaccompanied Alien Children

Unaccompanied alien children are those who arrive in the Unites States with no lawful immigration status and have no parent or legal guardian available to provide for their care and legal custody. Under United States immigration law, an alien child is defined as a foreign national under the age of eighteen, who either is the subject of a removal or exclusion proceeding under the Immigration and Nationality Act ("INA" or the "Act"),[2] the central source of American immigration law, or has an asylum application pending before the INS. Although the INA does not actually define the term "unaccompanied minor," the Act does define the term "child" as an unmarried and unemancipated person under the age of twenty-one,[3] although an alien child is treated as an adult for detention purposes upon attaining the age of eighteen.

Being unaccompanied by a parent or other legal guardian who is capable of providing for their care and custody, these children are subject to detention by the INS. Often these children are held for long periods of time—as long as a year or more—while their cases proceed through the immigration process. Under the existing system, the INS is responsible for an incongruous dual function—both the custodial care of these children, and the prosecutorial objective of arguing in favour of their removal proceedings. As a result, the INS faces an inherent conflict of interest—it is simultaneously a service provider and a law enforcement agency—which ultimately clogs the process with inefficiencies and threatens to undermine its ability to secure the best interests of the children taken into custody. Moreover, this conflict of interest is exacerbated by the fact that INS simply lacks the requisite child welfare training and expertise to care for children in an appropriate manner.

At the present time, the legal framework for custodial care and treatment of unaccompanied alien juveniles derives from a consent decree known as the *Flores v. Reno* settlement agreement ("*Flores*").[4] Originally filed as a class action lawsuit in the Federal court system, the case broadly challenged the civil rights treatment and constitutionality of practices, policies, and regulations regarding the detention and release of unaccompanied alien children taken into the custody of the INS. Following a prolonged legal battle that ascended to the United States Supreme Court before being remanded back to the District Court of the Southern District of California, the class plaintiffs and the government reached a compromise in 1996. The resulting agreement broadly defines a litany of detention issues, including placement, transportation, monitoring and reporting, attorney-client visitation, and facilities inspection.[5] In addition, the agreement contains attached exhibits that dictate the minimum standards for licensed programs with which the Service contracts for the temporary placement of juveniles in its custody, such as access to medical and mental health care, educational materials, recreational activities, religious observance, and legal services.[6]

The central guiding principal of *Flores* requires that the INS treat all minors with "dignity, respect and special concern for their particular vulnerability as minors."[7] To this end, it is incumbent on the Service to place children in the "least restrictive setting appropriate to the minor's age and special needs,"[8] including releasing children to an appropriate caregiver or otherwise housing them in the least restrictive setting possible, such as one of eight shelters opened by the INS to house children in its custody. The majority of these shelters are institutional in nature and offer an environment of "soft detention": the children's activities and location are closely monitored; the doors are frequently locked or alarmed; and children are not allowed off the premises of the facility unless accompanied by facility staff. However, the children wear street clothing, are offered educational classes, and are not locked in cells. Occasionally, they engage in recreational or educational trips off-site with shelter staff. The INS also has an extremely limited foster care program, generally used for young children, girls, or children with special needs.

Because of the INS backlog of cases and a grossly inconsistent system for placement determinations among the thirty-three geographic INS districts, however, the advocate community has witnessed the pervasive exploitation of secure confinement that constitutes anything but the "least restrictive setting appropriate." The INS shelter and foster care program simply has failed to keep pace with the number of children in custody.[9] Thus, as a result of the lack of bed space in the shelters and sometimes questionable placement decisions made by the INS, approximately one-third of children in INS custody spend time in a juvenile jail, for periods ranging from a few days to more than a year.[10] Many of these children have not committed any crime at all. Despite this, they are housed in highly punitive, restrictive settings; are commingled with youthful offenders; are subject to handcuffing and shackling; and are forced to wear prison uniforms. Staff are ill-informed

about the INS-detained children and remain unaware of their legal, cultural, and mental health needs. Educational programs typically are conducted only in English. Immigration lawyers who can assist the children often are unavailable, resulting in the questionable removal of children who actually might be eligible for immigration relief. On some unfortunate, but not entirely unusual, occasions, speculative age determinations even result in the placement of teenagers in highly inappropriate adult detention centers, where such children find themselves commingled with adult criminal offenders.

Observations from the Field

An eleven-year-old child is meeting with counsel to discuss her immigration or asylum case. The lawyer enters the room to find the child handcuffed, a practice the INS claims to be a security measure. The child is so small, however, that the handcuffs are "practically falling off his hands."[11] *The INS detains the child at the Berks County Youth Center in central Pennsylvania while the immigration proceedings progress. The meeting, on the other hand, is taking place at a courthouse about an hour away from the Center, so INS transports the child to appear before the immigration judge. While transporting the child, and during the child's appearance in court before an immigration judge, the handcuffs remain in use.*

Advocates have documented many instances where the INS or its contracted facility has used restraints, including handcuffs and ankle shackles, in the facility and during the transportation of a minor to and from immigration court and proceedings.[12] A minor at the Texas Liberty County Detention Center reported that he regularly was handcuffed and shackled by guards as a form of punishment. Children detained at Berks County Youth Center told Human Rights Watch that they had been handcuffed during transit to hearings, and some indicated that they had remained in restraints and cuffs for up to eight hours, including during time spent in consultation with an attorney.[13]

According to the Service, by its own determination and discretion it may restrain a child at any and all times when believing that there is a safety risk involving the child, even during meetings with lawyers. When asked about the use of restraints, the INS insisted that it is at the discretion of the officer whether or not the use the restraints during transportation is needed. The INS also responded to questions from Human Rights Watch stating that the use of restraints was within its rights because handcuffs are utilized as a security measure.[14] Thus, many juveniles are placed in handcuffs and shackles when they are taken to court hearings or are forced to wear jail clothing. This practice not only disrespects the most basic human rights of these children, but often is psychologically and emotionally damaging and humiliating for children who already have experienced traumatic experiences of death, abandonment, harassment, and abuse by other adults.

Nicolas is a sixteen-year-old child who constantly was shuffled among facilities by the INS. Nicolas originally was in a shelter in Arizona, where he had been fortunate to obtain the services of pro bono counsel. However, the INS suddenly transferred Nicolas first to Los Angeles County, and then to Tulare County, a facility more than a three-hour drive from either Los Angeles or San Francisco. His transfer was in clear violation of the Flores *v.* Reno *settlement, which states that "[n]o minor who is represented by counsel shall be transferred without advance notice to such counsel."*[15] *The transfer and lack of communication thereafter with his lawyer left Nicolas depressed and suicidal.*

Three Columbian children were given thirty minutes notice that they were departing from the Florida facility at which they had been detained for nearly a year and were to be relocated far from their pro bono counsel. Their attorney arrived at the facility the next day to discover that the children had been transferred more than a thousand miles away to Chicago, and that the day before the INS attorney had obtained a change of venue, without notice to the children's attorney, precluding any objection to the transfer.

Sudden transfer of children from facility to facility by the INS, even in the middle of the night, without warning to lawyers or to families or guardians, violates not only the terms of the *Flores* agreement and other INS regulations, but also generally accepted international standards for the treatment of children.[16] Under the terms of the *Flores* settlement, a child represented by counsel cannot be transferred to any facility without prior notice to their attorney, with the only exception to this rule being in "unusual and compelling circumstances,"[17] and even in this instance the INS must notify the attorney within twenty-four hours of the transfer. Similarly, international standards secure adequate protection to the child's legal representation by requiring notice to counsel prior to a transfer.

The transfer of a child to another facility interferes with the ability of counsel to interview their clients, prepare applications for asylum and other forms of relief, and provide adequate representation. According to Human Rights Watch, INS officials stated that children could be represented adequately by phone and that there was little to be concerned about from the separations from attorneys or families or guardians.[18] Thus, by transferring children from facility to facility, the INS creates

obstacles for immigrant children to obtaining the status or aid to which they are entitled. The consequences of the INS's actions "enables courts to bypass the rights of these children to legal remedies altogether."[19]

> *Pablo, a teenage boy, is taken into the custody of the INS after crossing the southern border. He has been a street child since the age of five and eligible to obtain relief as a victim of abuse, abandonment, or neglect under the provisions of the Special Immigrant Juvenile visa. Although Pablo has not committed nor even been accused of committing any criminal act, he is housed for more than five months in a punitive detention centre in clear violation of his protections under* Flores. *He attends classes, eats meals, and engages in recreational activities alongside adjudicated juvenile delinquents. Pablo's cellmate is a county delinquent in the custody of local officials on charges of assault with a deadly weapon and felony drug possession.*

A child who is seeking respite from persecution, torment, death, and destruction, and who may have developmental or other disabilities upon arrival in the United States, may be placed in a secure detention facility and commingled with juvenile offenders who have committed murder, rape, theft, or drug trafficking. Although the *Flores* agreement says that a minor "should be placed in an INS or INS-contract facility that has separate accommodations for minors, or in a State or county juvenile detention facility that separates minors in INS custody from delinquent offenders,"[20] the observed reality is quite to the contrary. As a matter of general practice, the Service contracts with local secure confinement facilities—such as Martin Hall Juvenile Detention Center in Spokane, Washington, and San Diego Juvenile Hall in San Diego, California—that are incapable of providing the non-offender segregation that is required under *Flores*.

Moreover, advocates confirm that at facilities like Berks County, Pennsylvania, or Liberty County, Texas, children in secure detention are not segregated from children in delinquency proceedings. Children in INS custody either share rooms or have extensive contact—during meals, classes, physical training, and unstructured time—with juvenile offenders.[21] In 1999, according to the INS nearly two thousand minors were placed in higher security jail-like facilities, even though 78 per cent were not charged with any offense or had not displayed any disruptive behavioural patterns. Some child advocates note that the use of more severe and punitive methods to control delinquent youth problems is "inappropriate for immigrant children who may not speak English and may have experienced severe family abuse or other violence or trauma."[22]

Proposed Legislative Relief

In order to address many of the deficiencies in the current system of INS treatment of unaccompanied alien juveniles, bipartisan-sponsored legislation was introduced in the Senate and House of Representatives of the United States Congress to restructure the legal and physical custody arrangements for these vulnerable children. Entitled the Unaccompanied Alien Child Protection Act of 2001,[23] this much-needed legislation would achieve a number of goals designed to break the inherent conflict of interest that leaves the Service with the dual functions of custodial care and law enforcement responsibilities.

Most critically, the legislation would shift the responsibility for the care and custody of unaccompanied alien children to an agency still within the Department of Justice, but with no direct interest in the outcome of a child's case—the Office of Children's Services (OCS)[24]—thereby enabling the INS to focus its efforts on the legitimate law enforcement objectives of securing removal or release for these children. In doing so, the OCS will streamline INS procedures by eliminating the inherent conflict of interest that currently leaves it with concurrent jurisdiction for both custodial care of unaccompanied alien children and immigration law enforcement responsibilities.

Furthermore, the legislation will require, whenever possible, family reunification or other appropriate placement for unaccompanied alien children.[25] Such placement options will expand shelter care facilities and foster care programs in which children receive services appropriate for their age and circumstances, limiting the appalling situation where the Service assigns non-offender children to punitive secure facilities where alien children are commingled with juvenile offenders.

Additionally, the legislation will ensure adequate legal representation for unaccompanied alien children through *pro bono* legal services or, if necessary, through appointed counsel.[26] In addition, the bill will develop a corps of child welfare professionals to act as guardians *ad litem* and to make recommendations—regarding custody, detention, release, and removal—based upon the best interests of each child. These issues are discussed at length below.

A further problem faced by some unaccompanied alien teenagers is an improper age assessment resulting from imprecise dental forensic or bone-scan evidence. The ramifications of such judgments are far-reaching—aliens proclaiming facially valid juvenile status instead are placed in adult confinement—without separate accommodations for children, and without the broad entitlement protections ensured by *Flores*.[27] For this reason, the bill will establish an age-determination system that enables unaccompanied alien children to present various forms of evidence proving their age, including an appeal procedure for adverse findings.[28]

At the same time, as critical as understanding what this legislation will accomplish is the recognition of what will *not* be affected by the proposal. Most importantly, and contrary to the uninformed assertions of some critics of the bill, the implementation of these reforms will not in any manner expand any rights to substantive grants of asylum or other forms of immigration relief beyond the current scope of United States immigration law. The language merely speaks to procedural—not substantive—transformation of the laws and regulations guiding the treatment of unaccompanied juveniles detained in government custody. No avenues of immigration relief are created by the bill, and therefore there is no reason to believe that the legislation would somehow act as a magnet, encouraging parents to send their children to the United States in pursuit of immigration relief. Without an opportunity for family members to obtain derivative status, the bill will not lead to an increase in illegal immigration by unaccompanied alien children.

Furthermore, the establishment of the OCS will not remove any current jurisdictional responsibility from the United States Department of Justice (DOJ), which houses the INS. Rather, the bill merely shifts the care and custody functions *within* the DOJ from the INS Detention and Removal Branch to a separate office with direct reporting to the Attorney General. Thus, although the legal custody for these juveniles will remain within an office of DOJ, no longer will the INS have the opportunity to exploit the inherent powers of custodial decisions to the detriment of a child's well-being. Within the modified framework of the OCS, critical evaluations—including placement and transfer—will reside solely within a branch of the government lacking any vested interest in the ultimate resolution of a child's immigration relief.

In addition, the legislative language will not modify the jurisdiction of either the INS or the Executive Office for Immigration Review (EOIR) to adjudicate claims for immigration relief. In the American system of adjudicating immigration claims, EOIR, established in 1983, houses both the immigration judges and the Board of Immigration Appeals (BIA) and has exclusive jurisdiction over applications for asylum brought by any alien for whom an immigration proceeding for deportation or exclusion already has been initiated. Like the proposed OCS, EOIR is an independent arm of DOJ—separate and apart from the INS—in order to preserve the integrity of the adjudication function vis-à-vis the immigration enforcement function of INS. In addition to "defensive" applications for asylum EOIR judges decide a litany of immigration matters. Along the same lines, all affirmative claims for asylum relief (those brought voluntarily by aliens not in the midst of removal proceedings) still will be determined by the Service Asylum Officers of the INS.

Finally, under the scheme envisioned by the bill, custodial rights of a parent or guardian in situations where a parent or guardian seeks to establish custody, making family reunification possible, will remain of paramount concern to OCS. The proposal in no way will interfere with any efforts to secure placements for unaccompanied children in the homes of suitable adult sponsors—especially family members—while they await an adjudication of their immigration claims. In fact, among the fundamental stated purposes of the bill is to "establish a government policy in favour of family reunification whenever possible."[29]

Procedural Barriers to Children's Asylum Claims

The U.S. asylum system traditionally has done little to accommodate the asylum claims of children. Typically, children's claims were subsumed under those of their parents and not considered separately. If the parent was granted asylum, then so too was the child. This approach, however, failed to take into account the fact that in some cases, the family may be actively participating in, or at least condoning, the abuses experienced by the child. Without separate consideration of the child's situation, such grounds for asylum were likely never to surface in the adjudication.

Alternatively, if a child is unaccompanied by a parent, their cases are handled in the same fashion as those of adults. This "one-size-fits-all" approach frequently fails to take into account the unique situation of a child, including her cognitive and emotional stage of development, and the impact that may have on the child's ability to recollect and articulate a traumatic experience in the home country. Such failure to consider the child's circumstances undermines the ability to gain asylum; a child cannot be expected to shed her childhood for purposes of a legal proceeding.

The INS addressed at least some of the barriers which confront children in the asylum process in December 1998. Working with non-governmental organizations, refugee and children's experts, and the United Nations High Commissioner for Refugees (UNHCR), the INS released "Guidelines for Children's Asylum Claims" (the "Guidelines").[30] By doing so, the United States became the second country in the world (the first was Canada)[31] to establish a framework for the consideration of children's asylum claims. The Guidelines are groundbreaking in their comprehensive establishment of legal, evidentiary, and procedural standards to guide adjudicators.

The Guidelines highlight several key principles that should steer the adjudication of children's claims. First, the Guidelines acknowledge that the "best-interests-of-the-child" standard as a useful measure for ensuring that procedural protections are in place when adjudicating children's claims, although they also explicitly deem the best-interest rule as inapplicable to the substantive determination of a child's claim. Presumably, the INS was reluctant to inject a best-interests element into the analysis of a child's claim out of fear of widening too broadly the application of the refugee definition to children.

The Guidelines also open the door to allowing a "trusted adult"[32] to accompany a child to the asylum interview. The Guidelines indicate that the trusted adult will normally be a relative but may be some other adult who can offer support to the child through the interviewing process. This provision responded to a call by outside experts to appoint guardians *ad litem* to assist children through their proceedings.[33] While the role of the trusted adult falls short of fulfilling the role of a guardian *ad litem*, it does at least acknowledge the importance of adult assistance in shepherding children through the asylum process. The Guidelines, however, also underscore the importance of a separate determination in children's cases when their parent is denied asylum.

The Guidelines are perhaps most significant in their practical recommendations on how adjudicators can establish a child-friendly interview environment through rapport-building activities and appropriate questioning and listening techniques. While many of these recommendations, such as avoiding "legalese" and the use of abstract concepts, may seem to be simple common sense, the Guidelines provide a useful compendium to ensure that adjudicators not lose sight of the child's special needs during the asylum interview.[34]

The Guidelines are limited in two important ways. First, they are non-binding. Second, they were designed primarily for use by INS asylum officers, who are responsible for the initial non-adversarial adjudication of asylum claims presented by individuals in lawful status in the United States and/or who present themselves to the INS and request asylum after already having entered the country. The Guidelines have not been formally adopted by EOIR, including the immigration court judges and the BIA, the two departments that oversee all deportation proceedings in the United States. Despite not having formally adopted the Guidelines, however, EOIR has trained its immigration judges and board members under the Guidelines.

Despite the limitations of the Guidelines, a number of children have been granted asylum based on unique claims since their issuance. For example, Central American street children, Indian child labourers, and young Chinese girls forced into marriage have won their cases. Fundamental to the consideration of these cases has been an increasing acknowledgement that children may experience persecution differently than adults.

However, the U.S. asylum system continues to deny children two critical sources of help: the guarantee of counsel and the appointment of guardians *ad litem*. Asylum proceedings are extraordinarily complex and a recent study revealed that represented asylum seekers are four to six times more likely to win their asylum cases.[35] The ability of children who remain unrepresented to win their cases is even more questionable given their inherent lack of capacity to understand the proceedings in which they have been placed. Despite this, in contrast to many other western asylum countries, U.S. asylum law fails to ensure counsel to asylum seekers. Under the INA, non-citizens have the right to counsel in immigration court proceedings but at no expense to the government.[36] Federal courts have deemed this right to be fundamental to the adjudication of asylum cases.[37]

The practical reality for most asylum seekers is that they cannot afford or cannot access attorneys if detained. This is even more true for children, who may not even be aware of the importance of counsel to their cases. In addition, the sheer number of detention facilities in which children in INS custody are detained combined with the remote location of many of these facilities creates innumerable obstacles which charitable legal services organizations lack the resources to overcome. As a result, less than half of INS-detained children have legal representation. The lack of legal representation results in sometimes ludicrous situations; in one case, for example, an eighteen-month-old toddler appeared at a preliminary hearing with no attorney or other adult representative.

Also out of step with the practice of other countries, as well as the practice in other areas of U.S. law such as abuse and neglect proceedings, is the fact that unaccompanied children seeking asylum are also not appointed guardians *ad litem*. Guardians could usefully function *in loco parentis* in the context of a court proceeding to encourage children to participate to the fullest extent possible and appropriate and to help ensure that decisions reached on behalf of children during proceedings comport with the principle of the best interests of the child.

The guardian *ad litem* will work directly and closely with the child to:

- ascertain the child's views;
- help the child articulate his or her story;
- offer independent advice to the child;

- help develop the child's awareness of the options that are open to him or her and elicit the child's preferences about these options;
- act *in loco parentis* during the immigration proceedings to encourage the child to participate to the fullest extent possible and appropriate and to help ensure that the decisions reached on behalf of the child during the proceedings comport with the child's best interests; and
- help the asylum officer or immigration court to reach a decision in the case that is appropriate to the child's circumstances, keeping in mind that such decisions must also comport to the requirements of U.S. immigration and asylum law.

Ideally, child welfare professionals would function as guardians *ad litem*. It is critical that the role of the guardian *ad litem* be distinct and separate from that of the child's attorney, who is charged with representing the child in immigration court and seeking relief that is in keeping with the child's expressed interests. However, in order to ensure that the best interests of the child are addressed, to the maximum extent possible, the guardian must work closely with the child's attorney. Through such collaboration, the chances that a decision is reached in the child's proceedings that is truly in keeping with the child's interests will be maximized. Moreover, it is likely that effective participation of the guardian in the court proceedings will render such proceedings more efficient and therefore lead to a faster resolution of the child's case.

The need for government-funded counsel and guardians *ad litem* has been recognized by EOIR. It is a concept that has also been embraced by key members of the U.S. Congress, who have introduced legislation that would provide such assistance to children as well as transfer custody of the children away from the INS to a new Office of Children's Services.[38]

Conclusion and Recommendations

U.S. policy must be based on the recognition that unaccompanied children who arrive in the United States in search of refugee protection are children first and have a fundamental right to due process and care that is appropriate to their young age. It must also recognize that each child's case is unique and must inform the outcome of their asylum proceedings.

To reach these goals, the U.S. government must redress the inherent conflict of interest in the INS's handling of children and implement measures to address a child's lack of capacity to navigate asylum proceedings alone. To that end, the U.S. should take the following steps:

- require expanded shelter-care facilities and foster-care programs in which children would receive culturally and age-appropriate services;
- provide government-funded counsel to children;
- mandate the development of a corps of professional guardians *ad litem* to assist in meeting the best interests of each child;
- establish an age-determination system that allows a child to present a variety of forms of evidence to prove his or her age and incorporates an appeal process for adverse age findings; and
- eliminate the conflict of interest experienced by the INS by moving jurisdiction over the care of children asylum seekers to an agency with child welfare expertise and no interest in the outcome of the child's immigration or asylum proceedings. Presently, the INS is charged with providing care to the same children that it is concurrently trying to deport.

The U.S. has a proud history in recognizing the rights of both children and refugees. It now is time to apply these standards in the context of the U.S. asylum system.

Notes

1. United States Immigration and Naturalization Service, *Juvenile Detention and Shelter Care Program*, 9/2000, *available at* <www.ins.gov>.
2. *Immigration and Nationality Act*, 8 U.S.C. § 101 (2001).
3. *Id.* §§ 101(b)–(c).
4. *See* Stipulated Settlement Agreement, *Flores* v. *Reno*, Case No. CV 85-4544-RJK (C.D. Cal. 1996), *available at* <www.centerforhumanrights.org/FloresSettle.html> [hereinafter *Flores*].
5. *See id.* ¶¶ 12, 25, 28A, 32, 33.
6. *See id.* at Exhibit 1.
7. *Id.* ¶ 11.
8. *Id.*
9. See Letter from Center for Human Rights and Constitutional Law, *Flores* Counsel to Plaintiff's Class, to INS Director of Policy Directives and Instruction (Sept. 16, 1998) (on file with author).
10. See Letter from Center for Human Rights and Constitutional Law, *Flores* Counsel to Plaintiff's Class, to Arthur Strathern, INS Counsel, and John Pogash, INS Deputy Director of Juvenile Affairs (Sept. 16, 1998) (on file with author).
11. *Detained and Deprived of Rights: Children in the Custody of the U.S. Immigration and Naturalization Service,* Human Rights Watch at 6, December 1998, *available at* <www.hrw.org/reports98>.
12. *See* Gregory Zhong Tian Chen, *Elian or Alien? The Contradictions of Protecting Undocumented Children Under the Special Immigrant Juvenile Statute*, 22 *Hastings Const. L.Q.* 597, 619–22 (2000).
13. *See Detained and Deprived of Rights*, *supra* note 11, at 6.
14. *See id.*
15. *Flores v. Reno*, 507 U.S. 292, 295 (1993).
16. *See Detained and Deprived of Rights*, *supra* note 11, at 8.
17. *Flores*, *supra* note 4, ¶ 27.
18. *See Detained and Deprived of Rights*, *supra* note 11, at 8.

19. Sharon Finkel, *Voice of Justice: Promoting Fairness Through Appointed Counsel for Immigrant Children,* 19 N.Y.L. Sch. J. Hum. Rts. 1105, 1115–16 (2001).
20. *Flores*, *supra* note 4, ¶17.
21. *See Detained and Deprived of Rights*, *supra* note 11, at 10.
22. Chen, *supra* note 12, at 619.
23. *The Unaccompanied Alien Child Protection Act of 2001*, S. 121, 107th Cong. (2001); *The Unaccompanied Alien Child Protection Act of 2001*, H.R. 1904, 107th Cong. (2001) [hereinafter *Child Protection Act*].
24. *See id.* § 101.
25. *See id.* § 202.
26. *See id.* § 302.
27. *See Flores*, *supra* note 4, ¶ 12.
28. *See Child Protection Act*, *supra* note 23, § 205.
29. *Flores*, *supra* note 4, ¶ 14; *see also Child Protection Act, supra* note 23, § 202.
30. United States Immigration and Naturalization Service, *Guidelines for Children's Asylum Claims* (Dec. 10, 1998) [hereinafter *Guidelines*].
31. *See, e.g.*, Jacquie Miller, *Canada First to Adopt Guidelines for Child Refugee Claimants*, *Ottawa Citizen*, Aug. 27, 1996.
32. *Guidelines*, *supra* note 30, at 5.
33. *Id.* at 6.
34. *Id.*
35. *See, e.g.*, Memorandum from Andrew Schoenholtz, Georgetown University Institute for the Study of International Migration (Sept. 12, 2000) (on file with author).
36. *See Immigration and Nationality Act*, 8 U.S.C. § 240(b)(4) (2001).
37. *See Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 554 (9th Cir. 1990).
38. *See Child Protection Act*, *supra* note 23.

Andrew Morton serves as a government relations associate with the law firm of Latham and Watkins in Washinton, D.C. He has acted as pro bono counsel to the Women's Commission for Refugee Women and Children in its effort to seek legislative reform of U.S. treatment of children in asylum proceedings.

Wendy Young is the director of government relations and U.S. programs for the Women's Commission for Refugee Women and Children in Washington, D.C. In that capacity, she directs the Commission's Detention and Asylum Project, and has assessed the treatment received by women and children asylum seekers in the United States.

Casualties of Aboriginal Displacement in Canada: Children at Risk among the Innu of Labrador

Myriam Denov and Kathryn Campbell

Abstract

The concept of displacement has long been associated with individuals within poor and developing nations, living under conditions of conflict and civil unrest. Conversely, little research attention has been paid to displacement among Aboriginal peoples within the context of wealthy and developed nations such as Canada. This paper explores the consequences of internal displacement for the Innu Nation of Labrador. In particular, it examines how Innu children have become at risk for gasoline sniffing and suicide. The paper concludes by assessing the extent to which the United Nations Convention on the Rights of the Child and Canada's Indian Act have been effective in protecting the rights of Innu children. The questionable impact of state responses highlights the need for more effective strategies in order to protect the rights of Innu children.

Résumé

Pendant longtemps, le concept du déplacement a été lié à des gens vivant dans des pays pauvres et en voie de développement, en proie à des conditions de désordre ou de guerres civiles. Inversement, il n'y a pas eu beaucoup de recherches entreprises sur le sujet du déplacement parmi les peuples Autochtones à l'intérieur de pays riches et développés, tel le Canada. Cet article examine les conséquences du déplacement interne sur le peuple Innu du Labrador. En particulier, il se penche sur le cas des enfants Innus à risques, menacés par l'abus de solvants et le suicide. L'article conclut avec une évaluation de l'impacte de la Convention des Nations Unies sur les droits des enfants et la Loi sur les Indiens du Canada pour protéger les droits des enfants Innus. L'impacte douteux des mesures adoptées jusqu'ici par l'état, met en exergue la nécessité de trouver des stratégies plus efficaces pour la protection des droits des enfants Innus.

> *[Aboriginal people] are suffused by a free-floating hostility, the outcome perhaps of the combined effects of territorial disruption, overcrowding and social change...This diffuse hostility has no specific object and appears to be turned inwards in the form of self-destructiveness.*[1]

Introduction

The concept of displacement has, for the most part, been largely associated with refugees and individuals living under situations of civil unrest, political violence, and armed conflict, particularly within poor and developing nations.[2] In contrast, few authors have used the concept to explain the forced migration and cultural invasion that have occurred among many Aboriginal populations within wealthy, developed nations such as Canada.

The United Nations Development Program has consistently ranked Canada as one of the best countries in the world in which to live based on the criteria of life expectancy, adult literacy, school enrolment, and economic prosperity.[3] Given Canada's high standard of living and relatively low level of internal conflict, few would immediately refer to Canadian citizens as typical examples of victims of forced displacement, discrimination,

or extreme poverty. However, Canada's history of colonization and displacement of its Aboriginal populations tells a story of centuries of domination, discrimination, and assimilation. As a result of the Canadian government's policies involving the forced migration and massive relocations of Aboriginal communities, the concept of displacement is used in this paper to characterize the history and experiences of one Canadian Aboriginal nation. The Innu Nation of Labrador, a traditionally nomadic people who have roamed Nitassinan (Eastern Quebec and Labrador) for over two thousand years, provides a powerful example of an Aboriginal people who have been long-standing victims of cultural invasion and forced displacement within the Canadian context. The history of the Innu reveals two instances of forced internal displacement by the Canadian government and the consequent devastating social, psychological, and economic effects on their communities.

The objective of this paper is to explore the long-term impact of displacement on the Innu people of Labrador. First, the paper examines the community's loss of culture and identity as a result of displacement and forced migration. Second, it explores the community's increasing engagement in self-destructive behaviours such as substance abuse and suicide as consequences of displacement. Third, the paper describes the impact of displacement on those most vulnerable and at risk within the community: Innu children. In particular, the paper examines the relationship between the displacement of the Labrador Innu and current health concerns, including an epidemic of gasoline sniffing and suicide among Innu children. Finally, the paper assesses the extent to which the United Nations Convention on the Rights of the Child and Canada's Act have been effective in protecting the rights of Innu children.

A Brief History of the Innu of Labrador

Approximately sixteen thousand Innu (formerly known as Montagnais or Naskapi) currently inhabit Nitassinan. Archaeological evidence suggests that the Innu have lived in Nitassinan for at least two thousand years, and some scholars believe that they descended from the first human inhabitants of eastern Canada who moved into this region approximately eight thousand years ago at the end of the last ice age.[4] The Innu Nation of Labrador comprises approximately fifteen hundred people living in two communities, Sheshatshiu to the south and Utshimassits (Davis Inlet) to the north. Central to the Innu way of life are the herds of caribou that migrate through Nitassinan in the spring and autumn with food, hides for clothing and tents, and bones and antlers for tools or weapons; the caribou remain a central motif of their culture.

By the Second World War virtually all the Innu were, to some extent, involved in the fur trade and were increasingly under the influence of not only the traders, but also the missionaries, government officials, and other non-native people whom they met at the trading posts. The Innu began to spend more time in their coastal settlements. When furs, which provided income, became scarce, poverty and starvation were not uncommon. Government relief was thus provided to the Innu through the Hudson's Bay Company representative or the priest. As time went on, the Innu became increasingly dependent on the church as the intermediary between them and non-Innu who were trying to direct their lives.[5] Moreover, the priest, who had regular contact with the Innu, held tremendous power and moral authority. The priest is said to have played a pivotal role in encouraging sedentarization among the Innu and the abandonment of their traditional way of life as nomadic hunters. As one Sheshatshiu woman explained:

> The priest would come to visit us where we were camped. . . . my mother says that the priest got really angry because there was no one living in the community. The Innu people were afraid of the priest. He controlled them and told them what to do. The Innu would still be living in the country if it wasn't for the priest.[6]

At the time of Newfoundland's entry into Confederation in 1949, Innu settlements had long been established in both Sheshatshiu and Davis Inlet. However, these settlements were largely seasonal in nature – families lived in tents and not all of the inhabitants stayed in the settlements year-round. The priests and government representatives continued to pressure the Innu into remaining in permanent settlements. The financial dependency of the Innu on both the church and the Canadian government left them vulnerable to pressure from the government when it finally decided that the Innu must be settled in permanent communities.

According to Samson, Wilson, and Mazower,[7] the Canadian government set out to achieve two objectives by forcing the Innu to remain in settlements year-round. First, it sought to clear the Innu from their land to allow it to be opened to non-native "development." Second, they intended to prepare the Innu for their new circumstances in settlements with a program of "economic rehabilitation." There was a pervasive belief among government officials that hunting caribou was not "real work"[8] and that the Aboriginal people needed to be integrated into some sort of economic activity. As a result of these government strategies and initiatives, a series of forced migrations and displacements of the Innu of Labrador began in 1948, which has had dire long-term consequences for them.

I. The Displacement and Forced Migration of the Innu of Davis Inlet

Varied definitions exist regarding the concept of displacement, including internal displacement, forced evictions, and population transfers. Stavropoulou[9] argues that there is little difference among these terms; they all refer to arbitrary, coerced movement of persons, irrespective of their number and irrespective of the extent of the state's involvement in the process. Clearly, the situation of the Innu would fall within the purview of internal displacement.[10] Having been forced to migrate on two separate occasions, the Innu have suffered physical and cultural upheaval at the hands of the state. While the reasons proffered for these moves were couched in humanitarian terms, there was little, if any, consultation regarding the process and cultural traditions were ignored. Consequently, this forced internal displacement has resulted in a significant erosion of traditional lifestyles, which have been replaced with sedentarization. This in turn has had disastrous consequences for the community.[11]

A. Forced Migration I – 1948

In 1948, the Innu were moved from Davis Inlet to Nutak, two hundred fifty miles to the north. This move was undertaken without any real consultation with the Innu, and without their consent. To this day, the Innu today still do not understand the rationale for this move.[12] As Samson, Wilson, and Mazower[13] note:

> There is no single, unambiguous Innu understanding of sedentarization and what it meant: their perception of what happened is embodied, as always, in a series of widely differing accounts reflecting the varied and often chaotic experiences of individuals and families. What is clear however, is that the government made almost no attempt to explain the situation to all the Innu or to obtain their formal consent to settlement.

Although the move was said to be for humanitarian reasons and intended to provide the Innu with greater employment and economic prosperity, there is no evidence that these needs could not already be met in Davis Inlet, or that any government efforts were made to determine the conditions that the Innu would face in Nutak. McRae notes that the relocation of the Innu to Nutak had the more sinister goal of assimilation.[14] The policy of the Commission of Government was to "make white men" of the Indians and Eskimos. The provincial government saw not only sedentarization itself, but also the government's own work-creation and social assistance schemes as part of a long-term strategy to transform the Innu and assimilate them into Canadian society.[15] For the Innu, relocation to Nutak provided difficult access to traditional caribou-hunting areas. As a result, in 1949 the community left Nutak of their own volition, and returned to Davis Inlet where they remained until 1967.

B. Forced Migration II – 1967

In 1967, the Innu of Davis Inlet were relocated by the government a second time, to the site of their present village on Iluikoyak Island. A strong motivation for the move was a government interest in directing the Innu to fishing as an economic activity. There was, once again, no meaningful consultation with the Innu concerning relocation to the new site on Iluikoyak Island and their interests were assumed to be those identified by the priest and government officials who dealt with them.[16] As one member of the Davis Inlet community remembers: "When we were first told we would be moved to the island, I didn't like the idea…But no one said anything. We just moved."[17] While houses were built for the Innu at the new site, they lacked the basic amenities of sewage, running water, and furnaces. Moreover, the quality of the building was poor. These conditions have, to this day, never been addressed by the government and many have attested to that fact that the Innu are living in Third World conditions.[18] These intolerable living conditions have been an important contributor to the poor standard of health in the community and to widespread social dysfunction.

II. The Impact of Displacement on the Innu of Labrador

> *These effects of [displacement] are noticed whether the relocation was for development or administrative purposes…[R]elocation has been a major contributing factor in declining [aboriginal] health, reduced economic opportunities, increased dependence on government and cultural disintegration.*[19]

The impact of displacement has been far-reaching in the lives of the Innu of Labrador. Displacement has contributed to the overall loss of Innu culture and identity. It has also increased what is referred to as "culture-stress" and self-destructive behaviours.

A. Loss of Culture and Identity

The forced displacement of the Innu has led to a significant loss of their traditional culture and identity. This loss has been a result of being displaced from their territorial homeland, having their culture, values, and beliefs silenced through the establishment of educational institutions enforcing the "Canadian" curriculum, and through the destruction of the traditional Innu economy.

1. Displacement from Territorial Land

> For indigenous peoples' continued existence – throughout the world – land is a prerequisite. It is essential because indigenous people are inextricably related to land: it sustains our spirits and bodies; it determines how our societies develop and operate based on available environmental and natural resources; and our socialization and governance flow from this intimate relationship.[20]

As the above quotation illustrates, the land is of central importance to aboriginal culture, identity, and well-being. Aboriginal people have a unique relationship with the land that guides their daily life and provides them with great meaning. As one Innu man of Sheshatshiu explained: "To reduce the meaning of the word *nutshimit* to 'the bush' does not describe what it means to us. It is a place where we are at home."[21] Other places of significance, such as the gravesites of ancestors, locations for ceremonial activities, and geographical features such as mountains and lakes, are said to link a people with its past and its future.[22] Isolating people from their traditional habitat, therefore, breaks the spiritual relationship with the land that exists within many aboriginal communities.

Not only were the Innu displaced from their homeland in Nitassinan, but in their present location on Iluikoyak Island they are cut off from their hunting grounds, impeding them from carrying out their traditional pursuits. Moreover, in their new environment, the culturally based knowledge that made them self-sufficient in their homeland is not relevant. Whereas they were once skilled, knowledgeable, and confident within the context of the hunting grounds of Nitassinan, in their new environment on Iluikoyak Island, the Innu lack the opportunity to exercise a traditional way of life. As one Innu man from Sheshatshui noted: "… my self, my identity, my own religion is the country. I go to my own school there. There are medicines there that I know about. Out there I am a worker, a hunter, a fisherman, an environmentalist, and a biologist."[23] Displacement among the Innu can thus be seen as part of a painful process of dispossession and alienation of their society from the land and from the cultural and spiritual roots it nurtures, ultimately leading to a sense of powerlessness.[24]

2. Assimilation through "Education"

> "*The best way to destroy a culture is to train its children in another culture.*" – Innu man from Sheshatshiu[25]

Assimilation through "education" appeared to be one of the most important goals of the government officials and priests advocating the sedentarization of the Innu. Officials believed that through education, the Innu could be "civilized" into mainstream ways of working and seeing the world. Within the village of Sheshatshiu in the early 1950s, Joseph Pirson, an Oblate priest, believed this could be accomplished by sending the younger generation to school, where they would be taught the same curriculum as children elsewhere in Canada. Pirson was aware that keeping children in school would force their parents to abandon hunting and settle down in the village.[26] Promises of prosperity and hope were given to the Innu. As one Innu woman remembers:

> The Innu were told that houses would be built for them and they had to school their children in return. It's like bribing the Innu. The Innu were not to leave the community when their children were being schooled. Not even to go into the country while their land was being destroyed through exploitation…we were told the children would eventually find proper jobs once they finish school. It was never like that. All those promises….[27]

Furthermore, financial incentives were established whereby families who remained in the village year-round and sent their children to school were eligible to receive monthly government allowance cheques, thus creating a dependence on government assistance. Those who chose to hunt in the bush were not eligible to receive this government support.

Significantly, when schools were initially started, no attempt was made to schedule the school year around the Innu hunting cycles, forcing the Innu to remain in the village during hunting season. Furthermore, the school curriculum was modelled on the mainstream Canadian curriculum and classes were taught in English or French. In the early days in school, Innu children were encouraged to abandon the Innu language.[28] This has led to the recent situation where young children speak English better than they speak their native Innu language:

> The kids don't understand us these days when we use old Innu words...we think they have already entered into the *Akanishau* [white] culture. That's why they don't understand us...They ask us 'what are you saying? What does that word mean?'[29]

The educational system has created a situation whereby it is becoming increasingly difficult for the children to think in the terms and categories of their parents and grandparents.

3. Destruction of the Traditional Economy

The displacement of the Innu from their land and way of life also contributed to the destruction of their traditional

economy. In particular, displacement led to a reduction in the Innu economic base. The Innu had once possessed a large land base and diverse resources in the form of game for food, clothing, and tools, as well as trade with other peoples. Following the forced migration into settlements, the Innu land base and resources became, by comparison, relatively small and limited.[30]

The Innu economic base has also been reduced as a result of loss of land and resources because of flooding through hydroelectric development. Mines, hydroelectric projects, and pulp and paper mills have sprouted up all over the Innu homeland during this century without their consent, ultimately enriching provincial governments and multinationals, and wreaking havoc with Innu lives.[31] In 1973, the federal government dammed Churchill Falls without consulting the Native people. A large proportion of Innu land, which had sustained them for thousands of years, was flooded without warning and many graves, considered sacred, were destroyed. Churchill Falls, with its annual output of 5.2 million kilowatts, is one of the largest hydroelectric generating stations in the world. Billions of dollars have been made on the project; Hydro-Quebec received 8 per cent of profits, the rest going to other investors and to the province of Newfoundland.[32] The Innu, who were relocated to new settlements as a result of the flooding, received no compensation. The frustration at losing their land is expressed by this Innu woman:

> So much of our land has been taken from us, we are pushed to spend longer and longer periods of time in the community, it's like a gate has been put over us. We're told not to leave the community. They want us to live in shame so people from the outside can say: 'They're just drunken Innu people, they're not worried about their land'…the Innu people are poor while the government and others are making richesses [sic] from our land, they're making lots and lots of money from our land.[33]

The destruction of the traditional economy and the subsequent poverty among the Innu is evident in recent income statistics. In 1996, the average annual income of the Innu of Sheshatshiu was $10,904. The average annual income of individuals in Davis Inlet was $10,612.[34] Incidentally, during this same year, the average annual income of non-Aboriginal Canadians was $25,416.[35]

B. Culture Stress and Self-destructive Behaviours

According to the Royal Commission on Aboriginal Peoples,[36] the displacement of Aboriginal populations contributes to what is referred to as "culture stress." Culture stress is said to be apparent in societies that have undergone massive, imposed, or uncontrollable change. It is studied primarily in relation to immigrant and indigenous populations, but research on the aftermath of natural disasters such as floods and earthquakes, and on social disasters such as wars, reports similar symptoms of social breakdown.[37] According to *Choosing Life: The Special Report on Suicide among Aboriginal People*,[38] the factors that contribute to culture stress include loss of land, loss of control over living conditions, and restricted economic opportunity, all of which are relevant in the case of the Innu.

In cultures under stress as a result of displacement, normal patterns of behaviour are disrupted and individuals are said to lose confidence in what they know and in their own value as human beings.[39] They may feel abandoned and bewildered about whether their lives have meaning or purpose. As a result, culture stress is said to play a central role in predisposing Aboriginal people to substance abuse, suicide, and other self-destructive behaviours. In fact, suicide and substance abuse are among the recognized effects of trauma experienced by Aboriginal people.[40] Many Aboriginal elders maintain that forced relocation and displacement have played a major role in contributing to substance abuse and suicide among Aboriginal people.[41]

1. Substance Abuse

Substance abuse is often cited as a response to, and an escape from, the physical and psychological stresses of displacement and the depressing sense of loss and powerlessness among the displaced.[42] Indeed, there are high levels of alcoholism within Aboriginal communities, and according to several Native leaders, alcohol is the number-one community problem.[43] Alcohol abuse swept through the Innu communities of Sheshatshiu and Davis Inlet in the 1970s and is now an ingrained feature of daily life.[44] In Davis Inlet, in 1990, investigators found that between 80 and 85 per cent of residents over fifteen years of age were alcoholic, and that half of these individuals were intoxicated on a daily basis. Substance abuse is said to be a major factor in the high rates of suicide among the Innu.[45] According to the Innu Band Council's own figures, in 1993 almost a third of all adults in the community of Davis Inlet attempted suicide, generally in alcohol-related incidents. Alcohol abuse among the Innu gained national attention when, in February 1992, six children of Davis Inlet, who had been left unsupervised, burned to death in a house fire while their parents were out drinking. Gasoline sniffing is an equally serious problem in Aboriginal communities. This will be addressed in greater detail below.

2. Suicide

A comparison of suicide rates over time suggests that those for Aboriginal people in Canada have been higher

than for the general Canadian population throughout the last thirty to forty years.[46] In the past ten to fifteen years, suicide rates for Aboriginal people have been on average three times higher than the Canadian population.[47] Current statistics place the suicide rate for registered "Indians" at 3.3 times the national average and for Inuit at 3.9 times the national average.[48]

In comparison to the Canadian population as well as to other Aboriginal populations, suicide rates among the Innu are alarmingly high. According to Samson, Wilson, and Mazower,[49] between 1990 and 1998, there were eight successful suicides in Davis Inlet alone – equivalent to a rate of 178 suicides per 100,000 population, compared to a Canadian rate of 14 per 100,000. While small in actual numbers, the rates indicate that the Innu of Davis Inlet are almost thirteen times more likely to commit suicide than the general population of Canada. Perhaps more disconcerting is the fact that these figures make the Innu of Davis Inlet the most suicide-ridden people in the world.[50]

Although there are few written documents describing Aboriginal mortality patterns historically, Aboriginal oral tradition tells us that suicide was rare in the time before contact with the Europeans.[51] Despite the great diversity of Aboriginal populations, they shared a firm belief in spirituality that gave meaning to all life on earth. Most Aboriginal cultures had explicit proscriptions against suicide on the grounds that it contravened natural laws or the design of the Creator.[52] The high suicide rates among Aboriginal populations and particularly among the Innu can, in part, be related to their history of colonization.

III. Children at Risk: Intergenerational Trauma and the Plight of Innu Children

The role of trauma is appearing increasingly in writings about the experiences of Aboriginal peoples, particularly as a metaphor for the consequences of economic and social dependence.[53] According to Manson et al. (1990),[54] Manson et al. (1996),[55] and O'Nell,[56] there is a disproportionately high percentage of Aboriginal people in the United States who suffer from anxiety disorders, exposure to traumatic events, and post-traumatic stress disorder. Research among the Aboriginal peoples of Australia has demonstrated that long-term exposure to stressor experiences, such as traumatic separation, loss, abuse, dislocation, and dehumanization contributes to a whole host of medical and psychological illnesses.[57]

The effects of displacement and other traumas related to colonization not only have an impact on a single generation of Aboriginal community members, but rather occur intergenerationally.[58] Indeed, the overall health of Innu children appears to reflect the physical, emotional, and social health of the Innu generally. Within the Innu communities of Sheshatshiu and Davis Inlet, there are extremely high rates of infant mortality. Moreover, gasoline sniffing and suicide among Innu children have become a growing problem.

A. Infant Mortality Rates

According to statistics from the Assembly of First Nations,[59] the proportion of Aboriginal sudden infant death syndrome (SIDS) cases has been increasing, while cases of SIDS among the general Canadian population have been decreasing. In fact, an Innu child is between three and seven times more likely to die before the age of five than the average Canadian child, providing another measure of the chasm between the Innu and the rest of Canada.[60] Even among the Innu of Labrador dramatic differences exist: the rate in Davis Inlet, where there is no sewage or household running water and the nearest hospital can only be reached by airplane, is more than twice that in Sheshatshiu, which has more basic amenities and is within an hour's car drive of the hospital in Goose Bay.

B. Gasoline Sniffing and Suicide among Innu Children

The problems of gasoline sniffing and suicide have long affected Canadian Aboriginal communities, and are frequently linked to the effects of colonization, displacement, discrimination, and abuse.[61] In regard to suicide among Aboriginal youth, the *Special Report on Suicide among Aboriginal People* notes:

> Suicide is a major problem among Aboriginal youth. Racism, loss of culture, physical and mental abuse, family discord, feelings of boredom, loneliness and powerlessness all contribute to the personal pain that leads these young people to choose suicide. Drugs and alcohol abuse tends to exaggerate the problem.[62]

Rates of gasoline sniffing among Aboriginal children appear to be increasing.[63] Gasoline sniffing was first noticed among Aboriginal populations in the early 1970s and has since become more widespread, particularly among Aboriginal populations living on reserves.[64] In 1975, 62 per cent of Cree and Inuit youth in Northern Quebec revealed that they had sniffed gasoline at least once in the last six months.[65] Some people were said to use gasoline to calm their infants. Gfellner and Hundleby[66] and Smart[67] reported that the use of inhalants was significantly higher among Canadian Aboriginals than non-Aboriginal Canadians.

Persistent gasoline sniffing is a serious and highly dangerous health threat. Medical experts have declared that gasoline sniffing is one of the most dangerous addictions in the world.[68] Once inhaled, gasoline harms the

kidneys and liver and inflicts permanent damage on the nervous system and brain, particularly those parts of the brain that control visual coordination, motor skills, and memory. Gasoline sniffing is said to impair cognitive abilities, and chronic gasoline sniffers become dull and clumsy, shake uncontrollably, and may have difficulty walking. According to York,[69] chronic users often become anemic and suffer weakness in their arms and legs. The emotional and psychological consequences of gasoline sniffing are just as severe: they include feelings of paranoia, isolation and indifference towards oneself and others.

Aside from the obvious health concerns, there appear to be significant social problems that emerge as a result of gasoline sniffing. McGarvey et al.[70] noted that inhalant-abusing delinquents were significantly more likely to report threatening to hurt people, to have relatives that attempted suicide, and to have committed crimes while intoxicated, than their non-abusing counterparts. Other studies have found a relationship between gasoline sniffing and anti-social, aggressive conduct.[71]

Research indicates that gasoline sniffing appears to be most prevalent among geographically and socially marginalized groups.[72] According to Fornazzari,[73] through colonization, the dominant culture has destroyed the traditional economy and social structure of minority groups. These groups therefore adopt self-destructive behaviours, such as gasoline sniffing and alcoholism, because of their loss of identity and traditional way of life. Indeed, this observation appears to reflect the experience of the Innu generally and Innu children specifically. As one Sheshatshiu women explained:

> [Gasoline sniffing] has been going on for years and years. . . . These children feel that the only way to forget these sort of things [abuse and neglect] is . . . gas sniffing. It's not [their] fault the way they are today. I would call them victims of our past.[74]

In the Innu communities of Sheshatshiu and Davis Inlet, the problems of both gasoline sniffing and suicide among Innu children have, over the past ten years, gained national and international attention.[75] Two recent events in Labrador emphasize the severity of this problem. In January 1993, six Innu children in Davis Inlet barricaded themselves in an unheated shack in temperatures of minus forty degrees and attempted to kill themselves by sniffing gasoline. Television stations across Canada broadcast videotape images of the six children attempting suicide. In response, seventeen children were taken for treatment to Alberta, where they stayed for six months. Upon their return to Davis Inlet, almost all of the children resumed sniffing gasoline within a few weeks.[76] In Sheshatshiu in the winter of 2000, a group of Innu children aged six to sixteen remained unsupervised in the woods in sub-zero temperatures, sniffing gasoline by an open fire. Weeks before the images of the intoxicated children were captured by Canadian reporters, one eleven- year-old Innu boy had died as a result of playing with a candle while sniffing gasoline.

In response to pleas from parents and Innu leaders at a loss to deal with an epidemic of gasoline sniffing, in January 2001 the Canadian government removed thirty-five Innu children, aged ten to eighteen, from Labrador to Grace Hospital in St. John's, Newfoundland, for "treatment." The program, which cost the government 5.5 million dollars, was viewed by many as a failure. Youth support workers who served at the hospital claimed that the program lacked structure, and the rapport between staff (who were mostly non-Innu) and Innu children was poor.[77] Perhaps most importantly, workers claimed there was little or no treatment or counselling aimed at the children's addiction.[78]

Aboriginal communities have had no difficulty explaining to the Royal Commission on Aboriginal Peoples why so many Aboriginal youth are killing and injuring themselves and abusing substances. The causes were said to be in the confusion they feel about their identity, in the absence of opportunity within their communities, and in the bleakness of daily existence where alcohol and drugs sometimes seem to offer the only relief. Like other Aboriginal children, Innu children must deal with a surrounding society that devalues their identity as Aboriginal persons. They may have few supports or role models in families and communities that have been battered by the effects of colonialism and displacement.[79] Aboriginal people who spoke to the Royal Commission on Aboriginal Peoples[80] argued consistently that suicide and self-destructive behaviours are the result of a complex fusion of personal, social, and cultural factors that must be seen and understood together – holistically. The effects of displacement and colonization have had dire consequences for the Innu of Labrador. Innu children, those most vulnerable in the community, are continuing to suffer from the past abuses of their people.

The *Special Report on Suicide among Aboriginal People*[81] predicts a coming increase in the number of suicides by Aboriginal youth as the "population bulge" of children now under the age of fifteen enters the vulnerable years of young adulthood. This is clearly an issue for the Innu, as children make up nearly half of the Innu population. In 1996, children aged fourteen and under represented 47 per cent of the population of Sheshatshiu. During this same year, children aged fourteen and under represented 45 per cent of the population of Davis Inlet.[82] As a result of the large number of Innu children entering adoles-

cence and young adulthood, the risk of suicide and other self-destructive behaviours may be even greater. It is therefore important to examine current state responses to Aboriginal Canadians and their effectiveness in addressing the problems that are plaguing Innu children.

IV. Examining State and Civil Society Responses: The United Nations Convention on the Rights of the Child, the Indian Act, and Innu Resistance

This section assesses the extent to which Canada's compliance with the United Nations Convention on the Rights of the Child and Canada's Indian Act have been effective in protecting the rights of Innu children specifically and Aboriginal people generally. It also addresses the collective resistance of the Innu in the face of continued domination by the Canadian government.

A. The United Nations Convention on the Rights of the Child

The establishment of the United Nations Convention on the Rights of the Child (hereafter referred to as the Convention) was a significant achievement regarding the formal and international acknowledgement and recognition of children's rights. As it stood, the Convention was the first of any globally applicable human rights conventions to integrate explicitly the two broad classifications of rights: civil and political; and economic, social, and cultural.[83] The Convention is based on a "welfare approach," underpinned by three core principles: recognition that children's status is different from that of adults; prioritization of children's welfare; and participation of children in decisions affecting their lives.[84] Within the Canadian context, the Convention embodied many of the already recognized legal and social principles of Canada's commitment to social justice. However, as a wealthy and prosperous nation with an international reputation for challenging oppressors of the underclasses, Canada clearly falls short when its treatment of Aboriginal peoples is exposed and scrutinized.

As a signatory of the Convention in 1991, the government of Canada, in effect, pledged its commitment to meeting the needs and assigning and respecting the rights of Canadian children regarding their physical, psychological, social, and educational well-being. As part of this commitment, the Canadian government has completed two reports, in 1994 and in 1999, outlining how the country and each specific province has attempted to meet those needs and respect those rights through various practices, policies, and federal and provincial legislations. Article 27, section one of the Convention states that:

> 1. State parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Closely related to this are other basic needs: the right to the enjoyment of the highest attainable standard of health [article 24(1)]; the right to education [article 28(1)] and the right to social security from parents and/or the state [article 27(2)]. While unproblematic in and of themselves with respect to the lives of the majority of Canadian children, the health and education standards are unsatisfactory for poor children and many Aboriginal children.[85]

Furthermore, article 30 states:

> *In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.*

In essence, this section of the Convention provides cultural protections for children of minority groups, particularly of Aboriginal communities.[86] However, the Canadian government entered a "statement of understanding" concerning the Convention's impact upon Aboriginal communities.[87] This "statement of understanding" constitutes an interpretive guideline, giving great weight to article 30 in interpreting the government's duties towards Aboriginal children. However, the situation of Innu children clearly belies this alleged commitment to Aboriginal children. Forced displacement has had profound effects on the living standards of Innu people. Not only do they live in substandard conditions, in housing provided by the government, the impact of this displacement has effectively increased rates of substance abuse, suicide attempt, and suicides among community members, both young and old. High infant mortality rates, decreased longevity, and increased morbidity reflect the impact of such living conditions. School environments emphasize a Euro-Canadian approach to the world, pay lip service to the Innu language, and function on academic calendars that ignore the hunting season, so important to traditional lifestyles.[88] These conditions collectively work towards an erosion of the right of Innu children to healthy development.

The role of the Convention in light of respecting these rights begs examination. The Convention, with respect to civil and political rights, does not apply automatically in Canadian courts, as it must first be incorporated into Canadian law. As Toope indicates, the courts in Canada have been inclined to interpret Canadian legislative and administrative actions in light of Canada's international obligations.[89] With respect to economic, social, and cul-

tural rights, their protection is more complex. It is through social and economic policies, under the control of frequently changing federal and provincial governments, that such rights may be addressed. One danger of an instrument such as the Convention with regard to these rights is that its value becomes solely a symbolic one. Following its submission of the first compliance report on the Convention, the Canadian government received a response from the Committee on the Rights of the Child. The Committee was concerned with the emerging problem of child poverty. Moreover, it went on to state:

> 17. While recognizing the steps already taken, the Committee notes with concern the special problems still faced by children from vulnerable and disadvantaged groups, such as aboriginal children, with regard to their enjoyment of fundamental rights, including access to housing and education.

The Canadian government's track record with respect to meeting the needs of all Aboriginal people is seriously remiss. When examining the needs and subsequent rights of Aboriginal children, recognized through the Convention, it is highly negligent.

The articulation of a right is only the first step. What often follows are social conflicts in which vested interests and traditional imbalances of power are challenged through various legal, para-legal, and non-legal processes. These conflicts are made all the more difficult in societies that are not culturally attuned to rights discourse.[90] For an Innu child, the existence of rights protecting his or her access to a safe and healthy development means little if the political will does not exist to ascertain that these rights are respected and enforced. Canada's most recent report regarding the Convention indicates further steps to righting historic injustices through reference to *Gathering Strength: Canada's Aboriginal Action Plan.*[91] However, substantial reallocation of resources and political will must follow these commitments if they are to represent real action, and not simply a reiteration of stale political rhetoric.

B. The Indian Act – Equivalency Rights

While the purpose of the Indian Act is to protect the rights of all Aboriginal or indigenous peoples in Canada, many aspects of it have been continually challenged as being oppressive and paternalistic by various lobby groups advocating for further protection of the rights of Aboriginal people. The federal government itself acknowledges that the legislation provides an inadequate framework for its contemporary relationship with Aboriginal communities.[92] These problems include a high degree of governmental control over land use decisions; the limited bylaw making powers of bands; band justice enforcement; control of Indian status and band membership; restrictions on band control over Indian finances; and ministerial supervision of band elections.[93]

The relationship between the Innu Nation and provincial and federal governments regarding the application of the Indian Act has been highly contentious. Upon Newfoundland's entry into Confederation in 1949, the government of Canada did not recognize the Innu as Aboriginal peoples under the Indian Act. Instead, it entered into an agreement with the government of Newfoundland, giving it responsibility for the Indian and Eskimo peoples of Labrador, with the federal government providing funding. Given this lack of status, the Innu must negotiate primarily with the provincial government, which has no constitutional mandate with respect to Aboriginal peoples. The government of Newfoundland's policy towards the treatment of Aboriginal people has been explicitly assimilationist, as no category of "citizen" has recognized special rights.[94]

Lack of recognition as Aboriginal/Indigenous peoples under the Indian Act has had devastating consequences for the Innu. Primarily, it has meant that the Innu have not received the range of funding or the level and quality of services that are provided to all other Aboriginal peoples who are registered under the Indian Act and live on reserve land.[95] This discriminatory treatment constitutes a breach by the government of Canada in its financial obligation to the Innu as Aboriginal people.[96]

The failure of the government of Canada to recognize the constitutional status of the Innu and to deal with them directly as Aboriginal peoples has also meant that they have been denied the opportunity to control their own affairs through self-government. However, the government has sponsored Innu elected Band Councils in the villages, as well as a province-wide organization called the Innu Nation. Whereas these bodies are central in protecting Innu interests, at the same time they are dependent on federal funding which may foster conflicts of interest.[97] The Innu currently have little say in such matters as health, housing, welfare, education, and policing, and they do not control their own infrastructure and other essential programs. The concept of electing officials is somewhat foreign to many Innu people. Mandatory fluency in French or English, as well as familiarization and ease with western practices of policy making, negotiation, and resource management, clearly are daunting challenges to a people more familiar with living in the bush. By not including the Innu as Aboriginal people, the Indian Act has clearly failed to protect the rights of the Innu and, arguably, has implicitly contributed to the social and economic difficulties in the community.

C. Innu Resistance

The role of the Innu people vis-à-vis their relationship to the Canadian government is an important factor in helping to redress some of the oppressive consequences of past government actions. In Brand's[98] analysis of the impact of development on the displacement of two distinct groups of Jordanian people, she is able to demonstrate the effect of a strong civil society in mitigating damaging effects. Brand borrows from James Scott's[99] framework of analysis for understanding the factors that affect how development or modernization projects result in disasters for the people displaced. Scott has demonstrated that, in its quest for greater control over its territory and population, the modern state has devised numerous schemes that, while ostensibly targeting improving the human condition, have nonetheless "gone tragically awry."[100] Factors that enable this to occur include:

1. implementation of programs aimed at the simplification of administration of territory and population (imposing last names, changing land tenure patterns, forcing sedentarization);
2. adoption by the state of the "high-modern ideology," defined as excessive self-confidence regarding scientific and technical progress;
3. the existence of an authoritarian state willing to use its full power to implement the plans born of the high-modernist ideology;
4. a civil society that lacks the capacity to resist these plans.[101]

The first three factors appear to apply with respect to the internal displacement of the Innu. Displacement occurred for the purposes of development and assimilation, and can be understood as having had destructive effects for them. Clearly, the state sought to claim Innu territory and attempted to control its administration. Successive federal and provincial governments were able to control the Innu of Labrador by resettling them in villages, fettering their attempts at self-government and stifling their land claims. The state also embraced "high modern ideology" in this case by favouring and promoting the flooding of traditional hunting grounds and cemeteries for large-scale development of hydroelectric projects, for which the Innu received no compensation nor any of the profits. At the same time, the state is reinforcing progress by robbing Innu people of the means to follow traditonal lifestyles through forced sedentarization in villages. Not only is the state confident in the righteousness of this process, but it is willing to use its power to implement the change; traditional lifestyles are equated with backwardness and the adoption of western lifestyles as part of village living is considered progressive. This is evident through sanctions imposed on those who demonstrate resistance by enforcing arbitrary hunting rule violations and openly discouraging excessive time spent in traditional practices.

It is with regard to the final factor that the Innu do not closely follow Scott's conceptions. In order for development plans to be completely disastrous, a passive civil society must exist and be incapable of resisting. However, the Innu have demonstrated that they are not altogether passive recipients of modern development and are beginning to find their collective voice. For Brand's purposes, civil society is defined as the

> …*realm of organized social life that is voluntary, self-generating, (largely) self-supporting, autonomous form the state and bound by a legal order or set of shared rules.* It is distinct from "society" in general in that it involves *citizens acting collectively in a public sphere* to express their interests, passions, and ideas, exchange information, achieve mutual goals, make demands on the state and hold state officials accountable.[102]

The emergence of civil society in Innu culture has been a relatively recent phenomenon. This may be due in part to the reticence of Innu people to "push themselves forward."[103] Within Innu culture, aggressively voicing dissident opinions is believed to spark conflict and thus should be avoided. However, their passive acceptance of change came to an abrupt halt in 1980 when the first Innu protests began against military activity over low-level flight training at Goose Bay.

NATO air-force exercises, consisting of low-level flight training, air-defence exercises, and bombing practices over Innu land, were intiated in 1979 and continue to be highly problematic. The effects of such practices include loud and sudden screeching noises and deafening booms occurring hundreds of times a day, which have profound effects not only on the Innu people, but also on wildlife. There have been reports that, since these practices have begun, numbers of certain wildlife have been reduced and the behaviour of key species, such as caribou and beaver, have been altered.[104] The disruptive impact of these practices has been felt most explicitly in the heart of *nutshimit* (the bush), where traditional practices take place. Moreover, the Innu people have collectively expressed their dissatisfaction with the military training through a series of orchestrated demonstrations, court challenges, and occupations. Additionally, they have been able to garner international support for their cause through effective lobbying and media attention. It is through these actions that Innu citizens of Labrador, functioning as a civil society, have been able to effectively resist "progress" enforced on them by the state, in turn mitigating the effects of development through their continued resistance. In recent years, evi-

dence of further Innu resistance has been seen against the imposition of restrictions on hunting, on gaining increased control over their children's education, as well as protesting logging road construction, further flooding for hydroelectric development, and expropriation of land for nickel mining.[105] This continued resistance not only serves to diminish the harms of past actions, but also empowers the Innu to work towards establishing a strong and united community.

Conclusions

Discussions around the issue of forced displacement are often kept out of human rights discourses, and traditionally such issues have not been debated as human rights problems.[106] However, by definition, displaced persons have been removed from their home and/or land against their will and have lost the protection of certain basic rights. Moreover, on the international scale, no body exists to monitor displacement as a human rights violation or to monitor the rights of refugees and internally displaced persons.[107] Given the vulnerable position of many displaced persons, including those living within the borders of their countries of origin, such as the Innu, it would appear that special protections of their rights is essential.

In theory, the Convention could well serve the role of guiding the actions of the Canadian government in protecting the rights of Aboriginal children in Canada. However, in practice, Canada's compliance with the Convention, particularly when considering the reality of Innu children, remains questionable. One obvious way for the Canadian government to improve the plight of the Innu and its children would be to include the Innu of Labrador under the Indian Act, allowing them to gain equivalency rights as Aboriginal people. While clearly not a solution, revising the Indian Act to include the Innu within its mandate, could be a first step in improving the economic and social conditions of Innu communities and empowering the Innu to control their own affairs.

The Innu have demonstrated that they are no longer willing to accept policies and practices of the federal and provincial governments that ignore their fundamental rights. A renewed resistance is beginning to surface regarding a proposal by the provincial government for a possible third forced migration of the people of Davis Inlet. Forced displacement has devastating, long-term effects on many generations of displaced people. It is therefore imperative that the needs of the Innu take precedence. It would be a disservice to Innu children to ignore this opportunity.

Notes

1. B. Nurcombe, G. Bianchi, J. Money, and J. Cawte, "A Hunger for Stimuli: The Psychosocial Background of Petrol Inhalation," *British Journal of Medical Psychology* 43 (1970): 367–74.
2. R. Cohen and G. Sanchez-Garzoli, "Internal Displacement in the Americas: Some Distinctive Features," an occasional paper (New York: Brookings CUNY Project on Internal Displacement,2001); F.M. Deng, *Specific Groups and Individuals: Mass Exoduses and Displaced Persons*, Report of the Representative of the Secretary General on Internally Displaced Persons (Submitted pursuant to the United Nations Committee on Human Rights Resolution 2000/53, 2001); A. Helton, "Displacement and Human Rights: Current Dilemmas in Refugee Protection," *Journal of International Affairs* 47 (1994): 379–98; M. Stavropoulou, "Displacement and Human Rights: Reflections on UN Practice," *Human Rights Quarterly* 20 (1998): 515–54.
3. Toronto Star, "Canada Now Third in UN Rating," 3 July 2001.
4. S. Loring, "Keeping Things Whole: Nearly Two Thousand Years of Indian (Innu) Occupation of Northern Labrador," *Boreal Forest and Sub-Arctic Archaeology* 6 (1988): 157–82.
5. C. Samson, J. Wilson, and J. Mazower, *Canada's Tibet: The Killing of the Innu* (London: Clement and Foster, 1999).
6. Innu Nation Community Research Project, *Gathering Voices: Discovering Our Past, Present, and Future* (Nitassinan, 1993).
7. Samson, Wilson and Mazower.
8. M. Wadden, *Nitassinan: The Innu Struggle to Reclaim Their Homeland* (Vancouver: Douglas and McIntyre, 1991).
9. Stavropoulou.
10. Although this section deals specifically with the experience of forced migration of the Innu of Davis Inlet, it should be noted that the Innu of Sheshatshiu have also suffered from the effects of forced migration.
11. D. McRae, *Report on the Complaints of the Innu of Labrador to the Canadian Human Rights Commission* (Ottawa: University of Ottawa, 1993).
12. *Ibid.*
13. Samson, Wilson, and Mazower, 17.
14. McRae.
15. *Ibid*.
16. *Ibid*.
17. Innu Nation and the Mushuau Innu Band Council, *Gathering Voices: Finding Strength to Help Our Children* (Nitassinan: Utshimassits, 1992).
18. Samson, Wilson, and Mazower; Wadden.
19. Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples* (Ottawa: Ministry of Supply and Services Canada, 1996).
20. *Ibid.*
21. Samson, Wilson, and Mazower, 19.
22. Royal Commission on Aboriginal Peoples, 1996.
23. Samson, Wilson, and Mazower, 13.
24 Royal Commission on Aboriginal Peoples, 1996.
25. Samson, Wilson, and Mazower, 23.
26. Wadden.
27. *Ibid.*, 65.
28. *Ibid.*

29. Samson, Wilson, and Mazower, 21.
30. Complete reliance on a traditional lifestyle may not be practical in modern society. However, decisions regarding choice of lifestyle should, ideally, be left to the Innu.
31. Wadden.
32. Wadden.
33. Wadden, 55.
34. Department of Indian and Northen Affairs, 1996.
35. Assembly of First Nations, *Fact Sheet: Socio-economic Exclusion of First Nations in Canada* (Ottawa: Ministry of Supply and Services, 2001a).
36. Royal Commission on Aboriginal Peoples, 1996.
37. *Ibid.*
38. Royal Commission on Aboriginal Peoples, *Choosing Life: Special Report on Suicide among Aboriginal People* (Ottawa: Ministry of Supply and Services Canada, 1995).
39. Royal Commission on Aboriginal Peoples, 1996.
40. S. Manson, L. Ackerson, D. Wiegman, A. Baron, and C. Fleming, "Depressive Symptoms among American Indian Adolescents: Psychometric Characteristics of the Center for Epidemiologic Studies Depression Scale," *Psychological Assessment: A Journal of Consulting and Clinical Psychology*, 2, no. 3, (1990): 231–37.
41. Royal Commission on Aboriginal Peoples, 1996.
42. Royal Commission on Aboriginal Peoples, 1996.
43. M. Gagne, "The Role of Dependency and Colonialism in Generating Trauma in First Nations Citizens: The James Bay Cree," in *Intergenerational Handbook of Multi-generational Legacies of Trauma*, ed. Y. Danieli (New York: Plenum, 1998); G. York, *The Dispossessed: Life and Death in Native Canada* (London: Vintage UK, 1990).
44. Wadden.
45. Samson, Wilson, and Mazower.
46. W. Warry, "Unfinished Dreams: Suicide, Self-determination and Healing in Aboriginal Communities," draft research study (Ottawa: Royal Commission on Aboriginal Peoples, 1993).
47. L. Kirmayer, B. Hayton, M. Malus, V. Jimenez, D. Dufour, C. Quesney, Y. Ternar, T. Yu, and N. Ferarra, "Suicide in Canadian Aboriginal Populations: Emerging Trends in Research and Intervention," draft research study (Ottawa: Royal Commission on Aboriginal Peoples, 1993).
48. Warry.
49. Samson, Wilson, and Mazower.
50. *Ibid.*
51 Royal Commission on Aboriginal Peoples, 1995, 10.
52. Royal Commission on Aboriginal Peoples, 1995.
53. Gagne.
54. Manson, Ackerson, Wiegman, Baron, and Fleming.
55. S. Manson, J. Beals, T. O'Nell, J. Piaseki, D. Bechtold, and E. Keane, "Wounded Spirits, Ailing Hearts: PTSD and Related Disorders among American Indians," in *Ethnographic Aspects of Posttraumatic Stress Disorder: Issues, Research and Clinical Applications*, ed. A. Marsella, M. Friedman, E. Gerrity, and R. Scurfield (Washington: American Psychological Association, 1996).
56. T. O'Nell, "Psychiatric Investigations among American Indians and Alaska Natives: A Critical Review," *Culture, Medicine and Psychiatry* 13 (1989): 58–87.
57. B. Raphael, P. Swan, and N. Martinek, "Intergenerational Aspects of Trauma for Australian Aboriginal People," in *Intergenerational Handbook of Multi-generational Legacies of Trauma,* ed. Y. Danieli (New York: Plenum, 1998).
58. Gagne.
59. Assembly of First Nations, *Fact Sheet: Sudden Infant Death Syndrome (SIDS)*, (Ottawa: Ministry of Supply and Services, 2001b).
60. Samson, Wilson, and Mazower.
61. Gagne; York.
62. Royal Commission on Aboriginal Peoples, 1995, 8.
63. M. Howard, R. Walker, P. Walker, L. Cottler, and W. Compton, "Inhalant Use among Urban American Indian Youth," *Addiction* 94, no. 1 (1999): 83–95.
64. *Ibid;* Gagne.
65. York.
66. B. Gfellner and J. Hundleby, "Patterns of Drug Use among Native and White Adolescents: 1990–1993," *Canadian Journal of Public Health* 86 (1995): 95–97.
67. R. Smart, "Inhalant Use and Abuse in Canada," in *Epidemiology of Inhalant Abuse: An Update*, eds. R. Crider and B. Rouse (Rockville, MD: NIDA, 1988).
68. York.
69. York.
70. E. McGarvey, R. Canterbury, and D. Waite, "Delinquency and Family Problems in Incarcerated Adolescents with and without a History of Inhalant Use," *Addictive Behaviors* 21 (1996): 537–42.
71. W. Compton, L. Cottler, S. Dinwiddie, D. Mager, and G. Asmus, "Inhalant Use: Characteristics and Predictors," *American Journal on Addictions* 3 (1994): 263–72; B. Reed and P. May, "Inhalant Abuse and Juvenile Delinquency: A Control Study in Albuquerque, NM," *International Journal of the Addictions* 19 (1984): 789–803.
72. S. Dinwiddie, "Abuse of Inhalants: A Review," *Addiction* 89 (1994): 925–39; Howard et al.; York.
73. As quoted in York.
74. M. Fox, "Frozen Out," *Sydney Morning Herald*, 2 February 2001.
75. As noted by Neuwelt et al. (P. Neuwelt, R. Kearns, D. Hunter, and J. Batten, "Ethnicity, Morbidity and Health Service Utilization in Two Labrador Communities," *Social Sciences and Medicine* 34, no. 2 [1992]: 151–60), native statistics in the province of Newfoundland and Labrador continue to be pooled with those of the rest of the province. This reality ultimately masks the distinctive health experiences of the Innu and explains the difficulty in obtaining statistical data concerning the problem of gas-sniffing and suicide among Innu children.
76. M. MacDonald, "Last of Gas-sniffing Innu Slated to Leave Detox Facility in Newfoundland," *The Canadian Press,* 23 April 2001.
77. M. Wadden, Interview with Shelagh Rogers, *This Morning,* Canadian Broadcasting Corporation, 13 March 2001.

78. B. Sweet, "Staff Say Program Failed at Newfoundland Detox Facility for Gas-sniffing Innu," *The Canadian Press*, 9 June 2001.
79. Royal Commission on Aboriginal Peoples, 1995, 29.
80. Royal Commission on Aboriginal Peoples, 1996.
81. Royal Commission on Aboriginal Peoples, 1995, 2.
82. Department of Indian and Northern Affairs, 1996.
83. S.J. Toope, "The Convention on the Rights of the Child: Implications for Canada," in *Children's Rights: A Comparative Perspective*, ed. E. Freeman (Aldershot, UK: Dartmouth Publishing, 1996).
84. D. Haydon and P. Scraton, " 'Condemn a Little More, Understand a Little Less': The Political Context and Rights Implications of the Domestic and European Rulings in the Venables-Thompson case," *Journal of Law and Society* 27, no. 3 (2000): 416–48.
85. Toope, 39.
86. Toope, 45.
87. The Canadian government also entered a reservation to section 21 for Aboriginal children. This section ensures that the best interests of children are respected regarding adoptions. The reasons for this reservation relate to the many historical abuses of adoption laws that facilitated the removal of Aboriginal children from their homes.
88. Samson, Wilson, and Mazower, 22.
89. Toope, 39.
90. Toope, 51.
91. *Gathering Strength: Canada's Aboriginal Action Plan* (Ottawa: Ministry of Supply and Services, 1998).
92. J. Wherrett, *The Indian Act: Proposed Modifications* (Ottawa: Library of Parliament, 1997).
93. Royal Commission on Aboriginal People, 1996.
94. R. Armitage and J.C. Kennedy, "Redbaiting and Racism on Our Frontier: Military Expansion in Labrador and Quebec," *Canadian Review of Sociology and Anthropology* 26, no. 5 (1989): 798–817.
95. Wadden.
96. McRae.
97. Samson, Wilson, and Mazower, 28.
98. L.A. Brand, "Displacement for Development: The Impact of Changing State-Society Relations," *World Development* 29, no. 6 (2001): 961–76.
99. J. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1998).
100. As quoted in Brand, 961.
101. Scott.
102. L. Diamond, "Rethinking Civil Society: Toward Democratic Consolidation," *Journal of Democracy* 5, no. 7 (1994): 4–17 [italics original].
103. Samson, Wilson, and Mazower, 17.
104. *Ibid.,* 31.
105. *Ibid.,* 34.
106. Stavropoulou.
107. *Ibid.*

Myriam Denov holds a Ph.D. in Criminology from the University of Cambridge. She is currently an Assistant Professor in the Department of Criminology, University of Ottawa.

Kathryn Campbell holds a Ph.D. in Criminology from the University of Montreal. She is currently an Assistant Professor in the Department of Criminology, University of Ottawa.

The Rights of Internally Displaced Children: Selected Field Practices from UNICEF's Experience

Subajini Mahalingam, Geeta Narayan, and Esther van der Velde

Abstract

Displacement is a critical humanitarian issue—forty million people are displaced as a result of conflict and other humanitarian crises. Approximately half of the world's displaced persons are children. Children in flight are at greater risk of malnutrition and disease, physical danger, and psychological trauma. Many do not survive. When they do, their ability to lead normal lives is greatly impaired—many have no access to education and health care. This paper examines selected examples from UNICEF's work in the field with internally displaced persons. UNICEF's work with internally displaced children and families focuses on four areas: (1) advocacy, (2) assessment, (3) care, and (4) protection. Conclusions and recommendations are presented drawing from the field practices.

Résumé

Les personnes déplacées représentent un problème humanitaire critique—40 millions de personnes sont déplacées par suite de conflits et autres crises humanitaires. Environ la moitié des personnes déplacées dans le monde sont des enfants. Les enfants en fuite sont beaucoup plus vulnérables à la malnutrition et aux maladies, aux dangers physiques et au trauma psychologique. Beaucoup d'entre eux ne survivent pas. Ceux qui s'en sortent se retrouvent avec des chances diminuées de pouvoir vivre une vie normale—beaucoup d'entre eux n'ont pas accès à l'éducation et aux soins de santé. Cet article examine des exemples sélectionnés du travail accompli sur le terrain par UNICEF auprès des personnes déplacées. Le travail de UNICEF avec des enfants et des familles déplacés est axé autour de quatre domaines : 1) la défense de leurs droits ; 2) l'évaluation ; 3) le soin ; et 4) la protection. Des conclusions et des recommandations basées sur la pratique sur le terrain sont aussi présentées.

Introduction and Background

Displacement is one of the critical humanitarian issues of our time. Today about one in every 150 people on earth—a total of forty million—is displaced by conflict or human rights violations. Internally displaced persons (IDPs), those who remain within their own borders, constitute two-thirds of the total. Approximately half of all displaced persons—twenty million—are children.[1] The impact of displacement on children cannot be underestimated: many die within the first days and weeks of displacement due to malnutrition and diseases, especially measles, diarrheal diseases, respiratory infections, and malaria. Children in flight are exposed to physical danger—they may be separated from their families, physically abused, exploited, or abducted; many internally displaced children lose their chances of getting an education, proper nutrition, and health care.

The purpose of this paper is to highlight selected examples from UNICEF's experience working with IDPs in a range of countries, with a view to identifying lessons that could be used to improve future work in this area. It is hoped that the paper will be a starting point for further reflection and analysis by the international community on current initiatives designed to improve the lives and fulfill the rights of IDP children.

The Situation of Internally Displaced Persons

Internally displaced persons are defined as those who have been forced to flee their homes of habitual residence, in particular as a result of or in order to avoid the effects of armed conflicts, situations of generalized violence, violations of human rights, or natural or man-made disasters, and who have not crossed an internationally recognized border.[2] One issue which remains unaddressed by this internationally accepted definition of IDPs is the question of when one's status as an internally displaced person ends; governments, humanitarian organizations, and IDPs themselves all have different interpretations of when displacement (or the effects of displacement) ends. The question of definition has implications for IDPs' access to limited resources, humanitarian agencies' response to emerging/recurring crises, the implementation and enforcement of national legal standards, and the long-term stability and identity of IDPs.

The internally displaced are often more vulnerable than those who choose to remain in their places of origin since they are separated from almost all of their usual support systems. Without the structure and nurturing environments of their home communities, they are more susceptible to arbitrary action by those claiming authority, more liable to suffer forced conscription or sexual abuse, and more regularly deprived of food, water, health care, and other essentials. The internally displaced exist in a legal limbo and are often relatively invisible, even though human rights laws and domestic standards apply equally to them. Though they remain under the jurisdiction of their own government, that government may be unwilling or unable to provide protection and services to facilitate access by others. The displaced may be concentrated in camps or large groups. They may need to locate in urban perimeter housing, with relatives, scattered within the general population, or in hiding, further diminishing visibility and access.

An estimated half of all internally displaced persons are children, uprooted during a particularly vulnerable period of their lives.[3] Repeated displacement can increase mortality rates by as much as 60 per cent.[4] Conditions of displacement put at high risk the entire range of rights guaranteed children by the Convention on the Rights of the Child (CRC), including survival, protection, and development. Displaced children may be denied the right to education due to a lack of proper documentation, inability to pay school fees, or their status as non-residents of the area. In Mongolia, many displaced children do not have access to education for these reasons. In Sudan, while malnutrition rates in famine areas decreased, they doubled among the IDP population in 1999.[5]

In addition to difficulties faced by all displaced children, particular groups of children may confront especially traumatic conditions. These include unaccompanied minors, child soldiers, sexually exploited children, children who have witnessed great trauma, girls, and children with disabilities. For example, in Mozambique, displaced children who became soldiers experienced additional threats to their well-being, and required special activities to help them reintegrate into the lives of their families and communities after the end of the conflict. In addition to increasing immediate risks to children, displacement has an effect on children's long-term development, increasing the risk of poverty resulting from the loss of land, inheritance, or other legal rights; incarceration or discrimination; and inability to resume schooling.

The International Response

The international response to the internally displaced has historically been fragmented and inadequate. However, the international community has recently taken significant steps to improve its response to IDPs, in terms of institutional and operational coordination.

Under international human rights law, internally displaced persons are guaranteed the same fundamental rights and freedoms as the non-displaced. However, displacement often results in greater vulnerability to human rights violations and less ability or willingness by authorities to monitor and enforce compliance with legal standards.

In 1992, as the international community began to more fully appreciate the situation of IDPs globally, the UN Secretary-General appointed Dr. Francis Deng as his Representative on Internally Displaced Persons. As part of his mandate, Dr. Deng has conducted extensive research into the issues and challenges facing IDPs and the legal framework for their protection, and has undertaken several country-specific missions to monitor the situation of IDPs directly. One of Dr. Deng's most significant contributions has been the development in 1998 of the UN Guiding Principles on Internal Displacement, based on his research into the existing legal protection framework for IDPs.

The Guiding Principles represent an attempt to fill an identified gap in international law. They consolidate into one document the relevant rights and norms applicable to IDPs and provide a practical tool for implementation for governments and humanitarian organizations. Although not legally binding themselves, the Guiding Principles are based on international legal standards and principles which are binding. The publication of the Guiding Principles is a useful step in increasing governments' accountability for IDPs and in bringing coherence to the international community's actions vis-à-vis IDPs.

The Guiding Principles specifically mention children, expectant mothers, mothers with young children, and

female heads of households as groups that should be entitled to special protection and assistance by virtue of their unique needs or vulnerabilities. Displaced children are accorded special protection in several of the principles, including principle 11 (protection from forced labour) and principle 13 (protection from recruitment and participation in hostilities). Children's right to education is recognized in principle 23, with a special emphasis on women and girls. Taken together, the Guiding Principles provide a strong, comprehensive normative framework for the protection and assistance of internally displaced children.

Motivated by a desire to strengthen the international response to IDPs, the Inter-Agency Standing Committee (IASC) of the UN established a Senior Inter-Agency Network on Internal Displacement in July 2000. Consisting of focal points from the IASC member organizations, including UNICEF, the Network has a mandate to review selected countries with internally displaced populations, and to make proposals for an improved international response to their needs, including improvements in the inter-agency approach to IDPs. Since its establishment, the Network has undertaken field visits to Afghanistan, Angola, Burundi, Colombia, Eritrea, and Ethiopia. The Network identified a number of areas in which the international response has been less than adequate. It found great inconsistency in defining and counting IDPs in different countries; age and sex-disaggregation of data on IDPs is very weak. Many governments fail to honour their responsibility to fully meet the protection and assistance needs of IDPs; as a result, assistance provided by international agencies can inadvertently substitute for government action. The response to IDPs' protection needs at the field level, coordinated by the UN Resident Coordinator/ Humanitarian Coordinator, has not been consistent. Part of the reason for this has been a lack of sustained donor funding to IDP issues, especially to fill the "gap" between humanitarian assistance and longer-term development assistance into which IDPs often fall. The Network also identified the need to strengthen the UN system's capacity, both at field level and at Headquarters, to meet the needs of IDPs.

Partly in response to the Network's recommendations, a special unit for IDP issues is being set up in the UN Office for the Coordination of Humanitarian Assistance (OCHA). The unit, which will be operational in January 2002 with staff seconded from UN agencies and NGOs, is tasked with monitoring situations of internal displacement globally; undertaking systematic reviews of selected countries and proposing revised approaches; providing training, guidance, and expertise; mobilizing resources to address the problem of short-term funding by donors for what are essentially long-term issues for IDPs; advocating globally on behalf of IDPs; and developing further inter-agency policy on IDP issues.

UNICEF welcomes the establishment of the IDP Unit within OCHA, not only because it will contribute to strengthening inter-agency coordination around this critical issue, but also because it may, through improved coordination and resource mobilization, increase the quality and quantity of activities to protect and support IDP children. The Unit may also act as a catalyst to address the other major constraints humanitarian organizations have faced in their work with IDPs, namely, lack of safe and unhindered access to IDPs, an absence of political commitment to address IDP issues (i.e., denial by governments of the existence of IDPs within their borders), staff safety and security, and the dire shortage of resources to meet the needs of IDPs beyond the immediate life-threatening crisis which forces them to flee their homes.

UNICEF's Response

Within the broader UN system response to IDPs explained above, UNICEF aims to address the needs of IDP children. Using the Convention on the Rights of the Child, international law, and the Guiding Principles on Internal Displacement as its starting point, UNICEF strives to ensure that children displaced under emergency conditions have the same rights to survival, protection, and development as other children. UNICEF's work for internally displaced children does not, of course, take place in a vacuum. The support of its partners, both governmental and non-governmental, local and international, is critical in ensuring the success of UNICEF's efforts to support and protect IDP children. UNICEF's work for internally displaced children can be grouped into the following four areas: advocacy, assessment, care, and protection.

Advocacy for IDP Children. UNICEF seeks to advocate at the community, national, and international levels to ensure that the special needs of displaced girls and boys are consistently brought to the attention of national leaders, international organizations, the media, donors, parties to the conflict, and other audiences. Effective advocacy should be built on accurate data collection, assessment, monitoring, and reporting and may include: (1) regular reporting on the conditions of the displaced; (2) public education efforts internally and abroad; (3) engagement of the media; (4) preparation of publications or videos; (5) actions to strengthen the Convention on the Rights of the Child (CRC); (6) making IDP communities themselves aware of their rights; (7) representations to national authorities; (8) representations to donors; (9) mobilizing partner organizations; (10) advocacy at the highest political level; and (11) ensuring

that organizations working with the IDP community in general focus on special needs of children. Advocacy work may not be easy. Especially when displacement is associated with membership in an identifiable religious, ethnic or political group that is party to a conflict, advocacy on behalf of the displaced may engender opposition, including from the host government and other program partners.

Assessment. Assessment, monitoring, and evaluation activities are the foundation of sound programs as well as the basis of effective policy and advocacy. Good assessment planning should include the following: (1) the development of indicators of potential displacement; (2) pre-displacement assessments to establish baselines; (3) designing assessment tools with maximum flexibility to take into account the unstable nature of displacement; (4) planning to assess area of return or resettlement; (5) the inclusion of protection issues in assessments; (6) attention to cultural factors during assessments; (7) involvement of displaced including children recognizing limitations to open participation; (8) coordination of assessment efforts with partners.

Care. As part of its work to care for displaced children, UNICEF tries to support them, their families, and communities through actions to restore psychosocial health, maternal and child health care (including the prevention of malnutrition and childhood diseases), schools, water supply and sanitation systems, cultural activities, and self-supporting economic activities at the displacement site. When security can be assured, UNICEF also contributes to mobilizing communities for voluntary return. UNICEF works to promote emergency care for IDP children through a number of different activities, including, for example: (1) preplanning and coordination; (2) anticipation of and budgeting for extraordinary efforts to meet the needs of displaced children; (3) liaising with traditional and non-traditional partners; (4) interventions to support community structures; (5) planning for the possibility of family dispersion; (6) identification of high-risk groups; (7) optimizing the location of displacement; (8) planning for voluntary return, (9) mobilization of resources within the displaced population; (10) education; (11) avoiding stigmatization of the displaced; (12) psychosocial programming; and (13) health programming.

Protection. Internally displaced girls and boys are highly susceptible to violence, exploitation, abuse, rape, and recruitment into armed forces. UNICEF works to protect children from these threats to their well-being, for example, by promoting children as a "zone of peace," increasing their physical security in camps and other settings, and advocating with armed groups about children's rights. Protection activities could include: (1) periods of ceasefire or "days of tranquility" to organize services for children, typically vaccination campaigns, or designated specific access routes as "corridors of peace" for the delivery of needed supplies; (2) the provision of basic identity and registration documents; (3) land-mine awareness; (4) demobilization and reintegration of child soldiers; (5) protection against sexual violence and exploitation; and (6) actions to preserve the cultural and linguistic rights of children.

Selected UNICEF Field Practices

This section presents some examples from the field with a view to distilling some general lessons and indications of future directions for action in this area.

Advocacy. The objective of advocacy is to ensure that the special conditions and needs of displaced children are consistently brought to the attention of national leaders, international organizations and forums, the media, donors, parties to the conflict, and other audiences through presentations, reports, and other dissemination tools. Advocacy actions may include:

Strengthening Respect for the Convention on the Rights of the Child. The Convention on the Rights of the Child is the starting point for UNICEF's strategy to ensure that IDP children have the same rights as other children. UNICEF promotes a wide range of advocacy, awareness-raising, education and training activities, and widely disseminates information on the Convention on the Rights of the Child and other relevant international standards. The NGO Save the Children and UNICEF held a workshop in Afghanistan in 1999 to mark the occasion of the tenth anniversary of the CRC. The workshop was successful in that local (de facto) authorities, including religious leaders, attended. Humanitarian organizations strongly promoted the workshop within the community and the authorities became very interested. It was made known that the CRC had been translated into the local language and was going to be distributed—but that copies of the translated version would be made available only to those who attended the workshop. Since the authorities did not know what the CRC was about, they decided to attend the workshop. By the end of the training, the authorities began asking questions and showing interest in the issues.[6]

The lack of awareness of children's rights standards constitutes a fundamental obstacle to their implementation. By organizing this workshop and by disseminating the Convention on the Rights of the Child, UNICEF and Save the Children contributed to creating a protection environment in which violations can be prevented or mitigated.

Advocacy to Target National Leaders. In conditions of internal displacement, national authorities retain the primary duty and responsibility for the well-being of IDPs. Although advocacy can be addressed to multiple audiences inside and outside the country, an important focus of the advocacy should be on those leaders who have the authority and responsibility to address the conditions of the displaced, to prevent abuses of children, to guarantee access to the displaced, to permit IDPs to return voluntarily to their communities, and to address underlying causes of displacement. In Sri Lanka, UNICEF advocated with the national authorities for the right to education of displaced children. Displaced and returnee children attempting to re-enter school, often in environments where facilities are crowded and teacher shortages are common, can face significant barriers to enrolment. Lack of school uniforms, inability to pay fees, registration or documentation problems, malnourishment, stigmatization, and resistance by local communities already facing shortages all lessen the likelihood that displaced children will be permitted to continue with their education.

UNICEF and program partners in Sri Lanka undertook advocacy campaigns with local and national authorities to break down barriers to education for displaced children. Partly as a result of such advocacy, the Sri Lankan Ministry of Education issued a national circular aimed at lifting registration barriers, and UNICEF financially supported training for teachers regarding the special needs of children who had lost several years of education during their displacement.[7]

Authorities, donors, opinion leaders, and other advocacy audiences concerned about emergency conditions in the country may understand shortfalls in food, medicine, shelter, and other essentials. Few will fully realize the assault on other rights children have, such as the right to education. The result of this advocacy with the national authorities was that their attention was drawn to the right to education of IDP children and the government initiative created an enabling environment for efforts to enrol displaced children in school.

Advocacy at the Highest Political Level. In recent years, the Security Council has adopted a number of important resolutions for the protection of children by armed conflict, such as Resolutions 1265 (1999) and 1296 (2000) on the Protection of Civilians in Armed Conflict and Resolutions 1261 (1999) and 1314 (2000) on Children Affected by Armed Conflict. Many of the provisions in the Security Council resolutions have been used in advocacy efforts in the field. For example, in its Resolution 1355 (2001) on the situation in the Democratic Republic of the Congo, the Council called upon all relevant parties to ensure that urgent child protection concerns, including DDRR (Disarmament, Demobilization, Rehabilitation, and Reintegration) of child soldiers, were addressed in all national, bilateral, and regional dialogues, and that child soldiers were expeditiously demobilized. The Security Council also condemned the use of child soldiers, demanding that all armed forces and groups concerned bring an end to all forms of recruitment, training, and use of children, and called upon all parties to collaborate with the UN, humanitarian organizations, and other competent bodies to ensure the expeditious demobilization, rehabilitation, and reintegration of children abducted or enrolled in armed forces or groups and to allow their reunification with their families.[8] The Security Council resolutions have been used in advocacy efforts in the field, by UNICEF and others. For example, the resolutions on the Democratic Republic of Congo were used as part of a broader advocacy strategy to secure the release of child soldiers in the Great Lakes Region. This example illustrates how a resolution from the highest political body of the United Nations can exert political pressure and can be used at field level for advocacy.

Advocacy to Mobilize Resources. Interventions reaching the displaced inherently require substantial resources, both human and financial. Yet, the displaced benefit from few dedicated funding streams, and donors may be hesitant to commit resources to populations on the move or in hiding. In part, therefore, advocacy efforts must be planned with the goal of raising donor awareness in order to guarantee needed resources. In addition to raising donor awareness, UNICEF can assist IDP children by encouraging agencies to examine children's issues within their respective mandates. UNICEF, in its discussions with other agencies and NGOs, has reached agreements that other organizations, too, should include in their monitoring activities the rights covered by the CRC. In this way, it is possible to leverage resources from non-child-specific humanitarian organizations to improve the situation of displaced children. Resources well spent are, therefore, necessarily focused on initiating and coordinating activities by other actors.[9]

Although more than 50 per cent of humanitarian response is intended for children and women, children's issues are often compartmentalized within humanitarian agencies. The mobilization of resources among UN agencies creates a focus on children and women within the humanitarian response, generating better coordination within and between agencies and making more resources available for children and women.

Assessment

The circumstances of displacement make difficult the collection of accurate data, especially in conditions of

conflict or repeated displacement. Determining the status of internally displaced children may require special efforts to overcome limits to access, uncertain legal standing, or simply difficulty in finding displaced children and following their condition over time. Planning for and allocating resources to accurate, timely, and current assessment are critical to effective interventions on behalf of internally displaced children.

Baseline Assessments and Indicators of Potential Displacement. In Colombia, prolonged conflict and instability leave many communities prone to displacement. A Colombian research institute, Consultorio para los Derachos Humanos y el Desplazamiento (Human Rights and Displacement Consultancy or CODHES), with support from UNICEF, the European Community Humanitarian Office (ECHO), and other international organizations, developed an early warning system that could be used to indicate potential displacement. Using community-level "sentinel sites," they gathered indicators that suggest increased likelihood of displacement within a given geographic area. The data was shared with community leaders, officials, and organizations working with the displaced in order to generate prevention measures or to spur contingency planning activities where necessary. In addition, the early warning systems helped establish baselines to measure the effect of program interventions intended to benefit internally displaced persons.[10]

Knowledge of the risk of displacement can help prevent displacement, limit its scope, or at a minimum assist in an effective emergency response. Planning ahead can help ensure the procedures that take into account children's needs and protection concerns, which can otherwise be forgotten in the chaos of an emergency evacuation. In this case, the information was shared back with community leaders and organizations, allowing them to mobilize in preparation.

Assessing IDP Sociodemographics. In 1996, UNICEF in Angola, along with the United Nations Development Programme (UNDP) supported the government's National Institute of Statistics (NIS) in conducting a multi-province sociodemographic study of the displaced population in Angola. This was done with the co-operation of the National Union for the Total Independence of Angola (UNITA). Part of the success of the study was the multi- level approach which involved the participation of all the actors on the ground—including non-state actors such as UNITA. This was crucial to get a complete picture of internal displacement in areas both under government and non-government control.

Prior to this data collection activity, information on the over one million displaced persons in Angola was fragmentary, especially with respect to location and condition of displaced persons. Meeting issues of care, protection, and return proved difficult given such sparse data. The results of the assessment helped to bridge this gap. More significantly, agencies were able to identify concentrations of women, teenagers, and girls by looking at the data in relation to age and sex.[11] Such a disaggregation of data is extremely important for isolating statistics on children and their caregivers (primarily women). In the Angolan study, the information allowed for a more precise targeting of program efforts aimed at women's status and needs (and, as a consequence, that of children). It also stressed the importance of ensuring women's participation in decision-making processes affecting the Angolan displaced. The exercise thus illustrates how good assessment can help in the design of targeted and effective programs.

Coordination of Assessment Efforts. During emergencies when thousands of people may be displaced, conducting situation assessments can be expensive, difficult, and time-consuming. To maximize available resources and therefore efficiency, prevent duplication of work, and avoid conflicting or incompatible data (which tends to occur as agencies respond to their separate notions of the emergency), efforts should be coordinated. UN and other agencies should agree on and set common standards for data collection to ensure greater inter-agency compatibility. They should also coordinate their activities such as initial assessments and establishment of monitoring systems, so agencies complement each other in their work.

In Burundi, UNICEF, the World Food Program (WFP), the Food and Agriculture Organization (FAO), representatives of the Ministries of Health and Agriculture, and NGOs working in the country held a workshop to discuss information needs related to food security.[12] The Guiding Principles on Internal Displacement set forth the right to an "adequate standard of living," which includes "safe access to essential food…." However, malnutrition and food insecurity were high among displaced communities in Burundi, with 15 to 24 per cent of children under five malnourished.[13] Malnutrition compounded with instability of displacement leaves children unable to resist attack by disease and by infection from poor sanitation and contaminated water supplies, increasing risk of death by eight times. Tackling the problem effectively required a collaboration of efforts, especially among the UN agencies. The inter-institutional consultation brought together stakeholders and defined standard mechanisms and appropriate data gathering techniques to assist with appropriate food security and nutrition strategies. The workshop made great strides to ensuring quality assessments and thus targeted programming for the delivery of assistance.

Care

Care of internally displaced children focuses on all activities that promote the physical and psychological well-being of a child. To this end, UNICEF, through its programming, collaboration and advocacy, attempts to ensure that nutrition, water, hygiene, health, psychosocial, education, and non-food relief services reach children. This is true for all target displaced groups—whether they have relocated away from their communities, are in a transient or camp status, or are on the move.

Emphasizing Family Unity. Maintaining the family unit ensures to a large degree that children have the best physical care and emotional security. Trauma experienced by children upon separation from their family is often greater than the trauma of remaining with the family in an area affected by hostilities. During the war in Bosnia and Herzegovina, and later during the genocide in Rwanda and the subsequent refugee crisis, UNICEF and UNHCR joined with the International Committee of the Red Cross and the International Federation of the Red Cross and Red Crescent Societies to issue joint statements emphasizing key principles and providing practical guidelines relating to the evacuation of children from war zones. The statements stressed the need to preserve family unity whenever possible and to make every effort to provide adequate protection and assistance to enable families to meet the needs of their children in place.

If separation is unavoidable, careful records of all evacuated children separated from their families should be kept to assist later in reunification. Special emphasis should be placed on keeping siblings together, maintaining communication links with the family of origin, and ensuring that the child's knowledge of his or her culture, language, and religion is preserved. As a practical matter, proper procedures require that personal and family particulars, with photos, should be recorded in a personal profile and history file. Copies of the file should be given to the family, the child (to travel with him or her), the national authorities, the agency to whom the child is entrusted, and a neutral monitoring agency such as the Central Tracing Agency of ICRC.[14]

Coordinating inter-agency efforts is key to success in child tracing. This was proved particularly in the Rwandan case, where 150 humanitarian organizations (including UNICEF and UNHCR from the UN system, ICRC, IFRC, and a number of NGOs) collaborated to successfully reunite sixty-seven thousand children with their families. A key element in the success of the effort was the central database maintained by the ICRC in Nairobi, which allowed for mass tracing.

Empowering Youth. Camps for refugees and the internally displaced can be frustrating places for young people. Bored, anxious, worried, angry, depressed, and traumatized, these youngsters are prime targets for recruitment, violent behaviour, and crime. However, as UNICEF Albania found out, when given a role to play, their energy and capacity can be a great asset to their communities.

During the Kosovo crisis in 1999, many Kosovars fled to nearby Albania seeking refuge. Programs in the six refugee camps near Kukes, Albania, focused on child care, primary education, and health. Adolescents and their specific needs were marginalized. To address this gap, UNICEF and the local Albania Youth Club set up Youth Councils in the refugee camps. Council members organized recreational events for their members, assisted with the integration of new families, and worked for a cleaner and safer camp community. The councils provided activity, but more importantly they gave youth a place to belong to, and a sense of value, meaning, and community in their lives.

The experience of organizing and participating in the Youth Councils gave the members valuable problem-solving and leadership skills. During the reconstruction phase, they returned to play a key part in rebuilding their communities. The program thus helped to build local youth capacity for leadership.[15]

An important element of success in this program was the identification of youth as a group at risk, vulnerable to recruitment, abuse, criminal activity, boredom, and psychosocial issues. However, the Youth Council program was able to steer their energy into tasks that benefited the community. It creatively addressed two challenges by constructively occupying young people while mobilizing them to take on leadership in the community.

Mobile Health Brigades. In Sri Lanka, the deterioration of the health infrastructure in conflict zones, the wide dispersion of the displaced, and concerns about security and transportation made it difficult for IDPs to access adequate health care. UNICEF and program partners addressed this complex problem in part by supporting mobile health clinics that travelled to areas where the displaced were concentrated, to provide basic diagnostic and curative services, immunization, and referrals.[16] Such basic services can make all the difference in fighting preventable childhood diseases.

Isolated communities face two types of threats: direct attacks or threats from armed groups, and restricted access to important services such as health care, due to insecurity. Both types of threats enter into the community calculations of whether to flee and join the ranks of the displaced and whether, after return, to remain in the home area. Access is even more difficult for communi-

ties that are uprooted and forced to move not once but several times, as war fronts change. Mobility is often a fact of life for many IDP communities in Sri Lanka. In this field practice, UNICEF sought to address the issue of IDP access to health services. It successfully identified mobility and repeated displacement as a challenge to health program delivery and then addressed it creatively through the creation of mobile "health brigades."

Return of Happiness Project. Since internal displacement in Colombia is often related to violence or the threat of violence, many IDP children suffer emotional and psychological trauma as well as physical deprivation. A UNICEF-supported program to meet the psychosocial needs of these children, called El Retorno de la Alegria (the Return of Happiness), is well regarded.

Notable strengths of El Retorno are its reliance on participation from within the displaced community and its emphasis on building capacity among IDPs. Leaders for therapeutic games and recreational activities, an important component of El Retorno, were recruited from among the internally displaced, and "production groups" were formed among IDPs to produce shoulder bags, toys, and other program material. Training materials for El Retorno de la Alegria included a volunteer's manual that empowered IDP volunteers by providing basic instruction in early childhood development and emphasized the essential role of family and community structures to the child's well-being. Community volunteers were asked to share their experience and training with other displaced or returnee communities, enhancing their status and self-esteem. Of particular note, numbers of displaced teenagers were recruited as leaders of play groups, providing these adolescents with an important anchor to the community at a time of considerable stress in their own lives.[17]

Meeting Psychosocial Needs through Teacher Training. Given the importance of formal education in Sri Lanka, enrolling displaced and returnee children in classes is a high priority for IDP families. UNICEF Sri Lanka recognized that many of these re-enrolled students were still deeply affected by the conflict, and that teachers are in a unique position to observe students facing adjustment difficulties. Training programs for primary school teachers were initiated in co-operation with the Catholic Church to aid them in recognizing signs of psychological stress in IDP children and to guide appropriate interventions or referrals.[18]

Again, the success of the project lies in mobilizing community resources and supporting existing community structures such as the education system. Also, in many communities, it is difficult to approach psychosocial issues, for they are not seen as real problems or people are reluctant to participate for fear of being labelled mentally weak or even mad. The project got over this problem by using education as an entry point for psychosocial work.

Protection

Protection of displaced children focuses on shielding them from physical and psychosocial harm inflicted by others, such as violence, exploitation, sexual abuse, neglect, cruel or degrading treatment, or recruitment into military forces. Displaced status makes children especially vulnerable to each of these forms of abuse. Protection also refers to those actions that preserve the identity and cultural, linguistic, and inheritance rights of displaced children, since children removed from their home communities are at significant risk of losing these portions of their heritage. Protection activities for IDP children include interventions in the following fields:

Children as "Zones of Peace." An important concept for UNICEF's protection activities is the concept of "Children as a Zone of Peace" to ensure protection of children affected by armed conflict. First formulated in the 1980s, the concept is based on the simple principle that children have the right to protection from violence, abuse, and exploitation at all times—including during armed conflict — and that there is never a justification for targeting or involving children in hostilities. The concept, in its broadest sense, should include a range of measures, such as ceasefires, days of peace, protected humanitarian corridors, and observance of the principles that schools, child centres, and health facilities be inviolate and that the needs of all children be taken into account in peace accords and demobilization plans. One step undertaken by UNICEF has been to declare particular periods of time as "Days of Tranquility" during which services for children, such as vaccination campaigns, are organized, or to designate specific access routes as "corridors of peace" for the delivery of needed supplies. In July 1999, UNICEF East Timor organized one-week-long "Truces for Children" every month for five months. Children were immunized against the major vaccine-preventable diseases and received supplementary food to improve their nutritional status, and pregnant women received antenatal care. In July 2001, synchronized National Immunization Days were launched in Angola, Congo, the Democratic Republic of the Congo, and Gabon with a call for "peace during the mass immunization campaign."

These initiatives, however, must be seen as stepping stones only, with the ultimate goal being permanent, safe, and unhindered access to children for the protection of their rights.[19] Thus, Days of Tranquility are one

way to put into practice the fundamental humanitarian principle of access, which recognizes that humanitarian assistance to civilians be granted free and safe passage at all times.

Focus on Identity Issues for Displaced Children. Conditions of displacement, especially if the child is a member of a minority or opposition group, may complicate efforts to register births or otherwise establish the child's identity and full citizenship. Protection activities should ensure that basic identity and registration documents are provided and that government legislation and policies accord full citizenship to displaced children, including those born during displacement, whatever the causes of displacement. In Colombia, as in many environments of large-scale displacement, people forced to flee their homes often encountered problems with identification documents. A co-operative program between UNICEF and the Colombian government agencies, supported by European Community Humanitarian Office (ECHO), organized one-stop registration campaigns that made it easier for IDPs to regain identity documents. Materials developed by so-called "registration brigades" were written clearly, in simple language, and widely distributed to encourage participation. Multiple sites were selected for visits by the registration brigades, to overcome transportation difficulties faced by displaced families. Registration programs were targeted at border areas, like the Colombian-Ecuadorian border region, where temporary displacement across national boundaries may confuse registration requirements.[20]

The registration program provided flexibility in terms of location and an opportunity for cross-border registrations. This was an important advantage since people were also temporarily displaced across national boundaries. The registration activities helped to protect identity rights and ensured non-discrimination in future efforts to obtain schooling, employment, participation in civic functions, and other legal rights.

Land-mine Awareness. IDPs in general, and displaced children in particular, are vulnerable to the land mines that are a regular feature of many conflicts today. Displaced communities may find themselves in unfamiliar surroundings with little knowledge of where mines have been placed, and the limited resources available in IDP "welfare centres" may require a widespread exploration of new terrain for water, firewood, or sanitary facilities. Many IDPs must cross active conflict zones in attempts to reach their former properties, either to assess conditions or retrieve resources. Children are particularly at risk, as their curiosity and smaller size cause them to suffer far greater injuries and deaths. In recognizing these realities, UNICEF in Sri Lanka has mounted a land-mine awareness campaign to reach isolated IDP communities using portable flip charts and other transportable instructional material that could be taken to displacement areas. In this way, the scope of the awareness campaign was considerably expanded and a larger number of IDPs were reached by it.[21] In this case, a mobile awareness campaign proved to be the most effective way to reach a mobile population.

Demobilization and Reintegration of Child Soldiers. Children are more likely to become soldiers if they are poor, separated from their families, displaced from their homes, or lacking access to education. Refugees and displaced children are particularly vulnerable to being coerced into recruitment. In Sierra Leone, rebel groups forcibly recruited many children, potentially creating an enduringly violent substratum of Sierra Leonean society: a large group of young men (and some women) who had spent their formative years on the battlefield. A program to disarm, demobilize, and reintegrate child soldiers was developed and implemented by four humanitarian NGOs: Save the Children Fund, the International Rescue Committee, Caritas, and the Coopi, and was supported by the European Union and UNICEF. After a short demobilization period, the children were transferred to interim care centres closest to their areas of origin for counselling and to begin family reunification.

Reintegrating child soldiers successfully into society can help reduce the potential for future human rights problems in the country by addressing the psychosocial, economic, education, and training needs of a formerly militarized—and potentially still vulnerable — segment of the population. Successful demobilization may also include the promotion of human rights and non-violent means of conflict resolution, so that when these young people assume positions of leadership in the future, they will be able to draw upon these values. The demobilization process, therefore, not only provides essential services to former child soldiers, but also can contribute to broader reconciliation processes.[22]

Conclusions

The field practices described above give rise to conclusions that have relevance for a number of different IDP situations and for a range of humanitarian and development actors working in the area of children's rights.

Protection and assistance must be seen as mutually reinforcing interventions. Traditionally, the focus has been on providing assistance to IDPs, especially to what are generally seen as "vulnerable" groups such as IDP children; however, the international community is increasingly cognizant of the need to ensure that the populations they seek to assist are also protected from further human rights violations and threats to their safety. For

IDP children in particular, this means that the international community must seek to ensure that children have a better understanding of the full range of rights—including the right to protection — to which they are entitled. Awareness of one's rights is also a key factor in empowerment.

Because the protection and assistance needs of IDPs are so interlinked, internal displacement should be addressed as part of a broader humanitarian and development strategy. Since displacement is often a key factor behind the need for humanitarian assistance, a broader, systemic understanding of displacement—including the return and resettlement stages—is essential to effective humanitarian assistance. The false divide between humanitarian and development assistance is even more evident in donor responses to displacement—characterized by a lack of understanding of the ongoing nature of many displacement crises and needs, the long-term impacts of what looks to be a short-term problem (especially for internally displaced children), and the relative absence of a longer-term protection strategy for IDPs.

There is an urgent need for improved institutional and thematic coordination on the ground. Especially helpful at the field level will be implementation of the country-specific recommendations by the UN Inter-Agency Network on IDPs and the coordination work of the new IDP Unit within OCHA. Within this context, UNICEF seeks to contribute to raising the awareness and attention of its partners (UN and NGO) to the special needs and rights of displaced children. Through greater attention to IDP children both in the advocacy and allocation of resources by non-child-specific organizations, coordination and complementarity of actions around the thematic area of children can be strengthened.

Of the many different activities needed to protect and support IDP children, assessment is a particularly undervalued area of activity. It is often during the assessment stage that key decisions affecting rights and well-being of children are made, for example, decisions about which types of interventions are most critical for children during and after flight, or where interventions should be targeted to reach the greatest concentration of at-risk children. The early and ongoing availability of sex- and age-disaggregated data is essential to inform these kinds of decisions. A good assessment will also identify the specific challenges faced by different groups of children — unaccompanied minors, former child soldiers, separated children, adolescents, girls—as well as the coping mechanisms already in place or being used by the children themselves, and the interventions most appropriate for each group. Finally, assessments also need to address the definition of IDP status—when displacement ends—in order to ensure accuracy of situation analyses.

The participation of internally displaced young people is a critical element in successful project design, delivery, monitoring, and evaluation. Where interventions have been successful in restoring normalcy or in providing basic services in a sustainable manner, it is youth participation that has often been instrumental. Beyond the immediate impact of better programs, the participation of young people is also a major contributor to rebuilding their self-esteem, increasing their sense of efficacy, and ultimately to aiding in their empowerment.

When providing assistance to IDP children, efforts should be made to recognize and take advantage of entry points to reach children. International and non-governmental organizations may be able to use traditional entry points, such as education and health, to initiate activities in less well-accepted areas such as psychosocial support, recreation or gender-based violence. There may often be more flexibility around broadening the scope of care activities for children, as opposed to adults.

Similarly, creative solutions must be sought in order to address many of the challenges facing IDPs. Their situations are characterized by mobility, among other factors; their mobility may mean that mobile solutions are required. Traditional approaches and solutions to humanitarian assistance are likely to fall short of having a real impact on the lives of IDPs. What is needed are creative, think-outside-the-box solutions to the complex set of challenges facing IDPs. Institutional capacity building may be required to achieve this.

A multi-dimensional approach is necessary in advocacy efforts for IDPs. Not only is it critical to advocate at different levels, but it is also important to target advocacy at different kinds of actors within each level. At country-level, for example, advocacy for IDP children should be directed to national authorities and leaders, law enforcement personnel, community structures and leaders, school management structures, the media, non-state actors, the business community, parents, and IDP children themselves.

The preservation of family unity should be a general principle when working with IDP children. The family is often the most effective unit of protection and assistance for IDP children, especially very young children. Family reunification is also among the most important activities for children who have been separated from their families, and can help restore normalcy in a way that few other activities can.

It is hoped that this paper, which attempts to capture some lessons from the field, may prove useful to UNICEF's partners as well UNICEF itself. It is a sad fact that, all too often, lessons are not systematically captured, shared, and incorporated into the work of the international assistance community; in an area of assis-

tance as urgent yet also as constant as internally displaced children, the need to learn from past efforts is that much more important.

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Notes

1. Graça Machel, *The Impact of War on Children: A Review of Progress since the 1996 United Nations Report on the Impact of Armed Conflict on Children* (London: Hurst and Company, 2001), 26.
2. UN Guiding Principles on Internal Displacement.
3. Machel, 26.
4. Machel, 35
5. *Humanitarian Appeal for Children and Women in Sudan, Jan-Dec. 2000* (New York: UNICEF, 2000), 1.
6. Field practice 63: "Creating Curiosity in a Topic Is One Way to Get People Interested in Rights Issues," in *Growing the Sheltering Tree, Protecting Rights through Humanitarian Action: Programs and Practices Gathered from the Field*, Diane Paul (Geneva and New York: Inter-Agency Standing Committee Reference Group on Human Rights and Humanitarian Action, forthcoming).
7. *Mission to Sri Lanka with a View to Develop Field Practices to Internal Displacement,* UNICEF Office of Emergency Programs Working Paper Series (New York: UNICEF, 1998), 6.
8. Security Council Resolution 1355 on the Situation Concerning the Democratic Republic of the Congo, 15 June 2001, para 14 and 18.
9. *Mission to Sri Lanka with a View to Develop Field Practices to Internal Displacement*, UNICEF Office of Emergency Programs Working Paper Series (New York: UNICEF, 1998), 7.
10. Field practice 41: "Displacement 'Early Warning Systems' Can Alert IDP Communities and Assist with Contingency Planning," in *Growing the Sheltering Tree.*
11. Inter-Agency Standing Committee Working Group, *Manual on Field Practice in Internal Displacement: Examples from UN Agencies and Partner Organizations of Field-based Initiatives Supporting Internally Displaced Persons* (OCHA,1999), 15.
12. *Ibid.*, 42.
13. Machel, 75.
14. Field practice 13: "Guidelines for Evacuation of Children from War Zones Can Prevent Harm Caused to Children by Separation from Families and Poor Planning," in *Growing the Sheltering Tree.*
15. Machel, 33.
16. Field practice 133: "Mobile 'Health Brigades' Reach Isolated Returnee Communities and Communities at Risk of Displacement," in *Growing the Sheltering Tree.*
17. Field practice 199: "Meeting the Psycho-social Needs of Displacement-Affected Children through Maximum Use of the Community's Resources, Including Adolescents," in *Growing the Sheltering Tree.*
18. Field practice 207: "Meeting the Psycho-social Needs of Children through Teacher Training," in *Growing the Sheltering Tree.*
19. *UNICEF Action on Behalf of Children Affected by Armed Conflict* (Division of Evaluation, Policy, and Planning Working Paper, 2000), 14.
20. Field practice 158: "'Registration Brigades' Can Help Guarantee IDPs the Right to a Legal Identity," in *Growing the Sheltering Tree.*
21. *Mission to Sri Lanka with a View to Develop Field Practices to Internal Displacement* (UNICEF Office of Emergency Programs Working Paper Series, 1998), 5.
22. Field practice 200: "Reintegrating Child Soldiers into Civil Society Takes Extra Care but Can Provide Long-lasting Human Rights Rewards," in *Growing the Sheltering Tree.*

Suba Mahalingam graduated from the University of Toronto with a double minor in History and South Asian Studies. She has worked with Tamil refugee youth in Toronto and is currently working as an intern with UNICEF New York.

Geeta Narayan has worked in the area of children's rights for over six years, and is currently project officer for humanitarian policy and advocacy with the Office of Emergency Programmes at UNICEF New York.

Esther van der Velde has worked for three years in the field of human rights and is currently working as assistant program officer in the Office of Emergency Programmes at UNICEF New York.

Un regard sur la domesticité juvénile en Haïti

Irdèle Lubin

Résumé

Enfants en domesticité, enfants en service, ou restavèk (reste avec), telles sont les appellations reçues par des petites filles et des petits garçons qui sont placés dans des familles d'accueil afin de servir celles-ci. En retour, ces familles d'accueil, doivent leur fournir de quoi satisfaire quelques-uns de leurs besoins primaires (nourriture, logement, vêtement) et éventuellement le paiement des cours dans une école. Maltraités, humiliés, considérés au plus bas de l'échelle familiale, ces enfants seront traités comme de petits esclaves. Ils travaillent à longueur de journée, mais ils sont oubliés et ne font pas l'objet de beaucoup d'intérêt. La législation permettant de leur fournir une certaine protection dans les familles d'accueil n'est pas respectée, leurs droits ne sont pas respectés. Cet article met en évidence la situation des enfants en domesticité en Haïti, la législation existant sur la question, et la façon dont ces enfants vivent leurs droits dans le pays.

Abstract:

'Domestic Children', 'Service Children' or 'restavèk' ('live-in') - such are some of the appellations given to young girls and boys placed in host families in order to serve them. In exchange, these host families are supposed to cater for some of their basic needs (food, shelter, clothing), and in due course, to pay for their school fees. These children are ill treated, humiliated and considered as the lowest of the low in the family. They are treated as young slaves. They toil endlessly from morning to night, and are yet totally forgotten and attract hardly any interest. The legislation providing some degree of protection for them in the host families is totally disregarded and their rights ignored. This article focuses on the plight of Domestic Children in Haiti, the laws applicable to the situation, and the manner in which these children are living an existence deprived of rights in the country.

Introduction

Un peu partout dans le monde, le travail des enfants a entraîné des débats. Plusieurs dimensions de la question ont été abordées. Elle a suscité des prises de position diverses et variées sur le développement de ces enfants qui, dans bien des cas, mènent des activités trop exigeantes pour leur force physique. La législation sur le travail des enfants porte fondamentalement sur l'âge minimal pour être admis à travailler, la nature des travaux, le nombre d'heures de travail et le salaire. Certains pays légifèrent aussi sur le travail non rémunéré des enfants effectuant des travaux domestiques et ménagers. Mais les conditions dans lesquelles vivent ces enfants ne font pas l'objet de recherche et le fossé entre la loi et la pratique reste grand.

En Haïti, les enfants qui exécutent des tâches domestiques, les enfants en domesticité, poussent des cris de désespoir; mais ils sont oubliés et abandonnés chez des gens qui les maltraitent, qui n'ont pas peur de la loi à cause d'une certaine complicité avec les structures d'application ou du mépris général à l'égard de ces enfants. Qui sont ces enfants? D'où viennent-ils? En regard de la convention sur les droits des enfants, comment vivent-ils leurs droits? C'est à ces questions qu'essaie de répondre cet article qui présente :

- de manière succincte, la situation des enfants en domesticité en Haïti,
- la législation haïtienne sur les enfants en domesticité,
- la façon dont ces enfants vivent leurs droits dans le pays.

Les enfants en domesticité en Haïti

Enfants en domesticité ou enfants en service comme les nomme la législation haïtienne, ils ne sont pas très connus dans le monde. Dans certains milieux, ils sont souvent confondus « simplement » avec le groupe des mineurs travailleurs[1]. C'est un problème existant dans la plupart des pays pauvres et même dans certains pays développés[2]; mais il n'a pas fait l'objet de plusieurs recherches. Les enfants domestiques présentent des nuances très importantes selon le contexte et la culture de leur lieu de travail. Ces nuances sont très importantes pour permettre de mieux situer le problème, structurer éventuellement les interventions visant à améliorer les conditions d'existence des enfants concernés ou pour l'éliminer parce que c'est une pratique contraire à la Convention relative aux droits de l'enfant.

En Haïti, certains[3] ont considéré l'absence de rémunération et les tâches accomplies par les *restavèk* pour tenter de les définir. Cela ne permet pas de mieux situer le problème; on peut facilement les confondre avec d'autres catégories d'enfants tels les adoptés, les enfants placés provisoirement ou les « pensionnaires » ou même ceux qui vivent chez leurs parents biologiques et qui aident aux travaux ménagers. C'est un fait que « le *restavèk* fournit un labeur non rémunéré en argent mais plutôt en échange du logement, de la nourriture, du vêtement et de l'éducation »[4], mais il y a aussi d'autres éléments à considérer pour comprendre le problème de la domesticité.

On peut dire que l'enfant en domesticité est un individu dont l'âge peut être compris entre 6 à 14 ans. La domesticité n'est presque jamais son choix, c'est une décision qui a été prise par ses parents ou un proche dont les faibles moyens économiques ne permettent pas de répondre aux besoins de l'enfant. La domesticité est un moyen de lui procurer un mieux-être par son placement chez une personne vivant dans de meilleures conditions économiques. Généralement, l'enfant est avisé de cette décision juste avant de se rendre chez la personne qui le recevra comme domestique. Il vit sous le toit de cette personne et dessert tous les gens de la demeure moyennant un peu de nourriture et des vêtements; éventuellement on lui paie des cours dans une petite école. Dans la majorité des cas, il s'agit d'une petite fille, les garçons étant moins nombreux à être astreints aux travaux strictement domestiques. L'enfant en domesticité est considéré au plus bas échelon dans cette demeure; ses droits sont très limités pour ne pas dire inexistants et ses devoirs sont énormes. Les deux principales attitudes exigées de lui sont la soumission et la serviabilité. Il est souvent victime d'actes de violence (verbale, physique, psychologique…) de la part de son supposé protecteur ou protectrice.

Il faut éviter de prendre pour des enfants en domesticité tous ceux qui s'occupent des tâches domestiques dans une maison autre que la leur. En ce sens, mentionnons les cas de plusieurs enfants (filles et garçons) qui ne vivent pas chez leurs parents biologiques pour plusieurs raisons telles que l'adoption, le départ prolongé des parents biologiques, l'accessibilité à une école de niveau académique plus ou moins intéressante, l'apprentissage d'un métier etc. Ces cas sont très fréquents en Haïti. Les enfants de ces catégories ne sont pas considérés comme des domestiques, quoique certaines fois ils puissent aider aux travaux domestiques. Dans les cas où ils se sentent considérés comme des *restavèk,* ils ont toujours la possibilité d'aller ailleurs. Ce n'est pas le cas pour les enfants en domesticité. Par ailleurs, bon nombre de ces enfants (dans les deux derniers cas surtout) regagnent leur famille biologique à certaines périodes de l'année. L'enfant en domesticité n'a pas beaucoup de contact avec ses parents biologiques. Il y en a qui ont perdu tout contact avec leurs parents parce que la famille de placement ne les envoie pas toujours visiter leurs parents biologiques. Ils sont ainsi réfugiés dans leur propre pays où même les rencontres avec leurs familles biologiques ou un proche parent s'avèrent difficiles. Leurs parents sont souvent trop pauvres pour consentir des frais de transport.

De manière succincte, pour mieux situer le *restavèk* haïtien il faut considérer les éléments suivants :

- c'est un enfant généralement placé ou trouvé,
- le but de son placement est de rendre service afin de recevoir en retour des éléments indispensables à sa survie et éventuellement les cours dans une école,
- la période de placement n'est pas définie,
- ses rapports avec les membres de la famille de placement sont fondés sur la domination et l'autorité,
- l'état psychologique et émotionnel est un élément important à considérer aussi.

Législation relative aux enfants en domesticité en Haïti

La législation haïtienne fait une différence entre enfants en domesticité, mineurs travailleurs et gens de maison.

Appelés enfants en service par la législation haïtienne, dans la réalité de tous les jours, ils sont appelés enfants en domesticité, *timoun ki ret kay moun*[5] ou *restavèk*[6]. D'après le décret mettant à jour le Code du travail du 12 septembre 1961[7], l'enfant en service est celui âgé de 12 à 15 ans (articles 341 et 350) « confié à une famille pour être employé à des travaux domestiques ». D'après l'article 350 de ce même décret, « dès l'âge de 15 ans, l'enfant en service sera considéré comme domestique à gages et recevra un salaire équivalent à celui payé aux domestiques à gages travaillant dans les mêmes conditions ».

L'enfant en service ou en domesticité tel que défini ne reçoit pas, comme cela est mentionné antérieurement, un salaire pour les services rendus à la famille de placement. L'article 345 du décret précédemment cité, mentionne les besoins et les obligations auxquels ces enfants ont droit dans leur famille de placement. « Toute personne qui a un ou plusieurs enfants à son service contracte envers eux l'obligation de les traiter en bon père de famille, de leur fournir un logement décent, des vêtements convenables, une nourriture saine et suffisante de les inscrire obligatoirement à un centre d'enseignement scolaire ou professionnel en leur permettant de suivre régulièrement les cours dispensés par ce centre et de leur procurer de saines distractions ». Il est évident que les enfants en domesticité n'ont pas pu, pour différentes raisons, avoir ces besoins indispensables à leur développement chez leurs parents biologiques.

Le mineur travailleur, par contre, est âgé de 15 à 18 ans (article 337) et travaille dans un établissement agricole, industriel ou commercial. Il « bénéficie[8] » des mêmes droits et des mêmes obligations que les majeurs en vertu de la législation du travail.

Les gens de maison (article 254), appelés de manière générale bonnes ou garçons de cour, sont « ceux qui se consacrent de façon habituelle et continue aux travaux de nettoyage, de jardinage, d'entretien ou à tous autres travaux domestiques propres à un foyer ou à tout autre lieu de résidence ou d'habitation particulière ou dans une institution privée ou publique de bienfaisance et qui ne comportent ni bénéfice, ni opération commerciale pour l'employeur ou les membres de sa famille ».

Si la législation haïtienne fait une différence entre ces trois catégories de personnes, la réalité n'en fait pas vraiment. L'enfant en domesticité peut être considéré à la fois comme un mineur travailleur eu égard à son âge et comme *bonne à tout faire* ou gens de maison vu la nature des tâches auxquelles il est occupé habituellement. Par ailleurs, cela fait plus de 40 ans depuis que cette législation sur les enfants en service existe, mais elle n'a pas contribué à une amélioration du sort de ces enfants. Comme le souligne certains auteurs[9], le fossé entre la pratique et la loi reste très large.

Âge, sexe et provenance des enfants en domesticité

Les enfants en domesticité en Haïti, les *restavèk,* sont majoritairement de sexe féminin. D'après une enquête de l'Institut psycho-social de la famille[10], « l'âge moyen des enfants en domesticité juvénile se situe entre 11 et 14 ans ». Il est courant de rencontrer des petites filles de 6 à 10 ans qui commencent très tôt à vivre dans la domesticité. Dans l'enquête de l'IPSOFA, les domestiques rencontrés sont majoritairement (à 75 %) des petites filles.

Les enfants placés en domesticité viennent pour la grande majorité des familles pauvres des zones rurales réfugiées certaines fois dans des zones péri-urbaines à la recherche d'un mieux-être. Ils forment, dans la grande majorité, les bidonvilles et les quartiers défavorisés du pays. Dans son livre sur la famille haïtienne[11], L. Bijoux mentionne que « les enfants de service, dont les parents sont généralement des paysans pauvres, sont confiés aux familles plus ou moins aisées des villages et des villes ». Ces familles espèrent que leurs enfants seront bien traités. Elles comptent ainsi, comme le souligne L. Bijoux, sur le sens de solidarité et d'équité des familles d'accueil qui promettent toujours une meilleure éducation en compensation des travaux domestiques rendus par les enfants. Pour Despeignes, « les trois quarts du lumpen-prolétariat proviennent de l'immense armée des domestiques[12] ». L'IPSOFA a recensé 81 % de ces parents qui viennent des zones rurales. D'après Serge Henri-Vieux[13], la domesticité touche 80 % des enfants des couches défavorisées. Ces enfants sont placés par leurs parents ou un proche en l'absence de ceux-ci. D'après l'enquête de l'IPSOFA, 82 % des enfants se trouvent dans cette situation.

Un état de la question

De manière générale, il est constaté une dégradation de la situation économique en Haïti où la grande majorité des familles vit dans un état de misère. Les enfants, dans cette situation, sont les plus concernés et les enfants en service le sont encore davantage. La grande majorité des enfants placés en domesticité viennent de ces familles, comme d'ailleurs il est remarqué dans les cas des mineurs travailleurs[14]. Combien y a-t-il d'enfants en service en Haïti? Il est difficile d'avancer un chiffre. Il n'y a pas eu de recensement dans le pays depuis vingt ans. Certains organismes font de petites enquêtes mais, connaissant le pouvoir et la finalité de l'utilisation des chiffres dans les pays du tiers monde, il est recommandé de les utiliser avec précaution.

Le dernier recensement date de 1982 et, en 1984, l'Institut haïtien de statistiques (IHSI)[15] a estimé la population des enfants en domesticité à 109 000 dont 65 000 filles et 44 000 garçons. D'autres sources, comme le BIT[16], avancent le chiffre de 182 800 enfants de 10 à 14 ans officiellement reconnus comme enfants travailleurs. Est-ce que les enfants en domesticité font partie de ce chiffre? On ne saurait le dire. Mais il faut se rappeler que, généralement, ils sont considérés dans cette catégorie. Lors d'un Forum sur l'enfance et la violence en Haïti, tenu les 18 et 19 octobre 1995[17], le psychiâtre Legrand Bijoux a parlé dans une présentation sur les enfants en

domesticité de 200 000 à 300 000 enfants vivant dans cette situation. D'après l'UNICEF, cité par Serge Henri-Vieux au cours du même forum, il existe 130 000 enfants vivant en domesticité. Depuis la dernière estimation de l'IHSI en 1984, il n'y a pas de chiffre officiel sur le nombre d'enfants vivant en domesticité. Mais la tendance est de les confondre avec des enfants des zones marginales. Notons que ceux-ci peuvent vivre dans les mêmes conditions socio-économiques que les enfants en domesticité. Mais ils ne sont pas placés en service. Cette nuance est importante, car les enfants de la rue par exemple disent préférer la vie de la rue à la domesticité. Ils n'acceptent pas d'être considérés comme des enfants en service. En ce sens, il existe des enfants qui vivent chez eux, mais leurs conditions économiques sont pareilles à celles des enfants en domesticité ou pires. Mais le « bonheur » est qu'ils ne sont pas placés. La domesticité représente la situation ou la condition la plus dégradante de l'existence humaine dans la réalité haïtienne.

Conditions de vie des enfants en domesticité

Dans la grande majorité des cas, les conditions d'existence des enfants en domesticité ne sont comparables à aucune autre. Ils travaillent à longueur de journée, de 10 à 15 heures par jour[18] et ne se reposent que quelques heures.

En Haïti, l'enfant en domesticité est souvent représenté par un enfant mal coiffé, parfois en haillons, le visage émacié et ayant un seau d'eau sur la tête. Dans certaines familles, le *restavèk* amène l'eau pour tout le monde, mais il n'a pas le droit de l'utiliser, pas même pour sa toilette. Ils ne font pas que des tâches ménagères. En fait, ils participent à tous les travaux qui se font dans la maison : ils participent aux activités commerciales[19] et agricoles quand cela existe dans la famille de placement; ils font les petites commissions de tous les gens de la demeure; ils gardent les enfants; en ville, ils s'occupent aussi des animaux domestiques de la famille (chats et chiens principalement). C'est, en grande partie, la présence de ces enfants qui permet aux maîtres et maîtresses de maison d'aller travailler ailleurs ou de mener d'autres activités en dehors du toit familial. Tous les membres de la maison progressent, d'une façon ou d'une autre, sauf les domestiques qui doivent espérer qu'un jour on leur tende la main. Ils travaillent beaucoup mais ils n'ont pas le droit de se plaindre. À toutes les activités que mènent ces enfants, il faut ajouter les injures, la bastonnade, l'humiliation, l'ingratitude des maîtres et maîtresses qui ne les remercient presque jamais et qui croient en plus que ce sont eux les éternels ingrats. Les propos de Maurice Sixto dans *Ti Sentaniz* illustrent bien les conditions de vie des enfants en service en Haïti.

D'autres auteurs[20] ont décrit les conditions inhumaines dans lesquelles vivent ces enfants en Haïti. D'après J. Despeignes, « ils grandissent la plupart du temps dans l'abjection des humiliations et d'une servitude voisine de l'esclavage… Le maître nourrit son valet pour abuser de sa force de travail autant que dans les formes les plus poussées de l'esclavage… Le domestique est toujours en guenilles, malfamé et traité en objet. Il subit des châtiments corporels pour tout défaut dans l'accomplissement de sa tâche et n'a droit à aucune rétribution. La domesticité est le grand moule où sont coulés les hommes à qui la société n'entend rien donner ».

Les interventions auprès des enfants en domesticité

Malgré l'ampleur de la domesticité en Haïti, il n'y a presque pas d'interventions en faveur de ces enfants. Maurice Sixto, cité plus haut, grand parolier haïtien, a présenté un sketch intitulé *Ti Sentaniz* décrivant la situation des enfants en domesticité. À la mort de ce grand parolier, sur l'initiative du Père Jean-Baptiste Miguel, fut créé le foyer Maurice S0ixto. Aujourd'hui, deux foyers sont ouverts : l'un (en 1989) à Carrefour et l'autre à Léogane (en 1994), les deux se trouvent dans le département de l'ouest, au sud de Port-au-Prince. Ces foyers visent :

- l'amélioration du sort des enfants en domesticité en leur offrant une porte sur l'avenir par l'apprentissage d'un métier;
- la mise en confiance de l'enfant et la garantie de sa sécurité affective en servant de pont entre les familles patrons et les familles naturelles;
- la mise d'un frein à la délinquance juvénile en leur offrant un centre d'intérêt propice à leur épanouissement;
- la défense de leurs droits et la garantie de leur intégrité.

À part les foyers Maurice Sixto, les instances de l'État devraient aussi intervenir par le biais soit du service de l'inspection générale du travail du ministère des Affaires sociales (M.A.S) qui doit, d'après l'article 28 du décret créant ce ministère, « contrôler les conditions de travail des femmes et des enfants », soit du service de la femme et de l'enfant (article 32 du même décret), soit du service de la protection des mineurs de l'Institut du bien-être social de recherche (IBESR) dépendant lui-même du M.A.S (articles 138 à 142 du même décret). Mais dans la réalité, l'IBESR n'est pas fonctionnel et le M.A.S n'intervient pas non plus dans ce problème.

Il est important de noter que la législation sur les enfants en service date de 1961; l'IBESR a été déjà créé, soit en 1958, et le M.A.S en août 1967. En 1983, l'IBESR fut réorganisé par un décret-loi. Celui-ci propose une réor-

ganisation de l'institution qui devient un organisme technique et administratif du M.A.S chargé entre autres :

- d'accorder une protection particulière à l'enfant, à la femme et à la famille;
- de créer, autoriser, encourager et superviser les œuvres de prévoyance et d'assistance sociale tant publiques que privées.

Des structures étaient déjà en place pour intervenir dans ce problème. Mais, l'IBESR n'a jamais fait grand-chose dans ce sens. Aujourd'hui, plus de 40 ans après la création de cette institution, la situation des enfants en domesticité ne s'est pas améliorée. Vu que le bien-être social à l'enfance est considéré sur le plan de la défense sociale, l'institution s'est mise dans la surveillance et l'application des valeurs « admises » par les groupes dominants. La domesticité n'était pas vraiment une priorité. Il suffit d'encourager que des enfants soient placés quelque part. L'IBESR jouera son rôle de défense et de contrôle sociaux. Il interviendra dans des questions qui n'étaient pas de son ressort. Ce qui lui coûtera sa fermeture. M. Despeignes[21] écrira que cette fermeture survient parce que l'institution « s'était transformée en une véritable juridiction connaissant même des loyers non payés, avec ses salles de torture et ses hommes de main. Le mariage forcé, destiné a priori à protéger les intérêts moraux des jeunes citadins, devient une entreprise florissante et corruptrice ».

Il y a deux ans à peine, on a installé un téléphone d'urgence pour le signalement des mauvais traitements faits aux enfants mis en service particulièrement. Mais on ignore pour le moment les résultats de cette initiative. Compte tenu de la place de l'enfant en domesticité dans l'échelle familiale, il est certain qu'il n'a pas toujours accès au téléphone. Comment avisera-t-il du mauvais traitement dont il est constamment victime? Est-ce que d'autres personnes le feront? La domesticité est un problème assez délicat dans ce pays où beaucoup de familles disposent d'un ou de plusieurs enfants á leur service. Ces familles n'acceptent pas toujours d'avouer qu'elles ont des enfants en domesticité. Elles prétendent qu'il s'agit d'un petit filleul ou d'une petite filleule, d'un neveu ou d'une nièce ou d'un « petit parent ». Et c'est sous le couvert des liens familiaux que se font les mauvais traitements.

Les enfants en domesticité face aux droits de l'enfant

Il est important de noter que Haïti n'a jamais connu d'État providence. Si des enfants sont placés en domesticité, c'est principalement à cause de cette situation. Car la grande majorité des enfants sont mis en service à cause de la situation de misère dans laquelle vivent leurs parents biologiques qui ne bénéficient pas d'aucune allocation et d'aucune aide de la part des responsables. On pourrait tenter de parler de désengagement de l'État face à une telle situation, mais l'État ne s'était jamais engagé directement, malgré la signature ou la ratification de conventions internationales relatives aux droits et à la protection de l'enfance. Par ailleurs, même quand il existe certaines dispositions légales visant la protection de l'enfance, celles-ci n'ont pas d'effet parce qu'elles ne sont pas respectées. On n'investit pas dans la protection de l'enfance, les enfants en domesticité sont mis dans l'oubli avec des lois qui ne sont pas appliquées. Le signalement pour mauvais traitements infligés aux enfants en Haïti n'est pas connu dans la réalité de ce pays. Même si ces mauvais traitements font la une des médias, les responsables ne font pas grand-chose pour faire respecter les décisions en vigueur et améliorer ainsi le sort des enfants vivant en domesticité. De plus, l'autorité parentale sur les enfants est considérée comme fondamentale dans cette société où « les chefs de famille ont l'obligation de traiter les enfants en domesticité en bons pères de famille ». Suivant le décret-loi du 8 octobre 1982 (article 15), « les pères et mères ou la personne qui a la garde de l'enfant peuvent le confier à un centre de rééducation ou, si les motifs de mécontentement sont suffisamment graves, à un centre de détention pour une durée qui ne peut excéder six mois et qui doit être fixée par le doyen du Tribunal civil et le ministère public ». La plupart des parents en Haïti abusent parfois de façon criante de leur autorité et, dans le cas des enfants en domesticité, la situation est pire. Dans des cas d'abus de l'autorité parentale, qui jugera de la gravité des motifs de mécontentement des parents? La loi est muette face à cette question. N'est-ce pas là donner trop de pouvoirs aux parents contre « l'intérêt de l'enfant »?

En ce qui concerne les relations familiales, la plupart des enfants en domesticité dépendent du bon vouloir de leurs patrons et patronnes qui peuvent ou non décider de les envoyer visiter des proches à certaines périodes. Dans la plupart des cas, la famille d'accueil ignore tout des parents de l'enfant qui vit en domesticité chez elle car, bien souvent, les enfants sont passés d'une famille à l'autre, parfois sans leur consentement, comme s'ils étaient des objets. On peut rencontrer des gens qui, à la troisième génération, vivent encore en domesticité. De manière générale, les enfants n'aiment pas ces conditions. Il y en a même qui pleurent à l'idée de vivre dans la domesticité. Contrairement à ce qui est dit dans le droit de l'enfant[22] sur la défense d'être séparé de ses parents contre sa volonté, dans le cas des enfants en domesticité, c'est monnaie courante. Mais les parents biologiques croient toujours le faire dans l'intérêt de l'enfant face à des familles de placement qui promettent toujours de bien prendre soin de leurs enfants. Les autorités compétentes n'en font rien face à la désolation et à

la grande tristesse qui envahissent bien souvent les enfants en domesticité.

Pour ce qui est du droit d'expression, de religion et de la liberté de pensée, que peut-on espérer d'un enfant qui est considéré au plus bas de l'échelle familiale et de qui on exige la soumission et l'obéissance? L'enfant en domesticité adopte de fait la religion de ses patrons, sinon il risque de ne jamais avoir du temps pour « pratiquer sa religion ». Même en adoptant celle de ses patrons, il n'est pas sûr de pouvoir la pratiquer, faute de temps.

En ce qui concerne l'éducation, c'est surtout la recherche de la scolarisation qui motive bon nombre de parents à placer leurs enfants en ville ou dans les bourgs. Il existe une forte croyance dans l'institution scolaire qui peut permettre, d'après les parents en Haïti, de sortir de la misère. Schlemmer[23] rapporte les propos de Fukui pour qui « l'école représente une valeur aux yeux des classes populaires, sans que l'institution scolaire les aide à réaliser celle-ci, au contraire, puisqu'elle entraîne systématiquement l'exclusion de ceux qui ne répondent pas au modèle d'élève qu'elle a elle-même établi ».

En Haïti, la gratuité de l'enseignement est établie depuis 1816 avec la constitution de la même année[24]. Mais ironiquement, la grande majorité des écoles primaires est privée, les écoles secondaires publiques sont assez rares[25]. Il existe diverses petites écoles, dites écoles du soir, et qui sont réservées aux enfants en domesticité. Ce sont les pires écoles de tout le pays. Très peu de ces enfants ont accès à une bonne école, la grande majorité n'y a pas accès. Pour ceux qui y ont accès, le peu de temps consacré aux études est un facteur important dans le redoublement d'une année et le décrochage scolaire. Dans la plupart des familles, le ou la domestique avait commencé l'école avant la naissance des enfants du couple. Mais ces enfants termineront leurs études primaires et même secondaires avant que le domestique atteigne un niveau de scolarisation; il est souvent traité de paresseux, de crétin, de bon à rien ou de quelqu'un qui déteste l'école. En ce sens, les interventions des centres comme les foyers Maurice Sixto, bien qu'elles ne soient que des palliatifs, ont quand même leur place.

Contrairement aux enfants des patrons qui peuvent passer la journée devant la télévision ou à s'amuser autrement, les enfants en domesticité suivent très peu de programmes. Ils sont battus ou injuriés quand ils sont surpris en train de jouer. Dans certaines familles, ils n'ont pas accès à la télé. Pour échapper à cette pression, la plupart d'entre eux perdent beaucoup de temps quand ils sont envoyés faire des commissions en dehors de la maison.

L'exploitation sexuelle des enfants en domesticité est très courante. Certaines domestiques sont souvent violées par leurs patrons qui les abandonnent souvent avec un enfant. Et là encore, rien n'est signalé. Généralement, la patronne s'en prend à la domestique qui, à son avis, a attiré le patron dans son lit par son mauvais comportement.

En Haïti, l'exploitation sexuelle des *restavèk* est l'affaire des hommes. Mais les femmes qui gèrent le quotidien sont le plus souvent responsables des autres types de mauvais traitements infligés à ces enfants (violence verbale et physique, travail forcé...)

Un grand nombre de ces enfants ont préféré vivre dans la rue que de rester en service chez des gens. Lors d'une recherche réalisée en 1991[26], un nombre important d'enfants qui vivaient en domesticité avaient préféré se réfugier dans la rue pour échapper aux mauvais traitements. À cette époque, le problème des enfants de la rue commençait réellement à s'imposer comme problème social[27].

Conclusions et pistes de recherche

Déplacés de chez leurs parents biologiques et mis en service très tôt, les enfants en domesticité sont obligés de travailler dans des conditions très inhumaines pour obtenir le minimum nécessaire à leur subsistance. Est-ce une situation conforme à la convention relative aux droits de l'enfant? On peut éventuellement admettre que le travail peut aider à l'épanouissement des individus, mais tel n'est pas le cas pour des enfants en domesticité qui sont exploités, humiliés et marqués par les conditions dégradantes de cette vie. On serait tenté de dire que la domesticité soulage le poids des responsabilités des parents. Mais dans les sociétés, les responsables n'ont-ils pas un mot à dire pour soulager au moins les situations les plus catastrophiques? Il est évident que les *restavèk* viennent des familles les plus pauvres. Mais il faut noter que ces familles sont plus que pauvres, elles vivent dans la misère.

Comment les enfants vivant en domesticité vivront-ils leur vie adulte? Est-ce que leur progéniture connaîtra un mieux-être dans le futur? Comment ces petites femmes se considèrent-elles après avoir vécu en domesticité? Qu'est-ce qui leur permet de continuer à vivre malgré toutes les mauvaises conditions auxquelles elles font face? Comment réagissent-elles face à la violence une fois devenues adultes? On pourrait multiplier les questions sur l'estime de soi, la violence, la résilience chez les enfants en domesticité; on pourrait penser à des études comparatives par sexe, dans divers pays, etc. Autant de questions auxquelles on n'a pas encore de réponse. Il n'y a pas d'études réalisées sur les retombées et les enjeux de la domesticité juvénile en Haïti. Les chercheurs en sciences sociales et humaines ne se sont pas penchés sur ces cas. Comme le mentionne Bernard Schlemmer[28] dans le cas des mineurs travailleurs, « il n'existe de par le monde

qu'un nombre restreint de chercheurs qui se consacrent, pleinement et en tant que chercheurs, à un tel sujet. Le thème relève de l'action, de l'idéalisme : il constituerait donc un problème social, pas une problématique de recherche ».

Notes

1. Assefa Bequele et Joe Boyden, *L'Enfant au travail* (Fayard, 1990); Bernard Schlemmer, *L'enfant exploité : mise au travail, prolétarisation* (Karthala-Osrstom, 1996).
2. Martin Monestier, *Les enfants esclaves. L'enfer quotidien de 300 millions d'enfants* (Éditeur : Cherche midi, 1998); Assefa Bequele et Joe Boyden 1990, édition Fayard); Bernard Schlemmer, *L'enfant exploité, oppression, mise au travail, prolétarisation* (Karthala-Orstom, 1996).
3. Institut psycho-social de la famille, *Restavèk, la domesticité juvénile en Haïti* (commanditée et financée par l'UNICEF, 1998, p. 9).
4. Legrand Bijoux, *Coup d'œil sur la famille haïtienne* (Éditions des Antilles, 1990).
5. ti moun ki ret kay moun est l'appellation créole qui peut se traduire par enfant demeurant chez des gens.
6. Le *restavèk* est l'expression créole qui pourrait se traduire par « reste avec ». Mais dans la réalité du pays, il est considéré comme une injure grave. Les enfants en domesticité sont souvent qualifiés de *restavèk* par tous ceux qui veulent les humilier. Le *restavèk* est considéré comme un moins que rien.
7. *Le Moniteur*, journal officiel de la République d'Haïti, n^{o} 82 du jeudi 24 novembre 1983 et n^{o} 18-A du lundi 5 mars 1984.
8. Le mot est mis entre guillemets parce qu'on doit s'interroger sur ce qu'on appelle des bénéfices dans le cas de ces mineurs travailleurs.
9. Assefa Bequele et Joe Boyden. "Les problèmes et les solutions envisagées" dans *L'enfant au travail* (étude du BIT 1990, édition Fayard, chapitre 1).
10. Institut psycho-social de la famille. *Restavèk, la domesticité juvénile en Haïti* (commanditée et financée par l'UNICEF, 1998).
11. Legrand Bijoux, 1990.
12. Montalvo J. Despeignes, *Le droit informel haïtien* (PUF 1976).
13. Serge Henry-Vieux, "Enfants au travail et cadre juridique de protection" dans *Droits de l'homme et Aide à l'enfance Canada : Forum sur enfance et violence* (Port-au-Prince, Haïti, 18 et 19 octobre 1995).
14. Claude Meillassoux, "Économie et travail des enfants" dans *L'enfant exploité : oppression, mise au travail, prolétarisation* (Karthala-Osrstom, 1996).
15. IPSOFA, p. 3.
16. Monestier, p. 35.
17. *Droits de l'homme et Aide à l'enfance Canada : Forum sur enfance et violence* (Port-au-Prince, Haïti, 18 et 19 octobre 1995).
18. Monestier, 79.
19. Yolande Plumer, *Semailles* (Haïti, Imprimerie des Antilles, 1970).
20. Montalvo Despeignes, 96; Monestier, 79.
21. Despeignes, 1976, p. 61.
22. Lucie Lamarche et Pierre Bosset, *Des enfants et des droits* (Presses de l'Université Laval, 1997).
23. Schlemmer, 22.
24. Mathurin Augustin, *Assistance publique et privée en Haïti.* (Port-au-Prince, Haïti, 1944).
25. Irdèle Lubin, *Hacia Un Programa de Educacìon Con y Para Los Ninos de la calle de Haïti.* (ILCE, México, 1998, thèse de maîtrise en Technologie éducative).
26. Irdèle Lubin, *Pour une intégration institutionnelle des enfants de la rue à Port-au-Prince* (Port-au-Prince, 1992, mémoire de licence en service social).
27. Lubin, 1992.
28. Schlemmer, 10.

Irdèle Lubin enseigne à la Faculté des Sciences humaines de l'Université d'État d'Haïti. À l'heure actuelle, elle suit un programme de doctorat en Service social à l'Université Laval. Son domaine de recherche est le bien-être à l'enfance. Sa recherche portera sur les enfants de la rue en Haïti.

Protection of Refugee Children in India

V. Vijayakumar

Abstract

This note is an attempt to illustrate the role played by the Indian judiciary in protecting refugee children and their interests in the context of India not being a party to the Refugee Convention or its Protocol. Along with this, the efforts taken by the Supreme Court of India in bridging the gap between India's international obligations and domestic laws, both treaty-based and customary, are mentioned briefly. In doing so, the lack of focused discussion of article 22 of the Convention on the Rights of the Child in protecting unaccompanied and separated children and their interests is also mentioned. The article calls for a more meaningful discussion of these issues in the future.

Résumé

Cette note tente d'illustrer le rôle joué par l'appareil judiciaire indien pour la protection des enfants réfugiés et de leurs intérêts, avec comme contexte, le fait que l'Inde n'est pas signataire de la Convention sur les réfugiés ou de son Protocole. Par la même occasion, une brève mention est faite des efforts déployés par la Cour suprême de l'Inde pour combler le fossé séparant les obligations internationales de l'Inde et les lois domestiques, à la fois celles fondées sur des traités que celles découlant du droit coutumier. Ce faisant, référence est aussi faite à l'absence de discussions sérieuses dans l'article 22 de la Convention relative aux droits de l'enfant de la protection des enfants non-accompagnés et séparés et de leurs intérêts. L'article réclame des discussions plus sérieuses sur ces sujets à l'avenir.

Though India is not a party to the Convention on the Status of Refugees, 1951, or its Protocol, 1967, India has acceded to a number of international human rights instruments. Yet there is a gap between those international obligations undertaken and in realizing them through the domestic legal framework for effective implementation. Under such circumstances, the Indian judiciary has been playing a very important role in bridging the gap through their decisions from time to time. The nature and extent of the international obligations, their applicability, and the nature of reservation as well as the absence of domestic legislation have been discussed by the courts, in the context of constitutional rights and human rights jurisprudence. The primary objective of this short note is to identity some important decisions that seek to protect the rights and interests of refugee children. A few other important decisions of the Supreme Court as well as the High Courts in India are also discussed with a view to assessing the overall effect of those decisions in upholding human rights values in India. The importance of article 22 and other provisions of the Convention on the Rights of the Child in upholding human rights values in India will also be highlighted.

At the outset, mention must be made of *Digvijay Mote* v. *Government of India and others*,[1] in which a public interest petition was moved before the High Court of Karnataka. It was moved by an individual who acted on the basis of certain reports published in the newspaper as well as his personal visit to a school established exclusively for accommodating the refugee children from Sri Lanka. This school was established by an NGO, the Bright Education Society, registered in the state of Tamil Nadu (a province in India), in Bangalore, the capital city of the neighbouring state of Karnataka. This school, conceived as a boarding school, houses two hundred and fifty to three hundred refugee children from Sri Lanka exclusively. A majority of them were orphaned or have one of the parents living in the refugee camps in Tamil Nadu and not in a position to take care of the child. The school is administered from funds collected from various donors, individuals as well as organizations. The state of Karnataka also extended its helping hand in

providing necessary supplies through its Ministry of Women and Social Welfare. However, when the government of Karnataka decided to stop its humanitarian assistance and the school found itself in a difficult situation, the public interest petition was moved before the High Court. Though rejected in the first instance, on appeal before the same High Court, notices were served to all the respondents including the government of Karnataka. On receipt of the notice from the court, the Chief Secretary of the state convened a meeting of all concerned and decided to continue with the humanitarian assistance to the Sri Lankan refugee school and the same was communicated to the court. The petition was disposed of accordingly. However, the school continues to run into financial difficulties frequently. In the recent past, as it could not pay the arrears for the supply of electricity, the state-owned electricity board disconnected the supply. Due to this, the boarding school had to face all sorts of inconveniences. Once again the same High Court was petitioned to restore the power supply. The High Court gave specific directions to the Karnataka State Electricity Board to resume the supply of electricity and accept the payment of arrears in instalments from the school.[2]

In *Khy Htoon* v. *State of Manipur*,[3] the High Court of Guahati went to the extent of staying the deportation order issued against eight Burmese, including children from the age of twelve. Apart from staying the deportation order, the court even went to the extent of releasing them from Manipur central jail on personal bond, as they might not get any surety to come forward, considering their country of origin. The court went one step further and held that these refugees should be permitted to go to New Delhi to seek refugee status from the Office of the United Nations High Commissioner for Refugees. Similar orders were also issued by the Supreme Court of India in *Dr. Malavika Karlekar* v. *Union of India*.[4]

In *Narendra Bahadur* v. *State of Uttar Pradesh*,[5] the Supreme Court of India held that the courts should be averse to striking down a notification issued by the government for acquisition of land on fanciful grounds based on hyper-technicality. In this case, the notification issued under section 7(1) of the Uttar Pradesh Land Acquisition (Rehabilitation of Refugees) Act, 1948, was assailed by stating that the land acquired was for displaced persons and not for refugees. The Supreme Court held that "what is needed is substantial compliance with law and the notification satisfies that requirement." Thus, the distinction between "refugees" and "displaced persons" in international law has been diluted in the context of the partition of India into two dominions in 1947 as well as in domestic legislation. This approach of the court could also be seen in *Collector of 24 Parganas* v. *Lalith Mohan Mullick*,[6] in which the Supreme Court has also very clearly established the objectives of concepts such as "rehabilitation" and "public purpose" relating to displaced persons. In this case, a notification issued under section 4 of the West Bengal Land Development and Planning Act for settlement and rehabilitation of displaced persons was issued. Subsequently, a decision was taken by the Department of Refugee Relief and Rehabilitation, Government of West Bengal, to allot the acquired land to a society for the establishment of a hospital for crippled children. The Supreme Court observed that:

> [P]utting up of a hospital for crippled children is a public purpose connected with the rehabilitation of displaced persons. The original object of acquisition proceedings is generally termed as "resettlement of refugees" which would mean their rehabilitation. By rehabilitation what is meant is not to provide shelter alone. *The real purpose of rehabilitation can be achieved only if those who are sought to be rehabilitated are provided with shelter, food and other necessary amenities of life.* To provide a hospital for the disabled and for the crippled children of such displaced persons squarely comes within the concept of the idea of "rehabilitation" and consequently of settlement of refugees [emphasis added].

Thus, the construction of a hospital for refugee children was held valid under the concept of "public purpose" on the basis of which even private property could be acquisitioned or requisitioned. In this case, there was acquisition of private property for the construction of a hospital for refugee children.

In *National Human Rights Commission* v. *State of Arunachal Pradesh*,[7] the Supreme Court of India has very clearly established the rights of Chakma refugee children born in the state of Arunachal Pradesh for citizenship. A large number of children were born in India and were entitled to Indian citizenship by birth under section 3 of the Citizenship Act, 1955, prior to the amendment made to it in 1987 requiring one of the parents to be an Indian citizen. However, they also sought to be registered as citizens under section 5 of the same act. In this case, the Court observed that:

> [B]y virtue of their long and prolonged stay in the state, the Chakmas who migrated to, and those born in the state, seek citizenship under the Constitution read with section 5 of the Act (Citizenship Act, 1955). By refusing to forward the applications of the Chakmas to the Central Government, the Deputy Collector is failing in his duty and is also preventing the Central Government from performing its duty under the Act and the Rules.

In this regard, the Court went further and observed that:

> *[W]e are a country governed by the Rule of Law. Our Constitution confers certain rights on citizens. Every person is entitled to equality before the law and the equal protection of the laws. Besides, by refusing to forward their applications, the Chakmas are denied rights, constitutional and statutory, to be considered for being registered as citizens of India* [emphasis added].

Apart from these decisions addressing the rights and interests of refugee children, the Supreme Court of India has time and again reiterated India's obligations under contemporary international law based both on the provisions of the Constitution and on the international instruments to which India is a party. In *M.C.Mehta* v. *State of Tamil Nadu*,[8] the Supreme Court gave a set of directions for the abolition of child labour in Sivakasi Match Industries. Reiterating the same, the Supreme Court also referred to articles 3, 27(1), 31(1) and 36 of the Convention on the Rights of the Child in *Bandua Mukti Morcha* v. *Union of India*.[9] The Court held that primary education of children, in particular, children from poor, weaker sections, Dalits and Tribes and minorities, is mandatory. The Court also observed that the ban on employment of children must begin with the most hazardous and intolerable activities like slavery, bonded labour, trafficking, prostitution, pornography, dangerous forms of labour, and the like.

Apart from the decisions mentioned above, the following decisions would indicate the role played by the courts in bridging the gap between international obligations undertaken by India in protecting human rights and in realizing them. To mention a few, the Supreme Court in *Gramophone Company of India Limited* v. *Birednra Pandey*,[10] held that

> there can be no question that nations must march with the international community and the municipal law must respect rules of international law just as nations respect international conventions. The comity of nations requires that rules of international law may be accommodated in the municipal law even without express legislative sanction provided they do not run into conflict with Acts of Parliament.

In *People's Union for Civil Liberties* v. *Union of India*,[11] the Court held that "the provisions of the Covenant which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution can certainly be relied upon by the courts as facets of those fundamental rights and hence enforceable as such." In *People's Union for Civil Liberties* v. *Union of India*,[12] the Supreme Court went one step further and held that "the customary principle of international law, if there is nothing against it in the domestic sphere, would be part of the domestic law of the land." The court also observed that "*international law is now more focused on individuals than ever before*" (emphasis added). In *Nilabati Behra* v. *State of Orissa*,[13] the Court went to the extent of overriding the reservation India had on the International Covenant on Civil and Political Rights and held that individuals are entitled to compensation even in the absence of a statutory law. In another case, *Vishaka* v. *State of Rajasthan*,[14] the Supreme Court very effectively brought the international obligations India has undertaken to the protection of the rights of women and put into place a set of guidelines regarding sexual harassment in workplaces in the absence of any specific law.

In *Khudiram Chakma* v. *State of Arunachal Pradesh*,[15] the Supreme Court of India referred approvingly to the Universal Declaration of Human Rights in relation to refugees. The Court observed:

> Article 14 of the Universal Declaration of Human Rights, which speaks of the right to enjoy asylum, has to be interpreted in the light of the instrument as a whole, and must be taken to mean something. It implies that although an asylum seeker has no right to be granted admission to a foreign state, equally a state that had granted him asylum must not later return him to the country he came from. Moreover, the article carries considerable moral authority and embodies the legal prerequisite of regional declarations and instruments.

Again, the Supreme Court in *C. Masilamani Mudaliar* v. *Idol of Sri Swaminathaswami Swaminathaswami Thirukoil*[16] referred to articles 1, 2(b), 3, 13,14,15(2) of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) to protect the rights of women. In doing so, the Court observed that:

> Article 5(a) of CEDAW to which the Government of India expressed reservation, does not stand in its way and in fact Article 2(f) denudes its effect and enjoins to implement Article (2(f) read with its obligation undertaken under Articles 3, 14 and 15 of the Convention *vis-à-vis* Articles 1,3,6 and 8 of the Convention of Right to Development. These Conventions add urgency and teeth for immediate implementation.

The Court went on to observe that:

> [L]aw is an instrument of social change as well as the defender for social change. *Article 2(e) of the CEDAW enjoins the Supreme Court to breathe life into the dry bones of the Constitution* [emphasis added].

In *Madhu Kishwar* v. *State of Bihar*,[17] the Supreme Court made elaborate reference to CEDAW as well in protecting the rights of women. Referring to the Univer-

sal Declaration of Human Rights as the "Moral Code of Conduct," the Court read those principles into the domestic jurisprudence in awarding compensation to a foreign national, a woman from Bangladesh.[18] There are many such decisions of the Supreme Court of India that seek to protect the rights of citizens as well as others seeking to implement the international obligations undertaken by India directly or imposed on her by the customary principles of international law.

In spite of all these decisions, it is interesting to note that no specific reference has been made by any party to a dispute, or by the courts about the international obligations India has undertaken under article 22 of the Convention on the Rights of the Child.[19] A much closer analysis in this regard would reveal that many other provisions of the Convention on the Rights of the Child have also been ignored. Provisions like article 2 on non-discrimination, article 7(2) on registration of birth, and articles 20, 26, 28, 29, 31, 35, and 39 have not been taken into consideration in dealing with one or more refugee groups in India. Proper education and training of government officials, police, custodial institutions, NGOs, and para-military forces along with inclusion of human rights curriculum (with a focus on *children's* rights) would go a long way to ensuring effective implementation of the Convention on the Rights of the Child in the South Asian region.

Notes

1. W.A.No 354/1994, Karnataka High Court.
2. *Times of India*, 3 February 1999.
3. W.P. No. 515/1990, Gauhati High Court.
4. W.P. (Criminal) No. 583/92, Supreme Court of India.
5. (1977) 1 SCC 216.
6. (1986) 2 SCC 138.
7. (1996) 1 SCC 742.
8. (1996) 6 SCC 756.
9. (1997) 10 SCC 549.
10. AIR 1984 SC 677.
11. (1997) 3 SCC 433.
12. (1997) 3 SCC 301.
13. AIR 1993 SC 1960.
14. (1997) 6 SCC 241.
15. (1994) Supp (1) SCC 615.
16. (1996) 8 SCC 525.
17. (1996) 5 SCC 125.
18. *Chairman, Railway Board* v. *Chandrima Das*, (2000) 2 SCC 465.
19. *Ktaer Abbas Habib Al Qutaifi* v. *Union of India*, 1998 (2) G.L.H. 1005. The Indian government has also reported in its first Country Report to the UN Committee that more than seventy-five thousand children born in India (state of Tamil Nadu) to Sri Lankan refugees have not been registered. See the Country Report, Government of India, February 1997, p. 67.

Dr. V. Vijayakumar, a visiting scholar at the Centre for Refugee Studies during 2000, is also the Centre's international liaison coordinator for Asia. He is a professor of law at the National Law School of India University, Bangalore, India, and administered the UNHCR Chair on Refugee Law until March 2001.

The "Brown Paper Syndrome": Unaccompanied Minors and Questions of Status

Catherine Montgomery

Abstract

In principle, the Charter of Rights and Freedoms grants equal rights to all persons residing in Canadian territory. In practice, it is clear that some populations are more "equal" than others. Difficulties relating to the immigration process, access to services, and discrimination are but some of the forms of exclusion often confronted by minority and immigrant communities. For unaccompanied minors, their combined status as refugee claimants and as minors creates an added factor of vulnerability, referred to by one minor as the "brown paper syndrome." Drawing on a case study of unaccompanied minors in Quebec, the present article examines the relationship between status and barriers to integration, looking more specifically at the difficulties faced by these youth in the refugee determination process and in accessing resources in the public, private, and community sectors.

Résumé

La Charte canadienne des droits et libertés confère, en principe, des droits égaux à toutes les personnes vivant au Canada. Il est évident cependant que, dans la pratique, certains groupes sont « plus égaux » que d'autres. Les communautés d'immigrants et les minorités ont à faire face, entre autres formes d'exclusion, à toutes sortes de difficultés liées au processus de l'immigration, à l'accès aux services et à la discrimination pure et simple. Dans le cas des mineurs non-accompagnés, leur appartenance aux doubles catégories de demandeurs d'asile et de mineurs, crée un facteur additionnel de vulnérabilité—appelé « brown paper syndrome » (syndrome « papier gris ») par un mineur. Se fondant sur une étude de cas effectuée au Québec et portant sur des enfants mineurs non-accompagnés, cet article examine les liens qui existent entre le statut et les obstacles à l'intégration, en examinant plus particulière ment les difficultés confrontant ces jeunes dans le processus de la détermination du statut de réfugié et dans l'accès aux ressources qui existent dans les secteurs public, privé et communautaire.

> *The Brown Paper Syndrome: "What I don't like is when you produce the brown paper. […] It's not exactly racism, but then …. Other places when you produce it, it's like you're contaminated. It's just a label. Immediately it's like, 'Oh, okay, there's a wall in front of me. Stay away.'"* — Natasha

In principle, the Charter of Rights and Freedoms grants equal rights to all persons residing in Canadian territory. In practice, it is clear that some populations are more "equal" than others. Difficulties of access to services, discrimination, and other barriers to integration are but some of the forms of exclusion often confronted by minority and immigrant communities. For refugee claimants, the uncertainty of their immigration status increases their vulnerability. It is this added factor of vulnerability which is referred to above as the "brown paper syndrome," in reference to the immigration papers which identify refugee claimants as being "different" from Canadian citizens. The situation described above, however, is not that of an adult asylum seeker, but rather of an unaccompanied minor; that is, a youth under the age

of eighteen who has been separated from his or her parents and who arrives in Canada unaccompanied by a legal guardian.

The United Nations High Commissioner for Refugees (UNHCR) estimates the number of unaccompanied minors to be between 2 and 5 per cent of the international refugee population, thus representing an approximate 360,000 to 900,000 youth worldwide.[1] Although most unaccompanied minors remain in or near their countries of origin, in recent years increasing numbers have made their way to countries in Europe, North America, and Australia.[2] In 2000, an estimated 1,088 unaccompanied minors entered Canada, most of them settling in Ontario, Quebec, and British Columbia.[3] In Quebec, where the present study was undertaken, figures are not available for the precise number of unaccompanied minors who arrive each year. However, in early 2001 the Service d'aide aux réfugiés et aux immigrants de Montréal Métropolitain (SARIMM), the primary agency responsible for their protection, had 298 minors on file.[4] In 1999, thirty-five countries were represented in SARIMM's clientele, the majority from Africa and the Indian sub-continent (48.2 per cent and 35.3 per cent respectively) and a remaining 16.4 per cent from South America and Europe. More than two-thirds of these youth are boys or young men and just under a third are girls or young women. In terms of age, the majority, 64 per cent, are over sixteen years of age, followed by 22 per cent between the ages of thirteen and fifteen, and 14 per cent under the age of twelve.[5]

Since the unexpected landing of 134 Chinese youth off the coast of British Columbia in 1999, there has been increasing attention given to the situations of unaccompanied minors, particularly with respect to legislative and policy procedures. UNHCR Canada recently published a much-needed report on the asylum process in Canada for separated children.[6] In Quebec, the Ministry of Relations with Citizens and of Immigration (MRCI) has drawn up a preliminary discussion paper on policy issues relating to this population.[7] In Ontario a Migrant Children's Task Force was set up in 2000 for the same purpose and, in 1999, British Columbia created a Migrant Services Team in order to better coordinate services for unaccompanied minors.

All of these initiatives have inspired an essential introspection with respect to the roles and practices of institutional actors in working with unaccompanied minors in the refugee determination process. Meanwhile, relatively little is known about the way in which unaccompanied minors themselves experience this process or about the impact of the so-called "brown paper syndrome" on their establishment in Canada. A greater understanding of this experience could only be beneficial to the development of more coherent social policy and practice regarding this population. Drawing on a case study of the obstacles faced by unaccompanied minors in Quebec, the present paper examines the impact of their status as refugee claimants and as minors on everyday lived experience.

Boundaries and Barriers: Some Indicators from Existing Literature

Neither full citizens nor often even welcomed guests, refugee claimants frequently face difficult living conditions in their early years of establishment.[8] The status of refugee claimant is itself a sort of "status-in-waiting" in the sense that futures are dependent on the outcome of the refugee determination process. This period of waiting can become in itself a very significant barrier to integration, particularly in terms of access to certain types of resources.

While limited access to resources has been documented for adult refugee claimants, the specific situation of unaccompanied minors has received relatively little attention in existing literature. For adult claimants, the consequences of status are particularly prevalent in the job market, where employers often refuse to hire persons without a regularized immigration status. In Renaud and Gingras's study of 407 claimants in Quebec, 84.7 per cent acquired employment only after receiving refugee status, the median time for beginning a first job being over two and a half years (thirty-two months). Also, refugee claimants are often excluded from most government- sponsored employment and training programs because of their immigration status. Obstacles exist even in access to language training courses, generally considered to be a fundamental element of integration. Although such courses are in theory open to refugee claimants, Renaud and Gingras's study indicates that acceptance into language courses is four times greater for those who have obtained status than for those who are still in waiting. In the housing market, landlords often refuse, illegally, to rent to persons who do not hold Canadian citizenship. Just over ten per cent (10.4 per cent) of those involved in the study declared having encountered a negative reaction from landlords because of their immigration status.[9] Even for those who are able to rent, they are subject to such discriminatory practices as having to produce supplementary proof of their identity or of their capacity to make payments.[10]

Barriers of access can also be observed in publicly subsidized service domains, such as medical services, post-secondary training, and daycare programs. Refugee claimants are not covered under regular provincial health programs, but rather under a separate federal plan known as the Interim Federal Health Program (IFHP). Through this program, claimants do have access to

medical services considered as being "essential," but are not covered for routine medical, dental, or mental health services. In the sector of post-secondary education, claimants are allowed access, but are not eligible for regular tuition fees paid by Canadians students. The obligation to pay foreign student fees thus becomes a substantial financial barrier to education. Similarly, claimants with young children are not eligible for daycare subsidies, a situation which is particularly onerous for single- parent families.[11]

The lengthy delays in processing refugee claims only accentuate these obstacles. In 1999-2000, the average waiting period for obtaining refugee status was 9.6 months for adult claimants and 7.3 months for minors.[12] Altogether, claimants may wait for close to two years before acquiring regularized immigration status as permanent residents.[13] Such delays maintain claimants in a state of anxiety, not knowing whether they will be forced to leave the country and not able to plan for the future. This anxiety is further heightened in the refugee determination process itself. An Australian study, for instance, establishes a statistically significant relationship between the procedures surrounding the refugee determination process and the increase of stress and other psychiatric and somatic symptoms among refugee claimants.[14] A study of the refugee determination system in Canada, undertaken by Rousseau, Crépeau, Foxen, and Houle, also reveals significant weaknesses in the ways in which claims are processed, including difficulties in evaluating evidence, assessing credibility, and conducting hearings; insufficient knowledge of the political contexts from which the claimants have fled; false representations on war; and cultural misunderstandings and insensitivity.[15]

The Immigration and Refugee Board (IRB) has set up special guidelines for processing claims of minors, entitled *Child Refugee Claimants: Procedural and Evidentiary Issues*.[16] Although not legally binding, the guidelines are meant to set up a framework which takes into account the special needs of unaccompanied minors in the determination process.[17] Despite the well-foundedness of the guidelines, their actual implementation has been the source of concern from professionals involved both directly and indirectly with the refugee determination process. Ayotte documents some of the more serious weaknesses, such as inappropriate forms of questioning; the uneasiness of some minors in telling their stories; the lack of facility of some Board members in communicating with children; the lack of understanding of the impact of trauma, personality, and cultural background on a child's testimony; and contradictions between the testimony of the designated representative and that of the child.[18] The weaknesses identified in the refugee determination process call into question the right to a just hearing and thus constitute another very significant barrier to the establishment of decent life conditions for refugee claimants, both adults and minors.

Reflecting on Status: the Interface between the Juridical and the Sociological

The obstacles noted above can all be linked to a broader reflection on status. For Weber, status is a question of belongingness in what he refers to as the *Rechtsgemeinschaft*, or community of rights.[19] Belongingness has here two distinct, but interrelated, meanings. The first, a sociological meaning, refers to belongingness in the sense of being accepted as a member of what Anderson has termed the "imagined community'; that is, the political unit in which members "of even the smallest nation will never know most of their fellow members, meet them, or even hear of them, yet in the minds of each lives the image of their communion."[20] This meaning is closely associated with that of identity and poses the delicate question of who belongs to the nation-image and who is excluded from it. This image is always based on an insider-outsider relationship in which privileges are granted to those who are considered to "belong" and refused to those considered as outsiders.[21] From this perspective, discriminatory practices experienced by refugee claimants in the domains of housing, employment, education, or public services can be considered as manifestations of a tension between insiders and outsiders. In the situations described previously, a refugee claimant is conceived of as the outsider, the "Other," the 'pariah.' It is in part this status as outsider which places refugee claimants in a situation of "lesser right."

The second meaning of belongingness, a juridical one, refers to the legal status of individuals within the community. This meaning corresponds to the differential statuses conferred by immigration categories; that is, the fact of being a refugee, a permanent resident, or a citizen. Implicit in each of these categories is a hierarchy of rights corresponding to what individuals may or may not do depending on their immigration status in the community. The rights to vote and to hold office, for instance, are rights held only by citizens, whether through birth or through naturalization. The lower the status, the fewer the rights. Many of the obstacles cited above are maintained and reinforced by the fact that refugee claimants do not yet have a regularized immigration status. Access to regular health services, to government-sponsored employment and training programs, to post-secondary education as regular students, to subsidized daycare, and to other services in the public domain is reserved for citizens and, with some restrictions, to per-

manent residents. In these cases, the sociological dimension of "lesser right" is reinforced in a legal status.

This interaction between the sociological and the juridical takes on an added dimension in the specific case of unaccompanied minors. They are subject to vulnerability not only because of their immigration status as refugee claimants, but also because of their status as "minors," that is, the fact of being under eighteen years of age. This "age of majority," as we call it, marks an important socio-juridical boundary, at least in Western societies. The participation of minors in certain types of activities is limited because of their age. This is the case, for instance, for voting, for signing most types of legal documents, for accessing specialized training or employment programs, or for being eligible for social welfare transfers. Such limitations are made even more complex for unaccompanied minors in Quebec because, unlike youth in general, they do not have parents or legal guardians who can assume responsibility for them until they reach the age of majority. Although mechanisms for guardianship have been put into place in some provinces, such as Ontario and British Columbia, in Quebec there is an important juridical void surrounding this issue.[22]

The interface of these different types of status — as outsiders in the "imagined community," as refugee claimants, as minors — creates a certain number of barriers for unaccompanied minors. One form of status plays off against the others, thus increasing the vulnerability of this population.

The Quebec Case Study: Some Methodological Considerations

Given the limited literature available on unaccompanied minors in Canada, the principal objectives of the study were to provide a portrait of this population, to document obstacles encountered in their process of establishment, and to identify some of the sources of support enabling them to overcome such obstacles. The study is based on a Quebec sample which was constructed in two phases, each providing a distinct point of view on the experiences and needs of unaccompanied minors. The first phase consisted of a series of ten individual interviews with social practitioners and administrators working with unaccompanied minors, and one group interview which brought together an additional eight practitioners. The respondents are from four types of agencies and organizations, including the Service d'aide aux réfugiés et aux immigrants de Montréal Métropolitain (SARIMM), the YMCA,[23] Youth Centres (Centres jeunesse) and the Ministry of Relations with Citizens and of Immigration.[24] In addition to the individual and group interviews with the eighteen practitioners, the study also drew on informal meetings with persons working in the field. The second phase of the study is based on a series of thirteen interviews with unaccompanied minors. The youth are from Africa and the Indian sub-continent, which accounted for 84 per cent of the Quebec unaccompanied-minor population in 1999. The sample is comprised of seven young men and six young women. The names used are fictitious and were chosen by the minors themselves.

The interviews were semi-directive in structure and were conducted around the following themes: profiles and migratory trajectories of unaccompanied minors; obstacles and facilitators encountered in the process of establishment (particularly events relating to placement, education, immigration proceedings, health and social services, and help networks); and propositions for changes to social policy and practice regarding this population. The findings presented in the following pages examine the relationship between different forms of status and barriers to integration, looking more specifically at difficulties faced in the refugee determination process and in accessing resources in the public, private, and community sectors.

The Refugee Determination System: Liberating or Limiting?

> I used to think these people [immigration officials] enjoy playing God, you know, you can have it, you can't. Then I was like no, I can't think that way cause I just came here.… I should just be patient and I guess good things come to those who wait, but I just wished things would like [be faster] and I would know where my life was going — Tiffany.

The refugee determination process is a highly significant moment in the trajectories of unaccompanied minors, both symbolically and materially — symbolically, because it represents the passage from one world to another, not only in terms of geographic space, but also, and even especially, in terms of mental space. In this latter sense, it represents a form of liberation from the fear of return or of persecution. The process is of material significance because it determines the objective conditions by which the minors are permitted to participate in society. It is a process by which futures are decided and on which lives are dependent. The adoption of the IRB's children's guidelines, discussed previously, reflects the explicit acknowledgement of the particular vulnerability of refugee minors in the asylum process. Despite the meritorious intentions of such guidelines, however, both practitioners and minors who participated in the study had significant reservations as to their efficacy in everyday practice. While some commented on obstacles facing unaccompanied minors in the determination system more generally, others drew attention more specifically to limitations in the hearing procedures.

The determination process is a ritualized event, organized around a structured set of rules and procedures which are highly juridical and administrative in nature. Although juridical-type proceedings do exist in some form or another in most countries, the practitioners emphasize that unaccompanied minors are generally unaccustomed to the rules and procedures which make up such decision processes. Consequently, the process is seen as confusing. The minors do not necessarily understand all of the stages involved, the roles of the different institutional actors, or the importance of the official documents and forms which they are constantly filling out. This confusion is expressed in the following accounts from minors:

> Yeah, it [immigration process] is funny. I don't understand it, it is very long. I don't understand what is the process. I don't know, there are too many things […] Because there was some mixing, I get many letters, I went many places. — Michael

> I've got an idea of what's going on, but then I'm not so sure. You go to the hearing. What happens after that? If they refuse your claim what goes on after that? […] What happens after the hearing? Say you get your status, whatever, what happens after that? I don't even know. — Tiffany

On a more immediate level, the practitioners commented on the very subjective nature of the hearing procedures themselves. Decisions sometimes appear to be arbitrary, their justification reflecting more the personalities of the Board members present during the hearings rather than the facts of the cases themselves. One practitioner gives the example of a minor in his caseload whom he considered to have a clearcut case. The decision of the Board, however, was split, with one member stating that the story lacked credibility and another, the opposite. Commenting on the case, the practitioner states:

> It's not that simple!. And yet, for having worked with him for months on these questions, I knew, I mean that youth was an authentic refugee right down to the tip of his fingernails. But it was close, it passed really closely.

Other practitioners called for an urgent need to rethink the entire process of testimony for unaccompanied minors, placing significant emphasis on the very different ways in which minors may tell their stories. While they suggest that some Board members have a tendency to overestimate the capacity of minors to give testimony, for others this capacity tends to be underestimated.

The accounts of the minors themselves illustrate some of the principle difficulties encountered during the hearing procedures. A first difficulty is the formality of the event itself. Most of the minors felt intimidated during the hearing procedures. This was the case, for instance, of Ruby, whose refugee claim was rejected in the initial hearing and accepted only after her case was later appealed. When asked about what had happened during the first hearing, she explained that she had been scared. She believed that her case had been refused as a form of punishment because she talked too much:

> Interviewer: Why didn't they accept you the first time? Do you know?

> Ruby: Yeah, because before, I noticed that I [ask] lots of questions. I talk lots of things, that's why they thinking I am talking too much, so that's why they don't accept me.

Goldie was also extremely nervous during his hearing. He couldn't understand why he was able to tell his story so easily to his social workers at SARIMM and yet was scared that he wouldn't be able to answer the questions at the hearing. The tone of questioning used by the lawyer made him even more nervous, as he explains:

> Everything was right, but the problem is, I don't know why I was so nervous. I don't know. Because they [social workers] were asking me questions of my life before: what happened at this time, why it was like this, and this. […] I think the guy from, you know, the lawyer from immigration, from the government, the question he is asking me, he is making me very deeply. That is why I got scared. That is the only reason I got nervous. I was thinking, if they ask me anything I could not answer them. — Goldie

Goldie's comment also reveals a second difficulty mentioned by several minors in the study relating to the strategies used for questioning. Some were surprised by questions which they did not consider to be relevant to their individual stories. Although refugee hearings are meant to be non-adversarial in nature, the minors described what they considered to be a confrontational environment. Tone of voice and repetitiveness of certain types of questions were interpreted as signs that their stories were not believed. Michael, for instance, describes the type of taunting, or "teasing" as he says, used by one of the Board members: "I answered good what they asked me. They were teasing also. They were asking one time one question ten times, very like, they are compressing. The first question was, they said that there were some difficulties in my story, some wrongs."

Language barriers are another significant difficulty encountered by minors in the hearing process. Of those who participated in the study, all spoke either English or

French. However, the degree of language proficiency varied greatly from one youth to another. Despite a basic ability to communicate in one or another of the two languages, more than half were accompanied by an interpreter during the hearing process. Although the presence of the interpreters was generally appreciated, problems of translation heightened the insecurity of some minors. Vange, for instance, had a Portuguese-speaking interpreter from Brazil, although he is from a country in Africa where the Portuguese dialect is quite different. The differences in dialect between the interpreter and Vange led to some confusion during the hearing, so much so that he sometimes resorted to hand gestures in order to ensure that there were no misunderstandings:

> [There was] a bit of confusion, because they [the Board members] did not understand Portuguese. There were certain words, because Brazilian Portuguese and the Portuguese [in my country], there are certain differences, you see. And there were certain parts that I spoke in a Portuguese that only those from my country know and that he [interpreter] didn't understand. He explained things in a certain way that the jury members didn't understand either, but after that, I tried to explain some things by gestures and they understood. – Vange.

In other instances, problems of translation were more critical because of mistakes which weakened the credibility of the stories in the eyes of the Board members. Michael, for instance, had worked with a translator when he put together his written testimony. While he dictated in his mother tongue, the translator transcribed directly into English on the computer. According to Michael, the translation was done too rapidly because the translator was very busy during that period. As a result, there were some mistakes concerning names and addresses in the transcription which aroused the suspicion of the Board members.

In addition to problems of translation from one language to another, another type of communication barrier was also mentioned in the minors' accounts: the use of juridical or technical jargon used during the proceedings. In a somewhat comic situation, Vange described how he did not understand right away when the Board pronounced its decision, a positive one, because the person had used a technical word that he did not know. It was only after seeing the expression on his social worker's face that he knew that something important had just taken place. That "something important," of course, was the granting of refugee status.

Outside of the difficulties encountered in the hearing process itself, both practitioners and minors also commented on the long delays before status is determined. Not all of the minors had obtained status at the time of the study. The national average for processing claims of minors is 7.3 months, although for some of the minors in the study, the waiting period was over a year. Also, while the children's guidelines emphasize the importance of prioritizing minors' claims, the practitioners suggested that this practice is not observed systematically and that delays can in fact be quite long in some cases. The long waiting period constitutes a significant source of anxiety for these youth and its effects should not be underestimated. Some complained of difficulties sleeping during this period, of headaches, of problems concentrating in school, of episodes of crying, and of various physical discomforts likely caused by stress. Goldie, who had not yet received the decision of his hearing at the time of the interview, describes the impact of the wait on his health.

> It is not good for the health, you know. Sometimes I get sad. I don't know what is going to happen to me. I was thinking, and I don't feel like to eat. I don't feel to do something. I don't feel like go to school. I was scared, you know. I am still scared because if they want to, whatever they want, in little time, five, six months, the time I am going through, it is a long time. — Goldie

Still others just wanted to put this period behind them in order not to be constantly reminded of the situations which forced them to leave their countries and, also, to be able to plan for the future. For Komar, the happiest moment since arriving in Quebec was the day he learnt that he would be able to stay in Canada: "Yes, that's a very nice gift". For Michael, the day his case was accepted was the day he "started living." Vange, too, just wanted to get on with his life: "I already wanted to enter into this society like everybody else".

Thus, the immigration process, and in particular the determination of refugee status, constitute significant moments in the process of establishment of unaccompanied minors. As both practitioners and minors suggest, however, this process is riddled with obstacles. Confused understandings of the different stages in the process, confrontational types of questioning judged inappropriate for minors, communication barriers relating both to a lack of knowledge of English or French and to the use of technical and juridical terminology, anxiety and psychosomatic symptoms provoked by the long delays: these difficulties all contribute to the vulnerability of unaccompanied minors. While the IRB's children's guidelines constitute a potentially valuable tool for improving the conditions of establishment for unaccompanied minors, the lack of systematization in their implantation would appear in fact to add to this vulnerability.

Status Barriers and Access to Resources

Like adult claimants, unaccompanied minors also find that the wait for refugee status becomes an obstacle to accessing certain types of resources considered essential to social integration in the host society, whether in public, private, or community domains of activity.

Access to Public Sector Services: Health and Education

Access to health care forms part of what most Canadians consider a basic right. Like adult refugee claimants, however, unaccompanied minors who do not yet have refugee status are not covered by provincial health programs, but rather by the Interim Federal Health Program (IFHP) administered by the federal government. While this program ensures all essential services, it is based on a curative approach to health care rather than a preventive one. Thus, unaccompanied minors have access to medical, dental, or mental health services only if the consultation is considered essential and, even then, their papers are not easily accepted in all health centres and clinics.[25]

The difficult access to health services is best described in the accounts of the minors themselves. Komar, for instance, had a medical condition resulting from an operation he had had several years earlier and, in his country of origin, the condition was followed up in regular medical consultations. Prior to obtaining his refugee status in Canada, however, he was not able to seek medical aid because he was not yet covered by the Quebec health regime and the condition was not covered under the federal program. Although he did not suffer any adverse effects from his condition in the early period of establishment, the curative logic of the IFHP implies that he would have had to wait for his condition to worsen before being able to seek treatment. Such a logic places unaccompanied minors in a very delicate position which could potentially increase health risks. In a situation described by another minor, access to services was almost refused because the health professionals in the clinic where he sought help were not sure that they would be paid for the consultation. After pleading with one of the doctors, he was finally able to receive medical attention, but the doctor insisted that a letter be written in order to ensure payment. In the following comment, Vange describes the situation:

> It was complicated, because the doctor didn't know. He doesn't work with immigration. I don't know if I understood well, but he wasn't sure who was going to pay the consultation fees. I explained to him that I was at SARIMM. He almost refused me, but since I was the last client I said 'Monsieur, I really need to know my state of health, because I don't feel very good'. He did it and they wrote a letter. I don't know if they sent it to SARIMM… It was because I wasn't a permanent resident yet, I wasn't a resident at that time. – Vange.

Natasha describes her own experience of refusal because a health professional would not accept her immigration papers. Following a medical examination, her doctor told her that she could fill out her prescription at a local pharmacy and that all she had to do was present her immigration papers and there would be no cost for the medication. When she arrived at the pharmacy, however, she felt at once frustrated and humiliated by the way in which the pharmacist reacted when he saw her papers:

> So I had to go to the pharmacy and they didn't accept my brown papers, my immigration papers […] I wish someone had told me before, cause I don't like making a fool out of myself […] The doctor said go to the pharmacy downstairs, show them your papers, then they'll give you the medication. — Natasha

These situations illustrate both the difficulty of access to health care and also the confusion surrounding what services are covered and what the modalities of payment are. This confusion is felt not only by health professionals who are unfamiliar with this population, but also by the minors themselves who are not necessarily aware of what their rights entail in matters relating to health care.

Access to health services is even more complex for unaccompanied minors under the age of fourteen. According to Quebec laws, youth over this age are able to give authorized consent for medical interventions. Youth under this age, however, need the consent of a parent or of a legal guardian. Unlike some other provinces, such as Ontario and British Columbia, there is no designated legal guardian for unaccompanied minors in Quebec. While there have been no serious cases involving medical consent yet, this juridical void does nonetheless pose some serious ethical considerations with respect to the protection and care of unaccompanied minors. Vaccination and other health programs in the schools, although relatively routine occurrences, illustrate the potential consequences of this void. Students under fourteen need parental consent for such interventions at school. For unaccompanied minors, consent forms are sometimes signed by foster families or social workers, although, strictly speaking, they do not have the authority to do so. As one practitioner suggests, such practices are not without risk: "If something goes wrong afterwards? We put a signature somewhere. Imagine that something happens to the child; that he has a major infection and dies [e.g. following a vaccination]. Who is responsible?" The stakes are potentially even higher for interventions such as surgery or other serious forms of

treatment. Thus, the juridical void in these cases is amplified by the status of these youth as minors.

The educational sector is also one of the more important domains in which the impact of status can be observed. Access to education is to unaccompanied minors what employment is to adult claimants. It represents an essential stage in their establishment, not only by preparing minors for the future roles they will play in society, but also by introducing them to key values, symbols, and even language skills which will enable them to fulfil these roles with ease. Generally speaking, universal access to education is taken for granted in Canada. For youth such as unaccompanied minors, however, this access is not always unproblematical.

School attendance does not always begin immediately. Among those who participated in the study, the delays in registration ranged from one to five months following their arrival in Quebec, largely the result of communication difficulties between immigration and education authorities. As with the determination process, the waiting period is often a difficult one. Without some form of activity to keep them busy, many have too much time to dwell on the events which led to their departures from their homelands. Michael, for instance, describes the way in which he spent the days before he was able to attend school:

> I was thinking about my family. That was very boring days, thinking, thinking, I was so weak, my eyes were very black from this. Everybody was saying: are you eating well? But I was not eating well, I was not going outside. Really it was difficult. It was a difficult life. — Michael

He started feeling better only after his registration was accepted. School thus provides an excellent means by which minors can establish some kind of normal routine, helping them at the same time to think of things other than their losses. Consequently, both practitioners and minors alike call for better communication between immigration and education authorities in order to shorten the administrative barriers to entering the educational system.

Outside of the long delays, unaccompanied minors face other types of resistance in the school system, resulting from their status both as refugee claimants and as minors. As refugee claimants, these youth have the right to attend regular public schools in Quebec. Some schools, however, are reluctant to accept them. In a period of important cutbacks in the educational sector, special-needs groups such as unaccompanied minors are often perceived as burdens on an already overloaded system. Among practitioners, there is a generalized concern that the lack of resources has led to a standardization of educational practices, which tends to push those with special needs towards the periphery of the school system. Thus, the unaccompanied minors do not always have the support needed to encourage their progress in school. This was the case, for instance, of Goldie. He had enormous difficulties concentrating during the first few months in school. Sometimes he would place his head on his desk and start crying. The teacher, who believed he was trying to test her, would get angry and send him to the principal's office.

> Because I have so many problems I couldn't do study. […] The teacher, she get mad, and she was very, like telling me that: 'You are the only one doing this and that.' I mean, she was right, I was wrong. But she didn't understand my problem, I didn't tell her what happened to me. It might happen to anyone what happened to me. Everybody going to be in my situation maybe, because I lose everything in a couple of months. […] Yeah, if she knows that I was having that much problems maybe she wouldn't do that to me. I mean, she is always say: 'You not doing good.' And I don't like to hear that because when I was in my country I was doing my studies, I was always good. I never heard that from teacher: You are not doing this, I don't like to hear that, but I couldn't do. I tried to do studies but all my mind goes there, I start crying in class sometimes, I was going that like on the table, and the teacher think that I am tired or I want to sleep, and they go to the director: 'He was sleeping in class, this and that.' —Goldie

Furthermore, schools have no legal responsibility to keep students in the regular system after the age of sixteen. There has thus been an increasing tendency to wait out the period until unaccompanied minors reach this age, so that they can then be ushered out of the regular system and be placed instead in the adult-sector schools for continuing education. The adult sector, however, is considered by practitioners as being inappropriate for unaccompanied minors. Offering even less support than the regular school sector, the adult sector requires a greater degree of maturity and discipline on the part of students. The lack of support was a great source of anxiety for Chef, one of the minors in the study, who was to be transferred to the adult sector the following September: "[I] found out I had to go to adult school. So, I was really afraid, but they told me, 'You don't have to be afraid.' But I find that even like that there is nobody that will push you. I know you have to push yourself, but you need a little help too." Also, the adult sector does not have the same legal responsibility to accept minors whose immigration status has not yet been regularized, nor does it receive financial compensation from the school boards for these youth. There is thus a reluctance on the part of the adult sector

to accept unaccompanied minors who have been squeezed out of the regular sector. As one practitioner explains, the educational placement of unaccompanied minors sometimes resembles a ping-pong match, because the youth are volleyed back and forth between institutions which have excluded them on the basis of either age or immigration status:

> When the school board saw a sixteen- to seventeen-year-old, they would say: "The age difference is too big, we'll send him to the adult system". Except that adult schools have received rules and directives which say that they cannot accept them. For the financing, they need people who have already been accepted as refugees. Even if it is a minor, they don't receive anything, so they don't want to take them. Thus, the board would send them there and the school would say "No, you can't do that". They played ping pong with a lot of my minors […] Now, I always refer them with a letter saying "don't send them to the adult sector. These are your schools and you should know that they don't have the right. Send them to the regular system, because they have the right there".

Access to Private Sector Domains: Employment, Housing, and Commercial Institutions

Since their basic needs in terms of placement, food, and clothing are provided for by the government, unaccompanied minors do not face the same urgency in finding employment and housing as do adult refugee claimants. However, for "older" minors, particularly those between sixteen and eighteen, access to these domains may nonetheless be problematical.

The principal daily activity of unaccompanied minors is undoubtedly school attendance. Some older youth, however, may also look for part-time jobs which can give them a little bit of pocket money for buying such items as clothes or music. Like adult claimants, however, they find that access to the job market is not always easy. Not only are employers reluctant to hire them because of their immigration status, but the working conditions are less than ideal in places where employment is more accessible. Natasha, who comes from a former British colony in Africa, was educated in English and has a British-sounding accent. When she applied by telephone for a job in a telemarketing firm, she was told right away to come in for an interview. When she arrived at the firm, however, she noticed that the employer seemed to react negatively towards her. She suggests that he was surprised by the colour of her skin and that he showed even further resistance when she presented her immigration papers. Commenting on the experience, she just shrugged her shoulders and said, "You see that funny look in their faces. You're like, I've got no job." In another type of situation, Vange found himself working illegally in a manufacturing company because other employers wouldn't accept his immigration papers. He described the working conditions there as being difficult and waited with anticipation the acceptance of his refugee status so he could find something more appropriate:

> The status was very useful to me, because I wanted to participate in this society. I wanted to work in places with good conditions, because the place where I have been working up to now, most of the time the people who work there don't have their status or even the insurance card […] It is not a job that I love, not at all. I found it difficult. I didn't have documents. I worked like mad. Since I have good qualities I could work in better places. – Vange.

Similar experiences may occur to those who try to rent apartments. However, since most unaccompanied minors are in structured placement situations, such as foster and host families, group homes, or supervised apartments, obstacles in the rental housing market are much less frequent than for adult refugee claimants. Only minors over sixteen, the age at which Quebec laws authorize them to sign leases, are allowed to live in independent apartments. Despite the right to sign leases, however, discriminatory practices based on age and immigration status persist, as one practitioner suggests:

> It's true. [Immigration status] creates a credibility problem for the tenant. I am thinking about one of my youths. It took several weeks before he could obtain an apartment – because he was a minor, because he didn't have any income, because he was a new [immigrant].

Of the minors who participated in the study, only Goldie had experienced this type of difficulty, since most of the others were in placement situations. In fact, Goldie was still living with a family at the time of interview, but he had just begun an apartment search with a friend who was over eighteen years of age. Of the few apartments he had seen so far, he described most as being "dirty" and "smelly." When they did finally see a place that suited them both, Goldie said that the landlady responded by saying, "We don't give apartments to young people."

Even such administrative activities as opening a bank account or cashing a cheque can become bureaucratic ordeals for unaccompanied minors. Although SARIMM tries to direct the youth to banks which are more tolerant, there is nonetheless a reluctance to serve this clientele. Not only do they have too little money to be of any real interest to these commercial institutions, but their status as minors and as refugee claimants tends to arouse the suspicion of bank employees, as one practitioner suggests: "They [the minors] have three photos, with

immigration papers, but the banks consider them to be suspect".

Natasha's experience with banks also confirms this type of reaction:

> [W]hen I got there I had to make an appointment to open an account and she looks at me funny. She told me to sit down. Immediately, I saw like the barrier, kind of thing, then she serves everybody else. I got there like first.…They talk nicely to you when you're talking like this, [but] when you produce the [immigration] paper, then Oh! My goodness!

Access to Other Domains of Daily Life: The Community Sector

Even outside of more structured sectors of activity, such as those mentioned above, unaccompanied minors may also encounter obstacles in other, more informal, spheres of daily life, such as public libraries and leisure activities. One of the minors in the study, DC, is an avid reader. Although he has free access to the school library, he prefers to use the public library which is located near his foster family's home. At this library, however, he is not allowed to borrow books because of his immigration status. Instead, he sometimes spends a half a day there reading a book which has been put aside for him. At the time of the interview, he was deep into the works of Shakespeare. Although DC did not complain about not being able to borrow books – he mentioned that the library is quieter than the home where he lives – the example nonetheless demonstrates the limits imposed by status.

Participation in leisure programs may also be limited by immigration status. A practitioner gives the example of a community organization which pairs new immigrants with individuals and families already residing in Quebec, the objective being to create support networks during the first few years of establishment. Believing that such an activity could be a valuable source of support for several unaccompanied minors in her caseload, she called the organization in order to register them. Due to limited resources, however, the organization had been obliged to adopt strict criteria for accepting new members into the program. Excluded by the criteria were those whose immigration status was not yet regularized:

> I find that it would be very important. I have youth at the moment who would gain a lot from going to a family from time to time, even if they aren't accepted as refugees yet. Or going with an adult who would take them to an activity once a month. But that doesn't exist for refugee claimants.

Conclusion

The findings of the study reveal several types of obstacles encountered by unaccompanied minors in the early phase of their establishment in Canada. Whether in terms of weaknesses in the refugee determination system or limited accessibility to various types of resources within the community, such status barriers identify these youth from the outset as being outsiders in the *Rechtsgemeinschaft*, or community of rights. Such barriers are situated in a logic which reproduces the sovereignty of the nation-state as a political unit in which privileges are granted on the basis of status in the community. As refugee claimants and as minors, these youth are characterized by two forms of lesser status, thus limiting their opportunities for full participation in the host society. Yet, the situations of unaccompanied minors cannot be limited strictly to a national framework. Instead, they necessarily extend to the international sphere of rights protection, as inscribed in the Geneva Convention on the Status of Refugees and the Convention on the Rights of the Child, both of which have been ratified by Canada. The humanitarian values which inspire these instruments, however, seem to be contradicted in national instruments which maintain status differences and in the everyday lived experiences of these youth. This contradiction introduces a paradox by which, to paraphrase Renaud and Gingras, "Persons admitted to Canada for humanitarian reasons experience such difficulties in the process of establishment that there is something inhumane about it."[26]

Although both statuses are short-term, in the sense that these youth will not always be refugee claimants or minors, it is generally acknowledged that the first three years of establishment are crucial in determining decent living conditions in the long term.[27] From this point of view, it is in the best interests of this population that more coherent policies and measures be developed in order to minimize some of the more adverse consequences of status differences. Practically speaking, such measures would need to address two basic types of issues. The first, more administrative, concerns the refugee determination process itself, in particular the delays in processing claims and the sometimes arbitrary application of the children's guidelines in this process. A greater systematization of this process would not only reduce the anxiety and barriers provoked by the long waiting periods, but would also ensure more just and equitable hearings, which would better correspond to the humanitarian ideals that they are meant to embody. The second issue, more global, touches on the question of access to diverse resources. While many of the obstacles faced by unaccompanied minors in the public, private, and community sectors could be resolved simply by more rapid obtaining of refugee status, others could be minimized through the promotion of a greater aware-

ness of the special needs and rights of this population. Although the private sector remains a difficult target for promoting change, the development of informational tools and training programs among the various institutional actors brought into interaction with unaccompanied minors would enable an in-depth understanding of the lived experiences of these youth, their rights, and the resources available to them. Such an understanding is not only of academic interest, but is also crucial to the development of social intervention policies and practices which are better tailored to their needs.

Since the late 1980s we have been witnessing a severe backlash in opinion with respect to the plight of refugee populations. The economic recession of the late 1980s and the 1990s, which led to drastic cutbacks in social services and programs, has also had a dampening effect on the public's perception of Canadian humanitarian aid programs considered by many to be a drain on already scarce resources. Consequently, there is growing misunderstanding of the very essential and important role that we can play in helping innocent persons whose lives have been torn apart by events beyond their control. A greater awareness of the life situations and barriers faced by unaccompanied minors would help in dispelling the myth that these youth are burdens for society. Faced with ordeals which are unimaginable for most Canadians, these youth demonstrate an enormous capacity for adaptation. Our role as a society is to minimize barriers which hinder these capacities, thus facilitating their process of establishment and making of them full status members of the *Rechtsgemeinschaft*, both juridically and sociologically.

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Notes

1. United Nations High Commission for Refugees (UNHCR), *Refugee Children: Guidelines on Protection and Care* (Geneva: UNHCR, 1994).
2. Susan Forbes and Patricia Weiss Fagen, "Unaccompanied Refugee Children: The Evolution of U.S. Policies – 1939 to 1984," *Migration News* 1 (1985): 3-36; see also Howard Adelman, ed., *Unaccompanied Children in Emergencies: The Canadian Experience* (Toronto: York University, 1984); Wendy Ayotte, *Separated Children Seeking Asylum in Canada* (Ottawa : United Nations High Commissioner for Refugees, 2001); Wendy Ayotte, *Separated Children Coming to Western Europe: Why They Travel and How They Arrive* (London: Save the Children, 2000); Catherine Montgomery, Cécile Rousseau, and Marian Shermarke, "Alone in a Strange Land: Unaccompanied Minors and Issues of Protection," *Canadian Ethnic Studies Journal* 13, no. 1 (2001): 1-17.
3. Ayotte, 2001.
4. This figure includes all unaccompanied minors in their care, independent of the year of arrival. However, since the responsibility for these youth is transferred to Quebec's Youth Protection Services (Centres jeunesse) once they have acquired permanent resident status, it can be assumed that the majority have been with SARIMM for less than two years.
5. Montgomery, Rousseau, and Shermarke, 2001: 4.
6. Ayotte, 2001.
7. Ministère des Relations avec les Citoyens et de l'Immigration (MRCI), *Mineurs non accompagnés qui revendiquent le statut de réfugié* (Montreal: Programme particulier pour revendicateurs de statut, MRCI, 2000), internal document. See also Jeanne Houde and Frédérique Sabourin, *Mineurs non accompagnés* (Montreal: Interministerial Working Group on Unaccompanied Minors, MSSS-MRCI, 1997), internal document.
8. Jocelyne Bertot and André Jacob, *Intervenir avec les immigrants et les réfugiés* (Montreal: Méridien, 1991); see also Robert Heipel, "Refugee Resettlement in a Canadian City: An Overview and Assessment," in *Refugee Policy: Canada and the United States*, ed. H. Adelman (Toronto: York Lanes Press, 1991): 344-355; Jean Renaud, Alain Carpentier, Gisèle Ouimet, and Catherine Montgomery, *La première année d'établissement d'immigrants admis au Québec en 1989: Portraits d'un processus* (Montreal: Ministère des communautés culturelles et de l'immigration, 1992); Jean Renaud and Lucie Gingras, *Les trois premières années au Québec des requérants du statut de réfugié régularisés* (Quebec: Ministère des Relations avec les Citoyens et de l'Immigration, 1998); Christopher McAll and Louise Tremblay, *Les requérants du statut de réfugié au Québec: Un nouvel espace de marginalité?* (Montreal: Ministère des Relations avec les Citoyens et de l'Immigration, 1996); Morton Beiser, *Strangers at the Gate: The "Boat People's" First Ten Years in Canada* (Toronto: University of Toronto Press, 1999).

9. Renaud and Gingras, 1998.
10. McAll and Tremblay, 1996.
11. Catherine Montgomery, Christopher McAll, Andrea Seminaro, and Julie-Ann Tremblay, "Profils de la pauvrêté et de l'immigration à Côte-des-Neiges," *Interaction* 4, no. 1 (2000): 77-95.
12. Ayotte, 2001.
13. Renaud and Gingras, 1998.
14. Derrick Silove, Zachary Steel, and Charles Watters, "Policies of Deterrence and the Mental Health of Asylum Seekers," *Journal of the American Medical Association* 284, no. 5 (2000): 604-611; Derrick Silove, Ingrid Sinnerbrink, Annette Field, Vijaya Manicavasagar, and Zachary Steel, "Anxiety, Depression and PTSD in Asylum-Seekers: Associations with Pre-migration Trauma and Post-migration Stressers," *British Journal of Psychiatry* 190 (1997): 351-357.
15. Cécile Rousseau, François Crépeau, Patricia Foxen, and France Houle, "The Complexity of Determining Refugeehood: A Multidisciplinary Analysis of the Decision-Making Process of the Canadian Immigration and Refugee Board," *Journal of Refugee Studies* (in press).
16. Immigration and Refugee Board (IRB), *Child Refugee Claimants: Procedural and Evidentiary Issues* (Ottawa: Immigration and Refugee Board, 1996).
17. According to the Guidelines, claims from minors should be prioritized, a designated representative should be appointed to accompany and provide support to the minor throughout the proceedings, panel members should be selected on the basis of their experience in dealing with children, the age and mental development of the child should be considered in the hearing procedures, an informal environment should be created during the hearing, children should be questioned in a sensitive manner, and, where possible, hearings should be limited to a single sitting.
18. Ayotte, 2001.
19. Max Weber, trans., *Economy and Society, Vols. 1-2* (Berkeley, Calif.: University of California Press, 1978, original 1921).
20. Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (2nd ed.) (London: Verso, 1991, original 1983): 6.
21. Danielle Juteau, *L'ethnicité et ses frontières* (Montreal: Les Presses de l'Université de Montréal, 1999).
22. An interministerial committee in Quebec examined the question of guardianship in 1997. Since then, more recent discussions in 2000-2001 have united several institutional actors in an attempt to find a solution to the question of guardianship (cf. MRCI, 2000). At the time of writing, no specific plan of action had yet been detailed.
23. SARIMM has a branch office in the YMCA where short-term placement is also provided for unaccompanied minors in the days following their arrival in Quebec.
24. The Centres jeunesse, which form part of the youth protection network in Quebec, are responsible for unaccompanied minors with regularized immigration status. As for the Ministère des relations avec les citoyens et de l'Immigration, it is the Ministry responsible for immigration procedures in Quebec.
25. Outside of the regular network of health service clinics, unaccompanied minors living in Montreal also have access to a specialized health service for refugee claimants, the Clinique Santé Accueil, which is housed in the CLSC Côte-des-Neiges. The specific needs of this population are well known to the practitioners of this clinic and, consequently, minors do not encounter the same types of barriers here as they do in the regular health network.
26. Renaud and Gingras, 1998, 91.
27. Adelman, 1991.

Catherine Montgomery, Ph.D., is a researcher at the Research and Training Centre of the CLSC Côte-des-Neiges and Adjunct Professor in Sociology at McGill University in Montreal. Specialised in questions relating to immigration and social inequalities, her recent research work examines more specifically the difficulties faced by young refugees and immigrants in the period following migration.

Planning for the Return of Separated Children Seeking Asylum: An Inter-Country Social Service Perspective

Sarah Crowe

Abstract

A variety of circumstances contribute to an increasingly large number of minors who leave family, home, and country to seek asylum on foreign soil. They present special challenges to state and local authorities, to relevant non-governmental agencies, and to the international community. This paper considers the planning needs for these minors for whom asylum is denied and for whom return to country of origin needs to be arranged. The paper highlights the need for a social service perspective, such as provided by International Social Service, to be included in the planning process.

Résumé

Des circonstances très variées contribuent au fait qu'un nombre croissant de mineurs abandonnent leurs familles, leur patrie et leur pays pour aller chercher asile dans un pays étranger. Ils posent des défis particuliers aux autorités locales et nationales, aux organismes non-gouvernementaux et à la communauté internationale. Cet article examine les besoins au niveau de la planification pour pouvoir aider ceux de ces mineurs qui se voient refuser le droit d'asile et pour qui on doit faire des arrangements pour leur retour dans leur pays d'origine. L'article souligne la nécessité d'adopter, dans le processus de planification, une approche des services sociaux, comme par exemple celle de Service Social International.

Introduction

As the world becomes increasingly globalized and new migration patterns emerge, the phenomenon of escalating numbers of separated minors seeking safe havens or asylum requires special consideration by the relevant authorities.[1] While states have always seen the arrival of separated or unaccompanied minors, the new challenge is both to manage the large numbers of minors and to provide a range of services to ensure their safety, well-being, and basic human rights. Many of these children have escaped war, civil strife, economic hardship, and uncertain futures. Others have left on their own initiative or with parental assisted exile, with the result that many have become victims of trafficking, smuggling, and exploitation. Many of these children arrive with high expectations, not realizing that the countries in which they are seeking to live have established barriers which can place them at risk of marginalization and continued hardship. These minors have experienced anxiety in leaving their family and home country, trauma from their travel, and uncertainty upon arrival. They are children without legal status or guardians. They are children at risk and in need of protection. Ultimately, a decision will be made for each of these minors: they will be granted legal status in the host country or receiving country; they will receive temporary humanitarian refugee permits; they will be reunified with family members in other countries; or they will be returned to their country of origin.

This paper will consider the planning needs for minors whose asylum is denied or for whom repatriation is determined to be in their best interest. A social service perspective needs to be part of the planning, as it can provide governments and relevant authorities with information and support mechanisms, and can help implement the return of these children to their country of origin and the provision of follow-up services when their asylum claims are denied. International Social Service (ISS) is an international NGO dedicated to assisting children and families in migration. From an historical

perspective, ISS experience in dealing with separated minors demonstrates that the safe and properly planned return of children is possible to effect.

Planning Considerations

For minors whose asylum claim is denied, planning for their return needs to be completed with care, sensitivity, and with their best interest as the primary consideration. Returning minors to their country of origin can be expected to create high anxiety, a sense of failure, and a loss of hope for their future. The need for inter-country co-operation is essential in planning for the return of separated minors seeking asylum.[2] For some children, migration return may be relatively uncomplicated. The family welcomes their return and it is safe to return. For others, however, return migration is highly stressful and traumatizing. Guided by the principles outlined in the Convention on the Rights of the Child (CRC) and the guidelines in UNHCR and Save the Children's *Separated Children in Europe Programme Statement of Good Practice*, the international community is called upon from both a policy standpoint as well as at a practice level to provide the resources necessary to respond to children's safety and well-being. Many issues need to be addressed. When should the planning for returns begin? What considerations should be made to contact the family in the country of origin? How should it be facilitated? What services need to be in place to assist the minor for possible return? Should responsibility for these children extend beyond the return of a child to his/her country of origin? How can the minor be helped to return with a sense of security and possibilities for the future? Could a risk assessment, as well as a follow-up procedure, be in place to ensure the safety of asylum-seeking children who are found to be ineligible to remain in the country of destination? Co-operation between immigration authorities and competent child welfare authorities and the relevant non-governmental organizations (NGOs) is essential in addressing the needs and issues concerning these separated minor asylum-seekers.

An ISS Perspective: An Individual Approach

International Social Service (ISS) came into being as a result of vast migration following WWI. This organization has been involved with cases relating to separated minor asylum seekers since its origins in 1924. Emerging from the crises of these migrations, through their social work focus for wartime refugees, ISS adopted a vision of "offering help to people regardless of race, creed or political affiliation, who are suffering and facing difficulties caused by moving from one country to another."[3] More specifically, ISS casework consists primarily of issues concerning children. The development of ISS led to international social services sensitive to linguistic, cultural, and social issues with an international perspective in terms of family laws, divorce laws, and immigration laws.[4]

ISS demonstrates a competent capacity to offer leadership particularly due to its inter-country experience and international network to improve the processes of care for these children at risk. Through its historical and international experience, ISS has always been very involved in the planning for the best interest of separated minors. For example, the government of the United Kingdom funded an ISS UK-led program in response to the needs of minors migrating from the Yugoslavian conflict in the 1990s. This program ran for three consecutive years and worked with hundreds of minors from Bosnia, Albania, and Kosovo.[5]

Another example, although not involving the return of separated minors, demonstrates ISS involvement in responding to national crises. In 1995, following the war and genocide in Rwanda, a program was developed in order to find the best solutions to help orphaned Rwandan children.[6] Where family reunification was impossible, the program intended to integrate orphaned children into Rwandan foster families. The objective was to ensure that these orphaned or separated children would grow up in a safe, stable family environment despite their separation from their birth parents. This program, whereby some 916 children were placed into families by the end of October 2001, proved to be successful.[7] Indeed, social work expertise with an international focus can provide various solutions for separated minors and plan in their best interests.

Establishing "Best Interest"

Article 3.1 of the CRC establishes the principle of best interest as a primary consideration by all relevant competent authorities.[8] Many child advocates use this principle to compel states to reflect upon their policies and practices involving the care of children. The growing phenomenon of child refugees separated from their parents or legal guardian further challenges our capacities to ensure the human rights and welfare that children are entitled to vis-à-vis international conventions. From an ISS perspective, the planning and organization for return as well as follow-ups and family assessments are of particular concern. These principles, to be followed when planning the return of a child to his or her country of origin, identify the means by which "best interest" is considered throughout the process.

Save the Children and UNHCR's *Separated Children in Europe Programme Statement of Good Practice* outlines practices that should be followed in order to comply with the relevant international conventions. Tracing the fam-

ily is crucial in understanding and ensuring best interest of separated minor asylum seekers.[9] Accordingly, the "good practice" suggests that family tracing and family reunification are deeply rooted in the rights and entitlements specific to children.10 When assessing the situation, therefore, the host country should consider family reunification as a primary consideration.

The safe return of children to their country of origin is established in Section 12.2.2 (a) of the *Separated Children in Europe Programme Statement of Good Practice*. These guidelines require the guardian in the host country to arrange for appropriate investigations and social assessments to be conducted in order to help establish whether it is in the child's best interest to return. It is also deemed essential that contact be established between the child and family of origin and that the child is properly accompanied on the return. Furthermore, it is expected that follow-up monitoring services will be provided by a designated NGO or international organization.[11] The Italian government, for example, has developed a program for the repatriation of children that combines socio-economic reintegration with a sensitive focus on cultural and family situations. In essence, under Italian immigration law, children are returned to their families not only with careful preparation but also with long-term solutions. The Italian model, with the challenge of large numbers of separated minors arriving in Italy, illustrates how these principles can be upheld in practice.

The Italian-Albanian Model

Beginning in 1989 with the fall of the Communist regime, a massive flow of Albanian refugees arrived in Italy. The 1991 exodus of thousands of Albanian minors (some with family, others without) dispersed across Italy without a system to care for their well-being. During that time, about twelve thousand Albanian citizens claimed asylum in Italy, or whom nearly 600 were granted said status. This led the authorities in Italy to examine their procedure for dealing with the care and guardianship of separated minors.[12] This phenomenon intensified in 1997 following an economic and political crisis in Albania leading to another exodus to Italy. This second exodus was characterized by the presence of many separated minors. Many of these minors, who were repatriated by the Italian authorities, were found to flee back to Italy several times, despite their many repatriations. It was observed that these minors arrived in Italy as though through a "revolving door." The Italian authorities often involved the Italian Branch of International Social Service (ISS Italy) in order to plan for the return of these children. In fact, in 1991 the Italian Branch had established an Albanian Delegation of the ISS. It had been set up in order to deal with all social cases related to emigration, broken families as well as minors. Subsequently, the work of the Albanian delegation became increasingly focused on the problems of separated minors. These minors' principal motive for fleeing Albania was complete uncertainty with respect to their future prospects. Thus, it was clear that an approach to remedy this problem would consider the establishment and insurance of a credible future for these children in Albania to motivate them to remain at home.

The 1997 exodus led to government funding and support of programs in Italy to manage the arrival of these Albanian minors. The program led by ISS Italy focused on family investigations (home assessments), opportunities for reunification, and repatriation facilitating reintegration into Albanian society. Although this program exclusively served Albanian minors, the authorities involved hoped to export the Albanian experience to other countries both of origin and of exile.[13] This program proved successful in Italy although it was observed that an improved system for reintegration would further benefit these minors and prevent their return to Italy despite repatriation.[14]

Subsequent to the concerns brought forth by the authorities involved in the program for Albania was the signing of a Convention between ISS Italy and the Government Committee for the Protection of Minors. This Convention was based on the principles outlined in the CRC as well as recent national and international legislation focused on children's rights to live in their family and in their culture.[15] Furthermore, this Convention bridged the gap between the obligation of immigration authorities to evaluate refugee status and welfare authorities' concerns for protective care and guardianship. Operational as of April 30, 1998, the following provisions apply:

1. the technical organization of repatriation voyages, including individual examinations and assessments of every case;

2. placement of repatriated minors in professional courses, job training, or apprenticeships in Albania, an action which would entail the assistance and participation of Albanian professional institutes and organizations active in the area;

3. the gathering of statistical data relative to separated Albanian minors in Italy reported to the Comité pour la Protection des Mineurs Étrangers or to ISS Italy;

4. the analysis and interpretation of information acquired, in order to prevent departures, and improve the reception and support the repatriations.[16]

Initially, the Convention was to expire after one year. However, due to its success, it was renewed on January 1, 2000. Furthermore, in March 2001, a new Convention was signed seeking to expand this process of repatriation to all separated minors in Italy regardless of their nation-

ality.[17] Between 1998 and 1999, approximately 160 repatriated Albanian minors were integrated into professional courses or apprenticeships. Of these minors, 12 abandoned their classes; 94 pursued their classes; 55 completed and were employed in independent or salaried work. In 2000, a follow-up of the program determined that 47 families were successfully reunified.[18] ISS Italy is presently seeking to expand this program to other countries, namely, Romania, Moldavia, and Morocco.

The Italian-Albanian experience demonstrates that through collaboration and leadership the proper mechanisms can be put in place to assist governments and meet their obligations to uphold the rights of children. Working from the principle that the family is the most important element to a child's development, social assessments and family involvement are essential to the repatriation process. Indeed, the Italian model effectively ensures that the best interest of the minors is held as the primary consideration.

"An Ounce of Prevention Is Worth a Pound of Cure"

From an optimistic viewpoint, it is becoming increasingly evident that states, care authorities, immigration authorities, and NGOs acknowledge the seriousness of the issues concerning separated minor asylum-seekers. Although countries are not necessarily compliant with the principles outlined in the international conventions to which they are members, many states have ratified or are in the process of ratifying international and national legislative principles of care concerning the return of these minors. For example, the European Union (EU) Council Resolution 97/C 221/03 of June 26, 1997 compels all EU member countries to transform into national law by January 1, 1999, guidelines for the treatment of separated minor asylum seekers.[19] With respect to return, for example, article 5.1 states that minors shall only be returned to their country of origin after the conditions of such a return are clarified.[20] The EU hereby recognizes the necessity and importance of ensuring the safety and well being of separated children asylum-seekers.

Another example of this trend is a project guided by ISS Switzerland evaluating and assisting the safe and social-economic return of separated minor asylum-seekers. Similar to the Italian experience, ISS Switzerland, through its professional resources as well as international partnerships, is proposing to find concrete solutions for the assistance for return and re-integration in the country of origin.[21] The proposals for this project include:

a. Ensuring a return to a safe environment while offering programs for future prospects based on individual evaluations;
b. Ensuring equal protection to refugee children as to Swiss children;
c. From individual as well as national studies, planning for long term solutions;
d. Giving priority to family reunification;
e. Where family reunification is not possible, providing the care necessary for the development of the child;
f. And preparing objective and targeted information to the countries of origin in the attempt to prevent parents from sending their children with false hope to Western countries.[22]

From an ISS perspective, planning for the return not only to a safe environment but also with a re-integration in the economic, social and family framework is crucial. Through careful examination of individual as well as national cases, a dissemination of information could assist in prevention programs and demonstrate to families the potential risks and dangers for children upon departure to a foreign country.

In October 2001, UNHCR, Child Welfare League of Canada, and ISS Canada hosted a National Roundtable on the topic of "Separated Minors Seeking Asylum in Canada." This Roundtable brought together immigration authorities, child welfare authorities, NGOs and child advocates from across the country to discuss the present situation affecting these minors and the different federal and provincial procedures involved. Communication between these key players involved in issues concerning separated minors seeking asylum in Canada is vital to planning for the best interest of these children. The Roundtable was a stepping-stone to developing cooperation between the child welfare authorities responsible for care and guardianship, and the immigration authorities responsible for establishing status in pursuit of a national framework to deal with separated children claiming asylum in Canada. Enabling the safe return to the country of origin can be complicated due to original conditions upon flight, and security conditions in the country. Anticipation for the return to the conditions a child has fled can be expected to further stress and traumatize a child. Social work expertise, on an individual, case-by-case basis, with an international focus would offer a link across borders for the necessary services required such as home assessments for both planning for return, and search for family information. The discussions during the Roundtable were a positive development for reflection upon Canada's experience with these children at risk.

Conclusion

Global conditions of war, civil strife, and poor economic conditions motivate the migration and cause the displacement of many peoples around the world. Within this group, children are the most vulnerable. When chil-

dren arrive, separated from their family at the borders of countries of destination, they have already experienced the trauma not only from former living conditions but also from leaving their family. These separated minors claiming asylum are children at risk. Their vulnerability is reflected in international conventions that state that children should be provided with care regardless of nationality, culture, or religion.[23] Observing the experience from the European Community dealing with a large exodus of separated minors, much can be learned from organized co-operation among the authorities and NGOs involved. In particular, the Italian model developed for the safe return of Albanian minors demonstrates that the organization of long-term solutions for large numbers of separated minors can be facilitated with an individual approach. This model abides by the principles set forth in the CRC as well as in the *Separated Children in Europe Programme Statement of Good Practice*. Indeed, an international non-governmental organization, such as ISS, provides governments, child welfare authorities, and immigration authorities with the necessary inter-country network needed to plan for these minors. From this perspective, with the proper leadership, co-operation, and understanding, the mechanisms can be organized to ensure the safety, well being, and basic human rights of these children at risk.

Notes

1. Throughout this essay, the terms "children" and "minors" will be used interchangeably and will be defined as human beings under the age of eighteen as per article 1 of the *Convention on the Rights of the Child* (With Reservations and Statement of Understanding), 20 November 1989, Can T.S. 1992 No.3 [hereinafter *CRC*].
2. The definition of "separated minors" is as follows: "'Separated children and young people' are children under 18 years of age who are outside their country of origin and separated from both parents, or their legal/customary primary caregiver," Save the Children and UNHCR, *Separated Children in Europe Programme Statement of Good Practice,* 1999, s. 2.1 [hereinafter *SGP*].
3. Audrey E. Moser, "Young People in Migration: A Challenge for Social Services," in *Young People in Migration: A Challenge for Social Services."* Report on the International Social Service "Open Day" of 25 May 2000, 2.
4. *Ibid*., 5.
5. *Ibid*., 19.
6. "'A Child, A Family,' in Rwanda." *International Programs and Projects*. On-line: <http://www.iss-ssi.org/eng/ ISS_prog.html>. Date accessed: 23 November 2001.
7. Moser, 19.
8. CRC, art. 3.
9. Article 9.3 of the CRC states that "States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interest" (CRC, art. 9).
10. SPG, ss. 8 and 9.
11. SPG, s. 12.2.2 (a)
12. Servizio Sociale Internatiozionale – ONLUS (Sezione Italiana). « Rapatriement assiste des mineurs non accompagnés : l'expérience du Service Social International en Albanie. » Synthèse du rapport sur le programme mis en oeuvre par le Service Social International en Italie et en Albanie durant les années 1998 et 1999 et mise a jour an 2000, p. 1. [Hereinafter *ISS Italy*].
13. ISS Italy, 2.
14. ISS Italy, 2.
15. Article 9.1 of the CRC states that: "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child…" (CRC, art. 9).
16. ISS Italy, 2–3.
17. ISS Italy, 4.
18. ISS Italy, 8.
19. *COUNCIL RESOLUTION of 26 June 1997 on unaccompanied minors who are nationals of third countries (97/C 221/03)*, on-line: <http://www.unhcr.bg/euro_docs/en/_32_minors_en.pdf> (date accessed: 21 November 2001). [hereinafter *Resolution 97/C 221/03*].
20. Article 5.1 states that : "Where a minor is not allowed to prolong his stay in a Member State, the Member State concerned may only return the minor to his country of origin or a third country prepared to accept him, if on arrival therein – depending on his needs in the light of age and degree of independence – adequate reception and care are available. This can be provided by parents or other adults who take care of the child, or by governmental or non-governmental bodies" (Resolution 97/C 221/03).
21. Service Social International Fondation Suisse, "Evaluation et aide au retour pour des réfugiés mineurs non accompagnés. MNA." Geneva: SSI Fondation Suisse, 30 October, 2000) [Hereinafter *ISS Switzerland*].
22. ISS Switzerland, 2.
23. CRC, art. 2.

Sarah Crowe is a graduate in political studies from Queen's University, Kingston, Ontario. Presently, Sarah is working as a volunteer researcher at International Social Service Canada. *Special recognition is given to Agnes Casselman, Executive Director of ISS Canada, for her guidance and assistance. Special consideration also goes to Damien Ngabonziza, Secretary General, ISS General Secretariat, Geneva, Switzerland, and to Anna Libri, Assistant Director of ISS Italy, for their review and helpful comments.*

Taking the Agenda Forward: The Roundtable on Separated Children Seeking Asylum in Canada

Judith Kumin and Danya Chaikel

Abstract

On October 15 and 16, 2001, the National Roundtable on Separated Children Seeking Asylum in Canada was held in Ottawa. The meeting was organized by the Child Welfare League of Canada, International Social Service Canada, and the United Nations High Commissioner for Refugees (UNHCR) Branch Office in Canada. The organizers brought together immigration officials, child welfare professionals, and refugee advocates, in an effort to build partnerships and improve awareness of the problem of separated children seeking asylum in Canada. Participants discussed ways to resolve the tension between immigration and child protection concerns, as well as how to develop a consistent approach to the issue across Canada. Senator Landon Pearson generously agreed to host the event.

Résumé

Une table ronde intitulée National Rountable on Separated Children Seeking Asylum in Canada (« Table ronde nationale sur des enfants séparés cherchant asile au Canada ») s'est tenue à Ottawa les 15 et 16 octobre 2001. La réunion a été organisée de concert par la Ligue pour le bien-être de l'enfance du Canada, Service Social International Canada et le Bureau canadien du Haut Commissaire pour les réfugiés. Les organisateurs ont pu réunir des représentants du département de l'immigration, des professionnels du service de bien-être de l'enfance et des défenseurs du droit des réfugiés dans le but de forger des alliances et de créer une plus grande conscientisation autour du problème des enfants séparés cherchant asile au Canada. Les participants ont débattu des moyens à adopter pour mettre fin à la tension existant entre immigration et protection des droits des enfants, et aussi pour développer une approche au problème qui soit cohérente à travers tout le Canada. Le sénateur Landon Pearson a très généreusement accepté de se faire l'hôte de du programme.

Until the summer of 1999, child refugee claimants who arrived in Canada without parents or other guardians attracted little attention or concern. Then, in July and August 1999, 134 separated Chinese youth, aged between eleven and seventeen, arrived on the shores of British Columbia. They were among the 599 migrants who traveled on four unseaworthy ships that summer.

The passengers on the first boat, including many children, were released after they applied for refugee status. Most disappeared, presumably to the United States. The federal Minister of Citizenship and Immigration decided that subsequent arrivals would be detained. The provincial Ministry of Children and Families, considering that detention would not be in the children's best interests, took responsibility for the youngsters and placed most of them in specially established group homes.

Although the care provided by the British Columbia Ministry was exemplary, many of the youth still disappeared, in particular after their applications for refugee status in Canada were turned down. It is presumed that the children yielded to pressure from their parents (still in China) and from the traffickers who brought them to Canada. While there is no certainty about where these

young people have gone, most evidence points to the Chinatowns of cities like New York and Los Angeles. There, the children may end up in the sex trade or as indentured labourers in restaurants and other businesses, often until their parents' debt to the traffickers is paid off.

The experience with the Chinese youth raised difficult questions about what is in the "best interest" of such children. Article 3 of the Convention on the Rights of the Child (CRC) dictates that all actions must be guided by the principle of the best interest of the child. Is returning children to parents who knowingly put their sons and daughters on dangerous boats, and sold them into slavery-like work, in the children's best interest? Would allowing a child to go free, into the arms of the traffickers, be in the children's best interest? If a child is given refugee or humanitarian status and allowed to remain in Canada, what message does that send to parents in China or elsewhere, who are desperately seeking better lives for their children? How can Canada best assist these vulnerable children?

There are no easy answers to these questions, but they convinced the UNHCR office in Ottawa that the question of separated refugee and asylum-seeking children merited new attention at the policy level in Canada. In July 2001, UNHCR published a discussion paper entitled "Separated Children Seeking Asylum in Canada,"[1] which provides an overview of the situation of asylum-seeking children who arrive without parents or guardians, identifies issues which deserve attention, and makes proposals for further action.

The report highlights the frequent tension between immigration control imperatives and child welfare concerns, and the absence of opportunities for immigration officials and child welfare professionals to exchange views on matters concerning asylum-seeking children. UNHCR therefore decided to provide a forum where these disparate groups could come together, and did so in partnership with two other organizations: the Child Welfare League of Canada, a national umbrella organization grouping provincial and private child welfare agencies; and International Social Service Canada, a non-governmental social-work agency, which operates in the countries of origin of many of the children who seek asylum in Canada.

Together, the three agencies decided to convene a roundtable, with the goals of improving awareness of the issue of separated children seeking asylum in Canada and addressing these children's protection concerns. The aim was to bring together immigration officials, child welfare professionals, and refugee advocates who could help develop a more consistent approach to separated asylum-seeking children in Canada. Senator Landon Pearson generously agreed to host the event.

In the course of a day and a half, the Roundtable participants examined the following topics:

- the principle of the best interest of the child in the context of separated asylum-seeking children;
- Canadian practice with respect to identification, referral to care, and guardianship;
- detention;
- the Immigration and Refugee Board proceedings and the role of the Designated Representative;
- the return of separated children to their country of origin.

Throughout the discussion of these topics, a number of recurrent themes emerged. The first was the fact that the CRC establishes that the best interest of the child should be *a primary consideration* at all stages of the process. But "a primary consideration" is not the same as "the primary consideration," and participants agreed that interpretation and application of this principle is the single most difficult challenge in dealing with separated children.

It was also pointed out that in Canada, as in other countries, there is a lack of reliable data on the scope of the problem of separated asylum-seeking children. Data provided by Citizenship and Immigration Canada (CIC) and the Immigration and Refugee Board (IRB) are partial at best. A need therefore exists for the authorities at all levels to devote attention to gathering such information and making it available.

A major theme discussed at the Roundtable was the tension between immigration and child welfare concerns, which traditionally has made it hard to find solutions to problems concerning separated asylum-seeking children. This has been compounded by the difficulty in achieving a consistent national approach in Canada to standards of care for these children. This is due to federal/provincial jurisdictional issues, including the distinct legislative and administrative child welfare frameworks in each province as well as continuing disagreement on respective responsibilities for funding and delivery of care to separated asylum-seeking children. The need for the federal government to take a leadership role on this issue and for greater federal/provincial cooperation was emphasized.

Finally, throughout the discussion, the question of resources was raised. Adequate resources should be allocated to providing care and support for separated asylum-seeking children. While the numbers of such children in Canada appear still to be relatively modest, they have been growing without a corresponding increase in the financial and human resources devoted to meeting the needs of this vulnerable group.

The keynote speaker, Jacqueline Bhabha, Executive Director of the Human Rights Committee of Harvard University, drew attention to the particularly precarious position of separated child asylum seekers. She pointed

out that while "childhood" occupies a special place in life, with distinct requirements and privileges, we live in a world in which many social evils increasingly affect children. Poverty, forced military recruitment, the sex trade, and police brutality were cited as examples. She deplored the contradiction between the "sentimentalization" of our own children and the tendency toward "collective indifference" to other people's children – a contradiction particularly evident in the case of separated child asylum seekers.

Relatively little is known about the phenomenon of separated child asylum seekers, and this relative ignorance is itself noteworthy. From what is known, separated children have a lower success rate in asylum claims than accompanied children or adults, but also a lower removal or deportation rate. In other words, they tend to remain in host countries, but in a precarious situation, often without access to full welfare benefits or adequate protection. In many European states, separated children receive some form of humanitarian status; in the United States and Canada, many separated children stay without a regular status at all.

For the most part, children seeking asylum flee for the same reasons as adults – to escape war, persecution, ethnic strife, and civil upheaval. The main countries of origin of separated child asylum seekers generally match those generating adult flows of persons seeking protection such as former Yugoslavia, China, Sri Lanka, and Somalia. But the increase in numbers of separated children seeking asylum seems disproportionately large. In the absence of conclusive research, one can only speculate as to the explanation for this. Bhabha suggested three reasons. First, the nature of contemporary war is changing, with civilians, and especially vulnerable civilians, increasingly targeted and affected. Second, the growing difficulty of claiming asylum in developed states because of stringent visa requirements, checks on carriers, militarized borders, and other escalating immigration controls has led to increased dependence by asylum seekers on the costly services of smugglers and traffickers. Families may be able to afford to send only one member to safety, and may send a child as a priority. Third, the forces of globalization may contribute to the growth in numbers of vulnerable children, as structural adjustment policies and the disintegration of traditional sources of security and employment place rising numbers of children at risk.

Bhabha expressed concern about how the tension between immigration enforcement imperatives and child protection concerns affects separated child asylum seekers. Her tentative finding was that it produces an indeterminate limbo in which children are marginalized and have to struggle for certainty, for long-term plans, and even for rights. She concluded that the "policy incoherence" which creates this state of affairs urgently needs systematic attention.

Following the keynote speech, a presentation on the implications for separated children and adolescents of the best-interest principle enshrined in the CRC was made by Wendy Ayotte, UNHCR consultant. She recalled that Article 3 of that Convention states that:

> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.

She drew attention to three other basic principles of the CRC: non-discrimination (Article 2), the right to life (Article 6), and the right of the child to express his or her own views (Article 12).

Ayotte recalled the importance of the CRC as the principal instrument setting out the internationally recognized rights of children, and the importance of Article 3 as a tool for the interpretation of the other articles of the Convention. She stressed that the best interest principle needs to be applied in a case-specific manner, and that while the views of the child must be taken seriously, they will not always prevail. The appointment of a qualified guardian was identified as key to ensuring that the child's best interest is considered in all aspects of life: in terms of health, psychosocial well-being, family relations, education, legal representation, and the immigration and refugee process. Since detention cannot be construed as being in a child's best interest, Ayotte emphasized that creative alternatives to providing secure care for at-risk children should be developed. Training for all those who deal with separated asylum-seeking children is essential. This includes lawyers, CIC and IRB officials, designated representatives, and child-care professionals. Finally, she urged that consideration be given to developing a national protocol on separated children seeking asylum in Canada, to ensure protection of their rights as children.

Many important points emerged from the discussion:

There is a need for a consistent approach to the definition of a separated child. The CRC, to which Canada is party, defines a child as under the age of eighteen. The age range for child protection in Canada, however, varies from under nineteen in British Columbia to under sixteen in Ontario. The cut-off age for care in Ontario was identified by participants as a significant protection gap. Furthermore, particular attention should be paid to properly identifying separated children, including those who are accompanied or met in Canada by adults who are not their parents. More consideration should be given to appropriate age-assessment methods, since

there are conflicting views on the accuracy of medical techniques used to determine age. It was recommended that age-assessment tests be culturally sensitive and take into account, for instance, the different level of physical development of children who have been undernourished. Also, the question was raised as to whether a child needs to give consent before bone scans or dental examinations are administered.

2. *There is a need to achieve a more consistent response when separated asylum-seeking children come to the attention of Canadian authorities.* The situation in Ontario, where there is no mechanism to provide protection and care for children who are sixteen and seventeen years old, was the subject of discussion, and was contrasted with procedures in British Columbia and Quebec. A task force in Ontario, which met during late 2000 and early 2001, proposed a protocol to meet the needs of separated asylum-seeking children who do not come within the jurisdiction of the child welfare agencies. This effort was reviewed and could usefully be the subject of further discussion.

3. *There needs to be a clearer understanding of the nature and scope of guardianship in the context of separated children.* The appointment of a legal guardian was identified as essential to identifying and responding to the issues affecting the best interest of these children. Practice is different in each of the provinces, with a variety of strengths and weaknesses.

4. *Training and sensitization on child protection issues would be beneficial for all parties dealing with separated children (CIC, IRB, lawyers, NGOs).* Many professionals working with separated children have extensive human rights or refugee protection training, but lack experience with children and are not necessarily sensitive to their specific needs. This is crucial if child-appropriate interviews are to be conducted, when dealing with trauma, and when assessing placements. As well, it was suggested that new ways of soliciting evidence from children are needed, especially from the very young, since the IRB process can be intimidating for a child and could cause further trauma. Several participants felt that it was not appropriate to compel children, particularly young children, to give evidence in IRB proceedings. Others suggested that the experience which has been gathered in other domains with regard to eliciting evidence from child witnesses could be useful in the refugee area.

5. *It was suggested that establishment of a "case management team" for each child would be helpful and would enable concerned parties to share knowledge of the child's situation.* Such a team could better coordinate legal and administrative procedures and more effectively assist the child. It would also enable children to build relationships of trust with individuals whom they see on a regular basis.

6. *Participants agreed that detention of separated children is inherently undesirable, and that all alternatives should be explored before a child is detained.* Recent examples of detention practice in several provinces were raised, and many participants felt that they represented an inappropriate response which was contrary to the best interest of the children concerned. The absence of data on the detention of children was identified as a problem, and CIC was urged to gather and make available data on the number and locations of separated children detained.

In the context of the discussion on detention, it was noted that the best-interest principle is complicated by increased instances of smuggling (organized movement of migrants across borders) and trafficking (where there is coercion and/or slavery-like working conditions). Some participants felt that the obligation to protect children from abuse could make detention of some sort necessary. Other participants suggested that while it may be necessary in some cases to place restrictions on the freedom of movement of unaccompanied children who are at risk, the challenge lay in coming up with ways to achieve this objective without resorting to detention, which some claim in effect criminalizes the victims. In any event, the appropriateness of detention of a separated child should be based on an individual assessment, taking into account all of the child's circumstances.

It was recommended that CIC, child welfare authorities, and NGOs collaborate to develop viable alternatives to detention. A "safe house" model used in England was cited as an example. The "buddy system" was also proposed as a measure to offer some protection against trafficking. This could involve older children who understand the risks of unaccompanied migration and who can share their experiences and offer some guidance to newly arrived children. This can be also a very good strategy for trust-building.

7. *A discussion on the role of the Designated Representatives (DRs), who are appointed by the IRB to represent separated children, focused on the ways to enhance the effectiveness of these representatives in protecting the best interest of the child in IRB proceedings.* It was agreed that there is a need for training of the representatives with respect to the refugee process and procedures generally and for their role in this context. Some participants thought that the minimum age requirement for DRs (eighteen years) is too low. Concern was expressed that some DRs lack the necessary cultural knowledge or sensitivity. It was also suggested that IRB members be trained on the role of DRs, and that the IRB should monitor the suitability and effectiveness of DRs. Many participants were concerned about the regulation stipulating that when children turn eighteen, they immediately lose their right to have a DR, even if they were

already assigned one. It was recommended that whenever possible, those appointed as DRs should be professional individuals such as social workers and psychologists. The practice in Quebec and British Columbia, where child welfare agencies and NGOs are often appointed as DRs, was considered to be a positive approach.

8. *The IRB was urged to consider revising its Child Refugee Claimant Guidelines to include substantive issues, akin to the United States Immigration and Migration Services Guidelines.* It was also urged that the IRB designate and train specialized members to hear children's claims. In other areas of law (such as family and criminal law), judges are required to have particular expertise, and this could by analogy be extended to cases involving separated children seeking asylum.

9. *With respect to the return of separated children to their country of origin, a comprehensive pre-removal risk review following the best interest principle should be conducted.* Return of separated children should occur only it is in the best interest of the child, has been properly arranged, and can take place in safe conditions. This may involve family tracing and counselling for the child and his or her family. Federal authorities were encouraged to make available data on the numbers of children removed to countries of origin, as well as to third countries (usually the United States).

10. *CIC was invited to take a leadership role in pursuing discussions with the provinces.* It was suggested that a tripartite working group (CIC, provincial representatives, and NGOs) could usefully be set up to pursue the discussion.

11. *After a day and a half of intensive deliberations, delegates agreed on the need to pursue specific actions, with a view to ensuring consistent treatment of separated children seeking asylum across Canada.* The Roundtable was a first step, and brought together key stakeholders. For the first time in Canada, this network of concerned individuals and agencies shared valuable knowledge from their diverse regional and sectoral backgrounds. They now face the challenge of developing a Canadian model which will ensure that the rights of separated children seeking asylum in this country are protected.

Note

1. Wendy Ayotte, *Separated Children Seeking Asylum in Canada* (Ottawa: UNHCR, July 2001). Available on request from UNHCR in Ottawa.

Judith Kumin is the representative in Canada of the United Nations High Commissioner for Refugees.

Danya Chaikel is a CANADEM junior professional consultant in the UNHCR office in Ottawa. Her background is in human rights, with a special interest in the trafficking of migrants.

Book Reviews

Human Rights and Forced Displacement

Anne F. Bayefsky and Joan Fitzpatrick, Editors
The Hague, Netherlands: Martinus Nijhoff Publishers, 2000
320 pages; ISBN 90-411-1518-8

Human Rights and Forced Displacement examines the complementarity of international human rights, humanitarian, and refugee law. The book consists of a collection of essays written by scholars and representatives of various institutions including the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC), academic institutions, and others. The only major refugee-related organization that is not represented or mentioned is the United Nations Relief and Works Agency for Palestine Refugees (UNRWA). The essays were first presented at a conference held at York University in 1998 but they have been updated for publication. Collectively, they address the question of how complementarity or convergence can be achieved, seek to identify the institutional and normative barriers, and suggest the way forward.

Scholars and advocates have traditionally approached international human rights, humanitarian, and refugee law as discrete conceptual and operational concerns. Human rights, according to the received wisdom, govern during times of peace while humanitarian law regulates state conduct during times of war and occupation. Refugee law, for its part, protects those who face persecution. A network of treaty bodies oversees the international human rights system while institutions like the ICRC and the UNHCR are more closely associated with the implementation of humanitarian law and refugee law respectively.

Human Rights and Forced Displacement begins from the premise that the three regimes do not represent unique conceptual or institutional concerns. As Anne Bayefsky's introduction sets out, human rights considerations surface across the spectrum of the refugee problem: forced displacement is brought on by human rights violations; successful repatriation and resettlement of refugees turns on the realization of their human rights; and the transition from war to peace depends in the long term on the ongoing respect for human rights. At the same time, however, the three legal regimes are not simply pieces of a puzzle that can be seamlessly united in the creation of a coherent and perfectly rational whole. On the contrary, when the regimes are brought together they leave gaps, produce contradictions, and, more fundamentally, raise questions about the desirability of convergence in at least some contexts. The quest for convergence reveals that the international system of rights protection is not a "system" at all. Rather, it consists of an intricate but uncoordinated web of norms, institutions, and practices.

Human Rights and Forced Displacement identifies the areas of agreement between the three regimes and their practitioners. Most contributors agree that convergence generates creative advocacy options. More interestingly, however, the book offers an exploration of the risks associated with the convergence project. The editors divide the book into four themes. The first focuses on standards. The lead article by Joan Fitzpatrick provides a good explanation of why convergence proves both desirable and dangerous. For example, Fitzpatrick observes that the standards relating to internally displaced persons need to be enhanced. Yet she notes that enhancement may undermine refugee protection because asylum seekers are frequently denied protection where an "internal flight alternative" is found to exist. Thus, the desire of states to prevent transnational flight may be the impetus behind promoting enhanced standards for the internally displaced and decision makers may increasingly deny refugee protection on the claim that internal flight represents a viable option.

Dilemmas also arise with respect to monitoring and reporting, the book's second theme. Several authors favour using human rights treaties such as the Convention on the Rights of the Child as the basis on which to measure the treatment of refugees. They urge humanitarian agencies to dedicate resources to human rights monitoring in addition to delivering provisions like food and shelter. For example, drawing on the experiences of

Amnesty International, Leanne M. MacMillan urges advocates to "get the refugee issue" before different international human rights bodies to compensate for the fact that the 1951 Refugee Convention did not create a body mandated with examining the legality of state conduct. Others counsel caution. They worry that human rights reporting may politicize humanitarian agencies and thereby undermine their relief mandate given that their presence in any given country is dependent upon the consent of host governments. Thus, some contributors conclude that human rights and humanitarian methods cut against each other.

Solutions to the problem of forced displacement are also proposed as the book's third theme. For example, David H. M. Cummings contends that the development of democratic institutions in the countryside can help reduce conditions like land dispossession that lead to forced displacement. Others see promise in the international criminal court. Still others stress the importance of voluntary repatriation. The solutions are not necessarily mutually exclusive; however, the problem that remains across the papers is how to define priorities and measure their effectiveness. A poignant paper by David Petrasek illuminates the systematic nature of the barriers that stand in the way of effectiveness. Petrasek describes the repatriation of Rohingya refugees who returned to Burma from Bangladesh. He concludes that repatriation in at least this instance was more forced than voluntary. It did not solve the problem for refugees although it did solve the "refugee problem" for the host country, donor governments, and international agencies.

Finally, the book compares the efficacy of the asylum regime with that of international criminal tribunals and international agencies. Not surprisingly, the priorities identified vary between contributors. For example, Francis Deng emphasizes the importance of engaging states in dialogue for the purpose of underscoring that state sovereignty implies human rights responsibilities. Judge Navanethem Pillay, President of the International Criminal Tribunal for Rwanda, sees a special role for international criminal tribunals as a form of deterrence. Others like Gianni Magazzeni of the United Nations High Commission for Human Rights give priority to early warning systems over deterrence strategies. All worry — some more explicitly than others — that lack of resources and political will undermine the best of schemes.

Human Rights and Forced Displacement represents a welcome addition to the growing international interest in convergence and the demise of analytical borders that until recently seemed sacrosanct and rational. There is no doubt that this is an important and emerging area within international analysis. The trend is evident across the international scene. A number of international conferences have been dedicated to cross-cutting themes such as human rights and population while GATT Panels have addressed issues involving human rights, environmental law, and trade regulation. The International Court of Justice recently gave an opinion on the relationship between human rights, humanitarian law, public international law, and environmental law in its *Advisory Opinion Concerning the Legality of Nuclear Weapons.* The editors and contributors to *Human Rights and Forced Displacement* are to be congratulated for striving to ensure that refugee rights remain part of the more general debate about convergence. Yet the book leaves the reader with some questions.

First, it does not include an essay dedicated to the human rights of refugee and internally displaced women. This is puzzling not only because women and children make up the majority of the world's refugees, but also because women's human rights advocacy is precisely about interrogating categories and promoting cross-fertilization between regimes. For example, the International Criminal Tribunal for Rwanda's decision in *The Prosecutor v. Jean-Paul Akayesu* can be read as the cross-fertilization between humanitarian law's prohibition of certain conduct during war and human rights law's more established prohibition on gender discrimination. By bringing the principle of non-discrimination to bear on its analysis, the Rwanda Tribunal ruled that rape and other forms of sexual violence could constitute genocide and that crimes against humanity include rape.

Moreover, an examination of displaced women's rights would have illuminated the importance of issues discussed by some contributors but only marginally. In particular, some questioned whether non-governmental organizations and international agencies — including the UNHCR itself — can be held accountable under international human rights law for violations of women's rights. This is a crucial question for refugee women who face a host of human rights violations in refugee camps, including lack of equal access to food, violence at the hands of family members, and attacks on their reproductive and sexual health. A discussion about whether non-governmental and international agencies can be held directly accountable under international law is not one that should take place at the margins of a discussion about human rights and forced displacement. It belongs in the mainstream.

An examination of the larger public international law context and the existing doctrines and texts that address convergence in a more generic sense would have added depth to the discussion. Convergence raises the question of how international treaties should be interpreted in light of each other. Hence, one must address the 1969 Vienna Convention on the Law of Treaties and the rele-

vant interpretive principles like the principle of non-retrogression. What is the relationship between the Vienna Convention and human rights, humanitarian, and refugee treaties? Is non-retrogression a free-standing principle of treaty interpretation? As the case of *Suresh v. Canada (Minister of Citizenship and Immigration)* illustrates, such questions are more than academic. The Federal Court of Appeal in this case used the 1951 Refugee Convention to undercut the absolute right to be free of torture as recognized in the Torture Convention.

The above points are not meant to detract from any particular paper or from the collection as a whole. Rather, they underscore the complexity and timeliness of the convergence problem. Those concerned with the human rights of refugees and the internally displaced from dispossession to refuge to settlement or repatriation will find *Human Rights and Forced Displacement* a valuable book. Those interested in the more general question of the cross-fertilization of international regimes will also find it worthwhile. One hopes that this collection of essays will inspire scholars and advocates alike to dedicate more time and energy to the issues surrounding convergence, compatibility, and cross-fertilization of legal traditions.

Reem Bahdi
Director, Women's Human Rights Resources,
Faculty of Law, University of Toronto.

Managing Displacement: Refugees and the Politics of Humanitarianism

Jennifer Hyndman, Minneapolis: University of Minnesota Press, 2000, 253 pp.
ISBN 0-8166-3353-3

"At what point do charitable acts of humanitarian assistance become neo-colonial technologies of control?" (147) So is the provocative challenge set by Jennifer Hyndman in her critical geopolitical study of the United Nations High Commission for Refugees (UNHCR) during the 1990s, a period of tumultuous change in the global refugee regime. Using an ethnographic approach, the author draws upon her own work experience in refugee camps along the Somalia-Kenyan border to reveal the "culture, practices and operations" of the UN refugee agency, and the global discursive politics of managing difference within its operations. This ethnography is framed in relation to the changing geopolitical environment shaping (and arguably compromising) the UNHCR's mandate. The insights gleaned from this project offer much to both the academic and to the practitioner, reflecting the author's concern to make humanitarianism more accountable by bringing theory to the practitioner, and the practical domain to the theoretician (xvi).

Central to Hyndman's analysis, articulated in Chapter One, "Scripting Humanitarianism," is the position that the post-Cold War era soon led to the dawn of new regime of international humanitarianism, distinguished by the ascent of neo-liberalism and descent of development practices. In the 1990s, Western donor states reacted to global displacements assertively, insisting UNHCR prevent or, at the very least, contain displacement by keeping people "safe" in otherwise unsafe areas. In practice, the UN refugee agency began work in "safe areas" of conflict zones such as that of northern Iraq, Bosnia-Herzegovina, or Somalia. What is now termed "preventative protection," and the inevitable emergency assistance delivered to allay loss of life within safe zones, has been pursued in an ad hoc manner globally, and not necessarily with the best coordination among UN and NGO agencies. For Hyndman, such an undefined approach deepens the divide between an "us" (donors) and a "them" (recipients), intensifying the "politicization of need and the politics of need, that is, questions of who is deserving and who has the power to decide." (181) This feeds into a legitimization of actions or inactions, or *neo-humanism*: humanitarian intervention determined by the popularity and visibility of a particular group, and the efficiency of measures used to assist this group (182). In effect, the UN organization has become a proxy to state responsibilities towrd refugees, and an invidious arm of discipline (173).

In this view, "[g]overnment donors are UNHCR's main clients; refugees and displaced people are its recipients" (187). While changes in the global realm are ongoing, practices of refugee management and control are becoming further institutionalized. To make this argument, Hyndman employs a range of theoretical approaches. In Chapter Two, "Border Crossings," the author draws upon cultural theories of mobility — to which she introduces the dimension of the economics of mobility —- and suggests that flows of humanitarian assistance move more freely than those of persons fleeing persecution, war, and violence. Two kinds of border

vant interpretive principles like the principle of non-retrogression. What is the relationship between the Vienna Convention and human rights, humanitarian, and refugee treaties? Is non-retrogression a free-standing principle of treaty interpretation? As the case of *Suresh v. Canada (Minister of Citizenship and Immigration)* illustrates, such questions are more than academic. The Federal Court of Appeal in this case used the 1951 Refugee Convention to undercut the absolute right to be free of torture as recognized in the Torture Convention.

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crossings are occurring, one financial and predominantly European and the other corporeal and African; yet "international borders are more porous to capital than to displaced bodies" (30). Ironically, increased flow of assistance potentially subverts the protection mandate of UNHCR, where assistance is transformed to control and contain populations, preventing movement to safe areas (37). While the economics of mobility tends to overshadow cultural considerations in this chapter, the author makes up for this in her discursive and empirical analysis of UNHCR policies on gender and culture.

Chapter Three, "Managing Difference," concludes that UNHCR approaches to dealing with difference are rooted in the "family of nations," transforming differences of "race," ethnicity, religion, or gender into "almost-the-sameness," and therefore "the object of benevolent accommodation." In so doing, differences are masked under the guise of universalism, with potentially damaging consequences, as illustrated in a case study of the UNHCR Women in Victims of Violence project. It is here Hyndman first elaborates the usefulness of "transnational feminist approaches," which require engagement of difference, analyzing dominant constructions, and changing them in relationally grounded ways, an approach I shall return to shortly (65).

Delving further still into the institutional practices of control reminiscent of a not-so-distant colonial past, Hyndman examines spaces between refugee workers, refugees, and services in Kenyan camps in Chapter Four, "In the Field." Without legal status in Kenya, Somali refugees are spatially segregated within border camps, limiting mobility, access to employment, and livelihoods. Yet work and security concerns are also structured by camp layout, begging the elementary question, "Whose geography is this?" (100). With careful concern for methodology, Hyndman sets out to interview refugee women regarding their daily activities, and reveals how spatial layout of camps organizes women's work in ways that affect their protection and assistance needs, including increased chances of rape and sexual attack when gathering firewood outside camp compounds.

This assertion is further elaborated when Hyndman begins to link specific practices of "managing displaced people and constellations of post-colonial power" (118) in Chapter Five, "Ordering Disorder." Drawing on post-colonial theories, Hyndman examines how refugees are represented in humanitarian circles: namely as helpless and in need of outsiders to care for them (121). Refugees are seen as "messy," in need of ordering, and UNHCR brings such order through endless "exercises of counting, calculating and coding refugees," invoking images of Foucault's "governmentality." Technocratic methods of "knowing" and representing refugees in UNHCR practices contrast and contradict the idea of refugee self-management and community development more recently pursed by the organization, possibly revealing why such an approach generally tends to be muted within "field" operations. Hyndman argues that community development approaches are based on the false premise that refugee camps are communities, whereas they are closer to institutions that temporarily contain displaced people, manifest as colonies where refugees enjoy lesser legal status and severe restrictions in comparison to any citizens of any community. Practices of ordering refugees by numbers such as "headcounts" and situation reports severely curtail refugee rights and participation.

In Chapter Six, "Border Crossings," Hyndman identifies at the "edges of her research" varied ways refugees oppose and subvert disciplinary practices of UNHCR and states. Reflecting upon serendipitous encounters with refugees during the course of her research, Hyndman argues that the containment of refugees and imposed order is "anything but complete" (149). This includes resistance to outright defiance – talking back to aid workers, refusing to co-operate in counting practices, and active participation in an informal economy that defies rules delineated by UNHCR and the Kenyan government – and reveals a mobility not recognized in Hyndman's earlier analysis.

A unique contribution of Hyndman's text is not only the deconstruction of UNHCR practices at different scales of the geopolitical, but also her mapping of potential alternatives, posing questions to provoke a re-imagining of humanitarianism. Though "doing nothing at all is not an option," Hyndman argues that current UN reform – technical changes to budgets and a near obsession with maximizing operational efficiency – is in fact just that. For Hyndman, an essential step forward is to avoid the current ad hoc approach and to build consensus among different actors – including UN, states, NGOs and local involvement – as well as new mechanisms for local involvement.

In Chapter Seven, "Beyond the Status Quo," Hyndman elaborates this and other points of transformation. To bridge the ever widening gap between "us" and "them," and to avoid the pitfalls of universalism, for instance, Hyndman again evokes the concept of transnational feminism, where "processes and criteria that spatially separate distinct groups based on their rank in tacit cultural and political hierarchies" are replaced with mechanisms that "create a basis for communication and exchange, even if this occurs between participants with unequal access to power." Hyndman explains that "transnational practices would involve ongoing meetings with refugees and their involvement at all levels of humanitarian response, not simply consultations with them

regarding pre-given models..." (76). How such communication and connection could best be facilitated, beyond the potential of adding "cultural workers" (86) to UNHCR field office teams, needs further investigation. Instances of dialogue between refugee and refugee worker, and refugees that connect across difference, would add to the theoretical propositions and practicality of transnational feminist approaches proposed. At the same time, UNHCR practitioners might find the methodological approach of the text useful to reflect upon and transform existing approaches to refugee consultation.

Hyndman brings her reader to the conclusion that the line between (neo-) humanitarianism and neo-colonialism is, in fact, a fine one (147). The text thereby sets new research agendas for scholars and demands critical reflection on behalf of practitioners. While the case of Somalia and Kenya provides rich insights to this study, UNHCR works in one hundred twenty countries globally. It would be helpful to contrast the findings of the Somali-Kenyan case with field operations elsewhere, particularly in different settings (and times) of displacement that challenge and transform global (historical) institutional practices and approaches to refugee management, or that may provide more room for refugees and the internally displaced to influence such approaches. Moreover, the text should inform critical analyses of more recent attempts by UNHCR to address some of the central concerns Hyndman identifies: for example, the Global Consultations on Protection (2000-2001) that seek to building consensus among states on the Refugee Convention; recent and arduous attempts to work in better coordination with UN agencies and NGOs; or the Dialogue with Refugee Women held in Geneva this year, the first attempt by senior managers to dialogue with refugee women.

Erin K. Baines
SSHRC Post-doctoral Fellow at the University of British Columbia and Simon Fraser University, Vancouver, British Columbia, Canada.