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Contents

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Multiple Homes and Parallel Civil Societies: Refugee Diasporas and Transnationalism

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Asylum seekers and refugees have been key players in the making of diasporas and transnational communities. The human rights approach to asylum seekers and refugees which appeared to be the hall mark of western states during the cold war era has disappeared. This "disappearance" has been clearly marked particularly in the aftermath of 9/11. Asylum is now increasingly perceived through the lens of migration and security issues. A pervasive national security oriented discourse advances the sacrifice of fundamental rights and freedoms not only for local populations but very systematically and effectively for refugees, asylum seekers and other migrants. Border controls, confinement and encampment of refugees, interdiction policies, "destitution as a threat to asylum seekers" and deportation are all mechanisms by which North America and "Fortress Europe", steadfastly attempt to prevent refugees and asylum seekers from reaching their shores.

These special issues of *Refuge*, the current one and the following one, dealing with refugee diasporas and transnationalism, are being published in this context.[1] Transnationalism as a phenomenon incorporates the economic, cultural and political practices of migrants, including refugees, who traverse several national borders. The terms diaspora and transnational have simultaneously become metaphors and categories that include various communities of displaced people, circulating migrants and people in limbo. While theorizing diaspora has a longer history, the "displacement" of the study of diaspora from history to area studies, cultural and literary studies and geography is relatively new. The conflation of studies in diaspora and transnationalism in the past decade has a symbolic representation in the title of a journal: "Diaspora: A Journal of Transnational Studies". While this conflation opens up new and challenging areas for research enquiry, it also creates some conceptual confusion and at times, uncritical interchangeability of diaspora and the transnational in a simplified manner.

The proliferation of diasporic categories such as "labour diaspora", "asylum diaspora", "victim diaspora", "feminist diaspora", "military diaspora" and "refugee diasporas" underscores a crucial element in the nature of the diaspora: ambiguity. However, we need to be cautious in not eliminating the historical specificity of these diasporas. While there is certainly a convergence between diaspora and transnational communities, it is critically important to maintain a conceptual and analytical distinction between them. The term diaspora has historically been used to describe the experience of forced displacement and to analyze the social, cultural and political formations that result from this forced displacement. Transnational communities can be generally defined as communities living or belonging to more than one "national" space. The condition of forced migration is not necessarily a component of transnational communities. However, the distinction between diaspora and transnational is not always clear in social science literature. While some scholars have argued in favor of identifying a closed set of attributes and have been only minimally concerned with the actual conditions of diasporic existence,[2] others have preferred to use the term in the broader sense of human dispersal.[3]

The traditional naming and meaning of diasporas can be expanded to include several communities that express new identities and cultural practices as the result of displacement, hybridity and transnationality and mediated through economic transnationalism in the context of globalization. While recognizing that diasporas can eventually evolve into powerful transnational communities, it is sufficient to say that *multiple* and *simultaneous* ways of belonging and multiple ways of incorporation in the "home" and "host" countries is the one key theme that is common for both. This is the most important theme that animates the dynamics of transnational groups in the contemporary age. In that sense the traditional categories of "home" and "host" lands in the context of migration and diasporas are becoming somewhat out dated. The plurality of experiences and plurality of contexts and locations contribute to the formation of multiple homes and multiple locations for transnational and diaspora groups.

In order to understand and study the transnational, social, cultural and economic and political practices of these groups, the traditional paradigms of immigration/settlement/adaptation/ integration are inadequate. New analytic lenses are essential to understand the social and political processes that transcend traditional state boundaries and create transnationalism. The concept of diaspora and transnational practices and engagements question the notion of integration and assimilation within a particular national frame of "host" societies.

The traditional sociological model of immigrant assimilation is based on the process by which an immigrant group adopts the way of life, patterns of culture and other practices by the dominant, majority group.[4] A critical body of recent work suggests that the notion of segmented assimilation would be a better tool in the study of these groups.[5] One of the important insights offered by the proponents of the segmented assimilation model is the steady stream of new immigrants from various minority ethnic groups allow them to maintain their distinctive identities in a much stronger way than their older generations. The differential treatment of ethnic and racialized minorities and systemic racism are realities that continue to challenge "assimilation".

It can be argued that transnational practices or transnationalism have become a major force and a paradigm shift challenging traditional notions of assimilation and segmented assimilation. This paradigm shift also necessitates a critical look at the ways in which durable solutions for refugees are conceptualized, programmed and implemented. Traditionally repatriation, resettlement, and integration have been practices accepted and promoted by UNHCR, national governments and NGOs.[6] However, as Van Hear notes in his article in this issue, the transnational character and practices of refugee diasporas have important implications for policy and practice in relation to the traditional triumvirates of durable solutions. For refugee receiving states and the UNHCR, repatriation is increasingly characterized as the most desirable of so called durable solutions. This view is predicated upon notions of refugee diasporas with unalterable territorial identities, loyalties and nostalgia. However, the contemporary transnational practices of refugee diasporas are multifaceted, fluid and exhibit multiple belongings and multiple homes. The key assumption that refugees will have eternal and unchanging ties to their country of origin and "home" is contested by transnationalism. The evolving complexity of networks and transnational practices increasingly challenge the idea of a society firmly perched upon the nation-state.

The countries from which these immigrant groups or "transnationals" originated ("homelands")—and the countries that the transnationals often inhabit—"host lands"- can be understood as a single field.[7] Conceptualizing those who leave and those who remain as a single socio-economic and political field can be helpful in explaining transnational practices. The notion of transnational spaces is the preferred concept of some scholars to describe transnational networks and practices.[8]

Transnational practices – including fostering nationalism in their "homelands" by some communities—pave the way for the creation of a complex niche in the "host lands". The existence of this complex niche requires us to focus more closely on the processes, practices, actors and networks that are instrumental in structuring and organizing transnational social fields. This complex niche can be conceptually described in terms of parallel civil societies. The idea of parallel civil societies opens up new ways of thinking about "home", migration, homeland politics and/or nationalism and transnationalism. The formation and continuation of parallel civil societies in the major metropolitan cities in the West is the result of several factors. First, transnational practices that question "home" as a fixed entity in the context of refugee and other diasporas. Home in this context becomes multi-sited and extends beyond national boundaries. Secondly, the nature and impact of immigration, refugee and settlement policies of the countries in the North. These policies, together with racism and social exclusion have led to transnational practices that can be read as a response to marginalization and exclusion. Denise Spitzer in her article examines how the Canadian government policy and public discourse have operated to strengthen and maintain the liminal status of Somali women refugees.[9] She points out that these policies and regulations hindered the ability of Somali women refugees to meaningfully integrate into Canadian society. Thirdly, in countries such as Canada, official multicultural policies and their impact on ethno-cultural minorities. The official policy of multiculturalism and the subsequent programs to foster multiculturalism in Canada came into existence in the 1970s.These policies facilitated a certain degree of affirmation of cultural difference while at the same time managing and channeling it through approved government avenues such as government support for ethnic and other immigrant organizations, cultural festivals, and the so-called "heritage language" programmes. In essence, the official multicultural policy is not more than a culturalist rendition of multiculturalism without corresponding political representation or power.[10]

The conceptual framework for these two issues of Refuge grew out of the conviction that transnationalism has become a dominant practice of our times and refugee diasporas signify a unique dimension in the arena of transnational practices.

The articles included in these two issues of *Refuge* address various dimensions and realities of the transnational practices of refugee diasporas in the international context. In addition to documenting some practices of parallel civil societies, the other important contribution of these two issues lies in the fact that several articles transcend the usual geographical bias that exists in transnational studies. Most of the literature on transnationalism is focused on the receiving context of the West while excluding countries in the South that receive large refugee populations. These two issues attempt to rectify this lacuna. However, it would not be inappropriate to say that more research is needed in this crucial area.

There are a total of twenty one articles in the two issues. Hyndman and Sherrell's article discusses the quality and distinctiveness of transnational links among Kosovars. They demonstrate that settlement and integration in contemporary world cannot be understood without consideration of transnational ties and practices. Echoing one of the main themes of the two issues, Nicholas Van Hear argues that durable solutions for refugees perhaps lie in their transnational relations and practices. He offers a simple schema for understanding diasporas and transnational relations and suggests that "transnationalism might be considered in itself as an "enduring" if not a "durable" solution to displacement."

The articles authored by Shotte, Kirk and Purveys illustrate the difficulties and barriers for adaptation that exist and how issues of identity and transnational practices are gaining more importance in the study of refugee diasporas. Bose's article on the Hindu Bengali displacement from Bangladesh critically interrogates the idea of refugee diasporas. He highlights the problems in identifying refugee diasporas as monolithic entities without any class, gender, caste and religious specificities. Pilkington and Flynn in their article deal with one of the most contentious aspects of transnationalism: the politics of "homeland". While these articles focus on different geographical regions, the key themes that underlie both articles are not only similar but point to the increasing relevance of "homeland" politics in the study of transnational political practices.

Joan Simalchik's article on the Material Culture of Chilean Exiles, approaches homeland politics and exile from a different angle.[11] While pointing out how Chilean exiles managed to construct an "embodied site of struggle" through their resistance, solidarity strategies and commemorative practices, Simalchik explains how "Chileans created and inhabited a newly devised distinct space". This distinct transnational space created not only through transnational practices but also through memory, commemoration and articulation of struggle. As she asserts, "with their emphasis on solidarity practices, [Chilean] exiles were able to create an expanse both to contain memory and to produce opposition to the military dictatorship."

Da Lomba's paper critically evaluates European Union's current asylum policy and the use of destitution as a deterrent against asylum seekers and refugees. Her article strongly makes the case that there is a gap exists between the EU asylum agenda and the EU member states' obligation under international refugee and human rights law. Neuman documents the complicity of UNHCR in the Australian government's unethical treatment of West Papuan refugees. The article explores the relations between the UNHCR and the government of Australia and argues that the UNHCR's role in providing and lobbying for protection for refugees was compromised by its consideration for Australian government's interests. This article adds an important resource to a growing body of literature that critiques the UNHCR's role in refugee protection.[12]

The use of internet technologies by diaspora groups and the creation of cyberspace as a unique location for effective transnational practices still remain an under researched area. Horst discusses the value of electronic media as an important methodological tool in studying transnational practices of Somali refugee diaspora.

Also included in this issue are highlights of discussions of transnationalism and forced migrants at the 9th conference of the International Association for the Study of Forced Migration held at Sao Paulo, in Brazil in January 2005. Collyer's summary reinforces the major theme of our special issues: transnational perspectives need to be incorporated not only in the study of refugee diasporas and forced migration but they can provide significant policy interventions.

In the second issue, articles by Anna Lindley and Dianna Shandy focus on one of the important aspects of transnational practices: financial remittances. Katharya Um's study on Cambodian transnational political remittance in the post-conflict situation helps us to understand the nature and impact of political remittances as important transnational practice in conflict and post-conflict zones. Denize Spitzer and Mehrunnisa Ahmad Ali critique Canadian government policy in relation to refugee women and unaccompanied children seeking refuge. Ali's article highlights the ambiguities in the identification, case processing, care and protection of separated children in Canada and calls for a systematic study of government policies and practices.

Savitri Taylor's article considers Australia's treatment of stateless Palestinian asylum seekers and discusses whether that treatment is line with Australia's legal and/or moral obligations towards asylum seekers and refugees. Her disappointing conclusion is that it does not.

Fethi Mansouri's paper addresses the important issue of the psychological impact of liminality. The Temporary Protection Visa (TPV) granted to asylum seekers in Australia who arrived without valid documents but are subsequently found to be refugees. Past trauma and persecution which are not uncommon for refugees, combined with family separation, exclusionary policies advocated by the Australian government and uncertainty about future results in chronic states of anxiety and depression among TVP holders.

Susan Banki's paper discusses refugee participation in transnational acts. While there seems to be a consensus that the legal status of refugees improves the ability to engage in political transformation Banki's paper on Burmese refugees living in Japan reveals that the provision of legal status can have the opposite effect, weakening fragile community structures, stemming advocacy efforts, and discouraging communication between divided political and ethnic groups.

Read collectively the articles in these two issues broadly indicate the coordinates of important transnational practices and the consequent emergence of parallel civil societies in the metropolitan West. They are financial and political remittances, difficulties in integration in the "host countries", homeland politics, the emergence of powerful social, political and cultural networks and virtual diasporas. More research is necessary to map parallel civil societies and the transnational practices that strengthen these parallel civil societies. Some of the key areas that need closer study include the proliferation of ethnic markets, the emergence of separate media and entertainment industries outside the mainstream as well as how nationalism in the homelands is fostered through transnational diaspora practices and the impact of these practices upon conditions of war and peace.

In the discourse of terrorism that has predominated post 9/11, diaspora and transnational communities are often portrayed as supporting violence directly and indirectly through financial and political remittance. This myopic view fails to address the significant contributions of diaspora and transnational communities to peace building in the global South.[13]

It is highly unlikely that the majority of individuals that inhabit transnational spaces will return to their place of origin on a permanent basis. The most probable scenario is that they will circulate if/when conditions are conducive for such circulation. The idea and practice of circulation together with the degree of social capital that a transnational community possesses can have enormous impacts upon the creation of parallel civil societies and expansion of transnational spaces.

Instead of perceiving transnational communities and refugee diasporas as "others" and inherently suspicious and troublesome, governments need to find creative and effective ways to understand and learn from them. That is, perhaps, the only way to place rights, freedom and human security at the centre stage.

Notes

1. Volume 23, Issues 1 and 2 of *Refuge*.
2. Robin Cohen *Global Diasporas: An Introduction* (Seattle: University of Washington Press, 1997)
3. William Safran "Diasporas in Modern Societies: Myths of Homeland and Return" *Diaspora* 1:1, pp. 83–99 and Jana Evans Braziel and Anita Mannur *Theorizing Diaspora* (Oxford: Blackwell, 2003).
4. R.E. Park was an important early exponent in delineating this process by suggesting the four stages: contact, competition, accommodation, and assimilation. See R. E. Park *Race and Culture* (Glencoe, IL: Free Press, 1950).
5. A. Portes and M. Zhou "The Segmented Assimilation and its Variants" in *Annals of the American Academy of Political and Social Sciences*, 530:74–96 (1993) and R. G. Rumbaut "Assimilation and Its Discontents: Ironies and Paradoxes." in C.Hirschman, P.Kasinitz and J.DeWind, eds. *The Handbook of International Migration: The American Experience* (New York: Russell Sage Foundation, 1999) at 172–195.
6. See generally, UNHCR *The State of the World Refugees 1995: In Search of Solutions* (Oxford: Oxford University Press, 1995).
7. Peggy Levitt and Nina Glick Schiller "Transnational Perspectives on Migration: Conceptualizing Simultaneity" (Princeton: Princeton University Center for Migration and Development Working Paper 3–09J, 2003) (available online at <http://www.peggylevitt.org/>; last accessed 10 January 2006).
8. Ludger Pries *Migration and Transnational Social Spacse* (Aldershot: Ashgate, 1999) and Thomas Faist *The Volume and Dynamics of International Migration and Transnational Social Spaces* (Oxford: Clarendon Press, 1999).
9. Denise Spitzer's article appears in Volume 23, issue 2.
10. For a critical review of Canadian multiculturalism see, Himani Bannerji *The Dark side of the Nation: Multiculturalism and Nationalism in Canada* (Toronto: Women's Press, 2002) and Yasmeen Abu-Laban and Christina Gabriel *Selling Diversity: immigration, multiculturalism, employment equity, and globalization* (Peterborough, Ontario: Broadview Press, 2002).
11. Joan Simalchik's article appears in Volume 23, issue 2.
12. Guglielmo Verdirame and Barbara Harrell-Bond *Rights in Exile: Janus-Faced Humanitarianism (*New York: Berghahn Books, 2005).
13. Wolfram Zunzer, "Diaspora Communities and Civil Conflict Transformation, Berghof Occasional Paper No. 26", (Berlin: Berghof Research Centre for Constructive Conflict Management, 2004).

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Further information about the Berghof Foundation for Peace Support and Berghof Center for Contructive Conflict Management is available at <http://www.berghof-peacesupport.org> and <http://www.berghof-center.org>. Information about the Berghof Foundation for Conflict Studies, Sri Lanka Office is available at <http://www.berghof-foundation.lk>.

Diasporic Nationalism, Citizenship, and Post-War Reconstruction

Khatharya Um

Abstract

While ties between Cambodian diasporas and Cambodia have been significant and enduring over the decades of conflict, the political changes engendered by the internationally endorsed elections of 1993 have transformed the scope and characteristics of the transnational traffic. Shaped by complex ideological, class, gender, and generational dynamics, Cambodian diasporas' re-engagement with the ancestral homeland has since acquired a multidimensionality that extends beyond mere monetary remittance. Spanning both private and public spheres, from national to household levels, these transnational encounters necessarily dislodge the narrow analytic focus and assumptions that accompany much of the discourse of transnationalism, and interrogate critical issues of nationalism, citizenship, and belonging.

Résumé

Malgré l'importance et la solidité des liens entre la diaspora cambodgienne et le Cambodge au cours de décennies de conflit, les changements politiques engendrés par les élections avalisées de 1993 ont modifié la portée et les particularités de la circulation transnationale. Le réengagement de la diaspora à l'égard de la patrie, influencé par une dynamique complexe quant aux idéologies, aux classes, aux sexes et aux générations, a depuis acquis une dimension multiforme qui dépasse la simple allocation monétaire. Ces rencontres transnationales, englobant les sphères privées et publiques, du foyer à la nation, écartent les hypothèses et les points de vue analytiques fermés qui accompagnent souvent le discours sur le transnationalisme. Elles remettent également en question les notions critiques de nationalisme, de citoyenneté et d'appartenance.

Introduction

Despite the challenges posed by protracted conflict, compounding dislocations, and distance, Cambodians dispersed throughout various refugee camps, in third-country settlement, and in Cambodia have maintained strong ties that extend not only across time and geography but also across multiple dimensions of economic, social, and political engagement. From the late 1970s to the early 1990s, when contact was constrained by political impediments, difficult access to the border camps and the economic hardships that confront new refugees in their countries of resettlement, these translocal relationships were sustained essentially through letters and financial remittances. In some instances, these exchanges were conducted between the many nodes in diaspora; in others, they made their way by circuitous routes from asylum in the West to needy families languishing in liminal refugee camps. Until the repatriation of refugees from the Thai-Cambodia border in 1991, remittances from overseas Cambodian communities provided a critical economic buffer, especially for families in camps not recognized by the UN. They continued, through the late 1980s and early 1990s, albeit in an imperceptible trickle, largely through the community of international non-governmental organizations (NGOs) that emerged following the collapse of the Soviet Union and the termination of Soviet subsidies. Following the repatriation of refugees from the Thai border camps back to Cambodia in 1991, support from overseas Cambodian communities was especially important for returnee families with little or no access to land and other productive means.

While transnational relations have been enduring and significant during the two decades of virtual regime isolation in Cambodia, the political changes brought about by the internationally endorsed elections of 1993 transformed the scope and nuance of transnational traffic. Liberalization of state control over movement of people, capital, goods, and information both into and out of Cambodia fortified

and diversified transnational connections. Shaped by differing political tendencies and by complex class, gender, and generational dynamics, Cambodian diasporas' re-engagement of the ancestral homeland has since acquired a multi-dimensionality that, heretofore, has not been possible. Many overseas Cambodians embarked on the political routes initially through transnational activism during the conflict period and subsequently through participation in the post-war coalition government. Many more solidify their transnational ties through family remittances and sponsorship of development projects and cultural activities in Cambodia. Some opt for long-distance involvement, others for actual return. The greater number go back and forth in the attempt to reconcile the fissures of dislocated lives, families, and communities.

The lived experiences of Cambodian diasporas, as they reflect historical, temporal, and spatial multiplexity,[1] challenge the bounded concept of the community and the linear approach towards migration. Rather than the presumed directional finality in the exit from one context and assimilation into another, Cambodian transnational experiences underscore the circularity of movement and the multidimensionality of connections. They dislodge the analytic centrality placed on monetary remittances that pervades transnational studies, and bring into focus the diverse forms, nuances, and textures of transnational connections that are equally compelling. They also interrogate the uncritical idealism that accompanies much of the discourse of transnationalism. The process of reconnecting and return for Cambodian diasporas, as it is for many transnationals, has not been without tremendous challenges. Their irrefutable agency notwithstanding, diasporas are constrained in their ability to effectively intervene and participate in homeland developments by the larger political, social, and economic contexts in which they have to operate both in their originary place and in their new places of resettlement. In the nexus of local, national, and global exigencies, agency and subjectivity exist in constant dialectical juxtaposition.

Homeland and Exilic Longing

In a context where rupture and entanglement, loss and remembrance, coexist in accustomed tension, the notion of time and space must be spoken of in terms of memory and imagination, in what Edward Said referred to as that "endless temporal notion in which past, present, and future intertwine without any fixed centers."[2] Being a refugee, as Hans Wicker points out, "means being engaged in a kind of lifelong psychological balancing act."[3] For forcibly displaced individuals, the "discontinuous state of being"[4] reflects the inability to free themselves from the past. Thus, as Homi Bhabha points out, rather than speaking of locality in "some utopian sense of liberation or return", "the place to speak from was through those incommensurable contradictions within which people survive, are politically active and change."[5] In fundamental aspects, it is in the context of this liminality that attachment to the "homeland" becomes most registered. The poignancy of longing is rooted fundamentally in the *denied* possibility of return for in the reconstruction of myth and memory; it is, as Said puts it, "fragmentation (that) makes it even more real."[6]

Cambodian diasporic longing for the homeland, as such, must be understood in light of the historical trauma of war, revolution, exile, and rupture. In essence, the nature and extent of the *disconnection* accounts for the *reconnection* that is sought. For many Cambodians, the rupture created by the losses and sufferings under the Khmer Rouge, and in the case of refugee survivors by physical dislocation from the homeland, was compounded by the nature of the atrocities. Disappearances and mass graves are especially significant in a Buddhist country because they deprive surviving relatives of the ability to perform the necessary rituals to ensure the successful transmigration of the soul, hence of the essential closure to these tragic life experiences. In many instances, this engenders a psychical sense of "being stuck" not only for the soul of the departed but for the survivors as well. Moreover, the virtual autarky that shrouded the country from 1975 to 1979 kept fractured families imprisoned in the liminality of not knowing. For many refugees, this "unresolved business" is made even more acute by the circumstances of flight—abrupt, often secretive and always perilous, resulting in further separation and deaths. These experiences combined account for the inability of the survivors to move forth towards building a new life and a new history. Memories of the past and of all that had been left behind essentially deny them the luxury of focusing on what they do have in the present and what they could envision for the future. Above and beyond the politics, the economics, and all the other "loftier" motivations, return for many Cambodian diasporas is compelled by that simple, yet insistent, need just "to light an incense" in remembrance.

The collective guilt of survivor-refugees is exacerbated by the conditions of post-war Cambodia. The decimation of the educated class and the enormity of Cambodia's needs exert additional pressure on the surviving and newly emerging professional and middle classes overseas. As reflected by Dr. Pen Dareth, who traded his lucrative position in Holland for a return home, "the country has helped me a lot by sending me abroad on a scholarship, now it's payback time. My conscience would not allow me to remain in Europe because I must help rebuild my country."[7] Among the 1.5 generation[8] of Cambodian-Americans, in

particular, one of the frequently proffered reasons for wanting to engage in the process of national reconstruction is simply that "we had the opportunity (for education, for jobs . . .) which people in Cambodia did not have . . . Without Cambodia, I wouldn't be who I am; I need to put something back."[9]

For diasporic communities, however, the longing for the homeland is rooted not only in the context of displacement but also in the experience of exile, reflecting diasporas' own positions and relationships with the receiving society. Ethnicity, as Sorenson points out, is "a product of interaction, not isolation."[10] In this sense, the post-resettlement experience of the refugees and their relationship with the host society incubate that longing for return. For many Cambodian refugees, resettlement in the US has not been without considerable challenge. With a disconcertingly high rate of welfare dependency and statistics of over 41 per cent of the population living below poverty line,[11] Cambodian-Americans are part of that "implosion of the Third World into the First."[12] Among first-generation refugees, relatively few professionals were able to re-enter that sector of employment after their resettlement in the US. Many gravitated towards social services, partly because it was an area where they could apply their bilingual skills and administrative training. Though civil service may afford them stability and social status, many remain frustrated with the downward mobility and the un-/under-fulfillment of their life aspirations. For many refugees, encounters with racism in America further underscore the denial of belonging.

The prevailing sense of marginalization and insecurity in diaspora amplifies the siren call of the homeland. The need to confront and navigate around multiple hegemonic contexts points to transnational social fields as being "in part shaped by the migrants' perceptions that they must keep their options open."[13] Being "obliged to live within a transnational space and to make a living by combining quite different forms of class experience," migrants have to "continuously translate the economic and social position gained in one political setting into political, social and economic capital in another,"[14] and in so doing, they "become skilled exponents of a cultural bifocality that defies reduction to a singular order."[15] In this sense, dual citizenship, as with many features of transnationality, should be looked upon not simply and simplistically in terms of splintered loyalty but as a strategy for maximizing social and economic capital in the effort to enhance the personal and collective sense of security. In Cambodia's stringently stratified society, where family names, educational achievement, former status, and even age continue to be reservoirs of traditional legitimacy, returning elites, even those who are economically dispossessed, can find personal affirmation and a *raison d'être* that anonymity of life in the US has robbed them of. If nothing else, the association with America commands a certain social and political premium. Framing the discussion of involvement and repatriation as such highlights the elements of expediency and instrumentality that are often overshadowed by the discursive preoccupation with the nobler motivation for return.

Diasporas and Transnational Political Remittance

Addressing the need to emphasize both the subjectivity and agency embedded in the refugee experience, Richmond advocated looking at refugees not "as helpless victims of forces beyond their control but 'survivors' who create something out of their crisis."[16] Despite forcible displacement and dispersed resettlement, refugee families and communities had mobilized to provide economic and political support for the homeland. Vietnam's occupation of Cambodia was a rallying cry for Cambodian diasporas. Coalescing under the umbrella of the government-in-exile (CGDK), exiled intellectual, political, and military elites came together, bound by little more than their shared desire for regime change in Cambodia, to form the initial core of oppositional leadership. At the grassroots, in places such as Long Beach, Lowell, and Chicago, it was a common sight to see Cambodian refugees, most with little education and little previous political awareness, gathering in community halls or at the local temples after long hours at their factory shifts for meetings with party representatives in search of political and financial support. Meager earnings from low-wage labour made their way into party coffers. Local noodle houses were always abuzz with political debates and exchanges of homeland news drawn from community newspapers that are dedicated largely to political developments in Cambodia, with only a peppering of local news. Rural Cambodians, awakened from their pre-political state by the mass victimization of Khmer Rouge draconian policies, have come to recognize the direct relevance of politics to their welfare. Constituting the majority of the refugee population, these peasant-nationalists provided critical support for the diasporan political cause. The resistance movement, coordinated and supported largely from outside Cambodia, was one of the principal catalysts compelling the negotiated settlements that officially marked the end of the Third Indochina War.

Following the internationally brokered peace settlement, Cambodian-Americans advocated for and won the right to run for office and vote in the elections. As a result of political pressure from Cambodian-Americans and their international supporters, voting stations were set up at the UN headquarter in New York while eight political parties led by

Cambodian-Americans participated in the 1994 elections. Over the last decade, returning Cambodian-Americans have held prominent positions in government and non-government sectors while many in diaspora continue to serve as critical links in the transnational networks committed to bringing about systemic change, some through advocacy and others, like the Cambodian Freedom Fighters, through more militant means.

Community Organizations and Transnational Activism

Where traditional leadership is dislocated and dispersed and the community fractionalized along multiple dimensions, organizations provide both the structure and the ideology for regroupment and involvement. In fundamental ways, community-based associations provide the space for affirming and expressing cultural and ethnic identity as well as the structure for channeling this expression into actions.[17] For politically displaced diasporas for whom politics constitute a diacritical marker of their communal identity, the social and political domains are inseparable. As it was with the Korean and Sikh communities in America, community-based institutions provide Cambodian-Americans a forum not only for the affirmation of religious and cultural identities but also for political activism. They serve as the institutional facilitators for local mobilization, providing venues for receiving representatives of the government-in-exile, channeling strategic access to a dispersed community, and acting as structural links among overseas Cambodian communities and between diasporas and the home country.

Given the bifocality of diasporic consciousness, participation in community programs thus enables diasporas to "live out the tension embedded in the 'experiences of separation and entanglement', of living here and remembering/desiring another place." [18]

The self-perception of Cambodian diasporas as critical interlocutors of the country's political fate facilitates the merging of domestic and homeland agendas. Many community events reflect social and political concerns centred both in the US and in Cambodia, providing the leadership in diaspora with the means and opportunities to conduct homeland political work, in tandem with the fulfillment of their social service mandate. It is not unusual, therefore, to find event programs listing panels on Cambodian-American youth and educational issues alongside presentations on international border negotiations and democracy building in Cambodia. In the 1990s, the umbrella organization for Cambodian-American mutual assistance agencies, the Cambodian Network Council, would typically set aside each of the two days of the national convention for domestic and homeland issues respectively. In its present incarnation, the organization has added a "border committee," one charged with addressing Cambodia's frontier disputes, to its standing committee structure.

Organization, as Samuel Huntington argues, "is the road to political power," and that power can be leveraged both in diaspora and upon return to the ancestral homeland. In providing a forum for the articulation and reaffirmation of culture and ethnic identity, these organizations perpetuate a context where traditional norms regarding social status, leadership, authority, and relations of obligation are validated and reinforced. In this process, they provide the institutional base for the cultivation of patron-client networks and other forms of social capital that can be extended into the political arena in Cambodia, where personal loyalty remains a principal asset. Those with established power bases overseas can thus convert these political assets into access and influence in Cambodia. It is significant that, of the Cambodian-Americans who returned to hold important positions in Cambodia in both government and non-governmental arenas, many emerged from the cadre of social service providers and from the leadership of community-based organizations in the US.

Formal Economic Ties

While homeland politics is a central preoccupation of Cambodian diasporas, it is also true that active (as opposed to supportive), high-level participation in the political process, be it in Cambodia or in diaspora, and long-term repatriation have been the privilege of the few. Even with the determination and desire to re-engage, many overseas Cambodians are unable to undertake long-term relocation because of economic constraints such as home mortgages, college tuition, and other family obligations. Moreover, access to positions and real money-making opportunities require not only economic but political capital, which many refugees do not have. These constraints, in effect, may reinforce transnational mobility as they necessitate constant movement back and forth.

For most Cambodian families, transnational ties are forged and maintained largely through non-political venues. For overseas Cambodians with business acumen and means, economic liberalization and the magnitude of the country's post-war needs make it possible to capitalize upon the comparative advantages that they possess – cultural and language competency, family and professional connections, as well as expertise and connections garnered in the West – to assume important roles as investors, entrepreneurs, and critical intermediaries for firms seeking to do business in Cambodia. Cambodian-American owned companies, travel agencies with multinational branch offices, hotels and motels, restaurants, fast-food eateries, and even

a private college have mushroomed since the political opening in 1993. While the incipient nature of the legal and business infrastructure and lack of systemic transparency in Cambodia continue to deter many potential investors, they also provide an environment in which more opaque business undertakings do thrive. Though relatively little capacity building and technology transfer have taken place, these intermediations have yielded benefits for Cambodia. As a Delcom representative points out, access brokered through the Cambodian-American connection brings in critical resources to the country: "Delcom has brought in a lot of money and expertise by building the first power plant. We ensure there is transfer of skills and technology to Cambodia. We have also created jobs for hundreds of local workers."[19]

In spite of opportunities and interest, there are factors that limit entrepreneurial activities. The destruction of strategic human resources under the Khmer Rouge further eroded the weak entrepreneurial base left in place by Cambodia's colonial experience, accounting for the limitation of social and economic capital within the diasporic community. As a result, most of the business enterprises, such as doughnut franchises, are linked to the small community of Sino-Cambodians who historically constitute the commercial backbone of Cambodia's economy. Following the political opening of Cambodia, these are the individuals who are well-positioned to capitalize on the emerging opportunities.

Non-Formal Transnational Economic Engagement

Though Cambodia has since made a transition from rehabilitation to slow development and the enthusiasm of the international business community has sobered over the years, overseas Cambodians continue to play significant roles in the country's economic development, particularly through non-formal avenues. As people travel back and forth, goods are brought in and sold in both market arenas, at the very least as a way of deferring the cost of travel. Traditional handicrafts, gems, textiles, and ethnic foods, items much desired in diaspora, now stock the shelves of ethnic grocery stores in America's inner cities while medicines, second-hand goods, and luxury items of the West find their way through the labyrinth of family-based economies in Cambodia. The dynamics observed in the Dominican immigrant community are mirrored in the Cambodian transnational experience: "to the untrained eye, these travelers may appear as common migrants visiting and bearing gifts for their relatives back home, when they are actually engaged in trade."[20] In a refugee community of high English-language illiteracy, particularly among the older population, "trip facilitators" find a lucrative niche as travel escorts and facilitators of home visits. This was particularly true in the earlier years when travel to Cambodia was much more complicated than it is presently. In a country with weak banking infrastructure, carriers with service charges ranging from 10 to 25 per cent, depending upon the accessibility of the destination, continue to provide the principal means of capital remittance. In a country of high illiteracy and little trust, video technology provides instant confirmation of the transaction. Not uncommonly, individuals are simultaneously engaged in multiple "informal" activities. Travel, for instance, may be financed through "service fees," while expenses can be deferred, and profit made, through the sale of goods brought into and out of both Cambodia and the US.

Transnational Cultural Projects

In light of the dislocations that surviving refugees experience, the struggle to "make whole again" begins with the attempt to thread some continuity into life in exile. Community events are thus replete with cultural activities that not only affirm their cultural identity as Cambodians in America but also bridge the present with the interrupted past. Religious ceremonies are aimed not only at the well-being of the refugee communities in America but also destined for those left behind in Cambodia. Conducted in makeshift temples or in rented high school auditoriums, ceremonies such as Pchum Ben, the day of the ancestors, are marked as much by the sense of continuity as they are by the absence. Faded pictures and names scribbled on torn pages from school notebooks lie on the offering tables. For many refugees, young and old, these rites are no longer simply performative but are imbued with the rawness of irreparable loss. The genocidal experience intrudes in what, in the past, has been a largely ritualistic, cultural moment:

> It always reminds me of my older sister who died from starvation in the Khmer Rouge regime . . . It is believed that Pchum Ben is the time when the souls of the dead are set free from hell and the living relatives must start to make offerings in food and gifts of religious value to their dead ancestors or the spirits . . . I always think that my sister soul always comes and rests with my family during the days of the festival. And, I still maintain the same feeling that she is still very hungry. And I want to give her rice to eat. . . .[21]

With increased travel and communication between the homeland and diaspora, religious and cultural activities have acquired a transnational feature. Whereas previously activities such as the Pchum Ben are largely confined to the community in the US or in Cambodia, surviving families

now remit money to Cambodia for the conduct of religious ceremonies and for exhumations and reburials from Khmer Rouge mass graves. As "community" comes to be defined transnationally, communal mobilization around religious activities such as the Krathen festival, dedicated to temple fundraising and other merit-making projects, necessarily extends across nation-state boundaries and geopolitical divides. Collectively, Khmer Buddhist communities, from Long Beach to Lowell to Philadelphia, have actively raised funds for religious projects in Cambodia, whereas previously these activities were confined to local communities in the US. The ability to organize and participate in the Krathen in Cambodia allows Cambodian-American elderly to reconcile, in however small measures, with the fact that they will have to live their final years in exile.

Beyond the religious arena, the desire for re/connection that had spurred sister-cities campaigns aiming to pair Phnom-Penh with Long Beach, California, and Sihanoukville with Seattle, Washington, also saw local expressions. Hometown associations and alumni groups have contributed to the construction and renovation of schools and clinics in their native communities. Under the leadership of Mr. Thavy Nhem, for instance, the Beng Trabek High School Alumni Association raised $50,000 for the rehabilitation of their alma mater.[22] Similarly, alumni of the pioneer Lycee Sisowath with their historical involvement in political activism in France now extend their mobilization to other diasporan communities and to non-political multinational projects.

As bridges that link and transcend temporal, geographical, and political distance, transnational activities allow diasporas to reconnect with homeland village communities and to feel a renewed sense of empowerment as active contributors to national reconstruction. Through these contributions and renewed ties, individuals and families also reap social status and insure their place in an established community. One Cambodian-American professional who funded the construction of a clinic in his family's natal province puts it as follows: "my family is from that area. It is a way of keeping the family name in that place."[23] The same spirit reverberates in Mexican-American transnational communalism, ". . . the Absent Ones, Always Present."[24] After two decades of war and destruction, these construction projects stand as the "aesthetics of dislocation,"[25] edifying the creative and regenerative impulses of a fractured and wounded community. Against the backdrop of political instability and endemic uncertainty, these structures, be they religious or secular, are venues for ascertaining a certain permanency of presence, of belonging, memorialized in defiance of temporality.

There is, additionally, an immeasurable sense of empowerment that comes with this transnational sponsorship. For a people weighed down by the loss of self-determination, the ability to undertake positive actions, to see that one's simple actions are bettering numerous lives, can be overwhelmingly gratifying. Given relative deprivation, even the economically marginalized in the US can become benefactors back in Cambodia. As one proud sponsor of a well-digging project in Takeo province pointed out, "At night I go to bed and think about people drinking my water, cooking food with it and bathing from the clean water of my well. Where else can one get that level of satisfaction for a mere $200!"[26] Transposed onto an alternate arena, dispossessed and marginalized refugees in America can and do become power wielders; they are not simply impoverished and subjugated minorities but individuals with knowledge and resources to impart, irrespective of socio-economic standing, gender, and age. In a country where 90 per cent of the population are Buddhists, and where the Buddhist *wat* stands at the social and cultural centre of every Khmer village community, temple renovation and construction are fundamental aspects of national reconstruction. For elderly refugees with limited education and economic means, participation in these transnational cultural activities thus enables them to assume a position of leadership, both in the diasporan community and in their natal community in Cambodia, and to be meaningfully engaged in the process of change, thereby validating their continued importance and relevance.

Along with the spiritual and psychical rationale for engagement, there is also a utilitarian imperative for the maintenance of transnational ties. In fundamental ways, these multi-faceted remittances can be read as practical investments. With concentration in low-wage, low-security employment sectors and high dependence on public assistance, the Cambodian American community remains plagued by economic vulnerability. In light of this continued marginalization, remittances can be viewed as strategic efforts to enhance economic security with accumulation of assets in Cambodia. Given the relative affordability of land and the porous tax collection system in Cambodia, the purchase of property in Cambodia is an investment that yields not only economic returns but also psychical benefits by making it possible for first-generation refugee, most of whom are of agrarian background, to dream of spending their golden years back in the ancestral country where they can enjoy a higher quality of life.[27] In the same vein, providing monetary gifts and loans to families and investment in family enterprises is a way of buying into a future back in Cambodia. These strategies mirror those adopted earlier

by Portuguese-American elderly in the years prior to the institution of social welfare programs in the US.

Gender, Generation, and Transnationalism

In addition to class, the ability of diasporas to re-engage the homeland and to undertake an actual return is also filtered through gender and generational prisms. In a country with an acute shortage of skilled human resources, returning Cambodians with their inherent comparative advantages can access opportunities not easily found in diaspora. Possession of a degree from an American institution, regardless of whether or not it is accredited, work experience in the West, and command of the English language are valued assets in Cambodia. With economic and political liberalization and the country's heavy dependence on foreign assistance and process, employment opportunities have proliferated, especially in the public and private sectors. Armed with Western training and education, newly minted college graduates with little or no experience can access positions of responsibility with governmental and non-governmental agencies at a level that elsewhere would not be possible. Some have been able to assume leadership roles that have been impossible to achieve in diaspora where community politics remain dominated by the older generation.

In the immediate aftermath of the peace settlement, optimism about diasporas' contributions to Cambodia's post-war reconstruction led to the creation of various programs to facilitate the transfer of skills. Along with the employment opportunity that accompanied the growing presence of international NGOs in Cambodia, these channels also provide important entrée for those desiring return and re-engagement outside the political arena. As a result, many Cambodian American youths are able to return to Cambodia through educational or international aid programs. Commonly referred to as the "Cambodian Peace Corps," the CANDO program, for instance, conceived and administered by a national Cambodian-American organization with USAID funding, brought back a number of young volunteers to work in Cambodia in the early 1990s. Younger-generation Cambodian-Americans also actively engaged in fundraising for various development projects in Cambodia. In the late 1990s, a transnational campaign to build a dormitory in Phnom-Penh for low-income students from the rural areas received much endorsement from the Cambodian-American community. Various student associations in California have been involved in establishing scholarship funds for needy students in Cambodia. Following the assassination of Oum Radsady, a respected adviser to Prince Ranaridh, overseas Cambodians created a scholarship program in his name. Other community and student-led initiatives include the remittance of funds by Cambodian students at Berkeley to an orphanage in northwestern Cambodia in 1998 and collection drives for books and equipment to be sent to educational institutions in Cambodia, as well as donations to help the reintegration of Cambodian-American deportees.

Cambodian-American women, still hindered by the embedded patriarchy of diasporic politics, also find a ready niche within the emerging leadership in Cambodia. Many have found that their experiences and leadership skills, largely acquired through participation in American social services or in community-based organizations, are needed in a post-war society where women accounted for over 50 per cent of the population and where gender issues remain pre-eminent national concerns. Many returning Cambodian-American women also feel that in a situation of persistent political volatility, their presence can serve as a stabilizing force. One social advocate who had returned to Cambodia since the early 1990s observed: "Women have a cooler nature so they are not quick to anger and don't aggravate a potentially explosive situation. They can also say things that a man would take personally if they were to come from another man."[28] Though the leadership skills and the experiences remitted through returning Cambodian women have been most impactful in non-governmental sectors, their presence has also been registered in national politics. One of the political parties in the 1998 elections was led by a Cambodian-American woman from northern California. In the last coalition government, two of the top positions in the newly reconfigured Ministry of Women's and Veterans' Affairs were held by returning Cambodian women, both from California. Their affiliation with opposing parties underscores the ideological pluralism of overseas Cambodians.

The Role of Receiving State

Evidence of sustained transnational ties and initial enthusiasm about the contributing roles of returning diasporas notwithstanding, post-war reality fell short of the expectations. The ability of diasporic communities to fully participate in homeland developments was thwarted by constraints that are internal to the community and external to them. Political instability, prevailing distrust, and lack of genuine interest in cultivating diasporas' potential contributions or in facilitating the transfer of skills and resources stand as significant impediments to sustained transnational involvement. In examining diasporas' engagement with the homeland, it is therefore important to take into account not only their desire for reconnection but also the opportunities that are presented to them to re-engage and their ability to capitalize upon them. Their agency notwithstanding, dias-

poras are also fundamentally subjected to forces beyond their control. In critical ways, both the sending and the receiving regimes influence diasporan politics and shape the nature, scope, and depth of transnational linkages. For one, the state and condition of the host economy impacts upon the ability of people to remit resources and to travel back and forth. The welfare reforms of 1996 and the uncertainties that they engendered particularly among Cambodian elderly hampered transnational activities. With the majority of Cambodians in the US still without American citizenship, anxieties engendered by the 1996 immigration reforms also deterred the transnational flow.

Especially with regard to political activities, the ability of diasporic communities to effectively advocate for homeland causes depends to a large extent upon the receptivity and tolerance of the host polity, hence upon the alignment of the political agendas of the diasporic community with those of the host government. History has shown that exiles' political concerns can be advanced or deterred, depending upon the degree to which the host regime identifies with these causes, upon the nature and status of bilateral relationships between the two governments, and upon the position that the receiving regime adopts on critical issues such as democracy and human rights. Where diasporan politics contradict the national interests, their *cause célèbre* is often paralyzed by the political disregard of their adoptive governments as evidenced by the stillborn resistance politics of the Vietnamese-American community. In the context of the Cold War, the ideological commonality and overlapping policy agendas between Washington and the Cambodian non-communist groups in the 1980s and 1990s facilitated the lobbying and advocacy work of Cambodian diasporas. Washington's support of the non-communist Cambodian factions during the conflict period, crucial to the military and political campaigns of the government-in-exile, contrasts markedly with the notable reserve a decade later with which the US government, now wedded to the "successful" implementation of the Cambodia Peace Plan, responded to the attack and suppression of pro-democracy forces in Cambodia.

The Role of Sending State

Sending, like receiving, states can do much to facilitate or impede transnational relations. Essentially, whether or not the social, economic, and political capital that émigrés may possess is fungible across transnational domains depends upon the receptiveness of the home regime. Through legislation and policies, governments can choose to include or deny possibilities and incentives for diasporic contributions, and in so doing define the parameters, terms, and nature of involvement. A regime's openness to diasporas can be inferred from its policy articulation that gives priority to political reconciliation and economic rationality over power consolidation and continued state control. The extent to which governments are willing and able to create mechanisms to facilitate capital remittance is an important gauge of their attitude about diasporic contributions. In the case of India, for instance, large government subsidies of non-resident Indian investment contributed to a significant repatriation of capital from overseas Indian communities. In contrast, the Cambodian government has been unsystematic in its solicitation of diasporic involvement. Its ability to strategically capitalize upon transnational remittance of capital and expertise has largely been undermined by prevailing distrust, weak and corrupt institutional and legal infrastructure, a governance system paralyzed by partisanship, and a state vision equally undercut by the same political impediments.

Conversely, wariness on the part of home regimes, on the other hand, can be deduced from legislative measures that seek to restrict, limit, and render ambiguous the role of overseas ethnic communities. Laws such as those regarding property ownership, citizenship, and associated rights define the possibilities for diasporas' political and economic participation. The contestation of dual citizenship, for instance, signals the Phnom-Penh regime's persisting regard of returning Cambodians as the "perpetual outsiders." In the same vein, lack of systemic transparency, poor legal infrastructure, persisting political volatility, and intrusion of politics in critical aspects of the society and economy deter genuine commitment to long-term investment; many of the economic initiatives remain "get-rich quick" schemes. That many returning Cambodian-Americans had to relive a replay of traumatic flight during the coup in July 1997 did little to restore diasporas' confidence.

While it can be argued that the dominating Cambodian People's Party may harbour distrust of diasporic communities and of transnational connections, it is also true that the Party, and particularly factions and individuals within it, profits from these connections. Distrust notwithstanding, elements in the Phnom-Penh regime do recognize the potential of overseas Cambodians to provide valuable links to public and private sectors outside of Cambodia, to tap into international and transnational resources and support given the connections and networks that they possess, and to be important advocates especially in their adopted countries. In the early years of political liberalization when the heretofore cloistered socialist government was feeling its way towards closer relations with the West, regime supporters within the Cambodian-American community were particularly instrumental in helping government officials navigate the labyrinth of the American political system.

Over the years, Cambodian-Americans had helped garner political support from various US administrations on critical initiatives such as the extension of the Most Favoured Nation status to Cambodia. In the aftermath of the bloody coup in 1997, a team of politically savvy Cambodian-Americans was redeployed back to the US to exercise damage control and to conduct aggressive public relations campaigns on behalf of the Cambodian government. A White Paper generated by the Cambodian People's Party (CPP) justifying the coup found its way into the Cambodian-American community through regime supporters, some of whom, ironically, were seeking temporary refuge back in the US in the face of renewed civil war. Ensconced in the safety of their American suburban homes, they eloquently argued for the necessity of state repression.

The Cambodian experience points to the importance of looking both at the state and at the diasporic community not as monolithic constructs but as comprising competing and conflicting interests. Additionally, in looking at regime responses, distinctions must also be made between initiatives that are pre-emptively undertaken by the state and those that are reactive to developments and dynamics beyond their control. While the communist faction in Phnom-Penh may try to curtail the role of overseas Cambodians, the reality remains that participation of Cambodian diasporas was an integral part of the negotiated settlement. In effect, while the communist-controlled government may be able to deter, shape, and influence the nature, level, and scope of transnational linkages, they cannot sever them without tremendous economic and political costs. This litmus test came in the wake of the 1997 coup that drove most of returning Cambodians back into exile, and threatened to unravel both the structure and the spirit of the power-sharing agreements. Signals conveyed to the Hun Sen regime in the form of frozen international assistance and diplomatic protestation compelled the communist faction to move away from its hard-line position and to include the non-communist groups in the 1998 elections. Despite having consolidated their political and military power, the CPP was unable to divest itself of the power-sharing structure.

The Role of International, Transnational, and Supranational Forces

Just as the state emerges as an important variable in the analysis of transnationalism, so are international forces critical to the Cambodian transnational experience. Where the state is autocratic and civil society incipient, dissenting voices will have to find resonance through transnational connections. The strengthening of vertical and horizontal networks means that public accountability is no longer confined to the conventional boundaries of national communities. Towards these ends, faxes and the Internet make communication relatively easy and almost instantaneous, and also infuse a poignant sense of immediacy to events that would otherwise be lost amidst the media deluge of international crises.

In the case of Cambodia, international monitoring, exercised through both governmental and non-governmental mechanisms, has been instrumental in safeguarding the role of diasporas in the nation's post-war political processes. Since the brokering of the peace settlement, international signatories have provided important intervention during critical periods of turmoil. Following the communist-led coup of 1997, international pressure exerted upon the Hun Sen regime made it possible for the non-communist political leadership to continue participation in the country's political processes. Though international stance has been compromised in various instances by *realpolitik*, the works of international NGOs, continuously advocating for systemic reform and accountability in critical areas such as environmental protection and human rights, help reinforce the protestations from Cambodian diasporas. While donor countries, heretofore, have been reluctant to attach conditionality to their assistance programs, the decision reached at the December 2004 donor meeting to insist upon measurable reform progress is a significant step towards greater accountability. Given the prevailing political climate in Cambodia, it would be difficult to assume that these pressures would be exerted simply by forces within the country or even by Cambodians alone.

The Problematics of Return

The intellectual optimism that is foregrounded in the discussion of transnationalism frequently deflects analytic attention from the more destabilizing impact of these transnational dynamics on social and cultural institutions and on interpersonal relations that are also present. In many respect, Cambodian transnational developments are relatively recent phenomena. Though linkages have been developed and maintained over the last two decades of diaspora, the deepening and diversification of the transnational connections have registered, in slow increments, only since 1989 and, dramatically, only since the elections of 1993.

Despite the recency of these developments, some disconcerting reverberations are already beginning to be felt. The inflated expectation of expertise and resource remittance from overseas communities did not account for the challenges of return and reintegration.

For the most part, national reconciliation in Cambodia has been symbolic, with structural integration largely masking the power asymmetry that still prevails within the coalition government. Despite the rhetoric, distrust of diasporas pre-

vails. For younger-generation Cambodians, in search of a sense of belonging denied them by the racial politics of America, Cambodia represents communal acceptance and security that, in many instances, never materialize. For some, reconnection with the ancestral country allows for a movement away from internal confusion towards multi-faceted loyalties and a hyphenated sense of identity. For many, the anticipation of a seamless reconnection was marred by the cultural and ideological distancing that they encounter, poignantly conveyed through the ascription of the term *anikachun* – literally translated as "ethnic minority" – for overseas Cambodians. The sense of alienation that one volunteer experienced during her stay in Cambodia, feeling "that I am just observing but not participating,"[29] is also shared by a fellow returnee who commented that "it was like I was in my country but not my home."[30] Disillusioned by present-day ills of Cambodian society, a young Cambodian-American professional reflected: "Cambodia is behind me now. I have to concentrate on building a life here in America."[31] At least for this young Cambodian-American, return has lent itself to the final rupture.

The implications of return for both the community in diaspora and that in the originary context are also felt in other ways. Repatriation of talent divests the diasporan community of much-needed human capital. Given that leadership is largely drawn from the pool of community-based organizations, there is institutional destabilization that results from the shortage of people to run programs and to provide community leadership, at a time when vulnerable communities are particularly impacted by changing socio-political and economic trends in the US. In various locales, such as Oakland and San Francisco with a combined population of about twelve thousand Cambodians, the departure of agency directors and community advocates in search of greater prospects in Cambodia left Cambodian refugee communities without the institutional support that had heretofore been provided by community-based organizations. Whereas at the height of the refugee resettlement era, the Cambodian community in the US could count on the resources of some two hundred mutual assistance agencies, at present there are only around twenty viable organizations nationwide. As that generation of social service providers approaches retirement age and as the future of social service programs becomes even more precarious under the present political trends in America, it can be assumed that the repatriation of diasporic talent and leadership to Cambodia will increase. While this development may yield opportunities for a younger and more invigorated leadership to emerge, leadership transition has not always been smooth and effectual. American education and success in mainstream professional arenas do not necessarily translate into effective functioning in a community still comprised of first-generation refugees with limited ability to speak English. The younger generation of leadership that is now at the helm of many organizations frequently finds itself unable to negotiate the complex, multi-generational issues that beset the community. Until new leadership can be cultivated and legitimated in multiple political, cultural, and generational contexts, community advancement will continue to be undermined by organizational instability and the absence of effective leadership.

In addition to the adverse implications for community institutions, transnational developments also have a profound impact on family institution and relations. Though the full extent of the challenges remains to be systematically uncovered, evidences of change in kinship dynamics are already registering in various dimensions. Transnational familial relations have been destabilized by the added economic hardship, irreconcilable expectations, and asymmetrical power relations that remittance entails. Given the cultural emphasis on gift giving, return visits can be costly for diasporas already living on economic margins. For many, there is the added pressure to "live up" to the image of the successful migrant to which all-too-many respond by going into severe debt. Within the diasporic community, efforts to sustain transnational relations have paradoxically eroded the foundation of the nuclear family in America. For many refugee households, the demand of transnational obligations exerts tremendous pressure on marriages and on the household. This situation is further complicated when it involves distant but sole surviving relatives. Given that most of the returnees are male, an increasing number of Cambodian-American women are finding themselves becoming *de facto* heads of household, having to provide financial support not only for the family in the US but also for their self-repatriated spouses.

Moreover, the concept of "extended" families, in many instances, has acquired a transnational dimension, including in some cases multiple and simultaneous, formal and informal "marriages." The opportunity for finding a new and, in most cases, much younger and "more traditional" (often defined as more submissive) wife in Cambodia is capitalized on by returning Cambodian men with ever greater frequency. This recourse has presented itself as a way of countering the enhanced independence that Cambodian-American women are achieving through education and workforce participation, particularly outside the home, hence of reinforcing patriarchal dominance within the Cambodian-American community. Interestingly, this practice is not confined to the older generation but has also become increasingly appealing to the younger generation. The attractiveness of transnational marriage is also seen in

the resurgence of the end-of the-century equivalent of the "picture bride," facilitated in this contemporaneous context through the Internet. Whereas one can argue that traditional marriages have always involved brokered arrangements of convenience and expediency, it is important to note that distance and migration divest this process of the mediating and protective social and normative mechanisms that governed the traditional system. The lure of a promised escape from poverty often obscures a harsher reality that awaits many of these young brides as they may find themselves entering into a polygamous situation, or left without the emotional and economic security that they seek. For their part, the men may find that these "visa marriages" do not yield the desired harmony, docility, and stability, as some of the women are quick to seek new options after having secured entry into the US.

Relational tension is also evident across the geographical divide. Though they may benefit from the economic support extended to them, relatives in Cambodia may also feel tremendous resentment towards what they perceive as condescension of their overseas benefactors. On their part, Cambodian-Americans are frequently offended by what they view as materialism and presumption of their kin at home. The resentment at being regarded merely as a financier is often compounded by the frustration about the seemingly limitless expectations of their kin-recipients: "We work hard in America; I don't have money for them to squander."[32] Younger Cambodian-Americans, perhaps less burdened by guilt than their elders, are most vociferous about what they regard as abuses of generosity: "The relatives in Cambodia are abusing the money we send them. They do not use the money as we intended. They use the money for eating out . . . for Seiko watches, expensive jeans."[33] Adoption of the capitalistic emphasis on time and money has also contributed to changing norms governing relational obligation. Whereas relatives in Cambodia may continue to view these remittances as "gifts," extended without expectations or conditions, diasporas often regard these ties on different terms. One Cambodian-American woman pointed out that attaching conditionality to these remittances "like a contract, a business arrangement" is a way of helping the Cambodian people by educating them to new and "more efficient" ways of managing their affairs.[34] Given the power asymmetry inherent in the relationship, these differing perceptions are often reduced to the convenient binary of debt and gratitude, control and subordination, and left unarticulated until family tension erupts.

The shifts in social relations are also evident at the communal level. Whereas traditionally, village projects, such as well digging, are embarked upon through collective planning and decision making, the prevalence of transnationally sponsored development has also been associated with the erosion of local participation, hence of local ownership of the process and the outcome. All too frequently, overseas sponsors not only remit the capital but also unilaterally determine the design and select the site for the construction. Distance is, therefore, measured not only in physical space but also in relational terms, in the impersonalism that, paradoxically, governs the very endeavours aimed at strengthening communal bonds.

With growing exchange and, paradoxically, the sobering of the initial euphoria, the challenges revealed by the expanding and deepening of transnational relations are not easily dismissed. Increase in travel to and from Southeast Asia and in the number and complexity of transnational family arrangements has intensified the growingly vocalized concern over the transmission of AIDS and the disparaging effects on the Cambodian family and society.

Because these concerns are mostly expressed by women in a context that remains entrenchedly patriarchal, they have yet to attain the necessary political decibel level. Nonetheless, they are symptomatic of the growing discomfort over the more destabilizing aspects of transnational dynamics. Though the ramifications of these transnational dynamics remain to be fully unveiled, these concerns nonetheless speak to the need to give theoretical emphasis not only to those who left, but also those who *are left behind*, on both sides of the geographical divide, in this transnational movement.

For the 1.8 generation[35] and the American-born, who are temporally disconnected from the immediacy of their parents' experiences, the "memory" of, and connection with, the homeland are, for the most part, nurtured and transmitted generationally within the family context. The reflection of this young volunteer who had returned as part of the Cambodian-American National Development Organization (CANDO), often referred to as the Cambodian Peace Corps, speaks to the fluidity between the "actual" and the "imagined":

> . . . I have a lot of dreams, like the dream I had of working at Angkor Wat when I was in the United States. I even told my friends then of the magnificence of Angkor monuments without having been there. Except for what I had seen in picture books and from what my mom had told me, Angkor was just a childhood memory. But now, I live and work there.[36]

For many of the younger generation, it is the search for identity, through the reclaiming of a denied past, that compels the return. It is a way of connecting with their families, by sharing in the trauma that casts a pall even over those who did not live through those defining historical events.

Notes

1. I have borrowed this technical term to connote one structural conduit that generates connections and reactions in multiple domains, often simultaneously.
2. Edward Said, quoted in Salman Rushdie, *Imaginary Homelands* (London: Granta Books, 1991), 180.
3. Wicker and Schoch, p. 17.
4. Said, in Yossi Shain, *The Frontier of Loyalty* (Wesleyan University Press, 1989), 10.
5. Akhil Gupta and James Ferguson, "Beyond Culture: Space, Identity and the Politics of Difference," *Cultural Anthropology* 7, no. 1 (1992): 18.
6. Rushdie, 12.
7. "Giving Up the Good Life to Return Home," *Cambodia Times*, July 15–21, 1996.
8. This term is commonly used in the literature on immigrants to refer to those who migrated when they were in their adolescence.
9. Personal interview, Cambodia, 1996.
10. John Sorenson, "Opposition, Exile and Identity: The Eritrean Case," *Journal of Refugee Studies* 3, no. 4 (1990): 298.
11. US Census, 1990.
12. Renato Rosaldo, quoted in Roger Rouse, "Mexican Migration and the Social Spce of Postmodernism," *Diaspora* (Spring 1991): 17.
13. Linda Basch, Nina Glick Schiller, and Christina Szanton Blanc, *Nations Unbound: Transnational Projects, Post-Colonial Predicaments and Deterritorialized Nation-States* (Amsterdam: Gordon and Breach, 1991).
14. Nina Glick Schiller *et al.*, "Transnationalism: A New Analytic Framework for Understanding Migration," in *Towards a Transnational Perspective on Migration: Race, Class, Ethnicity and Nationalism Reconsidered*, ed. Nina Glick Schiller, Linda Basch, and Cristina Szanton Blanc (New York: New York Academy of Sciences, 1992), 1–24.
15. Rouse, 15.
16. Anthony H. Richmond, "Reactive Migration: Sociological Perspectives on Refugee Movements," *Journal of Refugee Studies* 6, no. 11 (1993): 18.
17. Sorenson, 317.
18. James Clifford, "Diasporas," *Cultural Anthropology* 9, no. 3 (Summer 1994): 15.
19. "Back to Help Rebuild Cambodia," *Cambodia Times*, July 15–21, 1996.
20. Alejandro Portes, "Global Villagers: The Rise of Transnational Communities," *American Prospect* No. 25 (March–April 1996): 74.
21. Youk Chhang, "My Sister," *Camnews*, 1998, online: <http://www.dccam.org/strick_rice.htm>.
22. "Back to Help Rebuild Cambodia," *Cambodia Times*, July 15–21, 1996.
23. Personal interview,.Washington, DC.
24. Portes, 74.
25. Meena Alexander, in Ketu Katrak "South Asian American Writers: Geography and Memory," *Amerasia Journal* 22, no. 3 (1996): 121.
26. *Ibid.*
27. The effort to capture this market was reflected in a recent campaign in the Vietnamese-American community offering a retirement package at a riverside village in Cambodia where bucolic agrarian lifeways can be recaptured in sufficient proximity to Vietnam, but without the oppressiveness of a socialist state.
28. Um, interview with TK, Phnom-Penh, 1998.
29. Personal interview, Phnom-Penh, December 1996.
30. *Ibid.*
31. Personal interview, Oakland, March 1997.
32. Personal interview, Phnom-Penh, August 1997.
33. Soc.culture.cambodia, February 5 1997, online, <http://www.khmernews.com/thread-1.hgtml>.
34. Personal interview, Phnom-Penh, December 1996.
35. I have used this term to refer to those who migrate in their pre-adolescence in distinction to the 1.5 generation who come in their early teens.
36. *Motherland* (Washington, DC: CANDO Project, November 15, 1994).

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Migration and Financial Transfers: UK-Somalia

Anna Lindley

Abstract

Migrants' financial transfers have been estimated to be Somalia's largest source of revenue. The UK is believed to be a significant source of these financial transfers to Somalia. Drawing on preliminary ethnographic research in the UK during 2004, this paper firstly presents some empirical observations on the dynamics of these movements of people and money between the UK and Somalia and other parts of the Horn of Africa. Secondly, it asks, in contexts of forced migration, what is the relevance of the popular concept of migrants' financial transfers as part of a "transnational household livelihood strategy"? Notions of household, strategy, and what it means to send money in such contexts are critically reviewed. The analysis concludes with some challenges to common assumptions regarding refugees' economic actions.

Résumé

Les transferts financiers d'immigrants sont considérés comme étant la plus importante source de revenus en Somalie, et le Royaume-Uni serait le principal responsable de ces transferts. À partir de recherches ethnographiques effectuées au Royaume-Uni en 2004, l'article s'attarde d'abord à des observations empiriques sur la dynamique des déplacements de personnes et d'argent entre le Royaume-Uni et la Somalie ou d'autres parties de la corne d'Afrique. Dans le contexte de l'immigration forcée, l'article aborde ensuite la question de la pertinence du concept populaire de transferts financiers d'immigrants en tant que « stratégie transnationale des moyens de subsistance des ménages ». Les notions de ménage, de stratégie et du sens lié à l'acheminement de sommes monétaires dans un tel contexte sont examinées d'un point de vue critique. L'analyse conclut par quelques remises en question des hypothèses concernant les activités économiques des réfugiés.

Introduction

We do not think of refugees as helping to keep a country's economy afloat. We do not think of refugees as financing a telecommunications industry, providing for the basic needs of families abroad, paying for weapons for militiamen, putting equipment in hospitals. Yet these are all activities attributed to Somali migrants through the sending of money to Somalia. Financial transfers by migrants have been estimated to be Somalia's largest source of external revenue, competing with livestock exports and considerably larger than international aid flows. Annual transfers from Somali migrants in the UK, believed to be one of the largest sources of transfers, have been estimated at around nine times the UK's bilateral aid to Somalia. The uses and impacts of these transfers in Somalia and elsewhere in the Horn of Africa are complex, but a significant proportion meet the daily needs of families.[1]

Migrants' financial transfers to their country of origin are calculated to be the most stable and second-largest capital inflow to developing countries, and are increasingly highlighted in academic and policy research.[2] However, rather less attention has been paid to the dynamics of migrants' transfers to countries in conflict situations.[3] This paper highlights the fact that many Somalis recognized as refugees have taken on roles that are more commonly associated in the literature with economic migrants, namely, the sending of financial transfers for spending and investment in the country of origin. The first section presents some empirical observations on the movement of people (with a range of motivations and statuses) from Somalia to the UK, and the movement of money (shaped by various factors) from migrants in the UK to Somalia and the Horn of Africa. In the light of this evidence, the second section reflects on how the dominant micro-level model of

migration and migrants' transfers as part of a "household livelihood strategy" – a concept which pervades many understandings of transfers to conflict-affected countries – helps and hinders our understandings of the UK-Somali case. The third section reflects on common assumptions regarding the economic actions of refugees.

The paper draws on fifteen in-depth interviews with Somalis in the UK and conversations at community organizations, at special events, in family settings, and with customers of a money-transfer agency during 2004.

The Movement of People and Money

The Republic of Somalia was formed in 1960 from a British and an Italian colony and collapsed in 1991.[4] Warlordism and inter-clan violence devastated parts of the country during the 1990s. In the north the secession of Somaliland and the regional administration of Puntland have provided relative stability for people devastated by violence. In parts of central and southern Somalia there are non-state authorities – clan elders, Islamic and regional groups, and even coalitions of business people – that provide a degree of stability, many supported by their own militia. Efforts to re-establish a functioning government based in the southern capital, Mogadishu, continue at the time of writing. In the latest Human Development Report, Somalia's gross domestic product (GDP) per capita is among the poorest in the world, life expectancy is forty-seven years, primary school enrolment is 14 per cent, and adult literacy is 18 per cent. Around one-sixth of Somalis live abroad, the majority in neighbouring countries, but some further afield.[5]

According to Sørensen, "Few source countries produce only asylum seekers or economic migrants."[6] Historically, there has been a range of political statuses and migration channels among Somalis living in the UK. From the 1800s, the British Merchant Navy recruited workers from the Protectorate of Somaliland , and a few thousand ex-sailors and their families were already living in the UK by the 1980s, along with small numbers of Somali students.[7] When the civil war broke out in the north of Somalia in 1988, many more Somalis applied for family reunion in the UK or claimed asylum. People have continued to seek asylum fairly steadily since the beginning of the conflict. In 2003, Somalis made 10 per cent of asylum applications, more than any other national group, and received 30 percent of all the grants of settlement to refugees.[8] Today, there are Somali people who have become British citizens and people at all stages of the asylum process, including people who have had their asylum claim rejected but have not been deported to Somalia.[9] Some Somalis moved to the UK after living in other rich countries, for example claiming asylum after losing jobs and status in the Middle East countries during the 1990s, or moving as EU citizens from the Netherlands and Scandinavia since the late 1990s.[10]

There appear to be considerable incidences of remitting across most political categories and migration histories mentioned above and across a variety of socio-economic situations. The young men from Somaliland who first sojourned as seamen in the UK rarely planned to stay, saving and then sending or taking money to their families in Somaliland, building their future there. Retired seamen who did remain in the UK have sent money from redundancy payments or state pensions to support relatives abroad or sponsor their travel to the UK.[11] Many people who send money to Somalia came as refugees and are now working in different types of employment; for example, one man, now working for the local council, sends a regular amount every month to two uncles, because they helped to bring him up; he also sends money to twelve aunts, something small to one or two of them each month, and to two uncles on his mother's side on a quarterly basis (co-ordinating with two more uncles in the US who also support them). When we spoke, he had received an e-mail from a school friend who needed money; he did not know how this friend got hold of his e-mail address. "I had not thought to send money to him, but now I will have to include him this month." At the weekend, his wife works as a cleaner and he looks after the children as she also helps support relatives in Somalia. Other people who make transfers are reliant on state support; for example, a group of sisters I met transfer $300 per month to their mother and a sick brother in Somalia. Some of the sisters are on income support and I asked one girl if she ever found it hard to make the payments. She responded emphatically that they *have* to send the money, that they work it out between them if one of them does not have quite enough, saying, "She can't work, can she? She's an old lady living with her sick son . . . there's no pension [in Somalia]." While it is much less common for people on asylum support to remit money, it does sometimes occur, particularly when people have relatives in very difficult situations. Even some Somalis born in the UK or who arrived at a young age sometimes send money. For example, one girl in her twenties who moved to the UK when ten years old sometimes sends money to her aunt and her grandmother: "I'm not supporting them every month . . . so every six month I might just dash something out, £100 or £200." Amounts and regularity of family transfers vary considerably: people may send anything between $50 and $1,000 on a monthly basis, with most transfers clustered at the lower end of this range,[12] but many migrants send less frequently, "what I can when I can," or in response to particular needs communicated by the recipient.

To whom are financial transfers sent and for what? Family members are the commonest important group of recipients, with mothers and siblings featuring prominently as recipients.[13] However, other relationships can also play a role. Family and business relationships often merge, with relatives often running or co-owning businesses started by migrants or living in and looking after property owned by a migrant. Many Somali import-export and construction businesses require financial transfers from partners or investors in the UK or other countries. There are also numerous migrant-supported health and educational projects in Somalia, with clan and community relationships playing a key role in mobilizing funds. For example, one subclan group mobilizes funds for a school in Somalia from the diaspora: each month, group members in each country are responsible for sending a certain amount to cover the total $6,000 monthly running costs of the school. An e-mail list communicates news about the project and mobilizes the group in response to contingencies and to share gentle gossip and jokes.[14] Clan and political allegiances have also at times mobilized funds for factional leaders and new political administrations, *e.g.* via clan collections made by groups of refugees to support militia – although people tend to say that the days of collecting money for warlords are over, that since the mid-1990s, people no longer trust the warlords to protect their families' interests. However, new political formations and leaders in the north continue to garner support from the diaspora, with attempts in recent years to raise funds in the UK for Abdullahi Yusuf as leader of Puntland (he has now been elected president of the new Somali parliament) and with the resounding verdict from the Foreign Minister of Somaliland, Edna Aden: "The disapora has brought Somaliland to where it is today."[15]

These financial transfers, of varying amounts and regularity, from a range of political categories of migrant across a range of relationships, can be used for food, housing, health, education, to maintain livelihoods during difficult times, to extend livelihoods, to capitalize *new* income-generating activities, to invest in social networks and charitable initiatives, for political support. In the context of limited income-generating opportunities in Somalia, several Somalis I interviewed described transfers as "like a monthly salary" or "like social security" for recipients. Some interviewees who send money said how they *hoped* the money is used, but stressed that they sometimes have little control or knowledge over actual uses by family members. This, and some other aspects outlined above, do not easily fit with the concept that familial financial transfers are a "transnational household livelihood strategy."

A "Household Livelihood Strategy"?

How does the literature on migration explain migrant transfers? In the 1980s, in development economics, the definition of "household" shifted from "shared residence" to "mutual sustenance unit," which might include people located in different places as long as their principal obligations and commitments are to that household. In this context, the "new economics of migration" (NEM) focuses on the *household* as the main unit of analysis,and explains migration, at the microeconomic level, as a way to diversify the household's income portfolio in response to local constraints (in labour, credit, insurance, or other markets).[16] In this model, migrants and non-migrants in the household share costs and returns of migration, so anticipated remittances are key in migration decisions, part of a "self-enforcing, cooperative, contractual arrangement."[17] Effectively, migrant transfers occur as part of a household livelihood strategy.

In more recent years some interesting conceptual themes have been developing that are relevant to financial transfers to countries undergoing conflict, including Horst's exploration of Al-Ali's term "forced transnationalism" in the context of Somali migrants in Minneapolis, Riak Akuei's research underlining the remittance "burdens" on Sudanese refugees, and Al-Ali, Black and Koser's framework for analyzing factors affecting the transnational engagement of refugees based on research with Bosnian and Eritrean people.[18] However, the concept of migration and migrant transfers as part of a "household livelihood strategy," while originally developed within an economic and functionalist paradigm, has proved particularly powerful and pervasive and is often invoked, both casually and carefully, to explain remittance-sending by people from conflict-affected countries. How does this approach help and hinder our understanding of migrant transfers in general, including to conflict-affected areas? My reflections focus on three areas: the notion of "household," the notion of "strategy," and the process of sending transfers.

Firstly, it is important to problematize the household unit. In terms of composition, in Somalia "almost every 'family' unit encompasses three or more households, which are interdependent in terms of the accumulation of resources and their distribution."[19] Moreover, in conflicts, household composition often changes radically, as family members may be killed, or displaced, or may just lose each other, and family members not strictly part of the "original" household can take on key roles. Non-household links – clanship, business, friendship, community, philanthropic relationships – can also be the source of material and financial transfers. A woman who sent a fourteen-year-old niece to Europe with a smuggler cited the poor education available in Somalia as the main reason, and then said: "Her

parents are poor, but we, the relatives, can foot the expenses involved . . . *It is our hope that she will support her family*."[20] Here, the girl's migration was clearly viewed as a collective investment, but a wider concept of family prevails. Gender, age, and social relations also shape the household's migration decisions.[21] These relations can be dynamic: for example, Somali families would traditionally send sons as migrants, and when the conflict broke out, often families were concerned to get their sons out of the country to avoid the militia, but over time reportedly families increasingly prefer to send daughters because they are seen as better at "remembering their family" and sending money home.[22]

Secondly, it is also important to problematize the notion of migration and transfers as part of a coherent strategy in a given context. The new economics of migration was developed to explain contexts of labour migration. While elements of force have certainly been uppermost in the exodus from Somalia under conditions of conflict, it is important to acknowledge that there are elements of choice and force in both the most constrained flight from violence and more work-motivated movements.[23] As highlighted by the concept of "human security," the empirical boundaries of countries "at peace" and countries "at war" can be more blurred than we often think.

There are parts of the former Republic of Somalia that are quite possibly more secure for a child growing up than some of Brazil's slums or Kenya's refugee camps. This does not belittle the human disaster of civil war, it rather testifies to the existence of complex forms of insecurity and violence across the world.

In all this, people are not only geographically, but also socially, politically, and economically situated. In complex and changing structural contexts, position is key: it can determine whether people stay or go, and where they are able to go. Migration to the UK is now dependent on the mobilization of not-insubstantial financial resources, and family assistance is common: to smuggle a person today costs $4,000 to $10,000.[24] According to a Somali aid worker in Hargeisa, "Each person here would sell their soul to get a visa – they would sell their house, their camels, their possessions, their gold. They are happy to pay up to US$10,000 to an agent and take a gamble *to get someone* abroad."[25] Despite the extreme context of this case, it fits with the NEM model as an example of a collective family investment strategy based on the anticipation of financial returns.

Moreover, the term "strategy" – defined as a long-term plan to achieved a particular aim[26] – implies a degree of self-aware intent. This fails to capture the complexity of migration from countries undergoing conflict. Some people flee conflict and persecution in an unpremeditated fashion (tactics?); many also leave as the result of a more meditated decision as threats increase (strategy?). Often migration is staged, beginning with a pretty desperate flight to a neighbouring country, then a more meditated decision to move to a richer country. Once people have escaped immediate danger, they often feel the same concerns as migrants from peaceful contexts: the wish to earn more money, to find better opportunities, and so on. Van Hear suggests that transnational connections between family members in the three domains of refugee protection (country of origin, country of first asylum, country of resettlement), signficant for many Somali families, represent "enduring" if not official, "durable" solutions to displacement.[27] However, the spreading out of many families often becomes a strategy – in the sense of a "long-term plan" – only *after* migration has occurred. To say that migrant transfers are part of a "migration strategy" in these complex contexts smacks of *ex post* rationalization. Going back to the NEM model, it remains unclear how much of a role anticipated transfers actually play in prompting migration from conflict-affected countries. In some cases, anticipated remittances do clearly make a difference – this is illustrated by the varying market prices of migration: "agents in Mogadishu can charge double the price for smuggling Somali girls to Italy because the girls get jobs as housekeepers and can start sending money home immediately."[28] What is clear is that whether Somalis have been thinking ahead to future transfers or not when moving to the UK, whether leaving Somalia or other countries of residence for the UK was "desperate" or "calculated" and supported by their family or not, transfers often still take place.

Thirdly, what about the senders? The NEM approach tends to normalize financial transfers as an integral part of migration: migration is effectively predicated on anticipated economic returns. Most studies on remittances conduct research in the country of origin, with *remittance-receiving* households; researchers are mainly interested in the impact of remittances and tend to assume that, within certain parameters, the sending of remittances occurs pretty automatically in response to the needs of the receiving household. Thus the *process of sending transfers* is rarely problematized and the *impact of transfers on the lives of senders* is rarely considered. The source, patterns, and sustainability of remittance transfers in general, and particularly to countries undergoing conflict, remain under-researched.

More detailed economic studies have conceptualized remittance behaviour in four main ways.[29] Firstly, *altruism* or *enlightened self-interest:* concern for the family and investment in family relationships are socio-economically useful if you go home. Secondly, *self-interest:* you might wish to

cultivate good relations with your parents to secure your inheritance, or you might prefer to invest your savings in your home country and trust your family to handle this. Thirdly, *co-insurance:* when things are bad at home, you send them remittances; when things are bad in the host country, you can go home. Fourthly, *loan repayment:* your family financed your upbringing / education / migration and you owe them. To some extent, we can recognize these motivations to remit when examining the UK-Somali case. However, this case also highlights that we should not focus just on the dynamics between senders and recipients: *the material parameters of the migrant and the recipient* also shape the sending process, in this case particularly the migrant's income level, household composition in the UK, and the income, location, and security situation of the recipient, and whether they receive help from other family members, can also shape financial transfers. Information, or means of contact, would also appear to be an important factor in shaping particularly family transfers: reportedly, remittances to Hargeisa tripled in 1996 when telephone services became widely available.[30]

The relevance of such parameters is particularly salient where people are migrating from conflict-affected countries. Hyndman, researching displacement from Somalia and humanitarian responses, points out that refugees do not easily fit the "migrant transnational" template: "Post-structuralist approaches which are attentive to the hyper-mobility of capital in relation to the markedly restricted movement of members from the displaced diaspora pose a stark challenge to the often compelling analyses of some 'travelling theorists'." It is clear that "[d]ifferent social groups have distinct relationships to this anyway differentiated mobility: some people are more in charge of it than others: some initiate flows and movement others don't; some are more on the receiving-end of it than others; some are effectively imprisoned by it."[31] This analysis resonates with empirical evidence on the sending of financial transfers by Somalis in the UK. Some are indeed urbane "transnational entrepreneurs," business-minded people creatively deploying often earlier-accumulated resources and their transnationalism to get on in the world; others are vulnerable people struggling to fulfill, through great self-sacrifice, the obligation of keeping family members from starvation. In the Netherlands, anecdotal evidence suggested that newly arrived Somali women who were seeking asylum, in many cases single mothers, often remitted half of their asylum allowances to help the rest of their family, with visible repercussions on the nutrition and health of the children under their immediate care in the host country. As a Somali health worker put it, "[Their children] were eating bread and jam too often."[32] For Somalis in the UK, transfers are often a significant factor in their livelihoods, with reports of people working two or three jobs on low wages and remitting high proportions of their earnings.[33] Some people talk about not being able to make any savings in the UK because of their commitments to family at home. There are clear tensions between economic prospects in the host country and support of relatives in Somalia. One forty-year-old father, a government employee and home-owner, told me his brother had phoned several times during a recent drought for him to send money to pay for the family's livestock to be trucked to the next waterhole, as the camels would not make it if they had to walk. After a couple of such payments, he had wanted to ask if it was *really* necessary, but could not really find the words to ask, so he tried to say as little as possible. As he pointed out, laughing, his brother would not appreciate being told that he has a mortgage to pay. Many senders whose family members depend on them for subsistence aspire one day to send a lump sum to capitalize a sustainable income-generating activity for the family in Somalia, "so they don't need to bother you any more." Some women use rotating fund systems among clan and family members: the strong social trust among participants and the commitment to contribute to such a fund is respected and understood by relatives in Somalia, and it is easier for participants to put off requests than when their money is in a bank and could easily be withdrawn. Through regular contributions, each participant obtains a lump sum to remit or to spend on a major purchase such as a car in the UK.[34]

Interviewees express a strong sense of moral and social obligation to remit: "It's a must," "You put yourself in their shoes," "In Somalia, you eat with your brother when he has money;" and some also invoke a related sense of social pressure to remit, from family and home community but also within the diaspora. One interviewee told me that his cousin has a good job in a shop in the UK but he was not helping his mother in Somalia, so the interviewee, who *was* sending her money, forced the cousin to speak to her on the phone. Now the cousin sends her about $200 per month; the interviewee physically accompanies him to the cash point on payday and himself takes the cash directly to the money transfer agency. These examples illustrate that the process of sending transfers can be far from straightforward for the migrant.

These are some of the issues raised by the UK-Somalia case regarding the "transnational household livelihood strategy approach" approach to understanding migrant transfers. It is important to note that many of these issues are general problems with the economic functionalism of

the "new economics of migration" and apply in many other contexts of migration and transfer, involving countries formally at peace – although these problems are thrown into particularly sharp relief by the UK-Somalia case.

Concluding Reflections

The financial transfers explored here represent the engagement of Somali migrants in a transnational process, the social, economic, and commercial dynamics of which challenge some common assumptions about the economic actions of refugees. Crisp has pointed to a tendency in the literature to treat refugees as a separate case, in a way that can exaggerate differences between refugees and other migrant groups.[35] A particularly important example of this has been the fact that remittance sending is generally associated with "economic migrants" rather than also being a recognized activity undertaken by refugees. Research on the economic actions of people categorized as refugees tends to focus on those enacted within the host state, whether regarding refugee livelihoods in countries of first asylum or refugees' fortunes in, for example, the UK labour market.

Refugees in the West are often assumed to be too isolated and deprived to make financial transfers. While isolation and deprivation certainly do form part of the experience of many refugees in the UK, this does not preclude many refugees saving and sharing income with family overseas; moreover, even small amounts of money can be of considerable significance by overseas standards, and particularly so in countries wrought by conflict.

The debate on migration and asylum in Europe remains hyperpoliticized and largely domestically focused or aid focused. In the rich European countries that offer asylum to some people from states undergoing conflict, the economic actions and the elements of economic motivation of those seeking asylum are too often either demonized or denied. Yet refugees' earnings and in some cases welfare receipts may be remitted to provide support to families very badly affected by conflict, often at considerable cost to the refugee. The tentative evidence indicating that Somalis in the UK might send per year nine times the amount of the UK's bilateral aid budget to Somalia is food for thought. These financial transfers in no way substitute for just distribution of tax revenue or allocation of international aid to poor people, and their complex effects are beyond the scope of this article. It is worth remembering, however, that beyond failed political regimes and beyond international aid, people who have left countries affected by protracted conflict and state collapse can be key actors in ongoing transformations, of many types, that are occurring their places of origin.

Notes

1. Financial transfers to Somalia are estimated at between US$700 million and $1 billion per year, US$360 million of which are estimated to go to family members for food, shelter, clothing, schooling, health care, and other necessities; see Abdusalam Omer and Gina El Koury, "Regulation and Supervision in a Vacuum: The Story of the Somali Remittance Sector," *Small Enterprise Development* 15 (2004): 44–52. International assistance to Somalia totalled US$271,604,400 in 2003, according to Somalia Aid Co-ordination Body, *Donor Report 2003* (Nairobi: SACB, 2004). Somali migrants in richer countries also send money to family members in other countries, particularly Egypt, Ethiopia, and Kenya. Somalis in the UK transfer around US$12 million per month to Somalia, according to Abdusalam Omer, *A Report on Supporting Systems and Procedures for the Effective Regulation and Monitoring of Somali Remittance Companies* (Nairobi: UNDP, 2002). The basis for this estimate of remittances from the UK is unclear and would seem to be based on estimates from remittance companies, and is likely subject to a wide margin of error. The UK's total bilateral assistance to Somalia is around US$15 million for the year 2004–05; see Department for International Development, *Press Release: UK provides more funding to Somalia's humanitarian needs*, London: DFID, <http://www.dfid. gov.uk/news/files/pressreleases/pr-somalia-full.asp> (accessed December 3, 2004).
2. For example, Dilip Ratha, "Workers' Remittances: An Important and Stable Source of Development Finance," in *Global Development Finance*, ed. The World Bank (Washington, D.C.: World Bank, 2003). 157–75.
3. Relevant work includes: Nadje Al-Ali, Richard Black, and Khalid Koser, "Refugees and Transnationalism: The Experience of Bosnians and Eritreans in Europe," *Journal of Ethnic and Migration Studies* 27 (2001): 615–34; Nicholas Van Hear, "Sustaining Societies under Strain: Remittances as a Form of Transnational Exchange in Sri Lanka and Ghana," in *New Approaches to Migration? Transnational Communities and the Transformation of Home*, ed. Nadje Al-Ali and Khalid Koser (London: Routledge, 2002); Cindy Horst, *Transnational Nomads: How Somalis Cope with Refugee Life in the Dadaab Camps of Kenya* (PhD thesis, University of Amsterdam, 2003); Paul Collier, *Policy for Post-Conflict Societies: Reducing the Risks of Renewed Conflict* (Washington, D.C.: World Bank, 2000); Stephanie Riak Akuei, "Remittances as Unforeseen Burdens: The Livelihoods and Social Obligations of Sudanese Refugees (report in the series *Global Migration Perspectives,* ed. Jeff Crisp and Khalid Koser, Global Commission on International Migration, Geneva, 2005).
   Considering Displacement, Family and Resettlement Contexts in Refugee Livelihood and Well Being. Is There Anything States or Organisations Can Do?" (London: University College London, 2004).
4. From 1969, the country was ruled by General Siyad Barre, whose "scientific socialist" regime retained power in latter years through a mixture of repression, manipulation of clan affiliations, and harvesting geopolitical rent from the Cold

War superpowers. Civil war broke out in the north in 1988, and Barre was ousted in the south in 1991.

5. See UNDP, *Human Development Report 2001 Somalia* (Nairobi: UNDP, 2001). Recent population estimates vary considerably, which indicates just how circumspect you have to be about statistics on Somalia.
6. Ninna Nyberg Sørensen, "Opportunities and Pitfalls in the Migration-Development Nexus: Somaliland and Beyond" (DIIS Working Paper 2004/21, Danish Institute for International Studies, Copenhagen, 2004).
7. Shamis Hussein, "Somalis in London," in *The Peopling of London*, ed. Nancy Merriman (London: Museum of London, 1993) 163–68; Save the Children Fund Wales Division, *The Somali Community in Cardiff* (Cardiff: Save the Chidren Fund, 1994).
8. See Home Office, *Control of Immigration Statistics United Kingdom 2003* (London: The Stationery Office, 2004). A grant of settlement allows someone subject to immigration control to remain in the UK indefinitely and is described as "the main available measure of longer term immigration of persons subject to immigration control." Since 1998, people recognized as refugees are simultaneously granted settlement and those granted Exceptional Leave to Remain can apply for settlement after four years' residence with that status.
9. Around two-thirds of Somali asylum applications that received an initial decision in 2003 were refused, but many will succeed on appeal. See Home Office, *Control of Immigration Statistics United Kingdom 200,* and Anushka Asthana, "Living in Fear: My Week with the Hidden Asylum Seekers," *Observer*, March 28, 2004.
10. Katrine Bang Nielsen, "Next Stop Britain: The Influence of Transnational Networks on the Secondary Movement of Danish Somalis" (Working Paper No. 22,: Sussex Centre for Migration Research, Falmer, March 2004).
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Global Transactions: Sudanese Refugees Sending Money Home

Dianna J. Shandy

Abstract

This paper draws on ethnographic research in America and Ethiopia to explore the phenomenon of Sudanese (Nuer) refugee remittance from those in the diaspora to those who remain behind in Africa. Specifically it locates the unidirectional flow of cash within transnational flows of people, goods, and information. This multi-sited study explores the impacts of these transfers on both sides of the equation. It documents the importance of remittances as a vital component of survival and investment in the future for Nuer refugees in Ethiopia. Similarly it raises questions about the siphoning off of resources on the social, cultural, and economic integration of Sudanese in the United States. Finally, it situates remitting behaviour within a broader socio-historical context to explain its centrality in maintaining a Nuer community across national borders.

Resumé

L'article s'appuie sur des recherches ethnographiques menées en Amérique et en Éthiopie pour explorer le phénomène des versements que font les réfugiés soudanais (Nuer) de la diaspora à leurs compatriotes restés en Afrique. Il permet d'établir que le flux monétaire unidirectionnel se situe plus particulièrement au sein de la circulation transnationale de personnes, de biens et de renseignements. L'étude, effectuée dans divers lieux, analyse les conséquences de ces transferts pour les deux parties. Elle documente l'importance des versements en tant que composante vitale de la survie des réfugiés nuer d'Éthiopie et de l'investissement pour leur avenir. Ce faisant, l'essai soulève la question du détournement de ressources au profit de l'intégration sociale, culturelle et économique des Souadanais aux États-Unis. Enfin, il situe le comportement associé aux versements dans une perspective socio-historique élargie pour expliquer le son rôle crucial vis-à-vis du maintien de la communauté nuer au-delà des frontières nationales.

The slogan "Reliability you can trust" emblazoned on a map of Africa greeted me as I waited to meet friends outside Western Union in the sprawling, dusty Ethiopian capital of Addis Ababa. Staring at this sign, I was struck by the vital role these ubiquitous money transfer offices that shuffle more than US$20 billion each year[1] play in larger transnational processes. Quadrupling in size from fifty thousand agents in 1998 to more than two hundred thousand in 2004,[2] Western Union offices (and other businesses like them) serve as storefronts, or localizing venues, for the daily, lived experience of globalization. Therefore, in a world on the move, they offer a unique window into the linkages between refugees in the diaspora and those who remain in Africa.

This article draws on ethnographic research in the United States and Ethiopia to explore the phenomenon of Sudanese refugee remittances to their compatriots in Africa. It situates the unidirectional north-south flow of cash within more complex, multidirectional transnational processes involving people, goods, and information. Specifically, it explores the impacts of these transfers on both sides of the equation. It raises questions about the effects of this siphoning off of resources on the social, cultural, and economic integration of Sudanese in the United States over time. Similarly, it documents the importance of remittances as a vital component of survival and investment in the future for Nuer refugees in Ethiopia. I argue that under these circumstances, these money transfer offices were not just facilitating the flow of cash; they were catalysts for rapid social change among Sudanese in Ethiopia. Moreover, in commentary that engages contemporary debates surrounding the meaning of globalization, what makes this even more compelling is that these processes were occur-

ring among some of the most marginalized, disenfranchised, and purportedly powerless people on earth—refugees who had been pushed out of their country of origin, many of whom did not have a legal right even to reside in Addis Ababa. This finding lends support to the argument that we need to understand globalization in terms that extend beyond the narrow, economically bounded definition of "the growing liberalization of international trade and investment, and the resulting increase in the integration of national economies"[3] to one that appreciates "the intensification of global interconnectedness, suggesting a world full of movement and mixture, contact and linkages, and persistent cultural interaction and exchange."[4]

This paper is based on ethnographic research I have been conducting since the mid-1990s with South Sudanese refugees who have fled the civil war that has engulfed their country since 1983. Most of my work has focused on those refugees who were resettled in the United States. Fieldwork undertaken in summer 2004 in Ethiopia was an attempt to understand more about the linkages between refugees in the diaspora and those who remain behind in Africa.

Ethiopia, one of nine countries that border Sudan, hosts approximately one hundred thousand Sudanese refugees. Ethiopia, while receiving some US$211 million per year in remittances, or 2.6 per cent of its gross domestic product (GDP), is one of the poorest countries on the planet, ranking second from the bottom of the list in per capita health expenditure in Africa with a life expectancy of about forty-five years. And it is within this adverse environment that Sudanese refugees must carve out a daily subsistence and attempt to plan for the future.

Who Are the Senders?

There are an estimated thirty million Sudanese. Three million have been killed by the war and another five million displaced. A very small percentage of those displaced have accessed official third-country resettlement placements. North America and Australia have emerged as key destinations for those southern Sudanese who have been resettled as refugees. Sudanese in Canada, Australia, and other places in the world are important to understanding the overall picture. Here, however, in order to provide an in-depth treatment of the subject, I narrow my focus to ties between Sudanese in the United States and Ethiopia.

More than twenty thousand Sudanese have been resettled in the United States since the early 1990s when these placement efforts got underway. About one-fifth of this population is comprised of the so-called "Lost Boys of Sudan" cohort. There are approximately three men to each woman, and the vast majority of the population is under age forty. On arrival in the United States, most lacked formal schooling, and they have been integrated into the lowest rungs of the socio-economic ladder. Many ardently seek educational opportunities and are striving to carve out a place for themselves in the United States that allows them to meet their responsibilities here, while addressing the needs of those left behind. This arrangement means that those who are themselves least financially stable and most marginalized in society are shouldering the humanitarian burden for the after-effects of Africa's longest-running civil war.

International migration scholar Nicholas Van Hear notes that "one of the most important influences refugees and other migrants can have on their countries of origin is through the remittances they send."[5] It is important to clarify that in this case, as in that of many other refugee populations fleeing active civil conflicts, the impact is not necessarily limited to country of "origin" but also applies to neighbouring countries of asylum where many refugee populations reside. Van Hear goes on to describe the variety of methodological reasons that make it impossible to calculate what percentage of the annual $100 billion in migrants' remittances is sent by refugees. These limitations include: (1) remittance data is very patchy; (2) it is impossible to disaggregate refugee remittances from those of other migrants; and (3) refugees remit to a constellation of countries, not just their country of origin.[6]

On average unmarried Sudanese men living in the United States estimated sending about $5,000 per year to relatives in Ethiopia and Kenya. For all of the limitations Van Hear identifies,[7] it is hard to assess whether these experiences are representative of the larger Sudanese refugee population. Within this relative data vacuum, one could hypothesize that an upper limit might be to assume that if each of the twenty thousand Sudanese refugees resettled in the United States were to send US$50 per month (or enough to support one person left behind), this would amount to a total of US$12 million per year. While Ethiopia is only one of several countries where Sudanese refugees are seeking asylum, this amount represents a still-plausible 5.7 per cent of the total annual remittances to Ethiopia of $211 million.

While it is impossible to calculate precise amounts with available data, it is possible to describe the ways Sudanese refugees remit using both formal and informal avenues. Formal money transfer channels like Western Union, or its competitor Money Gram, are used heavily. Direct bank transfers are a theoretical option (particularly for sums where the sending fee exceeds $50), but I did not interview anyone who exercised this option. Informal, but not casual, ways to dispatch funds include sending money with acquaintances making the trip back to Africa and utilizing

what are termed "alternative remittance systems."[7] Until the events of September 11, 2001, Somali remittance companies, or *hawala*, provided a regularly used, lower-cost alternative to send money from North America to Ethiopia. Interviews with Sudanese in the United States elicited a description of a process where people went to the home of a Somali immigrant and gave him money and details about the recipient. The Sudanese counterpart in Ethiopia would go to collect the money from the Somali man's "brother" in Ethiopia. This system made transactions a few dollars cheaper than Western Union, particularly for sending smaller sums. Scrutiny of these Somali remittance companies has closed many of them or driven them underground. As a result, even if Sudanese still use *hawala*, they are no longer eager to disclose this in interviews. The other informal approach is to send funds and goods along with Sudanese who are making the temporary journey back to Africa, often to visit relatives or to negotiate marriage matters.

With each of these approaches come advantages and disadvantages. How African customers weigh these options has become big business for remittance companies like Western Union who have their eye on the markets ushered in by the post–Cold War surge in African emigration. In fact, more Africans immigrated to the United States during the 1990s than had come during the previous 180 years.[8] This was a result of both changes in U.S. migration policy and destabilization in numerous African countries as regimes toppled, resulting in a power vacuum.

Remittances are vital to understanding globalization and, as will be described later, many recipients depend on this cash flow for daily subsistence. Residing illegally in Addis Ababa, many urban Sudanese refugees are "unbanked," making it risky to manage large sums of cash. Carrying cash on their person is perilous, as is hiding it in their rented accommodations. In light of these constraints, funds optimally are transferred on an as-needed (usually monthly) basis. While this option offers advantages to the sender who is most likely operating on a send-as-earn basis, it is decidedly more costly over time. Western Union, for instance, charges about US$15 to send US$50 from the United States to Ethiopia, the minimum monthly allotment needed to subsist as an urban refugee in Addis Ababa. Sending this amount in twelve monthly increments would cost US$180 in sending fees over the course of a year; if the annual total of US$600 were sent in one instalment, it would cost the sender only US$50. While this fee structure encourages sending larger amounts less frequently, this does not always meet the needs of senders or recipients.

One of the alternatives, sending money with people travelling back to Africa on short-term visits, has the advantage of eliminating or diminishing transfer fees, but it also has drawbacks. Certainly the lack of availability of someone trustworthy travelling when you wish to make a payment would present a barrier. Reliability may also be a concern, as travelling with large amounts of cash can present problems for the carrier when arriving in Ethiopia. Another drawback to this approach is the diminished privacy that the informal bureaucracy of Western Union affords: whom you are sending money to (and whom not), along with how much, becomes a matter of social scrutiny. The resulting gossip acts as a mechanism of social control, giving recipients some degree of influence on senders' behaviour.

Formal and informal modes of remitting pose challenges. When using Western Union, the recipient usually is required to present identification and to know the answer to a "test question." This can be problematic if the recipient is residing in Addis Ababa illegally and lacks documentation, does not speak Amharic, or is unable to travel to a Western Union agent location. In some cases, a Sudanese who does have documentation (*e.g.* by virtue of being registered as a student, married to an Ethiopian, or legitimately in Addis Ababa on a "pass" from the refugee camp) serves as a broker. The recipient needs to know that money is awaiting him or her. Practically, this requires contact through telephone or one of the omnipresent Internet kiosks. In Addis Ababa, some Sudanese with long-term connections to Ethiopia have access to a telephone or a post-office box. They take messages and deliver post for a small service fee. Access to a free Yahoo Internet account and use of Western Union can eliminate the need for this communication broker.

Even when the broker is eliminated, others in the community keep tabs on who is receiving remittances and how often. In my own experience, I found that numerous Sudanese in Ethiopia communicated with me via electronic mail to request assistance after my fieldwork there. These requests ceased when I began to send money to one individual to pay for his school fees, suggesting some sort of understanding that my resources were being channelled to a particular individual, rendering me unavailable to others. Sudanese remittance recipients report that there is an understanding that funds marked for educational costs must be used for that purpose. But money for food or rent is viewed as a corporate asset. If the money is being used improperly, *i.e.* for alcohol rather than school fees, this information is communicated quickly back to the sender, who most likely will stop payments or redirect them to someone else in the family who is deemed more responsible.

Even if the recipient is fulfilling his or her end of the agreement by going to school or supporting the family, remittances can still stop abruptly. The flow of remittances

is utterly dependent on the well-being and employment of the sender. A number of those without means in Addis Ababa had come there at the behest of their sponsor abroad, only to be stranded there when the remittances stopped. In some cases the Sudanese relative in the United States lost their job with the recent economic downturn. In other cases, the sender fell ill. Or, in still others, he got married and now had to worry about dependents in his newly formed nuclear family. This experience can, however, be gendered and marriage can also open opportunities for women to initiate sending remittances. For some Sudanese, this meant they could not get enough cash to return to the camp. For others, they preferred the option of remaining in Addis Ababa cadging a meal and a place to sleep off of others who did have a "relative." This option, at least, offered hope in a way that being "warehoused" in the refugee camp did not.

Clearly, if Africans who have been resettled in the United States are using resources to support families in Africa as well as their immediate families in the US, this has some impact on their integration into a new society. It may mean they are forgoing educational opportunities in lieu of income-generating ones. They could also eschew the entry-level job with upward mobility potential for the one that simply pays more per hour now. If parents are working more hours during shifts when their children are at home in need of care, this raises questions about how this sharing of resources will play out in the next generation.[9]

However, when considering these potential negative impacts on integration, two points must be considered. First, since many Sudanese refugees have access only to the lowest rungs of the socio-economic ladder in the United States, they may be barred from working the prime shift anyway. The second point has to do with positionality. Often it seems that some of the anti-immigration rhetoric that argues that remittances are a threat to social cohesion in the host country does not pause to consider the choices immigrants are asked to make: Do you invest in your family in the United States while your mother or other children are suffering in another country? It is truly expecting extraordinary acts of ordinary people to assume that Sudanese refugees are able to turn their back on loved ones suffering in Africa to invest fully in their new societies in the diaspora.

Impact of Remittances

With an understanding of who is sending the money, how, and with what implications for themselves and their families in the host country, this next section examines the impact of these funds on the lives of Sudanese recipients in Ethiopia. Here, I assert that these remittances do not just sustain people; they broker possibilities for dramatic social change in the form of reconfigured residential patterns, local economies, and power structures.

Shaping Residential Patterns

Scattered throughout the third-largest city in Africa with its five million inhabitants, more than thirty-five Western Union offices dot the Addis Ababa landscape, with 188 locations nationwide. Living in the shadows of these offices are several thousand refugees from Sudan who are dependent on the remittances accessed through these offices for daily subsistence. To retrieve the resources housed within these kiosk-like structures, in a country where a shared taxi ride costs 12 cents and a filling meal less than a dollar, all you need is a control number, a "test question" (*e.g.* your grandfather's name), and a "relative" abroad. America, Canada, Australia, or even Norway will do. If not a relative, you might hope for a "friend," perhaps a school mate or someone you knew from your home town. These "relatives" are those Sudanese who found some way to migrate to another country, as described above.

Some Sudanese come to Addis Ababa when they receive instructions via telephone from a Sudanese sponsor living abroad that there is money awaiting them in the capital. Even the rumour that a relative might be thinking of sending money is enough to prompt people to make the journey. The money often is earmarked for educational costs for the individual to complete his (and it is usually male) secondary or tertiary education at one of the countless "private colleges." These school fees cost about $39 per month, excluding basic needs like food, clothes, and shelter. It might also be earmarked for "treatment" for those who cannot get adequate health care in the refugee camps in Western Ethiopia. Others come to escape "security situations," due to vendettas levied against them or their families, because a relative might have been involved in killing as a soldier. Many are simply caught in the crossfire of recent flare-ups between camp refugees and local inhabitants that have driven even most of the international organizations that provide programming and services out of the area. While international agencies like the United National High Commissioner for Refugees (UNHCR) treat refugees as victims in need of support, some local inhabitants view refugees as interlopers who deplete local assets such as firewood and who have access to resources like education and a steady food ration that locals may lack.

Others come to Addis Ababa as prospectors of sorts, hoping to get information to establish a connection with a long-lost relative or friend abroad. This process is facilitated by the Nuer cultural injunction to not refuse someone who needs a meal or a place to sleep. Food can always be made to stretch a bit further. Even if the bed is full, there is

still room on the floor, as I found in one case where a dozen high-school-aged boys shared a room just ten feet square with one bed. They took turns as to whose night it was to get the bed and who got the blanket on the hard cement floor. In this way, even those without an immediate link to those abroad still benefit in terms of having food and shelter needs met. While one of these boys may have been receiving remittances from a relative abroad, the other eleven tapped into this resource and kept themselves afloat, if only barely.

A few come to Addis Ababa directly from the Sudan, as in the case of the woman, her husband, their three children, and the woman's sister whom I met in a dirt-floored, shack-like dwelling. In this case, the family sold what cows remained in their herd after the latest assault from the devastation of the war in Sudan and made their way on foot over many days across the border to Ethiopia. They by-passed UNHCR camps en route to Addis Ababa. The purpose of the journey was to seek treatment for their three-year-old daughter, who suffered from stomach pains. By skirting the refugee camps and heading directly to the capital where they hoped to receive remittances from a relative in the United States, this family's experience speaks to refugees' perception of the inadequacy of the response of the so-called "international community" in meeting their basic needs. It also highlights the spuriousness of viewing refugees as powerless and fleeing willy-nilly without a plan. And finally, it emphasizes the limitless reach of globalization, where even the most seemingly isolated regions are tied into a larger system along whose lines cash, information, and even people flow relatively unencumbered, even in the midst of a civil war.

The demographic profile of the Sudanese who arrive in Addis Ababa is also revealing. Cash flows facilitated by expanded global networks reshape residential patterns. Gender ratios in the Ethiopian refugee camps are reportedly about half male and half female. This ratio of men to women in Addis Ababa shifts to three to one. (This gender imbalance is repeated among Sudanese in the United States.[10]) Therefore, while equal numbers of males and females leave Sudan for Ethiopia, many more men continue on to the capital. Reasons for more Sudanese males than females in Addis Ababa include: access to the cash necessary to make the trip from the camps to Addis Ababa; the pursuit of secondary and tertiary education as a predominantly male activity; and the issue of protection and security. I did interview a few women who were in Addis Ababa without a husband or immediate male relatives. They lived with other women and their young children in compounds. I met one Ethiopian woman, married to a Nuer man who was living in the United States with one of their children and another wife. The woman instructed me to contact the father when I got home to tell him to take the second child who was living in Ethiopia or to send monthly support for the child. Personal security was also an issue. I interviewed one man who had been beaten the night before just for being Sudanese.

In these ways, money transfer offices act as a sort of siren, beckoning those with little hope and an elevated tolerance for risk to Africa's urban slums. Thus, remittances play a dubious role in fueling rural to urban migration in Africa. This overview of residency practices is intimately linked to a discussion of local economies.

Reconfiguring Local Economies

Destruction of the means of livelihood is one of the principal reasons people become refugees. Paradoxically, refugees, or asylums seekers as they are sometimes called, are often denied the right to work in their host countries. In Ethiopia, for Sudanese refugees, daily survival is guaranteed only if they remain in the refugee camp, consuming what most concur are inadequate rations. In refugee parlance, those Sudanese in western Ethiopian camps are being "warehoused," or left for an extended period in camps with no immediate solution in sight.[11] This was especially perilous in western Ethiopia, where tensions between locals and refugees ran particularly high, resulting in the gunning down of seven Ethiopian government refugee workers in their jeep in December 2003.[12] Those Sudanese I encountered in Addis Ababa had rejected the fate of being forgotten by the rest of the world and sought to procure some further support, usually to pay for continued education. Since formal employment is illegal, this means people must work in some sort of informal economy or rely on remittances. Options for employment in the informal economy seemed very limited for this population. When I asked people why they came to Addis Ababa, many said they had feared for their lives while gathering firewood in the areas surrounding the refugee camp. I heard this story from so many people that I couldn't fathom the insatiable consumption that would necessitate so much wood, envisioning all of western Ethiopia ablaze. It was only later that I understood that people sought firewood not for their own personal use, but as a commodity to sell. Gathering firewood or selling their and their family's meagre camp rations were the only two ways to make money to pay the exorbitant US$20 bus fare for transport from the camps to Addis Ababa. Gathering firewood was considered a hazardous activity, as this was resented by local Anuak inhabitants and often prompted bloodshed. Given the limited options to earn an income, most Sudanese relied on direct or indirect access to remittances.

Optimally, those who live in Addis Ababa receive monthly remittances of US$50 to US$100, while those who

remain in the camps tend to get what people called "one-time payments," or an instalment of cash to meet a designated need, such as medical care. This infusion of cash is fundamental to the survival of Sudanese in Addis Ababa, but it is important to appreciate that these remittances support a way of life more complex than simple subsistence.[13] I encountered no Sudanese in Ethiopia who could be considered prosperous by Ethiopian standards, with the exception of those U.S.- and Australia-based Nuer who were back on temporary visits to see family or to look for a wife. However, inequities do exist among Ethiopia-based Nuer, and these remittances introduced or, in some cases, reinforced power hierarchies.

Altering Power Structures

The transformation of African societies and ways to access power within them has dominated African Studies literature since the mid-1960s. Wage-labour employment,[14] Christian conversion,[15] and formal schooling[16] are documented as key catalysts of significant social transformation.

Among the Nuer, one thread of continuity running through their entire documented history is the dominance of cattle in marking social status.[17] In the past decades, educational attainment has been grafted onto this arrangement. In the current climate in which civil war rages on, cattle keeping, while still pursued, is risky and educational credentials do not guarantee access to employment or, as experienced by Nuer in the diaspora, employment commensurate with qualifications.[18]

Ironically, those in the diaspora may appear, at first glance, to be worse off than their African counterparts. In one case I followed, one brother worked in the United States in low-level positions in factories and meat-processing plants to support not only his U.S.-based family but also his brother who was attending law school in Ethiopia, among other relatives. I paused to consider which brother was better off in this situation. The U.S.-based brother was constantly exhausted from working the night shift and caring for the children when his wife left for her day-shift job. His educational aspirations were deferred. The Africa-based brother, on the other hand, dressed in a three-piece suit each day to attend law school in a private college in Addis Ababa, and enjoyed a certain level of status from this experience. While this example does raise some important questions about how these two men's lives and relative experiences of being successful will unfold over time, it is important to recognize that superficial markers of status such as clothing do not speak to overall well-being. And, despite appearances, the brother who was attending law school lived a very hand-to-mouth subsistence existence in which he was utterly dependent on his brother abroad for his every need. Within this chaotic and fragmented social order, access to a remitting sponsor abroad has emerged as a marker of status and promise of human security.

Cash Flows in Context

Remittances serve as a lifeline for many in developing countries. In this section I suggest that it is crucial to understand these north-south cash flows within a more complex set of multi-stranded transnational processes involving, people, goods, and information.

First, it needs to be appreciated that while refugee status is conferred at the level of the individual, the experiences of Nuer refugees demonstrate the ways in which the actions of individuals were undertaken on behalf of family (or corporate) groups. In one case I followed in both the U.S. and in Ethiopia, the family pooled all of the blankets they had just been given by UNHCR and sold them; the eldest living son was selected to undertake a perilous journey from the refugee camp in Ethiopia to a camp in Kenya that was known to be offering resettlement slots. Others I interviewed in Ethiopia described a process where "resettlement forms" that enabled people to apply to have their case considered by UNHCR were scarce. When forms did become available, they were distributed on a representational basis throughout the camp. Therefore, to even have access to a form to apply for resettlement, people were obligated to their family for having been the one selected to apply.

Therefore north-south cash flows, while seemingly asymmetric in terms of who is giving and who is receiving, need to be seen within a larger temporal and spatial context. These reciprocal arrangements allow the person who benefitted from access to resettlement to meet social and familial obligations. At one time the family invested in him; now is his time for repayment. In so doing, however, those in the diaspora who remit money are perhaps obtaining some peace of mind and most assuredly securing a stake as a member of a complex web of social ties. One thirty-year old Nuer man I interviewed in the United States who had spent a year in university in Cairo, after a long day of filling out papers and forms for school, commented, "Refugees are cowards." When I asked him what he meant, he included himself in that category and said, "The real men stayed to fight in Africa; the ones who left were cowards." His words, according to the African repatriation literature, capture the dilemma faced by those who return home after wars or upheaval.[19] For him, as for many other Sudanese, sending money home is an opportunity to assuage some of the negative feelings they have in grappling with what psychologists might call "survivor's guilt."

In addition to psychological comfort, senders also invest in their futures by securing rights in marriage through the

transfer of bridewealth cattle. They may also invest in familial cattle herds for those living outside of the camps in western Ethiopia. One man in the U.S. spoke of trying to help his camp-based family purchase a home in a nearby town (for about US$2,000). Many hold out hope for a lasting peace in the Sudan. If this materializes, a history of remittances will ease the transition back to African society for those who choose to return.

Those who remain in Africa take advantage of the opportunity to send items home with those returning to the US after brief sojourns abroad and crochet antimacassars and bed covers in fluorescent pinks and yellows. They also send beaded items, often with a Christian motif, to decorate the walls of people's apartments to remind them of home. Items like the Bible in Sudanese languages are also unique items that are hard to obtain outside of Africa and are desirable to send.

In addition to goods, those who remain in Africa might perform services for those in the diaspora like obtaining a birth certificate for immigration purposes. In addition to the bridewealth funds discussed earlier, some of this money is used to recruit and provide upkeep for the betrothed with the groom's family. There are other family obligations like the care of the young and the elderly. In one case, a U.S.-based man sent money to enable his brother in Africa to marry a second wife. Neither brother was interested in taking a second wife at the time, but they made this arrangement to honour their father's request. By the U.S.-based brother supplying the cash and the Africa-based brother providing the service, they worked together to meet familial obligations.

Conclusion

In this paper I have attempted to present an overview of a largely undocumented practice that is difficult if not impossible to identify from a macro-level standpoint. This ethnographic view of Sudanese refugee remittances to their compatriots in Ethiopia highlights the vital nature of these resource flows in sustaining life under very difficult circumstances. More than just sustaining life, however, these remittances alter social life in unexpected and powerful ways through shaping residential patterns, local economies, and power structures. Viewed in this way, remittances need to be added to scholars' paradigm of factors precipitating rapid social change in Africa.

These remittance processes provide a dynamic view of globalization on the local level and an alternative view of north-south cash flows. This paper has offered possibilities to explore the impact of cash trickling directly into the hands of ordinary people, in contrast to aid flowing in through the usual cast of governmental characters to be doled out as they deem fit, and, perhaps, contributes to how we understand globalization.

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The Triad of Transnationalism, Legal Recognition, and Local Community: Shaping Political Space for the Burmese Refugees in Japan

Susan Banki

Abstract

Refugee participation in transnational acts – from advocating for regime change in home countries to strengthening modes of safe passage for friends and family to host countries – is only as effective as the ability of refugees to organize, collaborate with one another, and develop strong communication links between communities in the home and host countries. While many assume that legal status improves the ability of refugees to engage in political transformation, research on the Burmese refugees living in Japan reveals that the application and provision of legal status can have the opposite effect, weakening fragile community structures, stemming advocacy efforts, and discouraging communication between divided political and ethnic groups. I argue that transnational acts form a three-way relationship with legal recognition and local community, and that, because of conflictual relationships among local refugee communities, refugees from Burma with higher degrees of legal recognition in Japan do not necessarily expand transnational space.

Résumé

La participation des réfugiés aux lois transnationales – depuis leur plaidoyer en faveur d'un changement de régime dans les pays d'origine au renforcement des modes de passage sécuritaire pour les amis et la famille vers les pays hôtes – est aussi efficace que leur capacité à organiser, à collaborer entre eux et à établir des liens étroits de communication entre les pays d'origine et d'accueil. Bien qu'il soit admis que la situation juridique améliore la capacité des réfugiés à envisager une transformation politique, des recherches menées auprès des réfugiés birmans qui résident au Japon révèlent que l'application et la disposition de la situation juridique peut avoir l'effet inverse et fragiliser les structures communautaires, interrompre les tentatives de plaidoyer et décourager la communication entre les groupes politiques et ethniques déjà divisés. L'article défend la thèse que les lois transnationales forment une relation à trois avec la reconnaissance juridique et la communauté locale et que, à cause de relations conflictuelles parmi les communautés locales de réfugiés, les réfugiés de Birmanie dotés d'un fort taux de reconnaissance juridique au Japon n'élargissent pas nécessairement l'espace transnational.

Refugees who have fled protracted conflict find various means of advocating for change in their countries of origin. They assemble to discuss the political and economic situation in their region of origin, they share news and dismiss rumours through social networks, they distribute information through media outlets and nongovernmental organizations (NGOs), and they demonstrate and organize protests in order to call attention to the conditions in their home country.

These acts of communication and coordination not only cross borders, but in generating new strategies and resources to mobilize internal and exiled populations, they transcend them. Such political actions take place "over and beyond" the borders of home and host countries, and thus lie in the transnational realm.[1]

Refugees have varying degrees of legal recognition in their host country, ranging from official "refugee" status to temporary status to special residence permits to entirely illegal. Regardless of the specific terminology of each country, it is believed that the possession of legal status expands

transnational political space.[2] That is, there is an underlying assumption that migrants and refugees with legal recognition are better able, and more likely, to engage in political advocacy than those who are illegal.

In studying the particularities of the Burmese refugee community in Japan, this paper challenges that unidirectional assumption and complicates the relationship between legal status and transnationalism. Rather, transnational acts are part of a three-way relationship including legal recognition and *local community*. The development and maintenance of local refugee communities in Japan influence and are influenced by both legal status and transnational political acts, often in surprising ways. Despite the fact that legal recognition is thought to provide greater freedom of expression and movement and thus more opportunities to engage in advocacy efforts, in the Burmese refugee community in Japan, conflict arises from the application and provision of legal status, and transnational space is often diminished as a result.

I begin the paper by considering the transnational components and nature of refugee advocacy movements. Next, drawing from the literatures on transnationalism and diaspora, I describe the elements of the three-way relationship between transnational acts, legal status, and local community. Two months of field research in Japan – documentation, direct observation, and interviews – illuminate the remaining sections. First, I review the legal and factual circumstances surrounding the Burmese refugees in Japan. Second, I map the Burmese refugee community by ethnicity and political groups, comparing those with and without legal status. I conclude by specifying the connections between transnationalism, legal recognition, and local community.

Transnational Actors

Transnationalism is neither the unique domain of individuals nor of networks created by individuals. The ability of corporations, NGOs, liberation movements, cultural groups, and other non-state actors to partake in transnational acts has been noted by many.[3] In the migration literature, however, transnational action has moved to the forefront, as authors appropriately focus on the ways in which migrants and refugees are able to use transnational space in order to promote their agendas or agitate against undesirable policies.

Particularly, there is a value in understanding how *refugees* engage in transnational acts, and how they are able to define and refine their identities beyond the restrictive boundaries of a hostile home country and an (often) unwelcoming host country. Political action is particularly meaningful for refugees who have presumably fled from a government of persecution and discrimination. This paper, then, focuses on the specifics of *refugee* transnationalism in its political form.[4]

Transnational Action (and Emotion)

The topic of transnationalism has been bandied around just long enough that it is perhaps no longer accurate to call it a vogue topic (although it is certainly not yet retro). The field's numerous commentators draw from, among other disciplines, anthropology, cultural studies, political science, sociology, and migration.[5] Nevertheless, the discourse on transnationalism continues to play a salient role in the literature, reflecting its substantial significance in reality.

Transnationalism in all its forms – from developing transborder social networks to strengthening modes of safe passage to host countries to sending remittances home – is indeed a relevant phenomenon. Technological advances have facilitated the transfer of information and money, and superior methods of transportation have eased the ability of migrants and refugees to move physically from one country to another.[6]

Specifically, transnational *political* action utilizes these exchanges in order to effect political change in the home country, and transnational space is the arena in which these efforts are made.[7] Adamson lists three ways political entrepreneurs advocate for changes at home: (1) using exiled voices to challenge the discourse of the home country; (2) raising international awareness through local NGOs and state actors; and (3) sending resources to local actors in the home country.[8]

Van Hear has identified "movements or exchanges of people, money, and information" as the building blocks of transnational action.[9] However, while individuals hope to accomplish concrete political action, the nature of their exchanges need not be concrete; Van Hear's three fundamental items can be supplemented by less tangible, but equally important, elements. In addition to the movement of people, money, and information, transnational space allows for the exchange of questions, ideas, strategies, and decisions. This differentiation is necessary because information is *traded*; ideas are *created*. Transnational ties, true to their meaning, transcend a simple international exchange of "things" in order to produce knowledge, awareness, and a sense of identity. Likewise, ignorance, indifference, and alienation can occupy transnational space as well.

As the examination of community and its relationship to transnationalism will show further on, sentiment and sensation also move through transnational lines: trust (and distrust), conviction (and doubt), and hope (and despair). Because transnationalism is intricately linked with the ability to establish community networks between those "at home"

and those abroad, the positive *and* negative emotions that accompany such relationships are a critical, although, I argue, underexamined aspect of transnational ties.[10]

Indeed, ignorance, indifference, alienation, distrust, doubt, and despair are as likely to exist as elements of transnational space as are their positive counterparts, and this observation highlights what several authors have noted. Transnational forces are not always positive. Migrants may be motivated to participate in transnational political networks for purely nationalistic purposes or purely egotistical ones. Prestige and status may drive individuals to transnationalism, as can social pressure, family influence, and guilt.[11]

Finally, migrants and refugees are capable of using their cross-continental connections not only to foster peaceful solutions but to foment violent revolution.[12] In studying this question, academics as well as policy makers are drawn to ask: "Can (or should) policies be devised which enhance the positive outcomes of transnational networks, while discouraging transnational activities which fuel or sustain conflicts?"[13] If such policies are possible at all, a better understanding of the role of legal status in shaping transnational space is necessary.

Legal Status in the Host Country

The literature on refugee law is too vast and digressive to discuss here. Germane to this examination, however, are two points: 1) legal status describes only a refugee's legal label and cannot be considered an accurate picture of what he actually is or is not; and 2) legal status has a complicated, multi-faceted relationship with transnational space.

The Refugee Label

It should be clear that the actual number of refugees in the world – that is, those who have fled their home countries in need of protection elsewhere – far exceeds those with official "refugee" status. The Office of the United Nations High Commissioner for Refugees (UNHCR), driven by the nation-states which support it and host refugees, has no choice but to limit the number of individuals on whom it bestows refugee status. Scarce resources require this.[14]

Host countries construct the same hazy divisions. With limited budgets, few countries are willing to provide refugee legal status to all those who arrive at their borders, and whether accurate or just or neither, restrictions are put into place to allow for identifying and selecting "refugees" out of a larger group. Many host countries shy away from the term "refugee" altogether and employ different categories to determine the treatment of those who cross their borders. This process and the political and domestic factors that shape immigration/refugee quotas yield uneven results. "Official" refugee status as deemed by UNHCR or legal allowances provided by the host country is, at best, a mediocre indicator of whether or not an individual merits the "refugee" label.

The determination of legal status highlights the critical issue of the "migration-asylum nexus," which points to the ambiguity in distinguishing between those who cross borders for economic (migration) or political (asylum) reasons. Many host countries, increasingly unwilling to offer asylum to refugees, instead prefer to identify them as temporary migrant workers. If, over time, refugees understand that their chances to remain in the host country will improve if they claim to be migrant workers, the alarming result is that they will cease applying for asylum. While their status as migrant workers ensures them short-term residence in host countries, it avoids the issue of protection. Unlike migrant labourers, refugees have no foreign body to represent them.[15]

Legal Status and Transnationalism

It some ways, the positive relationship between legal status and transnational space seems clear and evident. Many scholars have argued that legal status paves the way for transnational space.[16] With greater freedoms in the host country afforded by legal recognition, refugees can engage in a host of transnational political acts, such as demonstrating without fear of arrest.[17] Transnational space is also facilitated by place. That is, those who have a place to meet and do not fear assembling to partake in political discussion are better able to further transnational political goals.[18]

However, perceptions about the need for evidence to prove asylum (or other forms of legal status) have embroiled questions of legal status and transnationalism. In explicating asylum policy in the United Kingdom, Shah underlines the fact that political agitation is often used to try to establish asylum claims, while these same transnational political acts can reduce the chances of receiving asylum.[19] This critical point reveals that the relationship between legal status and political advocacy is not solely positive, and it does not move in only one direction. The complexity of this relationship will be explored further on, particularly as it pertains to the Burmese refugees in Japan.

Community Networks vs. Local Communities

Networks that link geographically distant communities play a crucial role in maintaining and shaping transnational space. These community networks are an integral mechanism in the facilitation of transnational action. For example, community networks generate information about the host country, circulate it throughout the network's members, and communicate it to potential newcomers.[20] Networks provide the "organizational infrastructure" to convey migrants and refu-

gees to host countries, often through clandestine channels.[21] Finally, community networks between populations in the home and host countries allow for the coordination of advocacy on specific issues and the distribution of relevant and timely news concerning the host government in power.

While community networks are an inherent element of transnational action, *local communities* play a different role, and the distinction ought to be made clear. By "local communities," I refer to the population in the host country with whom the refugee surrounds himself, and the networks she employs for the purpose of *domestic* and *local* concerns. A refugee's local community might include family, friends, employers, and religious compatriots. While local communities may be transnational, they need not be. Perhaps it is axiomatic to assert that local communities with greater transnational connections are more likely to engage in transnational acts, but this point is precisely the basis for the third leg of the triad: the composition and quality of a refugee's *local community* is an important and overlooked factor in the shaping of transnational political space.

For refugees and other migrant groups, local community is often linked to ethnic identity. Linguistic and cultural similarities with home populations facilitate trust and communication among individuals who feel alienated in the host country. Refugees, often members of minority groups accustomed to relying on one another in the country from which they have fled, continue to cluster together. Naturally, many countries host refugees of more than one ethnicity, and as noted by Ambroso, this transnational identity is not always inclusive.[22] Exiled communities often vie for the same transnational space in the form of resources, legal aid, media attention, and prestige, and divisions between refugees from different local communities frequently fall along ethnic lines.

The preceding review indicates that the relationships between political transnationalism, legal recognition, local communities, and ethnic identity have not been ignored by any means. However, where this paper hopes to make an original contribution is in placing these relationships within the context of one another. As the following section will show, Japan's Burmese refugee population reveals the ways in which these elements interconnect and influence one another, often in iterative phases.

For the same reasons that this study might be considered valuable and original, it may not be generalizable. First, whether they fled from the rural Arakan state or the urban capital Rangoon, the Burmese refugees in Japan live in the most urban of all resettlement situations. Unlike many of their compatriots who crossed borders into Thailand or Bangladesh to live in rural areas or refugee camps, virtually none of the Burmese in Japan are living outside of the cities. Urban settings have been noted to encourage refugees to depend less on outside forces than rural or camp settings.[23] In Japan, the fact that Burmese refugees face relatively similar work opportunities and obstacles, similar types of housing, and similar initial access to health and education upon arrival makes the presence (or absence) of local communities that much more influential.

Second, Japan's Burmese refugees are plainly situated in the intermediate term, the nebulous and lengthy period between the post-emergency phase and the resolution of the conflict.[24] Burmese refugees are engaged in transnational political action in order to, and with the intention to, return to Burma when the conflict subsides. Kurdish and Tamil refugee communities are two other examples of refugee situations where the conflict is ongoing, and, as with all refugees who remain the intermediate term, their sense of security is less stable and more temporary than that of refugees who have found a durable solution. Furthermore, because the conflict is ongoing, it is difficult to measure the effectiveness of advocacy efforts in the short term.

Third, Japan's tiny and relatively new Burmese refugee population does not have the force of a large-scale refugee movement. Its small size has made it somewhat facile to study, but it does not possess what we might call "networks of scale." That is, as more refugees populate a host community for longer periods of time, they gain access to aid, legal status, and other resources. Increasingly, they have the ability to help other refugees and mobilize for demonstrations. Japan's Burmese refugee population is yet too small and new for significant impact. Neither do generational issues present themselves at this time. There are only a handful of Burmese refugee children past elementary school age currently in Japan.

However, as the community grows in numbers and duration of time, refugees will integrate linguistically and economically. This fourth and final point is critical: the Burmese refugee population in Japan is very much in transition. Unless there are drastic changes in Burma or in Japanese immigration policy in the next ten years, the refugee population will not only be better integrated and larger, but will have a significant second generation of children. It is very likely that the composition of those with and without legal status will change as well, although the direction of this change is more difficult to predict, given Japan's ever-changing but consistently restrictive immigration policies.

The Burmese Refugees in Japan

Notwithstanding generous per-capita donations to UNHCR, refugee status is not easily granted in Japan.[25] Critics site Japan's high degree of ethnic homogeneity and isolation as

reasons for its restrictive refugee policies.[26] Others note the lack of a historical legal framework for conceptualizing the notion of a "refugee" altogether.[27] In recent years, Japan's efforts to become more involved in the international foreign policy arena have led to some *ad hoc* attempts to accept more foreigners and refugees into the country on a temporary basis, but legal status for refugees continues to be problematic.[28] Since 1975, a small number of Indochinese refugees (approximately ten thousand) have resettled in Japan. As part of a quota agreement, most were permitted to remain in or enter the country on a temporary basis. Recently, some have secured permanent residence, but approximately half possess only temporary protection in the form of long-term resident status, which must be renewed every one to three years. Few, if any, have official refugee status, which implies a temporariness which belies the circumstances.[29] The lack of consistent durable protection proffered by the Ministry of Justice (MoJ) demonstrates that refugee policy has been a low priority for the Japanese government.

Because this paper compares those Burmese in Japan who possess legal status with those who do not, it is clear that not all of those who have fled Burma have received official refugee status in Japan. Thus, the term "refugee" is used loosely here. Because the Japanese government has recognized very few Burmese (and few asylum seekers of any nationality, for that matter) as Convention refugees, an examination of only such refugees would be slim indeed. Rather, this paper identifies Burmese refugees as those who claim to have fled Burma for political reasons.[30]

Until mid-2004, there were an estimated ten thousand Burmese living in Japan. Most began arriving following the military junta's brutal crackdown against democracy demonstrations in 1988, and others have continued to arrive ever since. Approximately 90 per cent of the ten thousand were illegal overstayers, individuals who came to Japan legally but remained past their legal allowance. The majority arrived with limited work or travel visas, and some arrived originally on student visas. A small number arrived by boat, former sailors in the Burmese military who deserted their ships and their crew. Others arrived through third countries such as Korea, the Philippines, or Thailand. A handful actually claimed refugee status when they arrived at the border (at airports near Tokyo or Osaka), but to my knowledge, none were accepted for refugee status immediately, although none were sent back outright.

In 2004, authorities from the MoJ threatened to reduce the number of overstayers by 50 per cent, and since then, employers have been fined for hiring illegal migrants, and arrests and detention have increased significantly. As a result, by mid-2005, the number of Burmese who remain in Japan is estimated to be between five thousand and seven thousand.

The approximately one thousand Burmese who reside legally in Japan who are not refugees are either government officials, businessmen who benefit from the current regime, or spouses of Japanese citizens, all of whom are reluctant to challenge the present military junta. While they may engage in transnational acts as migrants, they certainly could not be considered refugees under even the most liberal definition. This group of one thousand is, therefore, outside the scope of this paper's research.

The remaining Burmese overstayers in Japan are difficult to categorize according to motivation. While all are opposed to the ruling regime, their reasons for coming to Japan may be purely political or highly economic or anything in between. Like refugees everywhere fleeing a country in conflict, many Burmese fled to Japan to avoid the devastating impact of a failing economy, hoping to save their families not only from persecution, but from unemployment, malnutrition, and starvation. These aspirations are often ignored in Japan, as they are elsewhere. A sharp distinction between political and economic motivations does not reflect the reality of those fleeing a failing state. This study focuses on those who live on the political end of the spectrum, of whom approximately four hundred have received, applied for, or expressed intent to apply for refugee status.

Legal and Residence Status in Japan

Citizenship in Japan is notoriously difficult to obtain.[31] Individuals of Korean descent whose parents and grandparents were born in Japan, who speak no other language but Japanese, have not been granted Japanese citizenship. There are few, if any, refugees of any nationality who are fully naturalized Japanese citizens. Additional categories inapplicable to refugees include individuals such as diplomats, artists, skilled labourers, spouses and children of citizens, and students. Notably, these categories, which confer permission to *reside* in Japan, are separate from legal status. The continuum below reveals both the legal categories and status of residence relevant to refugees:

Official refugee status ↔ *special permission* ↔ *asylum seeker* ↔ *overstayer*

Usually granted long-term resident status — *No residence status*

Convention refugees, or those with official refugee status (*nanming*), are those recognized as such by the Japanese government. UNHCR's mandate status alone has certainly not been sufficient to protect refugees in Japan – early in 2005, two Kurdish asylum seekers with mandate status were *refouled* directly to Turkey, much to the shock of the advocacy community in Japan. While no Burmese with mandate status have been *refouled*, Japan's actions are not encouraging. Neither are UNHCR's. If mandate status was never entirely effective in protecting asylum seekers in Japan, it certainly no longer is; since the aforementioned deportation, UNHCR in Japan has chosen to stop giving mandate status to asylum seekers altogether.

While the total number of Burmese with official refugee status is small (approximately 80 from 1992 to 2004), it is still a significant percentage of the total *nanming* population in Japan, which numbered a total of 320 at the close of 2004. (As discussed earlier, Indochinese refugees were not given official refugee status and are therefore not included in this number.) In recent years, this pattern is even more prominent; in 2004, of the fifteen refugees recognized by the MoJ as *nanming*, fourteen were Burmese.

A greater number of Burmese have been able to secure temporary protection by being granted "special permission" (*zaitoku*) to stay in Japan, a category not unique to refugees, but applicable to all migrants. These Burmese refugees are also legal and they total approximately 130. At the start of this research, I attempted to tease out differences between those with official refugee status and those with special permission, since they are legally distinct categories, but for all intents and purposes, their rights and lives are exactly the same. Both generally receive long-term residence status (*teiju-sha*) upon being granted legal recognition. I have, therefore, placed them in the same category for the purposes of comparison.

Asylum seekers (*nanming nintei shinsei sha*) deserve particular attention. They are pursuing refugee status, but have neither been accepted nor rejected yet. The great majority have no legal status when they apply – that is, they are overstayers, rather than, for example, students who apply for refugee status while they have legal rights to be in Japan. This category is important because (1) there are more Burmese asylum seekers than either those with refugee status or special permission (approximately 180 at the close of 2004); (2) their numbers are increasing daily; and (3) applying for status/asylum is a long process, generally lasting from one to three years. During this time, refugee participation in transnational activities is as important as before and after.

Given that most asylum seekers are illegal at the time of their application, they live precariously. Until recently, the very act of applying for asylum triggered their deportation procedure, which meant that, technically, they could be detained and deported while their cases were still under consideration. Recent revisions to the Immigration Control and Refugee Recognition Act, which went into effect on May 16, 2005, have somewhat improved their temporary security. Now, at the same time that asylum seekers submit their claims, they are automatically considered for a renewable provisional stay permit (*karitaizai*), which suspends deportation procedures until after a decision is made on their legal status. These changes and others in the law have come about due to the intense efforts of Japanese asylum lawyers, and, notably, in consultation with Japanese NGOs and even a Burmese individual with official refugee status. This is interesting evidence of transnational advocacy that improves conditions in the host country, rather than in the home country.[32]

By far the largest of number of Burmese fall into the category of overstayer (*huko shurosha*), but as noted earlier, there is no easy way to distinguish between those who have come only for economic reasons and those who have not. The number of those who would be identified as refugees under my definition may range anywhere from several hundred to several thousand.

From the above continuum, there are three categories into which refugees can be separated according to transnational activity. These categories provide the basis for comparison for the purposes of this paper:

Illegal overstayer (category 1)
↓
Asylum seeker (category 2)
↓
Official refugee status or special permission (category 3)

Transnational Action for the Burmese in Japan

While insignificant networks of scale may limit the transnational impact of the small and relatively new Burmese refugee community in Japan, transnational activities are still a critical element of life, particularly for those who have arrived recently. Almost all Burmese refugees whom I interviewed came to Japan with the assistance of migrants and/or refugees who preceded them, and most disclosed that they have helped others since arriving. Passports are falsified, apartments are shared, and the names of potential employers are circulated. Even before leaving Burma, information about legal procedure in Japan is available. The name of one prominent refugee lawyer in Tokyo is known in political circles in Burma's capital city, Rangoon, a clear indication that transnational circuits are functioning vigorously.

On the political front, transnational activities take common and expected forms. Refugees demonstrate in front of

the Burmese embassy, distribute information about the military junta to local NGOs, lobby the government to end official development aid to Burma, write articles in English and Japanese newspapers, send money to the Thai-Burmese border, and organize and participate in Burmese cultural events. The picture of Burma's most famous dissident, 1991 Nobel Peace laureate Aung San Suu Kyi, can be found in many homes, on political circulars, and on the enormous posters that adorn political protests and cultural gatherings.

Local Community Divisions

Despite common ground in loathing the current regime and working for change, the refugee community is internally divided. Burmese refugees belong to a bewildering array of various political groups with every acronym imaginable, and deciphering the numerous personal vendettas and political issues that surround the formation of each group would be akin to untangling a scouring pad into a line of thread. Political demonstrations in Tokyo and cultural events in various locations present a relatively united face to Burma's military junta, and this image of cohesion is, of course, critical. However, when signs come down and ethnic costumes come off, griping is common.

Some refugees insist that it is impossible to obtain legal status unless you are a member of a particular political group. Others counter that increasingly restrictive policies on the part of the Japanese government have led some Burmese to abuse the asylum system. Some Burmese ethnic minorities point out that they are excluded from the most prominent refugee political groups. Others respond that hard-line ethnic minority goals (which few espouse, at least openly) are incompatible with the democracy struggle. These examples highlight how much tension is generated in the community by discussions about who "deserves" refugee status.

In Japan and elsewhere, divisions between Burma's majority population and its ethnic minorities are profound. The majority Burmans desire democratic rule while the ethnic minorities want various degrees of autonomy and independence. There lies deep distrust among the groups. Silverstein traces a longstanding divide-and-rule strategy that feeds and is fed by a pattern of ethnic rivalry, while Rajah demonstrates that conflicting interests among the ethnic groups make such methods successful for the current regime as well.[33] Today, both the lack of open communication and the varying demands of Burma's many ethnic groups – from democracy to autonomy to independence – complicate the processes of future reconciliation. [34] It is a sobering reality that even if Burma's military junta were to cede power tomorrow, reconciliation is not by any means assured. This is why positive transnational links are critical.

In Japan specifically, there are divisions between the Burmans and the ethnic minorities (of whom there are ten groups in Japan: Chin, Kachin, Karen, Lahu, Paluang, Rakhine, Shan, Mon, Naga, and Rohingya). The ethnic minority groups believe that their low numbers of legal status (with the exception of the Rohingya, discussed below) are due to the fact that Burmans have been unwilling to allow the ethnic minorities into leadership in political organizations in Japan. Because they are not represented in political groups, the minorities believe, they cannot prove refugee status. Japanese lawyers have asserted that political leadership positions are not necessary to obtain legal status, but the perception remains. On their part, many Burmans believe that ethnic minorities have not protested loudly enough to qualify as refugees.

Even among the ethnic minorities, the Muslim Rohingyas are patently excluded from community events, channels of information, job opportunities, and help with housing. The Rohingya, who number approximately seventy in Japan, have an unusually high rate of legal recognition (approximately twenty have been accorded refugee status or special permission, category 3), due to their significant ability to prove fear of persecution in Burma. In essence, the Rohingya provide support within their own group, and legal status reinforces, rather than weakens, their very small community. However, the provision of legal status tends to increase hostility against the Rohingya as a group (which divides the ethnic minorities further). The ability of the Rohingya to function transnationally requires further study.

Clearly, personal rivalries and ethnicity play a noteworthy role in creating rifts among refugees in Japan, but more relevant and increasingly evident because of restrictive government policies, the application and provision of legal status damages local community cohesion. Rather than working toward a common goal, refugees now compete with one another for the scarce resource of legal recognition. This finding is critical to part of my thesis, which is that legal recognition does not always expand transnational space.

Transnationalism clearly plays a role in facilitating information that supports daily efforts: one man explained to me the following chain that brought him to a Japanese language program: the *political group* of which he was a member in Burma recommended the name of a lawyer in Tokyo, who sent him to UNHCR. UNHCR referred him to a Japanese refugee NGO, which informed him about the Japanese agency that provides language programs. This refugee's original contact source, from which he received the information that allowed him to access other resources, exemplifies transnationalism at work.

In theory, refugees in category 1, the overstayers, have the least freedom to move about and protest in public. We would thus expect that their involvement in political transnationalism would be minimal, while we would expect that those refugees in category 3 with legal allowance to reside in Japan would be the most vocal and active. Given the finding by Shah that asylum seekers have been rejected for political agitation, we would expect category 2 asylum seekers to keep out of the public sphere as well.[35] Because of refugees' interactions with their local communities, the reality in Japan is far different.

Overstayers (Category 1)

Overstayers in category 1 present a complicated picture because of the aforementioned difficulty in teasing out motivation. The majority of overstayers are not involved politically whatsoever, focusing only on their livelihoods, but this group does not fall into the refugee category. There are many overstayers, however, who are politically active. They have chosen to remain illegal for a number of reasons. Many have families in Burma whom they fear would be harmed if they applied for refugee status. Others eschew the taboo label "refugee." This subgroup of overstayers, whom I call category 1, whose members are illegal but involved politically, do involve themselves in some transnational activities, such as attending political meetings and cultural events, sending money home, and providing contacts, information, and assistance to new arrivals. Until recently, they also attended demonstrations and marches, but a sobering account (circulated transnationally), which occurred in 2004, has impeded this activity: an overstayer who often protested at the Burmese embassy was arrested and deported back to Burma, whereupon he was detained straight from the airport.[36] Importantly, because they have not claimed refugee status, these individuals retain their Burmese passports. Therefore, they are a key mechanism for bringing money, documents, and packages to and from Burma.[37] Transnational networks ensure that local communities in both countries know where, when, and how to find these one-time transpostal deliverymen.

A curious phenomenon is worth noting. Many overstayers from Burma admitted coming to Japan primarily for economic reasons. Upon arrival, they heard from the vocal local community what they never learned in Burma. Stories of forced labour, rape, arrest without due process, and countless egregious actions by the Burmese military awakened their sense of conscience. While never interested in protesting in Burma, these overstayers became more political than they ever would have been at home.[38] Political transnational space is thus magnified by the presence of a local community of overstayers, and as the migrant community continues to grow, so may the number of activists.

Legal Refugees (Category 3)

Category 3 refugees are more comfortable in public spaces, and thus they are able to practice the permeating Burmese culture of meeting at tea houses to gossip and discuss sports and politics. Some are active on the advocacy scene. The majority, however, are absent from political demonstrations and minimally involved in efforts toward political transformation in Burma. They may engage in transnational acts such as bringing family members from Burma to live with them in Japan, but their participation in political transnational events is low.[39]

Why have many category 3 refugees removed themselves from the political and transnational arenas? First, legal status has furnished them with the potential to lead a more normal life – to live with their family members, to secure long-term jobs, to receive health care, and to take vacations. After years of living in fear, many legal refugees have refocused their energies on livelihood, rather than political, activities.

Second, many category 3 refugees in Japan have curtailed their political activities because they feel unwelcome in the local communities where they were accustomed to spending time. Jealousy appears to play a role, and resentment is present as well. Once they have received legal status, category 3 refugees are viewed as traitors to the cause. Purist democracy activists assert that legal recognition corrupts the political movement, because Japanese officials can then claim that obtaining refugee status is only a strategy to remain in the country, rather than a critical way to protest the ruling regime. Legal status, then, is perceived of as a rejection of political transnationalism. Because so much political advocacy takes place in local communities, this dynamic plays a significant role in reducing the transnational actions of legal refugees.[40]

Asylum Seekers (Category 2)

Despite the fact that they are in danger of being picked up by police, category 2 asylum seekers are the most active politically, attending demonstrations and protesting at the Burmese embassy almost daily (if they are not in detention, in which case their spouses are likely to be involved in protests). This is so for two reasons. First, asylum seekers believe that their cases will be substantiated more easily if they can prove political involvement in Japan, lawyers' assurances to the contrary notwithstanding. The misperception that transnational political action enhances the likelihood of legal recognition is widespread in the Burmese refugee community and clearly complicates refugees' decisions about political activism.

Second, those who choose to seek asylum are often at greater risk for being arrested. Some have had, or fear, a run-in with the police. Others try to obtain refugee status

immediately upon arriving in Japan. Either way, they are the most apprehensive about their current circumstances, and require the most support from their local community. Because community connections are reliant on putting in "face time" at demonstrations and local political meetings, category 2 refugees not only attend gatherings of all kinds, but help with the tedium involved in running them. Ever in danger of being caught by the police and less likely to be securely placed in a long-term job, it is the category 2 refugees, not the majority of illegal overstayers, who are the most vulnerable in Japan. They are the most intermediate of an already intermediate-term population.

The intricacies of the Burmese refugee community are not unique to Japan, but the divisions created by the provision of preciously guarded legal status aggravate the three-way relationship already described. While many assume that legal status improves the ability of refugees to engage in political and social transformation, the provision of legal status can have the opposite effect, weakening fragile community structures, stemming advocacy efforts, and discouraging communication between divided political and ethnic groups. Thus, transnationalism, rather than acting as a simple function of legal status (Figure 1), is more likely to be defined by the interactions described in Figure 2.

Figure 1. Unidirectional Relationship

Conclusion

The crafting of new democracies often demands patience and reconciliation, rather than revenge or an arbitrary 'settling of accounts.' It also requires courageous leadership on the part of both outgoing authoritarian regimes and their democratic opposition, and a broad understanding among supporters of democracy that not everything can be achieved quickly. Diasporic forces that push for immediate results at the expense of long-term political healing and viability may therefore compromise or endanger the political 'progress' they seek to encourage. This is particularly pertinent to the case of exiles whose personal experiences of war and injustice prior to their departure, and their commitment to continue the struggle while abroad, have left them frozen in time.[41]

While Burma's refugee population has the ability and potential to engage in helpful and positive transnational action, communication and co-operation on the local community level are critical. In this paper, I have suggested that transnational potential – both positive and negative – stems from both legal status and local community dynamics. In attempting to generate new spaces (ideas and possibilities for regime change) in old places (the home country), an understanding of this three-way relationship will, it is hoped, contribute to the discussion on transnationalism. Legal recognition does provide important benefits to refugee populations, but a better understanding of its divisive effects on refugee communities will help the international refugee regime to focus on the gaps that remain in its wake.

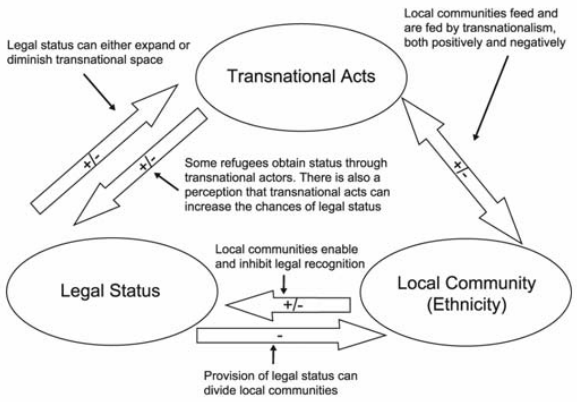

Figure 2. The Triadic Relationship

Notes

1. Osten Wahlbeck, "The concept of diaspora as an analytical tool in the study of refugee communities," *Journal of Ethnic and Migration Studies* 28 (2002): 223.
2. A lengthier discussion of transnationalism follows, but transnational space refers to the arena where transnational life takes place. It is the space where, for instance, foreign workers transfer funds overseas, where migrants raise and resolve tensions among family members caught between the traditional culture of their home country and the modern culture of their host country, and where refugees struggle to balance the realities of their current lives with their desire to return to their homeland. Faist has elaborated on the term "transnational social spaces" and offered preconditions under which transnationlism occurs. Thomas Faist, *The Volume and Dynamics of International Migration and Transnational Social Spaces* (Oxford: Clarendon Press, 2000), 198.
3. See, for example, John Baylis and Steve Smith, eds., *The Globalization of World Politic,* (New York: Oxford University Press, 1997), 526.
4. In this paper, the definition of "refugee" includes both those with and those without official refugee status, since the very

purpose of the paper is to compare varying groups. As discussed further on, Burmese "refugees" are identified in a broader scope than what would be dictated by official designation.

5. Wahlbeck provides an extensive review of the distinctions between transnational groups and diasporas, and presents a neat summary of the different academic approaches to diaspora. Additionally, he advises against spending too much time trying to determine whether or not a particular group actually constitutes a diaspora (Wahlbeck, 228–32). I will heed his warning and stay away from the subject altogether.
6. While the physical movement of individuals is easier today, border restrictions have limited migration politically. Transnational efforts to mitigate or circumvent quotas, visa requirements, or detention are just some aspects of transnationalism's increasing significance.
7. Several authors have explored refugee involvement in political advocacy. See, for example, Gisele Bousquet, *Behind the Bamboo Hedge: The Impact of Homeland Politics in the Parisian Vietnamese Community* (Ann Arbor: University of Michigan Press, 1991) and Oivind Fuglerud, *Life on the Outside: The Tamil Diaspora and Long-Distance Nationalism* (London: Pluto Press, 1999).
8. Fiona Adamson, "Mobilizing for the Transformation of Home: Politicized Identities and Transnational Practices," in *New Approaches to Migration? Transnational Communities and the Transformation of Home*, ed. Nadje Al-Ali and Khalid Koser (London: Routledge, 2002), 155–68.
9. Nicholas Van Hear, "From Durable Solutions to Transnational Relations: Home and Exile among Refugee Diasporas" (Working Paper No. 83, New Issues in Refugee Research, UNHCR, Geneva, 2003), 3.
10. Koser and Al-Ali examine the meaning of home in Nadje Al-Ali and Khalid Koser, "Transnationalism, International Migration, and Home," in *New Approaches to Migration? Transnational Communities and the Transformation of Home*, ed. Nadje Al-Ali and Khalid Koser (New York: Routledge, 2002), 1–14.
11. *Ibid.*, 5.
12. Van Hear, 3.
13. *Ibid.*, 15.
14. See Susan Banki, "Refugee Integration in the Intermediate Term: A Study of Nepal, Pakistan, and Kenya" (Working Paper No. 108, New Issues in Refugee Research, UNHCR, Geneva, 2004), 4.
15. Stephen Castles and Nicholas Van Hear, "The Migration-Asylum Nexus: Definitions and Dimensions" (paper presented at the 9th International Association for the Study of the Forced Migration Conference, São Paulo, 9–13 January 2005).
16. For example, see Mohamed Kamel Dorai, "Palestinian Emigration from Lebanon to Northern Europe: Refugees, Networks, and Transnational Practices," *Refuge* 21 (2003): 23–31; Dorai notes that transnational links remain weak until individuals receive legal status. Faist specifically points to the host government's juridical and political regulations as a factor which permits refugees to travel and protest freely (2000).
17. I have argued elsewhere that legal recognition does not necessarily offer all of the freedoms that improve refugee quality of life that we assume it will, but this point steps away from questions about transnational action. See Susan Banki, "Community and Quality of Life: The Consequences of Legal Status for the Burmese Refugees in Japan" (paper presented at the 9th International Association for the Study of the Forced Migration Conference, São Paulo, 9–13 January 2005).
18. Val Colic-Peisker, "Bosnian Refugees in Australia: Identity, Community and Labour Market Integration" (Working Paper No. 97, New Issues in Refugee Research, UNHCR, Geneva, 2003), 7.
19. Prakash Shah, "Taking the 'Political' Out of Asylum: The Legal Containment of Refugees' Political Activism," in *Refugee Rights and Realities: Evolving International Concepts and Regimes*, ed. Frances Nicholson and Patrick M. Twomey (Cambridge: Cambridge University Press, 1999), 119–35.
20. Dorai, 23–31.
21. Jeff Crisp, "Policy Challenges of the New Diasporas: Migrant Networks and Their Impact on Asylum Flows and Regimes" (Working Paper No. 7, New Issues in Refugee Research, UNHCR, Geneva, 1999), 6.
22. Guido Ambroso, "Pastoral Society and Transnational Refugees: Population Movements in Somaliland and Eastern Ethiopia 1988–2000" (Working Paper No. 65, New Issues in Refugee Research, UNHCR, Geneva, 2002).
23. Mulki Al-Sharmani, "Refugee Livelihoods: Livelihood and Diasporic Identity Constructions of Somali Refugees in Cairo" (Working Paper No. 104, New Issues in Refugee Research, UNHCR, Geneva, 2004).
24. For an in-depth discussion of the intermediate term, see Banki 2004, 5.
25. In 2003, Japan donated $100.5 million to UNHCR, IOM, and UNRWA, a contribution greater than any other single country other than the US. However, its refugee acceptance rate was extremely low. Its ratio of refugee population to total population was 1:16,139, compared to the US at 1:1,194 and Thailand at 1:150. See USCR, *World Refugee Survey 2003* (Washington, DC: USCR, 2004), 14–15.
26. Ryuji Mukae, *Japan's Refugee Policy: To Be of the World* (New York: U.S. Committee for Refugees, 2002).
27. Koichi Koizumi, "Resettlement of Indochinese Refugees in Japan (1975–1985). An Analysis and Model for Future Services," *Journal of Refugee Studies* 4 (1991): 182–99.
28. Isami Takeda, "Japan's Responses to Refugees and Political Asylum Seekers," in *Temporary Workers or Future Citizens? Japanese and U.S. Migration Policies*, ed. Myron Weiner and Tadashi Hanami (New York: New York University Press, 1998), 431–51.
29. Myron Weiner, "Opposing Visions: Migration and Citizenship Policies in Japan and the United States," in *Temporary Workers or Future Citizens? Japanese and U.S. Migration Poli-*

cies, ed. Myron Weiner and Tadashi Hanami (New York: New York University Press, 1998), 23.

30. The effort to distinguish between Burmese who fled to Japan for political rather than economic reasons highlights the issue of the aforementioned "migration/asylum nexus," which might be better called a "continuum" in this context. This paper is interested in the *effect* of legal labelling, rather than in identifying individuals as "real" refugees (a misled effort to be sure). Therefore, I did not track down spurious claims or specific facts that would challenge/substantiate refugee status, but rather focused on how that status (or lack) shaped transnational space. As discussed in the next section, these refugees lie somewhere on the legal spectrum from Convention refugees to totally illegal.
31. For much of the information in the following section, I am indebted to Eri Ishikawa, Senior Legal Researcher at the Japan Association for Refugees; see http://refugee.or.jp.
32. The revisions to the law are not perfect by any means. Two major criticisms have been leveled thus far: (1) asylum seekers are not permitted to work, which is an unreasonable expectation for individuals who generally lack resources; (2) the revisions in the law created an independent body of Adjudication Counselors to review appeals, but the hearings are limited to an hour, even if translation is necessary. As a result, several asylum lawyers are boycotting these hearings.
33. Josef Silverstein, "The Evolution and Salience of Burma's National Culture," in *Burma: Prospects for a Democratic Future*, ed. Robert Rotberg (Washington, DC: Brookings Institution Press, 1998), 11–32; and Ananda Rajah, "Ethnicity and Civil War in Burma: Where Is the Rationality?" in *Burma: Prospects for a Democratic Future*, ed. Robert Rotberg (Washington, DC: Brookings Institution Press, 1998), 135–52.
34. This is part of a much larger problem in Burma' s future, which deserves closer treatment in another format.
35. Shah, 126.
36. Confidential interview with Burmese refugee in Japan, August 2005.
37. There are only so many times that overstayers can return to Japan once they leave, but new arrivals with legal permission to work (who have not yet become overstayers) replace those who leave permanently.
38. While my relationship with an extremely reputable and trusted law firm probably helped create trust with those I interviewed, I acknowledge that refugees are likely to tell a story that highlights their activities as pro-democracy demonstrators and minimizes their images as illegal migrants. It is possible that some refugees told me of their "political awakening" in this vein, but I heard the story not only from overstayers and asylum seekers, but from those who were entirely secure in their legal status.
39. Note that some refugees reject legal status for fear of harming their families in Burma, while others obtain legal status in order to send for them. This contradiction requires further study.
40. Two related factors may change this relationship. First, if the Japanese government's crackdown on illegal migrants forces increasing numbers of them to claim refugee status, the marginalization of those who apply will lessen. Second, as more refugees receive legal status, the legal local refugee community will grow in size and perhaps in political strength. From my observations during a follow-up visit in August 2005, both of these phenomena are starting to occur.
41. Yossi Shain, *Marketing the American Creed Abroad: Diasporas in US and Their Homelands* (Cambridge: Cambridge University Press, 1999), 83.

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The Impact of Policy on Somali Refugee Women in Canada

Denise L. Spitzer

Abstract

This paper explores the ways in which government policy and public discourse have operated to enhance and maintain the liminal status of Somali women refugees in Canada, and the ways in which Somali Canadian women have resisted these efforts in order to create meaning and a place for themselves and their families in North America. The policies and practices that obliged many Somali women to wait three to five years to apply for permanent residency status, Eurocentric definitions of the family that constrain family unification strategies, and economic marginalization due to lack of recognition of foreign credentials have had cumulative adverse effects on the health and well-being of Somali women in Canada.

Résumé

L'article se penche, d'une part, sur la manière dont les politiques gouvernementales et le discours public ont contribué à rehausser et à maintenir le statut liminaire des réfugiées somaliennes au Canada et, d'autre part, sur la façon dont les Canadiennes d'origine somalienne s'y sont opposées afin de créer un sens et une place pour elles et leur famille en Amérique du Nord. Plusieurs facteurs ont eu des effets néfastes sur la santé et le bien-être des Somaliennes au Canada : les politiques et les pratiques qui les obligent à attendre de trois à cinq ans pour demander un statut de résidence permanente, les définitions eurocentriques de la famille qui restreignent les stratégies d'unification familiale de même que la marginalisation économique découlant du peu de reconnaissance de la certification étrangère.

> Long ago in Somalia, we had no problems. Our problems began with the war. They killed my husband in front of me, but we go ahead with life. They're having all those problems, but still some people here think that there we didn't have electricity, water, houses, cars . . . The Canadian people think we have nothing, but we are Somalians and we are rich. . . — Aman, age 70, widowed, mother of nine children

Aman[1] is one of more than seventy thousand Somali refugees who found asylum in Canada in the 1990s.[2] While the numbers of Somalis admitted into Canada as Convention refugees has declined from over twelve hundred in 2000 to just over five hundred in 2002,[3] only an estimated 1 per cent of all Somali refugees have been resettled in a safe country.[4] This paper explores the ways in which government policy and public discourse have operated to enhance and maintain the liminal status of Somali women refugees in Canada, and the ways in which Somali Canadian women have resisted these efforts in order to create meaning and a place for themselves and their families in North America. Specifically, I argue that the policies and practices that obliged many Somali women to wait three to five years to apply for permanent residency status, Eurocentric definitions of the family that constrain family unification strategies, and economic marginalization due to lack of recognition of foreign credentials have had cumulative adverse effects on the health and well-being of Somali women in Canada. Values of perseverance, mutual aid, and kinship, however, facilitate Somali women's ability to create refuge in Canada as individuals and as a community.

Background

Somalis comprise one of the largest single ethnic groups in Africa and occupy the region represented by the nation-states of Somalia and Djibouti and parts of Ethiopia and Kenya. Kinship forms the core of Somali social organization

and segmentary lineages serve as the basis for political alliances and loyalties. Women maintain natal clan affiliation and can draw on affinal kinship networks throughout their lives.[5] Islam is one of the major identifiers of Somali culture and society and has acted to unify Somalis against the potential entropy of clan divisions. Introduced to the region in the fifteenth century, Islam drew upon indigenous traditions, resulting in a syncretic form of practice and beliefs.[6]

Until the imposition of borders by British, Italian, and French colonial regimes, Somalis migrated throughout the Horn of Africa region. After World War II, Britain retained control over British and Italian Somaliland and parts of Ethiopia, uniting ethnic Somalis under one administration. In 1969, a military coup led by Muhammed Siyad Barre led to the establishment of the Somali Democratic Republic. Barre established himself by appealing to indigenous egalitarian ideas and Soviet aid. To develop pan-Somali identity, Barre invested in education and infrastructure, discouraged public identification of clan identity, and funded the development of the Somali orthography. His efforts to reclaim territory occupied by Somalis in the Ogaden region of Ethiopia was met with failure. The loss of the war and the effects of a subsequent drought led to unrest.[7] Barre responded by consolidating power in the hands of his allies and Darood (Marehan) clan members. Opposition to the regime was solidified when the Somali Nationalist Movement was formed by members of the northern Isaaq clan. The struggles for power occurred both within and without the government and clan divisions. An estimated 350,000 people died in the civil war between 1988 and 1995.[8]

Somali Women

> Who can stop a Somali woman? Drown her, murder her — yes, but as long as she has breath in her body, she'll talk.[9]

In general, Somali gender relations and roles are inscribed by Islamic thought and practice and despite Orientalist assumptions – and fundamentalist claims – gender remains a contested rather than static issue in the history of Islam and in contemporary Somali society. Ahmed[10] maintains that claims to both an egalitarian tradition in Islam and one which strictly proscribes women's behaviour originate in ethical and spiritual assertions in the Qu'ran that support the former while judicial interpretations that have in practice varied over the years have been employed to reinforce the latter. Notably, Sufism, the form of Islam most prevalent in Somalia, allowed women greater opportunity for spiritual exploration. Although Islamic ideals of virtue and honour are upheld, Somali women bear little resemblance to Orientalist stereotypes of Islamic women as oppressed, veiled, and meek. For example, oral literature and song are engaged as expressive outlets, allowing women to voice protest and joy, describe women's conditions, encourage proper behaviour, and express solidarity. In one song, a mother sings to her daughter: "When you reach a marriageable age, and if God keeps his approval, a wicked mean and evil man, a wife-beater and intimidator, to such a man (I promise) your hand won't go."[11] Perhaps the most vivid example of the power of Somali women is found in the stories of the legendary queen Arawailo. Arawailo organized a women's strike and while the men were preoccupied with housework and childcare, she seized power. Men claim she was a cruel ruler who singled out men for her hostility while women honoured her rule.[12]

Traditionally, Somali men and women have been interdependent, requiring the active participation of each in Somali society and production. Nomadic women are responsible for rearing animals, weaving the mats and constructing the *aqal* (movable homes), caring for children, obtaining water, and selling products. In agricultural regions, women are responsible for numerous areas of production including sowing and marketing grain and caring for livestock.[13] Moreover, women have been actively engaged in the independence movements, political organizations, and the civil service.[14]

The Barre government promoted women's participation in education and established the Somali Women's Democratic Organization; however, women's participation in decision making was limited.[15] In the Somali Democratic Republic, female enrolment in elementary education increased dramatically. Life Education Centres were organized where women were trained in income generating activities often predicated on the female arts.[16] In 1975, the government passed the Family Law, which declared men and women as equal, enshrining women's right to inheritance, political office, and land holdings.[17] Despite these efforts, women's participation in the economy was formerly limited and women working in areas traditionally associated with men faced some resistance.

Women's sphere of activities is wide ranging and includes social, economic, and spiritual undertakings. In Somalia, women have gathered together in prayer and instruction around older women who are well versed in the Qu'ran. Particularly in urban areas, where formerly nomadic women are engaged in fewer productive activities, more time can be allotted to spiritual studies. These gatherings also contributed to the institution of the *hagbad*, women's lending circles, which contribute to the economic well-being of women.[18]

From Somali to "Refugee"

> With the war, we left everything behind. That's all I get [holding on to her dress], my scarf, my clothes, that's all I get. All the jewelry I got were the things I had on my body. Nothing else. Some of my family died. All of my belongings were taken away
> — Aisha, mother of eight children

The informants' accounts of the onset of the civil war resonate with those found in other literature suggesting that the conflict and ensuing exodus from Somalia was abrupt and unanticipated. The father of acclaimed author Nuruddin Farah told his son: "We were like a horde of ants, blind with fear, and fleeing ahead of a hurricane . . . Alas, we had no idea we were fleeing in the direction of the storm, not away from it."[19] With little to draw on to make sense of one's circumstance, refugee experience can be disorienting – disrupting bonds of trust and familiar relations – while individuals are plunged into a process that reinforces a homogenization of identity as individuals are relegated to the category of "refugee."[20]

The disruption engendered by forced migration also contributed to changes in family structure and gender roles. Many women lost family members and those who survived took on additional responsibilities and roles. For instance, in one region, 70 per cent of women surveyed reportedly cared for over ten dependents; most cared for four to five orphans.[21] Moreover, women have been marginalized in refugee camps where they are also vulnerable to gender violence and sexual exploitation.[22]

Somali Women in Canada

> I was in my home, now I'm a refugee, that's the difference. There I was like a queen, here's I'm like a chicken, like nothing.
> — Aman

For most Canadians, the image of Somalia is conflated with the inquiry that drew into question the integrity of the Canadian military. The macabre photos of Shidane Arone, the ensuing cover-up of his torture and murder are foregrounded while the conflict that apparently cast Somali against Somali provided a mere rustic backdrop. In the nightly newscasts, the Somalis, if appearing at all, were portrayed as bloodthirsty or quaint. These images of a poverty-stricken, violent, and backward people, however, would not remain relegated in the public consciousness to the imaginings of eastern Africa; *these* people had arrived in Canada. Indeed, Canadian public discourse in the 1990s was rife with panic about immigrants who appeared at coastlines and airports threatening to drain national resources. Stories of Somali warlords entering the country and Somali women committing welfare fraud were woven into the primitivist images of Somali society contributing to an atmosphere of hostility and distrust of Somali refugees who were constituted as potentially undeserving of humanitarian compassion in Canada.[23]

For Somalis arriving in Canada in the 1990s, adjusting to life was complicated by the rapidity with which role changes and identities were enacted. Foremost, households headed by single women were a new phenomenon: women, therefore, were thrust into new decision-making and economic roles.[24] Confronting negative stereotypes and incidences of overt racism has also been new for many Somalis, who had been accustomed to residing in a relatively homogenous environment and were now compelled to occupy diminished subject positions. Women often felt perplexed when confronting racism themselves or helpless in their ability to help their children cope with it at school where they were taunted by other students or ignored by teachers.[25] In fact, some community leaders have noted that respect for adults is eroding within the community as elders appear powerless to the younger generation in the Canadian context.[26] As Ruhiyya, a divorced mother of four and community activist, remarked:

> Somalis really need to learn how to deal with racism; to understand what is coming from, because we never experienced it before. A lot of women are isolated, frustrated, lack support; some have five, seven, eight kids by herself, to get to school. Do the housework, it all adds to stress. . . They are foreign to doctors, they don't know what to do . . . There's a rumour that they do c-sections so they [Somali women] won't have too many kids.

Canadian Policies and Somali Women

Upon arrival in Canada, most women who arrived in the 1990s found themselves playing the "waiting game." Although they entered Canada as Convention refugees, the lack of identity documents created suspicion about their "authentic" identity. Women who came from Somalia are less likely than their male counterparts to possess a driver's license, passport, or other official documents, items which were uncommonly used in a predominantly oral society and which would have been impossible to secure following the collapse of the Somali central government. Thus where once identity was linked to family and bilateral kinship relations, now torn asunder by the conflict, the need to establish one's identity in a bureaucratic manner had become crucial to demonstrating trustworthiness and to being deserving of claiming sanctuary in Canada. The Canadian government's own analysis acknowledged that the emphasis placed on identity documentation has produced a disproportionate and negative burden

on women.[27] Eighty per cent of refugees who did not possess identity documents were women and children and in 1998 the Canadian government estimated the numbers of refugees who fell into this category to be thirteen thousand.[28] Passed in 1993, Bill C-86 required refugees without official identity documents such as a passport to wait five years until they were able to apply for permanent residency status.[29] During this imposed period of liminality, women were compelled to wait to sponsor other family members whose lives may have been in peril at home or who may have been languishing in camps as part of the refugee diaspora. They had to console their children who could not attend post-secondary education because they did not qualify for "Canadian" tuition fees that are substantially lower than those offered to foreign students, nor were they eligible for student loans or bursaries. Additionally, they could not avail themselves of services that were available only to permanent residents. Regulations, therefore, stalled family reunification and integration while reinforcing the image of the Somali refugee as "welfare queen" and a drain of Canadian resources.

> All we are waiting for is the work to change. We can't work; we don't have any work. All we are waiting for is the welfare cheque — Fatma, divorced, mother of five

In 1999, the waiting period was reduced to three years, despite calls from various sectors including an all-party Commons committee, to reduce the waiting period from five years to one year and to institute a system of sworn personal affidavits to affirm identities.[30]

In contrast, the Canadian government's response to the refugee crisis precipitated by the conflict in the former Yugoslavia differed from the programs offered Somali claimants. In response to the call by the United Nations High Commissioner for Refugees (UNHCR) for countries to step forward to provide temporary sanctuary for Kosovar refugees, the then current Minister of Citizenship and Immigration, Lucienne Robillard, announced a policy of fast-tracking Kosovo refugees. Those with relatives in Canada and those deemed as having special needs were granted expedited removal from the region. Under this program, children of any age or marital status were eligible for the program and family members who were able to sponsor overseas family members could themselves be Convention refugees whereas under other circumstances only unmarried children under the age of nineteen were eligible and sponsors were required to be citizens or permanent residents. Furthermore, Kosovar refugees were granted broader health benefits than are afforded other Convention refugees and those lacking identity documents were not subject to the same waiting period to apply for permanent residency status as had been imposed on predominantly Somali and Afghani refugees who were in a similar predicament.[31]

In 2001, changes to immigration policies and procedures under Bill C-11 led to the elimination of the Undocumented Protected Persons in Canada category as refugees lacking identity papers were known. Currently, an applicant must submit a statutory declaration affirming one's identity along with a similar confirmation provided by an acquaintance made prior to coming to Canada or by an official of an ethnocultural organization.[32] The legislation acknowledges that refugee claimants may need to resort to forged documents to flee an untenable situation; however, it also "requires the Refugee Protection Division to take into account a claimant's lack of identity papers, inability to reasonably explain the lack of papers and failure to take reasonable steps to obtain them, when it considers the credibility of the claimant."[33]

Although delays in obtaining permanent residency status demanded by these policies have been reduced over the past few years, other barriers to family reunification and integration have not been resolved. While residents and citizens may now sponsor single, dependent children under the age of twenty-two – up from the previous age limit of nineteen – the definition of family remains decidedly Eurocentric in the way in which it presumes the independence of adult children.[34] As Aman explained:

> Our children, even if they are at university, they live at home. Until they get married, they are with the family. It doesn't matter what age they are. The mother will cook for them, wash their clothes and take care of him, thinking, my child is at university studying. If we can, we take care of him, wash for him, feed him, and when he gets married, he's in the hands of his wife. You can raise your brother's children, your sister's children, if they need a hand, if they don't have enough economical support. They are part of your family and they keep with you. That's part of our culture.

Indeed one of the most distressing aspects of the imposed waiting period has been the concern that adult children will have outgrown the age limit for family reunification, creating sentiments shared by some mothers that they have failed their children who may be languishing in refugee camps abroad. For our respondents, caring for children, loving them, earning their love and respect brings the greatest satisfaction life can offer; therefore, reuniting with children and other family members has become the most intensive focus of women's efforts.

When the opportunity to sponsor family members is presented, other considerations come to the fore. Women them-

selves face employment difficulties due to lack of recognition of their experience and credentials and due to their responsibility for child care and domestic responsibilities, tasks that may have been shared amongst a larger network of kin or aided by domestic workers in Somalia. Without remunerative employment, sponsoring children once they have obtained landed immigrant status is difficult. But work implies not only income, but respect and self-esteem. Safia asked:

> I was a businesswoman in Mogadishu. I had my own house. We lived in our culture, in my family. Our children were respecting us, here, even if they come, how will they respect us?

Many of the informants ran successful businesses or managed enormous responsibilities as head of a large household and farm. Their stories of work, wealth, and the respect they earned contrasts with the image of Somali women as confined to oppressive households in a poor country lacking in basic amenities. Resonating with the experiences of both other groups of involuntary migrants who are cast as not only the great unwashed, but the great unskilled, and voluntary migrants, lack of recognition of credentials and work experience contribute to a downward mobility that is difficult to reverse particularly for women of colour who are generally relegated to the lowest ranks of the Canadian workforce.[35]

The portrayal of life in Canada contrasts with reminiscences of home that are filled with warmth, revealing a life centred around community and kin, rich in hospitality and social support where those with resources provided for those with less.

> We were supporting each other. My sister was here, my mother was here, all in the same building and we were happy together. We had quite a beautiful life there. All of our country was beautiful. We were happy with what we had whether we were economically rich or not. We were happy with what we had — Fatoun

One source of distress in diasporic communities has been the inability to provide for others in the community, as individuals are hampered by few economic resources and need to remit funds to overseas kin.[36] The levelling effect of the refugee experience has reduced the ability of Somalis to help one another in diaspora while at home those with resources could be counted on to assist those in need.[37]

The Impact of Policy on Health and Well-Being

> For us, what's more important is to have our children around, to communicate and for them to love us. When I came to this country I was healthy and good enough. But now I developed high blood pressure. I'm constantly taking medicine, I'm taking too much because all my children are not here with me, also my husband. I'm thinking too much. I can't go because I don't have a landed visa. If my children are here at least, I'd feel settled and I'd feel happier where I am. I've been here five years and no documents — Safia

The cumulative effects of family disintegration, mistrust, and downward mobility may have significant health implications. In a trend that resonates with the documented loss of the healthy immigrant effect, many of the members of the Somali communities in Toronto, Ottawa, and Edmonton interviewed reported deterioration in health status.[38] In particular women described a host of stress-induced conditions such as hypertension, increased cholesterol levels, cardiac problems, and type 2 diabetes that arose as a self-described consequence of uprooting and resettlement. While factors such as changes in diet and mobility undoubtedly contribute to the emergence of these ailments, continuing high levels of stress may also by themselves, or in interaction with these other determinants, create significant health implications. For instance stress induced by migration, poverty, and persecution – all of which have been experienced by the Somali women we interviewed – has been linked to type 2 diabetes as well as overall poor health status.[39] Lack of social support can further exacerbate health problems.[40] Importantly, stress that is ongoing and which threatens one's value systems and sense of security is believed to have the most significant health impact.[41] Feelings of being mistrusted, as evidenced by the imposition of the waiting period, lack of control over work and familial environment, and the overwhelming anxiety about the safety of family members can readily be presumed to contribute to this most deleterious form of stress.

Resisting the Effects of Adversity

Somali women in Canada, however, have found myriad ways of resisting this marginalization although they, like other Moslems, have been accused of fatalism. *Inshallah*, if Allah wills, is the expression that frequently is heard in discussions about this process. *Inshallah*, I will get the papers or my family will be reunited. The term is interpreted by some as a sign of fatalism or lack of self-reliance; however, traversing the Canadian refugee process requires great determination – a rejection in fact of fatalism – and demands the ability to take action in adverse situations. I believe the term signals shared context and understanding, an invocation of empathy and support to persevere despite the uncertainties of the process refracted through the familiar currency of Islamic imagery.

Moreover, women developed other strategies to counter the adverse effects of isolation and stress on their health and

well-being. For example, women re-established traditional loaning circles (*hagbad)* and formed Qur'anic study groups; often women who lacked immediate kin support turned to each other for religious study, friendship and succor.[42] Women further engaged in microeconomic enterprise, from importing and selling perfumes, oils, and material from Somalia and environs to preparing foods to sell to neighbours; others advocated on behalf of the community. All of these activities are ways in which women not only added to their material well-being, but also worked to create community and to redress the impact of the policies that have circumscribed their lives in Canada. Notably, the creation of, and ability to rely on, social support has a physiological impact on the body and can reduce stress hormones and response resulting in improved health status.[43]

Conclusion

Living in apartment towers, exiled to winter, images of home shared by women in these research projects suggest an opulent paradise that belies the poverty portrayed by UN statistics or the internecine struggles that have punctuated Somali political life. Visions of a rich family life are cast in a web of kin and kindness of neighbours in a portrait of a nurturing and respectful society.

Despite internal contestation, the environment was still relatively homogeneous; in Somalia, one's own language, values and religion are writ large in the greater society and are reflected back in the security of social bonds and daily life. What shatters the idyll seems to come from behind, unsuspected, vile, and swift. Little time is spent describing the hell that seemed to overrun paradise in the blink of an eye. The descriptions of women's luxurious lives in Somalia are warm and sensuous, the support of family and servants, the taste of fresh camel milk, the smell of fresh fruit; the senses and longing are heightened and contrast with hazy Ontario summer skies or the dirty slush of an Albertan spring. The recounting of these memories figures prominently as ballast against the degrading stereotypes and supplicant stance appended to the label of"refugee."

The immigration policies that pertain to voluntary migration are subject to the push and pull of global economics and geopolitics; however, refugee policies are presumed to be grounded in Canadian values and our commitment to human rights. Historically, Canadian immigration policy has been contrived as a balance between economic concerns and humanitarian commitment; however, policy making is inherently political.[44] For instance, the disparity between the treatment of refugees from Somalia and those from Kosovo suggests a colour-coding of refugee policy that belies our humanitarian claims. While the elimination of the waiting period of Convention refugees without identity documents has taken effect, it has been implemented at a time when the numbers of Somalis admitted to Canada is declining. Moreover, decisions regarding the acceptability of identifications are at the discretion of a single-person panel at a time when Moslem refugees in particular are vulnerable to distrust, harassment, and detention, especially after the attacks in the US on September 11, 2001.

The imposition of a waiting period for Convention refugees lacking identity documents, impediments to family reunification, downward mobility, and economic instability have contributed to the sustained liminality experienced by Somali refugee women in Canada. These regulations have a significant impact on Somali women; they hinder not only family reunification, but the ability of Somali refugee women to integrate into Canadian society and to re-create meaningful and productive lives in the arms of their families and communities. Moreover, the policies can have deleterious health effects through the induction of chronic stress.

As refugees, the Somali women I spoke with have encountered an intransigent bureaucracy; they have learned to survive in the concrete towers of apartments that line busy streets. They have purchased snow boots and have learned to maneuver through life as single parents without the assuring support of family or the economic power to afford domestic help. Congregating when possible, forming their own Qur'anic study groups and lending circles, keeping alive the dreams of home, and finding other ways of providing and receiving support make this life possible. Resourcing social support, creating meaning, and linking the past to the present and to the future have been vital to physical, spiritual and communal survival.[45]

Currently, group processing of Somali and Sudanese refugees has been introduced as an innovation in the settlement process. This will enable individuals to retain bonds of kinship and friendship with the hopes of facilitating the resettlement process.[46] While these initiatives emerged from the perceived need for enhanced mutual support upon arrival in Canada, refugees to Canada who have arrived here over the past decade still require attention as they have sustained the negative impact of policy on women's health. Concerted action to redress the foreign credential issue and broader definitions of the category for children would be an important start to ensure that Somali refugee women in Canada can truly participate equitably in Canadian society.

Notes

1. This paper is informed by two qualitative studies: the first involved the collection of life stories from eleven Somali women residing in Toronto, Ottawa, and Edmonton and the second included interviews with ten women and men in Edmonton. (All names are pseudonyms.) Financial support for these projects was provided by the Isaak Walton Killam Memorial Scholarship and the Prairie Centre of Excellence for Research in Immigration and Integration. I wish to thank all of the women who shared their stories and hospitality with me. I must also express my special gratitude to Mana for her invaluable assistance, support and friendship and to Ladan for sharing her insights and writings.
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A Diaspora in Diaspora? Russian Returnees Confront the "Homeland"

Hilary Pilkington and Moya Flynn

Abstract

The term "Russian diaspora" is used to refer to the twenty-five million ethnic Russians who in 1991 found themselves politically displaced beyond the borders of the Russian Federation and resident within newly independent states. This paper firstly reviews the problematic "classification" of these communities as a "diaspora." More specifically, by drawing on narratives of "home" and "homeland" among those Russians "forced" to return to the Russian Federation since 1991, it focuses on a central pillar of diasporic identity: the relationship to "homeland." By exploring the everyday interactions with and articulated narratives of Russia on "return," the paper argues that it is upon confrontation with "the homeland" that Russian returnees develop a sense of "otherness" from local Russian residents and a connection with other "returning Russians." The question is raised as to whether, rather than "coming home," Russians returning from the other former Soviet republics become a "diaspora in diaspora"?

Résumé

On utilise l'expression « diaspora russe » en référence aux 25 millions de Russes provenant d'ethnies différentes qui, à l'échelle politique en 1991, se sont trouvés déplacés au-delà des frontières de la Russie et sont devenus des résidants d'États nouvellement indépendants. L'article s'attarde d'abord à la problématique liée à la « classification » de ces groupes en tant que « diaspora ». À partir d'anecdotes se rapportant aux notions de « foyer » et de « patrie » parmi ces Russes forcés de revenir en Russie depuis 1991, l'article se penche plus particulièrement sur le pilier de l'identité de la diaspora : la relation à la « patrie ». Grâce à l'exploration des interactions quotidiennes avec la Russie et des faits racontés sur le « retour », l'article défend le point de vue suivant : c'est par la confrontation avec la « patrie » que les rapatriés russes se sensibilisent à la notion de l'« autre » vis-à-vis des résidants russes et qu'ils tissent des liens avec d'autres « rapatriés russes ». La question qui se pose alors est de savoir jusqu'à quel point les Russes qui reviennent d'autres Républiques soviétiques ne deviennent-ils pas une « diaspora dans la diaspora » plutôt que de simplement retourner chez eux.

Introduction

The term "Russian diaspora" refers to the twenty-five million ethnic Russians who became politically, although not physically, displaced in the wake of the collapse of the Soviet Union.[1] On 1 January 1992, these Russians suddenly found themselves resident in the new geopolitical space referred to as Russia's "near abroad." The question of the applicability of the term "diaspora" to the case of Russian minorities in the former Soviet republics has received considerable attention in western academic literature since the mid 1990s,[2] facilitated by a wider return to the question of "diaspora" in the light of increasing concern with transnational movement and, especially from post-modernist perspectives, its implications for identity.

This paper reviews briefly the problematic "classification" of the Russian-speaking communities in the former Soviet republics as a "diaspora." More specifically, however, it pursues a central pillar of diasporic identity: the question of the relationship to "homeland." For Russian-speaking communities in the former republics "the homeland" has not been a "faraway land" generating communal myths of, and longing for, return. It has been a tangible presence – an open door – through which individuals and families choose, and re-choose, whether or not to walk.

Indeed the peculiarly immanent nature of "the homeland" in the case of the Russian diaspora provides an excellent opportunity to explore, empirically, the centrality, or otherwise, of "homeland" in diasporic identity. This is approached in the paper by examining narratives of "home" and "homeland" among *returnees* to Russia, that is members of the Russian-speaking communities who were resident in the former Soviet republics upon collapse of the Soviet Union but who have since returned to Russia.[3] By exploring their everyday interactions with, as well as articulated narratives of, Russia, the paper argues that it is in the very process of confrontation with "the homeland" that Russian returnees develop a sense of "otherness" from Russians resident all their lives in Russia and, *post facto*, a connection with "other Russians" from the former republics. The question thus is raised as to whether, rather than "coming home," Russians returning from the former republics become a "diaspora in diaspora"?

The empirical data drawn on were gathered during two distinct periods of fieldwork. During the first study, which was conducted among returnee communities between July and December 1994, data were gathered from a total of 195 Russian returnees, 144 of whom were settled in four rural settlements in the Orel region, Central Russia, the remaining fifty-one of whom were resident in the city of Ul'ianovsk in the Middle Volga region of Russia.[4] The second study was conducted during the period 1997–1999 in the regions of Saratov and Samara, in the Volga region of the Russian Federation.[5] Two pilot studies were conducted in Saratov region (August–September 1997, and April 1998) when data were gathered from seventeen respondents. The main period of fieldwork took place during the period June–November 1999, when data were gathered from twenty-six respondents in Saratov region and nineteen respondents in Samara region. In both studies, data were gathered primarily through semi-structured interviews (which were taped, and later fully transcribed and analyzed in Russian) and extensive field observations. Observations were made at a number of sites of migrant resettlement and the activities of migrant associations and regional migration services were monitored. In addition, basic demographic data were gathered from respondents who were also asked to provide details of sources and type of assistance received.

In both studies migrant communities were included from both urban centres (Saratov, Samara, and Ul'ianovsk cities) and rural settlements (Orel region and compact-type settlements in outlying rural areas of the Samara and Saratov regions). In the first study 73 per cent and in the second study 82 per cent of the respondents stated their nationality to be "Russian."[6] All but a handful of the respondents (who had been displaced upon the territory of the Russian Federation due to the conflict in Chechnia) had left the former republics, primarily Uzbekistan, Tajikistan, and Kazakstan, as well as Azerbaijan, Georgia, and Turkmenistan, between 1988 and 1999. The respondents were accessed through migrant associations, the migration service, and local academic contacts. In village locations and compact settlements, whole migrant communities were interviewed; in urban environments snowballing techniques were employed.

The regions chosen for study were areas popular for in-migration – the Volga region, as a whole, is one of the main regions for migrant settlement in the Russian Federation – but not regions with identified "tensions" arising from in-migration (such as Krasnodar territory in southern Russia). By 1 January 2000 the Volga region had received the second highest number of forced migrants and refugees of all Russia's economic regions – a total of 250,840.[7] These figures do not include the large numbers of forced migrants and refugees who have not been registered. In both studies regions with comparable numbers of returnees but quite different migration environments were selected. In the 1994 study, Orel region had a positive attitude to the reception of migrants (even setting "targets" for reception) while the attractive nature of Ul'ianovsk city (given its reputation at the time of study for social stability and low cost of living) meant Ul'ianovsk was considerably more protectionist in its immigration policy. Of the regions included in the 1997–99 study, Saratov region pursued a relatively liberal migration policy and was fairly open to migrant arrival and resettlement, and there was active co-operation between the regional administration, the regional migration service, and migrant associations. However, an increasingly restrictive attitude was detected over the period of study. Samara region, in comparison, put greater restrictions on in-migration, the issue was not high on the agenda of the regional administration, and there was much less co-operation and dialogue between the migration service, relevant government departments, and migrant initiated groups.

The "Russian Diaspora": Academic Models

The Russian-speaking communities in the former republics have been the object of "diasporization." The newly independent Russian government sought to exercise Russia's great-power status in the "near abroad" through a discursive reconfiguration of the borders of post-Soviet Russia according to the geographical location of the Russian *ethnos*, rather than the current administrative borders of the Russian state.[8] Indeed it was not only ethnic Russians who were declared to be the responsibility of the Russian government; all ethnic groups with a cultural and historical "link" to Russia were "diasporized" through a growing reference to

the Russian-speaking minorities in the former republics as "compatriots" (*sootechestvenniki*).[9] By configuring the relationship between Russia and the Russian communities in the "near abroad" in this way, the Russian government furnished itself with the right to "defend" Russian-speakers abroad – and thus to influence in the newly independent states – without undermining the civic – as opposed to ethnic – definition of the new Russian nation; the latter was crucial to the Yeltsin government in the first part of the 1990s as it distinguished "democrats" from "communists/nationalists."[10] Although, in practice, Russian government rhetoric aimed at maintaining the Russian-speaking communities abroad as "ours" (including the passing of a law, Concerning the State Policy of the Russian Federation in Relation to its Compartriots Abroad, in March 1999) was tougher than either its real economic capabilities or its political will,[11] nonetheless "diasporization" was important in that it positioned the Russian-speaking communities as an object of *Russian* state concern rather than as a policy matter for the newly independent states.

The process of "diasporization" of the Russian-speaking communities by the Russian state has led to an ambiguous and wide-ranging usage of the term "diaspora" in Russian media and political discourse. As Kolstø notes the "terminological anarchy" surrounding the diaspora debate demonstrates the political confusion on the issue, and the difficulty of defining who makes up this "diaspora" and its relationship to the Russian state.[12] The term is frequently used in a general, all-encompassing manner with no critical analysis of what constitutes this diaspora. As Kosmarskaia comments, academics, politicians, and journalists have tended to use "diaspora" simply as a synonym or descriptive label for all the Russian-speaking populations in the newly independent states.[13] Engaging with wider global debates, however, Russian academic literatures have sought to refine the use of the term "diaspora" and to critically evaluate its applicability, both in general conceptual terms, and with relation to the Russian speaking communities.[14]

No amount of political rhetoric, however, can make the Russians in the former republics "fit," subjectively, a classic diaspora model. Russian communities vary between, and even within, the former republics by socio-economic origin, length of time in the republic, degree of integration into the host community, and orientation towards return to Russia. While Anthias is surely right to criticize classificatory models of diaspora that ignore class, gender, and other differences within "diaspora,"[15] in Russia even the assumption of common ethnicity, which lies at the core of understandings of "diaspora," is problematic. During the Soviet period, for example, although Russians formed the nucleus of settler communities in the other republics, their ethnic make-up depended heavily upon the region of settlement and always included Ukrainians and Belarusians alongside the Russians in the core group.[16] The identity of the Russian-speaking communities was primarily defined in socio-cultural rather than ethnic terms, therefore, and the connection to the "homeland" expressed in their economic and political placement within All-Union structures controlled from Moscow, rather than in any longing for "return."[17] In current debates within Russia, for example, liberal politicians, academics, and journalists avoid the term "ethnic Russians" when referring to the "diaspora" in an attempt to dilute the high degree of politicization of diaspora discourse and to counter the tendency among the nationalist camp to "over-ethnicize" the term.[18]

Secondly, although it is undoubtedly true that a greater awareness of themselves as "Russians" was experienced by the Russian-speaking communities in the former republics as a result of the "nationalizing nationalisms" of their host countries,[19] the degree of that awareness was dependent not only on the policies of individual newly independent states, but also on the form of settlement that had developed in particular regions whilst under imperial Russian and then Soviet rule (size, ethnic composition, history of migration to the region), the socio-economic position of the settlers within each society, and the degree of cultural cleavage with the indigenous community.[20] This degree of differentiation, as Graham Smith observes, meant that the Russians showed little sense of transnational solidarity linking their diasporic communities, either symbolically or through established social networks. Even within any Soviet successor state, Russian minorities displayed a weak sense of communal identity and thus a low level of collective action.[21]

The potential for the gradual development of a "communal identity" and ultimately a Russian "diaspora" community in the Soviet successor states is hotly disputed in Russia. Kudriavtsev claims that it is unlikely that a Russian diaspora will evolve and come to play an important role in the former republics precisely because it lacks any common ethnicity. Boronin goes still further, arguing that the shift from a "colonialist-paternalistic" mentality to that of a "persecuted minority" will push the Russian "diaspora," in time, into self-liquidation.[22] Kosmarskaia argues, however, that while one cannot currently talk of "a diaspora" as such, the conditions for "diasporization" are in place and thus Russia currently has a "proto-diaspora."[23] This "emergent" diaspora is seen to differ from "traditional" historical diasporas – or those forming on the basis of migrant communities in the West – in that it takes a loose, fluid form based on informal friendship, professional, or family ties and lacks a mono-ethnic basis. Such "diasporization" is viewed as an alternative to the two, often promoted, solutions to the

current situation of the Russian-speaking communities in the former republics – migration or assimilation.[24] If this process were to take place, Lebedeva suggests it might coalesce around a number of key social institutions within the former republics and would act as a positive deterrent to further return migration.[25]

Thirdly, and for the purposes of this paper most significantly, in its strictest sense a diaspora refers to a people deprived of, or driven out of, its homeland,[26] yet the Russian population in the "near abroad" has its ethnic "homeland" adjacent and apparently open for "compatriots" to return home at any time.[27] While some, non-Russian, ethnic groups settled in the former republics following forcible deportations under Stalin, the majority of Russians resident in the former republics in 1991 arrived there through migratory processes encouraged as a means of securing the continually expanding borders of the Russian Empire.[28] The peculiar, overland, formation of the Russian Empire marks out the "Russian diaspora" even from other colonizers "gone native." In the Russian case, as Rogers Brubaker notes, the original migration from core to periphery involved no crossing of state borders and thus migration was not only legally and politically defined as internal migration but was psychologically experienced as such.[29] Thus, the migration of Russians to the outer edges of the Empire, according to Melvin, served to strengthen the colonial state and its institutions rather than to develop a distinct Russian ethnic and national identity and, in the Soviet period, although the boundaries of most ethnic and national communities became more rigid, "the margins of the Russian community retained a high degree of plasticity."[30] The contiguous nature of homeland and hostland, and their common statehood for a significant period of time, seriously disrupts the classic relationship between diaspora and "homeland"; for Russian-speaking communities in the former republics, a diasporic relationship to Russia "as homeland" was rarely experienced and, in the last century, frequently displaced onto "Soviet" identity.

Finally, diaspora status for Russians in the former Soviet republics is associated not with transnational movement, but with lack of movement; what moved in 1991 were the borders of the Soviet "homeland," not specific ethnic communities. This is not a unique occurrence. Robin Cohen, for example, classifies the Russians in the Soviet successor states as a "stranded minority," akin to Hungarians "stranded" across a number of other European countries upon the break-up of the Austro-Hungarian empire, whilst Emil Payin calls them an "imperial minority."[31] In a similar fashion, David Laitin refers to ethnic minorities who become a diaspora as a result of boundary shifts as "beached" diasporas,[32] whilst Brubaker refers to them as "accidental' diasporas."[33] On the same grounds – that the "diaspora" was a result of the collapse of empire rather than flight from the homeland – Graham Smith refers to the Russian "diaspora" as "borderland Russians," suggesting thereby that they are bound together only by their similar geographical location *vis-à-vis* the homeland – Russia – rather than any common identity.[34]

Transnational movement – going somewhere that is not "home" – is surely as central to diasporic identity as the concept of "homeland." The transnational migration actually experienced by Russian-speaking communities since 1991, however, is not *away* from Russia as "homeland" but *back* to "the homeland." In the case of Russian returnees from the former Soviet republics, this migration experience and the experience of the "homeland" when it is confronted upon return often results in a "misrecognition" of Russia; Russia is reconfigured as the "other" against which some form of diasporic identity is forged *after* return. In the empirical section of the paper, the process of identity formation of this "diaspora in diaspora" in the course of everyday experience of, and engagement with, the homeland are explored, as well as the ambiguities and limitations inherent in such an identity.

Confronting "Homeland," Creating "Home": Real Lives

The "homeland" is confronted by Russian returnees not once – as they cross the often transparent border to Russia – but repeatedly. "Homeland" is confronted firstly in its imagined form, appearing as a narrative among returnees of their life "there," in the former republics. It is confronted again, and on a daily basis, in the experience of "return" as returnees negotiate for status, employment, and housing and attempt to reconstruct "home" on Russian soil.[35] The forms of this confrontation, and their implications for post-migration identity formation among returnee Russians, are considered below.

Narratives of Life "There"

The lack of a distinct diasporic identity amongst the Russian communities whilst resident in the other republics of the Soviet Union is supported by evidence from respondents' testimonies concerning their lives "there." The relationship of the returnees to the former republic was grounded, at least partially, in imperial consciousness. Respondents describe how they, their parents, or grandparents were sent out to the borderlands from the "centre" – Russia – to raise the economic and social level of the other republics as part of Soviet modernization drives. In this sense Russians in the non-Russian republics did not self-identify as "Russians" (a significant minority were not ethnic Russians) but socially and

culturally as the "brightest and best," the chosen ones sent to bring cultural enlightenment and economic improvement to the "backward" parts of the Soviet Union. In narratives of life "there," this sense of superiority is expressed through self-identification as skilled, responsible, and conscientious workers, in contrast to representatives of the titular nationalities in the former republics who are seen as "loving management positions," of being capable of working only in commerce and thus being incapable of doing real work, *i.e.,* producing:

> Who worked? Only the Russians worked. They [those of the titular nationality] are not capable of anything. Only to be shopkeepers or work in cafes ... to water down the vodka. They are masters at short-changing ... but physical work ... that's not for them. — 43, Orel, 1994[36]

However, alongside such expressions of superiority, respondents articulated an admiration for the multinational state in which they lived and appreciation for the people, culture, and traditions of the former republic:

> … you know they are so hospitable, generous, such sincere, rich people, we have probably learnt a lot from them, a great deal. I do not regret that I lived there, and was born there – this feeling of love for these people, simply this love for my homeland (*rodina*), it will always remain with me. — 53, Samara, 1999

Narratives of life "there" are grounded in a sense of the security, safeness, and completeness of life, based upon well-established networks, connections, and roots, which had been built up often over generations. In this sense the former republic is quite explicitly the land of their kin, their people (*rod-ina*). Respondents narrate how they, or their ancestors before them, were born in the former republic. They talk of growing up, getting married, and having children there. Their work, their flats and summer houses (dachas) are located there. These latter articulations indicate that not only did the former republics constitute the respondents' "homeland" but also where they were "at home" (*doma)*.

The complexity of the relationship in relation to the former republic is also evident in the peculiar distortion of us/them, here/there boundaries found amongst returnee respondents. Russian returnees frequently talk about "at home there [the former republic]" ("*u nas tam*"), and "them here [Russia]" ("*oni – tut*"). Although it is impossible to list all articulations of this (it is a general speech pattern) the following statements make clear the impossibility of assuming the presence of even the fundamentals of Russian identity: common language and shared home prior to the return "home."

> *Our* Tajiks are very hospitable, our republic is called little Switzerland, it is very beautiful. — 9, Orel, 1994

> ... we don't even understand the Russians. When we arrived the first time, we could not understand the Russians, how *they* speak, the language. We could not understand. *They* don't understand us, and we them. — 31, Orel, 1994

The absence of remembered desires to "return" home or feelings of being separated ("in diaspora") from one's "homeland" are conspicuous and suggests that, for Russian returnees, the process of "returning" to Russia is an experience fraught with confrontation and contestation rather than a smooth journey "home."

Migration Decisions: Leaving Home or Going Home?

Despite their lack of diasporic identity, migration back to Russia became a common response among the Russian-speaking communities to the changing environment in the former Soviet republics from the late 1980s. A growing sense of "ethnic discomfort" was articulated by respondents through reference to the disruption of the security of everyday life, which had made this place "home." Respondents felt victims of discrimination on the basis of language and nationality in the spheres of employment and education. Daily activities, such as shopping, using public transport, or walking down the street were no longer "safe" and unproblematic. Many respondents spoke of the verbal abuse they received on the grounds of their ethnicity and of being told to "return" to "their Russia":

> Your homeland (*rodina*) is Russia – you are Russian – go back to *your* Russia. — 42, Saratov, 1999

The disruption of everyday life was accompanied often by feelings of extreme danger and insecurity, and in some cases respondents had been caught up in violent ethnic conflict. For a minority of respondents this experience – a "borderland experience" – not only made them more acutely aware of their "Russianness" but gave rise to a defensively aggressive sense of that nationality. As one returnee from Moldova noted:

> I am a Russian (*russkii*), not a Russian citizen (*rossiianin*) because ... I lived on the border.... On the border of the division of nations. Russians who live here don't understand that.... Only now are they beginning to sense that other nationalities exist, they have not understood this yet.... I understood this a long

> time ago...and thanks to this, there on the national periphery, I became more Russian than the Russians here. — 136, Ul'ianovsk, 1994

Such experiences of ethnic discomfort meant that the adjacent "historical" homeland – Russia – now presented itself as the logical solution to the displacement felt; migration to Russia was for many the only possible response.

Encounters with the "Homeland": No Longer an Object of State Concern

The process of "diasporization" of the Russian-speaking communities in the "near abroad" by the Russian state is important for understanding returnees' encounters with the homeland. While resident in the former republics, the Russians had been an object of considerable state concern. For a minority of respondents migration to Russia was perceived, therefore, as a return to an ethnic homeland:

> We are Russian (*russkie*), we have come to our Russian brothers, we have not just moved anywhere, we have come to our native Russia. — 35, Saratov, 1999

Upon return, however, most returnees feel that state concern had evaporated. The most common response to this among respondents was a feeling of "hurt" that while they had "done their duty" for Russia, the Russian state considered them "redundant" and was indifferent to their plight:

> Where did the Russians in Kazakstan appear from? They came from Russia. Then it was in the interests of Russia to send them there – so they would open up a new land.... But now, when we want to return, after three or four generations, because we are being driven out – they will not take us here. We are redundant (*my ne nuzhni*) — 36, Saratov, 1999

The absence of the state is tangible; the actual journeys made by migrants and the location of places for settlement are conducted with the assistance only of family or friendship networks. This reflects the reluctance of the state to frame these journeys as a *repatriation* movement rather than as a collection of individual experiences.[37] State concern, it appears, is located "there," not "here."

This is not to suggest that the state, at the federal level, has made no provision for returnees. In February 1993 the Russian Federation laws On Refugees and On Forced Migrants were introduced and distinguished between a "forced migrant," who was a citizen of the Russian Federation, and a "refugee," who was not. Thus, from the outset, legislative frameworks set the Russian returnees apart, and the category of "forced migrant" seemed to be an acknowledgement by the Russian state of a special status. The Federal Migration Service (FMS) of the Russian Federation was established in June 1992 and mandated to "protect the rights of refugees and forced migrants and help in their resettlement." Federal and regional level legislation has been introduced to further this aim, but actual implementation has been limited. Furthermore, the role of the Federal Migration Service, and the direction of policy towards the returning communities in general, gradually shifted from providing protection and assistance for migrant resettlement to prioritizing control and management of migration movements. The respondents' testimonies reveal both a concrete lack of state provision, and a feeling of psychological distance from the service, which is not seen as central to "their" resettlement. Although some help is received, migrants frequently mention that forced migrant status has proved to be little more than "a piece of paper" and does not secure any concrete help.[38] There is a distinct lack of faith in the migration service which centres around the claim that the employees of the service cannot, and do not want to, understand what has happened to the migrants and are unwilling to help:

> At the migration service it is not "our" people who sit there, but "locals." And "locals" do not understand our problems at all. — 35, Saratov, 1999

> The migration service itself has long ago given up on us. They say, "Look, you are already here, you have citizenship, get on with it!" — 41, Saratov, 1999

The perception of state abandonment is felt in relation to both regional and federal administrations:

> I have the feeling that they [the local administration] don't consider us at all. I don't know whether it is just this local administration [Samara] that has this attitude. I don't know if other migrants live better, maybe there is somewhere, where they live worse than us. But in principle you do not expect help from anyone, you have to survive on your own. It is evident they have forgotten that we exist in Moscow. It has become almost insulting. — 46, Samara, 1999

Thus, although "registered" forced migrants hold Russian citizenship and are offered some minimal state assistance, the former is taken for granted by Russian returnees while the latter is experienced as derisory. Thus "returnees" do not feel welcomed by the Russian state and turn to other resources – selves, family and friendship networks – in order to recreate what constitutes "home" and secure their inclusion in Russian society.

One alternative to self-reliance has been participation in migrant initiatives such as "compact settlements" and "migrant associations." The idea of "compact settlements" was first promoted by a Russian federal level non-governmental association, the Coordinating Council of Aid for Refugees and Forced Migrants (CCARFM), as a "realistic solution" to the problems of housing, employment, and adaptation faced upon return, and as providing a necessary feeling of security, community and social inclusion.[39] The attitude of the Federal Migration Service to the idea of compact settlements fluctuated over time, alternating between support for the idea and limited financial and material help, to open hostility and opposition in cases of individual compact settlements. Many governmental and non-governmental experts held reservations about the future of compact settlements, one concern being that they might encourage the long-term social exclusion of forced migrants. There has been widespread recognition that settlements should only be encouraged where they have viable locations near existing urban settlements.[40] On the territory of Saratov and Samara regions, great difficulties have been faced in the establishment of compact settlements. Most of the settlements received initial help from the migration service and local administration. However, a subsequent lack of resources, the failure of the settlements' enterprises, conflicts within the migrant groups, and the unsuitability of the location of the settlement have meant that the majority are now struggling to survive.

Attitudes to this type of settlement amongst returnees reflect both the *post-hoc* diasporic identity that develops among returnees, and also their conscious desire to recreate "home" in their "new" homeland. Thus, compact settlements are perceived as providing housing and employment on site, but also a beneficial environment upon arrival to facilitate inclusion because they bring together "similar" people to themselves (that is, other migrants):

> I would be very pleased, if it was all migrants – let's say from Tajikistan, Kazakstan – all the former republics. Because we are from "one and the same plate." Everything we had was the same. We would be very good together. We understand each other. They ["local" Russians] do not understand us.... they have their culture, we have our culture. — 35, Saratov, 1999

On the other hand, compact settlements are also perceived as working to isolate returnees in rural areas where their professional skills cannot be applied and their families find it difficult to integrate. Moreover, this self-containment might generate exclusion from wider society and thus inhibit adaptation: [41]

> I think it is better to live together with the local population ... it is impossible to be separate, we must integrate faster. In order to integrate it is absolutely necessary to live with the Russians (*rossiiane*). If we acquire citizenship, we want to take part in the affairs of Russia. We will also feel ourselves to be *rossiiane.* Therefore we must mix with them. Compact settlements – I do not consider they are that good an idea. — 21, Saratov, 1999

Those migrants who have had experience of living on a compact settlement, or who presently live in such a settlement, are concerned mainly with the realities of making the settlement work. Nevertheless, they have already invested a great deal of physical and emotional energy into the settlement and feel a sense of community strong enough to deter them from abandoning hope in its eventual success:

> We have to persevere, the place here is not bad, it is beautiful, we hope to achieve something here. The children like it, and we have already become accustomed, we know the place, it already seems a shame to leave. And here living on the hillside, we have our clan, we ... are all newcomers (*priezhie*), we have our community (*obshchina*), we have our own outlook and views, a lot of us do not want to leave the hillside, we already want to build our settlement here. — 59, Samara, 1999

While the Russian-speaking communities in the former republics have failed largely to generate their own community organizations, returnees have developed migrant associations rapidly which help fill the gap left by the lack of government provision. In Saratov and Samara regions a number of associations have been established,[42] although many respondents either had not heard of them or did not know what they did. Others identified migrant associations as yet another "official" structure in which one should have little faith as a source of help. Migrants who had contact with the associations, or were actually involved in their operation, had a different perception of the role and importance of such bodies, however. They were seen clearly as a response to state indifference, and as a source of real potential help:

> ... if the government does not care, then we must come together in a group, what other way is there? — 37, Saratov, 1999

Moreover, although a formal structure, migrant associations were considered, unlike official government structures, to approach migrants with understanding and empathy. The reason for this is that the associations are run by migrants, who both have had a similar experience of displacement and may have come from the individual's previous "homeland":

> She [the head of one association] always listens to you when you go there, she will always give you advice. She is our fellow countrywoman (*zemliachka*), also from Uzbekistan. She knows what it is like, she has gone through it herself, so it is easier for her to understand. — 41, Saratov, 1999

> If people have gone through it themselves, they understand that it is very difficult. All the people try to support you with warm words, to provide help in some way, to do something. In the migration service it is more difficult, you go there and it is like a "deaf wall," a wall that doesn't understand, and people who do not understand – that a person has come with nothing, has to start again, and that adaptation is very difficult. Here [in the migrant association] it is easier, you can always run to the association with any question. — 50, Samara, 1999

To those migrants who are included in the sphere of activity of the migrant associations feelings of group identity are generated, which draw upon the common experience of both residence in, and displacement from, a former republic. Both the compact settlements and the migrant associations create spaces where feelings of common identity are discovered and fostered. However, there is great diversity of interest and identity amongst the migrant community and many returnees do not consider the associations as integral to the process of resettlement. For them resettlement remains an individual or family centred process, and the reconstruction of "home" and "homeland" one of personal negotiation.

"Other Russians": Local Encounters with "Homeland"

The process of resettlement fosters a sense of "difference" among Russians returning to the Russian Federation; this difference is grounded clearly in the experience of life "there," but is framed in terms of sites of confrontation with the "homeland" and, in particular, in opposition to "local" Russians. The feelings of superiority rooted in imperial consciousness, which were expressed *vis-à-vis* the titular population in the former republic, are also voiced upon "return" and in relation to the local population. Returnees consistently described local Russians as: rude, disrespectful (especially of their elders), linguistically impoverished, drunken, and lazy:

> ... by nationality I am Russian but I consider myself Soviet.... I don't consider myself a *rossiianka* ... the locals ... they are pure *rossiiskie* people ... a Russian [*russkii*] it seems to me should be a good, kind, considerate, hospitable person, a cultured, educated person, but a rossiiskii – that is about getting drunk, not going to work, all that...all the bad characteristics. — 119, Orel, 1994

> ... the cultural level in Russia is very low, relationships between people are completely different, ... those who have arrived, they are highly educated and highly specialized. They are very hard-working, and come with the desire to work ... it is highly qualified, cultured, intellectual, well brought up people who have arrived. — 53, Samara, 1999

Although the returnees do think of themselves as ethnically "Russian," they feel their Russianness to be challenged by the local population. Returnees claimed that they were labelled as outsiders by locals who referred to them as: "newcomers" or "strangers" (*priezhie*), "immigrants" (*immigranty*), "emigrants [sic]" (*emigranty*), "migrants" (*migranty* and *pereselentsy*), "refugees" or, according to the republic they have come from, "Kazaks," "Kirghiz," etc. This, returnees said, meant that they were effectively excluded from the common ethnic and civic community:

> The same Russians don't accept us as Russians.... We have no rights at all here. — 1, Orel, 1994

> It is us who are strangers, we who have arrived. Yes, we are Russians (*russkie)*, but we are not perceived as Russians. We are strangers, and I think that our children, who have come with us, they will also be strangers. — 45, Saratov, 1999

> I am Russian (*russkaia)*, my husband is Russian (*russkii)*, but everyone treats me as a Kazak (*Kazashka)* at work, if you are from Kazakstan [to them] it means you are a Kazak.
> — 49, Samara, 1999)

The returnees also complained that general economic problems were blamed on increased competition generated by their arrival:

> ... we are not treated well, all the time we are called "blacks" ... "foreigners".... They don't like us. Many say "you have taken our flats." Very many complain "you have swarmed down on us, taken our jobs, our flats, because of you, life is tough here now...." — 178, Ul'ianovsk, 1994

> … it seems to them that we take their work, their money. When a country "fills up," there are soon difficulties, therefore people already look at you in a different way. We are like competitors for "life." — 36, Saratov, 1999

Encounters with the homeland at the local level thus engender a sense among returnees that though they may be Russians, they are "other" Russians:

> Although we are Russians (*russkie*), we are not the same kind of Russians that live here. — 1, Orel, 1994

This essence of this "otherness" lies at the heart of the "diaspora-in-diaspora" identity; returnees differentiate themselves from local Russians by ascribing to "self" those positive characteristics attributed to the peoples of the republic of former residence. Many respondents openly acknowledged a kind of "hybrid" identity, saying that they had assimilated much from the peoples they had lived with:

> We arrived like that … the East is like that. We were taught like that there. The Uzbeks, the Tajiks they are all like that. For them the main thing is the family ... that is why we have got more in common with the [other] newcomers (*priezhie*) than with the locals. There is a big difference between us and them. — 20, Orel, 1994

> ... here *we* are all newcomers (*priezhie)*. We are all close to each other in spirit. Everyone is from Central Asia here, I came from there. We have our own way of life, although I am Russian (*russkaia),* my way of life is more similar to an Eastern woman's. Therefore we have found a common language. Newcomers, no-one loves them anywhere. Here, we are all together, we are all a group...we can communicate, we have a great deal in common, our way of life, for example. We even have the same dishes, if you go to that extent. We prepare dishes in the same way. It means a great deal. And to have left there, to have lost everything, left everything.… such little things give you joy. We have common recollections, a common outlook. It is something important for us. — 27, Saratov, 1999

A sense of common experience and common identity thus appears to emerge among returnees as a product of the daily encounter and confrontation with the "historical homeland" after return to Russia.

Revisiting the Concept of "Diaspora": Constructions of "Home" and "Homeland"

Evidence of a common identity amongst returnees is not proof of "diasporic" identity. The latter claim, once again, requires evidence of the centrality of the old (former republic) homeland to the sense of community among returnees. The articulation of "homeland" in returnees' narratives, however, suggests that although "homeland" is important to returnees' identity, it is not a single concept, but is fluid and under constant re-formation throughout the process of reconstructing "home" in Russia.

The understanding of "homeland" (*rodina*) in the narratives of returnees is complex. Around two-thirds of respondents in Orel region expressly said they did not consider their migration to Russia to be a return to the *rodina*. The majority of respondents from Saratov and Samara regions, when they spoke of their *rodina* also placed it "there" (in the former republic). This is, in many ways, logical. Linguistically, the term *rodina* fixes homeland as the "place of birth," and many respondents identified their *rodina* as "there," where they were born:

> I was born there, lived there. Of course it is hard. You yearn ... for your homeland. And that homeland is there, there where you were born, in spirit you never leave. — 189, Orel, 1994

> *Rodina*, is where you are born, we were born in Tajikistan, our homeland is there. — 11, Saratov, 1997

For other respondents homeland was linked to the former USSR as a whole and the latter's disappearance was thus experienced as bereavement. The sense of loss is as much for the security of the "past" – of employment, housing, established friends, and community – as for any consciously multi-ethnic society, of course. The insecurity and uncertainty faced upon return to Russia thus generate a bitter sense of loss of belonging:

> We haven't got one [*rodina*]. We are aliens there and here we are aliens ... the children were born there in Uzbekistan. We haven't got a homeland! — 125, Orel, 1994

For others, however, although they share a sense of having "no homeland," their focus is the "present" process of reconstructing "home." By rebuilding one's "home" – signifying the security of housing and employment, the establishment of family and friends, security, and a future for their children – they establish the foundations for a future "homeland" on the territory of Russia. The process is not one of return to a familiar ethnic community, but a process of "becoming" or "rooting":

> There I am a stranger, and here I am still not myself. That is, I am between the sky and earth. I am not there, or here...if everything were settled, if there were housing and work, then I could say I would never leave here – it would be my "home." — 43, Saratov, 1999

> My *rodina* is there, where I was born, where my friends are. But I think Russia has to become my "home." If there is housing, then Russia will become homeland and home, because our children will be here. Our children will have children, and there will be grandchildren. Therefore I will consider that Russia – it is my home. — 35, Saratov, 1999

These narratives describe a process of "recreation" and transferral. There is a clear acceptance that the period of *rodina* being "there" is over in a physical, lived sense. Re-

spondents rarely envisaged return as a real possibility, although the memory of homeland "there" remained potent. The first step was to recreate "home" in Russia; if they managed this successfully, it might become "homeland" for future generations:

> I cannot say that I exactly feel at home. But, I feel calm, simply calm. It is already the children, grandchildren, this will be their *rodina* in time, when it has all settled down. —39, Saratov, 1999

Statements made by returnees concerning their "homeland" are complex and contradictory. While theorists of the postmodern would suggest that the contemporary world of diaspora, mass population movement, and transcultural flows naturally problematize the notion of homeland,[43] this does not fully explain the sentiments expressed by respondents. For Russian-speaking returnees, there was no problem of envisaging what constituted a homeland; it was clearly symbolized by "where I was born," "where the children were born," and "where my parents are buried." The problem was rather a sudden disembodiment of that homeland. The "imagined community" (Russia) had been severed from the physical homeland (former republic) leaving individuals and communities displaced. To resolve this displacement, many Russian-speakers in the former Soviet republics took the migration option. Their experience of "return" to Russia, however, was not one of "going home" to an ethnic homeland, but of recognizing, *post-factum*, a diasporic identity and then seeking to re-root themselves through actively reconstructing "home."

Conclusion

The peculiar process of settlement of Russians in the former Soviet republics and the process of their objective, but not subjective, "diasporization" in the post-1991 period problematize the application of a classic "diaspora" model to the experience of these stranded, imperial minorities. In particular the central relationship between diaspora and "homeland" is disrupted. Until the late 1980s, generations of Russian-speakers in the former Soviet republics envisaged no split between physical homeland as where they lived, where their children were born, and where their parents had died, and homeland as "imagined community." The Soviet homeland (*sovetskaia rodina*) embodied both. The rise in ethnic tension through the 1980s and the sudden collapse of the Soviet Union at the end of 1991, however, severed the two, leaving the Russian communities displaced.

This paper has explored one resolution of this displacement: migration, or rather return to "historical homeland." It has suggested that the experience of encountering Russia as homeland, however, does not necessarily bring those in diaspora "home," but often engenders a sense of "otherness" and exclusion. What appears to emerge is a sense of common identity among Russians from the former republics upon return, which had not been present while in diaspora; a "diaspora-in-diaspora" identity? The possibility that diasporic identity may be stronger amongst those forced to "return" to their historical "*rodina*" than amongst those who remain "there" has indeed been suggested by Gradirovskii.[44] To talk of such an identity, however, surely stretches the concept of "diaspora" too far. Rather than make claims for such an identity, therefore, the paper has suggested that it might be useful to unpack the notion of "homeland" into "home" and "land." This would disavow the primacy of a primordial connection between ethnos and territory embodied in the notion of "homeland." It suggests, rather, that homelands "become" through the siting of an individual's "home" (kin, family, past, present, future, job, house). What returnee experience reveals is that everyday encounters and confrontations with the "ethnic homeland" engender both a diasporic longing for the "homeland" left behind whilst at the same time siting individuals and families in a space which they will make "home" for themselves and "homeland" for their children.

Notes

1. There were 25.3 million ethnic Russians living in Soviet republics other than the Russian Federation according to the last Soviet census, conducted in 1989. In addition there were approximately 11 million members of other ethnic groups whose primary cultural affinity is Russia and who are often subsumed into the "Russian" diaspora as "russophones" or the "Russian-speaking population."
2. See: Ian Bremmer, "The Politics of Ethnicity: Russians in the New Ukraine," *Europe-Asia Studies* 46, no. 2 (1994): 261–83; Tim Heleniak, "Migration of the Russian Diaspora after the Break-up of the Soviet Union," *Journal of International Affairs* 57, no. 2 (2004): 99–117; Pal Kolstø, *Russians in the Former Soviet Republics* (London: Hurst, 1995); Neil Melvin, "Forging the New Russian Nation" (Discussion Paper 50, Royal Institute of International Affairs, London, 1994); Neil Melvin, *Russians beyond Russia's Borders* (London: Pinter/Royal Institute of International Affairs, 1995); Vladimir Shlapentokh, Munir Sendich, and Emil Payin, eds., *The New Russian Diaspora: Russian Minorities in the Former Soviet Republics* (New York and London: M.E. Sharpe, 1994); Jeff Chinn and Robert Kaiser, *Russians as the New Minority. Ethnicity and Nationalism in the Soviet Successor States* (Boulder: Westview Press, 1996); Graham Smith, "Transnational Politics and the Politics of the Russian Diaspora," *Ethnic and Racial Studies* 22, no. 3 (1999): 500–23; Graham Smith, *The Post-Soviet States* (London: Arnold, 1999); Charles King and Neil Melvin, eds., *Nations Abroad: Diaspora Politics and International Relations in*

the Former Soviet Union (Boulder: Westview Press, 1998); Charles King and Neil Melvin, "Diaspora Politics: Ethnic Linkages, Foreign Policy and Security in Eurasia," *International Security,* 24, no. 3 (1999/2000): 108–38; David Laitin, *Identity Formation: The Russian-Speaking Populations in the Near Abroad* (Ithaca: Cornell University Press, 1998); Edwin Poppe and Louk Hagendoorn, "Types of Identification among Russians in the 'Near Abroad.'" *Europe-Asia Studies* 53, no. 1 (2001): 57–71.

3. Russia began to receive a net inflow of migrants from the Soviet republics from the late 1970s but this gradual "decolonization" was replaced by repeated waves of "refugees" and "forced migrants" during the late 1980s and first half of the 1990s as ethnic conflict and economic collapse became part of the everyday realities of life in the former Soviet republics. The registration of returnees by the Federal Migration Service of the Russian Federation was begun in July 1992. By the end of 2002, approximately 1.5 million refugees and "Russian-speaking forced migrants" (*russkoiazychnie vynuzhdennie pereselentsy*) had been registered in the Russian Federation; see *Goskomstat*, *Regiony Rossii, Statisticheskii sbornik*, Vol. 2 (Moscow: Goskomstat, 1998), 68; *Goskomstat, Statisticheskii biulleten. Chislennost' I migratsiia naseleniia rossiiskoi federatsii v 1999 godu* (Moscow: Goskomstat, 2000), 113; *Goskomstat Demograficheskii ezhegodnik rossii* (Moscow: Goskomstat, 2002), 128. Many more people have been temporarily or permanently displaced in the former Soviet Union, however, and it is estimated that the actual number in Russia is between 8 and 10 million; see International Organization of Migration, "Management of Migration in the CIS Countries" (IOM Open Forum Information Series, 3, 2002).
4. This fieldwork was conducted by Hilary Polkington as part of a wider project supported financially by the Economic and Social Research Council under the Research Grant scheme (Award R000221306 "Going Home: A Socio-cultural study of Russian-speaking forced migrants", June 1994–August 1995).
5. This fieldwork was conducted by Moya Flynn as part of her research for her doctoral thesis, entitled "Global Frameworks, Local Realities: Migrant Resettlement in the Russian Federation" (University of Birmingham, 2001).
6. The lower proportion of "Russians" in the first study results primarily from a large number of Tatar returnees choosing to settle in Ul'ianovsk *oblast'*, which has a significant Tatar minority.
7. Within the Volga region, Samara received the highest number of forced migrants and refugees over the period 1992 to January 2000, a total of 69,983. Saratov region received the second largest number of forced migrants and refugees, a total of 54,625. Ul'ianovsk region received 12,159 forced migrants and refugees over the same period and Orel region, 13, 610 (Federal Migration Service Statistics, unpublished data, 1998); *Goskomstat Rossii, Regiony Rossii,* 68; *Goskomstat Statisticheskii biulleten,* 115.
8. Hilary Pilkington, *Migration, Displacement and Identity in Post-Soviet Russia* (London and New York: Routledge, 1998), 25.
9. *Ibid.*, 26; Neil Melvin, "The Russians: Diaspora and the End of Empire," in King and Melvin, 39.
10. Pilkington, 56–57; Melvin, "The Russian Diaspora and the End of Empire," 47.
11. Igor Zevelev, "Russia and the Russian Diasporas," *Post-Soviet Affairs* 12, no. 3 (1996): 265–84; Melvin, "The Russian Diaspora and the End of Empire," 48.
12. Kolstø, 262–63.
13. Natalya Kosmarskaia, "Ia nikuda ne khochu uezhat', zhizhn' v post-sovetskoi Kirgizii glazami russkikh," *Vestnik Evrazii* 1–2 (1998): 76.
14. Aleksander Militarev, "O soderzhanii termina 'diaspora' (k razrabotke definitsii)," *Diaspori* 1 (1999): 24–33 (Militarev addresses the usage of the term; however, he does not use it at all in relation to the Russian-speaking communities); Sergei Gradirovskii, "Rossiia i postsovetski gosudarstva: iskushenie diasporal'noi politikoi," *Diaspori* 2–3 (1999): 40–58; Natalya Lebedeva, *Novaia russkaia diaspora. Sotsial'no-psichologicheskii analiz* (Moscow: 1998); Kosmarskaia, "Ia nikuda ne khochu uezhat'," 76–100; Natalya Kosmarskaia, "Russkie diaspory: Politicheskie mifologii i realii massogo soznaniia," *Diaspory* 2 (2002): 110–56; Natalya Kosmarskaia, "Russkie diaspory: Nauchnii diskurs I nizovie vospriatiia," *Diaspory* 4 (2003): 142–204; Natalya Kosmarskaia, "Russkoiaychnie blizhnego zarubezh'ia: diaspornii proekt protiv avtokhtonogo," *Diaspory* 1 (2004): 148–84.
15. Floya Anthias, "Evaluating Diaspora: Beyond Ethnicity," *Sociology* 32, no. 3 (1998): 564.
16. Melvin, "The Russians: Diaspora and the End of Empire," 33.
17. *Ibid*. Empirical research confirms this lack of ethnic solidarity among diaspora communities and points to socio-cultural links as providing a possible common, diasporic identity: Gradirovskii, 3; Zevelev, 279; Viktor Kudriavtsev, "Lovushka integratsii," *Nezavisimaia Gazeta*, June 25, 1996.
18. Kolstø, 260. The ethnicization of the Russian media debate on diaspora is evidenced by the frequent use of the ethnically exclusive terms "Russians" (*russkie*) or "ethnic Russians" (*etnicheskie russkie*) to refer to the Russian-speaking minorities in the former Soviet Union; see Pilkington, 25.
19. Rogers Brubaker, "Accidental Diasporas and External 'homelands' in Central and Eastern Europe: Past and Present" (paper presented at the international conference "Diasporas: Transnational Identities and the Politics of the Homeland," University of California at Berkeley, November 12–13, 1999).
20. Melvin, "The Russians: Diaspora and the End of Empire," 48.
21. Smith, *The Post-Soviet States,* 78.
22. Kudriavtsev, 3; Voronin, cited in Kosmarskaia, "Ia nikuda ne khochu uezhat," 76.
23. Kosmarskaia, "Ia nikuda ne khochu uezhat'." In the article Kosmarskaia explores the possibility of the development of a Russian diaspora in the Kyrgyz Republic, by addressing the questions of how this would come about, who would constitute this "diaspora," and why it would be possible in the Kyrgyz Republic.

24. *Ibid*. Also Natalya Kosmarskaia, "Khotiat li russkie v Rossiiu? (Sdvigi v migratsionnoi situatsii I polozhenii russkoiazichnogo naseleniia Kirgizii)," in *V Dvizhenii dobrovol'nom I vyuzhdennom, Postsovetskie migratsii v Evrazii*, ed. Anatoly Viatkin, Natalya Kosmarskaia, and Sergei Panarin (Moscow: Natalis, 1999), 207.
25. Lebedeva. This approach has been criticized by Kosmarskaia for ignoring the specifics of the post-Soviet case, where those individuals who decide to "stay" are unlikely to be involved in any type of official, socio-cultural organization; Kosmarskaia, "Ia nikuda ne khochu uezhat'."
26. William Safran, "Describing and Analyzing of Diaspora: An Attempt at Conceptual Cleansing" (paper presented at the international conference "Diasporas: Transnational Identities and the Politics of the Homeland," University of California at Berkeley, November 12–13, 1999).
27. Hilary Pilkington, "Going Home? The Implications of Forced Migration for National Identity Formation in Post-Soviet Russia," in *The New Migration in Europe: Social Constructions and Social Realities*, ed. K. Koser and H. Lutz (Basingstoke: Macmillan, 1998), 86.
28. Melvin, "The Russians: Diaspora and the End of Empire," 30.
29. Brubaker.
30. Melvin, "The Russians: Diaspora and the End of Empire," 28.
31. Robin Cohen, *Global Diasporas: An Introduction* (London: UCL Press, 1997), 191; Emil Payin, "The Disintegration of the Empire and the Fate of the 'Imperial Minority'" in Shlapentokh, Sendich, and Payin, 21–36.
32. Cited in Safran.
33. Brubaker.
34. Smith, *The Post-Soviet States*.
35. Numerous studies have been conducted which explore the different aspects of processes of resettlement and adaptation of Russian-speaking migrants on the territory of the Russian Federation: Pilkington, *Migration, Displacement and Identity*, and Moya Flynn, *Migrant Resettlement in the Russian Federation: Reconstructing "Homes and "Homelands"* (Anthem: London, 2004) explore the socio-cultural and socio-economic aspects of adaptation and the complex understandings of Russian migrant identity. Sociological studies by Cherviakov, Shapiro, and Sheregi (1991), Vitkovskaia (1993), Susokolov (1994) cited in Pilkington, *Migration, Displacement and Identity*, 25, look at issues of reception and adaptation of migrants in Russia alongside questions of migrant intention. Other studies concentrate specifically on the regional and locational aspects of migrant resettlement, and look at the impact of region and "type" of settlement (urban, rural), alongside factors including gender, education, employment, housing and political orientation, upon the success of migrant adaptation. See Zhanna Zaionchkovskaia, "Vozmmozhno li organizovat' pereselenie na Dal'nii Vostok," *Migratsiia* 3 (1997): 13–15; Galina Vitkovskaia, "Adaptatsiia vynuzhdennikh migrantov v raznikh tipakh poselenii v Rossii" in *Migratsiia i urbanizatsiia v SNG i Baltii v 1990s*, ed. G. Vitkovskaia and Zh. Zaionchkovskaia (Moscow: Centre for the Study of Problems of Forced Migrants in the CIS, 1999): 199–240; Galina Vitkovskaiia, "Za kogo golosyut vynuzhdennie pereselentsy?" *Migratsiia* 3 (1997): 26–30; Elena Filippova "Adaptatsiia russkikh vynuzhdennikh migrantov iz novogo zarubezh'ia," in *Vynuzhdennie migranty: Integratsiia I vozvrashchenie*, ed. V. Tishkov (Moscow: Institute of Ethnology and Anthropology, RAS, 1997), 45–74. Vitkovskaiia completed a comprehensive study of migrant resettlement across the Russian Federation which looks at migration trends, regional resettlement patterns, urban and rural settlement, and the major factors affecting the resettlement process: Galina Vitkovskaia, *Resettlement of "Refugees" and "Forced Migrants" in the Russian Federation* (Geneva: International Organization of Migration, 1998). A regional study focuses upon the socio-psychological adaptation of Russian forced migrants and refugees in Saratov and Volgograd regions: Valentina Grishchenko, *Russkie sredi Russkikh: Problemy adaptatsii vynuzhdennikh migrantov I bezhentsev iz stran blizhnego zarubezh'ia v Rossii* (Moscow: Institute of Ethnology and Anthropology, 1999).
36. In the interests of anonymity, respondents are referred to only by the identification number assigned them in the databases of biographical details conducted for each of the fieldwork studies, the region of their resettlement, and the year of interview.
37. This can be contrasted with repatriation programs that exist for Russian Jews returning to Israel, or ethnic German Russians returning to Germany.
38. This help is predominantly in the form of a small, one-off monetary payment or an interest-free, returnable loan for the construction, renovation, or purchase of housing. The 1994 study saw a pitiful level of state assistance; the payment had been received by 31 per cent of respondents in Orel and 14 per cent in Ul'ianovsk while the housing loan had been received by just one family who, coincidentally, were personal friends of the head of the regional migration service. In Samara and Saratov regions nineteen respondents (out of the total of sixty-two) had received the one-off payment while only six individuals had received the housing loan. In explaining the low take-up, the majority of respondents pointed to the difficulties of application, the bureaucracy involved, and the unrealistic possibility of returning the loan.
39. Lidiia Grafova, Elena Filipova, and Natalya Lebedeva, *Compact Settlements of Forced Migrants on the Territory of Russia* (unpublished report, Open Society Institute, New York, 1995).
40. In-depth studies by Filipova have looked at the concept of compact settlements, concentrating upon: their development in the Russian Federation; the problem with defining what constitutes a compact settlement; the advantages and disadvantages of this method of settlement for successful adaptation; governmental attitudes to compact settlements; and the importance of location and population constitution for the success of the settlements; see Elena Filippova, "Opit sozdaniia kompaktnikh poselenii migrantov v Rossii," in Tishkov, 75–88; Elena Filippova, "Obshchinno-kompaktnie poseleniia:

uslobiia uspekha I prichini neudach," *Prava Cheloveka* 1 (1998): 6–11.

41. The perception amongst migrants across the Russian Federation that compact settlements can either provide a familiar environment where they are understood, or on the contrary, as leading to problems of isolation and exclusion from the local community, is referred to in the study by Filippova, "Obshchinno-kompaktnie poseleniia: usloviia uspekha I prichiny neudach."
42. During the period of the study there were three main organizations in the city of Saratov and one main organization in the city of Samara. Other smaller organizations existed on the territory of the regions. The associations in Saratov were at a more developed stage than in Samara region. This was mainly due to the liberal environment conducive for their development, but also could be seen as an indicator for the greater need for such associations in Saratov region.
43. Andrew Gupta and James Ferguson, "Beyond 'Culture': Space, Identity, and the Politics of Difference," *Cultural Anthropology* 7, no. 1 (1992): 10.
44. Gradirovskii, 44.

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Children Alone, Seeking Refuge in Canada

Mehrunnisa Ahmad Ali

Abstract

Using comparisons with international policies and practices, this paper highlights the ambiguities in the identification, case processing, care, and protection of separated children in Canada. It calls for systemic studies of government policies and institutional practices that impact separated children, so that Canadians can take more principled positions towards them. Our current lack of knowledge about separated children puts this highly vulnerable group at greater risk of exploitation and neglect.

Résumé

À l'aide de comparaisons entre les politiques et les pratiques internationales, l'article met à jour les ambiguïtés concernant l'identification, le traitement, le soin et la protection des enfants séparés au Canada. Il demande que soient menées des études systémiques sur les politiques gouvernementales et les pratiques institutionnelles qui touchent les enfants séparés afin que les Canadiens puissent adopter des positions mieux informées. Notre méconnaissance actuelle au sujet des enfants séparés rend ce groupe déjà vulnérable encore plus à risque d'être exploité et négligé.

Introduction

In international comparisons, how a country takes care of its vulnerable populations is often used as an indicator of its human and social development. In most instances, children and refugees are both counted among vulnerable populations. However, when children separated from or unaccompanied by adults responsible for their care seek refuge in a country, they are viewed from two very different perspectives. People who see them as the cargo of human traffickers, or as "anchors" sent ahead by parents wanting to follow them, tend to believe that their good care and protection will only encourage exploitative adults who have used them for their own interests. Others, who see them primarily as children, claim they are in "double jeopardy" because of the circumstances under which they have left their countries and the absence of supportive adults in countries where they have arrived. Very little is empirically known about them. They continue to remain invisible and voiceless, not only because of their inability to speak for themselves, but also because of societal ambivalence towards them, in Canada as well as in other countries.

Bhabha suggests that inconsistent treatment of these children in North America is based on "two opposing normative frameworks – immigration control preoccupations on the one hand, and welfare protection (including child rights) concerns on the other."[1] This ambivalence is reflected in social policies and public services available to separated children seeking asylum in Canada. We have yet to confront what Bhabha and Young call the Janus-like position of societies, on the one hand wanting to protect the rights of children and, on the other hand, wishing to protect the rights of the government.[2] Using comparisons with other countries, this paper identifies some ambiguities in policies and practices towards separated children seeking asylum in Canada. In doing so, it makes a case for a more coherent effort to fill the gaps in our knowledge so that we can take a more principled position towards these children.

International Context

In general, armed conflicts, political upheavals, radical climatic changes, economic hardship and deprivation, and global economic restructuring are considered major reasons for international migration. The 1951 *Convention on the Status of Refugees* and its 1967 Protocol were the first major international treaties designed to accommodate refugees in the aftermath of World War II. These were followed by other international agreements such as the 1989 *UN Convention on the Rights of the Child* (CRC) which relates specifically to

the protection of separated children. Article 2 of this document states that all rights identified in the CRC must apply to all children in the State; Article 3 emphasizes that "the best interest" of the child should guide all actions of the States concerning unaccompanied children; and Article 12 states that the children have the right to participate in decisions affecting them.[3]

Internationally, there seems to be less disagreement about the normative principles of the CRC than the debate about whether and how its principles should be applied in the face of competing concerns. In the European Union, a step towards harmonization of state policies was undertaken in 1997 with the adoption of *Resolution on Unaccompanied Minors who are Nationals of Third Countries.* This document lays out a set of basic criteria and procedures for their admission, services, asylum procedure, return, and final provisions. Equally important, it represents the EU member states' acknowledgement that unaccompanied children have specific needs and rights requiring particular attention. However, in contradiction to the guidelines developed by the United Nations High Commissioner for Refugees (UNHCR), which recommend that unaccompanied minors should not be refused access to a territory, one of the resolutions in the EU document states:

> Member States should take appropriate measures, in accordance with their national legislation, to prevent the unauthorized entry of unaccompanied minors and should cooperate to prevent illegal entry and illegal residence of unaccompanied minors on their territory.[4]

In the United States the *Guidelines for Children's Asylum Claims* were issued in December 1998. Building upon the guidelines developed by the UNHCR and by Canada, which focus only on procedural and evidentiary issues, this document also incorporates substantive legal standards for assessing children's claims. However, according to several reports the lack of state funding for legal services, the absence of guardian-like adults appointed to safeguard the interests of separated children, and the lack of priority given to processing their cases make it very difficult to effectively use these guidelines.

Canadian Context

In 1986 Canada received the Nansen Medal from UNHCR for its outstanding effort on behalf of refugees. It was also the first country in the world to develop special guidelines in 1996 for dealing with unaccompanied minors. Advocates of human, refugee, and children's rights have applauded Canada for this initiative and for the support it provides to unaccompanied children. However, the dilemma that Bhabha has pointed to became sharply focused in the Canadian response to the 134 separated Chinese youth who arrived on the shores of British Columbia in 1999 in unseaworthy boats.[5] The Department of Citizenship and Immigration Canada had decided to detain those who arrived after the first boat, but the provincial Ministry of Children and Families placed the minors in especially established group homes. Many of the youth subsequently disappeared, including those whose applications for refugee status had been turned down. Using the above case, Kumin and Chaikel point to the difficult question of what is in the "best interest" of such children. Should they be returned to parents who knowingly (?) had sent them on the dangerous journey?[6] Should they be allowed to "go free" right into the arms of traffickers? Would public services in Canada serve them better than public services or familial networks in countries of their origin?

The development and implementation of policies regarding separated children in Canada are also complicated by the distinct legislative and administrative responsibilities of different levels of government. Two related issues seem to account for most of these complications. First, immigration policies and procedures are generally developed at the federal level while child welfare is a provincial responsibility. The priorities, and resources available to address these priorities, are different at the federal and provincial levels. Second, variations among the provinces, such as the official age until which a person qualifies for child protection services, and the varied structures of the institutions that provide such services make it difficult to develop uniform policies and procedures.

Due to a variety of reasons, little is reliably known about the exact number of separated children arriving in Canada or in other countries. First, children who arrive in a new country unaccompanied by a legal guardian may not know the risks and benefits of declaring their status, or may not know how to do so even if they wanted to. Documented examples of such children include: a fourteen-year-old boy who moved to different city without leaving an address when he heard he could find there members of his own community; a sixteen-year-old who, upon the advice of a compatriot, began working to save for legal fees for a lawyer, and as a result failed to report to the local authorities; and a nine-year-old who was abandoned when his aunt, with whom he had arrived, could no longer care for him because of poverty and stress.[7] Second, adults who may have smuggled the children, or do not want the disclosure for other reasons, may prevent them from reporting their status. Third, authorities responsible for documenting their arrival may have not have sufficient information to assess their status, as in the example of a teenage girl whose age could not be determined because she had

travelled under false documents. Fourth, the different definitions of unaccompanied/separated children used by various institutions may create discrepancies in the data. For example, children who travel with an adult, such as a family friend, relative, sibling, or an agent who arranges their travel, but are subsequently abandoned by the adult, are not necessarily recorded as unaccompanied/separated children. And lastly, the case-processing procedures in receiving countries impact the accuracy of the data. For example, at the port of entry unaccompanied children are asked by Citizenship and Immigration Canada (CIC) to report to the Immigration and Refugee Board (IRB). For a number of reasons, such as those listed above, not all children do so. The figures recorded by the CIC are therefore different from those recorded by the IRB.

In the following sections the responses of various institutions to these children are discussed along with comparisons to other countries.

Identification and Entry

The process of identification of unaccompanied/separated children involves determining whether the person is below eighteen years of age and whether he/she is actually separated from parents or other competent caregivers. CIC defines an unaccompanied/separated child as one below eighteen years of age who arrives in or is already in Canada, is alone or is accompanied by a person who is not a member of "the family class" [according to the current *Immigration and Refugee Protection Act* (IRPA) – A42], or is not going to join her/his father, mother, or guardian already in Canada.[8] The Immigration Manual requires that "young children accompanied or alone, who arouse concern about the purpose of their trip to Canada or their welfare in Canada" be referred to Senior Immigration Officers. In her study, commissioned by the UNHCR, Ayotte claims that her interviewees, including CIC officials and representatives of non-governmental organizations (NGOs), expressed concern about whether there was sufficient and consistent attention paid to the assessment of a child's relationship with the adults she or he accompanied or was supposed to join in Canada. Immigration Officers' lack of training in interviewing children was cited as one reason for this gap.[9]

According to the 1997 UNHCR guidelines, specific procedures to identify unaccompanied children should be put into place at the points where refugee claims are made. Furthermore, if the applicant's exact age is uncertain, she or he should be given the benefit of the doubt and treated as a minor. Russel tells us that in the UK there is no guidance as to how to identify unaccompanied minors at the port of entry.[10] Because many unaccompanied minors arrive without identification documents, their age is determined only on the basis of their appearance and demeanour by untrained immigration officers. This determination may lead either to their detention or unsupported release. In some countries bone assessment tests are done to determine age but the accuracy of the test for people from different races has been consistently questioned. In the Netherlands, for example, X-ray examinations are used to determine whether the collarbone of the person tested has fully joined the breastbone or not. If it has, the person is considered to be twenty years old or older. Based on an extensive literature review and the opinion of the Board of Science and Pediatric Sub-Committee of the British Medical Association, Bhabha and Young claim that there is no "objective" test to accurately determine age.[11]

Even more complicated than the age factor is the determination of whether the child is really "unaccompanied/separated" or not. The UNHCR guidelines imply that the relationship of a child with an adult who is not a parent should be routinely scrutinized. However, varied definitions and interpretations of this term, across and within different countries, make it difficult for immigration officers to use a set of standard criteria and procedures to make this assessment. In the UK, a child travelling with an adult who is not a parent is not considered unaccompanied or separated. In his article "Unaccompanied Refugee Children in the United Kingdom," Russell concludes, "This [practice] is clearly unsatisfactory, as the identification of children relies upon the subjective assessment of an untrained border official."[12]

In Canada, refugee claimants coming from countries other than the country in which they were nationals or habitual residents were, until recently, not refused entry on the grounds that they were coming from a "safe third country." However, according to the new *Immigration and Refugee Protection Act*, which came into effect June 28, 2002, an agreement was reached between the governments of Canada and the United States which allows immigration authorities in each country to turn away refugee status claimants to the other country, unless they meets certain conditions, one of which is that of being an unaccompanied minor. In this document the term "unaccompanied minor" is defined as "unmarried refugee status claimant who has not reached his or her eighteenth birthday and does not have a parent or legal guardian in either Canada or the United States."[13] Thus the determination of the applicant's age and the presence of his or her legal guardians in either country become more significant than before.

According to the 1951 *Convention on the Status of Refugees*, refugee claimants cannot be refused admission into a country unless they have already been given refugee status in another country, already refused, or convicted of serious crimes. The 1997 UNHCR Guidelines affirm that unaccompanied mi-

nors seeking asylum should not be refused access to a territory.[14] In practice, the admission of such children varies from country to country and is often not regulated by specific national policies. In many European countries the option of returning an asylum seeker to a "safe third country" is used to send unaccompanied children to countries they are coming from or from which they have had a visa in the past. The *Immigration and Asylum Act* introduced in Britain in 1999 allows refugees to be sent to "safe third countries" without right of appeal. These include all EU countries, Switzerland, Norway, Canada, and the US. In Denmark, however, unaccompanied children below the age of eighteen are not refused permission to enter.

Making a Claim for Refugee Status

Any person seeking refugee status in Canada is required to demonstrate a well-grounded fear of persecution to the IRB, a quasi-judicial, independent tribunal whose members are appointed by the government. The applicants must submit a personal information form to the IRB within twenty-eight days of receiving the form and no distinction is made between children and adults with respect to the standards used for presenting their case. However, applications by separated children are prioritized for earlier hearings. A well-founded claim may enter the "expedited process," where it could be accepted without a hearing, or heard by a single member. In addition, other privileges, some of which are also accorded in other countries, are provided to applicants below the age of eighteen years.

Guardians / Designated Representatives

In the case of separated children several countries (including Canada, Finland, Norway, France, Switzerland, and the Netherlands) now require the appointment of legal counsel as well as a Designated Representative (DR) to safeguard the interests of the child. In some places, such as the UK, a person selected from an established panel of "advisors" is appointed to support and advocate for the child, in the legal process as well as in procuring health care, education, housing, etc. Individuals with expertise in education, social services, health, and legal work are usually selected as guardians. In the Netherlands guardians are recruited from among social workers with refugee background and with the same language and culture as unaccompanied children. They receive additional training and have regular contacts with immigration authorities and other organizations working with unaccompanied children.

The Canadian Guidelines do not specifically recommend the appointment of a guardian, but do specify the responsibilities of the DR:

> to retain counsel; to instruct counsel or to assist the child in instructing counsel; to make other decisions with respect to the proceedings or to help the child make those decisions; to inform the child about the various stages and proceedings of the claim; to assist in obtaining evidence in support of the claim; to provide evidence and be a witness in the claim; to act in the best interest of the child.[15]

Each one of the three major provinces that receive separated children, however, has a different support mechanism for separated children.

When an unaccompanied minor arrives in Quebec, CIC officials immediately contact Service d'Aide aux Refugies et Immigrants de Montreal Metropolitain (SARIMM), a parapublic organization that derives its authority from the Ministry of Social Services. SARIMM provides two caseworkers for each child, one to act as the DR (under a formal agreement with IRB Quebec) and the other to provide other supports such as procurement of housing, education, and health services. Many of the social workers of SARIMM are former refugees themselves. The DRs appointed by SARIMM have accumulated a lot of legal experience and continue to support a child through the subsequent steps of applying for landed immigrant status, of appealing a decision on humanitarian and compassionate grounds, of tracing her/his family through the International Red Cross, or of applying for reunification of the child's family in Canada.

In British Columbia the Ministry of Children and Family Development (MCFD) has set up a Migration Services Team which acts as the DR at IRB hearings and is also responsible for protection and support services for children up to the age of nineteen. Because of its dual role as guardian and DR, and its strong relationship with the IRB and CIC in British Columbia, the team is able to ensure that the children's protection and care takes precedence over enforcement procedures.

According to Sadoway, a staff lawyer at Parkdale Community Legal Services, Toronto, the provision of legal and other services for those arriving in Ontario, which receives the largest proportion of separated children, is the least satisfactory.[16] Unlike Quebec and British Columbia, Ontario has no agreement between the IRB and the Children's Aid Society or the Catholic Children's Aid Society (the two social service agencies mandated by the Children and Family Services Act of 1984 to provide child protection services up to the age of sixteen) to provide guardians or DRs for unaccompanied children. Instead, a panel of about eleven persons, consisting mainly of immigration lawyers, is called upon by the IRB to act as DR for unaccompanied children. Because the role of the DR is limited to providing support during the legal process, and the financial compensation for

acting as a child's counsel is much higher than for acting as the DR, many experienced lawyers are unwilling to serve on the panel, and those who agree to serve on it play only a perfunctory role in the litigation process. Sadoway points out that in some cases the DR is not appointed until a hearing is about to take place, which leaves very little time for him or her to safeguard the interests of the child.

Among the common challenges regarding the appointment of DR and/or guardians is the shortage of trained people, inadequate financial incentives for them, and lack of specifications for their roles. Some people have suggested that instead of depending upon professionally trained individuals, adult friends or relatives of the applicant should be engaged as the DR. However, Sadoway observes, "When a relative or friend is named as Designated Representative, concerns arise as to whether a DR is properly representing the best interests of the child."[17] The DR may lack sufficient information or credibility, or may have interests that conflict with the child's interests, as in cases where the adult is engaged in exploitation or trafficking of the child. Sadoway suggests,

> A better solution would be to appoint an unrelated DR from the Board's panel to act in the best interests of the child *in every case in which the child is accompanied by an informal guardian* [emphasis in the original] who is not a parent and who does not have legal guardianship of the child.[18]

She also recommends that the DR be a salaried employee who takes on this work as a part of his/her other work, as a social worker, children's lawyer, or manager of a group home.

Other scholars emphasize the importance of appointing guardians, either instead of, or in addition to, DR. Hunter suggests that the role of guardian "should be comprehensive and stretch to all aspects of a child's life, including ensuring suitable accommodation, education and healthcare, ensuring suitable legal representation and to ensure that the possibility of family retracing and reunification are carried out."[19]

Halvorsen put forward recommendations for the development of national guardianship systems. According to her, a guardianship system must ensure that:

> (1) all separated children have guardians appointed;
> (2) appropriately trained guardians are appointed within a month; and
> (3) guidelines are developed for all guardians.[20]

Procedural and Evidentiary Issues

Separated children, like other refugee claimants, are first interviewed by Immigration Officers at the port of entry, and some of them file their formal claims at the same place. However, where the law permits, refugee claimants make their formal claims at an inland office, rather than at the port of entry. The period between the date of entry and application allows the applicant to receive legal advice and other supports, which she or he may lack at the port of entry. This provision is especially important for minors, who need more support in collecting and presenting appropriate information.

Immigration officials are sometimes criticized for the methods and approaches used when dealing with unaccompanied children (*e.g.*, during interviews, refugee claim hearings or appeals hearings). The general situation of unaccompanied children in the refugee determination system is reflected in the decision of the California District Court on *Perez-Funez v. District Director, INS*. It states:

> … unaccompanied children of tender years encounter a stressful situation in which they are forced to make critical decisions. Their interrogators are foreign and authoritarian. The environment is new and the culture is complex… In short, it is obvious to the court that the situation faced by unaccompanied minor aliens is inherently coercive.[21]

The question of whether unaccompanied children have to be interviewed during the asylum process remains a subject of much discussion in the international legal community. Although the CRC calls for the inclusion of the children's voices in the decision-making process, there are several challenges associated in speaking with and listening to their authentic voices. First, many of the separated children come from cultures where they are rarely encouraged to express their ideas,[22] much less to adult strangers, speaking in a strange language, in a strange environment. Second, they may not have the necessary detailed information or understand the significance of the details that could have an impact on the decision regarding their application. Third, the trauma they are likely to have experienced in their home countries, and/or during their journey, could affect the accurate recall of events and hence their credibility.

At present, the methods used when interviewing adult refugee claimants continue to be used during interviews with unaccompanied children. In this procedure, immigrant officials place a great emphasis on credibility. Hence, "… no account is taken of the fact that the applicant is an unaccompanied child when assessing credibility."[23] It does not come as a surprise then that the success of an unaccompanied child's refugee claim largely depends on his/her ability to provide a coherent and evidence-rich account of the past events. Anderson has commented on the enormous pressure faced by unaccompanied minors to get all the details exactly right and keep them consistent:

> Regardless of the fact that they [unaccompanied children] or their families have suffered real persecution precipitating the desperate measure of flight… they have been told that only a particular version of the truth will enable them to remain, because this is what the interrogators want to hear.[24]

In many cases, the officials conducting the interviews do not have the appropriate training in use of developmentally and culturally appropriate modes of questioning children. When interviewing unaccompanied children, it is important to keep in mind that the experience of trauma can affect "the cognitive competence of the child and the ability of the child to pass on information."[25] At the same time, it is important not to dismiss the evidence presented by children simply on the assumption that their age renders them unbelievable. The Canadian Guidelines recommend that objective evidence may be given more weight in cases where sufficient and reliable information is not available and, as always, that children be given the benefit of the doubt.

The setting in which the interviews and hearings take place can also influence the comfort level and therefore the evidence presented by child interviewees. Bhabha and Young report that in the US, immigration judges conduct interviews in courtrooms, and in some instances child asylum seekers have been brought in handcuffed and shackled.[26] The Canadian Guidelines recommend that interviews be conducted in informal rooms and that a trusted adult be permitted to accompany the child and be permitted to speak with him or her during the hearing. The Guidelines permit flexibility in deciding who will question the child and also allow for use of videotaped interviews. In the UK, child asylum seekers can submit their testimony through a written application prepared by their attorneys and are thus spared the trauma of an interview altogether.

The Canadian Guidelines also set a higher standard for other countries by calling for the prioritization of separated children's claims in scheduling hearings. While it is not clear who monitors the duration of this period, concerns have been expressed both for ensuring that there is sufficient time for seeking and considering all the available evidence, and for the time that these children "lose" due to their uncertain legal status.

Russell also suggests that insufficient information about the situation in the countries from which the separated children come could lead to decision making *in vacuo*.[27] Bhabha and Young identify three kinds of situations that make children in these countries especially vulnerable:

> a. situations which adults are expected to deal with, but children cannot because of their "unique dependence" on adults. These would include loss of, or forced separation from, parents or guardians; deprivation of food, housing, schooling, or healthcare;
>
> b. situations in which children are specifically targeted as victims, *e.g.* conscription as child soldiers, infanticide, female genital mutilation, child marriage, bonded or hazardous labour, incest, or sexual servitude;
>
> c. situations which amount to persecution both for adults and for children, such as their political affiliations or religious beliefs, as in the case of the Intifada or the Soweto schoolchildren.[28]

Immigration authorities are advised to design and to offer training modules for immigration officers, lawyers, and judges dealing with children, with the support of universities, NGOs, or other training organizations. As Sadoway puts it, "Since separated children are less able to speak for themselves … they are an extremely vulnerable group of children in Canada. There is a great need for specialized training for all those who have contact with these children…"[29] Immigration authorities are also advised to develop country profiles that would offer comprehensive, up-to-date information on the situation in the main refugee-producing countries with a special emphasis on situations of children and human rights violations against children. Foreign embassies as well as international organizations in these countries may assist the governments in producing country assessment reports. In addition, reports produced by organizations protecting human rights of the children, for instance by Amnesty International, can be used as additional sources of information. Overall, unaccompanied minors have a lower success rate in asylum claims than accompanied children or adults. According to the British newspaper *The Independent*, unaccompanied children are seven times less likely to be given full refugee status in Britain than people in their twenties.[30] The same source explains that this is because "the stringent proofs of political persecution that the immigrant authorities require can rarely be supplied by children."[31]

Bhabha points to the disturbing practice of the receiving states treating unaccompanied children as adults:

> It is often claimed that these children are 'really' much older and can be treated as adults, that they are not children like 'our' children, but rather manipulative impostors… Heightened skepticism and hostility rather than compassion are thus, paradoxically, typical official responses.[32]

Bhabha attributes the low numbers of children who are granted refugee status to two factors: "Procedurally, the lack of access to adequate legal representation and substantively,

the refusal to see children as political agents or targeted subjects of human rights violations."[33]

Options for Unsuccessful Applicants

Most countries allow for some mechanisms to appeal for reversal of initial decisions made by the immigration authorities. However, the reported statistics show that only a small number of children are able to successfully appeal the decisions on their refugee application.[34] Nevertheless, the appeals system remains an important venue for unaccompanied children and therefore:

> it is vital that an effective appeal system must be staffed by people who are expert in international human rights law and refugee law, who should have knowledge of the human rights situation in the asylum seeker's country of origin and who should be aware of cross-cultural communication problems.[35]

Several reports claim that, although children's claims are unsuccessful more often than those of adults, children somewhat paradoxically have a much greater chance of avoiding deportation than adults whose claims have been rejected. This raises the question of how much effort enforcement agencies should invest in making sure such children do not stay on in the country. Illegal immigrant children can become the most vulnerable group of all because they cannot access services that are considered "essential" in most developed countries. The state therefore needs to ensure that those who stay on by default have some mechanism in place to legalize their status.

According to the UNHCR 1997 Guidelines on the return of unaccompanied children to the country of origin,

> [t]he best interests of an unaccompanied child require that the child not be returned unless, prior to the return, a suitable caregiver such as a parent, other relative, other adult care-taker, a government agency, a child-care agency in the country of origin has agreed, and is able to take responsibility for the child and provide him/her with appropriate protection and care.[36]

The circumstances and consequences of deportation of unaccompanied minors have been a focus of heated debates in official and popular discourses during the last decade. In many Western countries there are no clear policies or procedures outlining the circumstances and conditions of deportation of unaccompanied children. With reference to the UK, Russell remarks that its immigration and refugee policies on children are "silent on the question of whether an unaccompanied refugee child can be removed."[37] In the Netherlands, for example, if the unaccompanied minor turns eighteen within three years of his/her application for refugee status she or he forfeits the right to be considered a minor and is therefore more likely to be deported.

In Canada a number of options are offered to those who are refused asylum by the IRB in the first instance, and their removal order becomes enforceable. These options are:

A. As directed by the removal order, leave Canada of their own accord within thirty days or be removed from Canada by CIC as soon as practicable.

B. Submit an application to the Federal Court to review the refugee protection decision made by the IRB within fifteen days of receiving the decision. If a timely application is submitted, the removal will be stayed until a determination by the court is made. Prior to removal the majority of individuals are entitled to and are offered an opportunity to submit and application for a Pre-Removal Risk Assessment (PRRA) by CIC. This process allows for the review of any risk factors that the person may be subjected to on return to the country of origin/habitual residence. Provided the application is submitted within the appropriate timelines, the removal is deferred until a final decision is rendered.

C. Appeal for a Humanitarian and Compassionate Review.

In the case of separated children it is often difficult to ensure that the deported children will be protected while travelling back to their home countries and will have families able and willing to take care of them when they have arrived. Immigration officials may have insufficient information and/or resources to ensure their safety. In Canada the above concern has been addressed in the Guidelines (updated on June 22, 2002) by requiring that:

> Unaccompanied minors under the age of 13 should be removed with an escort. Unaccompanied minors between the ages of 13 and 18 can be returned on direct flights to their country of origin, without escort, where the airline will accept responsibility for the child during the trip and where no other safety and security risk exists. An escort should accompany children between the ages of 13 and 18 on non-direct flights or on direct flights where the airlines cannot accept responsibility for the child's care en route or where other safety and security risk exists. In all cases of removal of minors, reception with the family members or representatives of government departments or agencies responsible for child welfare should be arranged prior to departure.[38]

Another concern related to the removal of unaccompanied minors has to do with the fact that their removal often occurs after all possibilities of obtaining permanent residence status are exhausted. This process could take up to several years during which the associated uncertainty could have a very destabilizing effect on their well-being.

Some studies have found that in trying to escape deportation, the children often go underground, either with the help of their compatriots or on their own, while their cases are being processed.[39] The case of the Chinese youth who arrived in British Columbia by boat in 1999 is a classic example. As reported by Kumin and Chaikel, although the care provided by the British Columbia ministry was exemplary, many of the youth disappeared, especially after their applications for refugee status had been turned down.[40] When immigration authorities in any country believe that separated children who are refugee claimants may (a) try to go underground while their cases are being processed or (b) be at risk of being exploited by traffickers or other adults, they may put the children in custody.

Detention

The detention of unaccompanied minors has been a subject of much heated debate. The 1997 UNHCR Guidelines prohibit the detention of separated minors and Article 37 of the CRC requires that detention be used only as a last resort and that children be held separately from adults.[41] In countries such as Denmark, Finland, Italy, Norway, and Spain they are rarely, if at all, detained. However, detention is more common in the UK, Austria, Belgium, France, and Portugal. In some countries (*e.g.* France, Germany, Portugal) the children are detained in "waiting zones" along with adults, while in others they are put into jails or "correctional facilities" for young criminals. In Sweden a child cannot be detained for more than seventy-two hours, while in the UK and in Germany children can be detained for as long as six months.[42]

Supporters of detention claim that keeping these children in "protective custody" reduces their vulnerability to exploitation by unscrupulous adults, facilitates the determination of their claims, meets their basic needs for food and shelter, and allows for investigations of conditions in their country of origin. Its detractors claim that detention violates the rights of the children, makes them more vulnerable to exploitation by the criminals with whom they have to live, and has a damaging effect on their psychological and social health. Most reports recommend that separated children should be accommodated in appropriate facilities such as group homes, foster homes, or similar settings and be provided with adequate resources for education, health, recreation, and legal aid.

In most countries, it appears that detention is most commonly used in two cases: when there is concern that the age of a child is more than she or he claims it to be, and when there is fear that she or he may become a victim of traffickers if released. Strongly opposing the practice of detaining unaccompanied children, Russell argues that "Detention of unaccompanied refugee children exacerbates any trauma they may have suffered in their home countries and is itself a traumatic experience for children."[43] Other experts concur and recommend alternatives such as the "safe houses" used in Britain.

In recent years, the strengthening of anti-refugee sentiment and negative portrayal of refugees in official and popular discourses resulted in increased numbers of unaccompanied children being detained by Western states. Halvorsen reports that separated children are often detained in France, Germany, and Switzerland.[44] The US and, to a lesser extent, Canada also have been criticized for the detention of unaccompanied children in their territory. In some cases, the US officials put children in detention to trap their parents, who were presumed to be illegally in the US.[45]

Writing about the situation in the US, Morton and Young state that the eight shelters run by the Immigration and Naturalization Services offer an environment of "soft detention" to separated minors.[46] The shelter staff closely monitor the movements of the children, but they also provide the children with street clothing, educational classes, and occasional off-site trips. However, many separated children are also put in juvenile jails because there are not enough places available in shelters or appropriate foster care homes. These children have to endure prison uniforms, handcuffs and shackles, and sudden transfers from one facility to another, which sever their links with their counsels and other supportive adults.

At the time of ratifying the CRC Canada reserved the right not to detain children separately from adults where it was not feasible to do so. In general, Canadian immigration authorities have strongly discouraged the detention of minors. For example, the IRPA – A60 states, "For the purpose of this Division, it is affirmed as a principle that a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child."[47] In addition, IRPA Regulation 249 outlines the special considerations for minor children, *i.e.* availability of alternative arrangements, anticipated length of detention, types of detention facility, segregation facilities, and availability of services such as education, counselling, recreation, *etc.*

Removal

Canada's *Guidelines on the Use of Escorts for Removal and the Reporting Requirements of Escorting Officers* (introduced in January 2000) suggests that children below the age of thirteen years should be escorted to their countries of origin, and those between thirteen and eighteen years may be unescorted if they are going by direct flight and the airline can ensure their safe passage. In all cases their reception by

family members or legitimate welfare agencies has to be ensured prior to their departure.

Based on interviews with Canadian immigration officials, Ayotte reports that visa officers or international organizations are requested to contact the family or the local authority in the destination country prior to the removal of separated children.[48] However, there are no written instructions for CIC officials regarding such contacts and no accurate data about the removed children.

Deportation of separated children remains a controversial issue. Little is known about children who have been returned to their countries of origin. There is, however, a general consensus that every effort must be taken to ensure that appropriate care is available in the home country and that the best interests of the child, rather than political agendas, guide the actions of immigration officials.

Care and Protection

Article 2(1) of the CRC reminds us that that the state must ensure that *all* children are entitled to the rights identified in this document; Article 20 calls for provision of alternative care for children deprived of their family environments; and Article 39 recommends the rehabilitation of child victims of war and violence.[49]

Testimonies of separated children, however, speak of frequent incidents of racism, social exclusion, and marginalization. In many Western countries, individual and systemic intolerance makes it very difficult for these children to integrate in the receiving societies. Stanley interviewed 125 separated children in the UK, and found that nearly one-third reported incidents of harassment, many of which took place in educational institutions.[50]

In Ontario, the 1984 *Children and Family Services Act* provides the legal framework for statutory child protection services by the fifty-two units of the Children's Aid Society (CAS), up to the age of sixteen years. Sixteen- and seventeen-year-olds therefore do not routinely receive assistance by the CAS. Some of them are cared for by their ethnic communities, NGOs, or unrelated adults, or they survive on their own or with other young people in similar situations. They can, however, voluntarily seek care at a CAS unit but there is no documentation to indicate if they do so, or if the CAS responds to their needs. Between the ages of eighteen and twenty-one years, they can also seek Extended Care Maintenance, which provides social work support and financial assistance.

Sadoway reports that many of the separated children in Ontario are referred to the Peel CAS, possibly because the Pearson International Airport is located in the Peel region of Greater Toronto.[51] In order to care for the child, the CAS has to apply for a temporary or society wardship that is valid for twelve months. During this time, CAS tries to investigate the possibility of family reunification. If this effort fails, CAS can apply for crown or permanent wardship of the child that allows it to take care of the child until the age of eighteen years. Sadoway states that the agency must obtain a wardship order from the Ontario court to have parental authority for separated children, but according to a recent judgment this cannot be done until the child becomes a permanent resident in Canada. The implication arising from this is that if a sixteen-year-old refugee claimant does not receive permanent resident status within twelve months, she or he will no longer be entitled to statutory care within Ontario.

Sometimes child welfare agencies are reluctant to take responsibility for these children because their uncertain legal status can be a barrier in accessing the full range of public services made available to other children. Some of the challenges in caring for unaccompanied minors are described below.

Housing

Housing provided to separated children includes special reception centres, group homes, children's homes, bed and breakfasts, foster families, etc. In some cases separated children are also placed in detention facilities for juvenile offenders, immigration detention centres or prisons.

According to the Refugee Council and the British Agencies for Adoption and Fostering, unaccompanied children in the UK are housed mainly in bed and breakfast hostels and hotel annexes.[52] Stanley reports that children placed in hostels, bed and breakfasts, or private rented apartments have a considerably lower standard of care than those placed in foster homes or residential home accommodation.[53] The shortage of foster care homes, especially ones that are culturally appropriate, is common in many parts of the country. The monitoring of housing facilities for sixteen-and seventeen-year-olds by the Social Services Department is very inadequate. Some children have also been placed in unsupervised facilities with adults, which raises questions about their protection. In southeast England the Social Services Department has established a model called a "safe house" which has been cited as a very desirable option by some researchers. In this house adults are always present to support and monitor the children, the children are chaperoned when they go out, and schooling is provided in-house.[54]

Some scholars have argued that service providers might do better placing unaccompanied children in ethnically matched foster families because language and cultural barriers create significant problems, especially at the initial stage, for the establishment of good relations with foster families.

Other authors, however, argue that placing such children with others in similar conditions under supervised care is a safer and less costly option. Sadoway claims that children who are sent to live with distant relatives or family friends are often the most vulnerable, especially with regard to their legal guidance.[55] Macaskill and Petrie suggest that it is crucial to determine housing for the children immediately upon their arrival; to keep them there until permanent housing is found; and to place them "near others in similar situation to themselves and from whom they can receive mutual support."[56] Steinbock points to the tension between restoration of a child to his original ethnic, linguistic, and cultural background and the care provided by foster families from different backgrounds. He recommended that instead of making decisions about groups of children, each child and the options available for him/her be individually assessed; that these decisions be collectively made; that the "best interests" of the child be used as a normative principle at all times; and that mechanisms for monitoring the child's living conditions be put in place irrespective of whether she or he is placed in a foster home, a group home, or any other facility.[57]

Information about housing for separated children in Canada was not available, except that some Chinese and Pakistani youth were initially placed in youth detention centres in Ontario. Representatives of the Catholic Children's Aid Society and the Peel Children's Aid Society confirmed that they dealt with separated children, but they did not have, or did not provide, any further information about their housing.

Schooling

The first problem encountered by separated children, after housing, is registration in a school. Anecdotal information suggests that some school districts in Canada require documents for establishing the student's identity (*e.g.* a passport, birth certificate, or immigration forms), immunization status, and residence (*e.g.* bank statements, telephone bills, rent agreements). It seems reasonable to assume that separated children may not have any of these, may not know how to get them, or may not want to contact the appropriate institutions for fear of being reported to immigration authorities.

Macaskill and Petrie report that schools in Scotland have little experience and knowledge in educating separated children.[58] Their presence is simply ignored in areas such as staff development or curriculum planning. Even at schools where multicultural and anti-racist policies are in place, unaccompanied children have reported racist attitudes and prejudices towards them on the part of teachers and students.

Yau identified the following challenges encountered by refugee children in Toronto schools, likely to be exacerbated in the case of separated minors: little or no prior formal schooling; interrupted schooling; tendency to stay away from school for fear of authority/deportation; unfamiliarity with official languages in Canada; lack of parental supervision; financial difficulties; anxiety and stress related to past trauma and future uncertainty; social isolation; and joining of school in the middle of the academic year.[59] Other studies related to newcomer youth have found that the many academic and social challenges encountered by immigrant and refugee youth in Canadian schools lead to high levels of failure and dropping out.[60] These studies suggest that strong support by parents and ethnic communities helps to mediate the negative experiences of schools for the newcomer children. It seems reasonable to assume that for separated youth, whose pre-migration, migration, and post-migration experiences are all likely to be more traumatic than those of other newcomers, and who do not have the kinds of familial and community supports that other newcomers are likely to have, the situation is far worse.

Health

Separated children seeking asylum in Canada are not entitled to the provincial health care system, available to all other landed immigrants and citizens, but rely on a federal plan.[61]

The research on the acculturation of immigrant children emphasizes the role of parents as the crucial agents of socialization of their children into the host society. Unaccompanied children have to go through this process on their own, relying only on the support of previously unknown caregivers and service providers. Cole estimated that up to 50 per cent of children who have experienced trauma in war-torn countries suffer from post-traumatic stress disorders resulting in maladaptive affective, physical, cognitive, and behavioural symptoms.[62] Stanley found that mental health services were not available or accessible to separated children in England, and whatever emotional support was provided, was done sporadically through individual efforts of concerned adults (*e.g.* teachers who are taking on a pastoral role, social workers) rather than through institutional mechanisms.[63]

Unfortunately, the post-migratory experiences of children in the receiving societies are often no less traumatic than the experience of displacement itself. It is not uncommon for unaccompanied children to wait for years while their claims for asylum are processed. Anxiety and uncertainty associated with the lack of secure status and detention can have re-traumatizing effects on the child's psyche.[64]

Beiser *et al.* provide a useful model for understanding the "vulnerability-exposure" of separated children, which includes: (1) pre-migration stressors, (2) circumstances surrounding the migration, (3) personal characteristics (age, gender, ethnicity), (4) post-migration stressors (poverty, ra-

cism), (5) personal resources (language skills, identity), (6) social resources (social supports, education programs) and (7) the nature of the host society.[65] Although separated children may be highly vulnerable, they may not realize their needs for mental health services, may not be aware of such services, or may be reluctant to ask for them, for fear of labelling or of being reported to immigration authorities. Not surprisingly the emotional and psychological well-being of these children is a prominent concern in many studies.

Follow-up of Successful Applicants

Children who are granted asylum then have to proceed to next step of legitimating their continued presence in the country. In some European countries, unaccompanied children who are granted asylum are given a temporary immigration status (*e.g.,* Exceptional Leave to Remain in the UK; Temporary Residence Permit in the Netherlands; Temporary Permission to Stay in Denmark). Nykanen notes, in "Protecting Children? The European Convention on Human Rights and Child Asylum Seekers," that these children end up in a "limbo-status" with insufficient entitlements attached to it.[66]

In Canada, everyone who is granted asylum is eligible to apply for permanent resident status within 180 days. In fact, the printed application form for this is enclosed with the letter from IRB granting them asylum. Some community and para-governmental organizations (*e.g.* SARRIM) continue to provide support to minor applicants in preparing and submitting the appropriate forms. However, in cases where minors do not have the support of well-informed adults who can help them through this process, there is a strong likelihood of their not moving on to this next step in formalizing their status as permanent residents of Canada, which would also allow them to apply for citizenship once they have met the residency requirements.

Conclusion

As the above review shows, there is much we do not know about separated children, in Canada and elsewhere. However, further inquiry in this area can be grounded in what we do know. First, we do know that there are competing imperatives for policy makers regarding separated children and we need to acknowledge and to address them. In international agreements, for example, the need for the protection and care of separated children is strongly articulated, but the concerns regarding gatekeeping of international boundaries are largely ignored. This may be so because it is easier to defend one rather than the other imperative on moral grounds. However, policy research that takes multiple perspectives into account, and then makes a case for why some principles should override others, is likely to be more effective in guiding institutional practices.

Second, we also know that various competing priorities, structures, human and other resources, and legal jurisdictions mediate the implementation of policies at different levels. However, the urgent needs of vulnerable children cannot wait until all of these are sorted out. Research focusing on a few key policy issues, such as the identification, care, and protection of separated children, and key institutions that deal with them will help to locate specific ambiguities and conundrums. Questions about definitions of separated children, substantive and procedural guidelines for evaluating their claims, mechanisms for information gathering, training of personnel and seeking expert advice need to be addressed. We need to find out how particular policies (or lack thereof) shape decision-making processes in various institutions. At the same time we need careful analyses of institutional practices: what works and why, under which circumstances, what is further needed, and who can meet that need? Lessons learned from institutional studies can then be used to develop new policies.

Third, it is important to remind ourselves that research plays an important part in advocacy. Separated children are evidently a very vulnerable group of children whose rights can be violated by exploitative adults, inadequate public services, and inappropriate state regulations. However, without finely grained studies of their individual experiences illuminated with systematically compiled data from multiple sources, it is difficult to advocate on their behalf. Initiatives such Bhabha's proposed multinational study,[67] the Round Table on Separated Children Seeking Asylum in Canada,[68] and Montgomery's work with separated children in Quebec[69] are likely to help Canada develop a more principled position towards separated children. Otherwise, individual adults will continue to exercise inordinate power over these children while civil society remains silent because it has not yet figured out whether the children need to be protected from adults or punished because of them.

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The Psychological Impact of Extended Temporary Protection

Fethi Mansouri and Stephanie Cauchi

Abstract

Against the background of the recent international trend of a greater reliance on deterrence measures in managing the flow of asylum seekers, this paper discusses the implementation of the temporary protection visa (TPV) in Australia. It focuses on the psychological impact of the TPV policy on individual asylum seekers and how this unlimited temporary status affects the overall process of settlement. This study is based on personal narratives constructed by individual asylum seekers during one-on-one interviews aimed at sketching the mental and psychological manifestations of stressful events in their lives as TPV holders. What is particularly revealing among many of these TPV holders is the fact that their pre-migration traumatic experiences are compounded by a post-migration condition of being in indefinite "temporary" protection. This is further exacerbated by a prevalence of racialized discourses and exclusionary policies advocated by the host government. Past trauma and persecution, combined with present family separation and social exclusion, and further compounded by uncertainty about the future, had resulted in almost chronic states of anxiety and depression among a significant number of TPV holders.

Résumé

Prenant comme toile de fond la récente tendance internationale de se fier aux mesures de dissuasion pour gérer le flux de demandeurs d'asile, l'article discute de la mise en œuvre du visa de protection temporaire (Temporary Protection Visa – TPV) en Australie. Le propos s'attarde aux répercussions psychologiques des politiques liées au TPV sur les demandeurs d'asile individuels et à la manière dont ce statut temporaire illimité touche l'ensemble du processus d'installation. L'étude se base sur des anecdotes de demandeurs d'asile relatées au cours d'interviews individuelles. Celles-ci visent à jeter un éclairage sur les manifestations mentales et psychologiques à la suite d'événements stressants qu'ils vivent en tant que détenteurs de TPV. Chez de nombreux détenteurs de TPV, il est particulièrement révélateur que les expériences traumatiques pré-migratoires sont aggravées par une condition post-migratoire de protection « temporaire » indéfinie. Cette situation se trouve exacerbée par la prédominance des discours à teneur raciste et par des politiques d'exclusion mises de l'avant par le gouvernement hôte. Les traumatismes et la persécution antérieurs, combinés à la séparation familiale et à l'exclusion sociale actuelles, sans oublier l'incertitude face à l'avenir, ont entraîné des états presque chroniques d'anxiété et de dépression parmi un nombre significatif de détenteurs de TPV.

Introduction[1]

As Australia enters the third millennium, its multi-ethnic make up has emerged as a crucial dimension in the search for a national identity. Indeed, the 2001 Australian Bureau of Statistics (ABS) census demonstrates clearly that Australia is a genuinely multicultural society with more than 20 per cent of its people being from a non-English-speaking background (NESB). The annual intake of migrants (now in excess of one hundred thousand new arrivals each year) means that a significant number of new members of Australian society embark each year on the settlement and acculturation journey, with its many emotional and practical challenges, which affect both the individual and the host society. Unless they are carefully managed and serviced, the problems associated with settlement, cultural adjustment, loss of community standing, and separation from family and friends can lead to physical and mental health problems. Australia is one of the few countries in the world with an

organized resettlement program for migrants, which is also extended to offshore humanitarian entrants. However, Australia has also lead the world in the implementation of policies aimed at deterring asylum seekers. These policies include mandatory detention for all onshore arrivals without documents, a three-year temporary protection visa (TPV) for those found to be refugees, and the interception of asylum seekers arriving by sea and removing them to a third country for processing.[2]

The focus of this paper is on the TPV which was introduced in October 1999 for asylum seekers who arrive without valid documentation and who are subsequently found to be genuine refugees. TPV holders do not have the same entitlements as permanent visa holders.[3] They have limited access to Social Security, primary education, and English language classes, and are ineligible for most settlement support services. In practice, they are excluded from tertiary education, as they are not entitled to Higher Education Contribution Scheme (HECS) places and must pay full fees, and although they have the right to work their ability to do so is limited by the temporary nature of their visa, poor English language skills, and limited access to employment services. They have no automatic right of return if they leave Australia, and no right to family reunion – perhaps the most damaging restriction of the visa. Initially, it was thought that a permanent visa would be granted once the TPV expired after three years. In September 2001, however, amendments to Australia's migration legislation included the introduction of the "seven day rule." This rule prevents an asylum seeker from ever receiving a permanent visa if they have spent more than seven days in a country where they could have applied for protection. Most TPV holders who arrived after September 2001 have been affected by this.[4]

Over the five-year period from 2000 to 2005, most asylum seekers affected by the TPV regime were from Afghanistan and Iraq. At the end of this period the great majority (7,803) of processed applicants for further protection had ultimately received a Permanent Protection Visa (PPV), with 105 receiving a further TPV.[5] Of the latter cohort, 92 TPVs were granted as a result of character reasons and 13 as a result of the application of the "seven day rule." It should be noted that most of the 7,803 would have arrived before September 2001 and were therefore not subject to the "seven day rule."[6] As at 4 November 2005, 766 applications for further protection were yet to receive a primary decision and some 1,560 persons remained on a TPV.[7] Between July 2005 and February 2006 a number of TPV holders appealed the decisions made upon their applications for further protection at the Refugee Review Tribunal (RRT). This appeals tribunal recognized the need for further protection in 95 per cent of Afghan cases and 97 per cent of Iraqi cases.[8] What these statistics show is that the great majority of asylum seekers subsequently affected by the TPV policy were found to be Convention refugees whose cases for permanent protection were ultimately validated by Australia's own determination mechanisms. This situation raises serious questions about the efficacy of the TPV regime. The conditions attached to TPVs deliberately create obstacles to resettlement. Yet most of those affected by the TPV will subsequently settle permanently, attracting Australia's full resettlement services. Thus the TPV policy unnecessarily prolongs and exacerbates the difficulties and costs associated with the resettlement process.

On 13 July 2004, the government announced that all TPV holders would be given the opportunity to apply for permanent visas. TPV holders, however, would not automatically qualify for permanent visas, but would simply be given the right (if eligible) to apply onshore for other non-humanitarian visas – a right denied to them since the migration legislation changes of 2001. While the thirty-three visa categories available appear to be extensive, many, such as the "Media and Film Staff," "Visiting Academic," and "Foreign Government Agency" categories, will benefit few, if any, TPV holders, while other categories, such as "Close Ties," remain unavailable.[9] Some of the visas available are permanent; however others (such as student visas) are also temporary, and unlike humanitarian visas, do not engage the Australian government in any protection obligations once they have expired. Possibly of most benefit to TPV holders is the "Regional Sponsored Migration Scheme" (RSMS) visa which is available to people who have worked in regional Australia for at least twelve months. It has been amended so that employment does not need to be with one single employer and the level of functional English language required has been amended to make the category more accessible to TPV holders working in rural areas.

A "Return Pending" visa has been introduced for applicants whom the Australian government deems to be "no longer in need of protection." As at 4 November 2005, 75 such visas were in effect.[10] The visa allows eighteen months for rejected applicants to make arrangements to return home and carries the same rights and restrictions as the TPV. This is undoubtedly a more humane alternative for rejected asylum seekers than (often forcible) removal or detention, which were the extant responses, and will allow them time to examine other alternatives. A "Reintegration Assistance Package" to cover travel costs and resettlement has also been offered to encourage voluntary return. However, as the majority of TPV holders are Iraqi and Afghani, the security situation in their home countries raises concerns grave enough to question the appropriateness of such an offer.

For TPV holders wishing to remain in Australia and ineligible for alternative visas, the process of applying for a further protection visa prolongs uncertainty about the future and hinders individuals' and families' attempts to settle and build new lives. While the government's specious policy changes have neutralized critics of the TPV policy, in reality it benefits only a few existing TPV holders and, in effect, has further demoralized many of its supposed beneficiaries. As a signatory to the 1951 United Nations Refugee Convention, Australia is not obliged to provide permanent protection to refugees. However, there are compelling humanitarian and policy reasons for doing so, particularly since the majority of onshore asylum seekers in Australia since 1999 were classified as genuine refugees.[11]

The Current Study and the Empirical Evidence

The research findings reported in this paper are based on a larger project that was initially designed to look at the social and cultural rights of asylum seekers, and was not specifically seeking to document the mental health impacts of the TPV regime. When interviewing TPV holders, however, it became apparent that the psychological manifestations of stress and trauma were impacting upon every aspect of migrants' lives, from their ability to find and keep employment and their interest in learning English or studying, to their motivation to participate in community life and commit to a future.

Ten interviews were chosen at random from the larger pool of data that included thirty-five individual interviews and more than two hundred semi-structured questionnaires. Conducted in 2002, the interviews included in this study lasted on average forty-five minutes each and were conducted in Arabic and Farsi. We acknowledge some inherent limitations of translation and inform the reader that interviewees are identified by pseudonyms.

Content analysis was undertaken to identify major themes across all the interviews as well as in individual cases. The core themes that emerged from this analysis relate to the various phases of the asylum journey: persecution and oppression in the country of origin; uncertainty and hardship associated with the flight to a transit country of asylum; the "boat trip" *en route* to Australia; the detention experience; and life under the temporary protection regime. Within these broad themes the discourse analysis focused on linguistic indicators of psychological and mental status. These indicators related to explicit lexical markers of mental and psychological status, most notably: "anxiety," "uncertainty," "suffering," "fear," "pain," "torture," and "punishment." Although some of these linguistic references were more dominant than others, interviewees recorded between five and fifteen references each per interview. Table 1 provides a frequency count of linguistic references to stressful events.

- "Anxiety" appears 32 times and in all 10 interviews (100%).
- "Fear" appears 17 times and in 9 interviews (90%).
- "Pain" appears 7 times and in 4 interviews (40%).
- "Uncertainty" appears 14 times in all 10 interviews (100%).
- "Torture" appears 4 times in 2 interviews (20%).
- "Suffering" appears 27 times in all 10 interviews (100%).
- "Punishment" appears twice in 2 interviews (20%).

Table 1: Quantitative summary of linguistic references to stressful events (in general)

	Helen	Susan	Mary	Sarah	Bill	David	Larry	Colin	Peter	Jim
Anxiety	2	3	2	3	4	5	2	3	3	5
Fear	0	4	2	4	1	1	1	1	1	2
Pain	0	1	1	2	0	0	0	0	3	0
Uncertainty	1	1	1	1	2	2	1	1	1	3
Torture	0	0	0	2	0	0	0	0	2	0
Suffering	2	2	1	3	2	4	1	4	4	4
Punishment	0	0	0	0	0	1	0	0	1	0
Total per Interviewee	**5**	**11**	**7**	**15**	**9**	**13**	**5**	**9**	**15**	**14**

The most recurring psychological theme among interviewees was anxiety, which is mentioned by all subjects more than once during discussion. Similarly, uncertainty and suffering are mentioned by all interviewees. Suffering not only appeared most prominently among the males of the group, but it was easily the most prominent emotional response among them, with four of the six men interviewed mentioning suffering four times. Fear was also a dominant theme, mentioned by nine out of ten interviewees. This was more apparent in women – two of the four women interviewed experienced fear far more than other emotional responses – while each of the men experienced a degree of fear. Pain, torture, and punishment, reflective of the physical experiences of asylum seekers, were the least often mentioned by interviewees.

As this random sample shows, there is clearly a high level of negative feelings associated with the experiences of TPV holders. Whether talking of their past, their current situation, or their future aspirations, their psychological distress is unmistakable.

This article discusses the psychological impacts of the various stages of the asylum journey identified by interviewees. The interview excerpts included illustrate how individual experiences directly relate to the uniquely liminal state imposed by the temporary visa regime, which keeps refugees in a space of ambiguity, marginalization, and transition. The excerpts are not intended to provide a comprehensive examination of the effects of the TPV on the mental health of asylum seekers. Rather, they illustrate the psychological repercussions of a temporal limbo, which has been created by global migration trends and national border politics. It is important to let these voices be heard as testimony to the impact of these trends. As McGuire and Georges point out, "Having been constituted by border politics as politically, legally, socially, racially and culturally unauthorised others, the subaltern voices of … immigrants surface as 'moral others' who recount key dimensions of their migration experiences within multiple layers of context."[12]

Mental Health of Refugees

Studies have found consistently high rates of mental illness among asylum seekers, including, in particular, depression, anxiety, and post-traumatic stress disorder syndromes.[13] It has been noted that factors contributing to mental illness include not only the threat to life (and the reliving of such threats through current triggers), but the threat to what makes life meaningful.[14] This meaning can be generated by a range of socially and individually experienced elements such as dignity; self-respect; honour; being able to provide physically and emotionally for children, family, and friends; natural justice; achieving potential; and having a sense of agency.

Migration and settlement impose unique stressors on migrants. Traumatic experiences before or during immigration, grief and loss, separation from family and friends, and isolation from others of a similar cultural background combine with cultural and linguistic difficulties, a low or decreased socio-economic status since immigration, and prejudice and discrimination, leading towards a greater tendency towards mental ill health.[15] These mental health risks are more pronounced amongst the refugees and asylum seekers (onshore applicants) who seek protection and resettlement in Australia than in other migrants.[16]

It is generally accepted that the poor mental health status of asylum seekers is due to a combination of personal histories, including pre-migration exposure to trauma, and their current settlement and acculturation environment. The significance of the migration process itself has not been the subject of much research, with the notable exception being the impact of immigration detention on mental health. Evidence gleaned so far points to government policies of deterrence, such as prolonged detention and temporary protection visas, as prolonging and exacerbating mental illness.[17] It is well established that the asylum-seeking process itself, and the material conditions of settlement and acculturation, can exacerbate the psychological trauma from which the individual is seeking refuge. The crucial issue remains, however, as to whether it is in itself a significant *cause*.

While all refugees have escaped from a traumatic past and share with other migrants the problems associated with settlement and acculturation, exclusionary government policies disproportionately disadvantage onshore asylum seekers. Because they are denied the stability to reconstruct their lives, they are unable to leave their trauma and uncertainty in the past, and their vulnerability to further stress is compounded.[18] The analysis below suggests that in addition to existing and exacerbated conditions, mental ill-health amongst asylum seekers has been generated as a specific consequence of the temporary protection regime in Australia.

Fleeing from Trauma

The causal relationship between previous exposure to trauma and ongoing mental illness has been well documented.[19] Martin notes that "[t]rauma on a mass scale leads to the shattering of identity on a personal level: the shattering of previously held assumptions; and the loss of trust, meaning, identity and a sense of future."[20] Refugees and asylum seekers, by their very definition, are escaping persecution in their home countries. Most, if not all, will have experienced

significant trauma prior to their flight, which may include torture, imprisonment, forced isolation, murder of family and friends, separation from family, rape, kidnapping, and war or civil conflict.[21] Many will also have experienced severe disruptions to their daily existence, such as deprivation of food or water, lack of shelter, and being in a combat situation.[22]

A study of forty asylum seekers in New South Wales found most to be suffering from physical or psychological ill health serious enough to warrant medical attention.[23] Three-quarters of these people reported exposure to pre-migration trauma, and one in four had been tortured. More than one-third reported having been imprisoned and around one in three had family or friends murdered.[24] Silove and Steel's analysis of five studies[25] found nearly 80 per cent of asylum seekers reported exposure to serious trauma in their home countries. Many studies[26] have concluded that those who arrive without valid documentation often have a more significant trauma history than authorized arrivals.

Seeking Asylum: The Journey

TPV holders are in a unique situation among refugees in Australia. Temporary visas are given to "unauthorized" arrivals – those people who arrive in Australia without valid visas – usually by way of a third country.[27] The journey itself is often dangerous. Some asylum seekers have lived in refugee camps in a second country with little personal or material security, or given themselves into the hands of "people smugglers," often enduring a dangerous and unpredictable journey to Australia. Many have left home without travel documents, putting themselves in a precarious position along the way. This means that the process of arriving in Australia will be a source of further trauma for most TPV holders.

Susan's journey, for example, began when she followed her husband to Australia and led to her witnessing the drowning of several hundred people when the smuggler's boat she took from Indonesia capsized. Her experience is unique in its detail, but should not be dismissed as an extreme case. Journeys to host states can pose serious risks to the lives and health of asylum seekers, who would be unlikely to attempt such trips if substantive choices were available to them. Susan's narrative describes such a scenario:

> We women were alone, without our husbands who had already fled, Since we were also in danger we decided to follow the paths of our husbands. We were living in "Al selmania" and Saddam was always threatening to bomb it. I use to get really scared every time I heard bombing, so I decided to travel with my children to Iran, scared about dying. I got to Iran and I intended to travel to Australia from there.
>
> My trip started from Iran and it was easy because the Iranian government was happy for Iraqis to leave Iran. We only stayed in Iran for two months because the situation was getting very scary. Iraqis couldn't work and the situation was very hard. We left Iran for Malaysia by plane, and smugglers waited for us at the airport, and they told us that they'd take us to Indonesia very easily. We stayed for four days and then we crossed the Indian Ocean from Malaysia to Indonesia in a boat. We had a lot of problems in Indonesia, since we had gangs taking our luggage and some people who pretended they were from the police threatened to kill my son. They were all liars and they took all our money, it was a big conspiracy between the smugglers and the gang. After all this suffering, we got to Jakarta, Indonesia and we stayed for a week.
>
> I didn't enter Australia safely. The smuggler was a liar and he gave us a very old boat, and told us that there will be about 170 people, however, there were 418 people from different nationalities. … The men weren't allowed to inspect the boat that we would be sailing on. That boat was far away and the only way to get there was by smaller boats. First, women and kids were taken in this way to the main boat. All women were very busy taking care of their children, since some of them were not feeling well and were constantly throwing up (they were sea sick because the 'main' boat was very light). The number of passengers was very high, the children outnumbered the women and men, and there wasn't space for anyone to sit, or lie down and rest our legs. I was under the impression that we were heading to a larger boat. So I asked a man who wasn't feeling well if we were going to be transferred to a larger boat, he told me that this was the boat we would sail on. I was surprised because the boat was very small. We had no choice at this stage because we couldn't go back and we already paid the money. The smuggler left us a long time waiting [in Indonesia] before we got on the boat, so we already spent all our money. We had no choice but to accept the situation, we couldn't do anything if we went back. Everyone thought that getting to Australia is easy, even with a small boat …
>
> We went by sea from Indonesia towards Australia in October, and after 20 hours of sailing, the engine stopped and the boat flipped upside down, all other women and children died, only 45 survived from 418 people. Then we went back to Indonesia and we were put in a hotel by a human rights association, and they took care of us.
>
> When everyone was sinking, I was all by myself, floating without

> anyone's help for a whole day. I saved myself and I didn't know anything about my son. The next day, Indonesian fishermen rescued us and they told me that my son was alive. …It was very dark and cold, it was raining and I couldn't see anything around me. I was very thirsty and I was trying to drink from the rain, but the sea water which contained gasoline was going inside my mouth. So I was trying to breath from my nose, and struggling to stay alive. I expected death every second. …
>
> The smuggler knew that the boat will only last 1 or 2 days then stop, it's like he intended to kill us. When the boat stopped, the men told us that the engine cannot be fixed and that all we can do is pray, and scream for someone to find us and rescue us. In a second, the boat flipped upside down and the water came in, people started screaming, I opened my eyes and found myself under water. The boat over me and there were kids and women around me. They were swallowing the water, and dying, I could hear their screaming under water. I was telling myself, why is there all this unfairness in life? Why do human beings do these things to their brothers? I felt that all the ones who died felt that they were treated unfairly. I was thinking about my daughter, I wanted to see her, and I wanted to solve my son's problem. And my son who was with me, where is he now? I was wondering if he was alive, I just wanted to know, then die.

Detention Experiences

Unauthorized arrivals like Susan and her husband are put into immigration detention either in Australia or offshore while their claims are being processed. Most TPV holders will have been detained either in Australia or offshore as part of the government's Pacific Solution, whereby unauthorized asylum seekers are forcibly transferred to Pacific states that have agreed to host the status determination process. Mandatory detention of such asylum seekers is part of a global policy trend to deter and punish unauthorized arrivals.[28] This policy continues despite statistics released by the Department of Immigration itself showing that over 85 per cent of recent detainees were accepted as genuine refugees – higher than the corresponding figure for community-based (or authorized) applicants.[29]

The traumatizing effects of prolonged immigration detention have been well documented. A number of bodies including the UNHCR, the Human Rights and Equal Opportunity Commission (HREOC), the Australian Commonwealth Ombudsman, along with Amnesty Inter- national, Human Rights Watch, and medical practitioners have all expressed concern over the impact of this practice.[30]

One of the most disturbing studies on the effects of detention on the mental health of asylum seekers has been conducted by two psychologists, Sultan and O'Sullivan, one of whom was himself detained by the Australian authorities.[31] Of the thirty-three detainees interviewed, all but one had symptoms of psychiatric distress: 85 per cent reported chronic depressive symptoms, 65 per cent had pronounced suicidal ideation, while seven exhibited signs of psychosis, including delusional beliefs and auditory hallucinations. Sultan and O'Sullivan characterized the psychological deterioration of detainees as having four stages, beginning with a "non-symptomatic stage" and degenerating through primary and secondary to tertiary depressive stages. The last of these manifests in severe psychiatric symptoms, including self-harm and self-mutilation, suicide attempts, and emotional disconnection from others. They report that nearly half the detainees in the study had reached the tertiary depressive stage.

As Sultan and O'Sullivan have documented, the longer people stay in detention, the more traumatized they become. When entering a detention centre, people like Peter quickly absorb the prevailing hopelessness and become demoralized. Their psychological state is then exacerbated by the indeterminate length of time to be spent in detention:

> I was scared that I would never leave the camp because I found people who were in the camp for two years when I got there. Someone who comes looking for freedom stays in a camp for two years? Strange. He doesn't know what his destiny is. These cases made me doubt I would get the visa soon and I felt depressed and scared that my destiny would be like those who spent a long time in the camp, or those who were rejected. Did I come to Australia to live in a camp? I came here to feel like a human being. I had a nervous breakdown and was wondering how long I would have to live under the authority of these prisons.

Sultan and O'Sullivan's findings have been supported by numerous other studies. HREOC has documented many examples of suicide attempts and self-harming behaviour in detention centres.[32] Another study of seventeen East Timorese asylum seekers at the Curtin detention centre exposed substantial levels of pre-migration trauma among detainees. All were suffering from PTSD, while sixteen were depressed and eleven suffered from anxiety. Steel and Silove[33] found that detained asylum seekers reported a much higher response to trauma categories (average of 12.4 out of a possible 16 major trauma categories) than asylum seekers in the community (average 4.8 out of a possible 16 for asylum seekers in the community), suggesting that the detention itself might be a contributing factor, either in itself or as a re-traumatizing influence.[34] Some asylum seekers claim detention is more traumatic than the torture they have already endured.

For many like Mary, the prison-like environment is a brutal reminder of all they have escaped and can trigger a traumatic stress response:

> They used to always come to get our number (to count us). One day, they came in and I saw them, wearing the army gear, with the mobile phones, I felt like I was in Iraq and that the security was coming to take my son from me. At this moment, I had a nervous breakdown.

Similar findings are being reported in the United States. One study of seventy asylum seekers in detention[35] found that although the median length of detention was shorter than that in Australia, 70 per cent stated that their mental health had worsened substantially in detention. Seventy-seven per cent reported significant levels of anxiety, 86 per cent were suffering from depression, half had PTSD, and one-quarter reported suicidal thoughts.

Post-Detention Experience: Life on TPVs

Asylum seekers assessed to be genuine refugees are provided with a temporary visa upon their release from detention. In addition to the trauma of forced migration, TPV holders face the added burden of a future which is unknown and out of their control. Not surprisingly, the post-migration environment for asylum seekers and for refugees with TPVs is characterized by high stress levels, often directly related to uncertainty, fear, and deprivation. Under these circumstances, people with significant experiences of past trauma are particularly vulnerable to re-traumatization and to an increase in the severity of anxiety and post-traumatic stress symptoms.

Post-migration stressors are triggered by the dislocation and distress which occur when a person is unable to achieve a satisfactory state of belonging and have been associated with increased symptoms of depression, anxiety, and PTSD.[36] Indicators of successful settlement include the ability to speak the local language; obtain adequate employment; participate in the social, cultural, and economic life of the new country; achieve a sense of belonging and responsibility within the new culture; and enjoy meaningful relationships within the family, with friends, and within communities.[37]

The link between post-migration stressors and the absence of those factors critical for successful settlement is evident in TPV holders. For example, low English-language proficiency has been identified in many studies as a predictor of depression both in the short term[38] and in the longer term.[39] Depression is more likely to be diagnosed in those with low income or receiving welfare payments,[40] or in those not able to find work.[41] In one study, over half of the respondents experienced major stress related to fears of being sent home, or conversely, related to fears of being unable to return home in an emergency.[42] Other stress-inducing factors identified included forced separation from one's family, unemployment, a lack of access to health and welfare services, and difficulties with the refugee visa application process.[43] Discrimination and lack of social support or friends have been identified as major contributors to anxiety and depression in refugees.[44] Interestingly, one study suggested that spending time with others from the same cultural background in some instances *increased* anxiety, as respondents reported that they had to "conform and respond to the expectations of their ethnic groups."[45]

Schweitzer, Buckley, and Rossi distinguish these "vulnerability factors" from "protective factors," that is, the skills and opportunities which enable asylum seekers to participate in the social, cultural, and economic life of their adopted country. Social support, language proficiency, and education are the key protective factors they identify.[46] Unfortunately, if protective factors are not already in place they are very difficult to acquire. TPV holders have restricted access to services, either because they are ineligible or unable to pay for them. The pressure to find and keep a job often leaves little time for "luxuries" such as learning English, gaining qualifications, or accessing medical or counselling services. TPV holders' health is further undermined by their employment opportunities. Becoming economically self-sufficient is understandably the first priority for most, but the type of work commonly available is temporary, unskilled, and contractual, and does not provide sick leave provisions, prompting fears of losing their job if absent from work.[47]

The effect of past trauma on mental health is twofold. As already discussed, stresses of resettlement can exacerbate pre-existing mental disorders brought about by trauma, but the effects of past trauma may also inhibit successful settlement. The ability of asylum seekers to learn new skills, acquire education, and secure employment can be inhibited by psychological ill health caused by the traumas of their past. Without such skills asylum seekers are likely to remain marginalized, creating further depression, stress, and anxiety, and further disrupting their ability to participate and contribute.

In this way, the TPV policy deliberately and successfully creates an unsustainable life. Jim explains its effect on him:

> I lived a good life in Iraq, so high life and technology doesn't mean much to me. My purpose is not the high life, but to feel safe, free, and to get a citizenship to feel that I belong somewhere. All I've seen so far doesn't mean much to me, given the type of visa that I was given. I feel that getting this visa put me back in the same situation of not knowing and not being settled.

Concerns about the effects of the TPV on refugee health have been expressed by human rights groups and torture and trauma groups since the visa's inception.[48] It remains "a particular irony of the Australian response to refugee crisis … that the more traumatized are more likely to be detained and granted temporary protection rather than permanent protection."[49] The government's "deter and deny" policy punishes people for not entering Australia through channels which are authorized in advance. In the process it imposes the harshest restrictions on those people most in need of support.

Sengchanh argues that a fundamental question for our understanding of democracy is what we do about our non-citizens.[50] In this respect, the deliberate social exclusion of the most disadvantaged members (or potential members) of a society reveals much about the society itself. In Australia the rhetoric of national identity has cultivated the negative qualities of the "stranger" as much as the virtues of the citizen and this binary has been used to justify exclusionary policies and practices. It is in this context that asylum seekers have been rhetorically constructed as illegitimate intruders. More specifically, the conditions attached to the TPV position asylum seekers outside the legal, moral, and political structures of society. Too often, the people so affected become invisible and their experiences are elided. Mary is one of these people:

> I feel tied up. I don't know whether I'm living in Australia because I don't feel comfortable like the rest of Australian people. We're very tired mentally and we want to settle down. Our future and destiny is unknown. We don't have any freedom, like being in a prison. We've had enough suffering.

Like Mary, the TPV holders interviewed expressed overwhelmingly their frustration that they are unable to become a part of their new society in any meaningful way.

Family Separation

The policy of granting temporary protection is intended to deter others from attempting a similar journey. To do this effectively, the restrictions placed on the temporary visa are deliberately harsh. Many TPV holders interviewed felt that being separated from family is the hardest aspect of their existence. Susan's words sum up the feelings of many:

> I want to talk to Mr John Howard and ask him to take everything away from me, but in return bring my son here, and put him in a camp. Even if I don't get to see him, at least I'll know that he's safe in the hands of the Australian government and close to me. I just want to protect my son in any way. I'm so depressed, my daughter is in Jordan and I haven't seen her in 7 years. My family is dispersed, my daughter has two children that I haven't seen, and my son is in Iran. My other son and I waited for so long in Indonesia when my husband was in Australia. We left our country and we had no choices. If it wasn't for the very hard life, we wouldn't have left our country.

Many writers have commented on the importance of the family unit, which "lessens the sense of isolation and loss and provides a justification and a direction for the future."[51] Family is a potent source of community and social infrastructure that provides meaning and a sense of identity. David questions the morality of punishing the few in order to deter the many, particularly when those being punished are children and other family members who have already suffered:

> My wife was fired from her job because she was always pressured to make me go back to Syria. The government also pressured my family by stopping their financial income. They also kicked my children out of school after they fired my wife. My family was therefore with no income, my wife with no job and my children with no school. The situation was very bad and my children were suffering. Was it their fault? Even if I were guilty, they're children. Everyone I met here was willing to help, but because I had the TPV, the government didn't allow reunion. Was this protection visa given to me to protect me or to punish me?

Many asylum seekers could not afford to bring all their children with them to Australia, and those forced to leave family behind suffer guilt, anxiety, and depression.[52] A secondary (and probably unforeseen) consequence of the policy is that people will attempt dangerous journeys to join their families, which in effect creates a demand for further "illegal" migration. In 1999, the Australian government was among those that passed a Conclusion on the Protection of the Refugee's Family at a meeting of the Executive Committee of the UNHCR. This recognized that family cohesion is important for society, and therefore deserves state protection.[53] In this light, the family reunion restrictions of the TPV are particularly punitive, as people like David attest:

> How much can we handle? The injustice of our own country, or the injustice of the Australian government? We came to Australia looking for mercy and peace, not to deal with the mental pressure that we're suffering from. I can't handle living away from my family, I don't have the capacity to deal with that.

Economic Concerns

Economic security is a key indicator of settlement success and many international studies on the economic integration of refugees have identified successful economic integration

and well-being as being determined by the twin variables of refugees' social and human capital, and the social, political, and economic context of the host country.[54] Education, citizenship, ethnicity, English-speaking ability, and length of residence were found to be the main predictors of integration success. The refugee populations in these studies generally compared unfavourably to the wider population and to other migrants, and correspondingly demonstrated downward occupational mobility and high levels of unemployment or underemployment.

A Melbourne study of TPV holders[55] found that unemployment is high within this group, and that the little work available was often temporary, casual, and unskilled. With no access to English language classes, employment assistance programs, or vocational training, the opportunity to find work – much less, meaningful work – is severely limited. Accessing health care and counselling is constrained by financial and practical considerations, while the lack of sick leave provisions in this type of work prompts fears of losing employment and consequently prevents many from prioritizing their physical or mental health. Similarly, a recent report identified a range of barriers to employment faced by TPV holders stemming from the absence of settlement services following a period of detention including English language tuition, a lack of familiarity with the Australian labour market, and the loss of skills and confidence during the asylum seeking process.[56] The temporary nature of their visa was an additional obstacle to employers who preferred employees with more secure status. Schweitzer, Buckley, and Rossi report that refugees with low income or on welfare were more likely to be diagnosed with depression.[57] Peter found the restrictions imposed by the TPV denied him many rights and advantages afforded to citizens and other refugees:

> We started looking at a way to get work, the first obstacle was the language. We weren't entitled to a free English course being a Temporary Protection Visa (TPV) holder, what sort of visa is this? We weren't entitled to learn the language, study, get married, or travel…, so what are we allowed to do? I want to improve myself and my qualifications, I want to study, but I'm not allowed. If I study, it means cutting off the social security income.

The conditions imposed by the TPV enforce a dependency that is neither the desire of the TPV holders nor in the interests of the Australian public. Hoffman argues that "(a)sylum seekers have been denied the opportunity to establish a moral relationship with the public, so their enforced marginality prevents the recognition of their social legitimacy,"[58] a condition he sees as much more insidious than medical or welfare dependency.

Redetermination: Extending Uncertainty

The policy of temporary protection denies TPV holders the psychological space to build "protective" factors and heal from the past. They are unable to envision a future for themselves in the prolonged uncertainty of their situation. Many who have lost hope for themselves see their children's future as the most important, and perhaps the only, consideration:

> **I don**'t have any wishes or any plans for the future. We came to Australia, and they gave us the TPV which destroyed all our hopes. We hoped to get the freedom, peace and to settle down. A person without hope is like a dead person. We feel that our life is destroyed because it's without hope. We don't plan anything for the future and have no hope but to get a permanent visa. We're old, but our children are going to school and learning English. — Sarah

The strain of living in a state of impermanence clearly takes its toll on TPV holders such as Jim and David, who are unable to move forward or end the limbo in which they find themselves:

> I feel that I'm starting to live the same way I lived in Iraq or Iran. I haven't changed anything in my life, I moved from temporary circumstances, to another temporary… to third temporary circumstances. — Jim

> I went to a lawyer and I told him that I don't want Australia. I went with Foundation House[59] to Legal Aid[60] and I told them that I didn't want to stay in Australia and that I wanted to go to another country. My children have no one and they're out of school, they told me that I'm already an asylum seeker here and can't apply again. I told them that I had a death sentence in my country and I was given another one in Australia. The problem was that we were told that we can apply for the permanent visa within three years. I went to a lawyer in the city and he told me that it's too early to apply, and to come after two years and apply for the permanent visa. — David

The refugee determination process itself is inherently traumatic. Researchers have noted that most asylum seekers arrive with a belief that their claim is meritorious and that they will quickly be granted asylum.[61] They see Australia as a country that respects human rights and accepts refugees. The reality is that the determination process can take years, and holders of a temporary visa must reapply when their visa expires after three or five years. Under the

current regime, this process of application and reapplication for protection may be endless.

Applicants must recount and relive the most distressing events of their lives in great detail to prove their claims are genuine.[62] These statements are often disbelieved and discredited.[63] The credibility of asylum seekers (or perceived lack thereof) has been shown to be one of the most common reasons for rejecting claims at the Refugee Review Tribunal,[64] which is particularly concerning given the manifestations of PTSD and the likely impact this will have on the applicants' coherence, presentation, and memory. Pernice identified the possibility of refugees having developed a conditioned fear response regarding interviews, which makes them unlikely to present their case well.[65]

The requirement to go through the visa application process all over again will prolong the uncertainty and distress felt by temporary visa holders. The regulatory changes allowing TPV holders to apply for mainstream visas (outlined above) are specious, as they prolong the uncertainty and raise hopes with no guarantee of a permanent outcome. It is this aspect that prompted Marion Le to call it "one of the cruellest things this government has done."[66] Colin expressed a sense of helplessness around the lack of control over his future:

> There is a hope that the circumstances will change. I feel comfortable in this country, I feel freedom, and I hope that my freedom is permanent. I have a great hope that the laws regarding us will change. I haven't applied for the permanent visa because from what I heard, whoever applied for it before the tenth month, will be considered. However, whoever applies after that has no hope. I'm thinking of the present and what's left of the three years. What comes next is something out of my control. If they wanted me to stay then I will, and if they want me to leave, then I will because I have no choice. The decision comes from the government.

The loss of hope is the most serious threat to psychological well-being and healing. Some TPV holders retain hope, but that hope is inextricably tied to being granted permanent status with all the rights it confers. Nobody in this study expressed hope of a positive future while they remained on a temporary visa.

Prospects of Repatriation and Anticipatory Stress

The very real threat of return to an asylum seeker's originating country creates a substantial source of stress. Sinnerbrink *et al.* found that over 80 per cent of asylum seekers expressed fear about being sent back to their countries of origin.[67] Similarly, this study found that fear of repatriation was the most commonly stated anxiety among TPV holders as exemplified in this statement by Sarah:

> We feel the same thing here and that's not being settled, uncomfortable, unsafe. My children's future and our future are unknown. We don't know when we'll be returned to our country, for Saddam to hang us. We can't plan our future. We are always worried if we couldn't stay in Australia, who would welcome us in their country? We always feel discriminated against. I don't want my children to be like me, no future, and no destiny and without and identity. I want to study and work, I want them to belong somewhere and have a citizenship. — Sarah

Alexander characterizes four policy manifestations in the transition from temporariness to permanence, fuelled by what he calls "the myth of return."[68] The stronger the hold this "myth" (that return will be possible and inevitable) has on policy makers, the more likely it is that they will adopt a "non-policy" towards immigrants. This is likely to be followed by the "guest worker" policy of tolerance without acceptance, which then moves towards either assimilationist or pluralist policies of inclusion. The TPV policy, which shares aspects of the "guest-worker" and "non-policy" typologies, can be seen as heavily premised on an assumption that refugees are willing, and most importantly able, to return. For Peter, this thought is unimaginable:

> I started hoping that the criminal government will stay in Iraq, so that I'll get the permanent visa here, even though this is against common sense, and at the expense of my people and my family in Iraq who are suffering because of the government. Every Iraqi wishes that the government will collapse.

The interviewees were clear that the impermanent nature of their visa keeps them in a state of uncertainty and anxiety. They have lost everything that defined their previous lives and are yet unable to plan for their future and build new ones. Getting a permanent visa is the only solution that many – like Larry – can envisage:

> We've suffered enough; I came to Australia to get a future for my children. We want peace and freedom. I still feel like I'm in prison. I can't travel anywhere, and I feel that this visa doesn't allow us to settle down. We don't know what's waiting for us, will we suffer again? In Iran, we were threatened by being returned to Iraq. I don't feel that my children have any future in Australia. All I want is a future for my children, I don't care about me, I'm old and I've suffered enough. We lie to our children and we tell them that we will get the permanent visa and that they have to study and not worry about anything. Yet, they still don't feel that they're settled because of the unknown

> future. For example, a teacher asked one of my children about his hopes and wishes for the future in Australia and what he wishes to happen in the future, He told her that he doesn't wish anything because he only lives temporarily in Australia. She then told him that he'll stay in Australia and no one will take him away. My son told her that his family is on a temporary visa and that after three years we'll be sent back to our country. The teacher wanted him to concentrate on his studies and not worry about these things, so she told him that they all (in this school) will stand by him and won't let anyone send him away. We live the fear of the temporary visa every day.

Steel found that TPV holders displayed twice the risk for PTSD as permanent residents, and expressed concern that the conditions imposed by the TPV are creating a *new* category of traumatic stress which he describes as *chronic anticipatory stress*.[69] During his research into PTSD, he was struck by both asylum seekers and TPV holders reporting "that they were not troubled by intrusive memories of past traumatic incidents, but by terrifying images of imagined future traumatic events to themselves or their family."[70] Steel considers this "future oriented PTSD" as a "core adaptive survival response" to a state of uncertainty, which will be virtually impossible to treat while the situation of impermanence remains.[71] Mary, like many refugees, describes her material conditions associated with a TPV as being (re-)imprisoned:

> The disadvantage was giving us the temporary visa. The advantage was the good treatment that we got from the Australian people who were nice to us, and loved us. We've suffered enough; I came to Australia to get a future for my children. We want peace and freedom. I still feel like I'm in prison. I can't travel anywhere, and I feel that this visa doesn't allow us to settle down. We don't know what's waiting for us, will we suffer again?

This heightened level of anticipatory stress, Steel suggests, may be responsible for torture and trauma services across Australia reporting a lack of responsiveness to standard treatment interventions. The standard interventions are premised on the subject having arrived at a place and time where they are able to feel safe, but for TPV holders,

> the future threat they face is real and represents a likely outcome. In such circumstances, it could be argued that forms of exposure therapy, rather than having an habituating effect, are likely to have a sensitising effect to future trauma … the use of temporary protection may inadvertently lock individuals into an irresolvable future oriented PTSD.[72]

For people like Helen, this fear is part of daily life:

> How could I build hopes on nothing? I have no future, same with my children, my family. The future is unknown for me and my family, we live in fear and anxiety. I also worry that I'll get a mental illness that has no cure: madness.

Conclusion

Research undertaken concerning asylum seekers, detainees, temporary protection visa holders, and authorized refugees indicates that all these groups are at risk of ongoing mental illness.[73] The evidence points to government policies of deterrence such as prolonged detention and temporary protection visas as perpetuating and exacerbating mental illness.

It is widely accepted that the "recovery environment" is important in helping trauma survivors overcome post-traumatic stress, anxiety, and depressive symptoms. Support can be difficult to elicit from personal networks in communities where a significant number of people have been affected by trauma and are unable to offer much support to others.[74]

Many asylum seekers find accessing health services a daunting task and lack trust in health professionals and the service provided. Pernice believes that many refugees find it difficult to accept that speaking with a mental health professional will not adversely impact upon his or her relatives' safety,[75] particularly since the past torture experiences of some will have been inflicted by doctors acting under instructions.[76] These beliefs are sometimes reinforced in immigration detention when detainees are handcuffed during transportation to and from medical appointments, and where doctors have authorized (sometimes forcible) sedation for containment and removal of detainees.[77]

One of the greatest dilemmas for successful recovery is that the forms of therapy used with torture and trauma survivors are based on the assumption that trauma and torture are things of the past.[78] Standard treatments are not effective if trauma continues to be experienced. Schweitzer, Buckley, and Rossi observe that "many of the psychological problems facing recently arrived refugees will only be resolved by material changes in their lives and current circumstances and by being reunited with their families."[79] Under the current "protection" regime, this is unlikely to happen:

> As an asylum seeker, I don't want a TPV, and I didn't come for that. I came here to settle down and I wanted to be in a country where they respect human rights. I wanted to give this country as much as it gives me. If after the three years, I'll be returned back, then it's better to return now. The possibility to extend

the visa another three years doesn't help. The only thing that does is a permanent visa. — Colin

Many of the difficulties associated with settling in a new country are unavoidable. The TPV policy is not. For those who are escaping a traumatic past, the process of re-establishing their lives can be particularly fraught. As demonstrated in this article by the statements of TPV holders themselves, the temporary nature of their visas not only prevents them from beginning the process of recovery, but ensures that their journey through trauma is ongoing.

Notes

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The Material Culture of Chilean Exile: A Transnational Dialogue

Joan Simalchik

Abstract

In the aftermath of the 1973 coup d'état, Chileans managed to find refuge in more than forty of the world's countries. They left with the expectation that they would only need temporary asylum, but instead found themselves in a state of prolonged exile. In order to speed the day of return and as antidote to the trauma of exile, Chileans created communities in opposition to the Pinochet dictatorship. Through resistance strategies enacted in a constructed site of struggle, Chilean exile communities facilitated remembrance through commemorative practices, cultural forms, testimony, and the preservation of endangered material culture that became decisive for legal cases against impunity and as a basis for historical inquiry.

Resumé

À la suite du coup d'État de 1973, les Chiliens ont réussi à trouver refuge dans plus de 40 pays dans le monde. Partis en croyant n'avoir besoin que d'un asile temporaire, ils se sont plutôt trouvés en exil prolongé. Les Chiliens ont mis sur pied des groupes opposés à la dictature de Pinochet afin de raccourcir l'échéance de leur retour et comme antidote au traumatisme de l'exil. Grâce à des stratégies de résistance déployées dans le lieu présumé du conflit, les communautés chiliennes en exil ont perpétué le souvenir par des pratiques commémoratives s'appuyant sur des formes culturelles, des témoignages et la préservation du matériau culturel menacé. Ces pratiques sont devenues décisives en matière de défense juridique contre l'impunité tout en servant de base à la recherche historique.

A significant repercussion of the 1973 *coup d'état*, and the ensuing Pinochet dictatorship, was the need for Chileans to find asylum outside of their country. From the beginning of its rule, the junta issued proclamations pronouncing its intent to rid Chile of "the cancerous tumor" of members and supporters of the Popular Unity government.[1] The rhetoric was backed up with deed as the military institutionalized persecution of its opponents. Chilean refugees would soon find themselves to be an incipient part of an emerging transnational diaspora.

In its initial plan to recreate Chile based along the lines of its own ideology, the junta sought to people the country only with those who shared its objectives or, at least, with those who would not challenge them. In order to fulfill this aim, the junta decreed outright that selected Chileans would be forbidden to live in their own country. Those who were designated to be enemies of the newly evolving regime, or perceived to be so, were to be excised from the body politic. In its efforts to rid Chile of potential opposition, the military junta began to define who would be permitted to remain in the country. At the start, the category of *personae non grata* included leaders and members of the Popular Unity Coalition, leaders and members of socially active organizations linked to the left including trade unions, student federations, and women's groups and others deemed likely to challenge the authority of the military junta. Beyond the repressive practices that sought to marginalize opposition through termination of life, freedom, or employment, the military went further by terminating the right to live in Chile.

For those who found themselves under the gun, the distance from past to present was difficult to negotiate, especially because of the rapidity of the turnaround. Ariel Dorfman provided a flavour of this predicament in a section of his memoir entitled "A Chapter Dealing with the Discovery of Death inside an Embassy in October of 1973, in Santiago de Chile." Dorfman remembered his time in-

side the Argentine Embassy as one of nine hundred would-be refugees where he meets

> . . . face-to-face, the first torture victims of my life . . . laid out side by side in the great ballroom of the embassy, where only a month ago tuxedoed men leaned forward to murmur compliments to women in long, shuffling dresses, where one of the fugitives himself, Allende's Secretary of the Treasury, sipped a cocktail next to the very piano under which he now tosses and turns, trying to get some rest.[2]

As a consequence of the repression, hundreds of thousands of Chileans from the 1973 total population of ten million came to be living in the "remote havens of foreign lands."[3] Decree Law 81 promulgated in November 1973 and Supreme Decree 604 in June 1974 set out the rationale for stripping citizenship and refusing the right to live in Chile. The military regime drew up a National List (Lista Nacional), which included approximately five thousand names of Chileans deemed to be undesirable. An "L" indicating a name on the List was stamped on the passport and forbid entry into Chile. The List was modified during the seventeen years of the dictatorship but it was only abolished in 1989 as part of the transition to democracy negotiations. While not all Chileans who fled the regime were formally put on the List, its existence posed a constant threat to exiles who publicly opposed the regime.

Some Chileans began life in exile after enduring long, tedious, and bureaucratic immigration processes such as the one begrudgingly undertaken by Canada.[4] Some languished for months in limbo-like conditions in foreign embassies in Santiago or in interim countries such as Panama while they awaited resettlement. Many Chileans were not able to choose the country to which they were going, and had no time to prepare or plan for the journey.

> The problem Estela de Ramirez had when she arrived in Canada was that she had nothing to hold on to. At most some pictures in an issue of National Geographic from who-knows-when…when Estela de Ramirez was told that tomorrow she was going to Canada, nothing came to her mind. Canada.[5]

In the aftermath of the *coup d'état*, Chileans managed to find asylum in more than forty countries throughout the then-divided first, second, and third worlds.[6]

This group of exiles left Chile with the expectation that they would only have need of a temporary safe haven. Their commonly held belief predicted that exile would be short because the military regime was expected to collapse under the combined weight of Chile's democratic history and civilian political tradition. These were not immigrants seeking a new land, nor were they refugees hoping to be permanently resettled. This group of Chileans, who self-defined as exiles, intended to return to their country to continue their thwarted political project as soon as it was possible to do so.

As testament to the notion of inevitable return, El Retorno, deposed President Salvador Allende was frequently invoked. In his last radio address, broadcast shortly before his death on the day of the coup, Allende appealed: ". . . to keep the faith. Neither criminality nor repression can hold back history." He anticipated: "May you continue to know that sooner rather than later the great avenues through which free men walk to build a better society will open."[7] These words found themselves inscribed on banners and pamphlets, and became a watchword in the early days of the Chilean exile. "The hope of return helped us not to be separated emotionally from our history with Chile."[8]

In order to speed the day of return, Chilean exiles reconstituted themselves as the political expression of those silenced in Chile. Chile's pre-existing political, ideological, and social divisions now included a geographical dimension. Chileans were separated from each other spatially and were designated according to their location "inside" or "outside" of the country. In truth, the exiles inhabited ". . . a space that in territorial terms does not coincide with one particular country but falls in between two or more countries."[9] Along with the geographical divide of the exile condition, there exists a temporal disruption: ". . . the exile lives in two different times simultaneously, in the present and in the past."[10] The tension of maintaining a balance between shifting coordinates of time, place, and memory serves as a particularly demanding burden of exile.

This group was distinct from many of the previous exile movements in both number and type although the experience of forced migration in the twentieth century was not unique to Chileans. The Garden of Exile in Berlin's Jewish Museum designed by Daniel Libeskind conveys an expression of the experience of German Jews before and during World War II. The museum's tour begins in the basement Hall of Decision with the visitor forced to choose between continuing on the tour upstairs or entering the Garden of Exile, a concrete maze with slanted floors.[11]

The Chileans, though, like the Spanish Civil War refugees before them, bridged the shift from E. H. Carr's notion of the few select political leaders, *The Romantic Exiles*,[12] to those masses composing the new movement of asylum seekers termed the "age of refuge" by Edward Said.[13] The Chileans would be distinguished by their intent to return to their homeland and presaged the large-scale refugee movements that would characterize much of the latter part of the century. In 1973, many countries in which Chileans

sought asylum were ill-prepared to meet the challenge. For those countries that had signed the United Nations Convention on Refugee Status, most had not established the necessary framework in order to execute a process for refugee determination.[14] In many cases, Chileans found themselves to be the bridgehead for the development of refugee policy and (re) settlement services.

While the process of migration has been established to be a difficult and stressful time for anyone, forced displacement poses additional problems for people who become refugees.[15] The multiple series of losses involved with the state of exile compounds the difficulty of refugee settlement. Loss of community, language, and culture and separation from family, friends, and comrades all put into sharp relief the gap between home country and host society.

> The grieving process common to all uprooted groups is characterized in exiles or refugees by ambivalence towards adapting to the new society, and by anger at having been forced to leave. Interwoven is the survivor's guilt: the feelings arising out of being relatively safe, but with the knowledge that your loved ones and your political partners continue to be in precarious situations.[16]

"Refugee-survivors live in a state of extreme uncertainty about the future. Uppermost, in their mind, are questions about if and when they might be able to return to their country. The survivor lives metaphorically, if not actually, with his or her bags packed, ready to return home the moment it is possible."[17] For the most part, Chileans had arrived in exile with little more than memories of their political project in their bags and these memories were among the first belongings to be laid open.

The transition from state power to state of exile traversed more than the distance measured across international borders. The fate of those inside and those outside Chile was shared in the dimension of marginalization that both experienced. Both groups had been violently expelled from the fabric of the Chilean body politic. Those remaining inside Chile continued to be subject to direct persecution. Those outside of the country began to discover the unremitting condition experienced as the pain of exile.[18]

Coordinates of memory can be diminished for exiles. The passage of time exacerbates the distance from *patria* while, simultaneously, exile life is not represented in the mainstream culture of the host country. One aspect affecting the psychosocial traumatic consequence of forced exile is that people ". . . are unable to see themselves and their circumstances reflected back to them, and, kept from these reflections, are handicapped . . . ."[19] Refugee Chileans sought to build support for the human rights struggle at home while attempting to maintain their own culture in countries of asylum. Chileans sought to recreate in exile what they had performed in Chile. The form and content of cultural and commemorative practices could be replicated but these were enacted in a foreign terrain and conducted within a different contextual quality.

As antidote to the prolonged experience of exile, Chileans created communities in opposition to the dictatorship that had precipitated their predicament.

> Exile has long been a political instrument of punishment, but because of its reflective qualities, it can (and often is) used against the tyrant. The exile becomes the tyrant's *Doppelganger*. He will always be there; nothing is more implacable than absence. History, through the shifting of viewpoints, may be forgiving; the exile is relentless in his accusation because his memory never changes.[20]

Even though the Chilean *coup d'état* had created sympathy in many sectors of the world community that had supported the Popular Unity government, it was still difficult for Chileans to establish communities in exile. Despite the challenges and with their implacable and relentless memories, once in the countries of asylum, Chileans quickly regrouped and reorganized themselves along the lines of the political parties and organizations to which they belonged. The parties of the Popular Unity were grouped under a solidarity organization, Chile Democratico, with international headquarters in Rome and a hemispheric base for the Americas in Mexico. The Moviemento de Izquierda Revolutionario (MIR; the Movement of the Revolutionary Left) had formed the left opposition to Popular Unity and organized their own solidarity efforts independent of the Popular Unity group in countries of asylum. Chile Democratico held the dual aims of maintaining the political objectives and culture of the Popular Unity government while at the same time exposing the repression of the military regime. For MIR, the solidarity watchword was *resistancia,* and the letter R superimposed on the Chilean flag symbolically espoused this. For both groups, the basis of activities focused on events in Chile. As the military regime entrenched itself, in counterpoint, exiled Chileans prepared to organize for the duration. Rapid recognition of the military junta by foreign countries prevented the organizations from forming a *de jure* or *de facto* government in exile.[21]

Ethno-specific organizations were also created in order to maintain cultural attributes and to promote a more inclusive perspective. Soccer clubs were given the names of people and objects with significance for the community, such as Salvador Allende and *copihue rojo*, the national flower. An exile literary journal was entitled *Araucaria* after

the sacred tree of the Mapuche people, Chile's most numerous indigenous people, who are renowned for their fierce resistance to conquest. Heritage language schools were organized often in conjunction with local school boards in order to preserve Spanish expression and culture. In Toronto, the Salvador Allende School was established with the support of the Board of Education. Dance troupes, musical groups, and choirs were organized in efforts to replicate the folkloric traditions of the homeland. Many of these were named in memory of Victor Jara and Pablo Neruda. All these efforts sought to preserve *Chilenismos,* connecting past cultural practice with the intention to maintain memory for the return. [22]

The exile community coalesced around solidarity activities that sometimes perplexed the larger host society and frustrated the refugees. In Canada, a woman in exile recalled the difficulties of galvanizing support. "Comadre, I still remember the names of all those towns we went to. In some places, the public didn't even know where Chile was, let alone what happened there . . . ."[23] Still, efforts by nationals in asylum countries assisted exile efforts and networks of solidarity spanned the globe. In Canada, the Coordinating Committee for Solidarity with Democratic Chile had local affiliates based throughout the country and some of them outlived the life of the dictatorship.

Exile activity inside international organizations assisted in efforts to expose the continuing repression inside Chile. Refugee Chileans initiated fact-finding tours by Amnesty International, the American Association for the Advancement of Science, the Canadian Council of Churches, and other bodies to go to the country and collect information of the state of human rights under the junta. This data was reported, sent to the United Nations and foreign ministries, and formed part of the evidentiary record of the situation in Chile. Health professionals performed examinations on the regime's victims and produces epidemiological reports on the practice of torture. The torture treatment movement was established in response to the specific needs of Chilean exiles and informed by the underground activity of health professionals in Chile.

Academics, many of whom had been expelled from Chilean universities, documented and analyzed from outside the conditions on the inside. They set up in exile research on Chile's history, media, arts, political economy, and corporate investment in the areas that had been proscribed by the dictatorship.

Exiles played a large part in establishing human rights concerns within trade unions, student organizations, and other civic associations. Resolutions condemning the Pinochet dictatorship and enlisting support for the exile effort helped to assist host societies to become more aware of the conditions causing refugee flight. The Canadian Labour Congress, along with the National Union of Students, the National Action Committee on the Status of Women, and the National Union of Farmers, were prominent among those supporting a boycott of Chilean products in Canada.

Chilean exiles from all walks of life contributed to the diaspora production of culture and material evidence. Artists from theatre, music, art, and film developed representations of the plight of democratic Chile through reproductions of significant historic pieces or through new compositions. The World Conference of Solidarity with Chile held in Madrid in 1978 hosted a companion fair. This presented a veritable cornucopia of solidarity items including matchbooks, hand-painted handkerchiefs, posters, key rings, mirrors with Neruda's image, tee shirts, mugs, flags, and jewelry created by exile communities throughout the world.

Exile organizations set in motion series of activities, *tareas de solidaridad* (solidarity tasks), in coordinated efforts to denounce the military regime and limit its influence. A sense of urgency surrounded the work so that Allende's prediction of democratic return would be accomplished "sooner rather than later."[24] In these solidarity activities, distinctions were drawn between events that were intended to preserve the past and those that were instituted in response to the repression in Chile. Each demanded its own sense of immediacy. Specific anniversaries of dates identified as significant ones were commemorated with *homenajes* (homages). Celebrations of past victories were memorialized. And a rapid reaction network was established to be able to respond to new atrocities carried out by the junta.

Internationally, exiles organized marches and rallies in response to the continuing persecution inside the country. These events retained many of the features of their Chilean roots, but were enacted with much smaller numbers than the ones held in the past in Chile.

Events that conveyed a celebratory tone included the birthday of Chile's first president, Bernardo O'Higgins, the country's traditional election date, the inauguration date of the Popular Unity government, and the foundation of the Workers' Central Union of Chile (Central Unica de Trabajadores se Chile, or CUT). These *actos* held in exile performed the function of preserving democratic traditions that had been outlawed inside the country. More, they held the possibility of hope as examples of victories to be won again.

Chile's national day, September 18, was observed as *fiesta* complete with *comida typica* (typical food) and *cueca* (Chile's national dance) contests. Anniversaries of the founding dates of political parties and movements, now

banned in Chile, were celebrated with gusto in exile with invited greetings, speeches, cultural activities, and birthday cakes. The Chilean *bandera* was raised at each event and Popular Unity's anthem, "Venceremos" ("We Will Be Victorious"), and that of the resistance, "El Pueblo Unida Jamas Sera Vencido" ("The People United Will Never Be Defeated") were sung. *Penas* were held with folkloric music at which wine and *empanadas* were served and these created an opportunity for the community to socialize and to display and enact their cultural traditions. They also provided a useful function as fundraising events.

The exiles claimed the historic symbols of state for their own. The Chilean flag was not to be relinquished to the military regime but was maintained in exile for the time when democracy would return. The flag was ascribed with a democratic meaning and was connected by exiles as a legitimizing expression of their cause. It held a prominent place at most events and was used symbolically on letterhead, logos, and posters. After a number of years, the exiles began to sing Chile's national anthem and, without ceremony, it replaced "Venceremos" at events. Pride in patrimony was claimed by the exiles—Nobel-Prize-winning poets Gabriela Mistral and Pablo Neruda, internationally acclaimed pianist Claudio Arrau, along with painters, writers, academics, and legendary nationals. This form of patriotism extended into a cultural and civic space that had been obliterated inside the country and preserved in conditions of exile.

Exiles continued to represent their opponents, the military junta and its supporters, the same way they had in the pre-coup era—as *momios (*mummies). The new regime was depicted as being anomalous to modernity and it was characterized as being a political regression to antiquity. The designation of "*momio*" assumed an anachronistic quality, one in which this particular group of Chileans was seen as anti-historic and, therefore, as somewhat unnatural and politically and temporally deviant. They were characterized by the exiles as usurpers who had derailed the country from its historic mission by means of violence and held power through institutionalization of persecution.

Long before there was 9/11 there was *once de septiembre*. Commemorations of the date of the September 11 *coup d'état* held complex and multi-dimensional meanings for exiles. Viewed as an occasion for celebratory victory by the junta in Chile, September 11 was declared to be an official national holiday inside the country. In contrast, for exiles, this date signified defeat. September 11 observances were ascribed a prophetic meaning, though, in the sense that these events were transformed from representing failure into ones that told the "truth." Inside Chile, the dictatorship controlled information and its dissemination. In exile, however, Chileans were able to convey to the outside world what the junta had censored and to ascribe events with their own political framing.

As such, these events became opportunities to gather support for the cause. Events held to commemorate the coup's anniversary served as public statements in opposition to the military regime and commitments to eventual triumph. Additionally, they assisted the community members to keep faith and provided a forum in which they could rededicate themselves to victory. The *actos* offered an occasion for affected members of the exiled Chilean community to assemble, to communally mourn, and to implicitly forge mutual understanding of circumstance. They provided a forum in which exiles could demonstrate determination to resist and to receive encouragement.

Prominent political leaders delivered keynote addresses analyzing strategy and tactics. Entire families attended and children learned of the broader context to their parents' solidarity activities. Care was taken to ensure that members from the host society—potential supporters of the cause—would be invited and translation from Spanish provided. September 11 also provided an opportunity for members of the community to grieve and mourn those who had suffered under the military junta. The tradition of naming the fallen, after which the rejoinder of "*presente*" was called out, served to maintain memory and connect the past to present and future. The necessity of recalling and restating the names of the martyrs to the Popular Unity project was particularly compelling in exile because these same names had been expunged inside the country.

In exile, Chileans wove together strands of memory with new information gleaned, often surreptitiously, from inside. As the underground resistance established itself inside Chile, exiles were able to connect with it and to disseminate documentation of life under dictatorship. In this way, they could continue to serve the Chilean struggle from outside the country by becoming conduits for the fledgling internal opposition to the regime. Exiles established links in order to communicate and receive information and they created safe spaces that allowed material evidence to be preserved.

The ephemera of the Popular Unity period—photographs, posters, records, banners—were carefully preserved and often duplicated. In addition, Chilean exiles disseminated material produced by the resistance to the dictatorship. *Arpilleras*, handmade tapestries depicting vignettes of contemporary life under the dictatorship, were first made by women relatives of the disappeared, executed, and imprisoned. They were widely distributed in exile and through efforts of Chileans were exhibited in many art museums and galleries.

Other representations of Pinochet's Chile found international audiences by means of the exile diaspora. Soon after the *coup d'état*, a copy of Patricio Guzman's documentary footage of the time leading up to the military coup and its aftermath was smuggled out of the country in a Swedish diplomatic pouch through the efforts of the filmmaker's uncle.[25] Guzman himself came to Spain as a refugee after his detention in the National Stadium and, in exile, he crafted a three-part documentary, *The Battle of Chile*. The film depicted the internal strife and debate during the Popular Unity government and portrayed the opinions of rich and poor, powerful and marginalized. It also recorded the widespread violence of the military uprising. One extraordinary scene captured a crewmember's own execution: the film's cameraman shot on film a soldier shooting him. Copies of the documentary's raw footage in Chile were destroyed along with all previously made Guzman films. Outside of the country, *The Battle of Chile* received much exposure, was screened at the Cannes Film Festival in 1975 and 1976, and was awarded prestigious prizes. It became a mainstay of exile solidarity meetings.

Information on torture, execution, and imprisonment was transmitted to the international community through exile efforts. One such instance was the 1977 Canadian Enquiry into Human Rights in Chile that linked exiles with human rights groups in Chile. Evidence of the dictatorship's human rights violations was documented by means of testimony before Canadian lawyers and representatives of faith groups and human rights organizations. The distance between "inside" and "outside" collapsed through the shared experience revealed in the personal testimony of the junta's victims. Survivors in exile, along with those direct from Chile, related experiences of torture, rape, and persecution. The conference marked the first time members of the Association of Relatives of the Disappeared had left Chile and were able to bear witness about their experiences in an international forum. The evidence elicited by the Enquiry was reported to the United Nations Human Rights Commission and formed part of the proceedings' record.

Additional campaigns were undertaken to gather international support for the cause, and especially to influence the United Nations' annual vote on the human rights conditions in Chile.[26] International conferences were organized to expose the human rights crimes of the military dictatorship, many held in Europe, some under the auspices of the World Peace Council. A key component of these efforts was the introduction of testimonial evidence in order to substantiate charges against the military junta. In the aftermath of the *coup d'état*, the International Commission of Enquiry into the Crimes of the Military Junta was established in Helsinki. With the full participation of exiled Popular Unity leaders, the Commission conducted fact-finding missions to collect testimonial evidence of the violation of human rights in Chile. The Commission formed a Juridical Sub-Commission in order to collect and assess the information that was then published in documents widely distributed to international bodies. The Document of the Meeting of the International Commission of Enquiry into the Crimes of the Military Junta in Chile held in Berlin, GDR, February 6, 1977, reveals that it was attended by exile leaders of Popular Unity, including Sergio Insunza, minister of justice under Allende and by ". . . lawyers of differing political views from Great Britain, France, Spain, the USSR, Austria, the Federal Republic of Germany, Finland, and the GDR."[27]

Contributions to the body of evidence were made at national levels through exile organizations. In Canada, Chilean associations put out the monthly bulletin, Venceremos, published in English, French and Spanish during the 1970s. The newsletter contained articles on secret detention centres, testimony from the regime's victims, and news of the internal resistance and external solidarity efforts. The Canadian Council of Churches assisted by publishing *A Testimony from Chile* following the *coup d'état*. The Council presented ". . . this document as an authentic testimony by one man of the events that have transpired. We know this man and the sources that he has used for his information . . . "[28] The document is divided into sections entitled "Outrages Committed against Human Rights," "Human Rights, A Matter of Freedom," and "Perspectives for the Future." Chile Ontario Information Centre's newsletters proclaimed that the group ". . . feels obliged to explain to Canadians what actually changed . . . with regard to the Junta's maneuvers."[29]

A primary function of these events was to challenge the dictatorship's newly devised tactic of making people disappear inside Chile with testimonial evidence. Names, faces, and biographies of the disappeared ones were publicized by the exiles. Amnesty International in 1977 established a major campaign on behalf of disappeared Chileans incorporating information produced by exiles.

1977's Canadian Enquiry into Human Rights also marked the first time that one of the exiled cultural ambassadors of the Popular Unity government performed in Canada. The musical group Quilapayun ended the conference with an a cappella rendition of "El Pueblo Unido" and this was followed by a concert held in the University of Toronto's Convocation Hall. An audiocassette of the concert produced by the Toronto Chilean Association memorialized the event. Members of the group opened the concert with a piece describing the struggle during these "four long years of exile." The concert was a carefully orchestrated compilation of songs designed to uplift and to

remember. It opened with "Te Recuerdo Amanda" ("I Remember You Amanda"), one of Victor Jara's most famous compositions, and ended with "El Pueblo Unido," characterized by the group as "the most important song in our actual repertoire."

This concert became for Canada the first of many tours by Popular Unity celebrities Quilapayun, Inti Illimani, and Angel and Isabel Parra. The concerts succeeded in heartening the spirits of the exiled communities as well as furthering support for their cause by engaging members of the host society. Cultural events took on profound meaning for the exiles as they served to provoke memory and preserve a spirit of resistance. For the exiled musicians, the concerts provided a means to preserve the cultural heritage of the New Song Movement censored by the junta. In addition, by publicly playing the internally banned Andean instruments, exiled artists engaged in acts of resistance.

Many of the exiled artists had been caught outside of Chile when the coup took place, after which they were refused re-entry into the country. They had been part of an eleventh-hour effort by Popular Unity to generate international support for its beleaguered government. These musical groups had been active participants in *la nueva cancion chilena*, the Chilean New Song Movement, which sought to meld music with an anti-colonial/imperialist political consciousness in support of national sovereignty. The movement aimed to develop indigenous roots and establish a popular audience. It was characterized by the use of aboriginal names and traditional Andean instruments such as the *charango*, *zampona,* and *quena*.[30]

In exile, the musical groups created their own means of protest to the military regime. Quilapayun teamed with Joan Jara, British-born widow of the group's first musical director, the executed Victor Jara, on a worldwide tribute tour. In Montreal, the group staged their operetta, *La Cantata de Santa Maria de Iquique*, with the participation of Quebec chanteuse Pauline Julienne. Based on the 1908 massacre of striking miners and their families in the country's northern mining district, Quilapayun retold the story of the historic event in light of contemporary Chilean resistance. The group reworked their popular pre-coup songs such as "La Batea" ("The Washbasin") with new lyrics denigrating the military dictatorship. The rousing choruses of "Malembe" invited audience members to join in casting an evil spell on junta members.

Inti Illimani presented an international tour, "Chile in Our Hearts," with a view to protest forced exile. At this time, the group began to develop and broaden its repertoire to reflect the culture of Italy, their country of asylum.[31] Horacio Salinas, a founding member of Inti Illimani, explained the problem of remaining in suspended animation waiting for the day of return.[32]

> Exile produces two types of problems for artists. It causes a strong uprooting for artists and certain incomprehension by the new audience. Artists have a key or a code that was difficult for some countries to understand, so some artists stopped producing. The other problem is that for many the reason to create art was rooted in the land, the country and the history where they had been producing. So there were some people that continued to play the same music. But in another country with another history and also in a new epoch, there was a terrific shift which left many of those involved in this music removed from artistic reality.[33]

Salinas posed the nuanced dilemma faced by exiles: to "keep the flags of struggle very high" or "to open our ears a little and the windows of our house to understand what was happening in what was our second house . . . .We lived many years—from 1973 to 1978—perplexed, without putting curtains on the windows, with our bags packed always ready to return."[34]

When the Pinochet regime promulgated its own constitution in 1980, exiles came to understand that their predicament would be a long-term one. The military dictatorship that had been expected to fall had, instead, managed to institutionalize its claim to political leadership. Simultaneously, human rights and grassroots organizations were rebuilding inside the country. Even before this, exile activity had begun to modify its focus to showcase and support resistance activity in Chile. In 1978 and 1979, exiles sponsored concert tours of opposition musical groups recently formed inside the country. These included Ortiga and Illapu, both associated with Agrupacion Cultural de Universidad (ACU, or the University Cultural Association).[35] Exiles engaged in sympathy hunger strikes in 1977 and 1978 to support those undertaken inside Chile by the Association of Relatives of the Disappeared in efforts to obtain information on the fates of their family members.

During this time, inside Chile, the opposition began to incorporate the right of Chileans to live in their country into the roster of human rights demands. A Committee for the Right to Return was organized and employed the metaphor of a bell jar, depicting Chilean exiles under glass to illustrate their plight. In 1978, the ACU presented a photographic exhibition of artists in exile that openly proclaimed the names, faces, and activity of the banished ones. Efforts to dislodge the geographical separation of opposition Chileans continued to be mounted from inside and outside of the country.

Exiles also were able to provide a measure of security for internal opposition by facilitating the participation of for-

eign observers to Chilean activity. Canadian Geneva Parker attended the first two congresses of the Women's Department of the Coordinadora National Syndicato (National Workers Coordination) in 1978 and 1979.[36] Lake Sagaris and Lorraine Mitchell represented Canada's National Union of Students at the ACU's founding conferences in 1980 and 1981. Foreign delegates were able to bring out of Chile eyewitness testimony, material, and information that was duplicated and widely distributed. By these means, exiles were able to render assistance to the newly launched opposition groups and to continue to expose the repressive practices of the military regime.

By 1983, the fulcrum of resistance to the dictatorship had shifted to Chile. With the inception of the national days of protest inside the country, the exile community organized to support this activity. The "circles of silence" created by the culture of fear had been punctured in Chile as hundreds of thousands of Chileans publicly displayed their opposition to the dictatorship by mean of monthly demonstrations and work stoppages. The massive numbers who openly protested the regime fueled hopes among exiles that they would soon be able to return.

By this time, some exiles had been able to return to Chile while others on the Lista Nacional continued to be barred from the country. And still others continued to be expelled by the regime. For example, in August 1981, four opposition leaders of centre-left political parties were exiled because the regime proclaimed them to have "a defiant attitude that the government will not tolerate."[37]

Some exiles went back to Chile clandestinely and joined the resistance. Others surreptitiously entered the country to gather documentary evidence. Nobel-Prize-winning Colombian author Gabriel Garcia Marquez chronicled the exploits of exiled filmmaker Miguel Littin, when he secretly entered the country in 1985 in order to make a documentary of life under the Pinochet regime.[38] Littin had disguised himself as an Uruguayan businessman and, through subterfuge, shot one hundred thousand feet of film in six weeks. The two-hour film *Acta General de Chile* (*General Document on Chile*) comprised footage of a myriad of views of the country, including the interior of Pinochet's office. Screened at film festivals (a four-hour version was televised in Cuba), it was said to ". . . gently register the exile's nostalgia and surprises." [39]

Acta General de Chile served as an indication of the constricted vision of long-term exile. The film was critiqued by some for idealizing Allende's Chile and thus it ". . . muddles his memory". The film was deemed to be history ". . . as hagiography."[40] The tenderly photographed images of Chile evoked the exile's imagined memories of land, sea, desert, and mountains and exposed a predicament of long-term exile. Writing about the work of Chilean-Canadian photographer Rafael Goldchain, Alberto Manguel described the dilemma of exile:

> Within a country, inside a space, the eye sees its surroundings and reaffirms them. From outside—seen as memory, dream, longing invention—the exile sees the country as it never is . . . The exile's task is twofold: to procure himself as image of the absent country that will allow him a constant point of reference, and to procure for others an image of that same country that will not lend itself to easy cliches and mere local colour.[41]

Nostalgia is a permanent condition of exile. The term itself is derived from the Greek "*nostos*—return home, and *algia*—longing."[42] Forced exile can be described as a punishment without end. The sentence is one that is lived out daily and is only intensified when return is made possible. Boym depicts this fate as ". . . the luxury (or curse) of being able to criss-cross the border."[43]

Read through a lens of pain and dislocation, the state of exile continues to embody a punishment that never ceases; it is only transmuted as time goes on. Exile transcends the generations of its victims, affecting families permanently as children and grandchildren experience anew the loss of family and culture and the pain of their elders.

Mindful of Said's caution that exile can never be romanticized, Chilean exiles nevertheless managed to construct an embodied site of struggle. [44] Through their resistance, solidarity strategies, and commemorative practices, Chileans created and inhabited a newly devised distinct space. From this vantage point, they filtered information coming from "inside" and amplified and disseminated vestiges of the past. With their emphasis on solidarity practices, they were able to create an expanse both to contain memory and to produce opposition to the military dictatorship. It was into this constructed site of struggle that General Pinochet inadvertently fell when he was arrested in London in October 1998.[45]

When Chile's transition to democracy was commemorated with the *Acto de Democracia* on March 12, 1990, President Patricio Aylwin entered the National Stadium on foot to the strains of Verdi's *Nabucco*, symbolizing a return from exile. The anthem had originally been written as a celebration of the Jewish people's return from Babylonian captivity. While Aylwin had not been in exile, the choice of music symbolized the restoration of democracy and a healing of Chile's body politic. One component of the democratic transition's tasks was the creation of the National Office for the Return on July 31, 1991. While the office was fraught with problems, it was instituted to assist exiles with costs of returning and re-establishing livelihoods.

For those exiles who chose to return to Chile, a new process of renegotiating identity began. They found themselves to be in a different country than that they had left or remembered, one that had been profoundly altered by seventeen years of military dictatorship. Dr. Raul Berdichevsky described the impact of finding his Chilean reality altered when he returned from Canada:

> That which made me feel very Chilean—the values and basic principles of life—had vanished. That society no longer existed. It cast into sharp relief the fact that I too had been altered by life in exile. Clearly, exile contains man elements of movement and is not just the eternal rumination of the past.[46]

Within the Chilean diaspora, children and grandchildren of exiles began to produce representations of their own cultural memory. Films, songs, plays, and poems were created from the stance of second and third generations of Chileans. One young artist poetically captured the spirit of a transnational identity:

> Two continent reside on the planes of my horizons.
> I am all the people who have died. I am all the people who have left.
> I am…
> I was a small seed. Now I am two hearts, two shorelines, two maps.
> Demarcation and boundaries led me to this.
> A border within myself has been erased.
> Replaced by so much sound, beauty, and life.
> *Gracias a la vida…* [47]

In May 2001, Canada's Governor General, Adrienne Clarkson, led a delegation to the Southern Cone in order to establish closer hemispheric ties. In Chile, she said "Chilean poets, writers, academics and students have rejuvenated Canadian society, at the same time that it was enveloping them with safety."[48] During this visit, Clarkson signed an agreement with the National Library of Chile to repatriate the fruits of Chilean-Canadian exile achievement. The Periodical Writers Organization of Canada administers "Project Adrienne" with the objective of repatriating Chilean exile cultural products.

Memory nurtured in exile enabled the symbols and principles of the deposed Popular Unity movement to be conserved and commemorated, in direct opposition to the dictatorship's design. Resistance strategies facilitated the remembrance of people and political philosophy and preserved elements of material culture that were in danger of obliteration. Through the measures taken by exiled survivors, evidence was produced and maintained that has the propensity for historical inquiry and the possibility of reinsertion into the Chilean national narrative. As the transition to democracy extended throughout the 1990s, a complex and delicate process of resistance memory, coming from both inside and outside of Chile, persisted in reintegrating itself into Chilean national life.

Notes

1. Ricardo Trumper and Patricia Tomic, "From a Cancerous Body to a Reconciled Family: Legitimizing Neoliberalism in Chile," in *Household, Gender and Culture: International Perspectives*, ed. Susan Ilcan and Lynne Phillips (South Hadley, MA: Bergin and Garvin, 1998) 3–18.
2. Ariel Dorfman, *Heading South, Looking North: A Bilingual Journey* (New York: Farrar, Straus and Giroux, 1998), 201.
3. In October 2000, human rights lawyer Fabiola Letelier filed suit on behalf of more than six hundred thousand exiled Chileans and more than nine thousand Chileans refused entry into their country by the military junta. Exile organizations claimed one million Chileans were in exile in the aftermath of the *coup d'état*.
4. For more on Canada's official reluctance to accept refugees from Chile see Gerald E. Dirks, *Canada's Refugee Policy: Indifference or Opportunism?* (Montreal: McGill-Queens University Press, 1977); Reg Whitaker, *Double Standard: The Secret History of Canadian* Immigration (Toronto: Lester and Orpen Dennys, 1987); and Joan Simalchik, "Part of the Awakening: Canadian Churches and Chilean Refugees" (master's thesis, OISE-University of Toronto, 1993).
5. Carmen Rodriguez, *and a body to remember with* (Vancouver: Arsenal Pulp Press, 1997), 19–20.
6. Monica Escobar, "Exile and National Identity: Chilean Women in Canada," (PhD dissertation, OISE-University of Toronto, 2000), 252.
7. Salvador Allende, "Last Word," in *Salvador Allende Reader*, ed. James D. Cockcroft, (Melbourne: Ocean Press, 2000), 240–241.
8. Judith Pilowsky and Carlos Torres, "El Exilio: un crimen impune," (conference paper, University of La Serena, November, 2000), 6 (my translation).
9. Escobar, ii.
10. Joseph Wittlin, quoted in Paul Tabori, *The Anatomy of Exile: A Semantic and Historical Study* (London: Harrap, 1972),. 32.
11. The Garden of Exile is described as "Not your garden of paradise…It has a dizzying and confusing effect to it"; see <http://www.geocities.com/snufflesyoung/bvo/BVOE.htm>.
12. E.H. Carr, *The Romantic Exiles* Middlesex, England: Penguin, 1933). Carr wrote about pre-Marxist revolutionary Europeans and asserted, "In them Romanticism found its last expression" with a remaining "handful of dare-devil terrorists in Russia and of picturesque anarchists in western Europe…" (321).
13. Edward Said, *Reflections on Exile* (Cambridge, MA: Harvard University Press, 2000), 174. Said points out that while Carr

and "history romanticizes" the state of exile, it "cannot be made to serve notions of humanism."

14. For example, Canada signed the 1951 United Nations Convention in 1969, but only established refugee status in law in 1976. Previous refugee movements were admitted by special Cabinet decisions. It was in response to the Chilean situation, and the lobby of a coalition of Canadian civic organizations, that Canada set up its refugee determination system.
15. The "Diagnostic and Statistical Manual of Traumatic Stress" (DSM-IV-TR) lists "removal from home" under the housing category of psychosocial and environmental problems posing a potential risk factor for stress. Refugees are removed from both their homes and homelands. In the social environment category, acculturation problems are listed. *Quick Reference to the Diagnostic Criteria.* (Washington, DC: American Psychiatric Association, 2000), 43.
16. Ana Maria Barrenechea constructs a distinct category for "the fires of exile" in "Under Many Fires" in *Canadian Women's Studies: An Introductory Reader*, ed. Nuzhat Amin, *et al.* (Toronto: Inanna Publications, 1999), 227.
17. Ximena Fornazzari, "The Trauma of Exile and Resettlement," in *Community Support for Survivors of Torture: A Manual*, ed. Kathy Price (Toronto: Canadian Centre for Victims of Torture, 1995), 15.
18. Leon and Rebecca Grinberg state, "Exile converts the search for truth, a voluntary migration, into punishment and involuntary migration," and compare it to Adam and Eve's banishment from the Garden of Eden; see *Psychoanalytical Perspectives on Migration and Exile* (New Haven: Yale University Press, 1989), 8.
19. Ignacio Martin Baro, *Writings for a Liberation Psychology*, ed. A. Aron and S. Corne, (Cambridge, MA: Harvard University Press, 1994), 188. Martin Baro here writes concerning the effects of the "Social Lie" on populations living under conditions of war or dictatorship. This notion may be extended to exile populations who do not have opportunity to have their living reality validated by the larger society or "reflected" back to them with any accuracy or understanding.
20. Alberto Manguel, "Introduction," in *Nostalgia for an Unknown Land*, by Rafael Goldchain (Toronto: Lumiere Press, 1989).
21. For example, Canada recognized the junta eighteen days after the September 11 *coup d'état*.
22. However, Chileans often discovered elements of "typical culture" in exile. Many professed that they learned to dance the *cueca* and to prepare national dishes in countries of exile.
23. Rodriguez, 89.
24. Allende.
25. Guzman had intended to make a documentary depicting the life of Popular Unity government. Instead, because of the timing of the *coup d'état*, he filmed its demise.
26. Chile was condemned by the United Nations General Assembly for human rights violations each year during the dictatorship despite lobby efforts to normalize its image.
27. "Documents from the Meeting of the Juridical Sub-Commission….," Berlin, 1977, Toronto Action for Chile archives.
28. Anonymous, *A Testimony from Chile* (Toronto: Canadian Council of Churches, n.d.), Toronto Action for Chile archives.
29. Chile Ontario Information Centre, May 12, 1978, Toronto Action for Chile archives.
30. Angel and Angel Parra were children of folklorist Violetta Parra, founder of the New Song Movement. Both groups, Quilapayun ("Five Bearded Men") and Inti Illimani ("Messengers of the Gods"), who performed in traditional ponchos, had worked with Victor Jara. All were active supporters of Popular Unity.
31. Quilapayun, exiled in Paris, composed a musical thank you for solidarity shown by the French people. The piece, "Waltz of Colombe," used the Andean flutes, *quenas* and *zamponas*, to recreate the sounds of the traditional French calliope.
32. At a 1981 Toronto concert by Inti Illimani, Horacio Duran, another founding member, told the audience that Chileans had taken the world record for having the shortest index fingers from the Spanish people. This condition, he explained, comes from pounding the table with the finger emphasizing that "this year we go home." When they did return to Chile in 1989 after an eighteen-year exile, the group declared that it had been on the longest tour in history.
33. "A Conversation with Horatio Salinas of Inti Illimani," Center for Latin American Studies, University of California, Berkeley, October 6, 1999, 4, <http://ist-socrates.berkeley.edu:7001/Events/intiillimani-index.html>.
34. *Ibid.*, 4–5.
35. After one such tour, Illapu was refused re-entry into Chile and thus joined the ranks of exiled artists. Their song "Vuelvo," written to demonstrate their determination to return, became an anthem for Chileans in exile.
36. The CNS was the labour federation that grew in the vacuum left by the banning of CUT (Central Unica de Trabajadores, or Workers' Central Union of Chile).
37. Derechos Chile website, Chronology.
38. Gabriel Garcia Marquez, *Clandestine in Chile: The Adventures of Miguel Littin* (New York: Henry Holt and Co., 1986.) Littin had been appointed head of the Chilean film industry by Allende in 1970.
39. Michael Wood, *New York Times Book Review*, August 9, 1987.
40. *Ibid.*
41. Alberto Manguel, "The Memory of Exile." (Toronto: Blackflash, Fall 1988).
42. Svetlana Boym, *The Future of Nostalgia* (New York: Basic Books, 2001), xiii. Boym maintains (p. xvi) that nostalgia "…is not just an individual sickness but a symptom of our age, a historical emotion."
43. *Ibid.*, 331.
44. Edward Said.
45. Jack Straw, UK Minister of State who allowed the General's arrest by Scotland Yard, was an early member of the Chilean solidarity movement.
46. Dr. Raul Berdichevsky, interview, August 13, 2001, Toronto).

47. Marilo Nunez, "North Meets South," *Canadian Woman Studies* 19, no. 3: 95.
48. Paul Knox, "Military Rule Drew Canada, Chile Closer", *Globe and Mail*, May 9, 2001, A12.

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Australia and Stateless Palestinians

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Abstract

This article considers Australia's treatment of stateless Palestinian asylum seekers and discusses whether that treatment discharges Australia's legal and/or moral obligations towards the individuals in question. The conclusion drawn is that it does not.

Résumé

L'article prend en considération le traitement que l'Australie réserve aux demandeurs d'asile palestiniens apatrides et demande si ce traitement décharge l'Australie de ses obligations juridiques et/ou morales envers les individus en question. La conclusion établit qu'il n'en est rien.

Introduction

The primary function of the state is to protect its associated people (its nationals) from Hobbes's "war of all against all." Unfortunately, there are about nine million people worldwide who are in the situation of being "cast adrift from the global political system of nation states."[1] These people are "not considered as a national by any State under the operation of its law" and hence are *de jure* stateless.[2] Refugees, by contrast, may well possess the nationality of some country, but find themselves persecuted rather than protected in their country of nationality.[3] Some stateless persons are unlucky enough to be refugees as well, meaning that they find themselves faced with persecution in their country of habitual residence.

In an earlier era than our own, not much distinction was drawn between stateless persons and refugees because what was considered significant was what they had in common – their lack of state protection.[4] However, the trend since World War II has been that the international community has focused less and less on the fact that an individual lacks state protection and more and more on the reasons for the lack in determining whether or not to provide substitute protection. Those who lack state protection for reasons other than the reasons set out in the Convention Relating to the Status of Refugees (Refugee Convention)[5] have found themselves increasingly marginalized. In particular, while there is a Convention Relating to the Status of Stateless Persons (Statelessness Convention)[6] only 57 states[7] are parties to it compared to the 145 states[8] that are parties to the Refugee Convention and/or Refugee Protocol.

This article considers the plight of the approximately 3,723,036 Palestinians who are not formally nationals (citizens) of any country,[9] *i.e.* are *de jure* stateless. It then considers the extent to which these individuals are able to rely for protection on the two treaty regimes specified above and on the more general body of international human rights law. The article next considers whether Australia's treatment of stateless Palestinians complies fully with all of its obligations under the Refugee Convention, the Statelessness Convention, and the general body of international human rights law and concludes that it does not. Finally, the article argues that Australia not only has international legal obligations towards stateless Palestinians but also moral obligations incurred through past action. It suggests that in order to discharge these moral obligations Australia should not only meet its strict legal obligations to stateless Palestinians but also give serious consideration to conferring its own nationality on stateless Palestinians in Australia who have nowhere else to turn.

The Palestinians

For as long as the three great monotheistic religions have been in existence, the territorial entity now described as Palestine has had a distinct identity derived from those religions. It is the Holy Land.[10] The Jews settled Palestine about one thousand years before the birth of Christ. However, by the end of the seventh century most of the population of Palestine was Arab and Muslim and in 1516 it became part of the Ottoman Empire.[11] From about 1882, Jews began migrating or returning (depending on your point of view) to the Holy Land. From about 1904–5, most of the migrants were angry young men and their goal was to make "Palestine become as Jewish as England is English."[12] In other words, they were Zionists.

At the time Jewish migration commenced, the Holy Land had a permanent population of about 462,000 persons. Most of these inhabitants were Arab Muslims, some were Arab Christians, and about 15,000 were Jews.[13] By 1914, the population of Palestine had increased to over 720,000 of whom about 60,000 were Jews and the rest Arab.[14]

During World War I, the Ottoman Empire allied itself with Germany and in the course of the war Britain and France occupied its territories. Just before Armistice in 1918, those two countries announced that they intended "the complete and definitive liberation of the peoples so long oppressed by the Turks and the establishment of national Governments and Administrations drawing their authority from the initiative and free choice of the indigenous populations."[15] What they in fact did after World War I was to follow through on a secret plan to carve up former Ottoman territory between themselves.[16] Palestine, Jordan and Iraq went to Britain.[17]

In place of straight out colonial rule, Britain and France had themselves appointed as League of Nations Mandatories of the territories they acquired during the war. Mandatories were given supervision and control of mandated territories, but not sovereignty over them.[18] Article 22 of the Covenant of the League of Nations (the Covenant) provided:

> To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by people not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the wellbeing of such people form a sacred trust of civilization…
>
> The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations…and that this tutelage should be exercised by them as Mandatories on behalf of the League.[19]

As David Abernethy points out, this "acknowledgement by colonial powers that they had a moral and legal responsibility to foster the well-being of colonized people on behalf of the larger international community was an important break from the past."[20] The Arab inhabitants of Palestine were unimpressed. They believed for a start that Britain had reneged on the promise of liberation made just before Armistice. Moreover, it was evident to them that the terms of the Palestine Mandate were geared not towards giving effect to the principles set out in Article 22 of the Covenant but rather towards giving effect to the Balfour Declaration of November 1917 in which Britain had supported "the establishment in Palestine of a national home for the Jewish people." Article 22 of the Covenant stated:

> Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone.

Yet, as Omar Dajani points out,

> in contrast to its numerous explicit commitments to the establishment of a "Jewish national home" in Palestine, the Mandate referred to the indigenous Arab population of the country, which in 1922 represented almost 90% of Palestine's total population, primarily in contradistinction to the Jewish population. The Mandate, therefore, transformed the "independent nation" provisionally recognized by the Covenant into an assortment of "non-Jewish communities" that happened to reside within the borders of the territory of Palestine.[21]

Article 2 of the Palestine Mandate at least provided that in addition to "placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home," the Mandatory was responsible for "the development of self-governing institutions, and also for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion."[22] However, Britain did not in fact allow the Palestinians to develop self-governing institutions for fear that this would jeopardize the establishment of a Jewish homeland in Palestine.[23] By contrast, during the mandate period, the Zionists managed to put in place a 'continuum of "Jewish territory"' and a parallel Jewish polity in Palestine.[24]

During the interwar period, 100,000 European Jews migrated to Palestine. Many were, of course, refugees fleeing the spread of Nazism.[25] However, Arab Palestinians focused on their own dispossession and responded to Jewish settlement with an armed uprising which commenced in 1936 and was finally put down by the British in 1939.[26] By then war was looming in Europe and British Prime Minister Neville Chamberlain took the view that it was more important to have the Arabs on-side than the Jews.[27] In order to placate the Arabs, Britain placed restrictions on Jewish immigration and promised that Palestine would be given independence within ten years.[28]

Immediately after World War II, Palestine had an Arab population of approximately 1.06 million people and a Jewish population of approximately 554,000 people.[29] In other words, the Arabs outnumbered the Jews two to one.

The Zionist movement, through an organization known as the Jewish Agency, demanded that Britain allow the 100,000 Jews displaced by World War II to migrate to Palestine.[30] Britain, which was preparing to give independence to Palestine, decided to continue with the quota of 1,500 Jewish migrants per month that it had imposed in 1939.[31] The military arm of the Jewish Agency, Haganah, and two underground Zionist organizations responded by waging an undeclared war or campaign of terror (again, depending on your point of view) against British authorities in Palestine.[32]

By 1947, Britain had had enough and asked the United Nations to sort out the problem. The United Nations established an eleven-member Special Committee on Palestine (UNSCOP), which reported to the United Nations General Assembly in August 1947. The majority (seven members)[33] recommended the partition of Palestine into a Jewish state comprising 56 per cent of the territory and an Arab state comprising 43 per cent of the territory. It also recommended the internationalization of Jerusalem, since the city was holy to Jews, Christians, and Muslims.[34] A minority (three members) recommended that independent Palestine be established as a federal state.[35] The eleventh member (Australia) chose to abstain from making any recommendation.[36] The Zionists were pleased with the majority recommendations. The Arabs were not, since what was being recommended was that a minority of the population get the majority of the territory. Nevertheless, on 29 November 1947, the United Nations General Assembly passed a resolution which endorsed the partition recommendation by a two-thirds majority.[37]

According to the historian Tom Segev, "No one believed in the UN's map, everyone knew there would be war."[38] However, Britain was determined to wash its hands of Palestine.[39] The British High Commissioner and the last British troops left Palestine on 14 May 1948, the very day that the mandate terminated.[40] On that day, David Ben-Gurion, the head of the Jewish Agency, declared that the state of Israel had come into being. Palestine's Arab neighbours responded by sending in their troops. By the end of 1948, the Israeli forces had routed them all.[41] In the first part of 1949, Israel signed a series of armistice agreements with its neighbours, *i.e.* with Egypt, Jordan, Lebanon, and Syria. Under the agreements Israel got to keep considerably more territory than it would have received under the United Nations partition arrangement (77 per cent of mandatory Palestine).[42] Jordan and Egypt respectively were left in control of those parts of mandatory Palestine known as the West Bank and the Gaza Strip (the remaining 23 per cent of mandatory Palestine).[43]

On 27 January 1949, Britain and Australia announced their recognition of Israel.[44] Australia also moved the formal resolution recommending Israel's admission as a member of the United Nations.[45] On 18 May 1949, Israel's application for United Nations membership was approved. At the beginning of 1950, the new state of Israel had a population of one million Jews and about 150,000 Arabs. This was because on the one hand Jewish immigration to Israel continued while on the other most Arabs inhabitants had fled or been expelled during the 1948 war.[46] The extent to which displacement was caused by the latter rather than the former is the subject of bitter contestation,[47] since even at the time mass expulsion was regarded as a war crime and a crime against humanity.[48] In any event, the displaced Arabs are not regarded as Israeli nationals under Israeli law.[49] Moreover, they are not permitted by Israel to return to the homes they left. Whether Israel's position on nationality and/or return is defensible under international law is, unsurprisingly, the subject of further controversy.[50]

After the 1948 war, 470,000 displaced Palestinians settled in camps in the West Bank and Gaza Strip.[51] Over 280,000 more Palestinians also displaced during the 1948 war dispersed to neighbouring countries, with most going to Jordan, Lebanon, or Syria.[52] During the Six Day War of 1967, in the course of which Israel fought with Egypt, Syria, and Jordan, further displacement occurred with 800,000 West Bank inhabitants and 150,000 Gaza Strip inhabitants fleeing into Jordan.[53]

After the 1967 war, those who remained in the West Bank and Gaza Strip found themselves living under Israeli rule though still without Israeli nationality.[54] Pursuant to the 1994 Gaza-Jericho Agreement and the 1995 Interim Agreement, Israel transferred responsibility for civil governance of some parts of the occupied territories to the Palestinian Authority.[55] However, the non-Jewish inhabitants of the occupied territories remain *de jure* stateless[56] and, far from being protected by either Israel or the Palestinian Authority, are subjected to serious human rights abuses by both. These abuses include arbitrary deprivation of life; torture and other cruel, inhuman, or degrading treatment or punishment; arbitrary arrest and detention; arbitrary interference with privacy, family, and home; and denial of freedom of movement.[57]

All Palestinians living in Jordan, except those who fled from the Gaza Strip in 1967, have been permitted to acquire Jordanian citizenship and enjoy the rights which go with citizenship.[58] However, most Palestinian refugees in Syria and Lebanon (including the descendants of the original refugees) are unable to acquire the citizenship of their host country.[59] In Syria they at least enjoy many of the same rights as Syrian citizens do.[60] However, in Lebanon they

have extremely limited work rights, have no access to social assistance, are denied freedom of movement, and have, in fact, been persecuted at various times by state and non-state actors.[61]

Palestinians and International Protection

Asylum

Reference is often made to the fact that Article 14(1) of the United Nations Universal Declaration on Human Rights (UDHR)[62] provides that "everyone has the right to seek and enjoy in other countries asylum from persecution."[63] However, the drafting history of the UDHR indicates that the provision cannot be read as meaning that an individual asylum seeker has the right to be *granted* asylum by the country of his choice or any country.[64]

At one stage in the drafting process, Article 14 did in fact provide that everyone had "the right to seek and be granted in other countries asylum from persecution." This formulation was strongly advocated by the World Jewish Congress, which had in mind the experience of German Jews who had attempted to flee the Holocaust but had been denied entry by other countries. However, Saudi Arabia proposed the deletion of the words "and be granted" and was supported in this by most Arab countries. Arab opposition to the inclusion of the words "and be granted" appears to have been a response to the mass displacement of Palestinians which was occurring at the time. According to Johannes Morsink, "[t]hese countries probably thought that a vote for the human right to be granted asylum would in effect saddle them with half a million refugees to cloth, feed, and house," though from their point of view the only just solution to the Palestinians' plight was repatriation.

The amendment proposed by Saudi Arabia was carried by a vote of eighteen to fourteen with eight abstentions. Australia and Britain were among the non-Arab countries to vote for the amendment. Britain proposed the present wording of Article 14 and was strongly supported by Australia,[65] which, like Britain, did not wish to abandon "the right which every sovereign state possesses to determine the composition of its own population, and who shall be admitted to its territories."[66]

International Refugee and Stateless Persons Regimes

Even though the international community in the immediate aftermath of World War II was not moved by the experience of that war to recognize a human right to be granted asylum, it was still faced with the pressing need to resolve the plight of the thousands displaced from home by the war. As part of the effort to do so, the United Nations General Assembly convened the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons in July 1951. The Conference was charged with drafting a Convention Relating to the Status of Refugees and a Protocol thereto relating to the Status of Stateless Persons which took into account draft treaties already prepared by an *ad hoc* committee of the United Nations Economic and Social Council.[67] The conference did indeed manage to draft and adopt a Refugee Convention but ended up leaving the proposed Protocol relating to the Status of Stateless Persons for another day. A second conference of plenipotentiaries was held in 1954 to deal with the Protocol. The conference ended up drafting and adopting not a Protocol to the Refugee Convention but rather a separate Statelessness Convention. This Statelessness Convention replicates *mutatis mutandis* most of the provisions of the Refugee Convention. The significant Refugee Convention provisions that the Statelessness Convention does not replicate are Article 31, which prohibits penalization of refugees for illegal entry or presence (providing certain conditions are met); Article 33, which prohibits *refoulement* of refugees;[68] and Article 35, which requires states to co-operate with the Office of the United Nations High Commissioner for Refugees in the exercise of its functions including supervision of the application of the provisions of the Refugee Convention.[69]

All refugees/stateless persons in a state party's territory have the right to have the provisions of the relevant Convention applied without "discrimination as to race, religion or country of origin,"[70] the right of free access to the state party's courts,[71] and the right to be issued with identity papers if they do not possess a valid travel document.[72] All refugees/stateless persons in a state party's territory also have the right to receive the same treatment as the state's nationals with respect to religious freedom[73] and elementary education[74] and treatment "not less favourable than that accorded to aliens generally in the same circumstances" with respect to property rights[75] and education other than elementary education.[76]

Refugees/stateless persons "lawfully in" a state party's territory must not be expelled from its territory "save on grounds of national security or public order."[77] In addition, all refugees/stateless persons "lawfully in" a state party's territory must be accorded the same rights of freedom of movement[78] and rights to engage in self-employment[79] accorded to "aliens generally in the same circumstances."

All refugees/stateless persons "lawfully staying in" a state party's territory must be issued with travel documents for the purpose of travel outside its territory[80] and accorded the same treatment as the state's nationals with respect to public relief and assistance[81] and to labour and social security rights.[82] All refugees/stateless persons "lawfully staying in" a state party's territory must also be accorded housing rights,[83] rights of association,[84] and rights to engage in

wage-earning employment and practice "liberal professions"[85] that are "not less favourable than that accorded to aliens generally in the same circumstances."

Finally, each Convention provides that state parties "shall as far as possible facilitate the assimilation and naturalization" of the persons to whom the Convention applies.[86] However, the exhortation falls short of imposing an obligation on a state party to grant its nationality to persons to whom the Convention applies.[87] This fact is, of course, entirely in keeping with the refusal of states even to recognize a human right to be granted asylum.

Given that the Refugee Convention and Statelessness Convention confer certain rights on the persons to whom they apply, the next question which must be answered is whether either or both Conventions apply to stateless Palestinians. Refugee Convention Article 1A(2), as modified by Protocol Article I(2),[88] provides that for the purposes of the Convention, the term "refugee" applies to any person who:

> owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it. [89]

However, Article 1D of the Refugee Convention provides:

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

Similarly, while Article 1(1) of the Statelessness Convention provides that for 'the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law,' Article 1(2) provides:

> This Convention shall not apply:
> (i) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance.

The persons intended to be excluded by these provisions from the international protection regimes created by each treaty were Palestinians.[90] However, the drafting history of the Refugee Convention and the Statelessness Convention makes it clear that the reason for excluding them from the application of these treaties was that they were intended to be the beneficiaries of a separate and *better* international protection regime.[91]

On 11 December 1948 the UN General Assembly adopted Resolution 194, which confirmed the right of return of displaced Palestinians and also created the United Nations Conciliation Commission on Palestine (UNCCP), which was charged with facilitating their "repatriation, resettlement and economic and social rehabilitation."[92] A year later, the UN General Assembly created the United Nations Relief and Works Agency for Palestine (UNRWA) as a temporary organization and charged it with providing emergency relief and social services to Palestinian refugees.[93] UNRWA's limited mandate reflected the fact that UNCCP was supposed to quickly resolve the plight of displaced Palestinians. This didn't happen. By 1952, the UN General Assembly had stripped away most of UNCCP's original protection functions and it now exists in name only.[94] UNRWA on the other hand has had many renewals of its mandate and continues to operate.[95] Since 1993, UNRWA has defined a "Palestinian refugee" as any person who took refuge in its areas of operation

> whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who lost both home and means of livelihood as a result of the 1948 conflict.[96]

The children of *men* registered with UNRWA as "Palestinian refugees" can also register as Palestinian refugees.[97] UNRWA assists such individuals if they reside within its areas of operation in the Middle East.

Today, the reference to "organs and agencies of the United Nations other than the United Nations High Commissioner for Refugees " in Article 1D of the Refugee Convention and Article 1(2)(i) of the Statelessness Convention is usually read as a reference to UNRWA since UNCCP doesn't actually do anything anymore. Those who are in receipt of UNRWA's assistance are regarded as being locked out of the protection regimes of the Refugee Convention and Statelessness Convention, even though UNRWA's mandate does not extend to protection. In other words, UNRWA's mandate does not extend to promoting enjoyment of the kinds of rights set out in the Refugee Conven-

tion and Statelessness Convention or to the most important aspect of the legal concept of protection, which is facilitation of a durable solution to the plight of the individual (in the form of repatriation or resettlement).[98]

Goodwin-Gill and Akram make very strong and persuasive arguments in support of the proposition that the second paragraph of Article 1D has the effect that "Palestinian refugees" who leave UNRWA's areas of operation immediately and automatically become entitled to the benefits of the Refugee Convention.[99] Most state parties to the Refugee Convention accept that "Palestinian refugees" who make their way to places outside UNRWA's areas of operation are not *excluded* from Refugee Convention protection by Article 1D. However, most take the position that such individuals will only be entitled to Refugee Convention protection if they meet the Article 1A(2) definition of "refugee."[100] Unfortunately, the determination usually made in relation to such individuals is that they do not meet the Article 1A(2) definition of "refugee."[101]

On 8 November 2002, the Full Court of the Federal Court of Australia decided the case of *Minister for Immigration and Multicultural Affairs v. WABQ*.[102] The respondent in the case was a stateless Palestinian registered with UNWRA whose place of habitual residence was Syria. The Refugee Review Tribunal had found that upon leaving UNRWA's areas of operation the respondent ceased to be excluded from the benefits of the Refugee Convention by Article 1D. It had further found that the respondent had a well-founded fear of persecution if returned to Syria and was therefore a refugee within the meaning of the Refugee Convention. The latter finding was not challenged. However, the Minister for Immigration argued that it did not matter that the respondent met the Article 1A(2) definition of refugee, because Article 1D correctly interpreted excluded him from the application of the Convention. According to the Minister the correct interpretation of Article 1D was that a person entitled to receive assistance from UNRWA was excluded from the benefits of the Refugee Convention even if that person was no longer within UNRWA's areas of operation for whatever reason (in this case because he had been forced to flee).

The Full Court allowed the Minister's appeal because it found that the Refugee Review Tribunal had indeed erred in its interpretation of Article 1D. However, the Full Court did not accept the Minister's interpretation of Article 1D either.

Tamberlin J. (with whom Moore J. agreed in a separate judgment) held that the first paragraph of Article 1D had the effect that Palestinians as a group were excluded from the benefits of the Convention because as at 28 July 1951 they were protected by UNCPP and assisted by UNRWA. However, the second paragraph of Article 1D required a factual inquiry into whether UNCPP still performed its protection mandate. If it did not, Palestinians were entitled to the benefits of the Refugee Convention as long as they met the definition of refugee set out in Article 1A(2).[103] In the case before the court, of course, the respondent had already been found to fall within the definition and that finding had not been challenged. The case was, therefore, remitted back to the member of the Refugee Review Tribunal who had made the original decision so that a finding of fact could be made on whether UNCPP was still performing its protection mandate but without the need for the respondent to re-establish his refugee status if the finding about UNCPP was (as the court strongly indicated it ought to be) that it was no longer performing its protection mandate. Since the decision in *Minister for Immigration and Multicultural Affairs v. WABQ*, the Refugee Review Tribunal has been applying the Refugee Convention to Palestinians on the basis that UNCPP has not provided Palestinians with protection since 1951 or thereabouts.[104]

If states interpret Article 1(2)(i) of the Statelessness Convention consistently with their interpretation of Article 1D of the Refugee Convention, as they logically ought to do, then most states ought to take the position that once *de jure* stateless Palestinians are outside UNRWA areas of operation they are no longer excluded from the benefits of the Statelessness Convention by Article 1(2)(i).[105] If Australia interprets Article 1(2)(i) of the Statelessness Convention consistently with the Full Federal Court's present interpretation of Article 1D of the Refugee Convention, then it ought to take the position that Article 1(2)(i) no longer excludes Palestinians from claiming the benefits of the Statelessness Convention. However, since Australia's implementation of its Statelessness Convention obligations is not the subject of any kind of judicial oversight,[106] it cannot be taken for granted that the executive government will feel constrained to apply the reasoning in *WABQ* by analogy to its interpretation of Article 1(2)(i).

Assuming that Palestinians as a group are not (or a particular Palestinian is not) excluded from the application of the Statelessness Convention by Article 1(2)(i), they may still be caught by another of the exclusions listed in Article 1(2). In the present context, the most important of these other exclusions is Article 1(2)(ii), which provides that the Statelessness Convention shall not apply

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

Article 1E of the Refugee Convention contains an analogous exclusion from the application of that Convention. The only country in the world which could plausibly be argued to provide its stateless Palestinians residents with the sort of protection contemplated by Article 1(2)(ii) of the Statelessness Convention and Article 1E of the Refugee Convention (without actually conferring nationality) is Syria.[107] However, Australia's Refugee Review Tribunal seems to accept that the rights which Palestinians enjoy in Syria are not sufficient to trigger the Article 1E exclusion.[108]

International Human Rights Regime

In *The Status of Palestinian Refugees in International Law*, Takkenberg notes that not only is it the case that relatively few states are parties to the Statelessness Convention but even in those states few stateless persons have succeeded in actually claiming the benefits of that Convention.[109] He suggests that one reason for this is that the ability of an individual to enjoy most of the rights set out in that Convention is dependent not only on being stateless but also on having some kind of lawful immigration status in the country concerned.[110] The immigration status of an individual while in a country of which he or she is not a national is entirely governed by the domestic law of that country. International law has nothing to say about the matter. However, international law does have something to say about another matter and that is what rights are due to human beings *as such* regardless of other status.

Australia is one of the 153 states[111] that are party to the International Covenant on Civil and Political Rights (ICCPR)[112] and one of the 150 states[113] that are party to the International Covenant on Economic, Social and Cultural Rights (ICESCR).[114] Most of the human rights obligations set out in these two treaties are also customary international law obligations binding as such even on states which are not parties to the treaties.[115] Some of these customary international law human rights obligations have, in fact, become peremptory norms of international law, which as such override all inconsistent rules of international law whether sourced in treaty or custom.[116] More significantly, however, there is growing acceptance of the proposition that international human rights law as a body of law has primacy over all other international law, including the specialized international legal regimes put in place by states to govern particular fields of activity.[117] Of course, it is only necessary to determine which of two potentially applicable legal rules has primacy over the other in a given situation, if the rules are actually in conflict. Both the Statelessness Convention and the Refugee Convention make it clear that their provisions are intended to supplement rather than erode the protections provided to stateless persons and refugees respectively by other sources of law. Article 5 of the Statelessness Convention provides:

> Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to stateless persons apart from this Convention.

Article 5 of the Refugee Convention contains an analogous provision. In short, it is possible to turn to international human rights law to fill the gaps in the international protection of stateless persons and refugees that have been left by the two treaties specifically intended to address the situation of such persons.[118] Australia as a party to the ICCPR has undertaken to:

> respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[119]

Among other things the ICCPR provides that "[e]very human being has the inherent right to life" and the right not to be arbitrarily deprived of it,[120] that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,"[121] and that "[e]veryone has the right to liberty and security of person" and the right not to be arbitrarily arrested or detained.[122] The only ICCPR rights which in their own terms are owed by a state party to a subcategory of individuals rather than to all individuals are the right to freedom of movement,[123] the right to due process before expulsion,[124] and the right to participate in public affairs, vote, and hold political or public office.[125] Moreover, the United Nations Human Rights Committee[126] has been at pains to emphasize that:

> In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.
> Thus, the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens.[127]

Australia as a party to ICESCR has pursuant to Article 2(1) undertaken:

> to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the

> present Covenant by all appropriate means, including particularly the adoption of legislative measures.

The rights recognized in ICESCR include "the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts";[128] "the right of everyone to social security, including social insurance";[129] and "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing."[130]

The obligation imposed upon states by Article 2(1) is greater than may at first be apparent. As interpreted by the United Nations Committee on Economic, Social and Cultural Rights,[131] Article 2(1) imposes a "minimum core obligation" on States to realise immediately "minimum essential levels of each of the rights" contained in the ICESCR.[132] Beyond satisfaction of the minimum core obligation, even developed countries may be able to plead lack of resources as a reason for failing, at a given point in time, to realize fully the rights contained in the ICESCR.[133] However, it is important to note that ICESCR Article 2 continues as follows:

> (2) The State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, birth or other status.[134]

This means that state parties, in according the rights set out in ICESCR to whatever extent, must accord them to all persons within its jurisdiction without discrimination on the basis, *inter alia*, of citizenship status.[135] The only exception to this is contained in Article 2(3) of ICESCR, which provides:

> (3) Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognised in the present Covenant to non-nationals.

The exception applies only in respect to economic rights and can be relied upon only by developing countries[136] (not developed countries such as Australia).

In his 2003 *Final Report on the Rights of Non-Citizens* the UN Special Rapporteur on the Rights of Non-Citizens summarized the conclusion of his review of international human rights law thus:

> all persons should by virtue of their essential humanity enjoy all human rights unless exceptional distinctions, for example, between citizens and non-citizens, serve a legitimate State objective and are proportional to the achievement of that objective.[137]

This is another way of saying that differential treatment of citizens and non-citizens is only permissible if the difference in treatment does not breach the principle of non-discrimination, which is almost certainly a peremptory norm of international law.[138] The legitimacy of aims and proportionality of means can of course be debated at length, especially in the context of determining the extent to which non-citizens should be accorded economic and social rights. Even in that context, however, there is a bottom-line proposition which emerges with clarity from the jurisprudence of the Committee on Economic, Social and Cultural Rights: there can be no justification for differential treatment which involves denying to non-nationals the minimum essential levels of ICESCR rights necessary for survival.[139]

The Plight of Stateless Palestinians in Australia

Australia divides non-citizens into two categories: lawful and unlawful. A non-citizen in Australia who "holds a visa that is in effect" is a lawful non-citizen.[140] Visas can be permanent (giving permission to remain in Australia indefinitely) or temporary (giving permission to remain in Australia for a specified period or until the happening of a specified event).[141] Visas may also be subject to specified conditions, for example, a condition preventing the holder from engaging in any work in Australia.[142] A non-citizen who is not a lawful non-citizen is an unlawful non-citizen.[143] Sections 189 and 196 of the *Migration Act* provide that an unlawful non-citizen in Australia's migration zone (other than an excised offshore place) must be detained until removed from Australia, deported, or granted a visa.

Non-citizens in Australia who invoke Australia's international protection obligations are permitted to make protection visa applications. The basic criterion for the grant of a protection visa is that the applicant is "a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugee Convention as amended by the Refugee Protocol" or is the spouse or dependant of a protection visa holder.[144] The *Migration Act* does not give the primary-stage decision maker or the merits review tribunal the power to grant a protection visa to an applicant not meeting the criteria for grant of a protection visa. However, the Minister for Immigration has been given personal powers to substitute for a decision of the merits review tribunal another "more favourable" decision, "if the Minister thinks that it is in the public interest to do so."[145] In exercise of these powers, the Minister is able to grant a protection visa applicant whatever visa the Min-

ister thinks fit, even if the applicant does not satisfy the criteria specified in the regulations for the grant of a visa of that class. Ministerial guidelines relating to the exercise of the Minister's powers of intervention among other things identify cases of non-citizens to whom Australia has protection obligations under the Convention Against Torture and/or the ICCPR as cases in which it may be in the public interest to substitute a more favourable decision.[146] However, Australia's obligations under the Statelessness Convention are not specifically mentioned.

Requesting exercise of the Minister's powers of intervention is the first and only opportunity asylum seekers have to put non-Refugee Convention protection claims to a decision maker who actually has the ability to respond meaningfully to those claims. It is a protection mechanism which clearly does not meet minimum procedural standards. First, the Minister for Immigration does not even have to consider the exercise of the powers; *i.e.* their exercise is non-compellable. Second, the Minister is clearly not an independent decision maker in the sense of being independent of immigration control and other government interests potentially opposed to those of the asylum seeker. Finally, the claimant does not have effective access to judicial or other independent review.

The Minister's powers of intervention were exercised in 590 cases in the period 1 July 2002 to 31 December 2003. It appears that most persons who successfully sought intervention were granted classes of visa other than protection visas.[147] In recent times, the type of visa most likely to be granted has been a temporary spouse visa because the kind of case most likely to prompt intervention is that of "an in-community applicant with an Australian citizen child and Australian citizen/permanent resident partner."[148] However, use has also been made of a wide range of other visa classes.[149] By contrast, prior to 1999 it was almost always the case that a protection visa was granted following ministerial intervention.[150] Johanna Stratton infers from this change (correctly, I suspect) that the Australian Government has made a policy decision to avoid granting protection visas following intervention, in order to reinforce its message that Australia is not a "soft touch" for asylum seekers.[151] In short, it is far from satisfactory that Australia's fulfillment of its obligations under the Statelessness Convention is dependent on the uncertain discretion of the Minister for Immigration. The upshot is that those entitled to Australia's protection under the Statelessness Convention are unlikely to receive it, unless they happen to be "refugees" also.

Mr. Al Masri was a Palestinian from the Gaza Strip who arrived in Australia without authorization and thereby became an unlawful non-citizen. He made a protection visa application, which was rejected at both primary and merits review stages on the basis that Australia did not owe him protection obligations under the Refugee Convention. Section 198(1) of the *Migration Act* provides that an "officer must remove as soon as reasonably practicable an unlawful non-citizen who asks the Minister, in writing, to be so removed."[152] Immediately upon receiving the negative merits review decision, Mr. Al Masri made a written request to be returned to the Gaza Strip and did not at any stage thereafter seek to remain in Australia. Whether the Minister for Immigration might have been moved to exercise the ministerial powers of intervention on the basis of Australia's obligations under the Statelessness Convention must therefore remain a matter of speculation.

Israel did not oppose Mr. Al Masri's return to Gaza but would not permit Australia to return him via Israel. The alternatives acceptable to Israel were return through Jordan or Egypt, but those countries also refused to permit transit through their territories. Mr. Al Masri, who found himself faced with the prospect of indefinite detention in Australia, sought a court order for release.

The judge at first instance held that the relevant provisions of the *Migration Act* were

> to be construed as authorising detention only for so long as: the minister is taking all reasonable steps to secure the removal from Australia of a removee as soon as is reasonably practicable; [and] the removal of the removee from Australia is "reasonably practicable", in the sense that there must be a real likelihood or prospect of removal in the reasonably foreseeable future.[153]

His Honour then found as a matter of fact that there was no real likelihood or prospect of Mr. Al Masri's removal in the reasonably foreseeable future and accordingly ordered Mr. Al Masri's release from detention. The Minister for Immigration appealed the decision to the Full Federal Court of Australia.

Following the first-instance decision in the *Al Masri* case, two competing lines of authority developed in the Federal Court of Australia. One line of authority followed the *Al Masri* decision. The other line of cases did not, on the basis that the decision was plainly wrong. On 15 April 2003, the Full Federal Court handed down its decision in *Minister for Immigration and Multicultural Affairs v. Al Masri.*[154] The Court emphasized that it was a principle of statutory construction that legislation ought not to be read as curtailing fundamental rights or freedoms unless there was a "clear expression of an unmistakable and an unambiguous intention" to do so.[155] It then said, in the context of the case before it:

> The manifestation of such an intention must be such as to show clearly, and unmistakably, that the detention is to continue for as long as may be necessary and might even (as a theoretical possibility) be permanent, that it is intended that detention should continue without foreseeable end irrespective of the age, gender, personal or family circumstances of the person, irrespective of the unlikelihood (if such be the case) of a person absconding and irrespective of the absence (if such be the case) of any threat presented to the Australian community of a person detained.[156]

The Court held that the statutory scheme of mandatory detention manifested no such clear intention. Rather, it seemed to have been assumed by Parliament that detention would always come to an end one way or another. The Court, therefore, agreed with the first-instance judge that as a matter of statutory construction the power to detain was limited "to circumstances where there is a real likelihood or prospect of the removal of the person from Australia in the reasonably foreseeable future."[157] It commented that it felt "fortified" in its conclusion by the fact that such a construction also accorded with the principle that so far as its language permits a statute should be read as conforming with Australia's treaty obligations, including under Article 9(1) of the ICCPR (the prohibition on arbitrary detention).[158]

Although the first instance *Al Masri* decision was upheld by the Full Federal Court in *Minister for Immigration and Multicultural Affairs v. Al Masri*, the Australian Government was far from pleased and it became evident that the High Court of Australia would have to settle the matter. Special leave to appeal the Full Federal Court decision in *Al Masri* was refused by the High Court on the basis that the Government had subsequently managed to procure the return of Mr. Al Masri to Gaza. However, appeals to the Full Federal Court from two first-instance Federal Court decisions which raised the same question of law as was raised by the *Al Masri* case were removed to the High Court for resolution. On 6 August 2004, the High Court handed down its decisions in these two cases. In each case, the court was divided four to three, with the majority holding that the *Al Masri* decision was not good law. The judges' reasons for decision are set out in full in *Al-Kateb v. Godwin.*[159]

Mr. Al-Kateb was a stateless[160] Palestinian who was born and spent most of his life in Kuwait. He arrived in Australia without authorization and thereby became an unlawful non-citizen subject to detention. He made a protection visa application which was rejected at both primary and merits review stages and an application for judicial review of the visa decision which was also unsuccessful.[161] At this point, Mr. Al-Kateb made a written request to be removed from Australia, nominating Kuwait or Gaza as preferred destinations.[162] As in the case of Mr. Al Masri, however, the Australian Department of Immigration was unable to find any country prepared to allow entry to Mr. Al-Kateb. The first-instance judge found on the evidence there was no real likelihood or prospect of removal in the reasonably foreseeable future,[163] but, choosing to follow the line of authority holding that *Al Masri v. Minister for Immigration and Multicultural Affairs and Indigenous Affair* was wrongly decided,[164] held that Mr. Al-Kateb was not entitled to release from detention.[165]

The High Court majority (McHugh, Hayne, Callinan, and Heydon JJ.)[166] held that the relevant provisions of the *Migration Act*, by providing that detention of an unlawful non-citizen must continue "until" the occurrence of one of three specified events (*i.e.* grant of a visa, removal, or criminal deportation), had the effect of *unambiguously* authorizing the indefinite detention of unlawful non-citizens in the unfortunate position of neither qualifying for the grant of a visa nor, in practice, being removable/deportable from Australia in the foreseeable future. In particular, section 198 by imposing a duty to effect removal "as soon as reasonably practicable" did not thereby impose any kind of temporal limitation on detention.

According to Hayne J. (McHugh and Heydon JJ. agreeing),

> The duty remains unperformed: it has not yet been practicable to effect removal. That is not to say that it will never happen. This appellant's case stands as an example of why it cannot be said that removal will never happen. His prospects of being removed to what is now the territory in Gaza under the administration of the Palestinian Authority are, and will continue to be, much affected by political events in several countries in the Middle East. It is not possible to predict how those events will develop ….
>
> Because there can be no certainty about whether or when the non?citizen will be removed, it cannot be said that the Act proceeds from a premise (that removal will be possible) which can be demonstrated to be false in any particular case…. And even if, as in this case, it is found that "there is no real likelihood or prospect of [the non-citizen's] removal in the reasonably foreseeable future", that does not mean that continued detention is not for the purpose of subsequent removal. The legislature having authorised detention until the first point at which removal is reasonably practicable, it is not possible to construe the words used as being subject to some narrower limitation such, for example, as what Dixon J referred to in *Koon Wing Lau* as "a reasonable time".[167]

Having decided the question of statutory construction, the majority judges had to consider whether the statutory

provisions were, as argued by the appellant, constitutionally invalid. All four majority judges held that the provisions were constitutionally valid, being an exercise of the power conferred on the Australian Parliament by section 51(xix) of the Australian *Constitution* to legislate with respect to aliens which in their view did not infringe the separation of powers provided for by Chapter III of the *Constitution*.

Asylum-seeker advocates were horrified by the High Court decision, pointing out that as a result of it some stateless non-citizens faced the prospect of being held in Australian immigration detention for literally the rest of their lives. The Minister for Immigration denied this was the case, pointing out in her turn that she had the powers of intervention discussed earlier in this article which she was willing to exercise in appropriate cases.[168] In order to demonstrate her bona fides she ordered a review of all cases affected by the High Court decision.[169] Twenty-four cases were reviewed.[170] The Minister granted bridging visas to the individuals concerned in nine cases where the person had been "cooperative with removal arrangements," their identity had been "firmly established," and removal was "likely to be protracted."[171] In thirteen other cases the Minister refused to grant a visa, which in three cases meant the re-detention of persons previously released by court order.[172] The remaining two cases were still under review at the time of writing.

In order to escape characterization as "arbitrary" under international law, detention must be permitted by domestic law and must also be a necessary *and* proportionate means of achieving a legitimate end.[173] Detention would be proportionate, if the importance to society of the end to be achieved by detention could reasonably be said to outweigh the importance to the individual of physical liberty and the negative impact on the individual of deprivation of liberty. Since the negative impact of detention on the individual tends to increase as the duration of detention increases,[174] duration of detention is a relevant factor in assessing proportionality. It defies credulity to suggest that indefinite detention of persons who cannot be removed from Australia could possibly be a proportionate means of achieving the objective of immigration control. Thus the thirteen individuals, including stateless Palestinians, to whom the Minister refused to grant visas, are being subjected to arbitrary detention in contravention of Article 9(1) of the ICCPR.[175]

The purpose of a bridging visa, as the name implies, is to bridge the time that elapses while a substantive visa application is being processed or while arrangements are being made for a non-citizen to depart Australia. In general, however, unauthorized arrivals are not eligible for the grant of a bridging visa, which is why grant of such a visa in the nine cases above mentioned required exercise of the Minister's powers of intervention. A non-citizen with a bridging visa has the status of a lawful non-citizen and is, therefore, not subject to immigration detention. The problem with court-ordered release from detention was that all that it procured for stateless persons was the dubious benefit of being at liberty in the community but without lawful immigration status or clear rights. I am informed by practitioners familiar with the cases that, lawful status apart, the situation of the nine individuals released on bridging visas is as unenviable. In particular, the bridging visas have been granted subject to the conditions that the holders must not engage in work, studies, or training in Australia.

An Australian citizen or permanent resident (*i.e.* permanent visa holder) who has inadequate means of support will usually fall within one of the categories of persons entitled to a social security payment under the *Social Security Act 1991* (Cth). If all else fails, an Australian citizen or permanent resident with inadequate means of support is able to seek exercise of the discretion of the Secretary of the Commonwealth Department of Family and Community Services to make a payment known as a "special benefit" payment.[176] However, with the exception of certain protection visa applicants who are able to meet very restrictive eligibility criteria,[177] bridging and other temporary visa holders are not able to access Commonwealth funded social assistance. Australia also has a taxpayer-funded "universal" health insurance scheme, Medicare, which ensures that Australian citizens, Australian permanent residents, New Zealand citizens, and, subject to certain eligibility criteria, permanent visa applicants are able to access medical services without payment.[178] Stateless Palestinians, who have already been through the protection visa application process and have been unsuccessful, are unable to access any of this Commonwealth-funded social assistance. In most cases, they are not able to access State/Territory or local government funded social assistance either.[179] They must turn, therefore, to community sector welfare agencies to have their survival needs met. That these needs will be met is far from certain.

The Statelessness Convention only requires that work rights and social assistance rights be given to stateless persons "lawfully staying in" the state party's territory.[180] Goodwin-Gill takes the view that the same phrase used in the Refugee Convention means "something more than mere lawful presence."[181] While stateless persons on bridging visas are lawfully present in Australia, it could well be argued that they are not "lawfully staying in" Australia in the sense of being given resident status. While it appears to me that allowing states to so interpret "lawfully staying in" runs the risk of rendering most of the provisions in the

Statelessness Convention (and Refugee Convention) meaningless, I need not pursue the question here since it is possible to turn instead to ICESCR. As noted in the previous section, the Committee on Economic, Social and Cultural Rights has yet to be convinced that any policy objective is so important that refusing to meet the basic survival needs of particular individuals (as Australia is in relation to some stateless Palestinians) can be considered a proportionate method of achieving that objective. Australia's treatment of stateless Palestinians in the community (who are not protection visa applicants) is, therefore, in breach of its obligations under ICESCR.

Taking Responsibility for the Past

Each human person is able to imagine possible futures and to will and act to achieve one future rather than another.[182] It is an attribute that makes human beings unique among living creatures. For practical purposes, national societies too can be ascribed agency in the sense that the individuals who make it up collectively will and act to achieve a chosen future. Most of us do conceive of ourselves as participating in a collective national project. Moreover, even those of us who are alienated from the goals of this collective project are still participating in it, if only by accepting the benefits generated through it. Confronted with the reality that there are other human beings in the world, the moral question that arises is how we as individuals and national societies should take account of this in our own willing and acting. The reason this article has dwelt so much on history is that every decision we make as individuals and societies we make in the context of a past that cannot be changed. Being morally responsible requires of us an "*ex post facto* account for what has been done" as well as a taking into account of the welfare of others in the "forward determination of what is to be done."[183] Our past actions may already have given particular persons moral claims upon us that must be taken into account in the decision we are faced with now.[184]

One category of persons to whom it would be widely accepted I have special duties arising out of past actions consists of those to whom I have made promises understood to be binding.[185] My duty is to keep my promise. Likewise, if our state makes such promises on our behalf it ought to keep those promises.[186] By becoming party to the Refugee Convention, Statelessness Convention, ICCPR, and ICESCR, Australia has made promises, which since made ought not to be broken.[187] It has been demonstrated in this article that if Australia took its duty of promise keeping as seriously as it ought, the circumstances of stateless Palestinians in Australia would be vastly improved without the need to invoke any other moral duties.

Another category of persons to whom it would be widely accepted that I have special duties arising out of past action consists of persons that I have wrongfully harmed.[188] My duty is to make reparation. Analogously, if the state institutions through which we act collectively wrongfully harm others we have collective duties to repair the harm. However, many of us refuse to accept that this is so where the wrongs in question were committed before we were born. Ross Poole puts the question in these terms:

> By what line of inheritance do contemporary Australians inherit the sins of the predecessors? And which contemporary Australians? Is it only those of us of Anglo-Celtic stock whose ancestors came to Australia in the nineteenth century? Should we exclude those recent immigrants, especially those whose background is free from the taints of European colonialism and imperialism? And what of those Australians whose ancestors had no choice in the decision to migrate, but were brought over as convicts?[189]

Poole's answer is that our responsibility for past actions results from our identification with the entity, which performed those actions. In his words,

> A national identity involves, not just a sense of place, but a sense of history. The history constitutes the national memory, and it provides a way of locating those who share that identity within a historical community…. Acquiring a national identity is a way of acquiring that history and the rights and the responsibilities which go with it. The responsibility to come to terms with the Australian past is a morally inescapable component of what it is to be Australian. [190]

Elazar Barkan makes a similar argument[191] and adds that if we are willing to be the beneficiaries of our forebears' endeavours, we must also take responsibility for redressing the wrongs inflicted on others in the course of those endeavours.[192] Moreover, he demonstrates through detailed case studies that, in fact,

> This desire to redress the past is a growing trend, which touches our life at multiple levels, and it is central to our moral self-understanding as individuals and members of groups the world over.[193]

Australia was part of the British Empire until World War II.[194] Even after it had ceased to be a formal part of the Empire it continued to make common cause with Britain and most Australians identified with British interests as their own. This was certainly the case in relation to Palestine throughout the time that Britain was the Mandatory power.[195] The historical narrative at the beginning of this

article was intended to demonstrate that the British Empire and later Australia as an independent nation have been deeply implicated in creating the present plight of stateless Palestinians. It is a plight created in part by our broken promises,[196] our abuse of power,[197] our willingness to welcome Israel as a legitimate member of the international community once it was established as a fact on the ground without first insisting on a just resolution of the plight of the Palestinians thereby rendered stateless, and our refusal to give legal expression to a meaningful right of asylum.

It is the case, of course, that the moral standards of particular societies change over time. Historical actions which Australians judge to be wrong by standards now prevailing were not necessarily perceived to be wrong at the time they were undertaken. In acknowledging this "presentist moral predicament," one of the examples Barkan gives is, in fact, the failure of Western nations, then steeped in a colonialist mentality, to recognize in the first part of the twentieth century that support for the creation of Israel redressed earlier injustice against the Jews at the price of inflicting new injustice upon the Arab Palestinians.[198] He suggests, "[w]hen we (re)classify historical acts as injustices, we presumably determine that were we to face similar choices, we would act differently."[199] In other words, the reclassification of past action is vital to our *present* moral self-understanding.[200]

It is worth emphasizing that the argument that Australia ought to take moral responsibility for the historical wrongs in which it was complicit does not let other people off the moral hook for their actions or *vice versa*. Quite clearly, Israel, the Arab states, and Palestinian leaders have over time played a large part in creating and maintaining the sorry circumstances in which stateless Palestinians find themselves. They, *too*, are morally responsible for those circumstances. As many philosophers have explained, the attribution of moral responsibility is not a zero-sum game.[201] However, the question for Australians is what Australia should do to discharge its moral obligations. The treatment of stateless Palestinians in Australia and elsewhere from 1948 to the present day illustrates the continuing truth of Hannah Arendt's observation that:

> The conception of human rights, based upon the assumed existence of a human being as such, broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships – except that they were still human.[202]

Since the individual who is nothing but a human being cannot *in fact* enjoy all of their human rights anywhere, it is suggested that one means of redressing past wrongs to which Australia ought to give serious consideration is to heed the urging of Article 32 of the Statelessness Convention and "as far as possible facilitate the assimilation and naturalization" of stateless Palestinians in Australia who have nowhere else to turn.

Postscript:

Recent reforms to Australia's immigration detention regime have given the Minister for Immigration the power to ameliorate the plight of long-term detainees, including the stateless, *if the Minister wishes*. Since 16 June 2005, persons in immigration detention whose "removal from Australia is not reasonably practicable" for the time being have been eligible for the grant of a Removal Pending Bridging Visa (RPBV), provided the Minister is satisfied that the person "will do everything possible to facilitate" their removal from Australia and any visa applications (with specified exception) have been finally determined. They also have to meet character and national security requirements. Unfortunately, only detainees invited to do so by the Minister for Immigration are able to apply for a RPBV. As at 14 July 2005 the Minister had invited fifty-eight individuals to apply for a RPBV and forty-two of them had taken up the invitation. However, as at 13 February 2006 there had only been a total of thirty-one grants of RPBVs. If granted, a RPBV enables the holder to remain at liberty in the community until removal from Australia becomes reasonably practicable. Importantly, the holders of RPBVs are given some social assistance entitlements and have the right to work. Nevertheless, they remain in an unenviable state of limbo.

Since 29 June 2005 the Minister for Immigration has also had a personal and non-compellable power under section 195A of the *Migration Act* to grant a visa to a person who is in detention under section 189, if "the Minister thinks that it is in the public interest to do so." Exercising this power, the Minister is now able to bring any long-detention situation to an end by granting the detainee a bridging visa or indeed a substantive visa regardless of whether the person in question meets the usual visa criteria. During the period 1 July 2005 to 31 December 2005 the section 195A power was exercised eighteen times.

Notes

1. Ray Wilkinson, "Old Problems... New Realities" (2003) 3:132 *Refugees Magazine* 4 at 12–13.
2. This is the definition of statelessness set out in Article 1 of the *Convention relating to the Status of Stateless Persons*, 28 September 1954, [1974] A.T.S. 20 (entered into force generally 6 June 1960 and for Australia 13 March 1974) [*Statelessness Convention*]. It is also accepted as being the customary inter-

national law definition of statelessness: Susan Akram and Terry Rempel, "Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees" (2004) 22 *Boston University International Law Journal* 1 at 65. In addition to the *de jure* stateless, there are many more persons who are stateless in a practical sense (*de facto* stateless). These are people who are not, *in fact*, recognized as nationals by any country, because, for example, they cannot meet evidentiary requirements for establishing that they possess the nationality they claim. They, therefore, lack "effective nationality": B.S. Chimni, "Post-conflict Peace-building and the Return of Refugees: Concepts, Practices and Institutions" in Edward Newman and Joanne van Selm, eds., *Refugees and Forced Displacement: International Security, Human Vulnerability and the State* (Tokyo, New York, and Paris: United Nations University Press, 2003) 195 at 210.

3. See further below.
4. Carol Batchelor, "Stateless Persons: Some Gaps in Protection" (1995) 7:2, *International Journal of Refugee Law* 232 at 239.
5. *Convention relating to the Status of Refugees,* 28 July 1951, [1954] A.T.S. 5 (entered into force for Australia and generally on 22 April 1954) [*Refugee Convention*].
6. *Supra* note 2.
7. As at 1 October 2004.
8. As at 1 October 2004.
9. Guy Goodwin-Gill and Susan Akram, "Amicus Brief on the Status of Palestinian Refugees under International Law" (2000/2001) 11 *Palestine Yearbook of International Law* 185 at 222.
10. Baruch Kimmerling, "The Formation of Palestinian Collective Identities: The Ottoman and Mandatory Periods" (2000) 36:2 *Middle Eastern Studies* 48 at 52.
11. *Supra* note 9 at 202.
12. Chaim Weizmann, President of the World Zionist Organisation, at the 1919 Paris Peace Conference, quoted in Kimmerling, *supra* note 10 at 61.
13. *Supra* note 10 at 54.
14. Rashid Khalidi, *Palestinian Identity: The Construction of Modern National Consciousness* (New York: Columbia University Press, 1997) 96, citing estimates set out and justified in Justin McCarthy, *The Population of Palestine: Population Statistics of the Late Ottoman Period and the Mandate* (New York: Columbia University Press, 1990).
15. Cited in David Abernethy, *The Dynamics of Global Dominance: European Overseas Empires, 1415–1980* (New Haven and London: Yale University Press, 2000) at 108.
16. *Ibid.* at 105, 108.
17. *Ibid.* at 105.
18. David Harris, *Cases and Materials on International Law*, 5th ed. (London: Sweet and Maxwell, 1998) at 131.
19. In the *International Status of South-West Africa Case* the International Court of Justice reinforced the point that each of the League of Nations mandates was "created in the interests of the inhabitants of the territory, and of humanity in general, as an international institution with an international object – a sacred trust of civilisation...": *International Status of South-West Africa Case* (Advisory Opinion) [1950] ICJ Rep 128.
20. Abernethy, *supra* note 15 at 106.
21. Omar Dajani, "Stalled between Seasons: The International Legal Status of Palestine during the Interim Period" (1997) 26 *Denver Journal of International Law and Policy* 27 at 35. See also Rashid Khalidi, *supra* note 14 at 22–23, 213 fn. 5; *supra* note 9 at 206.
22. Council of the League of Nations, *Palestine Mandate*, 24 July 1922, online: cf2 http://www.mideastweb.org/mandate.htm.
23. Khalidi, *supra* note 14 at 21, 187–88.
24. Kimmerling, *supra* note 12 at 64–65.
25. Abernethy, *supra* note 16 at 116; William Keylor, *A World of Nations: The International Order since 1945* (New York and Oxford: Oxford University Press, 2003) at 147.
26. Khalidi, *supra* note 14 at 189–90.
27. David Schafer, "The Seeds of Enmity" (2002) 62:5 *The Humanist* 9 at 12.
28. *Ibid.*
29. See the report of the Anglo-American Committee of Inquiry 1946, online: cf2 http://www.mideastweb.org/angloamerican.htm, which states: "According to official estimates, the population of Palestine grew from 750,000 at the census of 1922 to 1,765,000 at the end of 1944. In this period the Jewish part of the population rose from 84,000 to 554,000, and from 13 to 31 percent of the whole. Three-fourths of this expansion of the Jewish community was accounted for by immigration. Meanwhile the Arabs, though their proportion of the total population was falling, had increased by an even greater number – the Moslems alone from 589,000 to 1,061,000. Of this Moslem growth by 472,000, only 19,000 was accounted for by immigration. The expansion of the Arab community by natural increase has been in fact one of the most striking features of Palestine's social history under the Mandate." These particular historical figures do not appear to be now disputed by the Israelis or Palestinians. Almost the same figures appear in a document entitled *Demography of Palestine and Israel, the West Bank & Gaza,* available on the Jewish Virtual Library Web site, online: <http://www.jewishvirtuallibrary.org/jsource/History/demograhics.html and in a document entitled *Geography of Palestine* on Palestine-Net, online: cf2 http://www.palestine-net.com/geography.
30. Keylor, *supra* note 25 at 147–48.
31. *Ibid.* at 148.
32. *Ibid.* at 148.
33. Daniel Mandel, "A Good International Citizen: H V Evatt, Britain, the United Nations and Israel, 1948–49" (2003) 39:2 *Middle Eastern Studies* 82 at 82.
34. Keylor, *supra* note 25 at 148–49.
35. *Ibid.* at 149.
36. *Supra* note 33..
37. Keylor, *supra* note 25 at 149. Australia's H.V. Evatt played a key role in securing the adoption of this resolution: Mandel, *supra* note 33 at 83.

38. Quoted in Jonathan Greenberg, "Divided Lands, Phantom Limbs: Partition in the Indian Subcontinent, Palestine, China, and Korea" (2004) 57:2 *Journal of International Affairs* 7 at 9.
39. Greenberg, *ibid.*
40. *Ibid.* at 10; Lex Takkenberg, *The Status of Palestinian Refugees in International Law* (Oxford: Clarendon Press, 1998) 12.
41. Keylor, *supra* note 25 at 150.
42. *Ibid.*; Wadie Said, "Palestinian Refugees: Host Countries, Legal Status and the Right of Return" (2003) 21:2 *Refuge* 89 at 89.
43. Said, *ibid.* at 89; Kimmerling, *supra* note 10 at 69.
44. Mandel, *supra* note 33 at 98.
45. *Ibid.* at 99.
46. Keylor, *supra* note 25 at 150.
47. Greenberg, *supra* note 39 at 10.
48. John Quigley, "Displaced Palestinians and a Right of Return" (1998) 39 *Harvard International Law Journal* 171 at 183, 220–21.
49. Takkenberg, *supra* note 40 at 183–84.
50. See for example the opposing positions taken in Hussein Ibish and Ali Abunimah, "Point/Counterpoint: The Palestinians' Right of Return" (2001) 8 *Human Rights Brief* 4 and John Quigley, *supra* note 48, on the one hand and Marc Zell and Sonia Shnyder, "Palestinian Right of Return or Strategic Weapon?: A Historical, Legal and Moral Political Analysis" (2003) 8 *Nexus, A Journal of Opinion* 77 and Tanya Kramer, 'The Controversy of a Palestinian "Right of Return" to Israel' (2001) 18 *Arizona Journal of International and Comparative Law* 979 on the other.
51. Keylor, *supra* note 25 at 150.
52. *Ibid.*; Said, *supra* note 42 at 89.
53. Said, *ibid.* at 90.
54. Kimmerling, *supra* note 10 at 69.
55. United States Department of State, *Country Reports on Human Rights Practices 2003* (2004), online: cf2 http://www.state.gov/g/drl/rls/hrrpt/2003/27929.htm#occterr.
56. Takkenberg, *supra* note 40 at 178–82.
57. *Supra* note 55.
58. Said, *supra* note 42 at 90; Akram and Rempel, *supra* note 2 at 117.
59. *Supra* note 9 at 224; Stefan Christoff, "The War against Palestinian Refugees in Lebanon" (2004) 38:2 *Canadian Dimension* 16 at 17; Keylor, *supra* note 25 at 150.
60. Said, *supra* note 42 at 90–91.
61. *Ibid.* at 91; Christoff, *supra* note 59; *supra* note 9 at 226–27.
62. The UDHR is not legally binding in and of itself, but many provisions of it have over time become customary international law. Existing state practice and *opinio juris* supports a contention that the right to seek asylum is now a customary international law right: Morten Kjaerum, "Refugee Protection between State Interests and Human Rights: Where Is Europe Heading?" (2002) 24 *Human Rights Quarterly* 513 at 515.
63. Unless otherwise stated, the discussion in this section is based on Johannes Morsink, "World War Two and the Universal Declaration" (1993) 15:2 *Human Rights Quarterly* 357.
64. S. Prakash Sinha, *Asylum and International Law* (The Hague: Martinus Nijhoff, 1971) at 93, endnote 10.
65. Frank Brennan, *Tampering with Asylum: A Universal Humanitarian Problem* (St. Lucia: University of Queensland Press, 2003) at 1–2.
66. Tasman Heyes, Secretary of the Department of Immigration quoted in Brennan, *ibid.* at 2.
67. Nehemiah Robinson, "Convention Relating to the Status of Stateless Persons. Its History and Interpretation: A Commentary" (Institute of Jewish Affairs, World Jewish Congress, 1955).
68. The prohibition on *refoulement* is the key provision of the *Refugee Convention* Article 33(1) providing that no state party
    > Shall expel or return ("refouler") a refugee, in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

    However, according to Article 33(2), the Article 33(1) obligation does not apply in respect of a refugee whom: "there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."

    It was unnecessary to include a prohibition on *refoulement* in the *Statelessness Convention* since stateless persons do not necessarily face persecution in their country of habitual residence and those who do would fall within the terms of the *Refugee Convention* and be protected by that Convention.
69. It should be noted, however, that in 1996 the UN General Assembly broadened UNHCR's mandate to include activities promoting the international protection of stateless persons.
70. *Refugee Convention*, Article 3; *Statelessness Convention*, Article 3.
71. *Refugee Convention*, Article 16; Statelessness Convention, Article 16.
72. *Refugee Convention*, Article 27; Statelessness Convention, Article 27.
73. *Refugee Convention*, Article 4; *Statelessness Convention*, Article 4.
74. *Refugee Convention*, Article 22; *Statelessness Convention*, Article 22.
75. *Refugee Convention,* Article 13; *Statelessness Convention,* Article 13.
76. *Refugee Convention*, Article 22; *Statelessness Convention*, Article 22.
77. *Refugee Convention*, Article 32; *Statelessness Convention*, Article 31.
78. *Refugee Convention*, Article 26; *Statelessness Convention*, Article 26.
79. *Refugee Convention,* Article 18; *Statelessness Convention*, Article 18.
80. *Refugee Convention*, Article 28; *Statelessness Convention*, Article 28.

81. *Refugee Convention*, Article 23; *Statelessness Convention*, Article 23.
82. *Refugee Convention*, Article 24; *Statelessness Convention*, Article 24.
83. *Refugee Convention,* Article 21; *Statelessness Convention,* Article 21.
84. *Refugee Convention,* Article 15; *Statelessness Convention,* Article 15.
85. *Refugee Convention* Articles 17, 19; *Statelessness Convention* Articles 17, 19
86. *Refugee Convention* Article 34; *Statelessness Convention* Article 32.
87. Andrew Brouwer, "Statelessness in Canadian Context: A Discussion Paper" (UNHCR, July 2003) at 9.
88. *Protocol relating to the Status of Refugees*, 31 January 1967, [1973] A.T.S. 37 (entered into force generally on 4 October 1967 and for Australia on 13 December 1973).
89. *Refugee Convention* Article 1A(1) defines an additional category of refugee, but it is a category which is of little relevance in the present day.
90. *Supra* note 9 at 232–36; Zell and Shnyder, *supra* note 50 at 110.
91. Susan Akram, "Palestinian Refugees and Their Legal Status: Rights, Politics, and Implications for a Just Solution" (2002) 31:3 *Journal of Palestine Studies* 36 at 40.
92. Quoted in Takkenberg, *supra* note 40 at 12; see also Akram, *supra* note 91 at 38.
93. Takkenberg, *supra* note 40 at 28–29.
94. *Ibid.* at 28; Akram, *supra* note 91 at 42.
95. Takkenberg, *supra* note 40 at 31.
96. Consolidated Registration Instructions, 1 January 1993, para. 2.13, quoted in Takkenberg, *supra* note 40 at 77.
97. Takkenberg, *supra* note 40 at 80.
98. *Supra* note 9 at 193–94; Akram and Rempel, *supra* note 2 at 57, fn. 251.
99. *Supra* note 9 at 230–50.
100. *Supra* note 91 at 43–44.
101. *Ibid.* at 44–45.
102. [2002] FCAFC 329 (8 November 2002).
103. *Minister for Immigration and Multicultural Affairs v. WABQ* [2002] FCAFC 329 (8 November 2002) paras. 169–71.
104. See for example *RRT Reference N04/48145* (19 July 2004); *RRT Reference N03/47958* (7 April 2004); *RRT Reference V03/15685* (12 March 2004).
105. This is the position in fact taken in German jurisprudence, for example: Takkenberg, *supra* note 40 at 189–90
106. See further below.
107. *Supra* note 9 at 258.
108. See, for example, *RRT Reference N01/37373* (29 June 2001). It is more usual for members of the Refugee Review Tribunal to express no view on the matter since the cases in which the point arises are cases in which stateless Palestinians, whose country of habitual residence is Syria, are claiming that they face persecution if returned there. The Refugee Review Tribunal takes the view that Article 1E cannot possibly refer to the alleged country of persecution.
109. Takkenberg, *supra* note 40 at 187.
110. *Ibid.* at 187 fn. 76. See summary of rights above.
111. As at 1 October 2004.
112. *International Covenant on Civil and Political Rights* 19 December 1966, [1980] A.T.S. 23 (entered into force generally on 23 March 1976 and for Australia on 13 November 1980) [*ICCPR*].
113. As at 1 October 2004.
114. *International Covenant on Economic, Social and Cultural Rights*, 19 December 1966, [1976] A.T.S. 5 (entered into force generally on 3 January 1976 and for Australia on 10 March 1976) [*ICESCR*].
115. Francisco Forrest Martin, "Delineating a Hierarchical Outline of International Law Sources and Norms' (2002) 65 *Saskatchewan Law Review* 333 at 355–58.
116. *Ibid.* at 341–47. A peremptory norm of international law (*jus cogens*) is defined as "a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character": *Vienna Convention on the Law of Treaties*, 23 May 1969, [1974] A.T.S. 2 (entered into force for Australia and generally on 27 January 1980) at Article 53.
117. Dinah Shelton, "Hierarchy of Norms and Human Rights: Of Trumps and Winners" (2002) 65 *Saskatchewan Law Review* 299 at 304–7.
118. I am not alone in doing so. See, for example, Bobana Ugarkovic, "A Comparative Study of Social and Economic Rights of Asylum Seekers and Refugees in the United States and the United Kingdom" (2004) 32 *Georgia Journal of International and Comparative Law* 539; David Weissbrodt, *Final Report on the Rights of Non-Citizens*, UN Doc. E/CN.4/Sub.2/2003/23 (2003) para. 13, online: <http://www1.umn.edu/humanrts/demo/noncitizenrts-2003.html>; and Ryszard Choleswinski, "Economic and Social Rights of Refugees and Asylum Seekers in Europe" (2000) 14 *Georgetown Immigration Law Journal* 709.
119. *ICCPR*, Article 2(1).
120. *ICCPR*, Article 6(1).
121. *ICCPR*, Article 7.
122. *ICCPR*, Article 9(1).
123. *ICCPR* Article 12(1) provides: "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."
124. *ICCPR* Article 13 provides: "An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority."

125. *ICCPR* Article 25 provides: "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:
    a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
    (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
    (c) To have access, on general terms of equality, to public service in his country."
126. This is the body charged with supervising the implementation by state parties of their *ICCPR* obligations.
127. United Nations Human Rights Committee, General Comment 15: The Position of Aliens under the Covenant (1986) at paras. 1–2.
128. *Supra* note 114, Article 6.
129. *Ibid.*, Article 6.
130. *Ibid.*, Article 11.
131. This is the body charged with supervising the implementation by state parties of their *ICESCR* obligations.
132. United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 3: The Nature of States Parties' Obligations* (1990) at para, 10.
133. Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on Its Development* (Oxford: Clarendon Press; New York: Oxford University Press, 1995) at 132–33.
134. When the words of Article 2(2) are contrasted with the words of Article 2(1) it becomes obvious that immediate realization of the obligation of non-discrimination is required: see *ibid.* at 181.
135. Weissbrodt, *supra* note 118 at para. 7; Choleswinski, *supra* note 118 at 718–19.
136. Weissbrodt, *supra* note 118 at para. 19.
137. *Ibid.*, executive summary.
138. The first international decision to explicitly affirm this proposition was the Inter-American Court of Human Rights Advisory Opinion OC-18/03 on the Legal Status and Rights of Undocumented Migrants: see Beth Lyon, "The Inter-American Court of Human Rights Defines Unauthorized Migrant Workers' Rights for the Hemisphere: A Comment on Advisory Opinion 18" (2004) 28 *New York University Review of Law and Social Change* 547 at 586–87.
139. Ryszard Choleswinski, "Enforced Destitution of Asylum Seekers in the United Kingdom: The Denial of Fundamental Human Rights" (1998) 10 *International Journal of Refugee Law* 462 at 493.
140. *Migration Act 1958* (Cth), s. 13 [*Migration Act*].
141. *Migration Act* s. 30.
142. *Migration Act* s. 41.
143. *Migration Act* s. 14.
144. *Migration Act* s. 36(2).
145. *Migration Act* ss. 417 and 501J.
146. Department of Immigration and Multicultural and Indigenous Affairs [DIMIA], Migration Series Instruction 386: *Guidelines on Ministerial Powers under sections 345, 351, 391, 417, 454 and 501J of the Migration Act 1958* (14 August 2003) para. 4.2.1. See further Savitri Taylor, "Australia's Implementation of Its Non-refoulement Obligations under the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights" (1994) 17 *University of New South Wales Law Journal* 432.
147. For example, only twenty-four of the 866 protection visas granted in 2002–03 were granted following ministerial intervention: DIMIA, "Annual Report 2002–03" (2003), online: ttp://www.immi.gov.au/annual_report/annrep03/report28.htm.
148. Johanna Stratton, *Humanitarian Intervention in the Public Interest? A Critique of the Recent Exercise of s 417 Migration Act 1958 (Cth)* (Honours thesis, Australian National University, 2002).
149. *Ibid.*
150. *Ibid.*
151. *Ibid.*
152. The rest of section 198 provides for the removal "as soon as reasonably practicable" of unlawful non-citizens who either have not made an application for a substantive visa or who have received final refusal of an application for a substantive visa even if the individual in question is opposed to such removal.
153. *Al Masri v. Minister for Immigration and Multicultural Affairs and Indigenous Affairs* (2002) 192 ALR 609, 619.
154. *Minister for Immigration and Multicultural Affairs v. Al Masri* [2003] FCAFC 70 (15 April 2003).
155. *Ibid*. para. 84.
156. *Ibid*. para. 117.
157. *Ibid*. para. 137.
158. *Ibid*. para. 156.
159. *Al-Kateb v. Godwin* [2004] HCA 37 (6 August 2004). In the other case, *Minister for Immigration and Multicultural and Indigenous Affairs v. Al Kafaji* [2004] HCA 38 (6 August 2004), the judges for the most part simply refer to the reasons given in *Al-Kateb*.
160. It was not in dispute that Mr. Al-Kateb was a "stateless person" within the meaning of Article 1 of the *Statelessness Convention*: *Al-Kateb v. Godwin* [2004] HCA 37 (6 August 2004) para. 79 (per Gummow J.).
161. *Al-Kateb v. Godwin* [2004] HCA 37 (6 August 2004) para. 99 (per Gummow J.).
162. *Ibid*. para. 102.
163. *SHDB v. Goodwin & Ors* [2003] FCA 300 (3 April 2003) para. 9.
164. His Honour was free to do this at the time as his decision was handed down a couple of weeks before the Full Federal Court's decision in *Minister for Immigration and Multicultural Affairs v. Al Masri* [2003] FCAFC 70 (15 April 2003).

165. *SHDB v. Goodwin & Ors* [2003] FCA 300 (3 April 2003) para. 10 referring to the reasons given by His Honour in the case of *SHFB v. Goodwin & Ors* [2003] FCA 294 (3 April 2003). In fact, on 17 April 2003 pending the hearing of the High Court appeal, a consent order was made by another judge of the Federal Court releasing Mr. Al-Kateb from detention on certain conditions: *Al-Kateb v. Godwin* [2004] HCA 37 (6 August 2004) para. 107 (per Gummow J.).
166. The dissenting judges were Gleeson C.J., Gummow J., and Kirby J.
167. *Al-Kateb v. Godwin* [2004] HCA 37 (6 August 2004) paras. 229–31 (per Hayne J.).
168. Meaghan Shaw and Michael Gordon, 'Long-term Stateless to be Reviewed', *The Age* (Melbourne), 10 August 2004, cf2 http://www.theage.com.au/articles/2004/08/09/1092022404082.html.
169. Ibid.
170. Amanda Vanstone, *Al-Masri Decisions, VPS 126/2004* (31 August 2004), online: ttp://www.minister.immi.gov.au/media_releases/media04/v04126.htm at 1 September 2004.
171. *Ibid.*
172. Ibid.
173. *A v. Australia, Communication No. 560/1993*, 30 April 1997 (Human Rights Committee views) para. 9.4.
174. Allen Keller *et al.*, "Mental Health of Detained Asylum Seekers. (Research Letters)" (2003) 362 (9397) *The Lancet* 1721.
175. Among those whom the Minister refused to release from detention was Mr. Peter Qasim who has been in immigration detention for over six years. Mr. Qasim claims to be a Muslim separatist from Kashmir. However, he is *de facto* stateless as the Indian government denies that he is an Indian national and has refused him entry. He has also been refused entry by eighty other countries. See Michelle Cazzulino, "A Man with No Past, No Future, No Hope," *The Daily Telegraph* (Sydney), 9 September 2004, 9.
176. *Social Security Act* s. 729.
177. See further, DIMIA, *Fact Sheet 62: Assistance for Asylum Seekers in Australia* (revised 20 November 2003), online: cf2 http://www.immi.gov.au/facts/62assistance.htm.
178. See further Health Insurance Commission, *About Medicare*, available online: ttp://www.hic.gov.au/yourhealth/our_services/am.htm at 11 November 2004 and DIMIA, *supra* note 177.
179. This assistance is usually tied to eligibility criteria that persons in their position would be unable to meet.
180. See above.
181. Guy Goodwin-Gill, *The Refugee in International Law*, 2nd ed. (Oxford: Clarendon Press, 1996), 309.
182. Philip Allott, "Globalization from Above: Actualizing the Ideal through Law" in Ken Booth, Tim Dunne, and Michael Cox, eds., *How Might We Live? Global Ethics in a New Century* (Cambridge: Cambridge University Press, 2001) 61 at 61.
183. Hans Jonas, *The Imperative of Responsibility: In Search of an Ethics for the Technological Age* (Chicago: University of Chicago Press, 1984) at 92.
184. William David Ross, *The Right and the Good* (Oxford: Clarendon Press, 1930) at 21.
185. *Ibid.* at 21, 27.
186. *Ibid.* at 34–35.
187. Recognition of this moral duty has led the Australian judiciary to the following propositions:
    1. "[T]he fact that [a treaty] has not been incorporated into Australian law does not mean that its ratification holds no significance for Australian law. Where a statute or subordinate legislation is ambiguous, the courts should favour that construction which accords with Australia's obligations under a treaty or international convention to which Australia is a party, at least in those cases in which the legislation is enacted after, or in contemplation of, entry into, or ratification of, the relevant international instrument. That is because Parliament, *prima facie*, intends to give effect to Australia's obligations under international law": *Minister for Immigration and Ethnic Affairs v. Teoh* (1995) 128 ALR 353, 362 (per Mason C.J. and Deane J.).
    2. "[R]atification by Australia of an international convention is not to be dismissed as a merely platitudinous or ineffectual act, particularly when the instrument evidences internationally accepted standards to be applied by courts and administrative authorities in dealing with basic human rights affecting the family and children. Rather, ratification of a convention is a positive statement by the executive government of this country to the world and to the Australian people that the executive government and its agencies will act in accordance with the Convention. That positive statement is an adequate foundation for a legitimate expectation, absent statutory or executive indications to the contrary, that administrative decision-makers will act in conformity with the Convention…." *Minister for Immigration and Ethnic Affairs v. Teoh* (1995) 128 ALR 353, 365 (per Mason C.J. and Deane J.).
188. *Supra* note 184 at 21, 27; Samuel Scheffler, *Boundaries and Allegiances: Problems of Justice and Responsibility in Liberal Thought* (Oxford: Oxford University Press, 2001) at 49–50.
189. Ross Poole, *Nation and Identity* (London and New York: Routledge, 1999) at 138.
190. *Ibid.* at 140–41.
191. Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (New York and London: W.W. Norton, 2000) at 344.
192. *Ibid.* at 320, 344.
193. *Ibid.* at xi.
194. The United Kingdom gave up control of its white dominions by the proclamation of an act of the UK Parliament called the *Statute of Westminster* in 1931. However, by its terms it supposedly did not apply to Australia until adopted by the Australian Parliament. Australian adoption took place in October 1942 pursuant to an act which was stated to have effect from 3 September 1939. The individual states of the Australian federation continued to hang on to at least the appearance of colonial dependency until passage by the UK

and Australian parliaments of the *Australia Act 1986*. See W.J. Hudson and M.P. Sharp, *Australian Independence: Colony to Reluctant Kingdom* (Carlton: Melbourne University Press, 1988) at 130–37.

195. Suzanne Rutland, "Postwar Anti-Jewish Refugee Hysteria: A Case of Racial or Religious Bigotry?" (2003) 77 *Journal of Australian Studies* 69 at 73–74.
196. For example, Britain reneged on the promise made to the inhabitants of the Ottoman territories that it occupied during World War I that they would be allowed self-determination after the war.
197. Britain used its clout as a Principal Allied Power to obtain a League of Nations Mandate over Palestine designed to give effect to the Balfour Declaration rather than the principles contained in Article 22 of the League of Nations Covenant and did not even honour the terms of that mandate insofar as it required the development of self-governing institutions.
198. *Supra* note 191 at xxxiii.
199. *Ibid.* at xxxiii.
200. This is a moral stance which Australia has already taken in another context. In the watershed case of *Mabo v. Queensland (No. 2)* (1992) 107 ALR 1, which overturned the (until then) sacrosanct common law doctrine of *terra nullius* and recognized native title, Brennan J. explained:

    "If the international law notion that inhabited lands may be classified as terra nullius no longer commands general support, the doctrines of the common law which depend on the notion that native peoples may be 'so low on the scale of social organization' that it is 'idle to impute to such people some shadow of the rights known to our law' can hardly be retained. If it were permissible in past centuries to keep the common law in step with international law, it is imperative in today's world that the common law should neither be nor be seen to be frozen in an age of racial discrimination.

    "The fiction by which the rights and interests of indigenous inhabitants in land were treated as non-existent was justified by a policy which has no place in the contemporary law of this country….

    "Whatever the justification in earlier days for refusing to recognize the rights and interests in land of the indigenous inhabitants of settled colonies, an unjust and discriminatory doctrine of that kind can no longer be accepted. The expectations of the international community accord in this respect with the contemporary values of the Australian people." ((1992) 107 ALR 1, 28–29).
201. See, for example, Alan Wertheimer, *Exploitation* (Princeton, N.J.: Princeton University Press, 1996) 252; Thomas Pogge, "Moral Universalism and Global Economic Justice" (2002) 1:1 *Politics, Philosophy and Economics* 29 at 50; Christopher Kutz, *Complicity: Ethics and Law for a Collective Age* (Cambridge and New York: Cambridge University Press, 2000).
202. Hannah Arendt, *The Origins of Totalitarianism*, 3rd ed. (London: George Allen and Unwin, 1967) at 299.

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Unaccompanied/Separated Minors and Refugee Protection in Canada: Filling Information Gaps

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Abstract

This paper fills information gaps with regard to unaccompanied/separated minors in Canada. By the means of reviewing Citizenship and Immigration Canada administrative databases, it investigates how many unaccompanied/separated refugee minors exist, who they are, and how they are received in Canada. We found that there were fewer truly unaccompanied minors than previously reported. In the asylum stream, only 0.63 per cent (or 1,087) of the total claimant population were found to be unaccompanied by adults in the past five years. In the resettlement stream only two truly unaccompanied minors were resettled during 2003 and 2004. Regarding their socio-demographic characteristics, we found that unaccompanied minors compose a highly heterogeneous group from many different countries.

Regarding how they were received in Canada, very little evidence existed. Our study found that unaccompanied and separated asylum-seeking minors showed a higher acceptance rate and quicker processing times than the adult population, but details about the minors' actual reception into Canada remains to be further explored.

This study recommends that Citizenship and Immigration Canada review its administrative databases with a view toward improving the data about separated/unaccompanied children. Consistent and detailed definitions are required to develop a comprehensive policy framework for unaccompanied/separated minor refugees in Canada.

Résumé

L'article remplit quelques failles d'information relativement aux mineurs séparés/non accompagnés au Canada. En s'appuyant sur l'analyse de bases de données administratives de Citoyenneté et Immigration Canada, l'article se penche sur le nombre réel de réfugiés mineurs séparés/non accompagnés, qui ils sont et comment ils sont accueillis au Canada. Il en résulte un nombre moins élevé de mineurs réellement non accompagnés que le nombre diffusé antérieurement. Parmi le flot de réfugiés, seulement 0,63 pour cent (ou 1 087) de l'ensemble de la population requérante était non accompagné par des adultes au cours des cinq dernières années. Dans l'ensemble des réinstallations, seulement deux mineurs vraiment non accompagnés ont fait l'objet d'une relocalisation en 2003 et 2004. À l'égard de leur particularités socio-démographiques, l'étude a démontré que les mineurs non accompagnés formaient un groupe hautement hétérogène issu de nombreux pays différents.s

Il existe peu de traces de la façon dont ils ont été accueillis au Canada. L'étude révèle que les demandes d'asile parmi les mineurs séparés et non accompagnés sont davantage acceptées et jouissent d'un temps de traitement plus court que parmi la population adulte. Toutefois, une analyse détaillée sur l'accueil réel des mineurs au Canada reste à faire.

L'article recommande que Citoyenneté et Immigration Canada revoit ses bases de données administratives avec l'objectif de mettre à jour les renseignements sur les enfants séparés/non accompagnés. Il est nécessaire d'avoir des définitions cohérentes et détaillées pour établir un cadre politique global à l'égard des mineurs séparés/non accompagnés au Canada.

Introduction

While a substantial body of literature on unaccompanied/separated children asylum seekers exists in Europe, surprisingly little has been published about their counterparts in Canada. Moreover, most of the existing publications by scholars and non-governmental organizations (NGOs) start by lamenting the lack of reliable data in Canada.[1] This has led to requests from national and international sources to provide statistics in order to develop a consistent national policy on the reception and care of unaccompanied/separated children in the refugee protection stream. For example, the Concluding Observations of the UN Convention on the Rights of the Child monitoring committee 2003 is especially concerned about the absence of a definition of "separated child" and the lack of reliable data on asylum-seeking children.[2] This paper addresses these gaps. It explores the inconsistencies and inadequacies in administrative databases of Citizenship and Immigratino Canada (CIC) with regard to unaccompanied/separated minors and investigates the following questions: How many unaccompanied/separated refugee minors are there in Canada? Who are they? How are they received once they arrive in Canada? In so doing, we hope to help identify the current challenges and policy priorities for the future.

The paper will first present a brief introduction to the two strands of Canada's refugee protection program (in-Canada asylum and overseas resettlement) in the context of protecting minor refugees, followed by a summary of the debates surrounding the definition of unaccompanied/separated minors. This section includes the definitions and terminology adopted for the purpose of this paper. Substantive findings will follow separately for the asylum-seeking minors and resettled minors. Finally, the paper ends with a brief summary and concluding remarks.

1. Canada's Refugee Protection System and Unaccompanied/Separated Minors

In keeping with its humanitarian tradition and international obligations, Canada provides protection to thousands of people every year through our refugee protection system.[3] All policies and programs relating to unaccompanied/separated children refugees are created and administered in accordance with the 2002 *Immigration and Refugee Protec*tion Act (IRPA),[4] as well as the *Canadian Constitution*, including the *Charter of Rights and Freedoms*, the *Privacy Act*, and other domestic legislation where appropriate. Internationally, Canada is a signatory to the 1951 *Convention relating to the Status of Refugees,*[5] the *Convention on the Rights of the Child*,[6] and other international legal instruments.

Canada's refugee protection system consists of two main components: the In-Canada Refugee Protection Process, for persons making refugee protection claims from within Canada, and the Refugee and Humanitarian Resettlement Program, for people seeking protection from outside Canada.

1.1. In-Canada Refugee Protection Process

Canada offers protection to people in Canada who have a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, or a danger of torture or risk to life or cruel and unusual treatment or punishment in their country of nationality. A claim for protection in Canada can be made at a port of entry or at a CIC office. An officer will determine whether a refugee protection claimant is eligible to be referred to the Immigration and Refugee Board (IRB) for a decision with regard to the risks for the individual upon return. Protection is conferred when the IRB determines that the applicant is a Convention refugee or person in need of protection. Protected persons are eligible for various types of settlement assistance. Unsuccessful claimants enter the removal stream. However, as Canada is committed to ensuring that people are not returned to a country where they would be at risk, most persons under a removal order that is in force can apply for a Pre-Removal Risk Assessment (PRRA). In addition, at any time in the process, an applicant can apply to remain in Canada for humanitarian and compassionate reasons (H&C).[7] In making an H&C decision, the officer is required to take into account the best interests of a child directly affected.

1.2. Humanitarian Resettlement Program

Foreign nationals are also able to apply for refugee protection while outside Canada through the Refugee and Humanitarian Resettlement Program. Resettlement involves both the selection of refugees overseas and the settlement assistance necessary to facilitate their subsequent integration in Canada. The Canadian government has several programs to help refugees resettle in Canada and establish themselves in their new home. Government Assisted Refugees (GARs) are referred by UNHCR and supported through the Resettlement Assistance Program. Privately Sponsored Refugees (PSRs) are supported by voluntary sponsoring groups who provide refugees with lodging, care, and settlement assistance.

IRPA enhanced Canada's ability to assist unaccompanied/separated minors by introducing additional flexibility with regard to family composition.[8] However, CIC realized that a number of Canadian families, who had agreed to act as guardians for refugee minors, were unable to provide the specialized care and attention that these refugee minors needed. As neither the Canadian sponsorship infrastruc-

ture nor the provincial child welfare services were able to provide the necessary care and protection for these minors, a moratorium on the resettlement of separated minors was pronounced in May 2001, preventing the resettlement in Canada of truly separated minors who are without the care and protection of a *bona fide* caregiver.[9]

2. *Defining "Unaccompanied/Separated Minors"*

There is a consensus that unaccompanied/separated minor refugees are particularly vulnerable. The consensus breaks down however, when it comes to identifying exactly who these minors are. The widest definition identifies as "unaccompanied" any minor who is not with both parents who have documents, such as birth certificates, marriage licenses, or passports, to prove the relationship. At the other end of the spectrum, the narrowest excludes as accompanied any minor who is with or who expresses the intent to join any adult, such as a parent, uncle, or family friend. For accurate reporting and policy development, not least the minor's safety, it is important to be clear about who falls within the definition. Therefore, based on a literature review, we have identified the following elements that must be clarified in order to define the population in question: who is a minor (age); what does being unaccompanied/separated entail (presence or absence of parents or custodians at specific points in time); and in the absence of parents or legal custodians, who can be considered acceptable caregivers?

First, with regard to age, and as accepted by the Government of Canada, the Convention on the Rights of the Child defines a child as "every human being below the age of eighteen years." This includes anyone before their eighteenth birthday and is sometimes expressed as "seventeen *and* under." Although this is the definition that is adopted in this paper, it is important to note that the age of majority differs from province to province. For example, a minor child is defined as under nineteen in British Colombia, New Brunswick, Nunavut, Northwest Territories, Nova Scotia, Newfoundland, and Yukon. In Ontario, services to children aged sixteen and seventeen differ from those available to younger children.

Secondly, the presence/absence of relevant adults (parents or guardian or relatives or friends) needs to be taken into consideration. Because migration is a process spanning a period of time rather than a finite event, the presence of adults before arriving in Canada, including time during the travel, and their presence after arrival can be examined separately. For the purpose of this paper, both circumstances are taken into consideration. Another dimension relating to the presence/absence of adults is whether the situation which provoked the separation was "involuntary" (*i.e.* the child was lost in the confusion of refugee camps or recruited by the military) or "voluntary."[10] This paper will focus on whether or not an adult is or will be present to provide care and protection for the minor in Canada.[11]

Finally, in the absence of parents, the question of who is an acceptable caregiver of the minor is crucial. Most sources agree that minors coming with parents or legal custodians are neither unaccompanied nor separated. However, what about minors coming with relatives? Friends? The UNHCR and NGOs, such as the Network on Separated Children in Canada,[12] have formalized this difference by distinguishing "separated" minors from "unaccompanied" minors: *separated minors* have been separated from both parents, or from their previous legal or customary caregiver, but not necessarily from other adult relatives or friends; *unaccompanied minors* are separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.[13] The latter are sometimes referred to as "truly unaccompanied" or "truly separated" in the literature.[14] It is important to note that minors who are together, whether related or not, but unaccompanied by any adults are considered unaccompanied as long as they are under eighteen.

An interesting aspect of this question on the "acceptable adult" is that there are two ways to determine the veracity of the relationship between that adult and a minor: objective and subjective. Be it biological or legal (*e.g.* custodial parent or court-appointed guardian), a relationship can be proved by objective documents, such as birth certificates, family registry, or DNA testing. However, this can be particularly challenging to refugees and asylum seekers who often lack documentation and are unable or unwilling to contact the authorities in their country of origin to obtain such documents. Another challenge occurs when a minor is with a family member or other person who may not have formal legal responsibility for the child, but who is a customary caregiver. A second way of establishing an adult-child relationship is by means of a subjective evaluation of the child's physical and psychological state.[15] Given the possibility of trafficking or abduction of minors, it is essential that both the objective and subjective elements of the relationship be carefully assessed and established.

The literature thus fairly consistently allows for three categories of children, although they are often called by different terms: those who are with a parent or guardian, those who are with non-parental adults, and those who have no adult caregivers. In light of the above analysis, the following terms (see Table 2.1) are used in this paper for our In-Canada Protection Process and our Refugee and Humanitarian Resettlement Program.

Table 2.1 Definitions of unaccompanied/separated minors used in this paper

Principal Attribute	In-Canada Protection Process	Resettlement Program
No acceptable adult present	*Unaccompanied minors* refer to individuals under the age of 18 for whom no acceptable adult, neither parents nor others, was present at the time of asylum claim in Canada. They are equivalent to resettlement program's "truly separated minors."	*Truly separated minors* refer to individuals under the age of 18 who are separated from both parents and are not with and being cared for by a guardian. They are equivalent to in-Canada process's "unaccompanied minors."
No parent present, but other acceptable adult(s) present	*Separated minors* refer to individuals under the age of 18 who have no parent, but have other adults, who are willing and able to provide care, present at the time of asylum claim in Canada.	*Consanguineous minors* refer to individuals under the age of 18 who are coming to Canada to be united with a blood relative (not parents).
		De facto dependents refer to individuals under the age of 18 who are emotionally and/or economically dependent on an adult principal applicant (PA). The PA may or may not be their blood relative. *De facto* dependants would normally be processed and live with the PA as members of the same household.
At least one parent present	*Non-separated minors* refer to individuals under the age of 18 who had at least one parent present at the time of asylum claim in Canada, but for some reason, were coded as "principal applicant." (See section 4.2 for the possible reasons.)	N/A

3. Asylum Seeking Minors in Canada

3.1. Data and Methods

The lack of an existing framework for data collection on unaccompanied minor asylum claimants necessitated an original research estimate starting from sample framing/sampling to data collection/analysis. First, we started by defining the population of interest as all claimants who (1) claimed on or between 1 January 2000 and 31 December 2004, (2) were under the age of eighteen at the time of claim, (3) were classified as "principal applicants" as opposed to "dependants," and (4) claimed at either Etobicoke, Fort Erie/Niagara Falls, or Toronto Lester B. Pearson International Airport.[16] The latter restriction was necessary to make on-site review of files manageable. Minor claimant intake at these offices represented a large proportion (45.6 per cent) of the national total and did not differ substantially from the latter.[17] Citizenship and Immigration Canada's administrative database, called Field Operational Support System (FOSS), identified 3,021 such individuals, *i.e.*, recent claimants under age eighteen identified as principal applicants at a major airport, land border, or inland immigration office in Ontario.[18]

Second, from this sampling frame, a highly representative sample of 280 claimants (approximately 10 per cent) was randomly selected using the software program SPSS. (See the Appendix for a table illustrating how representative the final random sample is compared to the national claimant population and the sampling frame.) Third, a template listing all relevant information was developed and a team of researchers completed it for each of the 280 claimants by physically reviewing some files deposited in the Toronto and Niagara Falls areas and conducting individualized in-depth searches of electronic immigration databases.[19] No attempt was made to match every record in every database; in general, a case would be followed through as many databases as necessary to determine the presence and identity of adults around the time of the claim. The electronic file in the main immigration database, FOSS, or the paper file often identified the presence of parents, other adults, and siblings. For example, the record of a court case would indicate that it was

brought by someone else on behalf of the child. Further matches were made by checking other immigration databases, in which the child might have been reunited with other family members after the claim was made. The following sections show findings from this custom-built database.

3.2. *Who Are the Unaccompanied Minor Asylum Claimants?*

For the purpose of this study, all findings are reported for three subgroups. The first group, *unaccompanied minors*, consists of those for whom no adult – neither parents nor any other acceptable adults – was present when they claimed. As Table 3.1 shows, among the 280 children in the sample, there were forty-six unaccompanied minors. In detail, thirty-four of forty-six were completely alone while twelve claimed with other minors, such as their siblings/relatives or friends. Minors for whom smugglers were the sole present adult are included in this group, too (more on smugglers later). In total, unaccompanied minors, who represent potentially the most vulnerable group, composed only 16.4 per cent of the total sample. The second group, *separated minors*, consists of those who had no parent present, but had other adults present around claim time. These adults ranged from relatives (*e.g.* grandparents, stepparents, adult siblings, aunts, uncles, spouse, and cousins) to friends and family friends. Separated minors represented 25.4 per cent. Finally, *non-separated minors* were those accompanied by at least one parent, but were coded as "principal applicants."[20] Among the 163 non-separated minors, seventy-six had both parents present around claim time, sseventy-one had their mother but not father, and sixteen had their father but not mother. In all 163 cases, other minors and/or adults might also have been present. In total, this non-separated minors group was by far the largest (58.2 per cent).

How could these proportions be used to estimate the number of unaccompanied minors nationally? According to administrative databases, there were a total of 172,516 adult and minor claimants in 2000–2004. Among them, 6,627 were principal applicants under the age of eighteen. (Of these, 3,021 claimed in the three areas that formed the basis of our sample.) As a starting point for further investigation, if the percentages in Table 3.1 are nationally representative, estimates would indicate that 1,087 unaccompanied minors (16.4 per cent of 6,627), 1,683 separated minors (25.4 per cent) and 3,857 non-separated minors (58.2 per cent) claimed in 2000–2004.

In the single year of 2000, there were 1,218 principal applicants under the age of eighteen. Applying the same technique, our estimates would result in 200 unaccompanied minor claimants (16.4 per cent of 1,218), 309 separated minor claimants (25.4 per cent) and 709 non-separated minor claimants (58.2 per cent) for 2000. Therefore, the widely used figure of "1,088 unaccompanied minor claimants in 2000"21 seems to reflect the total number of principal applicants under the age of eighteen, not the number of truly unaccompanied minors as in our definition.

These figures also suggest that Canada may be receiving relatively fewer unaccompanied minors than other countries. The UNHCR estimates the number of unaccompanied minors to be 2 per cent to 5 per cent of the international refugee population.[22] According to our analysis, unaccompanied minors represented only 0.63 per cent of the total claimant population (1,087 out of 172,516). Even the sum of unaccompanied and separated minors would only amount to 1.61 per cent of total claimants.

Table 3.1. Socio-demographic characteristics: group size, gender, age at claim and top three countries of alleged persecution

	N (Col. %)	Female (Row%)	Mean age	Top three countries
Unaccompanied	46 (16.4%)	18 (39.1%)	15.2	Sri Lanka, China, Burundi
Separated	71 (25.4%)	36 (50.7%)	15.3	Sri Lanka, Somalia, Colombia
Non-separated	163 (58.2%)	78 (49.9%)	10.0	Pakistan, Sri Lanka, Costa Rica
Total Minors	**280 (100.0%)**	**132 (47.1%)**	**12.2**	**Sri Lanka, Pakistan, Somalia**

In terms of gender distribution, separated and non-separated minors showed highly balanced gender ratios. On the other hand, unaccompanied minors showed higher representation of males compared to females, as only 39.1 per cent were female.[23] A Quebec-based study[24] also found that boys and young men were overrepresented among unaccompanied minors. In fact, despite the fact that women and children make up the vast majority of world's refugee population, men continue to constitute the majority of those claiming asylum in Western nations. This is partly because women and children often lack the necessary resources and skills to make their way to Canada or other Western asylum countries and claim asylum.

Regarding age at claim, unaccompanied minors and separated minors showed a comparable mean age of 15.2 and 15.3 years respectively while non-separated children showed a much younger mean age of ten years. This is understandable since very young children are less likely to be away from their parents. In fact, the youngest unaccompanied minor was seven years old and almost half of them were seventeen years old. The pattern was similar for the separated minors. In contrast, thirty-nine (or 23.9 per cent) of non-separated minors were aged five or under (figures not shown).

Where do they come from? The top countries of alleged persecution reported by all adult and minor claimants in 2000–2004 were Pakistan, Colombia, Republic of China, Mexico, and Sri Lanka, in descending numerical importance. Minor claimants shared most of these countries, as shown in other studies,[25] except for Burundi, Somalia, and Costa Rica. Costa Rica ranked eighth among the overall claimants, but neither Burundi nor Somalia figured among the top ten countries for overall claimants. However, the numbers are too small to yield a firm conclusion about distinct patterns of minor migration.

3.3. How Are They Received?

In terms of the in-Canada refugee determination processes, minor claimants, especially the unaccompanied and separated minors, differed somewhat from the overall claimant population. Starting with eligibility assessment at the front end of the determination process, compared to over 99 per cent of total claimants who were eligible in 2000–2004, a slightly lower proportion of 93.6 per cent of minors were eligible (Table 3.2). It is unclear why separated minors would show a higher proportion of eligibility than unaccompanied and non-separated children. However, it is fair to state that a large majority of minors were eligible. For all subgroups, the primary reason for ineligibility was not completing the eligibility screening process (prior to June 2002) or having made a previous claim in Canada (after June 2002).

Once eligibility is established, claimants are referred to the IRB for individual hearings. Our figures show that unaccompanied and separated minors who claimed in 2000–2004 had substantially higher acceptance rates (61.0 per cent and 57.1 per cent respectively) than the overall claimant population, for whom only 44.1 per cent of finalized decisions made in 2000–2004 were positive. Non-separated minors differed, as they showed a slightly lower rate than the overall claimants at 40.4 per cent. Although no direct comparisons can be made, as the available data is from various time frames, is based on various definitions of "unaccompanied," and includes cases coming from various countries, a preliminary conclusion is that the figure of "50 per cent acceptance rate in 2000"[27] seems to match the total minor figure (48.1 per cent), and not that of the subgroup of unaccompanied minors. Therefore, our figures do not confirm the American data presented by Bhabha[28] that "separated children have a lower success rate in asylum claims than accompanied children or adults."[29] We found no other comparable

Table 3.2. Minors in the In-Canada Refugee Determination Process

	Eligible	***Positive IRB Decision***	**Average time from *claim to IRB decision*[26]**
Unaccompanied	41 (89.1%)	25 (61.0%)	392 days
Separated	70 (98.6%)	40 (57.1%)	379 days
Non-separated	151 (92.6%)	61 (40.4%)	476 days
Total Minors	262 (93.6%)	126 (48.1%)	438 days

publication containing acceptance rates of unaccompanied or separated minors in Canada.

It is also interesting to note that, on average, it took non-separated minors approximately one hundred more days to have their cases heard at the IRB than their unaccompanied or separated peers. This may be because the IRB Chairperson's Guidelines related to procedure for child refugee claimants suggest that their claims be given scheduling and processing priority, as it is generally in the best interests of the child to have the claim processed as expeditiously as possible.

3.4. Relationship with Adults and Special Needs

No one disputes that children, by virtue of being children, need immediate and comprehensive assistance, not only for the refugee determination process, but for all other aspects of their lives.[30] They need assistance with food and shelter, medical care, and education, and, in general, adult guidance in their daily lives and protection from those who might harm or exploit them. They may also require specialized emotional support, due to their situation of separation, and specialized legal assistance.

For some minors, their contact with adults in the immigration process involves smugglers, often referred to as "agents," "snakeheads," or "coyotes." Out of 280 children in our sample, forty-seven files recorded the presence of smugglers either during the travel or around the claim time.[31] Understandably, the proportion reporting the presence of smugglers was higher among the unaccompanied and separated minors (28.3 per cent and 38.0 per cent respectively) than among the non-separated minors (16.8 per cent). Although the small sample size prevents a firm conclusion, interesting patterns by country of alleged persecution emerged: among the few countries that had more than ten minors, those coming from Somalia (9/17), Nigeria (6/12) and Sri Lanka (12/31) were much more likely to report smugglers than China (3/16), Pakistan (1/17), Mexico (0/12), Costa Rica (0/12), and Colombia (0/16).

When a child arrives in Canada with parents, the parents are responsible for the physical and emotional well-being of the child, including whatever support is needed to deal with the system, while the Immigration Officer is responsible for the immigration process. When the child is unaccompanied or separated, however, the immigration officer, while still primarily dealing with the immigration process, may have obligations under child welfare legislation and personal ethics pertaining to the child's safety.[32] This responsibility may lead to contact with the relevant child welfare authorities, NGOs, designated representatives, or legal counsel.[33] Like other issues under IRPA, the choice of whether to formally report a child to the child welfare authorities must be made on a case-by-case basis. The officer must exercise judgment as the possibility of risk to an unaccompanied child will depend on many circumstances, including the child's age and the appropriateness of any arrangements previously made for the child's care. "Risk," in the child welfare context, does not refer to risk of persecution, but rather to risk as defined under the child welfare legislation in the province in which the claim is made.

3.5. Summary and Conclusion

What do these analyses show? First of all, as Montgomery, Rousseau, and Shermarke[34] rightly state, "unaccompanied minors," however defined, constitute a highly heterogeneous population. They exhibit a wide spectrum of socio-demographic characteristics, come from many different countries and backgrounds, face a variety of conditions upon their arrival, and possess various needs of protection.

Second, detailed file review showed that the number of unaccompanied and separated minor claimants in Canada may be much smaller than previously reported. Previous researches have been based on quantitative data from existing administrative databases, which we found to be inadequate at accurately identifying the population of interest.

Third, unaccompanied and separated minor claimants showed distinct patterns compared to non-separated minors and adult claimants. Unaccompanied and separated minors were older than non-separated minors. Compared to non-separated minors and adult claimants, unaccompanied and separated minors were likely to come from different countries, more likely to have connection with smugglers, and slightly less likely to be eligible, but more likely to obtain a positive decision at the IRB once referred. They usually took a shorter time to obtain their decision, and were more likely to have help from professional child-care personnel. These differences re-emphasize the need to distinguish non-separated minors from unaccompanied and separated minors in future research.

4. Resettled Minors in Canada

4.1. Data and Methods

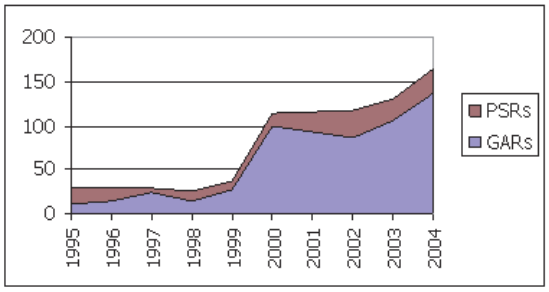
As stated above, administrative databases at Citizenship and Immigration Canada are not designed to capture which and how many minors were truly separated. This is as true for resettled minors as it is for asylum-seeking ones. In the resettlement context, the database does not currently capture how many minors arrived in Canada as consanguineous minors or how many were resettled as *de facto* dependants. However, it should be noted that the sample used in the resettled minors section differs from that used for asylum seeking minors above.

While we looked generally at all resettled individuals under the age of eighteen who are classified as principal applicants (heads of households), a small-scale individual review of all 294 CAIPS files of minors resettled as principal applicants in 2003 and 2004 was also conducted to identify the size and basic details of these subgroups.[35] Findings from this file review are reported below, but the majority of the resettlement section is based on all resettled individuals under the age of eighteen. All individuals in this aspect of our study under the age of eighteen are generically referred to as "separated minors."

4.2. Who Are the Resettled Minors?

Figure 4.1 below provides a snapshot of the number of principal applicants under the age of eighteen who have been resettled to Canada between 1995 and 2004 as Government Assisted Refugees (GARs) or Privately Sponsored Refugees (PSRs). Figure 4.1 shows a significant increase in resettled separated minors since 2000. However, the increases likely represent a new record-keeping procedure and the introduction of a more humanitarian interpretation of family rather than an actual increase in the number of separated minors resettled in Canada.

Figure 4.1
Number of Government Assisted and Privately Sponsored Minor Refugees, 1995–2004



Between 1995 and 1999, visa officers tended to process children who were not biological offspring under a non-parental principal applicant head of household.[36] In other words, *de facto* dependants were processed as true dependants and are excluded from the 1995–1999 figures. The practice stopped in 2000, so the number shown in Figure 4.1 between the years 1995 and 1999 is likely to include primarily truly separated and consanguineous minors. The next marginal increases in GARs in 2003 and 2004 are likely a result of the introduction of the Immigration and Refugee Protection Act (IRPA) in 2002; more specifically, of the changes making the Refugee and Humanitarian Resettlement program more accessible to those most in need. It is interesting to note that, since the moratorium on resettling truly separated minors was introduced in May 2001, the number of principal applicants under eighteen between 2002 and 2004 was therefore more likely to be comprised mostly of *de facto* dependants and consanguineous minors and not truly separated minors.

In order to provide some clues to the distribution of these three subgroups of minors (consanguineous, *de facto* and truly separated), the files of all of the resettled principal applicant minors for the years 2003 and 2004 were examined. Table 4.1 presents the breakdown. As expected with the moratorium, very few truly separated minors were resettled in 2003–2004. Between consanguineous minors and *de facto* dependants, the latter was much larger, at 70.4 per cent of the total principal applicants under eighteen. The file review[37] has revealed that the majority of separated

Table 4.1. Detailed file review: Distribution of consanguineous, *de facto* and truly separated minors, 2003–2004

	Total (Col.%)	**Female N (%)**
Truly separated	2 (0.7%)	2 (100.0%)
Consanguineous	59 (20.1%)	21 (35.6%)
De facto	207 (70.4%)	93 (44.9%)
Unknown	26 (8.8%)	11 (42.3%)
Total	**294 (100.0%)**	**127 (43.2%)**

minors were *de facto* minors. The majority of these *de facto* minors travelled with an adult, usually an aunt or an uncle. However, interestingly, based on the information collected at the time of the file review, the majority of *de facto* dependants under the age of twelve were travelling with their older single siblings rather than an adult with other dependant family members (such as an uncle with his own biological children). This data therefore seems to indicate that in the absence of parents, older single siblings are more likely to take on the care of their younger siblings than an older sibling with dependants of his/her own.[38] Many of those who fell into the consanguineous category were joining an aunt or an uncle in Canada.

Moving from this smaller file review back to the overall resettled minor population, Table 4.2 shows their socio-demographic traits. Regarding gender, Table 4.2 shows that 40.9 per cent of resettled minors resettled in 2000–2004

were females. Compared to the overall resettled population (adults and minors) in the same period, where 47.9 per cent were females, female minors seem under-represented. This is despite some of the program reforms of 2000 and 2002 which aimed at ensuring more equitable access to Canada's resettlement program by women and children who make up the vast majority of the world's refugees.[39]

Table 4.2.
Gender and source country of resettled minors, 2000–2004

	Total	Female N (%)	Top Countries
2000	114	49 (43.0%)	Sudan, Yugoslavia, Burundi
2001	116	46 (39.7%)	Sudan, Congo, Ethiopia
2002	117	40 (34.2%)	Sudan, Ethiopia, Burundi
2003	130	51 (39.2%)	Sudan, Congo, Ethiopia
2004	164	76 (46.3%)	Sudan, Congo, Somalia
Total	**641**	**262 (40.9%)**	**Sudan, Congo, Burundi**

In terms of source countries, resettled minors of 2000–2004 do bear resemblance to the general resettlement population in that most came from Africa. While most refugees resettled to Canada came from Eastern Europe and Asia prior to 2000, the Middle East and African countries represent over 50 per cent of all resettled refugees to Canada today. However, in terms of individual countries, minors show slightly different source countries than the overall resettled population. The top eight source countries for the overall resettled population in 2000–2003 were Afghanistan, Yugoslavia, Colombia, Sudan, Iraq, Iran, Ethiopia, and Bosnia-Hercegovina. In comparison, in addition to Sudan and Ethiopia, resettled separated minors came from Congo, Burundi, and Somalia. For some reason, family units in Afghanistan, Yugoslavia, and Colombia seem either to have remained more intact or to have more mothers who have been able to continue as the head of family when compared to families in Africa. It may be that the prevalence of conditions outside the refugee situation, such as HIV/AIDS, may have rendered more children without either parent in Africa.

It is important to note the implication of this difference. In addition to the fact that refugee children, especially separated children, are among the most vulnerable children in the world, those coming from African countries are even more vulnerable than those resettled in the past from European countries. Young children from the top countries shown in Table 4.2 are likely to have witnessed or have been the victims of atrocities such as bombings, militia attacks, child soldier recruitment, burning of entire villages, rapes, and executions of civilians. Further, young girls are at higher risk of being forced to work as child prostitutes for rebel armies in order to support themselves and, in some cases, their families.[40] Therefore, it should be noted that, in addition to the fact that post-IRPA resettled refugees may have higher needs generally, it is likely that the resettled separated minors may have even higher psychosocial needs.

4.3. How Are Resettled Minors Received?

All resettled refugees receive resettlement assistance but the amount and type that they receive is dependant upon their level of need relative to the other refugees being resettled. GARs receive up to twelve months of income support through the Resettlement Assistance Program (RAP) while PSRs receive similar assistance but have the added support of a volunteer for up to one year to help with the day-to-day challenges of adjusting to life in Canada. However, it is important to note that all assistance for resettled refugees is first and foremost designed to assist the adult principal applicant or head of household take care of his/her dependants and settle into Canadian society. Furthermore, integration programs and services are designed to directly address the needs of an adult caregiver rather than a minor. The adult is expected to look out for the needs of the minors and as such the programs will also include guidance on how to care for minors within Canadian society. It should be noted that the infrastructure is not in place to address the needs of minors directly nor are existing programs equipped to provide the care and attention necessary to protect minors arriving in Canada for the first time without an adult caregiver.

As noted above, provincial and territorial governments have jurisdiction in matters of child protection and social services; each province has its own child protection, child welfare, and guardianship legislation, and the care provided to separated children varies from one province to another. As a general rule, there is no requirement to involve provincial child welfare services when destining resettlement cases with a *de facto* or consanguineous minor given that these minors are in the care of an adult guardian.[41] As with any other permanent resident or Canadian citizen family, provincial services do not interfere in private families unless

there is reason to believe that the minor is in need of protection from the adult caregiver or unless the adult caregiver is unable to ensure the safety of the child.[42] However, the responsibilities of CIC and the provinces overlap in the resettlement of separated minors. Therefore, in all cases involving truly separated minors, CIC is required to consult with the ministry responsible for child welfare in the anticipated province of destination before making a decision to accept the minor.

Concerns surface where the adult caregiver abandons the *de facto* or consanguineous minor before the minor has reached the age of majority in the province in which they have been settled. When this happens within the first year of their arrival in Canada, this poses many complications for CIC, the province, and the minor since the minor may not be able to access the necessary supports. In provinces where the age of protection extends to include eighteen, resettled refugee minors who are abandoned by their guardian may seek the necessary protection services from the provincial government to ensure they are cared for until they reach the age of majority when they can work and obtain the benefits of an adult. In provinces where the age of protection extends only to fifteen, the abandoned minor may be placed in very real danger. This is due to the fact that the minor will still be relatively unfamiliar with Canadian society and, therefore, may very well lack a social support network.

4.4. Future Policy Development

CIC is working towards a national resettlement policy to prevent, as much as possible, resettled children from becoming victims of abuse and exploitation once here in Canada.

In recent years, CIC has engaged in consultation with provincial governments, NGOs, and the UNHCR to explore the issues associated with resettling separated minors. The first measure resulting from these consultations was the moratorium, in 2001, on separated minors without an adult guardian to care for them. The moratorium is expected to continue until we have an infrastructure in place to welcome and receive separated minor refugee children in a way that can ensure their physical protection and safety, including their financial independence until they reach the age of majority.

The second step was addressing the importance of ensuring children resettled to Canada are part of *bona fide* familial relationships. To that end, CIC with provinces, child welfare authorities, and the UNHCR has developed a national "guardianship protocol." In an attempt to mitigate the circumstances that give rise to family breakdown and exploitation, CIC is dealing with procedural issues to ensure refugee minors are brought into, or are part of, *bona fide* familial relationships that can provide the necessary safety and protection of the minor until the minor reaches the age of majority in the province in which they reside. The guardianship protocol, in the final stages of development, will also amend the definition of separated minors to: "an individual under the age of eighteen without the care and protection of a legal guardian."

The guardianship protocol will ensure every adult bringing a child into Canada as a *de facto* dependant or as a consanguineous minor understands their obligations as the adult caregiver. It will also facilitate the acquisition of legal guardianship for these children. To further help persons apply for legal guardianship, CIC has amended the terms and conditions for federal resettlement assistance so that CIC is able to cover the administrative costs associated with legalizing guardianship.

CIC also expects to further engage partners and stakeholders to develop the infrastructure necessary to allow Canada to resettle and ensure adequate care and protection of separated minors. In anticipation of such a development, CIC included in its April 2005 amendments to the Resettlement Assistance Program the flexibility to cover expenses unique to separated minors not normally considered integration expenses. In addition, new guidelines have been approved to use a secondary source of the resettlement assistance budget known as RAP "B" funding. For separated minors, this means the capacity exists to fund special programming initiatives or orientation sessions designed specifically to address the settlement needs of separated minors who arrive in Canada without an adult guardian. While there are no immediate plans for this type of programming, RAP "B" funding is expected to contribute to the development of a solid Canadian infrastructure that supports the care and protection of separated minors in the future.

CIC is committed to ensuring the protection of resettled refugee minors. The policy decisions taken in 2000 and again in 2002 were the first steps in that regard, both in terms of the relaxed settlement criteria and the record keeping policies. However, there is still much work to be done.

Conclusion

Scholars and NGOs have for long expressed concerns about the lack of reliable data and policy framework concerning the particularly vulnerable group of unaccompanied minor refugees in Canada: How many unaccompanied minor refugees are there? Who are they? How are they received? Using existing administrative databases to the fullest extent, this paper has sought to fill some of the information gaps.

Concerning their number, detailed file review has shown that truly unaccompanied minors were many fewer than

previously reported. In the asylum stream, extrapolating from a sample suggests that only 0.63 per cent (or 1,087) of the total claimant population had claimed unaccompanied by adults *in the past five years*. Even when those accompanied by non-parental adults are added, the figure only amounts to 1.61 per cent or 2,770 in 2000–2004. In the resettlement stream, partly due to the moratorium, only two truly unaccompanied minors were resettled in 2003–2004 (Table 4.1). Compared to other countries, especially to some European countries where the phenomenon of unaccompanied minors is much more prevalent, these figures are very small.

Who are they? On this, our data agree with previous findings that unaccompanied minors compose a highly heterogeneous and vulnerable group. They come from many different countries, often the same countries as the adult refugee population, but sometimes not. They tend to be older than accompanied minors. Unaccompanied or separated asylum minors are more likely to be males, but the two separated resettled minors were females.

About how they are received and what their specific needs are, very little evidence exists. Our study found that unaccompanied and separated asylum-seeking minors showed a higher acceptance rate and quicker processing times than the adult population, but details about their actual reception into Canada remains to be further explored.

What can be done to address the needs of this particularly vulnerable group of refugees? As a first step, Citizenship and Immigration Canada (CIC) needs to institutionalize a way of improving data entry quality which will allow the distinction of different subgroups of minor refugees. Currently, neither the asylum nor the resettlement database is able to accurately identify the different subgroups of separated/unaccompanied minors: in the case of asylum-seeking minors, those presenting themselves with no adult (unaccompanied) are not distinguishable from those who come with non-parental adults (separated) or even from those who come with a parent (non-separated). On the resettlement side, those coming completely by themselves (separated) are not distinguishable from those joining their non-parental blood relatives (consanguineous) or those being processed with guardians (*de facto* dependants). Unfortunately, previous research has been based on these aggregated figures. Once these subgroups become identifiable through a better data collection method and awareness at CIC, all existing data (*e.g.* gender, age, countries of origin, and much more) could be used to a much fuller extent. In concrete terms, a set of operational guidelines towards this end must be developed. These would review the input criteria for current administrative databases and ensure the necessary fields are available in the database which is being implemented.

When systems are in place to accurately identify separated and unaccompanied minors on a long-term basis, we will be able to develop a research-based policy framework to address the specific needs of this group. Although they are small in number, they are a particularly vulnerable population, subject to such abuses as trafficking in persons and lack of physical and emotional support. It is hoped that the attempt at defining the subgroups as well as some preliminary analysis into their numbers and reception that is presented in this paper will constitute the first step towards such policy framework.

Appendix

The following table illustrates how representative the final random sample is compared to the national claimant population and the sampling frame.

	National Minor Claimant Population	**Sampling Frame (3 offices)**	**Final Random Sample**
Mean age (years)	11.84	12.18	12.67
Male	3,588 (54.1%)	1,634 (54.1%)	148 (52.9%)
Female	3,039 (45.9%)	1,387 (45.9%)	132 (47.1%)
Etobicoke	1,692 (25.5%)	1,692 (56.0%)	160 (57.1%)
Fort Erie/Niagara Falls	927 (14.0%)	927 (30.7%)	85 (30.4%)
Pearson International	402 (6.1%)	402 (13.3%)	35 (12.5%)
Not selected	3,606 (54.4%)	N/A	N/A
Total N	**6,627**	**3,021**	**280**

Notes

1. Mehrunnisa A. Ali, Svitlana Taraban, and Jagjeet Kuar Gill, "Unaccompanied/Separated Children Seeking Refugee Status in Ontario: A Review of Documented Policies and Practices" (working paper no. 27, CERIS Working Paper Series, Joint Centre of Excellence for Research on Immigration and Settlement, Toronto, August 2003), http://ceris.metropolis.net/Virtual%20Library/Demographics/CWP27_Ali.pdf (accessed 2 November 2005); Judith Kumin and Danya Chaikel, "Taking the Agenda Forward: The Roundtable on Separated Children Seeking Asylum in Canada," *Refuge* 20 (2002): 73–77.
2. Review of Canada's Second Report by the UN Committee on the Rights of the Child, 17 September 2003, para. 96, <http://www.pch.gc.ca/progs/pdp-hrp/docs/crc_e.cfm> (accessed 2 November 2005).
3. Provincial and territorial governments have jurisdiction in matters of child protection and social services while the federal government retains power over the selection of all immigrants to Canada.
4. *Immigration and Refugee Protection Act [IRPA]*, S.C. 2001, c. 27; *Immigration and Refugee Protection Regulations*, SOR/2002-227; *Regulations Amending the Immigration and Refugee Protection Regulations,* Canada Gazette 138, no. 22, 3 November 2004, <http://www.cic.gc.ca>.
5. *Convention relating to the Status of Refugees*, 28 July 1951 (entered into force 22 April 1954, accession by Canada 2 September 1969) [*Refugee Convention*], <http://www.unhchr.ch/html/menu3/b/o_c_ref.htm> (accessed 2 November 2005); *Protocol Relating to the Status of Refugees*, 1967 (entered into force 4 October 1967, accession by Canada 4 June 1969), <http://www.unhchr.ch/html/ menu3/b/o_p_ref.htm> (accessed 2 November 2005).
6. *Convention on the Rights of the Child*, 1989 (entered into force 2 September 1990, ratified by Canada 13 December 1991); Can T.S. 1992 No. 3.
7. Humanitarian and Compassionate Consideration, *IRPA, supra* note 4 at section 25.
8. Under the previous *Immigration Act*, an equal consideration was given to the individual's ability to establish, and to his or her need for protection. As a result, principal applicants were discouraged from taking responsibility for dependants who did not meet the definition of dependent family members, such as nieces and nephews, including children. As minors without biological parents or legal guardians were considered

in their own right, it was very rare that unaccompanied minors were able to demonstrate their ability to establish.

9. There is a moratorium against the resettlement of all truly separated minors, except where the UNHCR determines resettlement to Canada to be the most appropriate solution and where CIC is able to ensure with provinces, the adequate care and protection of the minor. These situations are dealt with on a case-by-case basis.
10. Jan Williamson and Audrey Moser, *Unaccompanied Children in Emergencies: A Field Guide for Their Care and Protection* (International Social Service, 1989), 37. The authors use the terms separation with (abandoned, entrusted, living independently) or without (lost, orphaned, run away, abducted) the parents' consent.
11. For example, a child claimant whose parents are already permanent residents may be considered unaccompanied for the purpose of his/her referral to the IRB because his/her parents do not have open refugee claims. For the purpose of our study, however, she or he will be categorized as a non-separated asylum minor.
12. International Bureau for Children's Rights (IBCR*), Best Practices Statement on Separated Children in Canada* (Montreal: IBCR, 2002), <http://www.ibcr.org> (accessed 2 November 2005).
13. The Committee on the Rights of the Child includes, without comment, both definitions in *General Comment No. 6* (2005) entitled "Treatment of unaccompanied and separated children outside their country of origin." The UNHCR's *Refugee Children: Guidelines on Protection and Care* (Geneva: 1994) contains two checkboxes, for "unaccompanied" and "separated" children.
14. There are other definitions of acceptable adults, as well. Regulation 228(4) under the *IRPA* (*supra* note 4), which stipulates an exemption for the Minister when making a removal order, applies to a minor "not accompanied by a parent or an adult legally responsible for them." Safe Third Country Regulations (*supra* note 4) define the exception for "an unaccompanied minor" as "not accompanied by their mother, father or legal guardian, has neither a spouse, nor common-law partner and has neither a mother or father nor a legal guardian in Canada or the United States." The Immigration and Refugee Board Chairperson's Guidelines, issued under *IRPA*, define these adults as persons who purport to be members of the child's family if the IRB is satisfied that these persons are related to the child. Immigration and Refugee Board, *Guideline 3, Child Refugee Claimants: Procedural and Evidentiary Issues* (Ottawa: Guidelines Issued by the Chairperson, 1996), <http://www.irb-cisr.gc.ca>.
15. UNHCR's 1997 *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children* (Geneva: 1997) (Annex II, Point 5) point out that where a child is accompanied by an adult caregiver, the quality and durability of the relationship between the child and the caregiver must be evaluated to decide whether the presumption of "unaccompanied status" should be set aside. .
16. "Etobicoke" includes Etobicoke Canada Immigration Centre, Greater Toronto Area West Management area; "Fort Erie/Niagara Falls" includes Ft. Erie Peace Bridge, Niagara Falls Whirlpool Bridge, Niagara Falls Rainbow Bridge, Niagara Falls Queenston-Lewiston Bridge, Niagara Falls Selection, Integration and Refugee Operations, and Niagara Falls Enforcement; "Toronto Lester B. Pearson International Airport" includes Terminals 1, 2, and 3 and Operations.
17. See the Appendix for comparison.
18. The 3,021 minor claimants from the three offices constituted almost half of total national minor claimants in the same period (45.6%; N=6,627).
19. Primarily Field Operating Support System (FOSS), with help from National Case Management System (NCMS), Computer Assisted Immigration Processing System (CAIPS) and Case Processing Center database (CPC).
20. There are a number of reasons why non-separated minors (accompanied by at least one parent) would be coded as principal applicants in the administrative database. For example, the parents may be permanent residents or citizens of Canada, making the minor the only and principal claimant. Alternatively, parents may have claimed at different times than the child or against a different country of persecution. It could also be due to coding errors. Due to a computer coding error, some offices for some period of time were instructed to code *all* claimants as principal applicants.
21. Wendy Ayotte, *Separated Children Seeking Asylum in Canada: A discussion paper adapted from an original report researched and written by Wendy Ayotte* (Ottawa: UNHCR Branch Office for Canada, 2001), 8, (http://www.web.net/~ccr/separated.PDF).
22. Catherine Montgomery, "The Brown Paper Syndrome: Unaccompanied Minors and Questions of Status," *Refuge* 20 (2002): 57.
23. For the same period of 2000–2004, 41.6 per cent of all claimants (both minors and adults) were female.
24. Catherine Montgomery, Cecile Rousseau, and Marian Shermarke, "Alone in a Strange Land: Unaccompanied Minors and Issues of Protection," *Canadian Ethnic Studies* 33 (2001): 105.
25. Kumin and Chaikel, *supra* note 1 at 5.
26. Out of 280, 18 were not referred (ineligible) to the IRB and 7 were still waiting to be scheduled at the time of the survey. These cases were excluded from the time calculation.
27. *Supra* note 19 at 10.
28. Kumin and Chaikel, *supra* note 1 at 75.
29. Similarly, the IRB's statistics also show a higher acceptance rates for separated minors (by their definition) than others: while the overall acceptance rate between July 2004 and May 2005 was 40 per cent, that of "separated children" in Ontario was 51 per cent; (personal communication).
30. Geraldine Sadoway, "Canada's Treatment of Separated Refugee Children," *European Journal of Migration and Law* 3 (2001): 347–81 at 352.

31. While the relationship of the child with a smuggler ends before or on arrival, some smugglers may also be traffickers who will continue to exploit the child in Canada.
32. Citizenship and Immigration Canada, "Protected Persons 1, Processing Claims for Protection in Canada, chapter 14, Procedure – Minor Children," in *Immigration and Refugee Protection Act Manual*, <http://www.cic.gc.ca/manuals-guides/english/pp/index.html>. The manual states, for example, that "For the purpose of reception, whether the person accompanying them (or coming to meet them) is able to provide sufficient care, should be referred to provincial authorities as appropriate." Under the IRB Chairperson's Guidelines, claims of unaccompanied children should be identified as soon as possible by the IRB registry staff. The name of the child and any other relevant information should be referred to the provincial authorities responsible for child protection issues, if this has not already been done by Citizenship and Immigration Canada (CIC). The Guidelines state that an unaccompanied child claimant is by virtue of that status a child who may be at risk and the authority responsible for children at risk should be notified.
33. *IRPA* requires the IRB to designate a representative for every person under eighteen. CIC has no authority to designate a representative, but it is preferred that every child have an appropriate adult to assist with the claim in its early stages before it goes to the Board. This adult should act in the best interests of the child and not be in a conflict of interest position with the child. It may be someone who has travelled with, or come to meet, the child, or someone asked to assist according to regional/office practice.
34. Montgomery, Rousseau, and Shermarke, *supra* note 24 at 106.
35. CAIPS is one of CIC's databases and is the main system used in missions overseas to record case notes for refugee selected for resettlement.
36. This may be because the officers recognized that circumstances, such as separation from family members as a consequence of civil war or death of parents/guardians, often force minors to become *de facto* members of other families. Also, some refugee families may actively select a child to join their extended family/community/tribe members in displacement.
37. CAIPS.
38. Section 141 of *IRPA*; OP 5 One-year window of opportunity (OYW), section 6.34.
39. *De facto* dependency may vary on the basis of gender, as boys are more likely to be able to live in large groups as minors and separated girls are frequently "adopted" into families within their extended family and/or ethnic group. For girls who become *de facto* members of another family, it may mean that they are treated as a *de facto* "child," but it can also mean that they become victims of gender-based violence.
40. See "Refugee Children in Southern Africa Share Their Perception of Violence," *Africa Newsletter*, UNHCR Africa Bureau, August 2005; and "Note for Implementing and Operational Partners on Sexual Violence and Exploitation: The Experience of Refugee Children in Guinea, Liberia, and Sierra Leone," UNHCR, February 2002.
41. Both government-sponsored and privately sponsored refugees are not entitled to social assistance during the period of the sponsorship. The financial sponsorship period is normally one year but may be extended to two years in some cases of government-assisted refugees and three years in special private sponsorship cases.
42. Each province has legislation which defines the nature of child protection.

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Reflections on *Gendering Canada's Refugee Process*

Catherine Dauvergne

Abstract

This article introduces the report entitled Gendering Canada's Refugee Process released by Status of Women Canada in June 2006. The research investigates how, when, and why gender matters in Canadian refugee determination. It sets this inquiry in the context of changes brought in by the Immigration and Refugee Protection Act*, as well as changes that have occurred due to the post–September 11 security climate. The article reflects on the research methodology and highlights the key conclusions of the report. The report's seventy-nine recommendations are also presented here.*

Résumé

L'article présente le rapport intitulé Gendering Canada's Refugee Process (Détermination du statut de réfugié au Canada selon le sexe), publié par Condition féminine Canada en juin 2006. Il explore de quelle manière, à quel moment et pour quelle raison le facteur sexe intervient dans la détermination du statut de réfugié au Canada. La recherche se situe dans le cadre des changements amenés par la Loi sur l'immigration et la protection des réfugiés, et par les dispositifs de sécurité mis en place après le 11 septembre. L'essai se penche sur la méthodologie de recherche du rapport, en fait ressortir les conclusions clés et présente les 79 recommandations qu'il contient.

Status of Women Canada is scheduled to release the report entitled *Gendering Canada's Refugee Process* in June 2006. I was the principal investigator for this project and the lead author of the report.[1] Our final draft was completed in April 2005 and in the time between then and April 2006 (quaintly known as "at time of writing"), the report has gone through the predictable refereeing, copy editing, page proofing, and translation stages. It would be reasonable enough to think that I had tired of a project that was launched in May 2003, but the opportunity to introduce this research to the *Refuge* community, and the associated occasion to reflect on its construction and aspire for its future, proves irresistible.

In this short article, I introduce the research by outlining why we undertook the project and how we conducted the work. This makes a place for reflection on our methodological choices, and charts a path for further work. I then consider our regrets, things we had aspired to but could not achieve and why this is so. Finally, I highlight some of our findings, and set out again here the seventy-nine recommendations of the report because of my belief that if even some of these were taken up by current policy makers, considerable improvements could be made. In the current political climate in Canada, advocates are forced to argue for the status quo as "best practice" against a host of forces that would prefer an erosion of the current refugee determination system. Writing *Gendering Canada's Refugee Process* offered a comparatively rare opportunity to imagine improvements, and to be supported by generous government funding in so doing.

Why We Did It

This research set out to investigate changes to Canada's refugee protection system which had been brought in by the 2002 *Immigration and Refugee Protection Act (IRPA)*,[2] and in particular to investigate how, when, and why gender matters in refugee determination. In addition to new legis-

lation for the first time in twenty-five years, two other factors contributed to making the research timely. The first was the shift in the politics of security following the terrorist attacks of September 11, 2001. The second was the innovative statement in the *IRPA* that the government would report annually on the gendered effects of the legislation.[3] These three factors helped make a case for the grant application to the Research Directorate of Status of Women Canada program on human security.

The less official story of why is also important. In this instance, the research was spurred on by Leonora Angeles's pedagogic innovation. In the autumn of 2002 she required that graduate students in the Asian Public Policy Program write a grant application as an assignment for one of her courses. Chantal Proulx, Jenelyn Torres, Masako Tsusuki, and Anna Turinov undertook this project together. In searching out people at the University of British Columbia (UBC) who could assist them, they approached both me and Erin Baines. Erin, Nora, and I jointly decided that the students' original idea of twinning refugee matters with human security was important and that the timing was right to develop a fully articulated proposal from the original assignment. The three of us applied for the funding together, with the original students as researchers on the project.[4]

There has been a lot written about women in refugee law. Our work is different from the majority of other work in the area, and we hope this difference is complementary. This is also part of the "why" of this work. Academic research and analysis along with hands-on activism has been vital, since the mid 1980s, in putting gender on the refugee issues map.[5] While there is still much to be concerned about in this area, it is undoubtedly the case that gender is now clearly identified as an issue to be reckoned with in refugee law. Following concerted work by feminist activists and scholars, the United Nations High Commissioner for Refugees (UNHCR) launched its first *Guidelines on the Protection of Refugee Women* in 1991.[6] Led by Canada, many Western refugee-receiving countries now have policy guidelines on gender-related persecution.[7] The UNHCR updated both its guidelines and its language with a statement on gender-related persecution in 2002, and since 2001 has been working to implement is gender equality mainstreaming program.[8]

Our work is complementary to much of the existing work in that it is not jurisprudential. That is, it is not primarily about gender-related persecution or the interpretive trends in refugee law. This is a significant thing to leave out, so it is vital to understand what we have done instead. In a sense our point of departure is this: let's assume the gender-related persecution guidelines are perfect and their interpretation and application are seamless, would this solve all the dilemmas of gender in the refugee determination process? To answer this question, we have taken a long view of refugee determination in Canada, considering what happens to women and men from the moment they decide to make a refugee claim to the time when they are either permanent residents in Canada united with their close family members or when they have left the country. While the jurisprudential content of a given refugee decision is the centrepiece of this trajectory, it is also a discrete point in the process, neither the beginning nor the end.

In keeping with this non-jurisprudential perspective, our research focus was gender rather than gender-related persecution. We tried – with varying degrees of success – to investigate differences between the experiences of women and men in the refugee process, rather than to focus on gender-related persecution only. It stands to reason that many women, potentially the vast majority, will seek refugee status because of a risk of persecution which is not gender-related. Indeed, it might even be suggested that the more firmly established the jurisprudential thrust of the Canadian guidelines on gender-related persecution becomes, the more women will be seen as risking pure and simple persecution, rather than an exceptional adjectivally framed variety.

In this ambition, we were only partially successful. It proved extraordinarily difficult to understand and interpret the difference between refugee claims made by women and claims involving gender-related persecution. On the one hand, Immigration and Refugee Board (IRB) statistics suggest that in the decade following the introduction of the Canadian guidelines, only about three thousand decisions used them. This number must certainly be too low given that a rough figure for overall claims during that time frame would be three hundred thousand. On the other hand, our discussions with advocates, support workers, and decision makers indicated that gender-based persecution is immensely important to women's claims, some even saying that they used the guidelines in every single claim involving a woman. There are logical reasons for the IRB figures to underestimate use of the guidelines, and we certainly found that the guidelines, and the importance of gender issues generally, were a well-established part of the institutional ethos of the Board. On this point we were left with an understanding that there are some distinctions to be made between claims by women and claims involving gender-related persecution, but no satisfying way to describe these distinctions.

It is provocative to consider whether gender-related persecution has subsumed all women. It may be the case that jurisprudential attention to ways in which women are ex-

cluded from refugee law has left only one way for them to be meaningfully included. This important insight is not one we take up in *Gendering Canada's Refugee Process*, as it would certainly involve extensive jurisprudential work. But the terrain to be mapped is visible from the vantage point we establish.

The final reason we did this research at this point in time is generous funding provided by Status of Women Canada. Our grant proposal was accepted and funded over a two-year period. The project could not have been completed, or even started, without this commitment. Furthermore, the production costs often borne by researchers were in our case taken up by the funder, making the money go even farther.

What We Did

Our work on this project began in May 2003 and involved six principal activities: reviewing literature, policy mapping, searching for standards, interviewing, gathering numbers, analyzing, and reporting. Of these relatively predictable phases, the policy mapping, interviewing, and gathering of statistics proved especially challenging.

Assembling all the documents which govern the Canadian refugee determination process from start to finish is an immense task. In keeping with our commitment to look at the lived experience of a person's engagement with the Canadian government from arrival through to either settlement or departure, a preliminary methodological requirement is to simply identify the steps in that process. This involved taking into account the law, regulations, policy guidelines, rules, and other statements that control each aspect of the process. At first just as a ready reference, and later in partial disbelief, we represented all this material in the form of a chart, contrasting the *IRPA* and other recent documents with the previous regime. The chart is sixteen pages long (and is Appendix C to the report).[9]

This information required constant updating as new policies were introduced during our twenty-four month research time span. Changes made during our work included:

- temporary suspension of the Refugee Appeal Division has continued and now appears to be permanent;
- Canadian Border Services Agency (CBSA) was created in December 2003 with significant refugee determination related responsibilities;
- a new National Security Policy highlighting refugees as a potential security problem was introduced in April 2004;
- several policies and instructions relating to refugee hearings at the IRB were introduced by the Chairperson. These include guidelines about the order of presentation (questioning), use of videoconferencing, and front-end screening;
- reduction in legal aid for refugee claimants in British Columbia from February 2004;
- the *Public Safety Act* became law in March 2004;
- new regulations governing immigration consultants came into force in April 2004;
- new guidelines for IRB appointments were introduced in March 2004;
- the "Safe Third Country" Agreement with the United States came into effect on December 29, 2004;
- Citizenship and Immigration Canada (CIC) published a "Strategic Framework on Gender Based Analysis for CIC (2005–2010)."

Since our report was submitted in April 2005, there are a number of items that could be added to this list, and a change in government means that more could be on the way.

One of the themes of our report became change, and we worked to analyze the implications of incessant incremental change in a major policy area. Even the *IRPA* itself leaves intact much of the previous refugee determination process. Thus on the one hand, the process is marked by all-change-all-the-time, meaning that repeat players in the process – advocates, decision makers, community workers – are constantly adjusting and working to absorb new information, as well as analyzing and advocating as new initiatives appear on the horizon. This effort consumes an enormous amount of energy amongst each of these groups of people. On the other hand, as major pieces of the puzzle are fixed, it is possible to say that the system is the same now as it was ten or fifteen years ago. This is misleading, however, because each incremental change has its particular impact. The cumulative effects are seen more clearly in a study like ours which examines the long view of the in-Canada refugee process.

Gathering statistics to gender the refugee determination process was particularly difficult. We gathered statistical information from three sources: (i) publicly available documents such as annual reports; (ii) information in response to direct questions we posed of CIC and IRB officials; (iii) requests made under the *Access to Information Act*.[10] We are especially grateful to the CIC and IRB staff who assisted us in gathering this information and who spent time discussing key issues with us. It was a difficult decision to make the decision to pursue information using the access legislation when we had had such cheerful co-operation with individuals at key agencies. We made this choice in consultation with our analyst at Status of Women Canada, hoping that it would free individuals from vexing decisions about which information to release and when to release it. Our work did

not involve generating any new numbers ourselves, although we did sometimes calculate acceptance rates and comparison rates based on numbers provided by government agencies.

In some cases the numbers are revealing, in some they are predictable. In many cases the absence of sex-disaggregated data is the most significant finding. Our view is that these questions have simply not been previously asked. We do not believe there is any invidious motive in the unavailability of data. We are also convinced that everything that was available was released to us. While sex-disaggregated data are not the end point of an analysis of gender, they are an important starting point. We were surprised at the absence of this data in many areas. This was probably the most frequent reason for altering our research plans as we progressed. Information we had thought would be available simply was not, and some analysis was impossible because of this. Concomitantly, this provides even greater validity to our qualitative work, and frees us from crude numerical framing of results.

Interview data are a central aspect of the information we gathered. In total we interviewed 109 people between October 2003 and November 2004. Our interviews took place in Montreal, Ottawa, Toronto, and Vancouver. Some were conducted by telephone with interviewees in other locations. We interviewed two groups, key informants and people in the refugee determination process.

Our key informants included community activists in the refugee sector, refugee lawyers, refugee decision makers, and academic researchers. Refugee decision makers were recruited to participate in our study with the assistance of the IRB, Refugee Protection Division. The key informants included twenty-two refugee lawyers who have been practising between one and twenty-two years in Canada. On average and when combined, these lawyers assist 750 applicants annually, from all areas in the world. We also spoke with staff from refugee women's shelters, academics, refugee advocates volunteering in detention facilities, former Refugee Protection Officers, a former Immigration Officer, and international and national non-governmental groups. The eleven refugee decision makers we interviewed had been at the IRB for betweentwo and fourteen years, with approximately seventy years aggregate experience. Given average rates of decision-making responsibility, these individuals would have participated in over twelve thousand refugee determinations.

Our interviews with people in the refugee determination process included interviews with some whose claims had been accepted, some whose claims had been rejected, and some who were still engaged in the process. These interviews were challenging on several levels. First, recruitment among this population was difficult. Participating in our research did not offer any benefit to claimants. We asked claimants to retell stories that were often traumatic and we had no way to assist them with their claims. We were also aware that because many people involved in this process are very poor our modest financial recognition could act as an incentive to participate. We did not want those who would not otherwise consent to do so for the money. We addressed our recruitment concerns in part by recruiting participants through key informants. We guaranteed anonymity, and also offered interpreters of the interviewee's choice and to pay for child care if necessary. The recruitment challenge meant that we did fewer of these interviews than we had planned, with a final total of only thirty-one interviews.

A second challenge of these interviews was the emotional impact of the interview experience for the claimant and the interviewer. Most claimants, women and men, wept or had difficulty talking about their experiences at some point in the interview. We offered on many occasions to end the interview at a midpoint, but this offer was never taken. Our theoretical understanding of the interview relationship was fully tested in this setting. The stories we heard during these meetings provide a grounding for all aspects of the work.

All the interviews are a key source of qualitative data for our project. Given that more than thirty thousand refugee determinations have been made annually in Canada over the past decade, it is impossible to draw quantitative conclusions based on these interviews. Nonetheless, interviews provide information that statistics cannot. The interview data, particularly from those involved in the refugee determination process itself, provide an irreplaceable insight into the personal aspects of making a refugee claim. The interviews also serve to alert us to key areas for other types of inquiry.

We are aware that those key informants who agreed to speak with us are among the most dedicated and reflective members of the advocacy community. Similarly, we are aware that our conversations with refugee claimants reflect only those who are the most confident and resilient. Given these two facts, what our interviews show us is a best-case scenario. Our work presumes, therefore, ideal guidelines on gender-related persecution applied even-handedly to known facts by engaged and curious decision makers supported by the most dedicated community and legal workers in the cases of strong, resilient claimants. In sum, this is near utopian refugee decision making. In a true utopia, of course, there is no need of such a process.

Regrets

There is certainly a measure of regret in conducting research in such an idealized setting. We know that there are unscru-

pulous and lazy lawyers who sometimes take on refugee cases, and others as well who probably have no interest in how men and women might be treated differently in this process. This has an obvious effect on the process and we have no way to explore that fully. Similarly, some small number of decision makers are unprepared or ill-equipped for this demanding role. While the appointments process has improved markedly, the final decisions are still made solely by the Minister and reappointment decisions are not transparent and can be unreasonably delayed.[11] It is simply not possible that we would ever find ourselves speaking with weak or problematic Board members. Finally, some refugee claimants will tell lies, and a considerably smaller number will attempt to obtain refugee status when they know they are not eligible. For equally obvious reasons, such claimants do not volunteer to participate in research like ours, nor are they referred to us by community workers and advocates.

A considerable part of the public debate about refugee law and policy in Canada is driven by the assumptions that those taking sides make about these characters: the unscrupulous lawyer, the bad decision maker, the bogus refugee. My own view is that these are bit players. There is so little money in refugee law that the truly conniving are unlikely to stick it out long. The corrupt and incompetent are being weaned out. And among refugees, most of those who are not accepted are, despite their failure in this process, vulnerable women and men in search of a better life and not to be vilified for not understanding the intricacies of refugee law. We hope that, by giving a voice in our work to those who are living through this experience, others might be persuaded of this.

Beyond these methodological impossibilities, there are some things that I would reconsider for the future. Speaking with those living in the refugee determination process was invaluable and more of these interviews would have been better. This recruitment takes time, and could have been improved by scheduling longer stays away from Vancouver. It would also be beneficial to vary recruitment methods, and to consider direct recruitment and file sampling recruitment.

CBSA came into being at a midpoint in our research. The role of CBSA is increasingly vital for those in the refugee process, and it is evolving quickly. It would be useful to repeat and extend this work regarding CBSA, in ways that we were unable to achieve.

Our initial decision to stay away from jurisprudential research helped define the project and fit it within its budget and timeframe. In retrospect, however, it would be useful to know more about how decision making using the gender-related persecution guidelines is evolving. Many key informants reported to us that the guidelines are outdated. Jurisprudential analysis would tell us how and why. We can recommend an update, but we cannot fully specify its contents. This is an important lacuna.

Finally, we had initially planned to have stakeholder workshops to discuss drafts of our report. This proved impossible for two reasons. The first is that workshops are costly and the second is that we could not release our results prior to publication. I believe this discussion could have enriched the report and recommendations immensely. Neither problem is insurmountable. The first could be accommodated partially through videoconferencing and conference calls. The second is to be negotiated more thoroughly with Status of Women Canada. An appeal to feminist methodology might carry the day here and we did not make this case as strongly as we should have because our coffers were bare and our timeline short in any case. I remain hopeful that workshops can still be organized and that the public release of the report will generate enough enthusiasm to justify this next step.

Findings and Recommendations

The themes of *Gendering Canada's Refugee Process* are complexity, vulnerability, and change. Complexity is highlighted because is central to taking a long view of a potential refugee's engagement with the Canadian state. Vulnerability is vital because current discourses of security and efficiency risk silencing the vulnerability of those involved in the refugee process, whether or not their claims are ultimately accepted. Change comes to the fore as we work to interpret the consequences of constant shifting in the policy climate.

While the starting point of our work was a question about gender, our findings and recommendations are not solely focused on women. The analytic tools of feminist methodology are attuned to overlapping and intersecting vulnerabilities. At some points in our work we have arrived at an analysis which focuses on "women" as a distinct group. However, we have equally found instances where "men" are vulnerable in particular ways. In addition, at many points in the refugee process, the intersecting vulnerabilities that come with racialization, poverty, cultural isolation, dominant language illiteracy, and personal trauma overwhelm any analysis that could focus on gender, or genders, alone. Many of our recommendations call for changes that will benefit all those involved in the process.

One of our principal findings is that the government agencies concerned are not yet in a position to meet the legislative commitment to report on "…a gender-based analysis of the impact…" of the *Immigration and Refugee Protection Act*. Our research concerned only a portion of the governmental action authorized by this legislation, and it may be that more work has been done in other areas. For

the areas we investigated, there are still far too many questions for which no sex-disaggregated data exists in response. The reporting requirement cannot be met without more resources for this work. In addition, given that key parts of the legislative mandate have been transferred to the CBSA, that agency must also comply with the *IRPA*'s reporting requirement. CBSA had less information available about its activities than either CIC or the IRB did. This is most likely because the agency was so new at the time we were gathering data. As plausible as this may be, it is inexcusable. The launch of a new agency with a legislative mandate attentive to gender is an ideal to time get it right.

It is well known that men make more refugee claims in Western states than women do. This marked difference is true in Canada as it is elsewhere. In contrast, however, women are more successful as claimants. Very few individuals are found to be ineligible to make a refugee claim and similarly small numbers are excluded during the claims process. Security exclusions affect more men than women, and high levels of secrecy mean it is not currently possible to investigate why. The sole exception in the security area is that the Safe Third Country Agreement with the United States affects proportionately more women than men.

The refugee determination process in Canada is difficult. There is probably no way around this basic fact here or anywhere else. But it is getting more so. This is fairly obvious in the case of claimants where surveillance and screening are increasing and community support is decreasing with funding cuts to support services and legal aid. What is less obvious is that working conditions for decision makers, advocates, and community workers are also declining. Decision makers are under increasing work stress, even as the legislation has changed to require perfection in their decisions. Their work is supported by lawyers with less time to prepare themselves and their clients, and less money and time to gather independent supporting documents. The increased stress of each of these levels falls on the shoulders of the community sector, even as their funding is cut.

All of our seventy-nine recommendations are set out here. We hope they will encourage readers to obtain the complete report from Status of Women Canada. We also hope they will encourage shifting in governmental priorities, policies, and legislation. We welcome feedback on this work. The public release of *Gendering Canada's Refugee Process* marks the launch of a new phase of work in this area.

I. Conducting Gender Based Analysis of Canada's Refugee Process

1. That the Minister of Public Safety and Emergency Preparedness Canada (PSEPC) fulfill her obligation under s. 94(2)(f) of *IRPA* and report to Parliament.
2. That CIC, PSEPC/CBSA and the IRB develop best practice standards for Gender Based Analysis (GBA).
3. That CBSA establish a GBA Unit to assist the agency in fulfilling its obligations under the Federal Plan of Action and *IRPA* s. 94(2).
4. That the IRB assign a senior staff member to oversee GBA in evaluating the areas under its jurisdiction and responsibility.
5. That CIC and CBSA develop an annual and on-going work plan for evaluating the gendered impact of *IRPA* and their policies and activities and report on the successes and shortfalls in meeting those targets.
6. That the GBA conducted by CIC, CBSA and the IRB recognize the multiple sites of oppression and marginalization often present in the lives and experiences of refugee claimants and refugees. These realities should inform the gender-based analysis conducted by the particular department/agency/tribunal.
7. That the Ministers responsible for CIC and of PSEPC state the priority areas of research and evaluation to be conducted by their respective GBA Units.

II. Gathering Data to Support Gender Sensitive Policies

Many of our recommendations relate to data collection because in many areas it was impossible to systematically evaluate gendered effects. We have resisted calls to replace these recommendations with a single call for additional sex-disaggregated data for two reasons. First, it is not simply a matter of sex disaggregation of existing data sets. Second, we find it more useful to demonstrate precisely the type of data required to answer our questions. Precise recommendations avoid the need to interpret what a general request might mean for a particular agency. They also demonstrate clearly the dearth of information we encountered. With this in mind, we recommended:

8. That CIC and CBSA commit resources to producing and analyzing data as the basis of their annual reporting commitment.
9. More specifically, that CIC commit additional resources to its GBA Unit to ensure that it can meet its mandate and goals in training and reporting.
10. That CIC make publicly available the results of the monitoring and statistics gathering related to the in-Canada refugee determination process it had committed to in its GBA Charts for Bill C-11 (later, *IRPA*) and for the first set of Regulations.
11. That surveying of interdicted individuals begin at once, and that data collected include sex disaggregated statistics.
12. That CBSA collect data regarding the direct back practice to accurately determine how often it is used

and who is affected by this, including sex disaggregated data and other important demographic indicators such as age and country of nationality.

13. That efforts be made to gather more detailed statistics about those making gender related persecution claims, their countries of origin and their success rates in Canada.
14. That detailed monitoring be conducted to assess the ongoing impact of the Safe Third Country Agreement on women and men.
15. That CIC and CBSA, as appropriate, immediately begin collecting and publishing sex disaggregated data showing reasons for detention.
16. That detention statistics track the reasons for refugee claimant detention, and that separate "average days in detention" be tracked for refugee claimants.
17. That data be gathered to test whether detention is ensuring attendance by monitoring rates of absconding.
18. That IRB and the CBSA track the bond amounts being imposed and whether the capacity to meet those requirements has a gender differential.
19. That CBSA gather data to demonstrate detention patterns when families are involved.
20. That statistical tracking of the time it takes for families to reunite include a break down by sex of the principal applicant, and of sponsorees.
21. That the new "fast track" processing be monitored (including collected data regarding the sex of the principal applicant) and its results be publicized.
22. We recommend that more detailed statistical records be maintained and made public regarding removals, including sex disaggregated statistics.
23. That Pre-Removal Risk Assessment (PRRA) statistics be tracked on the basis of whether the individuals concerned are failed refugee claimants.
24. That humanitarian and compassionate applications be tracked on the basis of whether the applicants are failed refugee claimants. These statistics should be further sex disaggregated, and also cross referenced for success rates.
25. The security certificate process is highly gendered and therefore should be queried and monitored to ensure that pernicious stereotyping is not at the root of the pattern. Security decision-making should be undertaken with an understanding that men fit more easily into a "high risk" profile.

III. Legislative Change

Some of our recommendations under other headings could also be met by legislative change. In our view, however, the recommendations under this heading could only be addressed through legislative changes.

26. That Canada withdraw from the Safe Third Country Agreement.
27. Until such time as Canada withdraws from the Safe Third Country Agreement, we recommend that women making gender related persecution claims be exempted from the Agreement.
28. That only people who have been a principal applicant in a refugee claim be ineligible to make future claims. We also recommend that when there is evidence of a change in country conditions, that the ineligibility bar be lifted for all nationals.
29. That the IRB return to the previous two member panel practice.
30. We recommend a "front end" humanitarian process, linked to port of entry screening, as a means of saving resources and improving genuine humanitarian effects of this law.

IV. Pre-Claim Recommendations

31. That appropriate accommodations for those held for a long time before their initial interview should be routinely provided, including food, water, diapers, et cetera.
32. That interview training for the border setting should take into account that people are sometimes unable to explain their journey, even if they are refugees.
33. That specific policies and procedures should be enacted and training of CBSA staff undertaken to ensure that immigration officers at ports of entry are sensitive to the needs and realities of women arriving in Canada. Also, at each port of entry, there should be a specialist trained in issues of gender related persecution available to assist women and children when necessary.
34. There should be an option of having childcare during eligibility interviews.
35. Women should be interviewed by female officers whenever possible. If a woman requests a female interviewer and one is not immediately available, the interview should be postponed.
36. Whenever possible, female interpreters should be selected to participate in interviews with women. If a woman requests a female interpreter and one is not immediately available, the interview should be postponed.
37. That immigration officers provide an up-to-date list of community resources for refugee claimants, including those that are specifically geared towards

women and children and those that can provide services in the language of the refugee claimant.

38. That guidelines on gender based persecution be adapted for use at the eligibility screening phase. We recommend that training gathering evidence from vulnerable individuals, including women, be extended to all officers involved in this process.
39. That claimants at the border have access to qualified refugee lawyers, perhaps by using a duty counsel roster system, or by having a dedicated telephone line. Interpretation services would be a necessary aspect of such support.

V. Detention

40. That the policy of fast-tracking refugee claims for those in detention to ensure that they are processed as quickly as possible be revisited to ensure it is working.
41. That a time limit for pre-hearing detention be legislated (i.e. 90 days), and that detention beyond this time limit only be permitted in enumerated circumstances, or if the claimant herself has requested additional time to prepare for a hearing.
42. That any refugee claimant who is detained be provided with a lawyer at state expense as a matter of course, regardless of any "merits tests" imposed by legal aid programs.
43. That CBSA ensure consistent rules and policies for the treatment of refugee claimants, whether they are detained in immigration detention or provincial jails.
44. That the Canadian government monitor its practice in detention decision-making and eligibility screening to see if there is evidence of practices which would be labeled racial profiling. This would involve tracking decisions by factors including age and country of origin, as well as gender. Data gathered should be publicized, and could form the basis of policy adjustments if racial profiling trends do emerge.

VI. Hearings

45. That decision makers have a capacity to question claimants separately during a joined hearing, with appropriate safeguards.
46. That all counsel and others advising refugees recommend separate counsel for male and female partners when gender related persecution is involved.
47. That cases involving gender related persecution be added to the list of claims not appropriate for videoconferencing.
48. That a sample of ministerial intervention cases be scrutinized in detail to understand the basis for intervention decisions.
49. That refugee protection officers not take the questioning lead in hearings.
50. That the IRB track requests for gender sensitive panels, and the responses to them.
51. That the guidelines on gender related persecution be reviewed immediately and at five year intervals.
52. That the guidelines include information on using medical and psychological reports.

VII. Post-Claim Recommendations

53. That permanent residency status be granted at the same time as refugee status is accorded, or within 60 days of a positive refugee determination that is not under appeal by the Minister.
54. That refugee claimants in financial need be exempted from application fees.
55. That parents of refugees who are minors or young adults also be included in the definition of "family members" for the purpose of sponsorship. We further recommend that, in such sponsorship applications, the application fees be waived and the process fast-tracked in order to facilitate timely reunification.
56. That processing delays not be used to exclude, as a "family member", children who pass the age 22 threshold (and who do not meet the exceptions in the Regulations) during processing.
57. That the impact of the deadlines for application be monitored to ensure they do not preclude/hinder a refugee from obtaining permanent residence status in Canada and from sponsoring her/his family members.
58. That additional funds be put towards processing of permanent residence applications and into overseas visa posts to facilitate family reunification.
59. That accountability measures be put in place to ensure that any delays in processing permanent residence and sponsorship applications for refugees are not a result of lack of action taken by government officials, with respect to security clearances or in communicating to applicants any gaps in their files.
60. That successful refugee claimants be permitted to apply for a permanent Social Insurance Number (SIN) and allowed to work without a work permit.
61. We support the recommendation made by the Canadian Council for Refugees in its report, *More than a Nightmare* that "spouses and children of people recognized as refugees in Canada be brought immediately to Canada, to be processed here."[12]

62. That the Refugee Appeal Division be implemented immediately.
63. That an assessment of the reasons for PRRA determinations be made.
64. That guidelines on gender related persecution be developed for PRRA.
65. That training in PRRA determinations draw on the experience and resources of the IRB.
66. That the standard of proof for PRRA be the same as for refugee decisions.
67. Humanitarian and compassionate policy guidelines should be rewritten to focus on genuine humanitarian criteria.

VIII. Community Support

68. That both CBSA and CIC continue efforts to work with the community sector to ensure accurate information about community services is made available at the earliest possible moment, with particular attention to information about services for women who have experienced sexual assault and domestic violence.
69. We recommend that funding for vital services be increased as these are the key supports to women and men making refugee claims in Canada.
70. That the federal government adequately fund shelters for refugee claimants in every city where refugee claims are heard by the IRB.
71. That the Canadian Bar Association and provincial continuing legal education programs continue and expand opportunities for specialized training in refugee law.
72. That similar training be mandatory for immigration consultants.
73. That full funding for psychological and medical reports be provided.
74. The full funding for legal representation for refugee claimants be available.

IX. Moving towards Equality

75. That the government ensure that women outnumber men in the government assisted refugee category.
76. That the government publicize to sponsors and potential sponsors the gender disparity in the government assisted category.
77. That the government investigate the gender disparity in the government assisted refugee program.
78. That gender-based analysis and gender mainstreaming exercises be incorporated in policies related to human security and national security, especially those concerning refugees.
79. That the Canadian government revisit its "Freedom from Fear" policy statement to incorporate a more holistic and comprehensive view, especially one that considers the human security of both international and in Canada refugees, and the "fear," "want," and "vulnerability" that they experience.

Notes

1. My co-authors are Leonora C. Angeles of Women's Studies and Community and Regional Planning at the University of British Columbia and Agnes Huang, presently clerking at the Federal Court of Canada. The responsibility for this short piece is mine alone.
2. S.C. 2001, c. 27.
3. Section 94 of the *IRPA* states:
   (1) The Minister must, on or before November 1 of each year or, if a House of Parliament is not then sitting, within the next 30 days on which that House is sitting after that date, table in each House of Parliament a report on the operation of this Act in the preceding calendar year.
   (2) The report shall include a description of
   . . .
   (f)
   a gender-based analysis of the impact of this Act.
4. Erin Baines left the project team when she took up her position as Research Director of the Conflict and Development Program, Liu Institute for Global Issues at UBC.
5. A sample of important work in this area includes Audrey Macklin, "A Comparative Analysis of the Canadian, US, and Australian Directives on Gender Persecution and Refugee Status," in Doreen Indra, ed., *Engendering Forced Migration: Theory and Practice* (New York and Oxford: Berghan Books, 1999); Audrey Macklin, "Refugee Women and the Imperative of Categories" (1995) 17 *Human Rights Quarterly* 213; Thomas Spijkerboer, *Gender and Refugee Status* (Aldershot, UK, and Burlington, VT: Ashgate, 2000); Heaven Crawley, *Refugees and Gender: Law and Process* (Bristol: Jordans, 2001).
6. *Guidelines on the Protection of Refugee Women* (Geneva: UNHCR, 1991).
7. Canada introduced its first guidelines in 1993. These were updated in 1996 and the 1996 version remains in place today. The guidelines are issued under the power of the Chairperson of the Immigration and Refugee Board Chair person to "… issue guidelines in writing to members of the Board and identify decisions of the Board as jurisprudential guides, after consulting with the Deputy Chairpersons and the Director General of the Immigration Division, to assist members in carrying out their duties." (s. 159(1)(h)). The United States, the United Kingdom, Australia, and Sweden all have parallel guidelines in place. Guidelines have also been developed by the European Council on Refugees, the UK Refugee Women's

legal group, and the South African National Consortium on Refugee Affairs.

8. *Guidelines on International Protection: Gender-related persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, UNHCR, UN Doc. HCR/GIP/02/01 (7 May 2002).
9. This information is also on our website. See "Legal Framework," online: Gender in the New Refugee Process <http://www.genderingasylum.org/legal.html>, where the three-dimensional format makes the information easier to grapple with.
10. R.S.C. 1985, c. A-1.
11. The appointments process is described Online: <http://www.irb-cisr.gc.ca/en/about/employment/members/msp_e.htm>.
12. Canadian Council for Refugees, "More than a Nightmare: Delays in Refugee Family Reunification" (November 2004), online: Canadian Council for Refugees <www.web.ca/ccr/nightmare.pdf>.

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Book Review

Refugee Sandwich: Stories of Exile and Asylum

Peter Showler
Montreal and Kingston: McGill-Queen's University Press, 2006
Cloth, ISBN 0773530940, $75.00; Paper 0773530967, $27.95

Refugee Sandwich ought to be compulsory reading for every Canadian member of Parliament, and is recommended reading for anyone who votes in this country.

Peter Showler has a careers-worth of experience working in all aspects of Canadian refugee law. It is a tribute to his immense insight that *Refugee Sandwich* is his chosen contribution at this point, the culmination of well nigh thirty years of reflection. The book goes right to the heart of the central problem of refugee law and policy here and elsewhere: positions on all sides of public discourse are entrenched, no one is learning anything new, innovation is stifled by a need to defend each corner. It is impossible to express any complexity in this atmosphere, let alone shed any light on the labyrinth which is refugee decision-making.

Showler is an advocate. At a juncture when many advocates would have written a political tract, led a non-governmental organization, joined a think tank, or published a text, Showler has given us a work of what might be called 'fiction'. It is a crowning achievement.

Refugee Sandwich is principally comprised of thirteen stories told from and about different positions in Canada's refugee determination process. We are introduced to lawyers and judges, interpreters and decision-makers, bureaucrats, refugees and claimants. Even the much maligned refugee protection officer has a voice. Heroes and villains are largely off-stage. Despotic regimes and genocidaires are condemned, but this is never the focus of the narrative. The people we meet are too complex for easy labels.

Each story works its way around a sharp grain of truth, aiming at the oyster's trick. Some are told in the first person, some with omniscient narration. Every pearl is not evenly formed, but then each bit of truth is not an equally attractive starting premise.

> Ironically, that became one of the issues in the case, whether or not the woman was from the north. It was so obvious, not worth a moment's thought. If they had only asked me. But of course I am the interpreter. I am not a witness. There is a line and it cannot be crossed. I accept that the law requires certain immutable formalities ("The Go-Between", 166-67).
>
> . . .
>
> The claimant had not proved his case but she was still pierced by that one glimpse of pain that had transfigured Vasily's mask for just an instant. That was real pain, no doubt, and it had come in response to the question about the first incident at the school. But so what? What did it relate to? It was a crack in the story, nothing more ("Looking for the Little Things", 209).
>
> . . .
>
> …some portion of her story would have to be tested, and so I ask, looking into the eyes of a woman who is not there, who finds herself somehow not dead, her body sitting in a strange chair in a strange land answering strange questions from a white man, questions that are repeated in her language by the large kind Hutu man sitting next to her ("Ghost", 69).
>
> . . .
>
> Beth looked carefully at her husband, who was obviously pleased with himself. Over his shoulder she saw a woman in a thin dress walking away over dry and barren ground, holding the hands of two young girls ("Circumcising Mutilation", 123).
>
> . . .
>
> …he didn't say anything for a minute. He didn't look at the members. He did glance over at me and for once I was smart enough to shut up and wait. Finally he thanked her for her testimony and said he had no more questions ("A Crack in the Mirror", 161).

Refugee Sandwich creates a kaleidoscopic view of Canada's refugee system. With each small shift, the picture fractures and reforms, the light refracts differently; it is impossible to remember the preceding image. In this way,

the book mirrors the dilemma of refugee policy making – each position sees a new problem.

Some part of me wishes that the book were longer. My other quibble with it is that Showler introduces us to more decision makers than lawyers, judges, bureaucrats and interpreters. These others are a freshening contrast and in the additional pages I pine for, I would like to meet more of them.

My greatest fear for this book is that it will not reach the audience that would most benefit from reading it. The work is an ambitious attempt to engage a wide range of people in re-imagining refugee determination. Those who are most likely to read it are, of course, those who are already mired in the complexities it presents. For us, there is a creative affirmation. But the book will fall short of what I imagine to be Showler's aim if it is not read more broadly, and most especially those with broad responsibilities for Canadian public policy. This is an important marketing challenge, one what would be furthered by a Donner prize nomination.

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