Refuge

Informing Integration

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Refugee Solutions, or Solutions to Refugeehood?

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Writing in the *International Journal of Law and Psychiatry*, Fleur Johns recently indicted international refugee law – the ostensible source of refugee rights and solutions – as being instead "a producer of... pathology." She writes:

> The Refugee Convention classifies refugees as "problem[s]" and "cause[s] of tension" and works towards resolving these "problem[s]" and "tension[s].".. Yet where... lies the "problem" to be cured by recourse to international refugee law and lawyers? Does it reside in the wars, famines and political conflicts that... drive people from their countries of nationality? Does it reside in the trauma of border-transgressions to which refugees are subject...? Does it reside in the callousness of governments and judges, or the xenophobia of the constituencies that support them? [Or] [d]oes it rest as much... with international refugee law's tendency to insist upon the normality of stable and enduring national attachments; [and] its innate preference for limited, fear-laden divergences therefrom?[1]

There is an urgent need, Dr. Johns contends, for "... international refugee lawyers... [to] take a moment to question the pre-eminence of the therapeutic mode in their professional work and its role in sustaining a prescriptive normality that tends to diagnose the refugee as flawed and requiring correction..."[2] She concludes,

> Might our instruments and strategies of cure be tainted by the very drives against which we supposedly labor in the international refugee law field? Might insistence that international refugee law has or should have therapeutic, corrective effects comprise part of the problem towards which it ostensibly directs those curative efforts?[3]

My first instinct was to contest Dr. Johns's charge. As part of international law, created and managed by states, the refugee law regime of necessity achieves humanitarian good in the margins of a more fundamental commitment to preserve state interests. This is not only a description of the ground reality, but may in fact be a source of strength: refugee law persists in large measure *because* governments have a self-interest in its retention. And more specifically, is it really such a bad thing, in a world in which sovereign power still matters, to commit ourselves to enabling refugees – that is, persons disfranchised from their own state – somehow to secure either a new national attachment, or be restored to that with their country of origin? In practical terms, is that not a critical means of restoring dignity and self-determination?

Yet as I reflected more on Dr. Johns's argument, I recognized that much of her charge is sound if directed not at international refugee law as authentically conceived, but rather at the *distortion* of refugee law that has emerged from recent interstate and, in particular, agency reinterpretations of refugee law.

The argument I wish to make is that a legal regime which is in truth fundamentally oriented to the promotion of *autonomy* of refugees *has* been "pathologized" to focus instead on finding cures to refugeehood. A regime which was *actually* established to guarantee refugees lives in dignity until and unless either the cause of their flight is firmly eradicated or *the refugee himself or herself* chooses to pursue some alternative solution to their disfranchisement has now become a regime which labours nearly single-mindedly to design and implement top-down solutions which "fix the refugee problem."

In short, we increasingly see a regime oriented not to the facilitation of "refugee solutions," but instead to the implementation of "solutions to refugeehood."

The Fallacy of "Solutions"

To begin, I wish to be clear that I am not opposed to the notion of "solutions" as such. Solutions, at least for those who want them, are of course good things. But refugee protection, despite much rhetoric from the United Nations

High Commissioner for Refugees (UNHCR) since the mid-1990s to the contrary,[4] is not primarily about looking for solutions. Refugee protection is instead fundamentally oriented to creating conditions of independence and dignity which enable *refugees themselves* to decide how *they* wish to cope with their predicaments. It is about ensuring autonomy, not about the pursuit of externally conceived "fixes."

Increasingly, though, there is impatience with the duty simply to honour the rights of persons who are Convention refugees. The focus of much contemporary discourse is instead on the importance of defining and pursuing so-called "durable solutions" to refugee flight.[5] The main goal of a refugee protection regime oriented towards "durable solutions" is effectively to find a way to bring refugee status to an end – whether by means of return to the country of origin, resettlement elsewhere, or naturalization in the host country.

Indeed, those who focus on achieving durable solutions increasingly regard respect for refugee rights as little more than a "second best" option, to be pursued only until a durable solution can be implemented. UNHCR's Executive Committee, for example, has endorsed a conclusion "[r]ecognizing the need for Governments, UNHCR and the international community to continue to respond to the asylum and assistance needs of refugees *until durable solutions are found* [emphasis added]."[6] This position is in line with the view once expressed by a senior official of the UNHCR that

> protection should be seen as a temporary holding arrangement between the departure and return to the original community, or as a bridge between one community and another. Legal protection is the formal structure of that temporary holding arrangement or bridge.[7]

Despite the technical accuracy of the view that protection is a duty which inheres only for the duration of risk, that duty may be inadvertently degraded by referring to it as simply an "arrangement or bridge" rather than as a legitimate alternative to the pursuit of a "durable solution" to refugee status. This very simple notion – that the recognition and honouring of refugee rights is itself a fully respectable, indeed often quite a desirable response to involuntary migration – can too easily be eclipsed by the rush to locate and implement so-called "durable solutions."[8]

In contrast to this emphasis on the pursuit of durable solutions, the Refugee Convention gives priority to allowing refugees to make their own decisions about how best to respond to their predicament. As a non-governmental commentator astutely observed, one of the strengths of the refugee rights regime is that it eschews "the false notion of 'durable solutions' to refugee problems, especially as refugees [may] have no idea as to how long they are likely to stay in a particular country."[9] Rather than propelling refugees towards some means of ending their stay abroad, the Refugee Convention emphasizes the right of refugees to take the time they need to decide when and if they wish to pursue a durable solution.

In some cases, refugees will choose not to pursue any solution right away, but will prefer simply to establish a reasonably normal life in the state party where they sought protection. This is a valid alternative, which may not lawfully be interfered with by either governments or international agencies. Because refugee rights inhere as the result of the individual's predicament and consequent status – rather than as a result of any formal process of status adjudication – they provide refugees with a critical, self-executing arsenal of entitlements which may be invoked in any of the state parties to the Refugee Convention. They afford refugees a real measure of autonomy and security to devise the solutions which they judge most suited to their own circumstances and ambitions, and to vary those decisions over time.

Yet when the focus is on the pursuit of "solutions" rather than on respect for refugee rights as such, the drive is fundamentally to re-establish systemic homeostasis, which means that any conflicting priorities of refugees themselves are secondary, if relevant at all.

Nowhere can this risk be seen more clearly than in the context of the so-called "voluntary repatriation" framework.

"Voluntary Repatriation"

As we all know, there is strong support for regarding repatriation as the best solution to refugeehood. UNHCR's Executive Committee, for example, has "not[ed] that [while] voluntary repatriation, local integration and resettlement are the traditional durable solutions for refugees, . . . voluntary repatriation is *the preferred solution*, when feasible [emphasis added]."[10] As the language of the Executive Committee makes clear, support is not normally expressed for "repatriation" as a solution to refugeehood, but rather for "voluntary repatriation."[11] Which sounds nice, right? Wrong.

On closer examination, the routine use of this "voluntary repatriation" terminology can be seen to be problematic. While anchored in the language of the UNHCR Statute,[12] and hence logically taken into account in determining what sorts of role *the agency* can take on,[13] the rights of state parties to the Refugee Convention are quite differently conceived.[14] The Convention allows governments to bring refugee status to an end only when there has been either

"voluntary re-establishment" (not repatriation) or when there has been a "fundamental change of circumstances" in the country of origin which justifies the cessation of refugee status (not when UNHCR decides that the moment is right to promote "voluntary repatriation").

To be clear, there are only two relevant, Convention-based means of bringing refugee status to an end.

On the one hand, it may be the case that a person who is a refugee – that is, who continues to be objectively at risk of being persecuted – nonetheless decides to go back to the country where that risk exists. In so doing, the refugee is simply exercising the right of every person to return to his or her own country.[15] Refugee status may come to an end if – but only if – the voluntary return amounts to re-establishment in the country of origin.[16] Re-establishment is not the same as return or repatriation. Simply put, the refugee who *returns* only loses his or her refugee status once a durable, ongoing presence in the home country is established. Up to that point, she remains a refugee and is legally entitled to go back to the asylum country and to resume refugee protection there if things do not work out as hoped in the country of origin.[17]

The alternative solution to refugeehood allows the government of a state party to terminate refugee status and require the return of a former refugee to his or her country of origin where there has been a "fundamental change of circumstances"[18] that is significant and substantively relevant; which change is enduring; and which results in the practical and dependable delivery of "protection" in the home country.[19] If – and only if – these demanding criteria are met, return need not be voluntary[20] so long as it is carried out in a rights-regarding way.[21]

Where do these notions of "voluntary re-establishment" and "cessation due to a fundamental change of circumstances" tie in to UNHCR's favoured notion of "voluntary repatriation"? In principle, "voluntary repatriation" should really just define a UNHCR-based support mechanism to either of these Convention-based options. If a refugee wants to go home with a view to re-establishing himself or herself there, or if a government has validly terminated refugee status based on a "fundamental change of circumstances" there, then UNHCR as an agency is empowered to facilitate "voluntary repatriation" to the country of origin.[22]

In fact, particularly in the less developed world, "voluntary repatriation" has insinuated itself into the Convention-based rights regime, and has in practice become something of a substitute for either "voluntary re-establishment" or for "cessation due to a fundamental change of circumstances." In the result, refugees who choose to "test the waters" by return to their country of origin find that they are deemed to have lost their status by reason of "voluntary repatriation" even though the durability of stay required by the "voluntary re-establishment" test has in no way been met.

Even more seriously, governments in much of the political South erroneously assert the right to terminate refugee status on the grounds that UNHCR is promoting the "voluntary repatriation" of a given refugee population – even though the demanding criteria for cessation due to a fundamental change of circumstances could in no sense be satisfied. One might have hoped that states relying on the UNHCR "voluntary repatriation" standard would simply inject a volition requirement into their examination of whether refugee status can lawfully be withdrawn due to a fundamental change of circumstances in the country of origin. This "best of all worlds" option – the risk has clearly gone away, *and* this refugee is willing to go home – has not materialized. Instead, the pattern is for governments in most of the less-developed world to take UNHCR involvement in a given repatriation effort – relying on its agency-based "voluntary repatriation" standard – as a sufficient basis in and of itself for the termination of their own duty to protect the refugees in question, with no real attention being paid to the actual legal criteria for cessation of status (much less to volition). These governments simply end refugee status for groups of refugees based on the legally irrelevant fact that UNHCR is facilitating that group's voluntary repatriation.[23]

In each of these ways, then, the "voluntary repatriation" language – which sounds positive, rights-regarding, autonomy-affirming – is, in practice, being relied upon to deny refugee rights.

Sometimes this superficial reliance on the fact of an ongoing UNHCR "voluntary repatriation" effort is no more than a completely disingenuous ploy to justify a government's involuntary repatriation initiatives. In an extreme case, the Tanzanian government invoked UNHCR voluntary repatriation efforts as justification for its own decision in December 1996 that "all Rwandese refugees in Tanzania are expected to return home by 31 December 1996."[24] This announcement, said to have been "endorsed and co-signed by the UNHCR,"[25] resulted in the return of more than 500,000 refugees within the month.[26] Yet the criteria for lawful cessation of refugee status could not possibly have been met in the circumstances: fair trials were only beginning in Rwanda, disappearances and deliberate killings were continuing there, and there was no reason whatever to believe that Rwanda could meet the basic needs of the returning refugees.[27]

As bad as it is for governments disingenuously to invoke UNHCR "voluntary repatriation" efforts as authority for their own less-than-voluntary return initiatives, there is a

second – and in my view more pernicious – dimension to the problematic reliance on "voluntary repatriation" standards in lieu of true Convention cessation criteria. As the "supporting role" played by UNHCR in the unlawful repatriation of Rwandans from Tanzania suggests, the risks which flow from reliance on the "voluntary repatriation" paradigm may not be simply the consequence of host state manipulation. Reliance on the "voluntary repatriation" alternative to the real, Convention-based cessation standard is also prevalent as the result of institutional over-reaching by UNHCR itself.

UNHCR has now taken positions which suggest that governments *should* be guided by its institutional decisions about when to pursue repatriation in deciding when refugees should go home. Indeed, such deference is now said by UNHCR to be part of the "responsibilities of the host country."[28] Thus, in 2002 UNHCR announced that it had received "assurances [from] the Tanzanian and Rwandan governments that security in Rwanda *had improved* [emphasis added],"[29] and sanctioned the voluntary repatriation of the remaining 20,000 Rwandan refugees living in Tanzania.[30] Yet even the spokesperson for a partner agency participating in the ensuing government-orchestrated "voluntary" repatriation conceded that the repatriation actually conducted by Tanzania relied upon an "impetus" in the form of "verbal pressure"[31] – in particular, a firm year-end deadline for the refugees' departure.[32] In at least some instances, officials implementing the program used brute force to compel even long-term Rwandan residents to leave the country.[33]

Indeed, against the backdrop of UNHCR calls for repatriation, even host governments firmly committed to protection may on occasion feel under pressure to acquiesce in the agency's repatriation plans. For example, Zambia raised concerns about the risks posed by land mines for Angolan refugees slated for repatriation by UNHCR, but was reportedly lobbied by UNHCR to acquiesce in the return. The agency sought to reassure Zambia that even though many areas were "heavily mined . . . '[w]ith the funding UNHCR has received, we will be expanding our presence in those areas of resettlement to ensure that people are reminded of the threat of land mines. *So the problem is addressed* (emphasis added)."[34]

The UNHCR's ambition effectively to determine the issue of cessation for state parties – and to do so by reference not to Article 1(C)(5) of the Refugee Convention, but drawing on its agency-based "voluntary repatriation" standard – can be seen even more clearly in the assertion by the then-High Commissioner for Refugees during a visit to Africa in April 2003 that "Rwanda is safe for refugees in Tanzania and Uganda . . . 'In Tanzania, we informed the refugees that they could return to Rwanda. Some have returned, but many remain,' he said . . . Such people, he said, were '*not refugees anymore*' (emphasis added)."[35]

By taking such a legally unfounded, aggressive stance – not only effectively purporting to "determine" the issue of cessation under the Refugee Convention (which is *not* a UNHCR responsibility or prerogative) but to do so based not on the Convention standards, but rather on the basis of his agency's policy predispositions – themselves often rooted in political, economic, or other concerns[36] – the then-High Commissioner took the distortion of refugee law by reference to agency standards to a new height. The subordination of the real requirements of the Convention – that is, whether there is a fundamental, substantively relevant, enduring, and protection-delivering change of circumstance in the country of origin – to UNHCR's institutional preparedness to approve "voluntary repatriation" – whatever that means, on a given day – is not lawful and has proved extraordinarily dangerous on the ground.

To return to my overarching theme, the distortion of true cessation criteria by states and the UNHCR is important not only for its own sake, but because it stands as a shockingly clear example of how the current fixation with finding "solutions to refugeehood" has in practice trumped the commitment to honouring the rights of refugees as codified in the Convention. Repatriation – often not really voluntary, often not really safe, often not really warranted by international law – nonetheless delivers a "solution to refugeehood." It thus serves the political and economic interests of host governments anxious to divest themselves of protective responsibilities. The rush to repatriation also serves the interests of the refugee agency itself, which is increasingly prone to trumpet its own value to powerful states not simply by reference to the quality of life it has secured for refugees, but instead by pointing to its success in bringing refugee status to an end.[37]

Compounding the problem, developed governments, with the active participation of the UNHCR, are presently engaged in efforts systematically to deem refugee status unwarranted in the political North where it can in principle be secured closer to home, *i.e.* in the political South. While refugee law is not necessarily breached by initiatives of this kind, legal standards *are* infringed if return is effected to places where "solutions to refugeehood" are pursued at the expense of refugee rights. And to be candid, one's suspicions in this regard are aroused when the required quality of protection in destination countries is described by reference to amorphous, legally unfounded phrases such as "effective protection" – not "protection," full stop. While the meaning of "protection" in refugee law is fairly clear – including, at a minimum, respect for the Refugee Conven-

tion's definition and rights regime – the consistent official preference for the more fungible "effective protection" label is presumably of some normative significance. In particular, does anyone seriously imagine that "effective protection" would be deemed not to exist in a country which effects repatriation with UNHCR blessing, albeit premature or unwarranted based on the cessation criteria of the Convention itself?

What, then, is the challenge for the refugee advocacy community?

First, refugee advocates today need to learn the Refugee Convention "cold," and to understand its relationship to international human rights law more generally. In an era in which there is no more than selective ability and inclination to combat human rights abuse abroad, and in which traditional human rights law affords few immediate and self-actuating sources of relief, refugee law stands out as the single most effective, relatively autonomous remedy for those who simply cannot safely remain in their own countries. The surrogate protection of human rights required by refugee law is too valuable a tool not to be widely understood, and conscientiously implemented.

Second and related, we must refuse to buy into the propensity of states and the UNHCR to misinterpret the Convention so as to give priority to the search for "solutions to refugeehood" over "refugee solutions." The goal of refugee law is not to pathologize refugeehood and hence single-mindedly to pursue means of "curing" that status. To the contrary, refugee law exists precisely in order to ensure that refugees enjoy true dignity and quality of life for as long as it takes them to decide for themselves how best to cope, to respond, and to rebuild their lives. That prerogative cannot be traded away by governments, by the UNHCR, or by us.

Put simply, refugee rights are not negotiable.

Notes

1. F. E. Johns, "The Madness of Migration: Disquiet in the International Law Relating to Refugees" (2004) 27 Int'l J. of L. & Psychiatry 587 at 588.
2. *Ibid.*
3. *Ibid.*
4. "The limitations of... traditional solutions, coupled with the growing scale of the refugee problem and the changing nature of the international political and economic order, have prompted UNHCR to develop a new approach to the question of human displacement. This approach is proactive and preventive, rather than reactive... UNHCR's work is becoming more and more linked with a wide range of UN efforts, from political negotiations, economic and social development, to the defence of human rights and environmental protection." S. Ogata, "Foreward" in *The State of the World's Refugees: In Search of Solutions* (Oxford: Oxford University Press, 1995) at

8–9. There is, however, reason for some optimism that the new High Commissioner's insistence on a rededication of UNHCR to the primacy of protection will reverse this trend, at least in part. The agency's current "Mission Statement," for example, attempts to link efforts to address "refugee problems" and to pursue "solutions" with the advancement of refugee rights.

UNHCR is mandated by the United Nations to lead and coordinate international action for the worldwide protection of refugees and the resolution of refugee problems. UNHCR's primary purpose is to safeguard the rights and well-being of refugees. In its efforts to achieve this objective, UNHCR strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another state, and to return home voluntarily. By assisting refugees to return to their own country or to settle permanently in another country, UNHCR also seeks lasting solutions to their plight." UNHCR, *UNHCR Global Refugee Report 2005* (2006), online: <http://www.unhcr.org/>.

5. UNHCR records more than fifty resolutions of the General Assembly between 1959 and 2000 which call upon states to find "durable solutions" to refugee situations; it provides by way of a "sample text" GA Res. 38/121, para. 8, which "[u]rges all States to support the High Commissioner in his efforts to find durable solutions to refugee problems, primarily through voluntary repatriation, including assistance to returnees, as appropriate, or, wherever appropriate, through integration in countries of asylum or resettlement in third countries." UNHCR, "Durable Solutions," online: <http://www.unhcr.org>. In response to these and similar calls, including the mandate set by the Declaration of States Parties to the 1951 Refugee Convention and/or its 1967 Protocol relating to the Status of Refugees, UN Doc. HCR/MMSP/2001/09, Dec. 13, 2001, incorporated in Executive Committee of the High Commissioner's Program, "Agenda for Protection," UN Doc. EC/52/SC/CRP.9/Rev.1, June 26, 2002, the agency released a "Framework for Durable Solutions for Refugees and Persons of Concern" in May 2003.
6. UNHCR Executive Committee Conclusion No. 89, "Conclusion on International Protection" (2000), at Preamble.
7. G. Arnaout, "International Protection of Refugees' Rights" (Remarks delivered at the Training Course on International Norms and Standards in the Field of Human Rights, Moscow, 1989) [Arnaout] at 7. Arnaout was at the time the Director of the Division of Law and Doctrine of UNHCR.
8. See, for example, *ibid.* at 7: "It is not adequate to consider as a solution to the [refugee] problem . . . mere 'self-sufficiency.' The problem of the refugee has always been seen as de jure or de facto statelessness, and the solution to this problem, therefore, must be either the reacquiring of the normal 'community' benefits of the original nationality or the acquisition of a new nationality with all its normal benefits . . . Without a community, the individual is isolated, deprived and vulnerable."
9. Comments of M. Barber of the British Refugee Council, "Final Report: Implementation of the OAU/UN Conventions and Domestic Legislation Concerning the Rights and Obligations

of Refugees in Africa, 14–28 September 1986," Refugee Studies Programme, Oxford University (1988), at 34.

10. UNHR Executive Committee Conclusion No. 89, "Conclusion on International Protection" (2000), at Preamble.

11. See *e.g.* UNHCR Executive Committee Conclusions Nos. 18, "Voluntary Repatriation" (1980); 41, "General Conclusion on International Protection" (1986); 46, "General Conclusion on International Protection" (1987); 55, "General Conclusion on International Protection" (1989); 62, "Note on International Protection" (1990); 68, "General Conclusion on International Protection" (1992); 74, "General Conclusion on International Protection" (1994); 79, "General Conclusion on International Protection" (1996); 81, "General Conclusion on International Protection" (1997); 85, "Conclusion on International Protection" (1998); 87, "General Conclusion on International Protection" (1999); and 89, "Conclusion on International Protection" (2000). The Executive Committee has recently "[r]eaffirm[ed] the voluntary character of refugee repatriation, which involves the individual making a free and informed choice through, inter alia, the availability of complete, accurate and objective information on the situation in the country of origin." UNHCR Executive Committee Conclusion No. 101, "Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees" (2004), at Preamble.

12. "The High Commissioner shall provide for the protection of refugees falling under the competence of his Office by . . . [a]ssisting governmental and private efforts to promote voluntary repatriation [emphasis added]." UNHCR Statute, at Art. 8(d).

13. See *e.g.* UNHCR, "Handbook: Voluntary Repatriation: International Protection" (1996) [UNHCR, "Voluntary Repatriation Handbook].

14. See M. Barutciski, "Involuntary Repatriation when Refugee Protection Is No Longer Necessary: Moving Forward after the 48th Session of the Executive Committee," (1998) 10(1/2) Int'l J. Refugee L. 236 [Barutciski] at 249: "[T]he concept of voluntary repatriation is incoherent if taken as a legally binding standard. Its value appears in terms of recommending that a State take into account the individual's desire to return home. Although this is undoubtedly a reasonable recommendation, it cannot be a coherent legally binding standard according to international principles of refugee protection."

15. "No one shall be arbitrarily deprived of the right to enter his own country." *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Can. T.S. 1976 No. 47 (entered into force 23 March 1976), at art. 12(4).

16. "The Convention shall cease to apply to any person falling under the terms of section A if . . . [h]e has voluntarily re-established himself in the country which he left or outside [of] which he remained owing to fear of persecution." *Convention relating to the Status of Refugees*, 28 July 1951, 189 U.N.T.S. 150, Can. T.S. 1969/6 (entered into force 22 April 1954) [*Refugee Convention*], at art. 1(C)(4).

17. See generally J.C. Hathaway, *The Rights of Refugees under International Law* (Cambridge: Cambridge University Press, 2005) [Hathaway] at c. 7.2.

18. Refugee status is lost once the refugee can no longer claim surrogate international protection "because the circumstances in connection with which he has been recognized as a refugee have ceased to exist." *Refugee Convention*, *supra* note 16 at art. 1(C)(5–6). "We should not lose sight of the fact that international law concerns the imposition of obligations on States. It may be in the individual's best interest actually to remain in the host country and continue his or her life in exile, but is the State obliged to provide refuge if conditions in the country of origin have become safe within a reasonable time period? Clearly, States never agreed to such legal obligations." Barutciski, *supra* note 14 at 245.

19. See Hathaway, *supra* note 17 at 922–928.

20. The situation is somewhat more ambiguous for state parties to the *Convention governing the Specific Aspects of Refugee Problems in Africa*, 10 September 1969, 10011 U.N.T.S. 14691 (entered into force 20 June 1974) [*OAU Refugee Convention*]. While art. I(4)(e) of this treaty is largely comparable to the right of cessation due to a fundamental change of circumstances found in the *Refugee Convention*, art. V(1) of the *OAU Refugee Convention* expressly provides that "[t]he essentially voluntary character of repatriation shall be respected *in all cases* and no refugee shall be repatriated against his will [emphasis added]." The *OAU Refugee Convention* does not make clear how this provision is to be related to the cessation clauses. On the one hand, the reference to the duty to respect the voluntary character of repatriation "in all cases" could be read to limit the right of states to repatriate even a person who is no longer a refugee by virtue of cessation of status. On the other hand, the final clause more clearly stipulates that the requirement of voluntarism may in fact be invoked only by a person who is a "refugee," thereby excluding a (former) refugee whose status has validly ceased. If read to apply only to (present) refugees, then the OAU provision can not only be reconciled to its own cessation clauses, but also applied in consonance with art. 1(C)(4) of the *Refugee Convention*, which does require voluntary re-establishment by a person otherwise entitled to refugee status before the duty to protect him or her comes to an end. See Hathaway, *supra* note at c. 7.2.

21. The limitations on lawful repatriation set by international human rights law are discussed in Hathaway, *ibid.* at 944–952.

22. "The High Commissioner shall provide for the protection of refugees falling under the competence of his Office by . . . [a]ssisting governmental and private efforts to promote voluntary repatriation." UNHCR Statute at art. 8(c). Beyond this authority, UNHCR may engage in other repatriation activities only with the authorization of the General Assembly of the United Nations: UNHCR Statute, at art. 9. The Executive Committee of UNHCR has recently gone beyond this constraint in a modest way, calling upon the agency to "tak[e] clear public positions on the acceptability of return of persons found not to be in need of international protection": UNHCR

Executive Committee Conclusion No. 96, "Conclusion on the Return of Persons Found Not to be in Need of International Protection" (2003), at para. (j)(ii). The reference to persons not in need of international protection refers, however, only to persons not initially entitled to recognition of Convention refugee status, rather than also to persons whose refugee status has ceased.

23. "UNHCR has organized itself to facilitate repatriation . . . As evidenced by its healthy and thoroughgoing debate over how far it could venture toward repatriation without violating refugee rights, UNHCR was no mere plaything in the hands of states, but rather had the capacity for reasoned reflection and exhibited some relative autonomy . . . But soon there developed a repatriation culture that left refugees at greater risk . . . [A] repatriation culture means that UNHCR is oriented around concepts, symbols, and discourse that elevates the desirability of repatriation, coats it in ethical luster, and makes it more likely that repatriation will occur under more permissive conditions." M. Barnett, "UNHCR and Involuntary Repatriation: Environmental Developments, the Repatriation Culture, and the Rohingya Refugees" (Paper presented at the 41st Annual Convention of the International Studies Association, Los Angeles, 14–18 March 2000), online: <http://www.ciaonet.org/isa>.

24. Amnesty International, "Great Lakes Region: Still in Need of Protection: Repatriation, *Refoulement* and the Safety of Refugees and the Internally Displaced," Doc. No. AFR/02/07/97 (1997) [Amnesty International] at 2.

25. "On December 5, 1996 . . . UNHCR distributed information sheets to refugees about the repatriation exercise, including the immediate suspension of economic and agricultural activities in the camps . . . During the repatriation exercise, UNHCR provided both financial and logistical assistance to the Tanzanian government." B. Whitaker, "Changing Priorities in Refugee Protection: The Rwandan Repatriation from Tanzania" (Working Paper No. 53, New Issues in Refugee Research, UNHCR, February 2002) at 1–2. UNHCR pronounced itself satisfied that the returns were in fact voluntary despite solid evidence to the contrary. See Amnesty International, *supra* note 24 at 2; US Committee for Refugees, *World Refugee Survey 1997* (1997) at 99–100.

26. "Initially tens of thousands of refugees fled the [Tanzanian] camps and attempted to move further into Tanzania, in the hope of reaching neighbouring countries. The Tanzanian security forces intercepted the fleeing refugees and 'redirected' them towards the Rwandese border . . . Reports now indicate that some refugees who refuse to go back are being arrested and held in a detention camp . . . Other refugees who wished to remain were undoubtedly forced back in the rush." Amnesty International, *supra* note 24 at 2. Importantly, it was only after the returns occurred that UNHCR "expressed hope that Tanzania [would] institute a screening procedure to evaluate the claims of individuals too fearful to return;" *ibid.*

27. *Ibid.* at 5–6.

28. UNHCR, "Voluntary Repatriation Handbook," *supra* note 13 at 12. Specifically, UNHCR asserts that "[t]he country of asylum should respect the leading role of UNHCR in promoting, facilitating and coordinating voluntary repatriation;" *ibid.*

29. It is noteworthy that at this time, the training of judges who would preside over the trial of persons accused of all but the highest category of genocide crimes had only been commenced. It was therefore not surprising that Rwandan refugees continued to express grave reservations about the practical efficacy of commitments to protect them from retaliation. "Focus on Rwanda Refugees in Tanzania," UN Integrated Regional Information Networks, 9 May 2002.

30. "Rwandan Refugees to Be Out by December 31," *East African* (14 October 2002).

31. "Thousands more refugees seek repatriation," UN Integrated Regional Information Networks, 9 January 2002, quoting Mark Wigley, deputy director of Norwegian People's Aid. In the context of a subsequent effort by Tanzania to repatriate refugees to Burundi, a consortium of US-based non-governmental organizations called upon the Tanzanian government to "cease placing political and psychological pressure" on the refugees to return. "NGOs Concerned over Voluntary Repatriation of Refugees," UN Integrated Regional Information Networks, 15 May 2002.

32. "In late September 2002, UNHCR and the governments of Tanzania and Rwanda convened a tripartite meeting in Geneva . . . to discuss durable solutions for refugees living in Tanzania. The officials . . . found that, inter alia, '[p]ressure exerted by the governments of Tanzania and Rwanda on Rwandan refugees living in Tanzania and on UNHCR officials in Tanzania and Rwanda played a significant role in unnecessarily hurrying the voluntary repatriation program.'" J. Frushone, "Repatriation of Rwandan Refugees Living in Tanzania," US Committee for Refugees, 10 January 2003. Indeed, "[n]ewspapers in Eastern Africa have reported that Tanzania will forcibly send 2,000 Rwandan refugees living in the camps in western Tanzania back to Rwanda. The 2,000 are those who refused to return home during the recent voluntary repatriation, citing insecurity in their home country as the reason for remaining . . . The feeling in the Tanzanian government is that there is no need for the refugees to remain because the security situation in Rwanda is now stable. Earlier this month, Tanzania's Home Affairs Minister, Mr. Omar Ramadhan Mapuri, warned that Tanzania might be forced to repatriate all the refugees living in the country if the international community does not intervene in the serious food crisis facing the refugees." (2003) 127 JRS Dispatches (28 February 2003).

33. "The President of the National Repatriation Commission . . . [said] that the move by the Tanzanian government had caught more than the evictees by surprise. 'We had not anticipated this. We asked them to stop the process for some time so that we can talk with them and work out the modalities of how it should be done' . . . [Tanzanian ambassador to Rwanda] Mwakalindile admits that the forced repatriation may not have been handled appropriately." "Forced to Go Home: Rwandan Immigrants in

Tanzania," Internews, 15 April 2003. "The last convoy [of Rwandan refugees] to depart Tanzania carried refugees who alleged that Tanzanian authorities threatened to burn down their homes if they refused to leave the country. UNHCR insisted, however, that 'those repatriated were refugees who had voluntarily signed up . . . to return home.'" US Committee for Refugees, *World Refugee Survey 2003* (2003) at 100.

34. "UNHCR Addresses Returnee Concerns," UN Integrated Regional Information Networks, 14 March 2003, quoting UNHCR regional spokesperson Fidelis Swai; see also "Zambia: Plans for Return of Refugees Finalised," *Africa News*, 17 March 2003, confirming UNHCR's efforts to downplay Zambian concerns regarding the safety and security of conditions for return in Angola. In fact, even after UNHCR had announced that the road linking Maheba refugee settlement in Zambia with Cazombo in Angola was free of mines, "the return of more than 400 Angolan refugees . . . was postponed due to the discovery of a mine on June 10, two days before the beginning of the planned repatriation." "Angola: Preparations for the Beginning of the Organised Repatriation of Refugees," (2003) 135 JRS Dispatches (1 July 2003).

35. "Rwanda is safe for returning refugees, says UNHCR head," UN Integrated Regional Information Networks, 16 April 2003.

36. As Amnesty International noted in a stinging critique of UNHCR's decision to assist Tanzania's December 1996 enforced repatriation of Rwandans, "[t]hat [protection] oversights were possible, were legitimized by UNHCR, and were so readily accepted by the international community speaks volumes. Does the world remain committed to protecting refugees, or do we now emphasize return, for political and financial reasons, over safety?" Amnesty International, *supra* note 24 at 3.

37. "By the end of 2005, the global number of refugees reached an estimated 8.4 million persons, the lowest level since 1980. This constitutes a net decrease of more than one million refugees (–12%) since the beginning of 2005, when 9.5 million refugees were recorded. This is the fifth consecutive year in which the global refugee population has dropped and the second sharpest decrease since 2001. Over the five year period, the global refugee population has fallen by one third (-31%). Decreases in the refugee population are often the result of refugees havingaccess to durable solutions, in particular voluntary repatriation... The past four years saw an almost unprecedented level of voluntary repatriation, mainly due to the return of more than 4.6 million Afghans from Pakistan and the Islamic Republic of Iran. Globally, more than six million refugees were able to return home during 2002–2005, of which 4.6 million with UNHCR assistance." UNHCR, *2005 Global Refugee Trends* (2006) at paras. 7, 19.

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North-South Dialogues
in Forced Migration

Elizabeth McWeeny

First let me express my thanks and appreciation to the International Association for Studies in Forced Migration for their collaboration with the Canadian Council for Refugees (CCR) in order to plan our conferences together. Yesterday, the CCR concluded its International Conference on Refugee Rights and we had an opportunity for participants to take advantage of both conferences. This collaboration between two sectors, the academics and researchers with the practitioners and advocates, demonstrates how close we are in interests that affect refugees. So I am here as a practitioner seeking dialogue, allies, and partnerships on the common themes on forced migration.

The theme of this conference, North-South Dialogues, provides us with several images:

- the global geographic flow of power and information mostly north to south and the flow of resources and cheaply produced goods south to north;
- the view of the north as powerful, developed, civilized, and privileged and the south as impoverished, underdeveloped or developing, enslaved, and exploited;
- the flow of displaced people from south to north and the factors flowing north to south causing these displacements.

While the imagery is simplistic and not always based on fact, the differences and imbalances they portray are very real indeed.

Recently I had cause to read again the actual text of the Universal Declaration of Human Rights. To what did our global community commit in 1948? The text is still very relevant and I challenge every signatory nation to do a self-audit on how we are living up to those inspiring words that promised so much.

Building Alliances to Strengthen Advocacy

The subtext for the CCR conference was "networking across borders." We used last weekend to discuss how NGOs can be more effective advocates with and for refugees when we work together. How do we ensure that refugee women's voices are heard and that they are included in the leadership of local and international efforts? Who are our partners? Who can we collaborate with on common interests and issues? What strategies can we develop collectively to give strength to each individual voice? Who will take leadership to bring us forward from here?

Oftentimes, NGOs find ourselves working in isolation or communicating with colleagues on a local, regional level but not internationally. This is something we must change. We know our governments talk to each other. They strategize, negotiate, and bargain away the rights of refugees for economic and political purposes. The standards for one country's policies on refugees are seen as the "best practice" by other states even though they are often the lowest common denominator and certainly not the good practices we want to see in place.

NGOs have the unique role to be the uncomfortable voice that questions, challenges, and urges our governments and the communities in which we live to change. If we are to be effective as the uncomfortable, challenging voice we have to be as successful as states at working together on an international level in order to intervene at the levels where decisions are really made.

As usual, we don't have the substantial resources of governments but in this age of technology we can certainly be far more collaborative than ten years ago. However, in considering potential allies I'd like to mention a few dynamics that are relevant to this gathering:

- Bridging NGOs with Common Focus
- Linkage between Human Rights Advocacy NGOs, Humanitarian Assistance, and Development NGOs
- NGO Reliance on Independent Research and the Academic Sector
- Voices of the South in the North

Bridging NGOs with Common Focus

The lines of communication are very thin between NGOs in countries that traditionally do not receive large numbers of

asylum seekers and NGOs in those countries that host tens or hundreds of thousands of forced migrants. In planning the recent conference the CCR wanted to involve participants from all regions of the world and from as many countries as possible, especially countries of first asylum. It was amazing how challenging this proved to be. Even to begin, it was difficult to identify organizations to which we could send the conference information, especially when we wanted to identify NGOs that are working on the ground with refugees and displaced persons.

There is no organizational infrastructure to bridge these two realities, and even technological inequities serve as barriers. In following up from the conference focusing on building networks we are challenged with the reality that some participants do not have access to e-mail, the internet, or even a telephone.

Another part of our challenge is the language we speak and the imagery behind the language that works against developing common strategies. I recently attended an international meeting on detention. The participants brought different perspectives to the debate. Detention in countries like Canada and the US means confinement in institutional, jail-like settings. In many countries in Africa and Asia the reality of detention is the closed camp system containing many tens of thousands of people, sometimes for decades. This is no institutional prison setting but the high fences, armed guards, and national laws are just as effective. Nevertheless, when we talk about detention, NGOs don't often talk about camp-based containment as detention.

Linkage between Human Rights Advocacy NGOs, Humanitarian Assistance, and Development NGOs

Another illustration of a great divide is demonstrated every year during the UNHCR's Annual Consultation with NGOs, also known as the Pre ExCom. The participants, the agenda, and the discussions follow two very distinct tracks for the humanitarian aid organizations and the advocacy/rights based organizations. I was amazed at the degree of separation until I thought about our own Canadian experience and realized that we don't really talk to each other in Canada either.

The Humanitarian Assistance and Development NGOs uphold refugee rights in direct support, front-line services, and programs with tangible impact, often at the most basic level such as tents, clean water, food, and primary medical care. Advocacy NGOs seek protection and sustainment of human rights through political initiatives, international and national agreements and policies, donorship, and solution building. The two tracks are mutually supportive yet there seems to be very little dialogue between the two

sectors to develop common strategies towards achieving shared goals.

NGO Reliance on Independent Research and the Academic Sector

We practitioners need researchers to support our voice. Oftentimes we are mired in the anecdotes of our day-to-day challenges and, while our instincts tell us there is a bigger picture that will demonstrate trends, systemic issues and potential strategies, we have neither the resources nor the skills to gather and analyze what we know.

Government-funded research is too often self-limited by the agendas of the funders who seek research data as a means to confirm policies rather than as a tool to provide guidance in policy development. The political agenda around migration issues, be they national or international, is a particularly hot topic that generates wide polarization of interests. For this reason independent research in the field of migration is essential. It provides the objective perspective to support human rights first and does not give license for the political and economic agendas to override the international community's commitments made in 1948.

The Voice of the South in the North

Refugees and other migrants always leave someone behind: family, friends, community. A part of the relationship that travels south to north is the trust to give voice to what is happening. This voice is often the most immediate and precedes media, international and national attention, and civil society response. Two examples: recently impoverished people have been forcibly displaced to build the new airport in Mexico City, and resisters have been arrested or have disappeared; second, in Oaxaca, civil demonstrations have resulted in executions and arrests. As of today, these two situations have barely been reported in the mainstream media, partly because the government has quashed freedom of the press; however, personal accounts and photographs distributed by e-mail and over the internet give voice and demand a response to human rights violations that would otherwise remain unheard.

Immigrants and refugees, especially those who flee early in a conflict or developing humanitarian crisis, shed light on situations that perhaps do not receive attention from our governments or from ordinary citizens. Sometimes the news is seen as not credible but over a period of time becomes more widely accepted. For example, asylum seekers arriving from Zimbabwe early in this decade of oppression suffered a high refusal rate in seeking protection in Canada. More recent Zimbabwean refugee claimants have benefited from the awareness of the international commu-

nity that came later. In a second example, the Sierra Leone community in Canada advocated for special initiatives to provide protection through resettlement for their friends and relatives during a time when there was no Canadian response to the civil war in Sierra Leone. Public information and the pictures of that tragedy have come since the first voices were raised by Sierra Leone exiles.

In Conclusion

In conclusion, we can see that our opportunities to strengthen human rights lie very much in our willingness and ability to engage in dialogues with each other. Advocacy prompted by the voices of the oppressed and displaced, supported by valid research, and promoted across sectors and geography will build a powerful network. Your research and analysis is an essential component of that network and I invite you to continue to take a significant role and to work closely with NGOs. On behalf of the Canadian Council for Refugees I look forward to building on this conference and thank you again for the opportunity to speak to you today.

Elizabeth McWeeny is President of the Canadian Council for Refugees. She has been involved in the promotion of refugee rights for over twenty-five years and lives with her family in Thunder Bay, Ontario, Canada.

Informing Integration: Assessing What We Know, Admitting What We Don't Know

Catherine Dauvergne

Two things weigh on my mind as the process of getting this volume to press draws to a close. The first is that the response to our call for papers demonstrates how important this call truly is, and how far we still have to go as a community of knowledge to fully answer it. The second is that public debate about refugee integration flourishes despite the lack of knowledge, in ways that ought to alarm us. The opportunity of introducing this collection allows me to address both of these concerns. I will do so in reverse order.

In mid-October I was mulling over some (different) introductory remarks when I happened upon Martin Collacott's comment in *The Globe and Mail* (15 October 2007, p. A17). Collacott's subject was the appropriate role for Canada in responding to massive population displacement in and around Iraq. The thesis he was pursuing was that Canada should be wary how many of these people (many of whom are refugees – which is not my point, just yet) should be resettled in Canada because, in Collacott's view, they will face integration problems.

Interestingly, Martin Collacott did not make a submission to this volume. Despite his assertions of knowledge about refugee resettlement, delivered in a tone of sober authority. There are many ways to counter Collacott's argument. These include a careful assessment of the harms of protracted camp existence (the only alternative to resettlement available at this time); an exploration of what counts as a 'success' in Canada; according some agency to those caught up in this crisis, who undoubtedly have views about their own futures; evaluating when integration difficulties can be sheeted home to individuals and when they must reasonably rest with the host society.

Another vital counter is to consider the firm distinction between immigrants and refugees. Immigrants come to Canada on the basis of governmental 'selection' because of some economic or family role which they fulfill. These categories are frayed at the edges, I know, but they conform broadly with the contours of our law and policy. Refugees come to Canada because they are at risk of being persecuted elsewhere. Either they make it to Canada on their own and then demonstrate that they fit this descriptor, or they are identified as fitting it and are then assisted to come here. If we do not have expectations about integration which reflect this crucial difference, we will fall into the trap of treating refugees like immigrants. Because many refugees are resourceful and independent, and have honed their basic survival skills in ways that most of us cannot imagine, this trap is sometimes not obvious. But it should be. Canada welcomes refugees because of a legal obligation or a humanitarian impulse, not because of something they can do for us, or because they will 'fit in' well.

Expecting refugees to behave like immigrants, and to conform statistically to our pictures of immigrants, will lead to failures of law and policy, as well as failures of compassion. Quite the opposite outcomes of what Collacott suggests. An example of this conceit was published in the *Vancouver Province* on the same day as Collacott made *The Globe and Mail*. Under the headline, 'Integrating Immigrants? You're Doing Fine, Canada' Randy Boswell reported on the Migrant Integration Policy Index for this year in which Canada ranked equal fifth with Finland (and ahead of 22 other, mostly European, countries).

The Migrant Integration Policy Index is an enormous undertaking, funded by the European Union and produced by a network of twenty-five organizations, with the British Council assuming the lead. It measures integration in six areas: labour market access, family reunion, long-term residence, political participation, access to nationality and discrimination. Twenty-five indicators are assessed in total. It

is an ambitious and important project, and I am very pleased to see that Canada is participating. Other traditional nations of immigration such as Australia, the United States and New Zealand are not yet doing so.

My one concern with the Migrant Integration Policy Index, however, runs parallel with my concern about Collacott's comments: it merges immigrant integration and refugee integration, measures them on the same standard, with the same benchmarks, hoping for the same results. One reason that Canada performs so well on this Index may therefore be that the year it queried saw a marked drop in asylum seekers in Canada, and a steady hold on direct resettlement of refugees. In other words, as refugee numbers in all categories are reduced, we might reasonably expect integration to run more smoothly.

Indeed, if integration is all we want from our immigration and refugee programs, we are on a slippery slope to considering that the best possible refugees for Canada to assist will be well educated, English and French speaking, pale skinned, rich folk with existing ties to Canada. Here the aim is not so much integration as a seamless merging. Not only does this sound like an immigration program rather than a refugee program, it sounds like the old and (mostly) discredited White Canada legal regime of the early twentieth century.

I do not have enough data to conclude that Canada's rank on the Migrant Policy Index correlates with the drop in asylum, but the hypothesis is plausible and worth testing. In part this is because it is based on a widespread view that integration, even in the long term, will be harder for refugees than for immigrants. Much of our policy logic at present assumes this. We should really find out more.

It is at junctures like this that the role of quality research and analysis becomes important. Our call for papers focused specifically on refugee integration issues, as distinct from those of immigrants. We also wanted to engage with the distinction between the integration dilemmas of refugees who somehow make it to prosperous Western countries on their own, and the challenges facing those who are brought here by government or private sponsorship directly from overseas, even possibly from a protracted stay in camp conditions. In issuing this call, we had in mind integration in the broadest sense of the word, what does it take for individuals to rebuild their lives, to make their way in a new place, to arrive at a point where life can be about hopes and dreams for the future. While government policies do intersect with this understanding of integration, they are not the sum of it.

The response to this call demonstrated that important research is being done in this area, that much remains to be done, and that the notion of refugee integration is not yet sufficiently distinct from that of immigrant integration. By this I mean that we got a number of papers showing interesting research and important insights that did not grapple directly with the terms of the call. We made a decision to publish work fitting directly within our mandate, with only one category of exception, that I shall discuss presently. The volume that has emerged in response to this call gives us a good understanding of the state of this knowledge in Canada.

The first three papers in the volume set the stage for the refugee integration dilemma. Yu, Ouellet and Warmington provide a statistical and policy mapping of refugee integration in Canada. This thorough overview shows where we are in programmatic terms. Labman's article, which follows this map, advocates a renewed commitment to direct resettlement of refugees from overseas. This provides an important illustration of key differences between asylum seekers who become refugees, and refugees who come to Canada with government assistance. This distinction must necessarily underpin all integration analysis. Presse and Thompson's analysis builds directly from this point by describing recent changes in the Canadian refugee resettlement policy framework and how these intersect with United Nations High Commissioner for Refugees initiatives. Presse and Thompson conclude with a sketch of a research agenda that would assist policy makers in this area.

The next couplet of papers showcases what research on refugee integration can yield. Ives presents a detailed analysis of a cohort of Bosnian refugees resettled in the United States, highlighting disjunctures between integration as policy and as lived experience. Sherrell, D'Addario and Hiebert provide a finely scaled analysis of housing patterns for newcomers to Vancouver, demonstrating how this particular integration indicator varies for immigrants, for diverse groups of refugees, and for those who are seeking refugee status. This analysis raises the linkage between integration and the period before obtaining refugee status, a theme taken up in more detail in the final set of papers. Each of these papers presses the point that the scale of integration is the local and the unit is individuals and families. Small things matter.

The final trio of papers is an important reminder that integration – in the sense of truly rebuilding one's life and moving away from the pressure cooker of the claim process – becomes meaningful only after legal status is assured. As Labman makes clear, most refugees in prosperous Western states arrive as asylum seekers. Many of those who arrive remain, whether as refugees (the most common status in Canada) or in other humanitarian or subsidiary categories (which is more the norm in Europe). The experiences of those seeking asylum before they get legally durable status are inextricably linked to how they will fare once they have

that status. If integration support begins only when refugee determination ends, governments will face the consequences of individuals having lived marginalized lives for long periods of time.

The team led by Oxman-Martinez tackles this dilemma directly, coining the phrase 'dynamique triangulaire' to demonstrate the experience of community organizations engaged in settlement processes that span the single legal moment of obtaining status. Thornton also focuses on the period of time between arrival and legal status as vital to understanding any ex post facto integration, in this case in the context of the Republic of Ireland, which has become an important European destination for those seeking protection. The Bernhard team provides additional texture to this analysis by analyzing the effects of precarious legal status on children. It is a heartbreaking point to conclude.

This array of responses to our call for papers shows how much we still have to learn. The authors in this volume raise as many questions as they answer. The first three papers do so directly, mapping and naming the gaps. The second set shows the incredibly rich types of analyses that can be conducted in this area, and the important insights they will yield. This grouping is smaller than I would like, especially because of the great strengths of these studies. The third set of papers calls us to account for writing the call in the way we did. I've been eager to push the line about the distinction between refugees and immigrants, the final group of papers emphasizes that refugee determination is a legal process that intersects somewhat haphazardly with the lives of individuals. And thus my line is troubled. A serious scholarship of refugee integration must grapple also with the integration effects of waiting, of delay, of failure in the process, of the absence of appeals. Like life, integration happens while one is making other plans.

Despite the way we worded our call, we did not receive a single submission that addressed challenges of relocating those who have survived long periods of time in refugee camps. I hope these papers are still out there, still being researched, soon to be written, waiting to be published. To my mind this is the biggest gap, in a volume that both tells us and shows us that we do not know nearly enough. My most lofty ambition for the volume is that it will, itself, stand as a loud and prolonged call for more work in this area, more funding to do such work, more attention to its results, and more understanding of the global consequences of a law and policy regime in which asylum seeking continues to occupy the field of refugee lives.

It has been a real pleasure working with Sharryn Aiken, who has made being a guest editor a real treat. Sharry managed all the tricky bits and left the most enjoyable and engaging things for me. It was a pleasure. In addition, it was most enjoyable to work with Barry Halliday of Citizenship and Immigration Canada (CIC) on shepherding this volume forward. I am also especially grateful for the CIC staff who submitted work to this volume and who committed to the refereeing process that makes *Refuge* what it is.

Catherine Dauvergne is Canada Research Chair in Migration Law at the Faculty of Law, University of British Columbia. Catherine's next book, Making People Illegal: What Globalization Means for Migration and Law *examines how migration laws around the globe are shifting under contemporary social and political pressures. It will be published by Cambridge University Press in 2008.*

Refugee Integration in Canada: A Survey of Empirical Evidence and Existing Services

Soojin Yu, Estelle Ouellet, and Angelyn Warmington

Abstract

While a fairly large body of empirical research and policy documents exists on immigrant integration in Canada, studies on refugee integration are scarce. This paper attempts to fill this gap. It summarizes what is known about refugees' economic and socio-cultural integration patterns in Canada and what integration services are available to them in order to identify empirical knowledge gaps and service gaps. Whenever salient and possible, the distinction among the Government-Assisted Refugees, Privately Sponsored Refugees, Landed-in-Canada Refugees and refugee claimants is made.

Resume

Alors qu'il existe une masse assez considérable de documents de recherches empiriques et de politiques officielles ayant trait à l'intégration des immigrants au Canada, les études sur l'intégration des réfugiés sont rares. Cet article essaye de combler cette lacune. Il résume ce qui est connu sur les tendances d'intégration économique et socioculturel des réfugiés au Canada ainsi que sur les services d'intégration qui leurs sont disponibles ; cela dans le but d'identifier les lacunes en matière de connaissance empirique et dans les services. Là où c'est notable et possible, la distinction est faite entre les réfugiés pris en charge par le gouvernement, les réfugiés bénéficiant du parrainage privé, les réfugiés reconnus comme tels au Canada et les demandeurs du statut de réfugié.

Introduction

Refugees have consistently made up over 10 per cent of the annual inflow of newcomers to Canada in the last decade.[1] However, while a fairly large body of empirical research and policy documents exists on immigrant integration in Canada, studies on refugee integration are scarce. Very few Canadian studies on refugees have a truly national scope or contain systematic empirical analyses, and many are limited to reporting on one specific refugee community.[2]

Despite the lack of a shared definition for "successful integration" in academic or policy discourse,[3] most scholars and policy makers in Canada and elsewhere agree with a description of "integration" as a "dynamic, multi-faceted two-way process which requires adaptation on the part of the newcomers, but also the society of destination."[4] Hence, most generally accept that "integration," as opposed to one-way assimilation, outright marginalization, or segregation, is desirable.[5] In fact, Canada's domestic policy and international obligation reflect these views. Section 3(e) of the Immigration and Refugee Protection Act (IRPA) states that one of its objectives is "to promote the successful integration of permanent residents [immigrants and refugees] into Canada while recognizing that integration involves mutual obligations for new immigrants and Canadian society." Likewise, Article 34 of the 1951 Convention relating to the Status of Refugees, to which Canada is a signatory, states that "[t]he Contracting States shall as far as possible facilitate the assimilation [integration] and naturalization of [domestic asylum] refugees." This paper considers both directions of integration by examining the patterns of refugee integration into the Canadian society on the one hand and the services that are offered to refugees on the other.

A vast array of indicators is used in the literature to quantify the many facets of integration. Examples include labour force participation, income, house ownership, wealth, residential segregation, language skills and use, educational attainment, social networks, cultural consumption patterns, physical and mental health, fertility, marital status, and various attitudes. However measured, refugees and immigrants are likely to face common barriers towards achieving integration in Canada: lack of official language skills, difficulty finding an adequate job, and having foreign credentials recognized, among others.

Nonetheless, there are at least two reasons why refugee integration issues may be distinct from those concerning other immigrants, warranting more studies focusing on refugees. First, refugees are admitted to Canada primarily on humanitarian rather than economic grounds. The key selection criterion for immigrants is their *ability* to establish: economic potential for the principal skilled worker and business applicants, and the presence of economic and social supports in Canada for family class. In contrast, the primary consideration for refugees is their *need* for Canada's protection. Given this difference at the selection stage, it is not unrealistic to expect different patterns of integration between refugees and immigrants. Second, the circumstances surrounding refugees' migration are likely to be much more traumatic than voluntary immigrants,' which may impact their integration patterns and call for specialized integration services, such as counselling and mental health care, in addition to generic integration services.

This article seeks to summarize what is known about refugee integration patterns and needs in Canada in order to identify knowledge gaps. The second section provides a brief introduction to Canada's refugee protection system and its refugee population characteristics. The third section describes the patterns of refugees' economic and socio-cultural integration as portrayed in nationally representative databases and empirical literature, and identifies the empirical knowledge gaps on refugee integration in Canada. The fourth section describes the existing services addressing refugees' various integration needs, and identifies the service gaps for refugee integration in Canada. This paper concludes by summarizing the gaps identified and suggesting future research directions regarding refugee integration in Canada.

Refugee Population Characteristics in Canada

Canada's refugee protection system consists of two main components: the in-Canada refugee protection system, and the refugee and humanitarian resettlement program. Persons making claims through the in-Canada refugee protection system are referred to as "refugee claimants" or "claimants" in this paper. Claimants who are determined to be in need of Canada's protection at the Immigration and Refugee Board (IRB) are granted the "protected person" status; rejected claimants become subject to removal. Protected persons who subsequently become permanent residents are referred to as "Landed-in-Canada Refugees" (LCRs). The resettlement program involves the selection of refugees overseas either as Government-Assisted Refugees (GARs), who are referred by UNHCR and supported through federally funded Resettlement Assistance Program (RAP), or as Privately Sponsored Refugees (PSRs), who are sponsored and supported by voluntary groups. Whenever salient and possible, the distinction among these different groups of refugees is made throughout this paper. In addition, refugees are situated in the larger context by being compared to other categories of immigrants as well as to Canadian averages.

Figure 1: Refugees Granted Permanent Residence in 2005 by Category
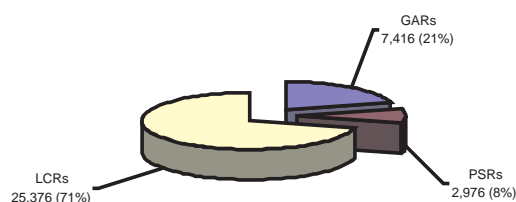
Source: Facts and Figures 2005, Citizenship and Immigration Canada

In 2005, Canada granted permanent residence to 35,768 refugees.[6] Figure 1 shows that more than two thirds of refugee inflow is composed of LCRs and their dependents from overseas (71 per cent), followed by GARs (21 per cent) and PSRs (8 per cent).

The main characteristics of refugees and immigrants who were granted permanent residence to Canada in 2005 may be presented in terms of raw figures[7] or historical figures.[8] Gender is evenly distributed across the three categories of refugees and the other immigrant categories (family and skilled workers).[9] In terms of age, the vast majority (more than 80 per cent) is under 45 in all immigrant and refugee categories. The family class has a similar age distribution to PSRs and GARs while skilled workers' age distribution is more similar to LCRs.'

Among refugee categories, GARs are the youngest with 37 per cent under the age of 15 and less than 10 per cent over the age of 44. PSRs are also fairly young, with 26 per cent under the age of 15 and 10 per cent over the age of 44.

LCRs are the oldest, with 15 per cent under 15 and 16 per cent over 44. In terms of areas of birth, the largest source area is Middle East and Africa for refugees while it is Asia and Pacific for other immigrants. For example, roughly 30 per cent of refugees arriving in 2005 come from the Asia/Pacific region, while almost 60 per cent of the family class and skilled workers come from that part of the world. Among refugee categories, areas of birth vary between LCRs on the one hand and GARs and PSRs on the other: while almost two thirds of PSRs and 42 per cent of GARs come from Middle-East/Africa, less than a third of LCRs do; 30 per cent of LCRs come from Latin America compared to 21 per cent of GARs and 5 per cent of PSRs; 13 per cent of LCRs come from Europe and Central Asia versus 3 per cent of PSRs and 9 per cent of GARs.

Table 1 summarizes the educational attainment upon arrival in 2005 of refugees and immigrants.[10] Only refugees who are 15 years of age or older are examined because the above-mentioned differences in age composition among categories may impact the education level. Among the three refugee categories, LCRs are by far the most educated. About half of the LCRs category has either thirteen or more years of schooling or a trade certificate/diploma or a university degree. In comparison, only one quarter of the GARs and PSRs category have attained this education level. In fact, 48 per cent of GARs and 36 per cent of PSRs have less than nine years of schooling. In terms of other immigrant categories, the family class's educational attainment is simi-

lar to LCRs but higher than GARs and PSRs, as slightly more than half of its population has either thirteen or more years of schooling or a trade certificate/diploma or a university degree. Skilled workers are by far the most educated of all immigrant categories with over 80 per cent with thirteen or more years of education. Overall, about 70 per cent of all arrivals in 2005 reported thirteen or more years of education.

Refugee Integration in Canada: Empirical Evidence

What do the literature and nationally representative databases tell us about the patterns of refugees' economic and socio-cultural integration in Canada? For the purpose of this paper, economic integration is measured by employment rate and employment earnings at one and five years after the receipt of permanent resident status. Socio-cultural integration is measured by available indicators, *i.e.*, Canadian citizenship, general satisfaction level, and familial networks, as no data is available on other indicators, such as social engagement and political participation. Whenever possible, the three categories of refugees are distinguished and compared to other immigrant categories.[11]

Economic Integration of Refugees

Through the Longitudinal Survey of Immigrants to Canada (LSIC), immigrants who arrived in Canada between October 1, 2000, and September 30, 2001, were interviewed at six months, two years, and four years after arrival in Canada as

Table 1:
Level of Education at Arrival by Category, Refugees
and Immigrants Aged 15 Years and Older
Who Were Granted Permanent Residence in 2005

	LCRs	GARs	PSRs	Family Class	Skilled Workers Principal Applicants	All Refugees and Immigrants
0 to 9 yrs	19%	48%	36%	20%	8%	14%
10 to 12 yrs	30%	26%	37%	23%	9%	16%
13 or more	13%	7%	7%	10%	6%	8%
Trade Certificate/Diploma	19%	7%	12%	17%	14%	16%
University Degree	19%	12%	7%	29%	63%	46%
TOTAL	16,950	4,642	2,217	63,352	52,266	204,633

Source: Facts and Figures 2005, Citizenship and Immigration Canada

permanent residents. Since tracking down the date of arrival of LCRs is complex and since LCRs may have already been in Canada for a certain period of time when obtaining their permanent residence (or "landed"), LSIC's "refugees" category mainly includes GARs and PSRs.[12] Figure 2 compares employment rates by immigrant category for principal applicants from the two first interviews. (In this section, the economic outcomes of solely principal applicants (PAs) of each immigration category are examined. The rationale for this is the practice of linking economic performance to the definition of each category, *i.e.* PAs rather than spouse, partners, and dependents.) Skilled workers have the highest employment rates both at six months (60 per cent) and at two years since arrival (over 70 per cent) whereas refugees have the lowest employment rates (20 per cent and over 40 per cent respectively). Interestingly, refugees also show the greatest improvement between the two interviews with an increase of over 20 percentage points. In comparison, family class shows the weakest progression, from almost 40 per cent at six months after arrival to less than 50 per cent at two years since arrival.

Figure 2: Employment Rate at 6 Months and 2 Years after Arrival by Immigrant Category (Principal Applicants)

■ 6 months since landing   ■ 2 years since landing
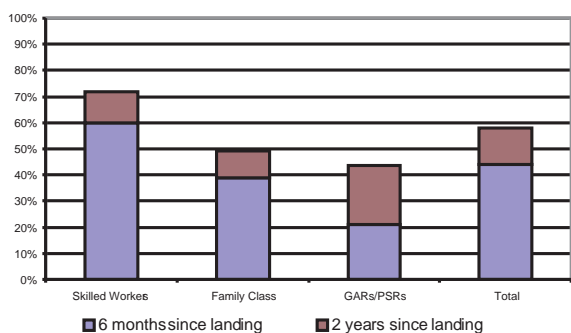
Source: Longitudinal Survey of Immigrants to Canada, Statistics Canada (weighted sample size)

Another national scale database on immigrants and refugees is Immigration Database (IMDB). Despite being limited to the tax-filing population, IMDB remains an important source of information on the economic outcomes of refugees since this large database provides the opportunity to disaggregate immigrants and refugees by category.[13] Figures 3 and 4 compare the employment earnings of refugee and immigrant categories (principal applicants) at one and five years since "admission to permanent residence" (landing) for tax years 1995 through 2003. This means that immigrants and refugees in Figure 3 are not identical to those in Figure 4, as Figure 3's population landed from 1994 through 2002 while

Figure 4's arrived from 1990 through 1998. However, both the earnings and the relative positions among immigrant and refugee categories mostly remain stable among the various landing cohorts, making intercategory comparison across time meaningful.

At one year since landing (Figure 3), refugees and family class show the lowest average annual employment earnings (under $20,000) while, as expected, the skilled workers category and the Canadian average show the highest average annual employment earnings, at around $30,000 (except for skilled workers who landed in 2001–2002, who report average employment earnings of around $25,000 in 2002–2003). Among refugees, the earnings of PSRs and LCRs are similar at just below $20,000 whereas GARs report the lowest earnings at around $10,000. The difference between GARs on the one hand and PSRs and LCRs on the other may be explained by the fact that (1) most LCRs have been in the country for a certain period by the time they land, thus have an advantage over newly arrived GARs and PSRs, and (2) sponsors often arrange PSRs' employment prior to their arrival unlike GARs, who are financially supported by the RAP. Therefore, even though LCRs and PSRs have higher average earnings than GARs one year after arrival, drawing conclusions on GARs' lower ability to integrate economically should be made cautiously.

Figure 4 shows how employment earnings compare at five years since landing. All categories report higher earnings than at first year since landing. Nevertheless, refugees and family class still show the lowest average annual employment earnings, within the $20,000 to $25,000 range, while skilled workers continue to show the highest employment earnings, reporting between $40,000 and $50,000 depending on the year of landing. The Canadian average is in between, at roughly $30,000. Although still very similar within the $20,000 to $25,000 range, interesting patterns emerge among the three refugee categories. At five years after arrival, PSRs have overtaken LCRs, albeit slightly. GARs, interestingly, show marked differences between landing cohorts. GARs who landed in 1994 and 1995 (tax years 1999 and 2000) show higher employment earnings than their peers who arrived before or after this period at five years since landing. In fact, these two cohorts show higher earnings than their LCR and PSR peers. A closer examination of the database showed that these two cohorts were composed mainly of highly educated refugees from Bosnia-Herzegovina.[14]

In short, the employment earnings of refugees at first and fifth year since landing are comparable to family class immigrants' earnings, and, as expected, much lower than skilled worker immigrants and Canadian average's figures. This finding is consistent with the pattern of divergent earnings

between refugee and family class entrants on the one hand and the economic class on the other as noted in a study by DeVoretz, Pivnenko, and Beiser.[15] Among the refugee categories, although GARs show lower employment earnings than PSRs and LCRs at one year since landing, at five years since landing there is very little difference among the three categories for those arriving in Canada in 1994 and later.

Figure 3: Employment Earnings at One Year after Arrival of Immigrants and Refugees Granted Permanent Residence in 1994–2002 by Category (Principal Applicants) and Canadian Average
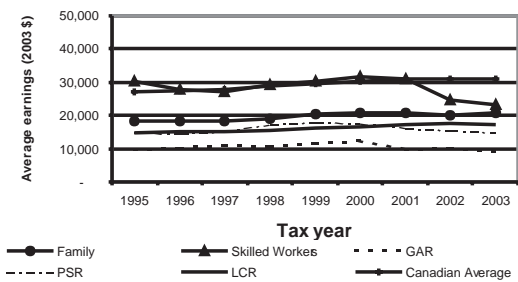
Source: Immigrants: Longitudinal Immigration Database (IMDB), Compendium Tables 2003, Statistics Canada, online: IMDB-BDIM Homepage, http://www24.statcan.ca (accessed 11 May 2007);
Canadian average: Cansim, tables 202–0402 and 326–0002, Statistics Canada, online: Cansim http://cansim2.statcan.ca (accessed 11 May 2007).

Figure 4: Employment Earnings at Five Years after Arrival of Immigrants and Refugees Granted Permanent Residence in 1990–1998 by Category (Principal Applicants) and Canadian Average
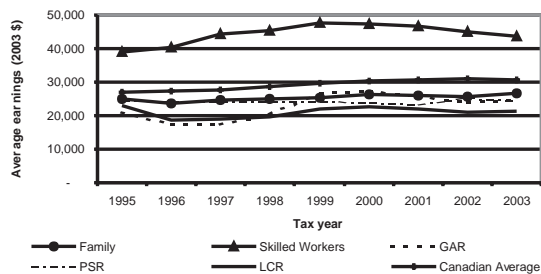
Source: **Immigrants:** *Longitudinal Immigration Database (IMDB), Compendium Tables 2003, Statistics Canada, online: IMDB-BDIM Homepage http://www24.statcan.ca (accessed: 11 May 2007);*
Canadian average: Cansim, tables 202–0402 and 326–0002, Statistics Canada, online: Cansim http://cansim2.statcan.ca (accessed 11 May 2007).

Socio-cultural Integration of Refugees

Socio-cultural integration is a much more elusive concept to define and to quantify than economic integration. Consistent with this difficulty, empirical evidence on refugees' socio-cultural integration patterns, or all integration patterns outside of the economic sphere for that matter, is extremely scarce. This section summarizes the very few studies that either remotely or more directly examine the socio-cultural integration patterns of refugees in Canada.

LSIC provides some assistance in this regard.[16] If taking the extra steps to acquire the Canadian citizenship is any indication of successful socio-cultural integration, Table 2 shows that refugees (GARs and PSRs) are doing extremely well: they show the highest percentage (97 to 99 per cent) of having obtained, applied for, or intending to apply for naturalization among all categories (87 to 95 per cent) by the fourth year of arrival.[17] However, given that refugees, by definition, do not benefit from the protection of another state, their high citizenship acquisition rate does not come as a surprise.

In terms of various attitudes towards Canada, a similar proportion of refugees to other immigrant categories cited "Canada's better quality of life" as one of the reasons why they would like to remain in Canada permanently: 55 per cent of refugees (GARs and PSRs) compared to 58 per cent of economic and 49 per cent of family class immigrants. However, they show a greater appreciation of certain aspects of Canada's life, namely "peace/absence of war" and "political or religious freedom," than other immigrant categories (Table 2). This reflects the particular circumstances surrounding refugees' migration (*e.g.* political unrest, persecution, etc.) that are distinct from motivations that encourage economic or family immigrants to come to Canada. However, the results may not be as high as one might expect for persons who have come to Canada specifically to escape persecution or war and thus warrant further analysis.

Another study on socio-cultural integration comes from a smaller study based on 525 interviews; conducted with adult GARs and PSRs destined to Alberta, it examines the daily interactions of refugees with their surroundings in greater depth.[18] As shown in Table 3, the study found that refugees spend more time with co-ethnic friends (47 per cent) and extended family living outside of household (26 per cent) than with "Canadian" friends (21 per cent), neighbours (21 per cent), or even families who sponsored them (7 per cent). Unfortunately, comparable studies on other immigrant categories in Canada are unavailable.

The impact of such co-ethnic contacts on socio-cultural and economic integration outcomes is unclear. A subsequent study based on the same sample found that living in close proximity to a family member (*i.e.*, child, parent, or sibling)

**Table 2: Citizenship Status and Intentions/Reasons
for Staying in Canada Permanently by Category**

	Per cent who obtained, applied or intend to apply for citizenship	Per cent who cited "better quality of life" as a reason for wanting to stay in Canada permanently	Per cent who cited "peace/ absence of war" as a reason for wanting to stay in Canada permanently	Per cent who cited "political or religious freedom" as a reason for wanting to stay in Canada permanently
Economic	91.3%-94.6%	58.4%	31.1%	16.7%
Family Class	87.3%-90.4%	48.6%	20.8%	11.1%
GARs/PSRs	97.2%-98.8%	54.7%	53.5%	28.5%
TOTAL	90.7%-93.8%	55.4%	29.6%	15.8%

Source: Grant Schellenberg and Hélène Maheux (April 2007), Tables 4:17 (LSIC).

Table 3: Refugees who Reported Spending Time "Daily or Often" with…

	Co-ethnic friends	Family outside household	Other Canadian friends	Neighbours	Other immigrants	People from work	Sponsor f amily
%	47%	26%	21%	21%	14%	12%	7%
N	224	136	106	112	72	64	39

Source: Navjot K. Lamba (2003), 343.

had a negative impact on the quality of employment. According to the author, this is presumably due to the need for care. However, the same study found that refugees who sought familial and extra-familial aid in finding a job found better quality employment than their peers who did not have such networks.[19] The impact of co-ethnic networks on refugee integration outcomes needs to be clarified.

Summary
Overall, in terms of economic integration, refugees have lower economic outcomes than other categories of immigrants. Compared to skilled workers, refugees show a markedly lower employment rate and lower employment earnings. The difference between refugees and family class immigrants is smaller. Although refugees' economic performance improves as their time in Canada increases, they continue to under-perform compared to other immigrant categories. Among the different categories of refugees, in the first year since landing, LCRs and PSRs outperform GARs in terms of employment earnings. However, for more recent years, by the fifth year after landing, these differences in

economic outcomes disappear and all three refugee groups show similar economic outcomes. In terms of socio-cultural integration of refugees, there is a dearth of evidence about this 10 per cent of Canada's annual intake.

In short, more research is needed on the causes of economic performance differential, and on the meaning, patterns, and causes of socio-cultural integration of refugees. In addition, the analysis of the statistics presented in this section elicits many further questions. For example, what is the impact of family size on average earnings for refugees and other immigrant categories? Do remittances affect average earnings of the immigrant and refugee categories differently? How does the trauma suffered by refugees and immigrants affect their social-cultural integration? Is there a gender difference in economic and socio-cultural integration patterns? These questions as well as many other caveats remain to be investigated.

Survey of Existing Integration Services
The previous section sought to identify the empirical knowledge gaps for refugee integration in Canada. This section

aims at identifying service gaps, if any, by examining currently available integration services for refugees in Canada. It does so by first reviewing the relevant literature and then examining the federal and provincial funding sources and programs as well as an array of service-providing organizations across the country.

For the purpose of this paper, an "integration service" is defined as a direct or indirect service whose goal is to facilitate any aspect of social, emotional, physical, or economic adjustment or settlement of newcomers in Canada. In other words, integration services are designed to assist *newcomers* who intend to *settle* in Canada *permanently*. This focus on permanent settlement is reflected in the various Terms and Conditions of integration services funded by the federal government, whose main clients are clearly defined as: (1) permanent residents of Canada, (2) protected persons as defined in Section 95 of IRPA, and (3) persons who have received the initial approval of the permanent residence. The focus on newcomers means that Canadian citizens are not eligible to access these services.[20]

Given this focus on permanent residents, a reminder note on the difference in status among the resettled refugees (GARs and PSRs), LCRs, protected persons, and refugee claimants is warranted. Most of the resettled refugees physically arrive in Canada as permanent residents. It is therefore no surprise that they are eligible to access most integration services upon arrival. In fact, as will be shown below, some resettled refugees even start accessing integration services overseas, before setting foot on the Canadian soil.

The story is very different for the would-be refugee claimants who arrive on Canadian soil without a permanent resident status. Many even arrive without a valid temporary resident status. Once these individuals submit their refugee protection claims, they are granted temporary resident status. As temporary residents, claimants are not eligible for settlement services, which are intended to facilitate permanent settlement and integration into Canadian society. (The debate surrounding whether integration services should be extended to claimants is highly polarized. Since it is beyond the scope of this paper to substantiate this debate, this paper suggests this topic as a subject for future research in the conclusion.) If claimants are determined to be persons in need of Canada's protection at the IRB, they are given the protected person status, which can be considered a permanent status as it indefinitely guarantees *non-refoulement*. Accordingly, protected persons are eligible to access integration services. If determined not to be in need of protection, they are subject to removal. Protected persons are subsequently allowed to apply for, and generally obtain, the permanent resident status. At this point, they (and their overseas dependents) are recorded as LCRs.

LCRs are eligible to access integration services generally offered to other immigrants.

Many integration service providers in Canada target all newcomers, including refugees, while some specialize in certain ethnic groups or only refugees or some categories of refugees. Although funding sources vary, most services are delivered by non-governmental organizations. Integration services to refugees are grouped into three areas: reception, orientation, and housing; employment and language; and counselling and social support. They are discussed in detail below.

Reception, Orientation and Housing

Resettled refugees are eligible to attend Canadian Orientation Abroad sessions, in which employment, rights and responsibilities, Canadian culture and life, among other things, are discussed before they depart for Canada. Upon arrival, most GARs are received at the airport by staff from agencies funded by the federally funded RAP and/or provincial funding sources. PSRs, on the other hand, are met at the airport by their sponsors. The service provider or sponsor will have arranged temporary or permanent accommodation for the refugee. Resettled refugees are eligible to receive orientation and housing support services immediately after arrival and may be directed to these and other services by their sponsor.

Refugee claimants, on the other hand, are not received by anyone when they arrive at a port of entry unless they have friends or family already residing in Canada. Instead, they rely on word-of-mouth for information as to where to go. According to one study in Toronto that looked at the initial housing situation of sponsored refugees and claimants (n = 44), 37.5 per cent of refugee claimants spent their first night with friends or family. One third of respondents spent their first night in a hostel or shelter, and another third wherever they could find a place, such as "a motel, a church, a stranger's house or even outside in a park" and later moved into a shelter.[21] In larger metropolitan areas, where most refugee claimants reside, they may access refugee-specific shelters, such as Romero House in Toronto, which provide counselling, orientation, and support services to claimants. In fact, of families using emergency shelters in Toronto in 1999, 24 per cent were found to be refugee claimants.[22]

Although mostly excluded from the federally funded integration services, refugee claimants are eligible for some integration services in certain provinces. For example, Ontario's Newcomer Settlement Program assists refugee claimants as well as other newcomers. In Quebec, refugee claimants are eligible to receive support services in finding permanent accommodation, but are not eligible for other

orientation and referral programs.[23] However, a study in Toronto found that while only a minority of service providers receive funding to serve refugee claimants, 81 per cent said they provide direct services to claimants.[24] Refugee claimants are generally eligible to receive services after a positive refugee determination at the IRB (when they become protected persons), by which time they will have resided in Canada for some time. By the time they are granted the permanent resident status as LCRs, they often no longer need to access initial orientation and referral services.

Regardless of categories, studies indicate that low income and high rents constitute a major obstacle for all types of refugees in finding permanent housing. This barrier is exacerbated by the fact that many refugees, like immigrants, tend to settle in large metropolitan areas where housing is most expensive. According to the PSR Evaluation, "focus group participants [sic] cited the high cost of housing as being a challenge to resettlement and it seemed common for the participants to have lived with their sponsors for a certain period of time upon arriving in Canada."[25] For GARs, low RAP rates are problematic. According to the RAP Evaluation, "[t]he majority of RAP focus group respondents stated that they had a gap of approximately 25 per cent between the support provided for rent and the actual amount they pay. Many respondents stated that they were using funds that were originally allocated for food and basic needs to meet rent and utility payments."[26] One study of newcomers in Vancouver found that, when asked about the main difficulties experienced in finding housing, 91 per cent of refugee respondents (n = 75) cited lack of affordability (or high rent) as the main obstacle.[27] Two small surveys indicate that refugees often spend more than 50 per cent of their income on rent.[28] For example, of 146 newcomer GAR respondents in British Columbia, 54 per cent spent more than 50 per cent of their income on rent.[29] Large household size often exacerbates this problem.[30] While housing support services have a role to play, increasing refugees' income and employment earnings may also be important.

Employment and Language

GARs, PSRs, LCRs, and protected persons have access to federally and provincially funded employment and language services that cater to all permanent resident newcomers. Refugee claimants who are waiting for their status determination may not have access to employment services, depending on the province in which they reside, but they may apply for temporary work permits.

Employment services often involve workshops on resume writing and interview skills, and job search tools. A number of programs funded by federal and provincial governments assist all immigrant and refugee newcomers with their job search. For example, the federal government funds settlement services, including employment-related services, through the Immigrant Settlement and Adaptation Program. These services are open to permanent residents and refugees who have received a positive refugee status determination by the IRB. At the provincial level, the Newcomer Settlement Program in Ontario and the Immigration Settlement Program in Nova Scotia fund the same type of programming. In Ontario, services may be offered to claimants, while in Nova Scotia, claimants are eligible for services after receiving a positive refugee determination only.[31] Other employment services target those with already high language and professional skills. For example, the Enhanced Language Training program provides advanced work-related language training with a bridge-to-work component for newcomers; the Ontario Internship Program for Internationally Trained Professionals creates job placement opportunities for professional immigrants.

Refugees share barriers to employment similar to those faced by other immigrants, such as lack of official language skills, lack of Canadian work experience, difficulty in foreign credential recognition, and discrimination. However, as presented below, some barriers may be specific to refugees, or at least more common and intense for refugees than for the overall immigrant population.

First, refugees, particularly GARs and PSRs, show a poor self-assessment of official language skills upon landing: 69 per cent of GARs and PSRs are unable to speak French or English upon landing compared to 6 per cent of LCRs and 36 per cent of other immigrant categories.[32] (LCRs show better language skills, partly because they have been residing in Canada for some time by the time they are granted permanent residence.) Very little is known about refugee claimants' language skills upon arrival. Perhaps due to their relatively poor language skills upon arrival, resettled refugees are much more likely than other immigrants to receive language training: 57 per cent of GARs and PSRs had received language training within six months of arrival compared to 24 per cent of family class, 25 per cent of skilled workers and 30 per cent of all immigrants and refugees.[33]

Official language skills are essential not only for obtaining employment, but for social integration as well. Language training is accordingly one of the largest program areas in newcomer settlement services. Most English or French language courses across Canada (except in British Columbia, Manitoba, and Quebec) are funded by the federal government's Language Instruction for Newcomers to Canada (LINC) and are not open to refugee claimants.

Likewise, provincially funded language programs in Quebec are not open to claimants. In Manitoba and in some areas in British Columbia provincially funded English language classes are open to claimants.

Second, as shown in Table 1, refugees, in particular GARs and PSRs, arrive with a low level of formal education. LCRs, the largest group of the three, show marginally higher educational attainment than GARs and PSRs, but it is lower than the educational attainment of other immigrant categories. Low educational attainment is often directly linked to low economic outcomes. A low level of formal education can affect economic outcome indirectly too, as it negatively affects one's ability to acquire an official language, which is a prerequisite for successful employment in Canada.[34]

Third, it has been argued that refugee claimants in particular may find it more difficult to find employment due to the fact that they can only acquire temporary work permits while the IRB decision is pending. Between 2003 and 2005, 76 per cent of refugee claimants 18 years of age and older had a temporary work permit (75 per cent of women and 78 per cent of men).[35] A study suggested that this temporary status may limit refugee claimants to secondary job markets.[36] Finally, those who experience pre-migration trauma and settlement stresses may be at risk of developing depression and post-traumatic stress disorder overtime, and, as a result, are more likely to be laid off.[37]

For the refugees who arrive with lower levels of formal education and social capital, fewer official language skills, and greater mental health needs than other immigrants, there may be a need to develop specific employment services that assist these multi-barriered refugees. In addition to the generic language and employment services, employment-related training targeted at newcomers with little formal education may need to be explored.

Counselling and Social Support

Refugees may have suffered torture, trauma, and difficult migration experiences. Combined with the stresses of resettlement, they may need particular support services.[38]

All refugees, including refugee claimants, have access to the Interim Federal Health program (IFH), which addresses basic and emergency health needs. However, the program does not address mental health needs and high dental needs. Specialized counselling and mental health programs are sometimes provided at the local level by organizations such as the Vancouver Association for the Survivors of Torture and the Canadian Centre for Victims of Torture in Toronto.

Another area of need concerns various types of family counselling. For example, as refugees move from their source to their resettlement country, women may become the primary source of income for the family, leading to changes in gender roles.[39] This change affects spousal and parental relationships, and may lead to domestic violence.[40] Some valuable programming exists in these areas, but is limited in scope. For example, specific support for women and parents is sometimes available, such as at the Arab Community Centre of Toronto, the Toronto Chinese Community Services Association, S.U.C.C.E.S.S. in Vancouver, and the Centre for Diverse Visible Cultures in Halifax.

In addition, GARs, PSRs, and LCRs have access to the Settlement Workers in Schools program in seven different communities in Ontario, which helps parents and children adjust to their new roles in the school system. This program involves partnerships with settlement organizations, school boards, and Citizenship and Immigration Canada. It is funded through the Immigrant Settlement and Adaptation Program (ISAP) and is available to all permanent resident newcomers, including protected persons.[41] In limited cases, similar programs exist throughout the country; for example, school liaising activities are provided by CASA C.A.F.I. in Montreal. It is unclear whether these programs assist refugee claimants.

Likewise, the HOST program and other twinning programs, such as Community Bridging Services in British Columbia and *le jumelage interculturel* in Quebec, match newcomers with Canadian residents who assist in resettlement and the development of social networks. The HOST program and Community Bridging Services are not open to refugee claimants (except for school-aged children for the Community Bridging Services) until they have received a positive refugee status determination. It is unclear whether other twinning programs across the country are open to refugee claimants. Such programs, albeit limited in quantity, help to build social networks, which facilitate the search for housing and employment and encourage the use of official languages.

Summary

This section surveyed a wide range of integration services available to GARs, PSRs, LCRs, and refugee claimants at the federal, provincial/territorial, and municipal levels. Integration services were categorized into three groups based on the needs they serve, as summarized in Table 4.

In summary, in terms of access to services, as expected, PSRs and GARs had the widest access. LCRs and protected persons did have similar access to services, but because they have resided in Canada for some time, they were less likely to access the services assisting the earlier settlement stage. Refugee claimants, given their temporary resident status, had the least access to services. They do have access to basic health care under the federally funded IFH, but were ex-

Table 4: Selected Integration Services Available to Refugees in Canada*

Service Area	Description	Examples of service-providing organizations and programs
1. Orientation, Reception and Housing support	• Airport reception for resettled refugees • Orientation to life in Canada – banking systems, Canadian culture, shopping, transportation, etc. • Temporary accommodation for resettled refugees; refugee-specific shelters in large metropolitan areas • Support in finding permanent accommodation	• Resettlement Assistance Program • Immigrant Settlement and Adaptation Program • The Association for New Canadians (St. John's, Newfoundland) • Romero House (Toronto)
2. Employment and Language	• Job search techniques; resume-writing and interview skills, job placement and bridge-to-work programs • English language instruction; English language conversation classes, job-related language training	• Language Instruction for Newcomers to Canada (LINC) • Enhanced Language Training (ELT) • COSTI (Toronto)
3. Social Capital; Health and Counselling; and Family Support	• Introduction to "Canadian" families • Twinning and mentorship programs • Settlement workers in schools • Parenting classes • Family counselling • Women's groups • Basic and emergency health cost coverage • Specialized counselling and services for victims of trauma and torture in some municipalities	• HOST • S.U.C.C.E.S.S (BC) • Canadian Centre for Victims of Torture (Toronto) • Interim Federal Health program

* See Annex for the full list.

cluded from most of federally and provincially funded integration services in all three categories. A few exceptions existed in some provinces and in large metropolitan areas, where locally funded organizations for refugees would extend their services to claimants.

In terms of service gaps, studies suggested that finding affordable permanent housing may be one of the greatest challenges facing refugees in the early stage of settlement. Regarding language and employment, some refugees may benefit from language training, employment services, and employment-related training targeted at newcomers with low levels of formal education. Refugees may also benefit from services on mental health and family counselling. However, a comprehensive study on the usage and effectiveness of the existing services is warranted before new programs are developed.[42]

Conclusions: Summary, Research Gaps, and Service Gaps

This article sought to summarize what is known about Canada's refugee integration patterns and service needs in order to identify research and service gaps. In terms of economic integration, although refugees' employment rates

and earnings improve with time, they continue to perform less well than skilled-worker immigrants (but not family class). Among refugee categories, LCRs and PSRs outperform GARs at the first year after landing, but by the fifth year after landing, all categories show similar economic outcomes. In terms of socio-cultural integration, refugees are more likely than any other immigrant category to intend to apply for, to have applied for, or to have received Canadian citizenship. Refugees also appreciate the peaceful nature of Canada more than other immigrants.

Our literature review revealed that national-scale empirical studies on refugee integration in Canada are extremely scarce. Existing national-scale databases, such as IMDB and LSIC, could be more fully utilized, at least to replicate the existing studies of immigrant integration. For example, in addition to the descriptive analysis of refugees' economic and socio-cultural integration patterns, multiple regression analysis could be conducted to test whether and to what extent the factors influencing immigrants' integration apply to refugees. In other words, are refugees reporting less employment earnings than other immigrant categories *because* of their lower human capital, traumatic migration experience, or different social networks? More-

over, since IMDB and LSIC are longitudinal databases, regression analysis would be even more meaningful given that integration is a process that occurs over a period of time and longitudinal analysis allows control for non-observable individual effects. Finally, as LCRs and the resettled PSRs and GARs exhibit distinctive characteristics, such as age, source country, and educational attainment, these groups should be studied separately whenever possible.

In terms of integration services, a number of federal, provincial/territorial, and local services and programs assist refugees by providing initial orientation, employment and/or social support. Many services cater to both immigrant and refugee populations while a smaller number specialize in refugees. PSRs, GARs, protected persons, and LCRs have similarly wide access to various integration services. However, because LCRs and protected persons will often have resided in Canada for some time, they are less likely to access some of the services. Refugee claimants, being temporary residents, have the least access to services, which tend to target permanent residents.

Our review identified a number of integration service gaps for refugees. First, refugees, especially GARs and PSRs with little formal education and minimal official language skills, may benefit from tailored employment and language programs. Using a similar concept to the federally funded Enhanced Language Training, which mostly addresses the employment needs of highly educated newcomers, a program targeting refugees (and immigrants) at the other, lower end of the educational spectrum may be worth exploring. Second, several small-scale studies suggest that refugees' heightened need for mental health and family counselling may need to be addressed. Finally, although not directly addressed in our review, we found two sub-national studies reporting on the spatial mismatch between service providers that are concentrated in traditional settlement (downtown) and multi-ethnic areas on the one hand and refugees (especially GARs) who settle outside these areas (suburbs, non-urban) or in ethnic communities located far from multi-ethnic service centres on the other.[43]

A final area worthy of further exploration regards the availability of integration services to refugee claimants. The debate for and against upfront integration services is polarized. Those arguing for services to be available to all claimants as soon as they submit their application maintain that these early services are a good investment for harmonious Canada since more than half of claimants do end up becoming permanent residents. They also argue that early integration services are congruent with Canada's international obligations and humanitarian values. On the other hand, those arguing against such services hold that providing integration services to the claimants who will in the end face removal may be costly and hard to justify. Moreover, they fear that such services would jeopardize the integrity of the in-Canada refugee protection system by creating a pull factor for an influx of unfounded claims. Empirical evidence to substantiate this debate is surprisingly sparse, if not nonexistent, in Canada. The few studies we located were mainly based on Europe and showed mixed findings on the impact of asylum policy (including access to benefits) on the number of refugee claimants.[44] An empirical study examining the benefits and costs attached to providing integration services to claimants would be required to advance the current debate.

Annex: List of Integration Services Available to Refugees in Canada

The section 4 of this paper was partly based on an extensive search of federal, provincial and municipal websites, which snowballed into non-governmental service provider websites. The federal government has over 400 contribution agreements with various service providing organizations across the country. Among them, a sample of 51 service providing organizations was examined in greater details; they are listed below. In selecting the sample, an effort was made to look at a number of service providing organizations from each province; to identify services in major municipal centres and smaller refugee destinations; to balance services in urban vs. non-urban settings; to include services that were ethnic-specific as well as oriented towards the generic newcomers group; and to look at large integration service providers as well as smaller and more specialized organizations.

Federal Funding Source/Program

- Resettlement Assistance Program: RAP provides GARs with income support for one year, initial reception and temporary housing, and initial orientation to Canadian life.
- Interim Federal Health Program: IFH provides emergency health insurance**
- Language Instruction for Newcomers to Canada (LINC): Language classes
- Immigrant Settlement and Adaptation Program: Reception, orientation, interpretation and translation, employment, and counselling (excluding social and psycho-social counselling) services; Includes Enhanced Language Training, Canadian Orientation Abroad and Settlement Workers in Schools (SWIS)** programs
- HOST: Matches newcomers with volunteers

Provincial Funding Source/Program

British Columbia
- Information and Support Services: Needs assessments, orientation, support and referral**
- Community Bridging Services: Matches newcomers with volunteers** (school-aged refugee claimants only)
- English Language Services for Adults: English language classes** (claimants outside of Lower Mainland and Greater Victoria only)
- Information Support and English Language Services for Adults: Provides English language training with support for cultural adjustment, orientation, referral for multi-barriered immigrant and refugee newcomers**

Alberta
- English as a Second Language: Language classes in Calgary and Edmonton*
- Bridging to Work programs: assists newcomers in obtaining work experience and upgrade skills*
- Immigrant Settlement Program: (co-funded by CIC) orientation, interpretation/translation, referral, language assessments, employment readiness, and enhanced language training*

Saskatchewan
- Community Partnerships and Settlement: language training, literacy training, employment services, orientation*

Manitoba
- English as an Additional Language: English language classes**
- ENTRY program: Orientation**

Ontario
- Newcomer Settlement Program: Client needs assessments, referrals, orientation, employment services, and community development**

Quebec
- Programme d'accompagnement des nouveaux arrivants: Referral and orientation, employment-related services, translation, assistance in finding housing** (housing search only)
- Programme d'appui aux relations civique et culturelles : Promote cultural understanding, encourage diversity and eliminate racism
- Programme d'aide financière pour l'intégration linguistique des immigrants : Language

New Brunswick

Nova Scotia
- Settlement Program Funding: A variety of settlement services including employment services

Newfoundland and Labrador

Prince Edward Island
- Employment Assistance Services: Job search skills and resume writing** (claimants with work permits only)
- Immigrant Student Liaison Program: Assists students in adapting to new environment and facilitates participation of parents in school system*

Local Service Providing Organizations

British Columbia
- Abbotsford Community Services: Employment services, diversity education, language, legal advocacy and information, translation and interpretation, children/youth and senior specific programming, family support**
- Immigrant Services Society of BC: Language, employment services, bridging for women, orientation and referral, counselling, family and youth programs, community development and capacity building* (Language classes exclude claimants)
- Inland Refugee Society: Information and referral, housing support, financial and in-kind assistance to claimants, information on making refugee claims, language and life skills classes**
- MOSAIC: Employment services including case management, English for the workplace, computer orientation, language classes, family and youth programs, parenting, interpretation, information and support services, orientation, referral, legal advice** (except for language classes)
- Pacific Immigrant Resources Society: Language classes, parenting and leadership classes for women*
- Surrey Delta Immigrant Services Society: Family services including counselling, support for victims of abuse, children with mental health issues, employment services, youth specific programming, parenting, interpretation and translation* (language classes exclude claimants)
- Vancouver Association for the Survivors of Torture: Specialized medical and settlement services to survivors of torture and their families, research and development of methods, and public education*
- S.U.C.C.E.S.S.: Specialized services for seniors, women, children and youth, reception, housing support, health services, employment services, counselling, school support, family support, legal clinics (excluding immigration law), recreation, information, newcomer- volunteer matching, language, public education, computer literacy, and translation* (language classes exclude claimants)

Alberta
- Calgary Catholic Immigration Society: Orientation, referrals, translation, interpretation, housing referrals, recreational activities, non-therapeutic counselling, family resource centre and subsidized child care, seniors services, HOST, support program for survivors of torture, legal workshop series, employment services, language classes*
- Edmonton Mennonite Centre for Newcomers: Community development and capacity building, community-based counselling and counselling for survivors of torture and trauma, youth programs, cultural brokering in schools, language, employment services, programs for professionals, housing units*
- International Centre: Employment services, mentorship for foreign trained professionals, tutoring, translation and interpretation, nutrition education, cultural awareness education** (translation and interpretation services are free for permanent residents only)
- Manitoba Interfaith Immigration Council Welcome Place: Referral, orientation, legal rights, housing support, interpretation, support in making a claim, and advocacy**
- Needs Centre for War Affected Families (Winnipeg): Supports refugee and immigrant children, youth, adults affected by war, counselling, language and computer training, and family activities*

Saskatchewan
- Moosejaw Multicultural Council: Interpreters, translators, community outreach, space for group gatherings, language classes and HOST* (language classes and HOST exclude claimants)
- Regina Open Door Society: Orientation, referral, language classes and HOST, recreation, social activities, advocacy, youth programs, seniors groups, liaison, computer literacy, children's activities, interpretation and translation, employment services, family counselling and support, parenting*
- Saskatoon Open Door Society: Employment services, language classes, family support, parenting, and counselling* (language classes exclude claimants)

Manitoba
- Age and Opportunity (Winnipeg): Activities, and English classes for seniors*
- Jewish Child and Family Service: Orientation and needs assessment, referral, connect to schools, and employment services*
- Community Legal Education Association (Winnipeg): Courses on legal issues and free legal information on the phone*
- Employment Projects of Winnipeg: Employment services*
- Employment Solutions for Immigrant Youth (Win-

- Fort Garry Community Network Immigrant and Refugee Outreach Program (Winnipeg): Home visits, referrals, organize community meetings*
- Immigrant Women's Counselling Services: Counselling for immigrant women with violence in

Ontario
- Arab Community Centre of Toronto: Information and referral, housing, legal assistance, translation, interpretation, counselling, parenting, orientation, employment services, legal services, cultural activities, and volunteer placements**
- Canadian Centre for Victims of Torture (Toronto): Medical, mental health and social care, legal help, crisis intervention, art therapy, community support, support groups, and counselling*
- COSTI (Toronto): Language, youth and children services, employment services, counselling and mental health services, referral, orientation, temporary accommodation, women and seniors services, and computer literacy**
- Ethiopian Association in the GTA: Reception, orientation, counselling, referral, employment services, case management, mental health counselling, HIV/AIDS prevention, and language* (language classes exclude claimants)
- Newcomer Women's Services of Toronto: Employment services, language, life skills development, volunteer opportunities, counselling, referral, and legal assistance* (language classes exclude claimants)
- Toronto Chinese Community Services Association: Counselling, orientation, employment services, computer services, language, women and seniors support groups, parenting programs, children and youth programming*
- Romero House (Toronto): Subsidized housing for refugee claimants, conversation classes, women's group, community events, employment services, housing support, paralegal services, translation, advocacy**
- Vietnamese Association Toronto: Settlement and adaptation services, employment services, domestic violence prevention, gambling counselling, family and youth at-risk counselling, language, advocacy, translation and interpretation* (settlement and adaptation services exclude claimants)
- London Cross Cultural Learning Centre: Orientation, referral, counselling, employment services, language, HOST, and translation*
- OCISO (Ottawa): Housing support, legal aid services, settlement counselling, orientation, job search workshops, women's programming, language, counselling and psychotherapy, multicultural liaison officer in schools, summer camp, and community development*

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Quebec
- Access Travail : Employment services*
- Accueil et integration Bas-Saint-Laurent : Referral, orientation and public education*
- Carrefour d'aide aux nouveaux arrivants : Orientation, information, interpretation, housing support, language, legal information, parenting*
- CASA C.A.F.I. (Montreal): Legal information, orientation, referral, translation, employment services, housing support, parenting, school liaison, programs for older immigrants, and language classes*
- R.I.R.E. (Montreal): Computer literacy, language classes, community education, programs for professionals, youth placements* (language classes and youth placements exclude claimants)
- L'Hirondelle (Quebec): Information, orientation, translation, housing search, interpretation, liaison, family summer camps, language classes, employment counselling, referrals, newcomer-volunteer twinning, and mentoring*
- La Maisonnee (Quebec): Language, employment services, orientation, support in making claims, legal information, interpretation, housing support, homework help, mentoring, inter-cultural twinning**
- Services et formation aux immigrants en Monteregie: Orientation, referral, employment services, language classes*

New Brunswick
- English Language Program University of New Brunswick: Language classes*
- Multicultural Association of Fredericton: Language classes, employment services, summer camps, computer skills, public education** (except for language classes)
- Multicultural Association of the Greater Moncton Area: ISAP funded settlement services, language classes and HOST program
- St. John YM-YWCA: General recreational programs open to the public**

Nova Scotia
- Halifax Immigrant Learning Centre: Language and literacy programs, English in the Workplace, computer literacy
- Metropolitan Immigrant Settlement Association (Halifax): Assessment, referral, follow-up, orientation, out-reach in homes and schools, intervention support, language assessment, employment services, and cultural and family awareness*
- YMCA Centre for Immigrant Programs (Halifax): Youth outreach and school support**

- Centre for Diverse Visible Cultures (Halifax): Language, literacy, computer literacy, information, legal advice, bereavement support, family counselling and support, translation, and recreation**

Newfoundland and Labrador
- The Association for New Canadians (St. John's Newfoundland): Housing search, orientation, referral support in making a claim, interpretation, translation, public education, women's group, social and recreational programming, tutoring, language, employment services** (except for language classes)

Prince Edward Island
- PEI Association for Newcomers to Canada: Programme D'Établissement des francophones including housing search support, referral, interpretation, matching with volunteers, community awareness, employment services; Internationally educated health professionals program; language testing*
- * It is unclear whether some or all services are/are not provided to claimants unless otherwise specified.
- ** Services are provided to claimants as well as to resettled refugees, LCRs and protected persons unless otherwise specified.

Notes
1. Citizenship and Immigration Canada, *Facts and Figures 2005: Immigration Overview – Permanent and Temporary Residents* (Ottawa: Minister of Public Works and Government Services, 2006), 3.
2. Following is a list of studies on refugee integration at the sub-national level in chronological order: Joseph H. Michalski and Youssef Habib, "A Study of Iraqi Refugees: Final Report" (Toronto: Centre for Applied Social Research, University of Toronto, 1997); Usha George and Ka Tat Tsang, "The Settlement and Adaptation of Formerly-Yugoslavian Newcomers" (Toronto: Faculty of Social Work, University of Toronto, 1998); Morton Beiser, Angela Shik, and Monika Curyk, "New Canadian Children and Youth Study Literature Review" (for Health Canada, March 31, 1999); Neita Kay Israelite, Arlene Herman, Faduma Ahmed Alim, Hawa Abdullahi Mohamed, and Yasmin Khan, "Settlement Experiences of Somali Refugee Women in Toronto" (presentation, Seventh International Congress of Somali Studies, York University, Toronto, July 1999); Samuel Noh, Morton Beiser, Violet Kaspar, Feng Hou, and Joanna Rummens, "Perceived Racial Discrimination, Depression, and Coping: A Study of Southeast Asian Refugees in Canada," *Journal of Health and Social Behavior* 40, no. 3 (September 1999): 193–207; Usha George and M. S. Mwarigha, "Consultation on Settlement Programming for African Newcomers," Final Report for Citizenship and Immigration Canada, Ontario Adminstration of Settlement and Integration Services (Toronto: Centre for Applied Social Research, Faculty

of Social Work, University of Toronto, 1999); Monica Boyd, "Gender, Refugee Status and Permanent Settlement," *Gender Issues* 17, no. 3 (1999): 5–25; Morton Beiser, *Strangers at the Gate: The "Boat People's" First Ten Years in Canada* (Toronto: University of Toronto Press, 1999); Baha Abu-Laban, Tracey Derwing, Harvey Krahn, Marlene Mulder, and Lori Wilkinson, "The Resettlement of Refugees in Alberta 1992–1997" (Edmonton: PCERII and the Population Research Laboratory, University of Alberta, 1999); Faranak Miraftab, "Sheltering Refugees: The Housing Experience of Refugees in Metropolitan Vancouver," *Canadian Journal of Urban Research* 9, no. 1 (June 2000): 42–63; Morton Beiser and Feng Hou, "Gender Differences in Language Acquisition and Employment Consequences among Southeast Asian Refugees in Canada," *Canadian Public Policy / Analyse de Politiques* 26, no. 3 (September 2000): 311–330; Harvey Krahn, Tracey Derwing, Marlene Mulder, and Lori Wilkinson, "Educated and Underemployed: Refugee Experiences in the Alberta Labour Market," *Journal of International Migration and Integration* 1, no. 1 (2000): 59–84; Kenise Murphy Kilbride, Paul Anisef, Etta Baichman-Anisef, and Randa Khattar, "Between Two Worlds: The Experiences and Concerns of Immigrant Youth in Ontario" (Toronto: CERIS, 2000); Paul Anisef and Kenise Murphy Kilbride, "The Needs of Newcomer Youth and Emerging 'Best Practices' to Meet Those Needs," Final Report to the Settlement Directorate, Ontario Region, Citizenship and Immigration Canada (Toronto: CERIS, 2000); Gillian Creese and Robyn Dowling, "Gendering Immigration: The Experience of Women in Sydney and Vancouver," Working Paper No. 01–04 (Vancouver: RIIM, January 2001); Jeff Chenoweth and Laura Burdick, "The Path to Integration: Meeting the Special Needs of Refugee Elders in Resettlement." *Refuge* 20, no. 1 (November 2001):20–29; E. Pittaway and Linda Bartolomei, "Refugees, Race and Gender," *Refuge* 19 (2001): 21–32; Morton Beiser and Feng Hou, "Language Acquisition, Unemployment and Depressive Disorder among Southeast Asian Refugees: A 10-Year Study," *Social Science and Medicine* 53 (2001): 1321–1334; Rose Damaris and Brian Ray, "Le logement des réfugiés à Montréal trois ans après leur arrivée : le cas des demandeurs d'asile ayant obtenu la résidence permanente," *Journal of International Migration and Integration/ Revue de l'intégration et de la migration internationale* 2, no. 4 (2001): 455–92; Dan Hiebert, "Canadian Immigration and the Selection-Settlement Services Trade-off: Exploring Immigrant Economic Participation in British Columbia," Working Paper No. 02–05 (Vancouver: RIIM, February 2002); Lori Wilkinson, "Factors Influencing the Academic Success of Refugee Youth in Canada," *Journal of Youth Studies* 5, no. 2 (June 2002): 173–193; Morton Beiser, "Ethnic Identity, Resettlement Stress and Depressive Affect Among Southeast Asians in Canada," Working Paper No. 17 (Toronto: CERIS, October 2002); Xin Ma, "The First Ten Years in Canada: A Multi-Level Assessment of Behavioural and Emotional Problems of Immigrant Children," *Canadian Public Policy* 28, no. 3 (2002); Dan Hiebert, "Are Immigrants Welcome? Introducing the Vancouver Community Studies Survey," Working Paper No. 03–06 (Vancouver: RIIM, March 2003); Joanna Anneke Rummens and Rajko Seat, "Assessing the Impact of Kosovo Conflict on the Mental Health and Well Being of Newcomer Serbian Children and Youth in the Greater Toronto Area," Working Paper No. 25 (Toronto: CERIS, May 2003); Tracey M. Derwing and Marlene Mulder, "The Kosovar Sponsoring Experience in Northern Alberta," Working Paper No. WP05–03 (Edmonton: PCERII, September 2003); Morton Beiser, L. Simich, and N. Pandalangat, "Community in Distress: Mental Health Needs and Help-seeking in the Tamil Community in Toronto," *International Migration* 41, no. 5 (December 2003): 233–245; Jean Renaud, Victor Piché, and Jean-François Godin, "One's Bad and the Other One's Worse: Differences in Economic Integration Between Asylum Seekers and Refugees Selected Abroad," *Canadian Ethnic Studies/Études ethniques au Canada* 35, no. 2 (2003): 86–133; Kathy Sherrell, Jennifer Hyndman, and Fisnik Preniqi, "Sharing the Wealth, Spreading the Burden? The Settlement of Kosovar Refugees in Small B.C. Cities," Working Paper No. 04–06 (Vancouver: RIIM, February 2004); "The Study of Sudanese Settlement in Ontario: Final Report" (Citizenship and Immigration Canada, Settlement Directorate, Ontario, May 28, 2004); Kathy Sherrell and Jennifer Hyndman, "Global Minds, Local Bodies: Kosovar Transnational Connections Beyond British Columbia." 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Murdie, "Pathways to Housing: The Experiences of Sponsored Refugees and Refugee Claimants in Accessing Permanent Housing in Toronto" (Toronto: CERIS, May 2005); Morton Beiser, Linda Ogilvie, Joanna Anneke Rummens, Robert Armstrong, and Jacqueline Oxman-Martinez, "The New Canadian Children and Youth Study: Research to Fill a Gap in Canada's Children's Agenda," *Canadian Issues/Thèmes canadiens*, Special Issue on Immigration and Intersections of Diversity (May 2005); Dan Hiebert, "Research on Immigration and Integration in the Metropolis," Commentary Series Working Paper No. 05–04 (Vancouver: RIIM, July 2005); Craig Watson "Integration of Government Assisted Refugees in British Columbia" (Vancouver: Faculty of Arts and Sciences, Simon Fraser University, Spring 2006); James McLean, Chris Friesen, and Jennifer Hyndman, "The First 365 Days: Acehnese Refugees in Vancouver, British Columbia," Working Paper No. 06–07 (Vancouver: RIIM, June 2006); Feng Hou and Morton Beiser, "Learning the Language of a New Country: A Ten-year Study of English Acquisition by South-East Asian Refugees in Canada," International Migration 44, no. 1 (2006): 135–165.

3. The term "integration" is used loosely in this paper to refer to a relatively harmonious pluralist model of diversity.

4. UK Home Office, *Integration: Mapping the Field* (Croyden: Home Office, 2003), 113.

5. Augie Fleras and Jean Leonard Elliot, *Multiculturalism in Canada: The Challenge of Diversity* (Scarborough: Nelson Canada, 1992); Augie Fleras and Jean Leonard Elliot, *Unequal Relations: An Introduction to Race, Ethnic and Aboriginal Dynamics in Canada* (Scarborough: Prentice Hall Canada, 1996); Peter S. Li, "The Multiculturalism Debate," in *Race and Ethnic*

Relations in Canada, 2nd ed., ed. P. S. Lee (Oxford: Oxford University Press, 1999); Gertrud Neuwirth, "Toward a Theory of Immigrant Integration," in *Immigrant Canada: Demographic, Economic and Social Challenges,* ed. S. S. Halli and L. Driedger (Toronto: University of Toronto Press, 1999).

6. Citizenship and Immigration Canada, *Facts and Figures 2005: Immigration Overview – Permanent and Temporary Residents* (Ottawa: Minister of Public Works and Government Services, 2006).

7. Characteristics of refugees and immigrants granted permanent residence in 2005 (PAs and dependents) are shown in the table on the right.

8. The table below provides historic figures based on Facts and Figures 2005, Citizenship and Immigration Canada. "FC" stands for Family Class and "SWPA" for Skilled Worker Principal Applicants.

9. The distribution discussed here is of aggregated totals (combining principal applicants and dependents) within each category.

		LCRs	GARs	PSRs	Family Class	Skilled Workers	All
Gender	Men	54%	50%	52%	47%	53%	49%
	Women	46%	50%	48%	53%	47%	51%
Age	0 to 14	15%	37%	26%	26%	12%	22%
	15 to 44	69%	54%	65%	67%	69%	66%
	45 and over	16%	9%	10%	8%	19%	13%
Areas of Birth	Middle-East/ Africa	27%	42%	64%	20%	12%	19%
	Asia/Pacific	30%	29%	29%	54%	58%	53%
	Latin America	30%	21%	5%	8%	18%	13%
	Europe & Central Asia	13%	9%	3%	18%	12%	16%
Total	Total	19,935	7,416	2,976	63,352	130,242	262,236

(Source: Facts and Figures 2005, Citizenship and Immigration Canada)

Per cent women by category by landing year, 1990–2005													
	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
LCRs	33	36	38	43	40	41	41	41	42	42	42	42	43
GARs	40	43	44	44	47	46	47	43	46	47	48	48	47
PSRs	40	38	38	41	45	46	48	47	48	47	46	48	50
FC	55	56	57	58	58	58	59	60	61	61	62	61	61
SWPA	33	40	42	42	32	32	30	29	28	25	24	25	25

Per cent aged 14 and under by category by landing year, 1990–2005													
	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
LCRs	18	20	19	21	16	16	18	17	19	19	18	17	16
GARs	27	31	32	30	31	30	31	31	32	32	34	34	33
PSRs	21	18	17	19	23	27	28	29	28	32	27	30	24
FC	13	12	14	16	14	14	14	14	15	14	12	12	12
SWPA	0	0	0	0	0	0	0	0	0	0	0	0	0

Per cent from Middle East and Africa by category by landing year, 1990–2005													
	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
LCRs	48	58	47	41	30	28	37	40	45	44	37	33	31
GARs	24	32	35	37	23	20	22	28	23	27	32	41	49
PSRs	16	21	26	34	35	35	38	27	29	30	41	40	44
FC	9	10	9	10	9	10	10	10	10	11	12	12	10
SWPA	23	18	16	14	15	16	15	16	18	17	16	20	23

| Per cent with thirteen or more years of education, trade certificates or university degree or above among fifteen years and older by category by landing year, 1990–2005													
LCRs	41	37	37	35	42	35	38	39	36	34	35	37	37
GARs	28	20	18	22	33	40	36	33	33	32	22	20	16
PSRs	43	42	40	31	26	31	29	33	30	29	25	24	20
FC	31	31	30	28	27	28	32	34	37	40	41	43	43
SWPA	69	68	64	69	81	87	90	92	94	96	97	97	98

10. This total includes *all* immigrants and refugees who were granted permanent residence in 2005, of which the categories presented in this table are only a part. For example, this table does not include business and investment classes.

11. This section is based on two sources. First, a systematic and exhaustive search of literature in five databases (Econolit, CSA illumine, ABI/INFORM Global, Web of science and JStor) for publications within the last ten years containing the following keywords was conducted: "refugees and Canada" with integration, assimilation, settlement, adjustment, adaptation, social, cohesion, or enclaves. Second, two nationally representative survey data, LSIC and IMDB, were analyzed. Unfortunately, neither could clearly report on the effect of Canada's most recent shift in selection policies with respect to the effect of the "ability to establish" regulatory criterion (Immigration and Refugee Protection Act 2002) due to its relatively recent introduction.

12. LSIC "refugee" figure also includes a few "refugees abroad."

13. Albeit being the best source of data for economic outcomes of refugees, IMDB only contain information about refugees who filed an income tax only (approximately 40 to 50 per cent of past arrivals). Conclusions should be made with caution.

14. There are strong reasons to believe that GARs who arrived in 1994 and 1995 were highly educated refugees from the Bosnia and Herzegovina conflict of 1992–1995 in Europe: see Steven L. Burg and Paul S. Shoup, *The War in Bosnia-Herzegovina: Ethnic Conflict and International Intervention* (Amonck: M. E. Sharpe, 1999); "Bosnia and Herzegovina - Canadian Aid," online: DFAIT-MAECI Homepage, <http://www.dfait-maeci.gc.ca/canada-europa/> (accessed 11 May 2007).

CIC data as shown below also clearly demonstrates that the proportion of GARs originating from Bosnia-Herzegovina and its neighbour country, Croatia, increased substantially in 1993 and 1994.

GARs from Bosnia-Herzegovina and Croatia, by landing year									
Cohort	1990	1991	1992	1993	1994	1995	1996	1997	1998
% of GARs from Bosnia-Herzegovina	0.0%	0.0%	0.0%	14.4%	49.8%	63.6%	56.7%	41.9%	41.7%
%% of GARs from Bosnia-Herzegovina with bachelors degree	N/A	N/A	N/A	19%	24%	16%	11%	7%	5%

Source: Facts and Figures 2005, Citizenship and Immigration Canada

Data also show that these GARs cohorts were highly educated.

Proportion of Refugees with a Bachelor's Degree; Their Respective Average Earnings in $1000, 1995-2003 Tax Years
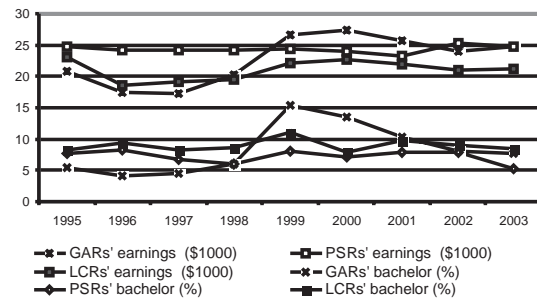
Sources: Facts and Figures 2005, Citizenship and Immigration Canada, and Longitudinal Immigration Database (IMDB), Compendium Tables 2003, Statistics Canada, online: IMDB-BDIM Homepage, www24.statcan.ca (accessed 11 May 2007).

15. Don DeVoretz, Sergyi Pivnenko, and Morton Beiser, "The Economic Experience of Refugees in Canada," RIIM Working Paper No.04–04 (Vancouver: Centre of Excellence for Research on Immigration and Integration in the Metropolis, May 2004), 17.

16. Grant Schellenberg and Hélène Maheux, "Immigrants' Perspectives on Their First Four Years in Canada: Highlights from Three Waves of the Longitudinal Survey of Immigrants to Canada," *Canadian Social Trends* (Ottawa: Statistics Canada, April 2007), 34, online: <http://www.statcan.ca/english/freepub/11–008-XIE/2007000/pdf/11–008-XIE20070009627.pdf>

17. The citizenship figures were presented by another variable on expectations about life in Canada. Since it was impossible to disaggregate the table, we decided to show the original ranges.

18. Navjot K. Lamba, "Social Capital and Refugee Resettlement: The Social Networks of Refugees in Canada," *Journal of International Migration and Integration* 3 (2003): 335–360. The study examined GARs and PSRs who were destined to Alberta between 1992 and 1997, and excludes LCRs. At the time of the interviews, approximately 85 per cent were still in Alberta while 15 per cent had migrated to Ontario or British Columbia.

19. Navjot K. Lamba, "The Employment Experiences of Canadian Refugees: Measuring the Impact of Human and Social Capital on Quality of Employment," *Candian Review of Sociology and Anthropology* 1(2003): 59.

20. Citizenship and Immigration Canada, Terms and Conditions, Settlement Contribution Programs, April 1, 2005 – March 31, 2010.

21. Murdie, "Pathways to Housing," 8.

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Resettlement's Renaissance:
A Cautionary Advocacy

Shauna Labman

Abstract

Arising out of UNHCR's Global Consultations was a renewed emphasis on the role of resettlement as a protection tool, durable solution, and burden-sharing mechanism. Resettlement is a useful instrument for all three reasons enumerated by UNHCR. Its malleability, however, also makes it prone to manipulation. It can be, and has been, used by states to obfuscate an unwillingness to meet their international legal obligations through a replacement of refugee protection by migrant selection. The argument is made here for why resettlement is a necessary component of refugee protection, particularly in the current period of securitization following the events of 11 September 2001. This is followed by a discussion of the dangers of the abusive use of resettlement to the overall refugee protection scheme. Models for more structured resettlement are examined with a view to understanding what reform is needed. In conclusion, recommendations for resettlement reform are provided.

Résumé

Suite aux Consultations mondiales du HCR, on a assisté à un regain d'emphase sur la réinstallation comme instrument de protection, comme solution durable et comme mécanisme de partage international de la charge. La réinstallation est un instrument utile pour chacune des trois raisons énumérées par le HCR. Cependant, sa malléabilité la rend aussi susceptible à la manipulation. Elle peut-et cela a déjà été le cas-être utilisée par certains états pour dissimuler leur réticence à honorer leurs engagements légaux internationaux en substituant la sélection des migrants à la protection des réfugiés. L'article met de l'avant des arguments démontrant pourquoi la réinstallation est un élément essentiel pour la protection des réfugiés, en particulier en la présente période de " sécurisation " suivant les événements du 11 septembre 2001. Une discussion s'ensuit sur les dangers de l'utilisation abusive de la réinstallation au détriment du cadre global de protection des réfugiés. Pour conclure, des modèles de réinstallation plus structurée sont examinés dans le but de déterminer les réformes requises.

A refugee, by definition, is an individual who has fled his or her homeland on the basis of a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.[1] While the refugee definition applies equally to all who are found to meet it, the protection attached to refugee status can differ greatly. Protection ranges from new citizenship to crowded camps. The determining factor is where refugee status is claimed. The *Convention relating to the Status of Refugees* (*Refugee Convention*) obliges signatory states to not *refoule* refugees who have arrived within the state's territory.[2] While signatory states grant refugee status and sometimes citizenship to the refugees who reach their shores, other states, often overwhelmed by refugees and determined to discourage further flows, have not signed the *Refugee Convention*.

In signatory states, refugee protection is conferred under domestic legislation once the state determines that an individual meets the refugee definition. In non-signatory states that lack similar refugee laws or status determination procedures, the United Nations High Commissioner for Refugees (UNHCR) may grant mandate refugee status under the *Statute of the United Nations High Commissioner for Refugees*.[3] UNHCR then seeks "durable solutions" for refugees. Durable solutions comprise local integration in the receiving country, voluntary repatriation to one's country of origin where the situation has changed so as to make this a possibility, or resettlement to another country.[4] Where

neither local integration nor repatriation is possible, resettlement is the only option.

Resettlement requires a third country to be willing to accept refugees into its territory. While signatory states to the *Refugee Convention* have promised not to *refoule* asylum seekers at their borders, they have not committed to accept refugees for resettlement. Too many of the world's refugees are therefore left to linger in non-durable conditions in countries of first asylum that are often only minimally safer than the countries they have fled. This article provides an examination of resettlement and an argument for its increased use as a tool of protection and responsibility-sharing while also warning against resettlement's vulnerability to manipulation.

Resettlement

As it approached its fiftieth anniversary in 2001, UNHCR was in the midst of an identity crisis. States that were the very authors of the *Refugee Convention* were vocally challenging its continued relevance and surreptitiously evading their obligations.[5] In both response to the crisis and in celebration of the anniversary, UNHCR initiated the Global Consultations on International Protection (Global Consultations) to address the situation through ministerial meetings, expert roundtables, and policy formulation.[6] One of the key developments to arise out of the resulting *Agenda for Protection* was a renewed emphasis on the role of resettlement.[7]

Resettlement is defined by UNHCR as "the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – as refugees – with permanent residence status."[8] The decision to resettle a refugee is only made in the absence of other options – local integration or repatriation.[9] There is an undercurrent of debate as to whether resettled refugees should be granted permanent residence.[10] Nor does refugee resettlement only occur through arrangements between UNHCR and states. It can also occur in certain countries through referrals from organizations other than UNHCR or through private sponsorship by an organization or individual of the third state. This article, however, is confined to a consideration of "government-assisted"[11] permanent resettlement through UNHCR.

Resettlement has a checkered past that predates the *Refugee Convention*. The International Refugee Organization, established in 1946, resettled over 1 million refugees between 1947 and 1951.[12] In fact, resettlement was the tool of choice of all refugee organizations that preceded UNHCR.[13] James Hathaway notes there was an assumption during this earlier period that "there was little likelihood that refugees would be accommodated in the first asylum country."[14] As enshrined in Article 33(1), the *Refugee Con-*

vention shifted the focus of refugee protection to the principle of *non-refoulement.* The boat people crisis of the 1970s and early 1980s brought a resurgence in resettlement enthusiasm with 1.2 million Indo-Chinese resettled by UNHCR between 1976 and 1989. Gary Troeller, a UNHCR representative, reports that by the late 1970s UNHCR was involved in the resettlement of 200,000 persons per year, and that at one point in 1979 "resettlement was viewed as the only viable solution for 1 in 20 of the global refugee population under the responsibility of UNHCR."[15] Beginning in the late 1980s however, resettlement came to be viewed by UNHCR as the least preferred durable solution. Concerns that large-scale resettlement was leading to the abandonment of asylum in first countries and serving as a pull factor for individuals to leave home for social and economic reasons, combined with an increased emphasis on voluntary repatriation following the end of the Cold War, limited enthusiasm for resettlement.[16] By 1996 UNHCR resettled only 1 in every 400 of the global refugee population under its care.[17]

In its current reinvigorated state, UNHCR has proclaimed that resettlement "serves three equally important functions:"

> *First*, it is a tool to provide international protection and meet the special needs of individual refugees whose life, liberty, safety, health or other fundamental rights are at risk in the country where they have sought refuge. *Second,* it is a durable solution for larger numbers or groups of refugees, alongside the other durable solutions of voluntary repatriation and local integration. *Third,* it can be a tangible expression of international solidarity and a responsibility sharing mechanism, allowing States to help share each other's burdens, and reduce problems impacting the country of first asylum."[18]

While the re-emergence of resettlement discourse is to be applauded, the difficulty with UNHCR's current tripartite construction is that it risks sending resettlement into its own dizzyingly schizophrenic identity crisis – uncertain of how to actualize its role in an effective manner.

Resettlement is a useful tool for all three reasons enumerated by UNHCR. Its malleability, however, also makes it prone to manipulation. It can be, and has been, used by states to obfuscate an unwillingness to meet their legal obligations under the *Refugee Convention* through a replacement of refugee protection by migrant selection. What follows can best be termed "cautionary advocacy." The argument is first made that resettlement is a necessary component of refugee protection, particularly in the current period of securitization following the events of 11 September 2001. This section is followed by a discussion of

the dangers of the abusive use of resettlement to the overall refugee protection scheme. Models for more structured resettlement are then examined with a view to at least understanding what reform is needed. In conclusion, recommendations for resettlement reform are provided.

Why Resettlement?

UNHCR reported that by the end of 2005 the global number of refugees was an estimated 8.7 million persons.[19] One in four of these refugees, 24 per cent, are in either Pakistan or the Islamic Republic of Iran.[20] In total, by UNHCR bureau divisions, over 2.5 million refugees are hosted in Africa, excluding North Africa, and almost another 2.5 million are in CASWANAME, UNHCR's bureau encompassing Central Asia, South West Asia, North Africa, and the Middle East. Europe hosts just under 2.0 million refugees and there are over 800,000 in Asia and the Pacific. In the Americas, in total, there are fewer than 600,000 refugees.[21] The numbers highlight "that refugees and mass movements are first and foremost a "developing country" problem and that the biggest "donors" are in reality developing countries who put at risk their fragile environment, economy, and society to provide refuge to millions."[22] Matthew Gibney terms this uneven distribution the "tyranny of geography."[23] In somewhat more neutral parlance, it raises the issue of burden sharing.[24] Following a review of the asylum policies of the US, Germany, the UK, and Australia, Gibney writes:

> …the limitations of the current international response are rooted in the fact that states have failed to agree upon fair terms for the distribution of responsibility for refugees (resulting in huge inequalities in state burdens) and that most states are content to 'free ride' off countries that have more inclusive asylum policies…[25]

In addition to more inclusive policies, or conversely less forceful interdiction, the "tyranny of geography" can be taken to convey that certain countries, particularly those in Africa, Asia, and the Middle East are simply closer to and more easily accessed by refugee flows.

The *Refugee Convention* acknowledges the need for burden sharing, considering in its Preamble "that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation."[26] There is no further mention of burden sharing in the *Refugee Convention* or in the subsequent 1967 *Protocol relating to the Status of Refugees* (*1967 Protocol*).[27] Resettlement is by no means the only form of burden sharing. Many countries also make significant financial

contributions to refugee receiving countries and UNHCR.[28] One controversial argument by Peter Schuck, for instance, recommends that all non-refugee producing states be allocated a yearly quota of refugees for care or resettlement that they can either absorb themselves or pay another country to provide surrogate care.[29] Goal 3(6) of UNHCR's *Agenda for Protection*, however, outlines the significant role of resettlement in burden sharing:

> 3(6): Resettlement used more effectively as a tool of burden-sharing.
>
> – States to examine how more flexible resettlement criteria could be applied with regard to refugees recognized on a *prima facie* basis in mass displacement situations to whom Article 1 F does not apply, coupled with, as appropriate, temporary humanitarian evacuation programmes.
>
> – The Working Group on Resettlement to examine further the potential use of resettlement as a burden-sharing tool, which would include the issue of criteria to be applied in mass displacement situations, especially where the prospect of other durable solutions is remote or absent.[30]

As of 1 March 2006, there were 147 states party to the *Refugee Convention* or *1967 Protocol* or both.[31] Stretching to the smallest numbers, there are a mere sixteen resettlement countries with yearly resettlement numbers ranging from 53,813 in the US to 29 in Mexico.[32] Gil Loescher and James Milner note:

> [t]he overwhelming majority of long-term refugees could be eligible for resettlement, but a lack of resettlement opportunities, of resettlement staff to prepare submissions, and inefficiencies in the process of preparing and submitting resettlement cases have resulted in the under-utilisation of this durable solution.[33]

In its current incarnation, resettlement is not an effective tool of burden sharing.

The argument for resettlement is difficult. Not because the image of wasted lives in limbo is not compelling but because it is not seen. It is as if the refugees have been rendered invisible. Bill Frelick offers the following description of the reality for these individuals:

> Millions of refugees worldwide have been relegated to a limbo existence, warehoused in camps or settlements with no prospects for voluntary repatriation or local integration. Children born and raised within the confines of camps often never see normal life outside the fences. These populations often become

dependent and despondent, with predictably negative social consequence.[34]

Highlighting the refugee's invisibility, Jennifer Hyndman argues that camps "remove evidence of human displacement from view and contain 'the problem' without resolution, as noncommunities of the excluded."[35]

For those left in the camps, rural outskirts, or apartment complexes in urban corners, there is the assumption that while not receiving government protection, refugees are nonetheless within UNHCR's protective bubble. To an extent this assumption is true. These refugees are recognized by UNHCR and receive protection under its mandate. UNHCR is able to offer basic aid and assistance. As Loescher explains: "UNHCR is identified primarily with assistance – the delivery of food, shelter, and medicine – to refugees and war-affected populations."[36] Hyndman notes, though, that "UNHCR is careful not to make the camps too attractive to potential refugees or other migrants by maintaining minimum educational and other facilities, an approach that has been called 'humane deterrence.'"[37]

While a comfortable camp environment and the chance at resettlement risk serving as pull factors that encourage migrant flows, these concerns are muted by the reality of UNHCR's powerlessness in the camp setting. Loescher indicates:

> The central importance of human rights protection of displaced and threatened populations is frequently neglected. [...] While UNHCR and other humanitarian organizations are able to deliver large quantities of humanitarian supplies under extremely difficult conditions, they are much less successful in protecting civilians from human rights abuses…[38]

He adds, "host governments or dissident warlords ultimately exercise control over the agency's operational environment."[39] In the chapter that follows Loescher's article, Arthur Helton recalls the image of soldiers from the "benign refugee-hosting state" of Tanzania marching Rwandan refugees back across the border at gunpoint in December 1996.[40]

Beyond invisibility, the primary difficulty with resettlement is that it is undertaken by states on an entirely voluntary basis. Unlike the obligation on all signatory countries not to *refoule* refugees at their borders, there is no requirement that signatory states bring refugees to their borders. As Janet Dench notes, "[i]nstead of addressing how people fleeing persecution might seek asylum in other countries, the Refugee Convention relating to the Status of Refugees focused on the obligation of states not to *refoule* a refugee to persecution."[41] The *Refugee Convention* is, therefore, *reactive* in its structure. Resettlement in contrast is in Hel-

ton's terms a "proactive refugee policy."[42] A coherent and comprehensive refugee policy must be both *proactive* and *reactive*.

This is an important point to highlight. An argument for increased resettlement should not be interpreted as a criticism of the principle of *non-refoulement* or as an argument that it should be diminished in favour of increased resettlement. What must be acknowledged is that the current world climate means that there are increased obstacles to asylum seekers reaching safe countries on their own. In the introduction to UNHCR's Global Consultations the editors note that:

> it has been noticeable that the post-September 11 context has been used to broaden the scope of provisions of the 1951 Convention allowing refugees to be excluded from refugee status and/or to be expelled. The degree of collaboration between immigration and asylum authorities and the intelligence and criminal law enforcement branches has also been stepped up.[43]

For Catherine Dauvergne, "[t]he worldwide fear of terror has overlapped and intertwined with the fear of illegal migration."[44] Although intentions are difficult to gauge and may be overlapping, it can safely be said that in some circumstances refugees are being targeted for exclusion while in others they are the unintentional victims. I will deal with the latter argument first and the former below under the heading "Dangers of Abuse."

While Article 31 of the *Refugee Convention* prevents the imposition of penalties for illegal entry by asylum seekers, it does not and cannot prevent a country from deterring illegal entry – as this is, in many ways, the essence of statehood.[45] Refugees inevitably travel within mixed migratory flows.[46] There is no way in advance to decipher between legitimate refugees and economic migrants or even potential terrorists for that matter. While this does not legitimize the vilification of all migrants, it does pose a conundrum for refugee protection. UNHCR reports a measured decrease in the number of asylum claims registered in industrialized countries from 2004 to 2005 and links the reduction to "increasingly restrictive national asylum policies."[47]

The intent of this article is neither to criticize nor support these policies although their recent explosion is remarkable.[48] Rather, in the face of these policies, the argument is that increased resettlement makes particular sense. Troeller notes:

> There is no necessary or proven correlation between increased resettlement and a reduction in the number of those legitimately or illegitimately seeking asylum. On the other hand,

increased resettlement opportunities may reduce the motivation to move 'irregularly' in search of asylum.[49]

Further, as borders turn into barriers, legitimate asylum seekers are finding it more and more difficult to find the protection envisioned by the *Refugee Convention*. John Fredriksson, one of the few people writing directly on resettlement, has therefore argued that "[i]n the aftermath of the tragic events of 11 September, [resettlement] may prove to be one of the most useful tools in the protection kit."[50] Joanne van Selm similarly suggests the post-11 September security measures "could in fact benefit some of those people seeking asylum and refuge by ensuring other, safer, means of arrival, including the expansion of resettlement."[51]

And indeed, according to Hathaway, there has been a "recent renaissance of interest by some governments" in resettlement schemes.[52] The top three resettlement countries have traditionally been and continue to be the US, Australia, and Canada.[53] In 2005, Australia and Canada each resettled approximately ten times the number of refugees as Sweden, the fourth largest resettlement country, and the US resettled more than fifty times Sweden's resettlement numbers.[54] The issue, however, is whether resettlement is truly being used as a tool of protection or as a tool of selection and evasion – what non-governmental organizations (NGOs) have referred to as a "fig leaf for policies of migration control."[55]

Dangers of Abuse

It is not within the scope of this article to provide a comprehensive review and analysis of the instances and structures of abuse that occur. Rather, what follows is a brief survey of the top three resettlement countries – Canada, the US, and Australia – and the difficulties with their current resettlement schemes. This is followed by a comment on the UK, which has recently initiated a resettlement program.56

Over the years the Canadian government has received pointed critiques that its resettlement program amounted to cherry-picking.[57] With the enactment of the new *Immigration and Refugee Protection Act* (*IRPA*) in 2001, the Government of Canada claimed a shift in Canadian resettlement policy toward protection rather than ability to establish.[58] Through regulations under *IRPA*, the "successful establishment" criterion that requires refugees to show that they have good settlement potential is now waived for refugees designated "vulnerable" or in "urgent need."[59] While a clear shift to need-based protection in theory, Michael Casasola notes that in the years preceding *IRPA*'s enactment "the number of refugees facing urgent or emergency protection concerns [was] actually quite small."[60] He reports that in 1999 UNHCR referred only 114 urgent and emergency submissions across all resettlement countries.[61] As the Canadian Council for Refugees (CCR) reported in its 2003 Report Card "[m]ost refugees seeking resettlement in Canada still need to meet the 'successful establishment' requirement, undermining the program's ability to offer protection to those in need."[62] CCR goes on to note, "Canada is the only resettlement country to formally exclude refugees from resettlement based on their integration potential."[63]

At the same time, the threat, and even more, the fear of terrorism has enabled government justification and support for restrictive policies. *IRPA* now ties protection to proposals to be "tough on those who pose a threat to Canadian security."[64] Reviewing the first incarnation of the legislation that eventually became *IRPA*,[65] Casasola noted:

> Unfortunately the most negative aspect of the legislative package was that the many positive resettlement initiatives were presented as a counter to some of the more punitive actions the government planned in order to limit access to the refugee determination system in Canada. In fact, the resettlement initiatives became an important part of the selling of the bill to the Canadian public. … Resettled refugees were presented as part of the refugees using the 'front door.' And by providing refugees greater access, Canada suggested it had the moral authority to limit access to those refugees described as using the 'back door.'[66]

This desire for choice and control of refugee selection is further emphasized in the US and Australian resettlement schemes.

With respect to the US resettlement program, Gibney succinctly describes it as "generous but not humanitarian."[67] Gibney traces the role of lobby groups and foreign policy considerations in determining the composition and character of resettled refugees. He notes that as a discretionary scheme "there has been no move in resettlement policy to correspond with an attempt to expunge political preferences from asylum processes…"[68] Van Selm adds:

> The US resettlement programme is used to giving a strong level of management, or the appearance thereof, to the arrival and situation of refugees in the United States. The United States has considerable power to choose which of the world's refugees become refugees in the United States, even if it is only selecting some 80,000 to 90,000 out of 20 million annually. The mere fact of such selection is linked not only to domestic policy concerns about the acceptability of certain groups of refugees or the appeal to public sympathies, but also to foreign policy concerns expressed in terms of national interest in supporting allied states.[69]

She worries elsewhere that in the current period of securitization, resettlement, in the US at least, may be vulnerable to targeted profiling.[70] As Troeller cautions, expansion of resettlement must be developed in a way that "maintains its primacy as a protection tool and that it not be shaped in order to meet solely migration needs."[71]

Australia, in contrast to Canada and the US, highlights a more sinister side of resettlement. Australia makes an intentional distinction between onshore asylum seekers and offshore refugees, and formally links the intake from the two categories. Refugee numbers are balanced in a way such that the offshore intake is reduced when onshore claimants increase.[72] This scheme permits Australia the rhetoric of repeatedly labelling those who arrive on its shores as "queue jumpers" who compromise Australia's ability to help the "neediest" refugees still overseas.[73] The essence of the argument, as put forth by Robert Illingworth, Assistant Secretary Onshore Protection Branch of the Refugee Humanitarian and International Division of Australia's Department of Immigration and Multicultural Affairs, is as follows:

> Do we really want Australia's finite capacity to resettle those in need to be taken up on the basis of decisions of organized criminals about who they will ship to Australia? Or would we want to use as many places as possible to resettle those people identified as in greatest need of resettlement through coordinated international efforts under the UNHCR?[74]

The argument is as attractive as it is misleading. Australia is privileging resettlement over its obligation under the *Refugee Convention* of *non-refoulement*.[75] Human Rights Watch has described Australia's system as an attempt to grant asylum "by invitation only."[76] While Canada and the US may be using resettlement as a means of migrant selection under a humanitarian guise,[77] they are doing so in conjunction with the continued granting of inland/onshore asylum. Australia is attempting to do so in lieu of inland/onshore asylum. Nor does the scheme necessarily import order to the process. The Refugee Council of Australia found the Australian program to offer not "a place in a queue but a ticket in a lottery."[78] Moreover, the argument that the granting of inland asylum encourages smugglers, traffickers, or "organized criminals" has been solidly countered. It has been argued that in fact it is the "restrictive immigration policies in many industrialized States…[that] oblige economic migrants and refugees alike to use irregular channels" thereby stimulating the consequent growth in smuggling and trafficking.[79] British philosopher Sir Michael Dummett has argued restrictive laws leave refugees with "no other way of escaping" and "the blame for the existence of these reviled traffickers in human beings lies largely with the governments that have erected the barriers the traffickers are helping people to circumvent."[80]

The UK began a resettlement program in coordination with UNHCR in 2004.[81] This immediately brought the UK within UNHCR's top ten resettlement countries.[82] While encouraging new resettlement countries is in UNHCR's interest, the background dialogue underlying the UK's participation is troubling. In a vein similar to the Australian perspective, Jack Straw, while British Home Secretary, proclaimed in 1999 that the *Refugee Convention* was "no longer working as its framers intended," and suggested the European Union (EU) set up a program "under which an agreed number of refugees – and possible others in need of protection – would be identified in their own regions and brought to the EU for resettlement."[83] In February 2002 the Labour Government issued a White Paper, *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain*, which included a proposal to develop a resettlement program with the underlying intention that this would reduce asylum claims and remove the demand for smugglers.[84]

As noted above, the principle of *non-refoulement* is essential to refugee protection. The presumption of the Australian and British governments that inland claims can be replaced by comprehensive resettlement is in error. As is discussed further in the final section of this article, resettlement will never be comprehensive enough to absorb the world's refugees. Moreover, there will always be refugees with the means, creativity, or sheer daring to make impossible journeys and survive. The Tampa incident in Australia in 2001 and the hijacking and rerouting of an internal Ariana Airlines flight in Afghanistan to the UK in February 2000 are extreme examples of such measures.[85] It is impossible to ever deter people completely from "exercising their human right to seek and enjoy asylum from persecution in another country."[86] However, as access to such asylum becomes more difficult to obtain, even the less overtly calculating approaches of Canada and the US to resettlement must be more carefully scrutinized.

Fair Selection Models

Assuming integration and repatriation whenever possible, it would be nice to imagine an ideal burden-sharing global refugee pie where all the world's remaining refugees were fairly parcelled out. The unfortunate reality is that there is neither the organization nor willingness to implement such a program, even if one were to support Schuck's model where countries could buy out of their obligations.[87] David Martin of the Migration Policy Institute notes that "[w]e are extremely unlikely in this new century to find the United States or any other country willing to make an open-ended

commitment to resettlement of virtually all who escape a designated nation."[88] Former UNHCR High Commissioner Ruud Lubbers suggested a burden-sharing ratio of one refugee per 1,000 inhabitants.[89] The suggestion, maintained by UNHCR as an annual resettlement quota of 0.1 per cent of a developed country's existing population, was greeted with silence by many governments.[90] Fredriksson calculated that this ratio would have meant a 387 per cent increase in the 2002 resettlement targets of the US, already the most generous resettlement country.[91] Yet, even with increased resettlement numbers there will always be the matter of selection.

If selections must be made, what is the best model on which to base the selections? Little appears to have been written in this area. Martin has prepared a comprehensive report on US resettlement reform published in 2005. While his recommendations are specifically directed to the US scheme, his overall message is broadly applicable. He recommends that the US resettlement program should not be

> …limited to rescue from grave life-threatening dangers but will work actively to rescue displaced individuals and groups who face a wider range of harms, including the wastage of human potential that can result from protracted stay in a refugee camp….the program can still be prudent and selective in choosing among them, with full attention to countervailing factors such as possible magnet effects, other political impacts, and near term prospects for voluntary repatriation.[92]

In the Canadian context, Dauvergne, with Leonora Angeles and Agnes Huang, notes that men outnumber women in both Canada's domestic refugee determinations and in the government-assisted refugee resettlement category despite evidence that women make up about half of the refugees currently seeking protection internationally.[93] While Canada cannot control for the dominance of men in the inland determination process, Dauvergne, Angeles, and Huang recommend that the Canadian government imprint a "somewhat crude equality measure" by ensuring "that women outnumber men in the government-assisted refugee category."[94]

Fredriksson has proposed two, more international, models. He premises his proposals on the argument addressed above – that increased security measures and border enforcement following 11 September have had the consequent effect of reducing access to asylum. Fredriksson argues that "changing realities demand changed approaches."[95] He proposes two potential models to "create a coherent global system and…set in motion a transparent programme…"[96]

The first model would be a formula-based approach factoring in length of time in an uncertain and non-durable situation and the likelihood and feasibility of repatriation in the foreseeable future.[97] This is in line with UNHCR's official position on resettlement – that it is one of three durable solutions alongside local integration and repatriation. Martin sees the *Agenda for Protection* as further stressing this need to "widen the resettlement horizon to include refugees who might not be in immediate danger but for whom no other long-term solution is in sight."[98] The suggestion focuses resettlement on protracted refugee situations. UNHCR defines a protracted refugee situation as:

> …one in which refugees find themselves in a long-lasting and intractable state of limbo. Their lives may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfulfilled after years in exile. A refugee in this situation is often unable to break free from enforced reliance on external assistance.[99]

UNHCR measures protracted situations as those in which refugee populations of 25,000 persons or more have been in exile in a developing country for five years or more.[100] By this calculation, UNHCR estimated that at the end of 2005 there were thirty-one different protracted situations in the world, accounting for some 5.2 million refugees.[101]

Resettlement should not be viewed as the presumed solution for refugees in protracted situations. Engagement is required with both the host country and the country of origin to ideally achieve local integration or repatriation.[102] Loescher and Milner note that comprehensive solutions for protracted refugee situations "would employ the full range of possible solutions for refugees – repatriation and reintegration, local integration in the host country, and resettlement in a third country."[103] Only when circumstances make the other options unviable should resettlement be considered. A timeframe for determining other solutions to be unviable is, unfortunately, difficult and situation-specific. Troeller makes the suggestion that resettlement could be used as a "safety-valve" to assist countries of first asylum.[104] This metaphor however fails to capture the essence of responsibility sharing as it suggests waiting until countries of first asylum reach a sort of boiling point before assistance is offered. Further, for 2005, UNHCR reported that the global number of refugees accepted for resettlement reached 80,800[105] – barely over 1.5 per cent of the protracted numbers. These numbers are troublingly low. As Loescher and Milner indicate, there is an "increasingly dire lack of protection for millions of refugees."[106] Thus, even supposing massive increases in the number of refugees countries are willing to accept for resettlement, eligibility would still require situation-specific evaluations and timeframe determinations, while the number of eligible refugees

would presumably still demand further selection decisions. Fredriksson's first model therefore offers little real guidance on how resettlement refugees should be chosen.

As an alternative, Fredriksson suggests a second model in which resettlement need is defined on a group basis. Martin considers this the "key" to "enhancing the pace" of US resettlement expansion.[107] In 2003 Canada piloted a group resettlement project in which individual assessments were bypassed with 780 Sudanese and Somali refugees from Kenyan refugee camps. Approximately 1,000 Afghans came from Central Asia under the same program in 2004 and 810 Burmese refugees from Thailand were resettled over fall 2006 and early 2007.[108] Since 2004, UNHCR has submitted thirteen refugee groups (43,000 refugees) for resettlement consideration from asylum countries in Africa, the Middle East, and Central and Eastern Asia.[109] The theory behind the new system for group resettlement is that it will reduce processing time and create ready-made support systems for arriving refugees.

The question raised by the Canadian project is how these groups are selected. While these groups are undeniably *deserving* refugees, why were they chosen over other equally deserving groups? The concern, often heard in the American context, is that resettlement is too greatly influenced by interest groups.[110] Adding to the concerns, Savitri Taylor notes:

> The problem with relying on situation-specific agreements being negotiated on an ad hoc basis is that success is made dependent on the existence of a political will to undertake each specific exercise. As the Assistant High Commissioner has noted, "comprehensive arrangements have not been always pursued even for refugee situations that warranted them." While it makes sense to negotiate situation-specific agreements in the short-term where the political will clearly exists, doing so should not be a substitute for the long-term goal of negotiating a non-situation specific multilateral agreement on responsibility-sharing.[111]

The model is also extremely susceptible to the modes of abuse voiced by van Selm and Troeller. As Taylor notes, though, this is not to say this model should be discarded. Effective processing that makes resettlement more attractive and affordable to the receiving countries should be encouraged in the hopes of encouraging the acceptance of increased numbers. What is currently lacking is a transparent and systematic structure for group selection.

A further model, not noted by Fredriksson, is need-based acceptance. Rather than addressing the "profound wastage of human lives" noted by Martin in protracted situations, need-based criteria target specific refugee types. UNHCR's resettlement criteria focus on eight elements: legal and physical protection needs, medical needs, survivors of violence and torture, women-at-risk, family reunification, children and adolescents, elderly refugees, and refugees without local integration prospects.[112] From UNHCR's global position, urgent need-based resettlement becomes a juggling act – looking at refugees and determining which country, each with distinct priorities and claim processes, will be the most likely to take an individual. In contrast to group resettlement, this model lends itself to detailed individual assessments of need.113

These differing models, all well-intentioned and highlighting valid areas of resettlement need, return us to resettlement's schizophrenic dilemma. The solution, I submit, is a top-down approach coming from UNHCR that acknowledges the validity of all of the above models. This acknowledgement should come through operational guidelines and criteria for each type of resettlement that as Fredriksson laments "are now virtually absent from the UNHCR Resettlement Handbook."[114] The percentage of resettlement from protracted situations should be established as well as whether all or some of protracted resettlement should be through group resettlement – a sort of melding of Fredriksson's models. UNHCR's need-based resettlement is already well-structured but should not be privileged in a way that relegates protracted and group resettlement to *ad hoc* secondary arrangements. The two models should be running parallel with states encouraged to take in refugees from both streams and clear processes for how to do so. The "crude equality measure" proposed by Dauvergne, Angeles, and Huang should likewise be transposed to the international scheme. Nothing in these models would prevent situation-specific considerations of whether resettlement is appropriate. All these models can be intermingled and combined in a complementary manner. What is needed is transparent planning and coordination from UNHCR.

UNHCR should likewise be more vocal in encouraging not just resettlement but resettlement quotas correlated to population density, gross domestic product, or some other agreed standard. While UNHCR cannot oblige states to take on their recommended numbers, a more emphatic statement by UNHCR would at least serve to highlight the low current resettlement numbers, even by the traditional resettlement countries. Further, more direction from UNHCR on resettlement distribution could lead to an increased willingness by states, and their citizens, for greater refugee resettlement. Gibney argues that "[a] well-publicized and transparent system for dealing with refugee burdens could only add to the legitimacy of international arrangements for protecting refugees..."[115] Van Selm adds that resettlement, once started, "has a 'knock on' effect –

meaning that the public gets more information and understands more about the situations from which both resettled refugees and asylum seekers have fled."[116] From the perspective of cost analysis, an issue not explored here but highly relevant, Loescher highlights that "international cooperation and collective action through resettlement sharing" would enable "clarity, consistency and lower transaction costs" for states.[117]

Conclusion

In concluding, I offer six recommendations based on the above analysis. The recommendations are intended to initiate dialogue leading to a comprehensive resettlement model. Actors from several sides can aid visibility, promote real change, and increase resettlement numbers. In addition to UNHCR, national governments, academics, and activists can prompt action. The recommendations that follow are therefore directed either generally at these four groups or, when specified, to individual actors.

Recommendations

1. Resettlement and non-refoulement must be complementary tools of protection. There is no refugee queue and only one door. Images and allusions to queue-jumping and entrance through the back door are misleading and detrimental to responsible protection. Both resettlement and *non-refoulement* are imperfect but necessary protection tools. Any increased focus on resettlement must not be in exchange for reduced access to asylum or an abandonment of the commitment to *non-refoulement*.

2. Global resettlement numbers should be increased. The "tyranny of geography" and locational (dis)advantage mean that certain countries are unfairly bearing the responsibility for the majority of refugee flows, counter to the commitment in the *Refugee Convention* to burden sharing. Heightened securitization in the face of increased terrorist threats since 2001 has concomitantly reduced access to Western states. It is therefore becoming increasingly difficult for asylum seekers to reach safe states and trigger the legal obligation of *non-refoulement*. Legally legitimate reductions of asylum claims through increased border monitoring add force to the argument that resettlement numbers should be increased to combat unfair and often crippling refugee distribution.

3. UNHCR should set and encourage resettlement quotas correlated to some agreed standard. The current absence of any recognized resettlement quota is unacceptable. A clear statement by UNHCR on ideal resettlement distribution, be it by population density, gross domestic product, or some combination of measurements, would draw attention to the reality that the traditional resettlement countries, in

fact, resettle very few refugees. While UNHCR cannot enforce increases, more direction may convince states, and their citizens, to undertake greater refugee resettlement.

4. Resettlement selection must reflect refugee protection and not national interests. The appeal of resettlement is often tied to a nation's notion that it offers a degree of control over refugee protection in contrast to the unpredictable nature of *non-refoulement*. Unlike the obligation imposed by *non-refoulement* to accept those who arrive at the state's "door," resettlement provides the ability to select for whom the "door" will be opened. While selection is an unavoidable aspect of resettlement, mechanisms must be in place to ensure that selection is committed to refugee needs and not a nation's interest in selecting the "best" refugees – the healthiest, most educated, most compatible, most similar to regular and desirable immigrants.

5. UNHCR should design a top-down model and operational guidelines for resettlement selection. While UNHCR cannot force compliance with its recommendations, it can and should provide a more comprehensive model and operational guidelines to which states can choose to subscribe. The appeal of such a structure is the simplicity, consistency and transparency of selection, reducing the scope for criticism, political influence and corruption. Moreover, such a model would provide a measure against which states could gauge their current selections and recognize gaps in their schemes.

6. A resettlement model should incorporate need-based, protracted, and group resettlement. UNHCR currently focuses resettlement on eight need-based criteria. While ideal for urgent and priority cases, the criteria fail to provide a comprehensive resettlement scheme. In addition to urgent need situations, protracted refugee groups exist in ever-worsening and volatile conditions of limbo that must be addressed. Group resettlement that reduces processing time and creates ready-made support systems for arriving refugees deserves increased attention and coordination. A resettlement model should incorporate both need-based and protracted resettlement, the latter through group processing.

UNHCR recognizes the need for the type of resettlement scheme proposed herein. Two goals of the *Agenda for Protection* are for "States that offer resettlement opportunities to consider increasing their resettlement quotas, diversifying their intake of refugee groups, and introducing more flexible resettlement criteria,"[118] and for "States and UNHCR to explore the feasibility of establishing a central biometric registration system to support the identification of refugees in need of resettlement."[119] This article can hopefully add to the dialogue that will bring these goals closer to reality.

Notes

1. *Convention relating to the Status of Refugees*, 28 July 1951, 189 U.N.T.S. 150 (entered into force 22 April 1954) at art. 1A [*Refugee Convention*].

2. *Ibid.* at art. 33(1).

3. *Statute of the United Nations High Commissioner for Refugees*, UNGA A/RES/248, 14 December 1950, s.1.

4. UNHCR, *Resettlement Handbook* (November 2004) at 1/2, online: <http://www.unhcr.org/protect/3d4545984.html>.

5. On a page titled "Protecting Refugees" on its Web site, UNHCR notes that "The main global treaty for the protection of refugees – the UN Convention relating to the Status of Refugees – marked its 50th anniversary on 28 July 2001 amid concerns that some of its key provisions are being questioned and even openly flouted by a growing number of states," online: <http://www.unhcr.org/cgibin/texis/vtx/protect?id=3c0794574>. In a recent statistical report UNHCR further noted that violations of the core principle of *non-refoulement* were reported by 50 per cent of UNHCR's country offices in 2005 and that 75 per cent of the states in possible breach of the principle are signatories to the *Refugee Convention* or *1967 Protocol* (*infra* note 27) or both. UNHCR, *Measuring Protection by Numbers 2005* (November 2006) at 11, online: <http://www.unhcr.org/statistics> [*Measuring Protection*].

6. First Track: "Ministerial Meeting of States Parties" (12 and 13 December 2001), online: <http://www.unhcr.org/protect/PROTECTION/3b9490a54.html>; Second Track: Erika Feller, Volker Türk, and Frances Nicholson, eds., *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge: Cambridge University Press, 2003), online: <http://www.unhcr.org/protect/PROTECTION/3b94e7a2a.html>; Third Track: "Executive Committee Meetings", online <http://www.unhcr.org/protect/PROTECTION/3b95d8d17.html>.

7. United Nations, *Agenda for Protection*, A/AC. 96/965/Add. 1, General Assembly, Executive Committee of the High Commissioner's Programme (26 June 2002) 3rd ed., October 2003 [*Agenda for Protection*].

8. *Resettlement Handbook, supra* note 4 at 1/2.

9. This statement belies the complexity of resettlement decisions that are explored in the substance of this article.

10. In the 1990s James C. Hathaway and Alexander Neve and, separately, Peter Schuck proposed temporary protection regimes as a means to encourage states to accept greater refugee numbers while deterring false claims. James C. Hathaway and R. Alexander Neve, "Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection" (1997) 10 Harv. Hum. Rts. J. 115; Peter H. Schuck, "Refugee Burden-Sharing: A Modest Proposal" (1997) 22 Yale J. Int'l. L. 243. See also James C. Hathaway, "Book Review: Rethinking Refugee Law" (2004) 98 Am. J. Int'l. L. 616 at 617.

11. I take this term from the Canadian resettlement program where "government-assisted refugees" is used to describe refugees resettled through the Canadian government resettlement program in contrast to private sponsorship.

12. Dennis Gallagher, "The Evolution of the International Refugee System" (1989) 23:2 International Migration Review 579 at 579.

13. James C. Hathaway, *The Rights of Refugees under International Law* (Cambridge & New York: Cambridge University Press, 2005) at 964 [Hathaway, *Rights of Refugees*].

14. *Ibid.*

15. Gary Troeller, "UNHCR Resettlement: Evolution and Future Direction" (2002) 14:1 Int'l J. Refugee L. 85 at 87 [Troeller].

16. *Ibid.* at 88.

17. *Ibid.* at 85 and 89.

18. Global Consultations on International Protection, *Strengthening and Expanding Resettlement Today: Challenges and Opportunities,* 4th Mtg., EC/GC/02/7 (25 April 2002) at para. 5.

19. *Measuring Protection, supra* note 5 at 1.

20. *Ibid.*

21. UNHCR, *2005 Global Refugee Trends* (Geneva: UNHCR, 2006) at 3, online: <http://www.unhcr.org/statistics.html>.

22. View of the former Indian permanent representative to the United Nations at the forty-eighth Session of the UNHCR Executive Committee, cited in Brian Gorlick, "Refugee Protection in Troubled Times" [Gorlick] in Niklaus Steiner, Mark Gibney, and Gil Loescher, eds., *Problems of Protection: The UNHCR, Refugees and Human Rights* (New York & London: Routledge, 2003) 79 at 81.

23. Matthew J. Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge: Cambridge University Press, 2004) at 195 [Gibney].

24. Even this terminology has its drawbacks. Savitri Taylor notes "[t]he choice of terminology describing the obligation as 'responsibility-sharing' rather than 'burden-sharing' is deliberate. As others have pointed out, whether asylum seekers are a burden or benefit depends, among other things, on the time frame adopted." Savitri Taylor, "The Pacific Solution or a Pacific Nightmare?: The Difference between Burden Shifting and Responsibility Sharing" (2005) 6 Asian Pac. L. & Pol'y J. 1 at 39 [Taylor].

25. *Supra* note 23 at 246.

26. *Supra* note 1.

27. *Protocol relating to the Status of Refugees,* 1967, 606 UNTS 267 (entered into force 4 October 1967) [*1967 Protocol*].

28. As at 10 December 2006, contributions to UNHCR programs for the budget year 2006 totaled US$1,031,016,510 from governments and private donors. UNHCR, "Donors/Partners," online: <http://www.unhcr.org/partners/3b963b874.html>.

29. Schuck, *supra* note 10. Mary Crock provides a helpful summary of Schuck's proposal and the consequent criticisms in "In the Wake of the Tampa: Conflicting Visions of International Refugee Law in the Management of Refugee Flows" (2003) 12 Pac. Rim. L. & Pol'y J. 49 at 80 [Crock]:

    Peter Schuck has argued for the introduction of a quota system whereby non-refugee producing states would be allocated a certain number of refugees for care or resettlement each year. This quota would be determined after establishing a global figure of the number of refugees in

need of protection each year, and would be allocated in a manner proportionate to the wealth and carrying capacity of a nation. The essence of Schuck's proposal is that developed states should then be able to elect either to take in their allocation of refugees or pay other states to take in or care for the specified number. Put another way, Shuck [Schuck] proposes that a state should be able to subrogate its liability by approaching other states to accept its refugee quota in exchange for cash, and/or other incentives such as "credit, commodities, development assistance, technical advice, weapons and political support." [footnotes omitted].

And at 85:

After publishing his "modest proposal," Shuck [Schuck] met with pointed criticisms from fellow academics Deborah Anker, Joan Fitzpatrick, and Andrew Schaknove. The three argue that the Shuck [Schuck] model would degrade the Refugee Convention as a human rights instrument. By turning the plight of refugees into an economic bargaining tool, wealthy states would be able to take advantage of poorer states, forcing them to shoulder the burden of caring for refugees in circumstances where they are likely to suffer in both the short and long terms. The authors argue that "by emphasizing the temporary nature of physical asylum and conferring it through voluntary coalitions of states, the economic and social rights of refugees under the Refugee Convention and Protocol will be de-emphasized." [footnotes omitted].

30. *Supra* note 7 at 61.
31. UNHCR, "States Parties to the Convention and the Protocol" (1 December 2006), online: <http://www.unhcr.org/cgi-bin/texis/vtx/protect?id=3c0762ea4> ["UNHCR States Parties"]. One-hundred forty countries have acceded to both the *Refugee Convention* and *1967 Protocol*. The accession of Montenegro to both the *Refugee Convention* and *1967 Protocol* in October 2006 is the most recent as of 1 December 2006.
32. UNHCR, "Refugees by Numbers 2006 edition," online: <http://www.unhcr.org/basics/BASICS/3b028097c.html#Resettlement> ["Refugees by Numbers"].
33. Gil Loescher and James Milner, "Protracted Refugee Situations: Domestic and International Security Implications" (2005) 45:375 Adelphi Papers 7 at 74–75 [Loescher and Milner].
34. Bill Frelick, "Rethinking US Refugee Admissions: Quantity and Quality" (2002) World Refugee Survey 28 at 35, cited in David A. Martin, *The United States Refugee Admissions Program: Reforms for a New Era of Refugee Resettlement* (Washington, DC: Migration Policy Institute, 2005) at 11 [Martin].
35. Jennifer Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism* (Minneapolis: University of Minnesota Press, 2000) at 190.
36. Gil Loescher, "UNHCR at Fifty: Refugee Protection and World Politics" in Steiner, Gibney, and Loescher, *supra* note 22, 3 at 13 [Loescher, "UNHCR at Fifty"].
37. *Supra* note 35 at 24 [footnote omitted].
38. Loescher, "UNHCR at Fifty," *supra* note 36 at 13.
39. *Ibid.* at 14.

40. Arthur C. Helton, "What Is Refugee Protection? A Question Revisited" in Steiner, Gibney, and Loescher, *supra* note 22, 19 at 30. See also Beth Elise Whitaker, "Changing Priorities in Refugee Protection: The Rwandan Repatriation from Tanzania" in Steiner, Gibney, and Loescher, *ibid.* at 141–154.
41. Janet Dench, "Controlling the Borders: C-31 and Interdiction" (2001) 19:4 Refuge 34 at 34.
42. *Supra* note 40 at 31.
43. Volker Türk and Frances Nicholson, "Refugee Protection in International Law: An Overall Perspective" [Türk and Nicholson] in Feller, Türk & Nicholson, *supra* note 6, 1 at 5.
44. Catherine Dauvergne, "Sovereignty, Migration and the Rule of Law in Global Times" (2004) 67:4 Mod. L. Rev. 588 at 588 [Dauvergne, "Sovereignty"].
45. Article 31 states:

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

2) The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Franck Düvell writes that "[t]he political processes of nation building…defined the extent of a state's territory, its national borders, national space, and so nationality and membership were reconstructed, and deserving and undeserving individuals defined and members created." Franck Düvell, "The Irregular Migration Dilemma: Keeping Control, Out of Control or Regaining Control?" in Franck Düvell, ed., *Illegal Immigration in Europe: Beyond Control?* (New York: Palgrave Macmillan, 2006) 3 at 24.

46. *Agenda for Protection, supra* note 7 at 46.
47. *Measuring Protection, supra* note 5 at 2.
48. See Dauvergne, "Sovereignty," *supra* note 44 at 600.
49. Troeller, *supra* note 15 at 92.
50. John Fredriksson, "Reinvigorating Resettlement: Changing Realities Demand Changed Approaches" (2002) 13 Forced Migration Review 28 at 28 [Fredriksson].
51. Joanne van Selm, "Refugee Protection in Europe and the U.S. after 9/11" in Steiner, Gibney, and Loescher *supra* note 22, 237 at 239 [Van Selm, "Refugee Protection after 9/11"].
52. Hathaway, *Rights of Refugees, supra* note 13 at 964.
53. *Measuring Protection, supra* note 5 at 19.
54. *Ibid.* UNHCR provides data on resettlement through its own referrals. By these numbers, in 2005, the US received 23,289 cases for resettlement, Canada 5,811, Australia 5,117, and Sweden 1,190. UNHCR notes, however, that according to

government sources Australia provides some 13,000 resettlement places annually and the US received a total of 52,000 individuals under its resettlement program during 2005 and Canada 10,400 persons.

55. "Part 8: The NGO Perspective Global Consultations on International Protection Third Track, Theme 3: The Search for Protection-Based Solutions: NGO Statement on Resettlement (22–24 May 2002)" 22:2/3 Refugee Survey Quarterly (2003) 432 at 433.

56. In 2005 the UK was listed by UNHCR as the tenth highest resettlement country with a mere 242 persons received. *Measuring Protection, supra* note 5 at 19.

57. See Catherine Dauvergne, *Humanitarianism, Identity and Nation: Migration Laws in Canada and Australia* (Vancouver: University of British Columbia Press, 2005) at 93 [Dauvergne, *Humanitarianism, Identity and Nation*].

58. Government of Canada, "Country Chapter: CANADA" in *Resettlement Handbook, supra* note 4 at 1.

59. *Immigration and Refugee Protection Act*, S.C. 2001 c. 27; *Immigration and Refugee Protection Regulations*, SOR/2002-227, s.139(1)(g) "successfully established" and s.139(2) "vulnerable," "urgent need".

60. Michael Casasola, "Current Trends and New Challenges for Canada's Resettlement Program" (2001) 19:4 Refuge 76 at 77 [Casasola].

61. *Ibid*.

62. Canadian Council for Refugees, *First Annual Report Card on Canada's Refugee and Immigration Programs* (November 2003), online: <http://www.web.net/~ccr/reportcard2003. htm>.

63. *Ibid.*

64. Department of Foreign Affairs and International Trade, "Canada's Actions since the September 11 Attacks Fighting Terrorism – A Top Priority," cited in Erin Kruger, Marlene Mulder, and Bojan Korenic, "Canada after 11 September: Security Measures and 'Preferred' Immigrants" (2004) 15:4 Mediterranean Quarterly 72 at 77.

65. Bill C-31 was first tabled in April 2000 but died when Parliament was dissolved later that year. Amended legislation, Bill C-11, was introduced and passed in November 2001.

66. Casasola, *supra* note 60 at 79. When tabling Bill C-31 on 6 April 2000, then Minister of Citizenship and Immigration Elinor Caplan stated, "Closing the back door to those who would abuse the system allows us to ensure that the front door will remain open." Citizenship and Immigration Canada, News Release 2000-09, "Caplan Tables New Immigration and Refugee Protection Act" (6 April 2000), online: <http://www.cic.gc.ca/english/press/00/0009-pre.html>.

67. Gibney, *supra* note 23 at 159.

68. *Ibid.* at 160.

69. Joanne van Selm, "Refugee Protection Policies and Security Issues" in Edward Newman and Joanne van Selm, eds., *Refugees and Forced Displacement: International Security, Human Vulnerability, and the State* (Tokyo, New York, & Paris: United Nations University Press, 2003) 66 at 69.

70. Van Selm, "Refugee Protection after 9/11," *supra* note 51 at 258.

71. Troeller, *supra* note 15 at 93.

72. For a more detailed discussion of Australia's policy see Dauvergne, *Humanitarianism, Identity and Nation, supra* note 57 at 92, note 30.

73. *Ibid.* at 92, note 31. See also William Maley, "Receiving Afghanistan's Asylum Seekers: Australia, the Tampa 'Crisis' and Refugee Protection" (2002) 13 Forced Migration Review 19 at 20 [Maley].

74. Robert Illingworth, "Durable Solutions: Refugee Status Determination and the Framework of International Protection" in Susan Kneebone, ed., *The Refugee Convention 50 Years On: Globalisation and International Law* (Aldershots, Hants, England & Burlington, VT: Ashgate, 2003) 91 at 105.

75. Australia ratified the *Refugee Convention* in 1954 and the *1967 Protocol* in 1973. "UNHCR States Parties," *supra* note 31.

76. Human Rights Watch, "By Invitation Only: Australian Asylum Policy" (2002) 14:10(C) Human Rights Watch, online: <http://hrw.org/reports/2002/australia/>.

77. While comparing Canadian and Australian refugee policies in *Humanitarianism, Identity and Nation, supra* note 57, Dauvergne, who earlier refers to humanitarianism as a "self-serving ruse," goes on to write: "Canada's law is filled with humanitarianism . . . demonstrating . . . that being perceived as humanitarian is vital" at 74 and 218.

78. Refugee Council of Australia, *The Size and Composition of the 2000–2001 Humanitarian Program: Views from the Community Sector* (Refugee Council of Australia, 2000) at 53 cited in Maley, *supra* note 73 at 20.

79. Türk and Nicholson, *supra* note 43 at 5.

80. Michael Dummett, *On Immigration and Refugees* (New York & London: Routledge, 2001) at 44, cited in Maley, *supra* note 73 at 20.

81. Refugee Council, "UK Refugee Resettlement Programme Begins" (23 March 2004), online: <http://www.refugeecouncil.org.uk/news/press/2004/march/20040323 ukre.htm>.

82. *Measuring Protection, supra* note 5 at 19.

83. Jack Straw, "An Effective Protection Regime for the Twenty-first Century" (Speech at the Institute for Public Policy Research, London, 6 February 2001), cited in Gorlick, *supra* note 22 at 80.

84. David Blunkett, Home Secretary, *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain,* (White Paper) (Crown Copyright, 2001), online: <http://www.archive2.official-dcuments.co.uk/document/cm53/5387/cm5387.htm>.

85. The Tampa incident refers to the rescue of 433 mostly Afghan asylum seekers from a sinking boat by the Norwegian freighter *Tampa* in August 2001. See Taylor, *supra* note 24, and Crock, *supra* note 29. In February 2000 a domestic Ariana Airlines flight within Afghanistan was hijacked and rerouted to the UK where asylum applications were filed by seventy-eight of the passengers on board. See "Government Appeal over Hijackers" *BBC* (11 May 2006), online: <http:// news.bbc.co.uk/2/hi/uk_news/politics/4760873.stm>.

86. Van Selm, "Refugee Protection after 9/11," *supra* note 51 at 254. The quotation is an allusion to Article 14(1) of the *Universal Declaration of Human Rights*, GA Res. 217 (III), UN GAOR, 3d Sess., Supp. No.13, UN Doc. A/810 (1948), which provides, "Everyone has the right to seek and to enjoy in other countries asylum from persecution."

87. See Schuck, *supra* note 10 and Crock, *supra* note 29.

88. Martin, s*upra* note 34 at 8.

89. See Fredriksson, *supra* note 50 at 31.

90. *Ibid.;* Troeller, *supra* note 15 at 93.

91. *Ibid.*

92. Martin, *supra* note 34 at 119.

93. Catherine Dauvergne, Leonora C. Angeles, and Agnes Huang, *Gendering Canada's Refugee Process* (Ottawa: Status of Women Canada, 2006) at 51.

94. *Ibid.*

95. Fredriksson, *supra* note 50 at 28.

96. *Ibid.* at 31.

97. *Ibid.* at 30.

98. Martin, *supra* note 34 at 98.

99. Executive Committee of the High Commissioner's Programme, *Protracted Refugee Situations,* 30th Mtg., EC/54/SC/CRP.14 (10 June 2004) at para. 3. For a comprehensive discussion of the challenges and security concerns associated with protracted refugee situations see Loescher and Milner, *supra* note 33.

100. UNHCR numbers exclude Palestinian refugees who fall under the separate mandate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

101. *Measuring Protection*, *supra* note 5 at 18.

102. Loescher and Milner, *supra* note 33 at 19–20. Loescher and Milner argue, at 20, that "[t]he primary causes of protracted refugee situations are to be found in the failure of major powers, including the US and the EU, to engage in countries of origin and the failure to consolidate peace agreements….Assistance to long-term refugee populations through humanitarian agencies is no substitute for sustained political and strategic action."

103. *Ibid.* at 71.

104. Troeller, *supra* note 15 at 93.

105. "Refugees by Numbers," *supra* note 32.

106. Loescher and Milner, *supra* note 33 at 71.

107. Martin, *supra* note 34 at 26.

108. Citizenship and Immigration Canada, News Release 2006–04, "Canada's New Government Welcomes Burmese Refugees" (20 June 2006), online: <http://www.cic.gc.ca/english/press/06/0604-e.html>.

109. *Measuring Protection, supra* note 5 at 19.

110. Martin, *supra* note 34 at 11; Gibney, *supra* note 23 at 132.

111. Taylor, *supra* note 24 at 39.

112. *Resettlement Handbook*, *supra* note 4 at c.3.

113. See *Resettlement Handbook*, *ibid.* at c. 6 for the steps involved in the assessment and preparation of a resettlement submission.

114. Fredriksson, *supra* note 50 at 30.

115. Gibney, s*upra* note 23 at 246.

116. Joanne van Selm, "The Strategic Use of Resettlement" (Paper presented at the International Seminar "Towards More Orderly and Managed Entry in the EU of Persons in Need of International Protection," Rome 13–14 October 2003), at 3–4, online: <http://www.migrationpolicy.org/pubs/2003.php>.

117. Gil Loescher, *The UNHCR and World Politics: A Perilous Path* (Oxford: Oxford University Press, 2001) at 367.

118. *Agenda for Protection, supra* note 7 at 80, Goal 5(5).

119. *Agenda for Protection, ibid.*, Goal 5(6).

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The Resettlement Challenge:
Integration of Refugees
from Protracted Refugee Situations

DEBRA PRESSÉ AND JESSIE THOMSON

Abstract

This paper explores Canada's response, through our Refugee and Humanitarian Resettlement Program, to developments in international refugee policy and will ask how Canada's resettlement program could be used more strategically in the future so as to meaningfully contribute to resolving protracted refugee situations globally while ensuring the successful integration of refugees from these situations.

Résumé

Ce document examine la réponse du Canada à l'évolution de la politique internationale sur les réfugiés, par le biais de son Programme de réinstallation des réfugiés et des personnes protégées à titre humanitaire, et il se demande comment le programme de réinstallation du Canada pourrait être utilisé de façon plus stratégique dans l'avenir pour contribuer de manière significative à résoudre les situations de réfugiés de longue durée dans le monde, tout en assurant la bonne intégration de ces réfugiés.

Introduction

Fifteen years have passed since the forcible exile of the majority of the ethnic Nepali southern Bhutanese population without a durable solution for the approximately 106,000 people now living in the refugee camps in southeastern Nepal.[1]

According to the 2006 edition of *The State of the World's Refugees* by the United Nations High Commissioner for Refugees (UNHCR), of over eight million refugees in the world at that time, some six million were considered to be in a protracted refugee situation. Further, the average duration of displacement has increased from nine years in 1993 to seventeen years in 2003.[2] In total, UNHCR has identified at least thirty-three major protracted refugee situations around the globe, not counting those outside UNHCR's definition due to their size and scope, which are also long-term situations of displacement.[3] These important statistics point to the seriousness and scope of protracted refugee situations globally.

It is clear, fifty-six years after the signing of the Refugee Convention relating to the Status of Refugees (Refugee Convention), that the phenomenon of refugee movements persists and that what was once thought to be a short-term challenge is a reality that is often ongoing for decades. More and more refugees find themselves "warehoused"[4] in refugee camps for years, without access to a durable solution. Not only are refugees unable to return to their country of origin voluntarily, but, in many of these cases, refugees languish in refugee camps, dependent on humanitarian assistance and food aid, with limited or no opportunities for self-reliance or local integration. Densely populated refugee camps with limited opportunities become the home and community of those who have been forcibly displaced for decades. As a result, a significant portion of today's refugees have severe psychosocial and physical health concerns, limited or no labour market skills, little or no formal education, and, for children, greater developmental challenges.[5] This in itself can be a disincentive for States hosting large refugee populations to provide for local integration and for other States to engage in resettlement of refugees with high needs.

This paper will outline the emphasis that Canada, the UNHCR, and other countries have placed on protracted

populations and will examine how this emphasis is the logical extension of policy development undertaken both internationally and domestically since the Global Consultations were launched in 2000. It will also explore how Canada's Refugee and Humanitarian Resettlement Program plays a role in securing durable solutions for refugees and will look to the future, asking questions about how Canada can best address the protracted nature of refugee displacement, while also exploring what this means for how Canada provides integration support to resettled refugees in order to meet their unique needs when coming from a protracted refugee situation.

Refugee Resettlement and the Agenda for Protection

The international community, led by the UNHCR, views a refugee as having secured a solution to his or her plight if the refugee has been able to find a safe and permanent (durable) solution through one of three means: voluntary repatriation to the country of origin in safety and dignity; local integration[6] in the country of asylum; or resettlement to a third country.

Over the past fifty years, millions of people have found a durable solution through resettlement. Since the Second World War, more than 860,000 refugees and persons in similar circumstances have been resettled to Canada.[7] Unlike asylum determination from within Canada, which derives from Canada's legal obligations as a signatory to the Refugee Convention, resettlement of refugees from abroad is a policy decision undertaken as part of our contribution to international burden sharing. In addition to those granted protection through the in-Canada asylum system, each year, under the Refugee and Humanitarian Resettlement Program, Canada resettles from abroad between 10,300 and 12,000 refugees.[8] Of this number, 7,300 to 7,500 are admitted to Canada under the Government Assisted Refugee (GAR) program while the balance are admitted under the Private Sponsorship of Refugees (PSR) program.[9] Private sponsors, members of organizations, and faith-based groups in Canada have assisted over 193,000 persons since 1978 through the PSR program.

To respond to new realities in the refugee context, and in part to react to large-scale protracted refugee situations, the UNHCR launched the Global Consultations on International Protection in 2000 in an effort to revitalize the international protection regime. These consultations led to the *Agenda for Protection*.[10] The *Agenda for Protection* serves as a blueprint that sets out enumerated goals and concrete ways states can redouble their efforts to enhance refugee protection and find solutions for more refugees. Resettlement is addressed in goal five of the *Agenda for Protection*,

which calls on States to increase their resettlement numbers, diversify the kinds of refugee groups they welcome, and introduce more flexible resettlement criteria in an effort to secure more durable solutions, particularly for protracted refugee situations. These consultations initiated, *inter alia*, a discussion on how the international community could use resettlement more strategically in order to benefit more refugees. In 2003, the international community defined a strategic use of resettlement as one where resettlement activity leads to planned direct and indirect benefits accruing to refugees not being resettled.[11] For example, a strategic use of resettlement can help sustain access to asylum in the face of a continued refugee flow; it can also play a role in providing access to more services for the general refugee population. Ideally, a strategic use of resettlement would also help lead to comprehensive solutions for specific refugee populations involving all three durable solutions.[12]

With this in mind, the international community, led by Canada and UNHCR, drafted and agreed to the Multilateral Framework of Understandings for Resettlement (MFU) in 2004.[13] This was an important development for advancing the concept of the strategic use of resettlement and in encouraging resettlement countries to pursue resettlement arrangements that would promote and be part of comprehensive solutions to particular refugee situations.

These developments in the international policy context emphasized the fact that resettlement could not operate in isolation from the other durable solutions and emphasized a need for more strategic and coordinated engagement on the part of resettlement countries to ensure they were part of a wider solution to the refugee dilemma. It was acknowledged that beyond the important role that resettlement can play in helping one family or one individual, resettlement, when pursued in a strategic fashion and in line with the MFU, could have wider positive implications. Further, it was widely agreed that resettlement countries could most effectively help to share the burden of refugee hosting countries, by targeting more vulnerable segments of the refugee population in order to alleviate some of the pressure on refugee camps and refugee hosting communities.

Historically, Canada, among other resettlement countries, had been criticized for selecting the "best and the brightest" refugees and thereby exacerbating the situation in the refugee camps where these individuals were selected. As a result, concurrent to and in line with the discussions at the international level, Canadian policies shifted in 1998 and were then formalized in 2002 with the implementation of the Immigration and Refugee Protection Act (IRPA) and Regulations. IRPA institutionalized this effort to focus on refugees' protection needs in part by softening the selection

criteria used to assess refugees' integration potential and by exempting refugees from certain medical requirements.[14] In addition to changing eligibility criteria, Canada also shifted the focus of its resettlement program to those most in need of protection.

While Canadian legislation retained a requirement for refugees to be able to demonstrate "an ability to establish" in Canada, it put "protection" first and foremost and "ability to establish" second. Persons found to be in urgent need of protection and those found to be more vulnerable in relation to the general refugee population in which they live are exempt from the need to demonstrate any integration potential. Further, all resettled refugees are exempt from certain medical requirements. In the implementation of IRPA, the "ability to establish" requirement is rarely used as a reason for refusal. Further, in the context of group processing, public policies have been instituted within the framework of the IRPA such that the entire group being considered for resettlement is deemed vulnerable and therefore everyone within the group is exempt from the ability to establish requirement. At the same time, Canada acknowledges the importance of ensuring that those who are resettled make an active and informed choice about resettlement, which at times can mean that some persons among the most vulnerable are more hesitant or unwilling to pursue resettlement.

Canada's Evolving Resettlement Focus

At the fifty-seventh session of the UNHCR Executive Committee (EXCOM) in October 2006, the Government of Canada called on UNHCR to make resolution of protracted refugee situations a priority in 2006 and beyond. In addition to the humanitarian imperative, Canada has a strategic interest in helping refugees find lasting solutions—because the longer refugee populations languish without access to durable solutions, the greater the risk they could pose to stability in their region, resulting in more refugee outflows. As such, Canada is exploring how its own resettlement program could be better used to help manage down refugee numbers and contribute to the *Agenda for Protection*.

One way to advance goal five of the *Agenda for Protection* is by focusing a portion of our resettlement efforts on specific protracted refugee situations. Today, Citizenship and Immigration Canada (CIC) is actively involved with some of the major situations identified by the UNHCR in the 2006 edition of *The State of the World's Refugees*.[15]

This shift in Canadian policies resulted in a significant change in Canada's resettled refugee population. First, the change has allowed far more persons with higher medical and other settlement requirements, including post-traumatic stress disorder and trauma counselling, to be eligible for resettlement. Second, the refugee pool from which Canada selects has shifted from one primarily consisting of European-based political dissidents to one that is largely African, Middle Eastern, and Asian based. Given that some of these groups come from entirely different political, economic, and social contexts, many refugees now have different settlement needs that include special requirements arising from years of trauma or torture followed by years in camps.

These complex refugee situations have given rise to a need for much greater individualized and, in some cases, specialized attention if we are to help today's refugees integrate and establish themselves successfully in Canada.

Current Integration Challenges

Successful integration is undefined in both legislation and policy. While there is some consensus on what integration is, there continues to be a debate around what is meant by successful integration and how success can be measured or defined. A useful starting point is found in the UNHCR's *Refugee Resettlement: An International Handbook to Guide Reception and Integration* (2002).

> Integration is a mutual, dynamic, multifaceted and on-going process. From a refugee perspective, integration requires a preparedness to adapt to the lifestyle of the host society without having to lose one's own cultural identity. From the point of view of the host society, it requires a willingness for communities to be welcoming and responsive to refugees and for public institutions to meet the needs of a diverse population.

It is important to note that under the Multilateral Framework of Understandings on Resettlement, countries, including Canada, agreed that prior to resettlement, measures are to be put in place to provide for the appropriate reception and integration of resettled refugees. This is particularly important for Canada as recent research indicates that today's refugees are achieving lower economic outcomes than in the past. CIC recognizes that current resettlement programming may not adequately meet the unique and changing needs of refugees.

This challenge grows partly out of the fact that, despite the policy changes regarding eligibility for resettlement, few changes were made to how refugees, once selected, are supported in their integration process within the Refugee and Humanitarian Resettlement program. For instance, although the change in the refugee profile has created significant pressures for program administrators and those in front-line service delivery, the Resettlement Assistance Program (RAP), which in essence was established to provide

benefits comparable to those offered by provincial social assistance programs, has not changed since its creation in 1998.[16] Such social assistance programs, however, are neither necessarily geared to helping refugees coming from diverse backgrounds and extended camp stays adapt to daily life in a North American context nor to addressing their health issues, which vary significantly from our historical experiences with immigrant health issues.

Although there are numerous programs available to facilitate the integration process of newcomers to Canada, these may be difficult to access and are most often not tailored to the particular needs of the resettled refugees, particularly those coming from protracted refugee situations.

Meeting the Integration Challenge

If Canada is to contribute meaningfully to managing down protracted refugee numbers while serving Canadian interests that include maintaining the public health and security of Canadians and facilitating integration of refugees, then a more strategic focus on individual needs is warranted. For example, the effects of war and trauma on the subsequent integration of refugee children and youth are not well understood. Research suggests that surviving war and its related trauma can have devastating social and psychological consequences for these youth.[17] Today, over 50 per cent of the world's refugee population consists of children under the age of eighteen. In 2006, 52 per cent of resettled refugees under the Government Assisted Refugee program were under the age of twenty-two. Yet despite these large numbers, little research has been undertaken to help us understand what happens to refugee youth once they are resettled.

In order to better facilitate integration, it is important to understand that integration is in fact a continuum with the starting point well before the refugee arrives in Canada and the end point years after arrival. More recently, settlement workers have posited that a needs-based approach, focused on the individual needs of the client, is required to better assist in the settlement and integration of refugees throughout the resettlement continuum.

One of the major challenges both in the context of measuring success and within efforts to define a more client-centered approach (based on unique needs of individuals and groups) is securing an evidence base for these key areas. This is particularly challenging for refugees, as there is a gap in research exploring "social indicators" of success. Further, much of the research that does exist on immigrant needs and outcomes does not disaggregate data between skilled workers and refugees.

Developing integration measurements for refugees needs to take into account both subjective and objective factors, as well as the experiences of different refugee populations. Within the different refugee populations there are also subgroups such as women, men, children, youth, and the elderly who may have widely different settlement needs. Additionally, each protracted refugee situation is unique and when pursuing multilateral approaches to resolving protracted refugee situations, Canada will need to consider the unique resettlement needs of particular groups in order to establish which barriers to services may need to be addressed and which new supports need to be established.

Certain refugee needs can be predetermined to some extent by analyzing the refugee's background. The refugee's situation prior to being resettled (protected camp situation or other), ethnicity, gender, age, language abilities, health issues, and education are general indicators of their needs. These indicators can help policy makers and program designers prepare integration plans for refugees arriving from protracted refugee situations that include follow-up and monitoring to ensure that the needs of individuals are being met. This has been flagged by a number of reports as being a critical component in integration that is currently lacking in the Canadian system.[18]

Specialized services may also need to be developed to meet the evolving unique needs of refugees. Medical and other needs assessments could help identify what specific resettlement requirements refugees have for which there are currently insufficient programs and services. In turn, these services would need to be developed in communities where refugee populations with those needs have been identified or where community-mapping exercises have indicated that services are currently lacking.

CIC believes the length of time required to negotiate multilateral frameworks for resettlement provides an opportunity to address some of the settlement challenges faced by refugees. For example, it is possible, with more planning, to use the time between developing a comprehensive strategy and actual departure of large numbers of refugees over a multi-year period to develop and implement detailed and population specific pre-departure programs. Such programs, in concert with humanitarian aid that focuses on primary and secondary education, preventative health treatment, skills upgrading, comprehensive cultural orientation, and language training when feasible, could help refugees selected for resettlement more readily make the transition from refugee to citizen. Ideally, initiatives would include members of the general refugee population who are not being resettled as such programs would also improve their own prospects for return (if conditions

are right) and help host countries sustain asylum space and encourage conditions for local integration.

Conclusion

> The Rohingyas in the camps in Cox's Bazaar are the remainder of a group of … refugees who fled into Bangladesh in 1992 to escape persecution by the military junta. . . . more than 26,000 remain in the camps, afraid to return. An estimated 100,000 to 200,000 also live around Cox's Bazaar, but outside the camps.[19]

Canadians have traditionally responded with generosity to refugee crises and humanitarian emergencies. Protracted refugee situations are emergencies that have been forgotten for too long. Canada, as one of the countries that endorsed the *Agenda for Protection*, has a role to play in developing concerted strategies to address refugee situations. A Canadian contribution could include substantial efforts to help create and sustain, especially in fragile and post-conflict states, the environments necessary to support effective protection and to establish the conditions for sustainable durable solutions.

In addition, through a more focused resettlement program that targets specific refugee populations that have been warehoused for years on end, Canada can make a tangible positive impact in some refugee situations. The multi-faceted ways in which different variables affect the integration continuum, however, indicate the need for policies and programs that are grounded in current research designed to target specific refugee populations.

More empirical studies of the impacts of protracted refugee situations are needed to guide future engagement of Canada's Refugee and Humanitarian Resettlement Program. Research studies must consider the various natures of refugee situations and address questions such as: are camp-based populations more or less at risk than urban refugee populations? What are the health needs of refugees in camps in Asia versus those in Africa? What are the differences in trauma and torture narratives among the various protracted situations identified by the UNHCR?

The responses to these and other questions would assist Canada in engaging substantively in multilateral frameworks regarding comprehensive solutions and assist in ensuring the successful integration of those refugees resettled in Canada.

Notes

1. Joint NGO letter, "Nepal/Bhutan: resolve protracted refugee problem," to the delegates of the Bhutan Donors Round Table meeting, 9 February 2006, online: South Asian Media Net, 10 February 2006, <http://www.southasianmedia.net/index_

opinion.cfm?category=Human%20Rights&country=Bhutan> (accessed January 10, 2007).

2. The UNHCR defines a protracted refugee situation as "one in which refugees find themselves in a long-lasting and intractable state of limbo. Their lives may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfulfilled after years in exile. A refugee in this situation is often unable to break free from enforced reliance on external assistance." The UNHCR currently uses a "crude measure of refugee populations of 25,000 persons or more who have been in exile for five or more years in developing countries" to effectively define protracted refugee situations. Protracted situations may include both camp-based and urban-refugee populations. United Nations High Commissioner for Refugees, *Protracted Refugee Situations* (June 2004), <http://www.unhcr.org/excom/EXCOM/40c982172.pdf>.

3. Gil Loescher and James Milner, "Protracted Refugee Situations: The Search for Practical Solutions," in *The State of the World's Refugees 2006: Human Displacement in the NewMmillennium*, ed. N. Merheb (Oxford: Oxford University Press, 2006).

4. US Committee for Refugees first applied the term "warehousing"to refugees in its World Refugee Survey in 2004.

5. See UNHCR, *Refugee Resettlement: An International Handbook to Guide Reception and Integration* (Geneva: UNHCR, 2002) for examples of the types of special needs refugees may have as a result of prolonged exile. It is estimated that around one in three of the world's refugees has had at least one experience of torture. Studies of refugees offered permanent resettlement indicate that one in four has been subject to torture or severe human rights violations, with almost seven in ten being subject to other traumatic events such as prolonged political repression and the loss of family members in violent circumstances.

6. Commonly referred to as one of the three durable solutions available to refugees, "local integration is based on the assumption that refugees will remain in their country of asylum permanently and find a solution to their plight in that State. It is a legal, economic and socio-cultural process whereby refugees are granted a progressively wider range of rights and entitlements by the host State that are broadly commensurate with those enjoyed by its citizens. These include freedom of movement, access to education and the labour market, access to public relief and assistance, including health facilities, the possibility of acquiring and disposing of property, and the capacity to travel with valid travel and identity documents. Realization of family unity is another important aspect of local integration." UNHCR, *Resettlement Handbook,* rev. edn. (Geneva: UNHCR, 2004).

7. This figure includes privately sponsored refugees and the dependants of persons granted asylum in Canada where the dependant was residing abroad when the principal applicant received protection in Canada. The total number also includes preliminary 2006 figures.

8. Canada establishes "targets" every year, which means our goal is to resettle at least 10,300 refugees and up to 12,000. The upper end of the target for 2007 was increased from 11,500 to 12,000.

9. Government Assisted Refugees are normally refugees who are referred to Canada by the UNHCR and supported through Canada's Resettlement Assistance Program during their first year in Canada if living outside Quebec. Quebec supports refugees destined to that province under the terms of the Canada-Québec Accord. Private sponsors refer most Privately Sponsored Refugees to CIC. Private sponsors provide resettled refugees with lodging, care, and settlement assistance for the first year. In exceptional cases, refugees are supported for two to three years.

10. For the full text of the *Agenda for Protection*, see UNHCR, *Agenda for Protection*, 3rd ed. (October 2003), 5–7; 73–81, <http://www.unhcr.org/protect/PROTECTION/3e637b194. pdf> (accessed December 8, 2006).

11. UNHCR, *Discussion Paper on the Strategic Use of Resettlement by the Working Group on Resettlement* (June 2003), <http:// www.unhcr.org/protect/PROTECTION/3ee6dc6f4.pdf>.

12. A comprehensive solution is one where concerted effort by a wide range of actors to address a particular refugee crisis results in the vast majority of individuals within a refugee population finding a durable solution through repatriation, local integration, or resettlement. The international response to the Indochinese refugee crisis in Southeast Asia is an important example of a comprehensive solution.

13. A core group led by Canada negotiated the MFU. This group consisted of States from both the developed and developing world, including States hosting refugees for protracted periods, as well as long-standing and emerging resettlement countries, namely: Canada, Australia, Brazil, Denmark, Ecuador, Egypt, the Islamic Republic of Iran, Kenya, Nepal, the Netherlands, Nigeria, South Africa, Sweden, the United Republic of Tanzania, Thailand, the United Kingdom, and the United States of America. The European Commission and the International Organization for Migration (IOM) were also members of the group. See <http://www.unhcr.org/protect/PROTECTION 414aa7e54.pdf>.

14. Prior to the implementation of the Immigration and Refugee Act and Regulations in 2002, refugees from abroad were selected in part based on their individual ability to communicate in an official language, work and educational experience and potential to successfully integrate within a one-year period. Current legislation emphasizes the refugee's protection needs over his or her ability to establish. In addition, the refugee's integration potential is assessed against the backdrop of his or her entire family's available supports and how well they can be expected to establish within three to five years instead of the previous one year time frame.

15. Canada is actively resettling Somali and Sudanese in Kenya, Afghans in Pakistan, and Karen from Burma (also known as Myanmar) out of Thailand. In addition, Canada has been approached to participate in a multilateral resettlement program of Eritreans out of Sudan. Further, while not listed among the thirty-three major protracted refugee situations, Canada has indicated interest in resettling Chin out of Malaysia. Canada is also involved in multilateral negotiations pursuing comprehensive solutions to the long-standing situations of Bhutanese refugees in Nepal and Rohingya in Bangladesh.

16. All refugees admitted to Canada under the resettlement program are also able to access emergency medical and dental treatment under the Interim Federal Health (IFH) program as well as foundational integration programs such as Language Instruction for Newcomers to Canada (LINC), HOST, and other services provided through the Integration and Settlement Adaptation Program.

17. Lori Wilkinson, "Factors Influencing the Academic Success of Refugee Youth in Canada," *Journal of Youth Studies* 5, no. 2 (2006): 173–193.

18. Usha George, "A Needs-Based Model for Settlement Service Delivery for Newcomers to Canada," *International Social Work* 45, No. 4 (2002), <http://isw.sagepub.com/cgi/content/abstract/ 45/4/465>.

19. UNHCR, Briefing Notes (15 December 2006), <http://www. unhcr.org/news/NEWS/45827c8a20.html>.

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More than a "Good Back": Looking for Integration in Refugee Resettlement

NICOLE IVES

Abstract

This paper describes the experiences of twenty-four Bosnian refugees resettled in the US and explores how achieving integration relates to the US policy contexts and programs. Juxtaposing refugee perspectives and policies, "lived experience" was compared with policies on paper. Central themes included participants' language and employment struggles, social support networks that included Americans, congregational sponsorship, and participants' faith in their belief that they could fully belong in American society. Implications included a reevaluation of American resettlement policy regarding language and employment, formal support for sponsorship, and an inclusion of refugee voices in planning and implementing resettlement programs.

Résumé

Cet article décrit l'expérience de 24 réfugiés bosniaques réinstallés aux Etats-Unis, et examine comment la réalisation de l'intégration se rapporte au contexte et aux programmes de la politique des États-Unis en la matière. Juxtaposant les points de vue des réfugiés et la politique officielle, le "vécu" a été comparé à la politique telle qu'énoncée dans les textes. Les thèmes centraux abordés comprennent les difficultés qu'ont connues les participants avec la langue et l'emploi, les réseaux de soutien social-qui incluaient aussi des Américains-le parrainage par les congrégations, et la foi des participants dans leurs croyance qu'ils pouvaient faire partie intégrante de la société américaine. Les implications comprennent une réévaluation de la politique américaine de réinstallation des réfugiés ayant trait à la langue et à l'emploi, le soutien formel au parrainage, et l'apport des réfugiés dans la planification et la mise en application des programmes de réinstallation.

Background

Approaches to refugee[1] resettlement are shaped by national policy contexts and ideological traditions. Resettlement is conceptualized at the federal level as economic self-sufficiency consisting of short-term assistance implemented locally. With a singular focus on refugees' economic participation, there is little understanding of the complexities of long-term economic stability. Restrictive government policies regarding foreign qualifications and language instruction in resettlement contribute to refugees being funnelled into low-wage jobs or the public welfare system. This article examines Bosnian refugee integration taking into account the American residual approach to resettlement. For this study, integration is defined as a refugee's social, economic, cultural, and political participation in a host country while maintaining a relationship with the country of origin.[2]

The study focused specifically on refugees from Bosnia and Herzegovina (hereafter referred to as Bosnia). As the former Socialist Federal Republic of Yugoslavia disintegrated in the early 1990s, civil war in Bosnia produced more than one million refugees. Refugees from Bosnia were chosen as a case study group because they were one of the largest groups recently resettled. Their memories of home were relatively recent yet they had had at least three years of resettlement experience. Issues central to all resettling refugees, such as language proficiency, employment, education, health, and acculturation have been found to be central to Bosnian refugees as well.[3] This article draws on

qualitative data to explore Bosnian refugees' experiences with resettlement. Data from twenty-four refugees from Bosnia were drawn from data collected from a larger comparative study of resettlement in Denmark and the US in 2003. The purpose of the larger study was to explore Bosnian refugees' resettlement experiences in Denmark and the US and how these experiences fused with structural factors to shape integration.

There has been limited exploration of the ways in which a state's social protection and welfare systems shape resettlement policies and how those policies in turn affect refugee integration. Recent studies have provided insight into resettlement challenges, including the examination of cross-ethnic networks and their roles in refugees' economic and educational integration.[4] Eastmond explored the ways in which practice and discourse contribute to the formation and illumination of refugees' lived experience and identity.[5] The trend, however, has not been to link resettlement challenges to specific resettlement policies and programs together with targeted recommendations for improvement. Moreover, traditional examinations of refugee resettlement have focused on single areas, such as employment, through a quantitative lens,[6] producing a fractured picture of resettlement.[7] Valuable monographs have recounted Bosnian refugees' experiences[8] although there has been modest research on the resettlement challenges Bosnian refugees face with refugee-voice-grounded policy recommendations. This study addresses this gap by focusing specifically on the resettlement challenges that refugees confront with policy recommendations grounded in the voices of those most affected.

The first section of the paper describes the resettlement context and conceptual framework for analyzing resettlement. In the second section, methods and the study's qualitative approach are discussed. The third section presents the findings that illustrate challenges found in resettlement. The final section includes a discussion of resettlement policy and programming and an identification of implications for policy and practice.

Resettlement Context

American social welfare policies tend to be evaluated and supported based on their ability to enhance personal independence in the form of individual economic self-sufficiency and to reduce dependence on public assistance. Assistance provided by the state for people in need, aside from being thought of as the last resort (after family and the local community), is believed to encourage dependency and be detrimental to both recipients and society. State-provided assistance must be kept less than market wages to ensure a greater attachment to the workforce than to aid receipt.[9]

Social welfare critics contend that support to refugees discourages long-term self-sufficiency and will only serve to smooth their transition from resettlement program benefits to public assistance.[10] A host country's social values greatly influence public and private attitudes toward the receipt of public assistance needed by refugees, particularly during the period of transition into the host country.

Conceptual Framework

Recent analyses highlight the inadequacy of traditional conceptualizations of migrant adaptation and acculturation processes.[11] Traditional adaptation research is based on the assumption that increased participation in the host culture requires detachment from the culture of origin.[12] In contrast, Berry's acculturation model addressed this host country-centric flaw by placing the refugee in an active role in the acculturation process. He delineated four acculturation modes: marginalization, separation, assimilation, and integration, two of which—separation and integration—incorporate the culture of origin. Valtonen adapted Berry's model to create a framework for refugee integration in resettlement. Reshaping resettlement to incorporate structural as well as individual factors, Valtonen transformed Berry's acculturation modes into refugees' resettlement outcomes. Based on her resettlement studies, Valtonen conceptualized integration as refugees' participation in all host society areas while preserving a sense of "ethnocultural integrity."[13]

A holistic approach addresses the person in context as well as the strengths and stressors in the refugee experience. Two theoretical frameworks that may best exemplify this holistic approach are Bronfenbrenner's ecological systems theory[14] and Garmezy's [15]and Rutter's[16] theories of resiliency and risk. Ecological systems theory calls for an examination of how the relationship between an individual and the immediate environment is mediated by forces originating from greater physical and social surroundings.[17] Garmezy's and Rutter's resilience theories provide a framework for understanding how risk factors endanger and protective factors safeguard physical and mental health and other related aspects of resettlement. Adopted for use in refugee research,[18] the resilience model involves "the evaluative awareness of a difficult reality combined with a commitment to struggle, to conquer the obstacle, and to achieve one's goals despite the negative circumstances to which one has been exposed, which were and remain evocative of sadness."[19] Rutter has provided a functional model for understanding the impact of stressful events on people's life course. In his model, protective factors transform negative life trajectories into positive ones while risk factors transform positive life trajectories into negative ones. The transformation happens at turning points in people's lives where

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the occurrence of an event triggers a trajectory change, in either the negative or positive direction.

Refugee research has uncovered micro, meso, and macro factors that shape refugees' experiences in resettlement and, thus, integration.[20] When refugees face challenges brought on by these factors during resettlement, their lives can evolve according to situational and human agency factors. These challenges could hinder or facilitate refugees' participation in economic, social, cultural, and political domains, that is, integration.

Micro factors shaping integration include acculturation and culture (including language and religion), employment, social support, and political perspectives. On the meso level, institutional settings such as resettlement and public welfare agencies, ethnic community organizations, religious congregations, and private for-profit entities provide formal resettlement assistance and resources.[21] On a macro level, inherent in the refugee experience are systemic issues of discrimination and host-country context. Examining the ways in which these factors affect resettlement has implications for understanding how refugees are affected at the micro and meso levels and subsequent programmatic responses.

Becoming a part of a host country is a transformative process that requires space for the fusion of selves. The self from the country of origin does not disappear but is a durable strand together with the refugee self and the self in the host country in the helix of a new existence. Holding on to the self from the country of origin requires a strong relationship with the country of origin. The present study contributes to the field of refugee resettlement by extending Valtonen's adaptation of Berry's acculturation framework through greater attention to multi-level factors affecting integration and more meaningful incorporation of involvement with the country of origin. The extension focuses on the integral qualities of micro, meso, and macro factors that facilitate or hinder integration (*i.e.*, how they function as protective or risk factors), how they function together to influence participation in the formal and informal life of the host country, and how that influence shapes integration. In order for a refugee to achieve integration, he or she must fully participate in the life of the host country, meaning participation in each ecological domain, while maintaining a relationship with the country of origin. Micro factors are the purview of the refugee in that he or she must work through or address each factor, such as language proficiency issues, employment challenges, and so forth. As meso and macro factors are outside of individual control, in order to achieve integration, the refugee must deal with the ramifications of these factors, such as discrimination and host country context. This process shapes a refugee's participation in the four ecological domains of societal life.

Methods

This qualitative exploration of refugee resettlement is a case study "[exploring] in depth a program, an event, an activity, a process, or one or more individuals."[22] Bosnian resettlement was time and activity-bounded, providing opportunities for gathering in-depth information using various data collection methods.[23] Case study methods included interviewing, participant observation, and document analysis. Qualitative methods were chosen to allow interviewees to give voice to their own thoughts, providing insight into how they saw their lives and the complex process of refugee resettlement and allowing for creation of new categories to emerge from the data.[24]

Sample

The sample consisted of twenty-four Bosnian refugees (eleven men and thirteen women) resettled in two northeastern states (see Table 1 for demographic data). Participants in the study were purposively chosen in partnership with two Bosnians working in resettlement to ensure the distribution of key demographic and theoretical variables in terms of gender, age, language ability, length of time since completion of the resettlement program, and employment status, characteristics found to be salient in resettlement.[25] Additionally, snowball sampling was used to access three participants who were in the 50-59 age category. These sampling procedures enable transferability of findings to other spheres of refugee resettlement.[26]

Data Sources

To situate cases in context, data sources included: (a) interviews with Bosnian refugees, (b) interviews with key informants from local resettlement agencies (including caseworkers) and government refugee agencies, (c) participant observation of sites and events (*e.g.*, agency intake sessions, English language classes, refugee employment orientations, home visits), and (d) review and analysis of historical, contextual, and statistical documents, including American refugee and resettlement policies, resettlement program materials, statistical information, and materials generated by Bosnian refugees. Utilizing multiple methods of data collection and multiple data sources enabled the comparison of findings from one method or source with others. Triangulating the methods and data sources in this way provided an opportunity for a more comprehensive understanding and interpretation of the data, thus enhancing the credibility of the data collected.[27]

Interview procedures. The primary data source was the in-depth, individual refugee interview guided by a semi-structured, open-ended interview schedule with explanatory, interpretative, and evaluative questions focused on refugees' lives prior to resettling and their resettlement experiences. The researcher conducted a face-to-face interview (two to three hours) and a second member checking interview (one to two hours). Interview questions were translated into Bosnian (using back translation and then pilot-tested) for interviews conducted in Bosnian with an interpreter. The interpreter was a Bosnian asylee (of mixed ethnoreligious background) with extensive professional experience interpreting for refugees. Interviews were conducted in English by the researcher unless participants requested the interpreter based on preference or limited English proficiency. Interviews were audiotaped with participants' permission.

Data Management and Analysis

After transcribing the interviews, the researcher wrote analytic memos for each as well as for developing themes and categories from key informant interview transcripts, participant observation field notes, and notes from document analysis. Memos were used to think about resettlement holistically, looking for patterns across all data sources as well as categorically.

Using categorical-content analysis, text was broken into small coded units of content and interpreted either descriptively or statistically. Units were then assigned to thematic categories that emerged from the text, following grounded theory.[28] Although categories emerged, the study goal of evaluating refugee integration influenced the scope of the categories' definitions.[29] Thus, content units were assigned to categories relating to varying resettlement outcomes (ranging from marginalization to integration) as conceptualized by Berry and adapted by Valtonen. NVivo, a qualitative software program, was used for organizational, coding, and theory building purposes.

Study Strengths and Limitations

The sample of twenty-four participants was chosen in consultation with Bosnian community members to ensure a diversity of experiences was obtained. Utilizing purposive and snowball sampling strategies related directly to study purposes: eliciting refugee voices to produce findings demonstrative of resettlement experiences of other Bosnian refugees and refugees from other ethnic backgrounds.[30] Case data were also confirmed in key informant interviews and through participant observation. Documents related to resettlement also provided information which, combined with the key informant data and participant observation,

contributed to a triangulation of findings. Although the sample was relatively small, a saturation point was reached where similar subjects and themes were heard repeatedly during the interviews. However, purposive sampling limits the transferability of findings. It may be that the attributed resettlement outcomes were more illustrative of the impact of individual factors than of refugee policies and programs. With varying levels of English proficiency, participants may not have been able to express complex ideas. The researcher hoped to decrease the effect of language barriers by member checking as well as giving participants an opportunity to use an interpreter regardless of proficiency level.

Results

Study participants' achievements were inadvertently supported by the American resettlement program's stringent self-sufficiency requirements. Their experiences were marked by confusion, poverty, exhaustion, and regret. A firm belief in "the American dream" and in the US as a land of immigrants distinguished them from refugees resettling in western Europe. However, participants felt that there was much more involved in the achievement of integration in the US than hard work, much more than "a good back."

More than 100,000 Bosnians were resettled in America as a result of the war in former Yugoslavia. While resettlement in the US guarantees safety from armed conflict in the country of origin, it does not guarantee a stress-free passage to integration. The goal for the Bosnian refugee participants was to regain some measure of what they had lost materially without becoming dependent on welfare. This led them to work long hours, often in multiple jobs. Many were successfully integrated into their own communities and able to buy a house within three to five years. Many successes were attributed to having "a good back," a Bosnian saying describing a hard worker. Other participants felt detached from American society, and were seen as separated or marginalized as per the study's resettlement outcome categorization.

Participants delineated four key areas in which one needed to actively participate in order to achieve integration: (a) acculturation and culture, including language and religion, (b) employment (and education), (c) social support, and (d) citizenship and advocacy.

Acculturation and Culture

Participants had a strong desire to regain what had been lost in Bosnia, both materially and psychologically. This entailed creating space for themselves in their new culture—a new identity formed in the juncture of the self in Bosnia and the self in the US. Participants missed the Bosnian identity as it had existed before the war—"a synthesis of the historical and

cultural experiences of all three *nacije* living on common territory where the different sources of people's identities were acknowledged and even emphasized."[31] "Nacije" refers to the ethnoreligious groups in Bosnia affiliated with one of three religious doctrines: Roman Catholic, Serbian Orthodox, or Sunni Islam. One participant, Senad,[32] noted that "everybody here in America came from somewhere…not [necessarily] as refugees, but from somewhere, looking for something." This was a common refrain when asked whether participants felt a part of American culture. Participants felt at times that they stood out, mainly due to language, but they still held on to the idea of America as an inclusive country. Moreover, at their workplaces, many had daily contact with people who had not been born in the US but were now citizens, shaping their conceptualization of "American."

All participants agreed on the importance of learning English on arrival and the necessity of knowing English for long-term economic and social well-being. Although not a single participant knew more than a few words on arrival, fifteen of the twenty-four participants spoke English fluently at the time of the interviews. "Fluent" was defined as being able to communicate clearly in English and not needing an interpreter. With the exception of participants in their twenties, however, participants categorized as "fluent" voiced their need to improve their English, spoke negatively about their accents, struggled with written English, and felt that their level of proficiency inhibited job mobility.

Resettlement programs offered sporadic English classes that lumped together those with varying ages, abilities, and purposes due to a lack of resources (*e.g.*, employment-focused vs. conversational). As a result, some participants dropped out, complaining that material was repetitive as different cohorts of newcomers entered the class. No intensive programs were offered by the resettlement programs to provide English language skills that could enable them to move from manual labor (*i.e.*, assembly work in factories or in warehouses) to better paying jobs more in line with their skill sets obtained in Bosnia. Whereas some participants were most focused on the economic implications of limited language, others felt its social and political constraints, noting feelings of social isolation from Americans due to a lack of English skills. Of the three participants who did not speak English at all, two were in their fifties, highlighting the language-learning challenges faced by older refugees.

What it meant to be Muslim in the US at the time of the participants' interviews in 2003 was inextricably linked what it meant to be Muslim in light of September 11, 2001, and the Iraq War. Participants were primarily Muslim, reflective of the ethnoreligious composition of refugees who fled Bosnia. Participants voiced frustrations with American perspectives of Muslims as a monolithic group

and described various ways one could be Muslim, illustrated by one participant's comment: "I'm not like the Muslims in Iraq or Afghanistan. There's a big difference in Muslims from Bosnia and Muslims from Iraq or Afghanistan…the Arab countries. Muslims in Bosnia, Muslims in Turkey, Muslims in West Europe…very different."

Muslim participants felt themselves under fire and felt that they were made to feel defensive about their faith. Many participants described feelings of otherness, as illustrated by Sabira's comment:

> I say at my job I'm not for war. People know I'm Muslim, and people talking like I'm on Saddam Hussein's side. I'm not! But I'm not on Bush side. I was in war 3 years. No food, many people killed. But people is thinking that I'm Muslim, that I like Saddam Hussein.

Employment and Education

The most influential directive in the resettlement program affecting adult refugees is "self-sufficiency within ninety days." Of the seventeen participants with higher educational credentials and qualifications in their backgrounds, only one was able to use hers shortly after arrival because of help she received from a Bosnian friend working in the same field. Two participants were able to continue the jobs they had held in Bosnia: One owned a cleaning business, not requiring recertification, and another resumed driving a truck after passing the Commercial Driver's License (CDL) exam within three months of arrival. The latter was sponsored by a religious congregation whose members helped him navigate the Department of Motor Vehicles and learn English specifically geared toward the CDL exam.

Twenty out of twenty-four participants were employed or employed and studying. Over half of employed participants were working in low- or no-skill jobs in the private for-profit or nonprofit sectors. Although such jobs are the most widely available to refugees, in economic downturns, those positions are the most vulnerable to layoffs. Of the twenty employed participants, four owned their own business. In response to the challenge of restricted access to economic opportunities, ethnic small businesses are one of the few ways a refugee can achieve economic and occupational mobility.[33]

Participants' dissatisfaction with employment included complaints of: long hours at low-wage, low-skill jobs; multiple jobs to maintain "a normal life" financially; jobs unrelated to their educational credentials; and lack of health insurance for themselves and other family members. Those who had health insurance were motivated to stay in unsatisfactory positions (usually manual labor) rather than try to obtain a job more suitable to their prior skills and

experience. All married participants indicated that both were working, as two incomes were needed for survival.

Social Support

A central process of survival in resettlement is recreating social networks that were damaged or lost as well as reconciling to that loss.[34] Participants acknowledged the centrality of the help that they had received during their first several years. Major support came from the Bosnian family, the wider Bosnian community, and congregational sponsorship.

All participants resettled with at least one family member, and twenty participants came with children. For those who were parents, their children's welfare provided the primary motivation to persevere. Family members who had fled Bosnia a short time before helped some participants. Participants were aware that their relatives had had a difficult time, and that their own relatively easier adaptation was in large part due to the struggles of the others. Participants described reciprocal assistance from the Bosnian community in the US. Many participants noted that they were continuing the Bosnian tradition of helping family, friends, and neighbours, not expecting financial compensation, but anticipating future assistance from them. They were disappointed by what they felt was an emphasis on monetary compensation in American culture, which seemed to eclipse the intention of reciprocity.

Eleven participants were sponsored by a religious congregation. Sponsorship refers to formal assistance by an entity for a limited time after a resettlement agency's initial reception and placement. Congregations replace social networks refugees are forced to abandon. Social capital (*i.e.*, support and help from family and community) that had been lost was regained through sponsorship. Congregations facilitated integration by removing barriers, teaching English, and contributing financially. Ten of the eleven participants were of a different religious faith than their sponsors. No participant voiced discomfort with that. Nine of the eleven participants had better outcomes in terms of employment (jobs requiring skills, paying above minimum wage), language (better communication skills, comfort level with English), and social support (sponsors provided practical and emotional support, advocacy, and ongoing friendship after initial assistance) than those who were not sponsored by a religious entity. Thus, the sponsored refugees had better overall experiences of resettlement, particularly in their initial years.

Citizenship and Advocacy

Among nearly all participants, there was a general reluctance to get actively involved in politics relating to American or Bosnian issues. Conceptualizations of political participation consisted primarily of citizenship, a belief in the importance of advocacy, and staying apprised of (but not necessarily actively participating in) politics and current events in Bosnia. Five participants were citizens, twelve were planning to apply, and seven participants had no plans to apply. The most common reason for relinquishing Bosnian citizenship was pragmatic: the ease with which one could travel with an American passport, including travelling back to Bosnia at some future point. One participant receiving Supplemental Security Insurance benefits felt that his benefits would be safeguarded if he were an American citizen. Whereas one participant felt that obtaining American citizenship would move her further away from Bosnia in a psychological sense, for another participant, the decision *not* to seek or consider applying for citizenship would be a loss. Sandra was the only participant who explicitly included political involvement in her conceptualization of integration. She felt that political involvement increased one's connection to the host country, critical to integration.

Discussion

Language and employment, moulded by resettlement policy, were the critical factors that shaped resettlement and provided participants with the tools to achieve integration. Resettlement policy and welfare ideology created the types of resettlement programs and benefits offered to participants. Religious congregations made a significant impact on resettlement outcomes of sponsored participants by mediating policy and ideology's impact.

Newcomers coming from countries where English is taught as a second language or having English-language backgrounds have an easier time starting off in the US. For example, refugees from countries in Africa[35] as well as immigrants from some Asian countries[36] which were formal colonies or had strong, historical Anglo ties have high levels of English proficiency. In September 2003, the author attended an initial home visit with a Sudanese family with a resettlement caseworker at the home of the family's congregational sponsors. No interpreter was needed for the home visit as the caseworker explained all complex resettlement program benefits and requirements entirely in English. English was one of four languages the refugee couple spoke fluently. Bosnians did not have this built-in familiarity with English and therefore did not have this advantage.

Studying Bosnian refugees in Chicago, Miller *et al.* found that an inability to speak English resulted in a lack of environmental mastery, underscoring "the importance of linguistic competence in effectively negotiating the environment and particularly in gaining access to important educational and employment-related resources."[37] In this

study, when asked, "What was your greatest challenge when you arrived," every participant gave some variation of "learning the language." Not one had functional English proficiency upon arrival, and those who knew a few words had acquired them in childhood. For participants who had limited or no English-language proficiency, this lack of environmental mastery created substantial barriers to integration.

Participants characterized English classes offered by resettlement agencies as ineffective due to varying proficiency levels in the same class and/or not offering classes frequently enough. An agency's ability to offer courses on a consistent basis is limited by federal funding. Tollefson asserted that language policy shaping American resettlement English courses for refugees was "designed to channel them into jobs in the peripheral economy."[38] More than a decade later, refugees continue to be employed in low-wage jobs because of either no involvement in English courses due to immediate job obligations or involvement in courses that are geared toward minimum-wage work. The limited benefits from resettlement programs necessitated finding employment as soon as possible after arrival, which meant jobs that did not require English proficiency.

Employment was an economic and a social imperative for participants, consistent with other studies focused on refugee resettlement,[39] including refugees from the former Yugoslavia.[40] Although the majority were employed, only a small number of participants were satisfied with the nature of their employment. Regardless of educational background or area of expertise, refugees most often found work in the lowest paying sectors, consistent with other studies examining refugee employment in Canada,[41] Italy,[42] the UK,[43] and the US.[44] Unless there is some mediation, such as occurred with congregational sponsors, most refugees who arrive with little to no English proficiency will end up in low-skill, low-wage labour from which there is limited opportunity for upward mobility.

Organized sponsorship programs, including those of religious congregations, made an extraordinary contribution to the resettlement of the refugees in the study, particularly in the initial period. Sponsors provided critical material, informational, and emotional support to refugees beginning on or soon after their arrival. American congregational sponsors connected participants to jobs that paid more than the minimum wage and from which there were opportunities for advancement. Differences in outcome based on whether or not a participant had been sponsored by a religious congregation were profound. Its impact directly supported the achievement of integration. Sponsorship offering material and emotional support is vital to the outcome of resettlement for resettling refugees.[45]

Contrary to these findings, Canadian studies of private sponsorship found that sponsorship did not bestow any employment advantage to resettling refugees.[46] Canada has a large, organized national refugee sponsorship program, where Canadian sponsors assist with initial costs, help refugees find employment and adequate housing, assist in school enrolment for children, and encourage refugees to enrol in English-language courses.[47] Further study would be need to explore the disparate findings from the American and Canadian studies.

Implications for Policy and Advocacy

Structural factors of resettlement policy, shaped by welfare ideology, impacted participants' integration as well as long-term self sufficiency. First, resettlement involves services from different sectors, which can lead to shifting responsibility, confusion, and a lack of enforcement of standards. Funding is provided by the Bureau of Population, Refugees, and Migration (PRM) in the Department of State for basic resettlement needs; public agencies oversee cash and medical assistance; and state and local voluntary agencies provide specific resettlement services under guidance by the Office of Refugee Resettlement. As Franz also found, there was a general lack of knowledge of resettlement and social welfare benefits, and as a result, many participants did not apply for benefits for which they were eligible.[48] Although minimum standards set out in resettlement policy govern basic needs, other services, such as language courses, are dependent upon the capabilities of local resettlement agencies, community resources, and knowledge of refugees' specific needs. As a result, refugees resettling in one area may not have access to the same opportunities as those resettling in other areas.

Second, the funding source for resettlement services and programs is not continuous. This hinders service continuity throughout the year. Because funding that is used for current refugees is often per capita funding given for those previously resettled, a large, sudden increase in resettling refugees can easily overwhelm agency resources. With the priority of employment over language proficiency, initial pressure is not on learning English but getting immediate employment regardless of type of job or opportunities for advancement. Language acts as a gatekeeper for employment,[49] miring refugees in low-paying employment with little job security or opportunities for advancement, threatening the goal of long-term self-sufficiency. Research findings highlight the demand for a policy provision that reflects a government commitment to equal opportunity for refugees, if not equal outcome.

Third, to facilitate stable employment and thus long-term self-sufficiency, a credible national body is needed to evaluate refugee credentials upon arrival. Valuable human

capital resources are wasted when refugees are forced to take jobs unrelated to their professional or vocational expertise. Valtonen also found that refugees' skills were being under- or nonutilized.[50] Societal losses are due to structural deficiencies regarding the utilization of human capital that would otherwise be counted as a resettlement advantage.[51] Credential evaluation need not interfere with the government goal of self-sufficiency in the short term. Short-term jobs in areas unrelated to skill/educational background might be more tolerable if credentials are being evaluated simultaneously.

Lastly, a policy mindshift is required. Refugees must be removed from the traditional position as policy objects to a place where they are integral, active agents in resettlement. Resettlement itself must also be transformed from a one-way procedure into a two-way process, with space for adjustment and social inclusion. Without some semblance of mutual accommodation, refugees will continue to believe that assimilation is the desired resettlement outcome of the government and the public. Federal funding at the local level could support cultural exchange activities that reflect this process of mutual adaptation. There also must be a concerted effort to solicit refugee perspectives and bring refugees themselves to the table. Without seeking and incorporating refugee input into policy, subsequent interventions will continue to be ineffective and ignore refugees' potential contributions.

Social relationships cannot be dictated by policy. Aspects of American cultures and ways of life strongly influence the extent to which a refugee can achieve what can be considered a satisfactory level of social integration.[52] Only participants who had been sponsored by a religious congregation described genuine friendships with Americans. This underscores the need for increased advocacy for funding to support social connections between refugees and American citizens to increase social inclusion. Findings demonstrated the importance of interactions between refugees and host country citizens not only because they facilitate social inclusion but also because they facilitate employment, which contributes to long-term self sufficiency.

Possibilities for Further Research

Further exploration of refugee sponsorship is critical. Exploratory research examining the prevalence of congregational sponsorship, the types of support provided by congregations, and the extent to which other community organizations are formally and informally involved in sponsorship is needed. A formal sponsorship system (*e.g.*, the Canadian system) should be examined to assess its transferability to the US. As congregational sponsorship is a voluntary activity in the US that takes place without governmental

oversight, a key question would be whether formal governmental organization of sponsorship detracts from the quality of the relationships formed and thus their impact on resettlement and integration.

Table 1. Sample Characteristics for Bosnian Refugee Participants

Sample Characteristics	Participants
Gender:	
Male	11
Female	13
Age range:	
21–29	4
30–39	6
40–49	11
50–59	3
Marital status:	
Married	20
Single	3
Widowed	0
Separated	1
Family status:	
Has children	20
Years in the host country:	+
3–5 years	9
5+ years	15
Language proficiency:	
Fluent	15
Limited	6
None	3
Employment status:	
Employed	18
Unemployed	3
Full time students	0
Part time students/working	2
Supplemental Security Income	1
Ethnoreligious background:	
Bosnian Muslim	16
Bosnian Croat (Catholic)	4
Bosnian Serb (Serbian Orthodox)	2
Mixed background (Catholic-Muslim)	2

Notes

1. According to the 1951 Geneva Convention relating to the Status of Refugees (Refugee Convention), a refugee is an individual who flees one's country of origin based on a well-founded fear of being persecuted for reasons of race, religion, nationality, social affiliation, or political opinion. Most adherents to the Refugee Convention also recognize the Organization of African Unity (OAU) Refugee Convention definition (1969) of a refugee as a "person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order [seeks] refuge in another place outside his country of origin or nationality." United Nations High Commissioner for Refugees, *The State of the World's Refugees: A Humanitarian Agenda* (Oxford: Oxford University Press, 1997), 52.

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On the Outside Looking In:
The Precarious Housing Situations of Successful Refugee Claimants in the GVRD

Kathy Sherrell, Silvia D'Addario, and Daniel Hiebert

ABSTRACT

Access to affordable and adequate housing is a key step in the successful integration of newcomers. While some immigrants are able to transition into home ownership quite rapidly, other newcomers are finding it increasing difficult to access basic shelter. There is little systematic knowledge about the extent of homelessness among immigrants and refugees in Greater Vancouver. This paper details the findings of a 2005 study entitled The Profile of Absolute and Relative Homelessness among Immigrants, Refugees, and Refugee Claimants in the GVRD. *We highlight the extent to which some newcomers are increasingly at risk of "hidden homelessness," a term that describes precarious and unstable housing experiences. This paper also details the unique housing experiences of refugee claimants. Given their temporary legal status, claimants often face the most tenuous experiences in the housing market. Their experiences are often marked by poor residential conditions, crowding, and high rent-to-income ratios.*

Résumé

L'accès à un logement abordable et adéquat est une étape importante dans l'intégration réussie des nouveaux arrivants. Bien que quelques immigrants parviennent à devenir propriétaire de leur logement assez rapidement, d'autres nouveaux arrivants éprouvent des difficultés croissantes pour accéder à un abri de base. Il existe peu d'information systématique sur l'étendue du phénomène des sans-abris parmi les immigrants et les réfugiés dans le Grand Vancouver. Ce document met en exergue les résultats d'une étude entreprise en 2005 et intitulée The Profile of Absolute and Relative Homelessness Among Immigrants, Refugees, and Refugee Claimants in the GVRD *("Le profil des sans-abris absolus et relatifs parmi des immigrants, les réfugiés, et les demandeurs du statut de réfugiés dans le DRGV"). Nous soulignons la mesure dans laquelle certains nouveaux arrivants sont de plus en plus à risque du sans-abrisme caché, un terme qui décrit des expériences de logement précaire et instable. Ce document détaille également les expériences uniques en matière de logement des demandeurs du statut de réfugié. Étant donné leur statut juridique provisoire, les demandeurs font face souvent à des expériences des plus ardues sur le marché du logement. Leurs expériences sont souvent caractérisées par des conditions de logement précaires, l'encombrement et des loyers élevés par rapport aux revenus.*

Introduction

> the longer a problem is ignored, the bigger it becomes…
>   — sign on the side of Covenant House Vancouver

On any given day media headlines inundate readers with stories about Vancouver's housing market: "Vancouver real estate prices lead the Nation," "Real estate prices rise 11.2% in year," "Housing prices continue to climb"; Vancouver continues to be the most expensive real estate market in Canada.[1] In January 2007 the average house sold for $530,695 (an increase of 16 per cent over the same period last year) compared to the national average of $299,318, making the housing ownership market increasingly difficult to enter for the average Vancouver household.[2] Tenants face

similar difficulties in accessing housing: Vancouver has the second highest rents in the country, with the majority of units in the private rental market. At the same time, recent research warns about the decreased economic fortunes of newcomers – as evidenced by longer catch-up times and lower wages.[3] "The New Face of Poverty" screams a January 2007 *Globe and Mail* headline: according to a report released by Statistics Canada educated and skilled immigrants have become the new face of poverty in Canada.[4] For refugees, who constitute a much smaller proportion of newcomers, the findings are grim: refugees are more likely to experience chronic low income and much less likely to exit poverty than were members of the skilled or family class.[5] The question arises: how have newcomers fared in accessing housing in Vancouver?

Recent research by Hiebert, Mendez, and Wyly indicates that housing trajectories continue to be upward for the majority of newcomers.[6] Almost 20 per cent of newcomers achieve homeownership within the first six months after arrival; astonishingly 6 per cent of respondents are mortgage-free after this short period of settlement in Canada. These positive outcomes, however, are not shared by all newcomers, a finding acknowledged by the authors of these reports.[7] While some newcomers are able to move rapidly into home ownership or are living in stable and secure housing, others are "living on the edge" in unsafe, insecure, or crowded conditions within the private rental market. Tenants in particular are identified by Hiebert, Mendez, and Wyly as a group who are not necessarily experiencing a progressive housing career: 20 per cent of all immigrant cohorts who rent are at risk of homelessness (*i.e.* spending close to, or beyond, 50 per cent of monthly household income on rent). Tenants, research suggests, are increasingly left behind as the gap between owners and renters continues to expand both in Vancouver and in Canada more generally.[8]

Although immigrants overall are faring well in the housing market, therefore, this is not the situation for all newcomers. This paper examines the results of a 2005 study on the circumstances of absolute and relative homelessness among immigrants and refugees in the Greater Vancouver Regional District (GVRD).[9] In an earlier paper, "Restricted Access: The Role of Social Capital in Mitigating Absolute Homelessness among Immigrants and Refugees in the GVRD," we argued that access to social networks varies according to the mode of entry for immigrants (*e.g.* skilled immigrants *vs.* refugees). The findings indicate that refugee claimants (RCs) are the most likely of all respondents to "fall between the cracks" of the housing system. Building on the paper by D'Addario, Hiebert, and Sherrell, this paper examines the extent and profile of those experiencing ab-

solute and relative homelessness in the GVRD.[10] The ability to access appropriate and adequate housing may be differentially experienced by immigrants and refugees, and at a finer scale by government-assisted refugees and refugee claimants.[11] What emerges from our research is a portrait of extremely precarious housing conditions amongst claimants in the GVRD.

Literature Review: Barriers to Housing for Immigrants and Refugees

Finding adequate housing is a kind of barometer indicating the degree of successful incorporation into a new society. Therefore, understanding the housing experiences of newcomers is an important first step in assessing the different levels of incorporation of new Canadians. For many newcomers, finding appropriate and adequate housing marks the first basic step towards settlement. However, as noted by Chambon *et al.*, Canadians do not have equal access to adequate accommodation.[12] Moreover, even similar groups of people in similar circumstances vary in their access to the stock of available housing.

Financial Obstacles

There is a large literature contending that, upon arrival, immigrants earn less than the average Canadian-born person, but that, over time, this gap narrows. This process, also known as "economic assimilation," may no longer be a pervasive reality in Canada, especially among new immigrant cohorts. Although immigrants entering Canada during the 1970s have nearly reached economic parity with the average Canadian-born citizen, subsequent cohorts experience both a lower relative income upon entering Canada and a delayed catch-up period.[13] These findings are roughly consistent for both men and women immigrants entering during the same time period. Further, the same research shows that even well-educated immigrants share this economic disadvantage. Picot explains that educated immigrant males arriving during the 1970s entered the Canadian labour market earning 82 per cent of the earnings of the average male Canadian.[14] By the 1990s, new immigrant males earned only 50 per cent of their counterparts. The trend for educated women is similar. Pendakur and Pendakur extend the general story of income dynamics into the labour market, and show that recent immigrants earn wages well below the Canadian average.[15] In Vancouver, the average Canadian-born annual income was $26,213 in 1991, compared with $18,208 earned by immigrants of less than ten years' stay in Canada.

Between 1980 and 2000, the proportion of immigrant family incomes that fell below the low-income cut-off (LICO) has risen considerably.[16] Although the percentage

of immigrant families living below the cut-off rose from 24.6 per cent in 1980 to 35.8 per cent in 2000, the corresponding figures for the Canadian-born declined from 17.2 in 1980 to 14.3 per cent in 2000. Poverty, once largely composed of Canadian-born citizens in 1980, is now predominantly associated with visible minorities and new immigrants (and Aboriginal Peoples and women, especially single mothers).

In 1995, 30 per cent of immigrants residing in urban areas were living below the poverty line, compared with 21.6 per cent of Canadian-born residents.[17] Furthermore, poverty levels dropped for those who have been residents of Canada a long time: those arriving in Canada prior to 1986 had a poverty rate of 19.6 per cent, compared with 52.1 per cent for those considered *recent* immigrants (arriving between 1991 and 1996).[18] As a result of below-average earnings, housing and rent affordability is a chronic issue for new Canadians. In 1996, 21 per cent of immigrant households suffered from "core housing need," which refers to a combination of poor housing quality and problems with affordability.[19] Recent economic changes have therefore had uneven social consequences, and have been especially hard on immigrants. These financial setbacks translate into difficulty accessing affordable and adequate housing.

Primary and Secondary Barriers

Chambon *et al.* assert housing barriers are experienced on a micro scale by the individual (or household unit), but are the result of macro-level dynamics.[20] The authors separated these obstacles into what they defined as primary and secondary barriers. The former include characteristics that are difficult if not impossible to alter, such as skin colour, race, gender, and ethnicity, while the latter include barriers that can be altered and often do change over time, including language and knowledge of institutions. Extending this argument Hulchanski asserts that because primary barriers such as ethnicity, race, and gender all play an integral role in shaping access to the basic necessities in society full incorporation may not be attained by many newcomers.[21] Structural barriers, such as high rent prices, lack of social housing, long waiting lists, and low vacancy rates, are intersected by reduced social assistance, legislation that generally favours landlords, and the lack of political intervention in housing crises with micro barriers to compromise access to housing for newcomers. The multiple sites of disadvantage faced by immigrants and refugees result in "differential incorporation," which refers to unequal opportunities faced by particular groups.[22] This differential incorporation increases the likelihood that immigrants, refugees, and asylum claimants will experience housing stress and/or homelessness.

Recent research by Murdie and Teixeira describes immigrant and refugee strategies to find affordable housing.[23] In addition to cost, many immigrants experience additional barriers related to the size of their households. Rental accommodations, both private and public, are not designed for large families. The size of affordable dwellings poses concern for many immigrant families owing to larger than (Canadian) average family sizes. While 20 per cent of immigrants live in households of five or more members, this compares to 10 per cent of non-immigrant households.[24] Research conducted by Miraftab revealed that many refugees felt obligated to be dishonest about the size of their family in order to negotiate a contract.[25] Family members were later smuggled in after accommodations were attained.[26] The consequence is often overcrowding, since rental apartments are generally limited to smaller households. In addition, immigrants face the potential for eviction if they are caught hiding additional family members. In these situations families are subject to frequent moves, placing greater financial strain on the household and creating a susceptibility to psychological problems.

In many cases the barriers that newcomers face in the housing market cannot easily be overcome. The reality is that newcomers are significantly more at risk of living in poverty than the average Canadian-born person. Moreover, rising levels of poverty among immigrants may consequently imply rising levels of homelessness for these same groups.

Findings: If Not on the Streets or in the Shelters, Then Where?

While Hiebert, Mendez, and Wyly paint a generally positive picture of the housing situation amongst newcomers six months after arrival, our research focuses upon those experiencing either precarious housing conditions or absolute homelessness.[27] In some regards the story continues to be positive: findings from the shelter survey reveal that immigrants and refugees are under-represented in Vancouver's shelter population. While immigrants and refugees represent 38 per cent of the population of the GVRD, they account for only 18 per cent of respondents. When Welcome House (the specific institution for government-assisted refugees, or GARs) is removed that number drops to 13 per cent or about one-third of what we may expect given their representation in the larger population.[28] Further examination, however, reveals that approximately 40 per cent of the non-Canadian born population captured in the shelter survey are refugees.[29] When we take into consideration that refugees (all categories) account for only 13 per cent of all newcomers to Canada, shelter usage by this group is approximately three times what may be expected. Although some of the results

can be accounted for by the inclusion of Welcome House in our sample, the results nonetheless begin to illuminate the variability of housing outcomes amongst immigrant and refugee groups. While immigrants as a whole are under-represented, refugees may be over-represented.[30] Alarmingly, although over 40 per cent of refugees in the shelter survey reported having arrived within the last year, 20 per cent have been in Canada for more than a decade. Shelter usage, then, is not restricted to only recent arrivals but may be indicative of longer-term housing problems.

Disturbingly, anecdotal evidence from shelter staff further reveals the precarious housing situations of many who are not in the shelters. Operators of a housing crisis phoneline in GVRD report increased calls from immigrant and refugee populations in the West End of Vancouver who are "sofa surfing," and suggest many may not be using shelters for cultural reasons. Other information has indicated that when immigrants and refugees have no place to stay, they will stay with family or friends. This may be related to issues of trust, language, the depth of familial and friendship connections, and the desire for a secure place to stay. Given the insecurity of their legal status, claimants may experience obstacles to settlement not faced by others. Unlike GARs, for example, claimants may not receive information necessary to access assistance in locating housing or emergency shelters.

As housing prices continue to increase across the Vancouver Census Metropolitan Area (CMA), low-income groups face increased affordability challenges.[31] Many of the locations inhabited by respondents in the housing survey (including both immigrants and refugees) also conform to areas in which at least 20 per cent of the population of the census tract is considered to be in the category of low income persons, according to census definitions (see Figure 1). While we cannot definitively assert that our respondents qualify as low income persons the extent to which they – particularly refugees – are located within areas of high concentrations of low income persons is striking. With the exception of a small concentration in South Vancouver, the majority of refugees in the housing survey are located in close proximity to either Vancouver's rapid transit line (Skytrain) or other major public transportation routes.
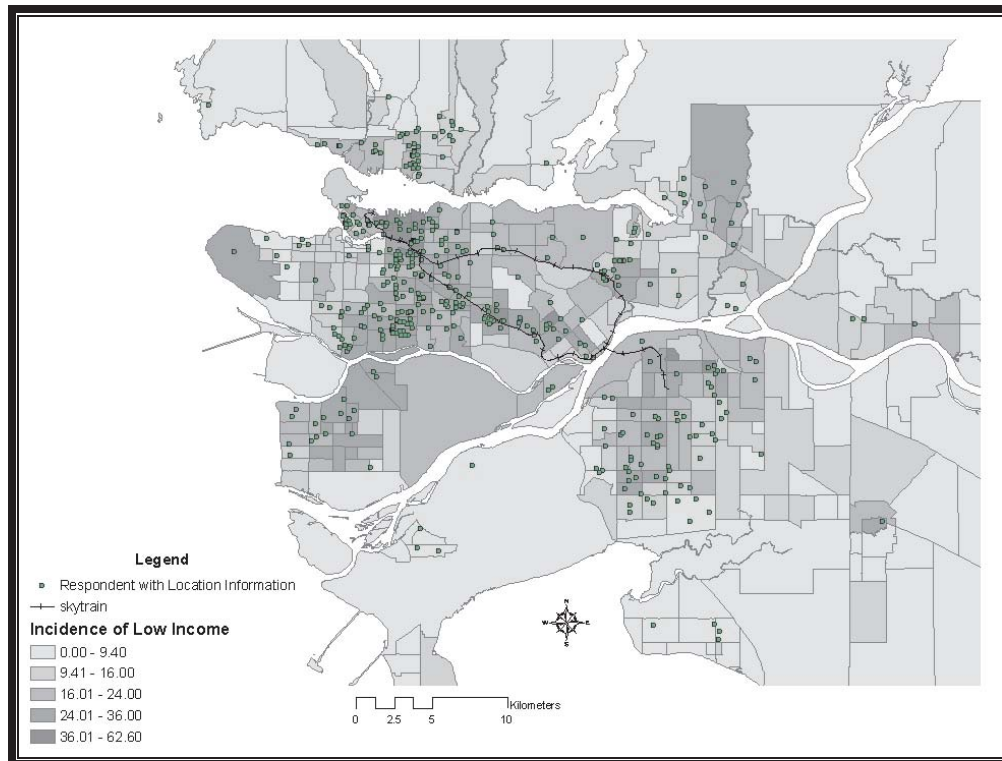

Figure 1: All respondents who provided location information with incidence of low income in census tract

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Living with Low Incomes: Employment and Social Assistance

Labour force participation amongst respondents across the three sub-studies is marked by un(der)employment and difficulties in obtaining employment. Within the housing survey, both those providing and receiving assistance report high numbers of households in which no one is employed. Of those households receiving help, for example, 35 per cent report having one or more persons employed, while 45.2 per cent of households providing help report having no one employed. We find high numbers of individuals who report providing assistance with housing, yet have no one employed within the household (42.6 per cent for immigrants and 54.5 per cent for refugees). Refugees who are receiving assistance with housing were four times as likely to report having no one employed in the household (80.5 per cent) than to report having one or more members of the household being employed (19.5 per cent), while approximately half of immigrant households reported one or more individuals in the household who were employed. Economic insecurity, as measured by high unemployment and low wages, is associated with significant housing affordability problems.[32]

Respondents in both the housing and claimant studies identified a number of barriers to obtaining employment which are consistent with the wider literature.[33] Problems with recognition of foreign credentials, lack of fluency in English, and the elusive need for Canadian experience all emerged as factors influencing respondents' ability to gain employment. In order to gain a foothold in the labour market, for example, claimants reported having been required to volunteer and/or having been placed at the bottom of the labour market regardless of their skill and education level. Lack of English language proficiency hinders ability of newcomers to obtain employment – a situation that is aggravated for claimants by their inability to access English language classes.[34]

For claimants, these difficulties in obtaining employment are compounded by their assignment of a Social Insurance Number (SIN) beginning in "9." Both key informants and claimants alike identified this visual cue – which marks the bearer as a temporary visitor to Canada – as the major barrier to obtaining employment. While informants spoke of the need to eliminate this marker, claimants spoke of its effects on their attempts to obtain employment. For some, discrimination owing to SIN tagging resulted in not being asked to fill out personal information on applications, while others were not called back for interviews. A claimant from Eritrea recounted his experiences:

There was a job in Coquitlam and everything was great. They showed me what to do, they told me how much they pay me, everything. And then they asked me for my SIN number and it says '9.' "What's this, are you new?"…if you are new it's terrible.

Unfortunately, the effects of SIN tagging extend beyond the claim period. Because individuals retain the "9" on their SIN until permanent residence is obtained, the individual is marked as temporary even after the Immigration and Refugee Board has accepted his or her claim. Discrimination owing to status as a temporary visitor to Canada, then, continues even after a positive determination results in the right to apply for permanent residence.

Access to employment, however, does not preclude the possibility of experiencing even the most absolute forms of homelessness. "Rooflessness" and dependence on emergency shelters is a real possibility even for those with some sort of employment. Although self-reported it is significant that almost one-quarter of all respondents staying in shelter reported some form of employment (full-time, part-time, or casual). Employment was the second most prevalent form of income among immigrants and refugees in the shelter survey. Difficulties in obtaining employment mean newcomers may remain dependent on welfare.

At the time of our research basic welfare provisions ranged from $510 per month for single, employable recipients to higher amounts depending on the structure of the family and number of individuals within it.[35] While many claimants were dependent upon government aid at least during the initial stages after arrival (thirty-two of thirty-six respondents in our claimants study), some may be deemed ineligible for welfare as result of an initial negative decision of their case by the Immigration and Refugee Board.[36] This was the case for two of the thirty-six claimants interviewed in our study. Ineligibility for welfare assistance has wider implications on an individual's ability to access emergency shelter as the majority of shelter beds in the Vancouver area require Ministry of Human Resources (MHR) vouchers. Those without proper documentation, or who do not qualify under criteria established by MHR, are hindered in their efforts to access emergency shelters by a lack of available emergency beds that do not require Ministry vouchers.[37] Very recent arrivals, including those lacking proper documentation, may not be eligible to access even the most rudimentary form of emergency shelters. Additionally, the perceived fear of deportation may prevent claimants from accessing emergency shelters.

Those reliant on social assistance in Vancouver are experiencing a critical housing affordability problem: rents have increased but the basic welfare allowance has not.[38] Unaffordable rental rates are cited by claimants as the most

common barrier to accessing housing. In 2005 the average rents for bachelor suites and one-bedroom units in Vancouver CMA were $678 and $788 respectively.[39] While rents have kept pace with inflation, social assistance rates have not. According to the National Council of Welfare the 2005 poverty line (measured by LICO) – is $20,778 (before-tax) or $17,219 (after-tax) for single employable persons in the province of British Columbia. Given 2005 welfare rates of $6,120 per year, this represents approximately 29.5 per cent (before tax) or 35.5 per cent (after tax) of the poverty line.[40] For single, employable people, the cost of renting a bachelor suite – at the average price of $678 per month – exceeds annual welfare assistance by over $2,000 per year, necessitating a search for the cheapest accommodations available or doubling up even within small spaces.

Low vacancy rates compound the difficulties associated with high rental rates and insufficient (welfare) incomes. In 2005, the average vacancy rate in Vancouver CMA was 1.4 per cent, well below the provincial average of 1.9 per cent.[41] While these vary across the CMA, the average vacancy rate within the City of Vancouver (where most of the rental units exist) was 0.7 per cent. Higher rent increases in larger units function to increase vacancy rates in these units as households seek to maximize their housing dollars, *e.g.* by choosing smaller units. Consequently, vacancy rates are highest among bigger units, while those for smaller units remain low (*e.g.* 2.2 per cent for units with more than three bedrooms compared to 1.0 per cent for bachelor suites). Vacancy rates continue to be lowest among those units that are in greatest demand by claimants (*e.g.* bachelor units, one-bedroom suites).

The rent-income discrepancy is evident in the extent to which respondents in the housing and claimant studies reported having experienced affordability problems for at least some part of their time since arrival. According to Canada Mortgage and Housing Corporation (CMHC) standards, housing is considered affordable if it accounts for no more than 30 per cent of gross household monthly income. Those spending beyond 30 per cent of monthly household income on housing are considered to be experiencing housing stress, while households allocating more than of 50 per cent are experiencing critical housing stress. The affordability challenges experienced by respondents in our study was staggering: at the time of the study 65 per cent of those not receiving help in the housing study and over 75 per cent of individuals in the claimant study did not meet affordability standards established by CMHC.[42] Respondents in the housing study who do not meet affordability standards are equally distributed between those experiencing housing stress and critical housing stress. Astonishingly, over 60 per cent of respondents who report having provided assistance are at-risk of homelessness themselves (*i.e.* they spend at least 31 per cent of income on housing); one-quarter of respondents providing assistance are themselves experiencing critical housing stress.

For claimants the situation is even more dire: when asked to reflect on rent payments as a percentage of total monthly household income for both their initial (after arrival) and current housing, all respondents in the claimant study reported having experienced critical housing stress for at least some part of their housing experience in Canada. Initially, all respondents reported having spent over 51 per cent of monthly household income on housing. Four of the thirty-six respondents initially spent 75 per cent or more of their household income on housing. At the time of the interview, which was approximately one year after receiving a positive decision on their claims, the housing situation of claimants had improved somewhat: almost 40 per cent of respondents (fourteen of thirty-six) reported spending less than 50 per cent of household income on housing. Even within those experiencing (critical) housing stress the situation improved slightly with average percentage devoted to rent declining from 65 per cent on arrival to closer to 50 per cent at the time of the study. In spite of modest improvements in affordability, however, it is significant that less than one-quarter of respondents fall within the national affordability standards (defined as spending less than or equal to 30 per cent of monthly household income on housing) one year after the positive decision.

Case Study

Brenda, a single mother from Congo, has been paying more than 75 per cent of her income on housing since she arrived in Canada in 2003. After staying in two emergency centres for the first three weeks here, Brenda found a one-bedroom apartment in New Westminster. Her rent costs $660 a month with an additional $140 for her phone bill and utilities. As a single mother, Brenda is entitled to $845 plus an additional child benefit of $246 a month. Brenda's monthly income totals $1,091, while her housing expenses total $800. Brenda has been on the waiting list for BC housing for over one year. She is frustrated that she and her son have to survive on the provisions of his child benefit. Brenda began crying while discussing her situation, she says, "…it's so difficult now…you can't buy food, buy anything. Maybe if you go to the food bank, I can't eat meat, I can't eat food from my country. It's so difficult. I went [to the welfare office] to ask I need some [bus] tickets because I am going to school. They said we don't give tickets. I said how can I find a job if I can't learn English?"

Devoting a high percentage, or in some cases all, of monthly household income to housing, means little is left over to pay for other basic necessities (including food, clothing, and transportation).

Stonewalled: Barriers to Housing amongst Immigrants and Refugees

For immigrants and refugees the structural barriers to obtaining housing that are faced by other low income groups – including inadequate shelter assistance rates, high rental prices, long waitlists, and a lack of affordable and accessible housing – may be compounded by a number of barriers specific to their circumstances (*e.g.* size of families and lack of suitable housing to meet the needs of large families).[43] Existing literature highlights a number of difficulties experienced by immigrants with limited financial resources; while the difficulties faced by newcomers may be similar to those of other low-income households, unfamiliarity with the Canadian housing markets and lack of English language proficiency exacerbate these problems.[44] Legal status may aggravate the situation, as well.

Respondents in the housing survey were provided with a list of barriers to accessing housing (including open-ended responses) and were asked to indicate any/all difficulties they had experienced. Immigrants and refugees alike both identified *language* and *size of family* as the greatest obstacles in finding housing. The inability to communicate proficiently with landlords due to limited English facility raises a barrier for newcomers not necessarily experienced by others in the aggressive Vancouver housing market. Refugees (both GARS and RCs) were twice as likely as the total respondent group to cite language as a barrier in accessing housing (76 and 36 per cent respectively). Lack of proficiency in English can increase barriers owing to the potential inability to read classified advertisements or negotiate rental contracts with landlords. Although some newcomers are able to rely upon family or friends for assistance in finding housing (*e.g.* by acting as interpreters), not all can do this. Claimants are at an increased risk owing both to their ineligibility for English language classes and to limited social networks, at least upon their arrival.[45]

Size of families, as well as number and age of children, were identified as additional barriers by immigrants and refugees alike. Thirty-four per cent of refugees in the housing study cited size of family as a barrier, while a number of claimants raised this issue spontaneously in the individual interviews. Difficulties in obtaining adequately sized housing owing to a lack of affordable units of sufficient size and unwillingness of landlords to ignore occupancy standards may be compounded by policies prohibiting children.

Landlords were reportedly unwilling to rent to families with children because of increased wear and tear and/or concerns about noise levels. Similarly, Murdie and Teixeira assert that in addition to cost, many immigrants experience additional barriers related to the size of their households. Rental accommodations, both private and public, are not designed for large families. Anecdotal evidence was prevalent of people lying about the number of children in their families in order to obtain housing, as well as instances of overcrowding due to lack of affordable housing of sufficient size for the families involved.[46] Because larger accommodations are too expensive for claimants who subsist on basic welfare provisions, the only option for many is to seek smaller and more affordable housing units resulting in overcrowding. One male claimant from Sri Lanka commented on the crowded condition of a one-bedroom suite he lived in for six months. He said, "The whole house was filled with beds, like two beds in the room and one bed on the outside."

Beyond the inadequacy of welfare levels and the affordability problem in obtaining adequate housing, some claimants reported facing the issue of welfare discrimination. According to participants, many landlords refuse to accept welfare cheques as payment for rent because it is considered to be an unstable form of income. Because payments are based on recipients' need, they may be suspended at any time, leaving tenants with no way to pay the rent. Landlords told claimants this was too much of a risk.

Finally, claimants may experience additional barriers arising from their precarious legal status. Female claimants, for example, spoke of being subjected to physical and emotional abuse from landlords through constant threats of deportation. One female claimant from Russia reported having been threatened by her landlord who repeatedly stated that she had "tools to kick her out of the country." Those lacking the right to permanent residence may be subjected not only to substandard (housing) conditions but also to exploitation. Lack of social networks and negative media stereotypes about refugee claimants hinder the ability of claimants to access housing. One key informant noted that:

> If they are very honest and tell them that they are a refugee claimant, then most probably the landlord won't rent a place to them first. They don't know much about refugee claimants in their mind it's always someone very desperate, no job, maybe experienced violence in their home country or their personality is unknown and also they don't have networks here, so if anything happens they have no other sources to help these tenants. Stigmatization is very serious.

All but one claimant interviewed in the study spoke of having arrived with no pre-existing social network. Although some are able to tap into ethnic resources after arrival, for example, by approaching someone who looks familiar, this is not the case for all newcomers. Although the ability of newcomers to access social capital was beneficial in avoiding absolute forms of homelessness amongst newcomers in our study, access to social capital is not equal: claimants tend to have less access to social capital.[47]

Isolated and Alone: Facilitating Integration and Access to Housing in the Absence of Information

When asked about her initial experiences in Vancouver and whether she was notified about any services upon arrival in Canada, a claimant from Mexico said,

> no one explained any services…no information what you can get as an immigrant, where to get money, how to get a home; I didn't know about community centres. I feel totally isolated, no language, no family, no hope to go back, no money, no house.

In some cases, lack of information (*e.g.* about where to go to receive help or how to find accommodations) has resulted in claimants spending the first night or two sleeping on the floor in the airport. The lack of support and information is heightened by gendered cultural expectations. According to one woman from Sri Lanka:

> Guys, they can go around and get the information, but ladies, in our country, we are taught that it is scary and especially because we don't know the language and we cannot trust any body and so we cannot find the information right away.

One settlement worker reflected on the capabilities of settlement agencies to provide initial information on housing to claimants. He stated that:

> …unfortunately the situation for a lot of settlement workers is that we don't have that many resources to offer in terms of housing. We can't say to our clients, by the way there is this specific way where you go to get all of the information and they will help and give you assistance and inform you about housing and where to go. There is no such thing. [Housing] is an area that the settlement sector has not put that much attention to it, and it's the key thing from the beginning.

While discussing his observations in dealing with claimants, another settlement worker asserted:

> …the more supported a refugee claimant is, not only with housing, but with relationships … they have the support they need to pull it off and they settle in more quickly, generally find jobs more quickly. Refugee claimants are totally disconnected.

For claimants, one of the key needs is information upon arrival (*e.g.* about how to access housing, etc).

A settlement worker with Chinese claimants expanded upon discrimination based on status:

> These refugee claimants don't have many resources to look for other places, and plus these places, the landlord don't like to rent a place to refugee claimants, so they are stuck in a hotel in Chinatown and the living condition is very bad. I heard from my clients that there are mice, and people break in and steal their stuff and also the facilities, shared kitchen and shared bathroom and very it's noisy and also people are gambling … so the whole environment is not very healthy.

Outcomes: Cockroaches and Cheap Rent…

The housing conditions in which claimants find themselves can best be described as low-quality and substandard – a place to live but not necessarily a home. Limited resources and difficulties in overcoming barriers force households to seek housing in areas with low rental rates and/or compromise in quality. The crowding, substandard conditions, and safety concerns experienced by claimants come together in alarming combination in one rundown hotel in Chinatown. This accommodation, which is geared to newcomers from China, was the subject of a number of interviewees' stories. A male claimant aged forty-nine from China gave these details:

> Things there are in a mess…there were cockroaches everywhere. But the rent was cheap. There were a lot of seniors living there; they are dirty and have a lot of personal belongings, so things are in a mess. A lot of cockroaches. Dirty, stinky.

In the Chinatown example, one washroom and small kitchen are allotted for twenty to thirty people; electricity and heating work sporadically at best. Unhealthy and unsanitary conditions within units are frequently accompanied by multiple safety concerns within the wider neighbourhood. High crime rates, drug abuse, and prostitution are frequently cited concerns. Consequently, claimants are a highly vulnerable and transient population.

One interviewee from Eritrea reported having lived in six places – all of which he characterized as unhealthy – since arriving in 2002, while another from Sri Lanka was in the process of searching for his seventh accommodation in the last two years. In one case the respondent from Eritrea signed a lease without understanding the conditions; in order to avoid losing his damage deposit the respondent

was forced to live in abhorrent conditions for twelve months. Rather than complaining the claimant waited for the lease to expire and began looking for another place to live. This transience can preclude the stability necessary for successful integration.

Conclusions: Opening the Doors

As housing prices continue to rise across the Vancouver CMA low income groups are increasingly challenged to procure adequate and affordable housing. For newcomers to Canada a lack of information, barriers to accessing employment and housing, and a lack of language proficiency aggravate the existing income-rent discrepancy brought about by unforgiving housing markets and insufficient (welfare) incomes. The affordability challenges experienced by immigrants and refugees in our study are staggering: many of our respondents are experiencing critical housing stress. While this is true of all groups, claimants face challenges symptomatic of their immigration class. Yet, it is important to note that over 50 per cent of claimants will eventually receive the right of permanent residence. Changes need to be made to make housing more affordable (including higher shelter/social assistance rates), but we also need to think about wider implications of legal status on the procurement of suitable housing. The combination of uncertain legal status, SIN tagging, lack of English language ability, and a dearth of social networks means claimants in particular are exposed to precarious housing situations, a finding that has implications for their eventual integration into Canadian society. For claimants, in particular, these micro barriers intersect with wider structural barriers to preclude full incorporation into Canadian society. If we as a society are to truly welcome refugee groups into Canadian society there is a need to more closely examine the barriers faced by claimants arising from their legal status. Otherwise refugees will remain on the outside looking in, with respect to both affordable housing and Canadian society more broadly.

Appendix A: Methodology

In approaching this research, and in light of the complexities in defining and enumerating homelessness, we adopted an evidence-based, multiple-points-of-contact study combining qualitative and quantitative approaches. The project was composed of three components, each of which focuses on a particular aspect of homelessness.

1. The first component sought to examine those experiencing absolute homelessness by developing a portrait of the immigrant and refugee populations using emergency shelters and transition houses. This sub-study involved twelve semi-structured interviews with key informants from emergency shelters and second-stage transition houses in the GVRD, and the compilation and analysis of data collected by shelter personnel over seven 24-hour periods between October and December, 2004. In total, we received 261 completed shelter data collection forms.

2. The second component sought to explore the housing situation of refugee claimants who have recently received a positive decision enabling them to stay in Canada. Thirty-six individual interviews were conducted with SRCs in the GVRD. The interviews were semi-structured and explored the housing situation of claimants both before learning of the positive decision and in the first six months since receiving it. In addition, four interviews were conducted with settlement workers.

3. The third component sought to examine the profile and extent of relative homelessness among immigrants, refugees, and refugee claimants. In so doing, we hoped to generate a basic estimate of the "sofa surfing" or "camping out" population among recent immigrants, as well as to identify in-group systems of support through questions about the provision or receipt of housing assistance. This sub-study is mainly focused on the Immigrant and Refugee Housing Survey (IRHS), which was conducted on October 4–8, 2004. In total, we received 554 completed surveys.

Notes

1. "Vancouver Real Estate Prices Lead the Nation," CKNW, March 8, 2007, <http://www.cknw.com/news/news_local.cfm?cat=7428109912&rem=60226&red=80110923aPBIny&wids=410&gi=1&gm=news_local.cfm> (accessed March 16, 2007); "Real Estate Prices Rise 11.2% in Year," *CBC News*, February 15, 2007, <http://www.cbc.ca/canada/british-columbia/story/2007/02/15/realestate.html> (accessed March 16, 2007); A. Ford, "Housing Prices Continue to Climb" *The Province*, April 4, 2007, <http://www.canada.com/the province/news/money/story.html?id=997f0e72–3bd8–4759-afbc-47ce7f0aff70> (accessed April 8, 2007).

2. "Real Estate Prices Continue to Climb."

3. G. Picot, F. Hou, and S. Coulombe, *Chronic Low Income and Low-income Dynamics among Recent Immigrants*, Analytical Studied Branch Research Paper Series (Ottawa: Statistics Canada, 2007); G. Picot, "The Deteriorating Economic Welfare of Canadian Immigrants," *Canadian Journal of Urban Research* 13, no. 1 (2004): 25–45; G. Picot and F. Hou, The Rise in Low-income Rates Among Immigrants in Canada, No. 11F0019MIE No.198 (Ottawa: Statistics Canada, 2003); D. Ley and H.A. Smith, "Relations between Deprivation and Immigrant Groups in Large Canadian Cities," *Urban Studies* 37, no. 1 (2000): 37–62 ; H. A. Smith, "The Evolving Relationship between Immigrant Settlement and Neighborhood Disadvan-

tage in Canadian Cities, 1991–2001," No. 04–20 (Vancouver: Research on Immigration and Integration in the Metropolis [RIIM], 2004); K. Pendakur and R. Pendakur, *The Colour of Money*, RIIM No. 96–03 (Vancouver: Joint Centre of Excellence for Research on Immigration and Settlement, 1996).

4. V. Galt, "The New Face of Poverty," *Globe and Mail*, January 30, 2007; for the full report see Picot, Hou, and Coulombe.

5. Controlling for demographic differences, 27.1 per cent of refugees in the 2000 entering cohort experienced chronic low income compared to 13.4 per cent in the family class and 15.6 per cent in the skilled class. See Picot, Hou, and Coulombe for a more detailed discussion.

6. D. Hiebert, P. Mendez, and E. Wyly, *The Housing Situation and Needs of Recent Immigrants in the Vancouver CMA* (Ottawa: Canada Mortgage and Housing Corporation, 2007); P. Mendez, D. Hiebert, and E. Wyly, "Landing at Home: Insights on Immigration and Metropolitan Housing Markets from the Longitudinal Survey of Immigrants to Canada," *Canadian Journal of Urban Research* 15, no.2 (2006): 82–104.

7. Because refugee claimants are temporary residents, their experiences are not captured in large-scale studies such as those by Hiebert, Mendez, and Wyly.

8. Hiebert, Mendez, and Wyly; Mendez, Hiebert, and Wyly; J. D. Hulchanski, "A Tale of Two Canadas: Homeowners Getting Richer, Renters Getting Poorer," in *Finding Room: Policy Options for a Canadian Rental Housing Strategy* (Toronto: CUCS Press, 2004), 81–88; J. D. Hulchanski, "How Did We Get Here? The Evolution of Canada's 'Exclusionary' Housing System," in *Finding Room: Policy Options for a Canadian Rental Housing Strategy* (Toronto: CUCS Press, 2004), 189–194.

9. See Appendix A for a brief explanation of the methodology. For a full discussion of the methodology and findings of the report see D. Hiebert, S. D'Addario, and K. Sherrell, *The Profile of Absolute and Relative Homelessness among Immigrants, Refugees, and Refugee Claimants in the GVRD* (Vancouver: Multilingual Orientation Service Association for Immigrant Communities, 2005), <http://www.mosaicbc.com/The_Profile_of_Absolute_and_Relative_Homelessness.pdf> (accessed May 2005).

10. S. D'Addario, D. Hiebert, and K. Sherrell, "Restricted Access: The Role of Social Capital in Mitigating Absolute Homelessness among Immigrants and Refugees in the GVRD," *Refuge* 24, no. 1 (2007): 107–115.

11. For the sake of clarity "GARs" is used to denote government-assisted refugees, while "claimants" denotes successful refugee claimants. The term "refugees" is understood to include both GARs and claimants.

12. A. Chambon, D. Hulchanski, R. Murdie, and C. Teixeira, "Access to Housing in a Canadian City: Experiences of Three Immigrant Groups" (paper, Urban Affairs Association Conference, Toronto, 1997).

13. After spending more than twenty years in Canada, the 1970s male cohort earned 97 per cent of the earnings of the "like" Canadian (adjusting for age, education, etc.). Immigrants arriving during the 1980s earned approximately 85 per cent of incomes earned by their Canadian-born counterparts after sixteen to twenty years in Canada. Finally, the 1990s cohort earned 70 per cent of the average Canadian-born income, after six to ten years in Canada; Picot. See also Pendakur and Pendakur.

14. *Ibid.*

15. *Ibid.*

16. Picot.

17. K. Lee, *Urban Poverty in Canada* (Ottawa: Canadian Council on Social Development, 2000).

18. *Ibid.*

19. Pendakur and Pendakur.

20. Chambon *et al.*

21. J. D. Hulchanski, "Immigrants and Access to Housing: How Welcome Are Newcomers to Canada?" in *Metropolis Year II: The Development of a Comparative Research Agenda*, Proceedings of the Second National Conference and of the Thematic Seminar "Housing and Neighbourhood," November 23–26, 1997 (Montreal: 1997), 263–274.

22. Chambon *et al.*

23. R. Murdie and C. Teixeira, "Toward a Comfortable Neighbourhood and Appropriate Housing: Immigrant Experiences in Toronto," CERIS No. 19 (Toronto: Joint Centre of Excellence for Research on Immigration and Settlement, 2001).

24. *Ibid.*

25. F. Miraftab, "Sheltering Refugees: The Housing Experience of Refugees in Metropolitan Vancouver, Canada" *Canadian Journal of Urban Research* 9, no. 1 (2000): 42–57.

26. See also Chambon *et al.*

27. Hiebert, Mendez, and Wyly. We employ a broad definition of homelessness that includes a range of circumstances from being without permanent shelter (*i.e.* "rooflessness"), through various forms of relative homelessness, such as "sofa surfing" and crowding. The former definition refers to those people who live without shelter and therefore reside on the streets or rely on public facilities such as emergency shelters (often defined as "absolute homelessness"), while the latter refers to those people who possess shelter, but are subject to substandard, unsafe, and/or temporary conditions. T. Peressini, L. McDonald, and D. Hulchanski, *Estimating Homelessness: Towards a Methodology for Counting the Homeless in Canada* (Ottawa: Canada Mortgage and Housing Corporation, 1991), <http://www.cmhc-schl.gc.ca/en/imquaf/ho/ho_005.cfm>. Defining homelessness has always proved to be contentious, and the particular definition adopted in a study will influence results, especially in terms of the number of people included in the category of homeless. Further, the definition chosen will affect policy, since the scope of provisions and assistance is directly linked to the scale of homelessness that is identified. See also G. Valentine, *Social Geographies: Space and Society* (Harlow, England: Prentice Hall, 2001); A. Veness, "Neither Homed nor Homeless: Contested Definitions and the Personal Words of the Poor," *Political Geography* 12, no. 4 (1993): 319–340.

28. The under-representation of newcomers amongst the absolute homeless population is reinforced by the findings of the 2005 Greater Vancouver Homeless Count.

29. Further, 28 per cent of respondents have become naturalized and as such did not specify their class of origin. Consequently, the number of respondents who arrived as refugees (either government-assisted refugees or refugee claimants) may be even higher than reported. Thirty-six per cent of respondents listed country of last permanent address as being outside of Canada; but we must remember that this includes Welcome House.

30. Although we recognize these results are not necessarily representative of the wider population, anecdotal evidence from shelter workers suggests these findings are consistent with their lived experiences.

31. Juan Pablo Mendez-Gonzalez, "Priced Out: A Profile of Tenant Households and Their Capacity to Enter Homeownership in Metropolitan Canada" (master's thesis, University of British Columbia, 2006).

32. For a more detailed discussion see Damaris Rose and Brian Ray, "The Housing Situation of Refugees in Montreal Three Years after Arrival: The Case of Asylum Seekers Who Obtained Permanent Residence," *Journal of International Migration and Integration / Revue de l'intégration et de la migration internationale* 2, no. 4 (2001): 493–529.

33. For a more detailed discussion see: H. Krahn, T. Derwing, M. Mulder, and L. Wilkinson, "Educated and Underemployed: Refugee Integration into the Canadian Labour Market," *Journal of International Migration and Integration / Revue de l'intégration et de la migration internationale* 1, no.1 (2000): 59–84; L. Lo, V. Preston, S. Want, K. Reil, E. Harvey, and B. Siu, *Immigrants' Economic Status in Toronto: Rethinking Settlement and Integration Strategies* (Full Text Version), 2001, <http://www.metropolis.net> (accessed December 2, 2002); B. Abu-Laban, T. Derwing, H. Krahn, M. Mulder, and L. Wilkinson, *The Settlement Experiences of Refugees in Alberta*, rev. ed. Study prepared for Citizenship and Immigration Canada. (Edmonton: Prairie Centre of Excellence for Research on Immigration and Integration and Population Research Laboratory, November 15, 1999); N. K. Lamba and H. Krahn, "Social Capital and Refugee Resettlement: The Social Networks of Refugees in Canada," *Journal of International Migration and Integration* 4, no. 3 (2003): 335–360; V. Preston and G. Man, "Employment Experiences of Chinese Immigrant Women: An Exploration of Diversity," *Canadian Woman Studies – les cahiers de la femme* 19, no. 3 (1999): 115–122.

34. The exclusion of refugee claimants from formal English language classes means they are dependent on volunteer-run classes that lack standardized levels and focus upon survival-level English.

35. Under these rates a single parent with one child is entitled to $845 per month, while a couple with two children receives $991 per month. These rates include both basic assistance and shelter allowance. Social assistance rates increased effective April 1, 2007; the impact of these increases is yet to be seen.

36. While access to welfare is not an immigration issue *per se*, there exists a need to ensure that those individuals progressing through all stages of the refugee determination system have access to basic financial assistance.

37. Key informants suggest those without status do not qualify for shelters and as such may move from transition house to transition house until they eventually have no place to stay and end up on the streets or in exploitative relationships.

38. In April 2007 the Government of British Columbia increased basic shelter rates by $50 for individuals and $100 for families.

39. Average rents for two bedrooms and three bedrooms or more were $1,004 and $1,184 respectively.

40. "Statistics Canada's After Tax Low-Income Cutoffs for 2005," Ottawa: National Council of Welfare, 2006, http://www.ncwcnbes.net/en/research/povertylines/relatedfactsheets.html>; also ""BC Employment and Assistance Rate Tables," Victoria: Ministry of Employment and Income Assistance, 2006. It is important to note that recipients may be eligible for additional income above and beyond basic welfare rates, including provincial and/or federal tax credits. For a single, employable person in 2005 this represented an additional $336. Because not all people may receive these benefits, they have not been included in our calculations.

41. "Rental Market Report: Vancouver CMA" (Ottawa: Canada Mortgage and Housing Corporation, 2005).

42. It is important to note that this question was asked only of those respondents not receiving help with housing. Had we asked all respondents what percentage of their household income is spent on housing, we may have received very different responses.

43. These findings echo those in the existing literature; for further discussion see Murdie and Teixeira; Miraftab; Chambon *et al.*; and J. Zine, *Living on the Ragged Edges: Absolute and Hidden Homelessness among Latin Americans and Muslims in West Central Toronto* (Toronto: Equinox Research and Consulting Services, 2002).

44. B. Ray, *A Comparative Study of Immigrant Housing, Neighbourhoods and Social Networks in Toronto and Montreal* (Ottawa: Canada Mortgage and Housing Corporation, 1998); T. Owusu, "Residential Patterns and Housing Choices of Ghanaian Immigrants in Toronto, Canada," *Housing Studies* 14, no. 1 (1999); R. Murdie, "Pathways to Housing: The Experiences of Sponsored Refugees and Refugee Claimants in Accessing Permanent Housing in Toronto," CERIS Working Paper (Toronto: York University, 2005); Zine.

45. As previously noted, claimants are often restricted to accessing voluntary English language classes which are not standardized and usually represent survival English at best. For a more detailed discussion of claimants access to social capital see D'Addario, Hiebert, and Sherrell.

46. See Miraftab for further discussion of the strategies undertaken by families in light of the lack of accommodations for large families.

47. For a more detailed discussion, see D'Addario, Hiebert, and Sherrell.

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La dynamique triangulaire dans le processus d'incorporation des demandeurs d'asile, les politiques migratoires et le rôle des organismes communautaires

Jacqueline Oxman-Martinez, Estibaliz Jimenez, Jill Hanley et Isabelle Bohard

Résumé

Cet article analyse comment le régime d'incorporation au Canada, à travers ses politiques et ses pratiques, facilite ou met à l'épreuve l'incorporation des demandeurs d'asile dès leur arrivée au Québec. Les auteurs examinent comment les intervenants des organisations communautaires perçoivent les obstacles dressés par le statut provisoire des demandeurs d'asile. Les dynamiques politiques enchevêtrées dans l'activité sociale où interagissent les demandeurs d'asile et les membres de la société d'accueil sont aussi analysées. L'étude se fonde sur les données et les résultats issus d'une revue documentaire et des entrevues faites auprès des intervenants et des représentants des différents paliers gouvernementaux.

Abstract

This article analyses how the present system for the integration of asylum seekers in Canada, as seen in policies and in actual practice, either facilitates or impedes the integration of asylum seekers right from the moment of their arrival in Quebec. The authors examine how advocates from community organizations perceive the obstacles inherent to the temporary status of asylum seekers. The article further analyses the political dynamics that are entangled in social activities where asylum seekers and members of the host community interact. The study is based on data and results from a literature review and interviews conducted with advocacy groups and representatives of the various levels of government.

Le présent article analyse le processus d'incorporation des demandeurs d'asile au Canada, dans la province de Québec. Il est basé sur certains résultats de la recherche *Canada's incorporation of asylum seekers: the role of the state versus civil society in the context of Québec* (Oxman-Martinez, J., Lacroix, M., et Hanley, J. 2004–2008) financée par le Conseil de recherche en sciences humaines du Canada (CRSH). L'article décrit d'abord comment le régime d'incorporation du gouvernement canadien, par le biais de ses politiques et de ses pratiques, facilite ou entrave l'incorporation des demandeurs d'asile dès leur arrivée au Québec. Ensuite, il examine comment les organismes communautaires et non gouvernementaux répondent aux différents besoins de cette population en situation précaire, en particulier aux besoins des services sociaux et de santé, en assurant la transition d'un statut temporaire à un statut permanent. Enfin, il expose les lacunes rencontrées par les demandeurs d'asile telles que constatées par les intervenants clés des organisations communautaires.

En d'autres mots, cet article analyse l'incorporation des demandeurs d'asile qui font leur demande au moment de leur arrivée au Québec[1]. Ces personnes peuvent être des réfugiés au sens de la *Convention relative au statut des réfugiés*[2], des personnes à protéger[3], des cas comportant des considérations humanitaires[4], des personnes issues de pays visés par un moratoire[5] ou tout simplement des personnes cherchant à améliorer leurs conditions de vie.

Le gouvernement fédéral partage la responsabilité de l'immigration avec les provinces et les territoires[6]. La Constitution canadienne, en vertu de son article 95, fait de l'immigration un domaine de compétence partagée. Aux termes de ses obligations internationales, le gouvernement

fédéral détermine qui est un réfugié au sens de la *Convention relative au statut des réfugiés* et quelles sont les personnes en situation semblable qui ont besoin de protection. D'ailleurs, le gouvernement fédéral est le seul responsable du traitement des demandes d'asile au Canada. Toutefois, l'*Accord Canada-Québec relatif à l'immigration et à l'admission temporaire des aubains*[7] accorde au Québec la compétence exclusive des services d'intégration. De ce fait et en vertu de la *Loi sur l'immigration au Québec*[8], le Québec a la responsabilité d'offrir des services d'accueil, d'intégration économique, linguistique et culturelle aux nouveaux arrivants qui s'établissent dans cette province afin de favoriser leur initiation à la vie québécoise. Toutefois, selon Lacroix « Au Québec, les services aux demandeurs d'asile ont systématiquement subi des coupures depuis l'Entente Canada-Québec de 1991[9] ».

En outre, les demandeurs d'asile qui entament une procédure de revendication du statut de réfugié au Canada, procédure longue et incertaine, ne bénéficie pas de l'ensemble des services d'établissement et d'intégration économique et sociale de la part du gouvernement fédéral ni provincial. Par exemple, les demandeurs d'asile ne sont pas couverts par la Régie de l'assurance-maladie du Québec (RAMQ)[10], mais plutôt par le Programme fédéral de santé intérimaire (PFSI) géré par Citoyenneté et Immigration Canada (CIC). Le PFSI accorde aux demandeurs d'asile une couverture temporaire qui offre uniquement les soins de santé essentiels et urgents[11] pour les individus qui n'ont pas de ressources financières. Cependant, l'accès des demandeurs d'asile aux soins de santé est, dans la pratique, limité par l'hésitation des services de santé à accepter les cartes PFSI, les barrières linguistiques pour communiquer leurs besoins, le manque de familiarité avec le système de santé, la peur de se voir refuser le statut de réfugié si l'on sollicite ces aides, le manque d'information et de connaissances de leurs droits et les barrières socio-culturelles[12].

Les organismes communautaires offrent des services afin d'aider les demandeurs d'asile, mais sans soutien financier gouvernemental suffisant. Ceci nuit en partie au processus d'incorporation des demandeurs d'asile au Québec. Pourtant, le taux d'acceptation devant la Commission de l'immigration et du statut du réfugié (CISR) est de 47 %[13], ce qui signifie que presque la moitié des personnes qui obtiendront ultérieurement la résidence permanente subira une carence des services d'assistance et d'intégration au début de leur processus d'incorporation dans la société québécoise.

Les demandeurs d'asile se heurtent au cadre politico-légal du Canada dans l'accès égalitaire aux services sociaux et de santé ainsi qu'à une information adéquate de leurs droits.

Cadre conceptuel

La majorité des travaux de recherche sur les migrants traduit une expérience complexe et douloureuse pour les demandeurs d'asile. Les exemples cités par Mestheneos et Ioannidi[14] décrivent ces situations comme une période négative liée aux traumatismes antérieurs, à l'isolement produit par l'exclusion sociale et une nouvelle culture, une nouvelle langue, la discrimination provoquant un sentiment d'infériorité. Ce contexte de vulnérabilité est accentué par la fluidité du concept d'intégration. Cette notion varie selon les idéologies nationales et temporelles[15]. L'hétérogénéité attachée à cette définition dirige soit vers un processus d'assimilation et d'uniformisation soit vers une tolérance mutuelle qui préconise une diversité culturelle, une égalité des chances. La culture dominante joue un rôle majeur dans l'accès à la société d'accueil et relègue le demandeur à un état de dépendance et de subordination qui l'exclut de la société[16]. Le concept d'intégration implique un processus où les immigrants doivent s'adapter pour répondre aux valeurs et aux normes de la culture dominante, ce qui contribue à diluer leurs propres systèmes de valeurs et de pratiques pour les enregistrer dans un régime d'assimilation, voire d'acculturation. Au contraire, le processus d'incorporation encourage, dès la présentation de la demande d'asile, la participation active, l'égalité et le dialogue entre les cultures dans une société caractérisée par la diversité[17].

Afin de considérer le demandeur d'asile comme un acteur à part entière, nous privilégierons l'emploi du concept d'incorporation[18]. Le bien-fondé de ce concept est donc relié au fait qu'il s'agit d'un processus qui permet de prendre en considération les dynamiques sociales et culturelles des différents acteurs, soit le demandeur d'asile, la société du pays d'accueil, les organismes communautaires qui viennent en aide aux demandeurs d'asile et les politiques d'immigration en vigueur. Cette perspective permet d'envisager le demandeur d'asile comme un participant actif dans son processus d'établissement susceptible de recevoir les mêmes privilèges et de jouer les mêmes rôles que l'ensemble de la population sans discriminations a priori.

Les observations permettent de constater que le délai d'attente, l'incertitude et la stratification dans l'accès aux divers services sociaux et de santé cantonnent les demandeurs d'asile dans un état de marginalisation qui intensifie le sentiment d'insécurité et d'exclusion[19]. Cette précarité affectera non seulement les relations dans l'alliance entre le demandeur et la société d'accueil, mais aussi, la capacité et les limites des organismes communautaires d'aider les demandeurs d'asile en raison de leurs restrictions structurelles[20] et le choix politico-économique des gouvernements. Lacroix précise que l'accès partiel aux services publics accentue les difficultés des demandeurs d'asile

déjà fragilisés dans leur expérience post-migratoire et aggrave les effets des traumatismes pré-migratoires[21]. Cette précarité précédemment décrite déstabilise les rapports de pouvoir déjà affaiblis entre le demandeur, l'État et la société civile. Des obstacles et des lacunes entravent la participation civique de cette population dans le processus d'incorporation et accentuent la vulnérabilité des demandeurs d'asile provoquée par des restrictions majeures telles que les difficultés d'accès aux cours de francisation à temps plein, aux stages et aux services de recherche d'emplois, au logement social et au régime de santé québécois.

Le statut d'immigration juridique accordé aux individus influence leur capacité d'accéder aux services et ressources qui leur soit nécessaires pour participer intégralement à la société d'accueil et satisfaire leurs besoins fondamentaux. Le concept d'incorporation permet de prendre en compte l'interaction des individus et de la société d'accueil et d'examiner les rapports et les répercussions qui soutiennent la participation des migrants ou, au contraire, la briment. La légitimité pour les immigrants de contracter et de jouir des mêmes privilèges que l'ensemble des nationaux puise son efficacité dans l'élargissement des droits individuels reconnus dans la *Charte canadienne des droits et libertés*[22]. Les principes universels de droits humains établis par les instances internationales influencent davantage les politiques d'immigration nationales[23]. Contrairement à la *Déclaration universelle des droits de l'homme,* l'éventail d'options fournies par les services sociaux et de santé et les moyens pour y accéder au Canada varient selon le statut légal des individus, en allant de services d'urgence à d'autres plus complexes[24]. Cette légitimité prend place dans un contexte de monde globalisé où un concept plus universel issu des traités internationaux et discours transnationaux autorise ce déploiement de revendication et de légitimité[25].

L'expansion des flux migratoires a bouleversé la définition étroite de la citoyenneté attachée aux limites historiques et territoriales des nationaux et modifié le modèle de citoyenneté classique. L'engagement des migrants, dans les différents champs de la société, et notamment dans les activités liées à la production économique, sociale et culturelle, implique une révision des représentations véhiculées par les politiques migratoires qui contredisent la réalité de l'implication sociale des migrants. L'observation des pratiques montre que ces dispositifs institutionnels génèrent un accès différencié aux services en dépit d'une présence marquée dans les activités sociales, économiques, éducatives et culturelles. Cette distinction renforce la disparité qui caractérise la vulnérabilité des personnes à statut d'immigration précaire, et ce, malgré les interactions constantes avec les membres de la société d'accueil.

L'élément-clé de ce cadre théorique — le concept d'incorporation — permet de mieux appréhender les interactions entre les individus et la société d'accueil tout en analysant les rapports et les impacts qui encouragent la participation des migrants ou au contraire, la contraignent.

Méthodologie

La méthodologie utilisée dans la recherche sur laquelle cet article est basé est exploratoire et qualitative. Elle puise dans les données de deux sources : une revue documentaire et des entrevues semi-structurées. La première comprend la recension des programmes et des services offerts au Québec autant par les différents gouvernements dans le cas de partage de compétences que par les organismes communautaires. Les entrevues sélectionnées aux fins de cet article, faites dans les deux langues officielles, ont pour objet de répondre aux deux questions de recherche suivantes :

- Quels sont les obstacles et les besoins des demandeurs d'asile dans le processus d'incorporation observés par les intervenants clés des organisations communautaires?
- Quel est le rôle des organisations communautaires dans le processus d'incorporation des demandeurs d'asile?

Les entrevues ont été faites d'abord auprès des informateurs-clés (cinq) qui travaillent dans les coalitions qui regroupent des organismes communautaires d'aide aux immigrants et réfugiés et ensuite auprès des intervenants qui travaillent directement avec les réfugiés. Un deuxième type d'entrevue a été adressé aux représentants des agences municipales, provinciales et fédérales (cinq) dans le but d'obtenir leur perspective concernant le régime d'incorporation, sa modification à travers le temps et les enjeux actuels. Nous avons rencontré un certain degré de saturation au niveau de l'information qui concordait avec nos recherches préalables[26].

Les entrevues ont été enregistrées, transcrites puis codifiées en suivant la méthode classique de la théorie ancrée[27]. Une analyse de contenu d'abord verticale, ensuite horizontale, de thèmes émergents et récurrents a été faite à l'aide du logiciel Atlas.

Identification des obstacles dans le processus d'incorporation des demandeurs d'asile

Bien que l'histoire personnelle et l'expérience d'accueil puissent varier considérablement, chaque demandeur d'asile est confronté à plusieurs défis lors de son arrivée au Québec. Les intervenants communautaires consultés signalent, entre autres, la barrière de la langue, la difficulté de trouver un emploi, le manque d'information et de références, de même qu'une allocation familiale insuffisante. Plusieurs besoins fondamentaux des demandeurs ont été identifiés par les

répondants, par exemple, l'aide financière, l'accès à la santé, au logement, aux cours de francisation, à la recherche d'emploi, à l'aide juridique et, finalement, à une représentation juridique adéquate. De plus, la difficulté d'accès aux services, le long délai de traitement de la demande du statut de réfugié et la séparation familiale se sont avérés des problèmes majeurs vécus par les demandeurs d'asile. Pour certains répondants, ces obstacles retardent le processus d'incorporation à la société québécoise.

L'inadmissibilité aux programmes d'aide à l'intégration et à l'établissement

Les demandeurs d'asile ne sont pas admissibles aux mêmes programmes gouvernementaux d'aide à l'intégration et à l'établissement offerts aux réfugiés parrainés par l'État[28]. Les répondants ont désigné cette exclusion relative des politiques comme étant un obstacle majeur à l'incorporation des demandeurs d'asile. Les services auxquels les demandeurs d'asile peuvent avoir accès sur le territoire québécois sont rares. Les informateurs-clés ont énuméré les suivants : le programme fédéral de santé intérimaire; certains services en sports, loisirs et bibliothèques offerts par les villes; les cours de français à temps partiel; l'hébergement temporaire; l'aide à la recherche d'un logement; les aides financière et juridique (bien qu'insuffisantes et inadéquates selon les répondants); ainsi que l'accès gratuit à l'école et aux différents programmes scolaires pour les jeunes de 6 à 16 ans sous la responsabilité des Commissions scolaires.

Les demandeurs d'asile ne bénéficient pas de la totalité des services d'intégration offerts aux nouveaux arrivants. Plusieurs informateurs-clés communautaires constatent dans leur pratique des coupures budgétaires du gouvernement du Québec dans les services dirigés aux demandeurs d'asile. Ce resserrement des services auprès des demandeurs d'asile est corroboré par certains informateurs gouvernementaux rencontrés. Un représentant municipal en donne cette explication :

> À l'époque, quand le bureau [d'aide sociale pour les réfugiés] a été créé, ils avaient accès aux mesures d'employabilité. Ils avaient donc accès à des mesures de francisation. On faisait de la francisation et même certains qui avaient des permis de travail avaient accès à des programmes d'aide à l'intégration à l'emploi. On a donc essayé le plus possible d'aider cette clientèle-là à intégrer le marché du travail et à se franciser et donc, à participer à la vie économique, sociale et culturelle. Ça a fonctionné jusqu'en 1996, je crois, et le gouvernement a ensuite revu la réglementation et a décidé que les demandeurs d'asile n'étaient plus admissibles aux mesures actives d'employabilité. Les demandeurs d'asile n'avaient donc plus le droit de participer aux stages en milieu de travail, ni à la francisation sauf à celle à

temps partiel. À partir de là, ça a été plus difficile parce que le gouvernement ne voulait plus investir en faveur d'une clientèle sans savoir si celle-ci allait avoir le statut et continuer à rester au Canada ou si elle risquait d'être expulsée. La Ville a fait des pressions, je pense, sur le gouvernement du Québec pour assouplir la loi, pour les rendre admissibles à certaines mesures, mais ça a toujours été un problème.

Un représentant fédéral constate aussi un manque évident de volonté du gouvernement du Canada d'investir dans l'intégration des demandeurs d'asile avant leur acceptation comme personne protégée[29] au Canada :

> The language programs are not just for refugees, those are for immigrants as part of the integration package. But, for asylum seekers, the assumption is that they are not, they have no status in Canada in terms of needing to be integrated until a determination is made on their claim. And so, until they go before the Immigration [and Refugee] Board of Canada (IRB)[30,] and a determination is made, the only benefit that they have [from the federal government] is the Emergency and Essential Healthcare through the IFH program.[…] See, the problem with asylum seekers is the obligation to integrate, and until there is some kind of a definition for obligation to integrate, they are just what we say they are – asylum seekers. And if you look at the statistics, 60 % of those people seeking asylum are failed, they don't actually pass the IRB. So, it is very hard to justify spending gobs of money setting up special programs for a population for whom 60 % didn't qualify in the first place. So that is where it becomes very hard. It is much easier for us to focus on the people for whom Canada has already said, "Yes, you meet this requirement and we will allow you to stay in Canada, and we will take responsibility for your integration." Until they have reached that decision, it becomes very difficult.

Aux dires des informateurs-clés, les difficultés d'accès aux services font en sorte qu'elles nuisent au processus d'incorporation du demandeur d'asile, comme l'explique un représentant municipal :

> C'est sûr que ça retarde le processus d'intégration dans la mesure où ces gens-là n'ont pas accès à des mesures comme des stages en milieu de travail. Une personne qui serait revendicatrice [du statut de réfugié] ne pourrait pas avoir accès, car pour les stages, il y a une entente avec Emploi Québec pour le financement du salaire, qui est défrayé à travers le programme de subvention salariale et celui-ci est pour des clientèles « immigrants reçus », « citoyens canadiens ». Un revendicateur n'a pas accès à ce programme, donc il ne pourrait pas faire un stage. C'est donc clair que ça retarde son intégration au point de vue économique.

Cependant, à long terme, ce retard dans le processus d'incorporation du demandeur d'asile, une fois que celui-ci est reconnu comme réfugié au Canada, aura inévitablement des répercussions sur la société québécoise. L'intervenant d'un groupe de défense des droits des réfugiés explique :

Le fait qu'ils n'ont pas le droit de prendre les cours de langue ou bien les cours d'informatique ou d'autres choses, ça leur donne l'idée que « Vous ne le méritez pas ». Ça lance l'idée que peut-être « Quand vous êtes réfugié, on va vous accueillir, mais entre temps, vous êtes un demandeur et on n'a pas besoin de vous ». Ça, je crois que c'est couper le nez de société, je crois que c'est stupide en fin de compte. Si une personne ne peut pas parler pour demander un billet de transport ou pour demander de la nourriture, c'est stupide. Pour les enfants qui commencent à l'école, pour leurs parents qui ne peuvent pas leur parler ou un mot du professeur, ça n'a pas de bon sens. Mais c'est juste un manque de ressources financières et ça répond aux besoins des revendicateurs, revendicatrices, alors pourquoi pas ? Surtout comme j'ai dit, c'est pas une question de 10 % qui vont être acceptés et 90 % expulsés, pas du tout. C'est loin de ça. Alors cet aspect de prévention des problèmes à long terme, je pense à long terme, ça va nous donner : ils vont travailler plus vite, moins de problèmes à la maison peut-être. Ils vont payer les impôts, ils vont partager, s'impliquer dans la société. Et pour nous tous, l'apprentissage de langue ça va plus vite quand tu travailles. Alors, c'est évident qu'un grand nombre de personnes qui rentrent vont rester. Et si on ne dépense pas trop au début, on va avoir des problèmes à long terme. C'est un peu préventif, c'est de façon parallèle : Est-ce que vous voulez guérir une maladie ou est-ce que vous voulez prévenir une maladie ?

Les difficultés d'accès aux services se santé sont soulignées par les informateurs clés comme l'un des gros problèmes. Le Programme fédéral de santé intérimaire (PFSI) administré par Citoyenneté et Immigration Canada (CIC) garantit que les services médicaux essentiels et les services d'urgence sont offerts aux demandeurs d'asile qui se trouvent au Canada et qui ne sont pas encore couverts par le régime provincial de soins de santé[31]. Toutefois, plusieurs intervenants ont été confrontés dans leur pratique à un refus de leur clientèle aux soins de santé en raison du manque d'acceptation du PFSI dans plusieurs réseaux de la santé. Comme l'explique l'intervenant d'un abri pour les réfugiés :

C'est vraiment le manque d'accès, que ce soit aux services de santé, c'est tellement difficile de faire accepter, surtout ici dans le quartier. La plupart des cliniques ne vont pas accepter le PFSI, le programme fédéral de santé. Ils ne veulent pas l'accepter. […] Mais il faut qu'ils reconnaissent ce papier-là qu'on leur donne,

parce que quand ils arrivent ici, c'est le seul papier qu'ils ont. Ils n'ont pas accès à rien d'autre que le PFSI, donc c'est important que les hôpitaux, les cliniques, tout ça, reconnaissent ça parce que les gens n'ont vraiment, vraiment pas autre chose.

D'ailleurs, selon les dires des répondants, le manque d'accessibilité aux services de santé est d'autant plus pénible pour les demandeurs d'asile lors de leur arrivée au Québec, notamment en raison des problèmes de santé mentale liés aux traumatismes et à la violence subis dans leur pays d'origine.

Le long délai de traitement de la demande du statut de réfugié et la séparation familiale

Les intervenants communautaires consultés ont déclaré à l'unanimité que le long délai de traitement de la demande du statut de réfugié est un obstacle difficile à surmonter pour les demandeurs d'asile au Canada. En effet, le délai moyen de traitement de la demande à la CISR pour l'exercice 2005–2006 est de 12,5 mois (en baisse par rapport aux 13,6 mois pendant l'exercice 2004–2005 et 14,2 en 2003–2004)[32]. Bien que plusieurs informateurs-clés aient constaté comme un élément positif la diminution du délai moyen de traitement[33], pour tous les cas, cette attente et cette incertitude génèrent de l'anxiété chez le demandeur. L'intervenant d'un service d'intégration des nouveaux arrivants décrit cette période de la façon suivante :

J'ai reçu des revendicateurs l'aveu que l'attente avait été assez longue. Ils ont passé à travers beaucoup de choses, beaucoup de peine. Il y a même eu des dépressions. Je les entends dire « Quand est ce que je vais être accepté ? », « Il faut que j'aie la réponse que je suis accepté », « Qu'est-ce qui va m'arriver ? ». Alors, je sens qu'il y a une tension par rapport à ça. Ça fait quelques personnes que j'ai rencontrées pour qui l'attente a été assez difficile.

L'intervenant ajoute que cette anxiété vécue par les demandeurs d'asile peut aussi avoir des effets négatifs sur le processus d'incorporation de leurs enfants :

J'ai connu des jeunes âgés de 6 à 12 ans. Ces jeunes vont à l'école et puis ils ont des difficultés. Ils comprennent le stress que vivent leurs parents, ceux qui arrivent, bien sûr, avec des parents, alors il y a des difficultés d'apprentissage.

Cette période d'attente est d'autant plus difficile pour le demandeur lorsque sa famille est encore dans son pays d'origine, car cela implique souvent une longue séparation avec leur conjoint et leurs enfants. Certains intervenants témoignent de la difficulté pour les réfugiés, une fois accep-

tés au Canada, de faire venir leur famille, comme le décrit l'intervenant d'un service d'intégration des réfugiés et immigrants :

> Les *revendicateurs* fuient leur pays d'où ils sont et dans bien des cas, se sont des personnes qui arrivent, pas nécessairement avec leur famille et donc c'est comme, beaucoup de stress pour eux. Ils sont ici, les autres membres de la famille sont au pays. Et ici, tant que ces *revendicateurs* n'ont pas le droit de travailler, parce qu'ils n'ont pas de travail à cause que la procédure traîne au niveau de l'immigration avant... qu'ils puissent passer à la CISR pour voir s'ils sont admissibles, s'ils sont vraiment réfugiés ou pas. Alors c'est un processus qui est quand même très long. Moi j'ai des cas où les personnes ont attendu deux ans avant de passer à la CISR ... pour pouvoir être accepté. Une fois que c'est fait, là il faut voir maintenant. « J'ai ma famille là-bas, il faut que ma famille me rejoigne ici, c'est difficile. » D'abord, ils n'ont pratiquement rien pour les frais pour l'étude de dossier pour la demande de résidence permanente. « Comment vais-je payer la demande de résidence permanente ? ». Et il y a des fois où il y en a qui vont emprunter de l'argent. Des fois il y en a qui arrivent à travailler. C'est pas suffisant pour leurs propres besoins ici et aussi pour subvenir aux besoins des membres de la famille au pays, alors c'est compliqué,c'est difficile. Je reçois des appels et des appels, « Qu'est-ce que je fais, comment je vais faire ? », « Il y a plein de problèmes qui se passent dans mon pays et je sais pas où est ma famille ». C'est vraiment très, très, très pénible et stressant, tant pour eux autres que pour nous autres comme intervenantes. Alors, ce n'est pas normal qu'on les fasse attendre pendant tout ce temps. Il doit y avoir une façon, un moyen d'accélérer ce processus en tenant compte des membres de la famille. Soit que si ce n'est pas possible de faire plus vite, mais d'au moins donner la chance aux *revendicateurs*, pour qu'ils puissent faire venir les autres membres de la famille.

Les témoignages révèlent que les conséquences de la séparation familiale[34] sont multiples pour les demandeurs qui revendiquent le statut de réfugié et qui se trouvent dans une telle situation. Les retards dans la réunification des familles[35] peuvent d'ailleurs avoir un impact important dans le processus d'incorporation du réfugié et de sa famille une fois arrivés au Québec[36]. Voici comment l'intervenant d'un abri pour les réfugiés décrit les impacts de cette longue séparation familiale :

> C'est difficile parce que souvent, le temps qu'elles attendent leur audience, elles n'ont même pas les moyens d'accumuler de l'argent pour pouvoir payer pour leur résidence quand ce sera le temps, donc ça créé beaucoup de problèmes après. C'est vraiment pas évident, juste l'attente, attendre que ce soit, que ce soit n'importe quoi, faut toujours attendre, mais surtout pour

l'audience, pour la réponse, la décision qui a été prise à l'audience. C'est tellement long. C'est hallucinant, c'est fou comment c'est long. Puis attendre d'être réunifié avec leur famille aussi après. Parce que eux souvent ils se disent « Bon, d'ici deux ans ma famille va être là », mais des fois ça peut prendre jusqu'à six ans avant que tu revoies tes enfants et ça, ça crée d'autres problèmes, parce que quand les enfants arrivent, les familles éclatent.

L'intervenant du service d'intégration des nouveaux arrivants confirme les effets néfastes de la séparation des familles une fois que celles-ci arrivent au Canada :

> La réunification familiale, ça c'est très pénible parce que les gens là-bas ils ne savent pas. Des fois ils disent « Mon mari ne veut plus que je le rejoigne » et c'est la même chose pour les enfants, bien que ce n'est pas le cas. Alors donc ces personnes, quand elles arrivent, ce qui arrive ici c'est que les enfants ne reconnaissent plus le père ou la mère, un des deux qui arrive avant. Parce que, après deux ans, trois ans, « c'est plus mon père, c'est plus ma mère ». Alors ils n'écoutent pas et donc là c'est une autre chose qui est soulevée. Et c'est une grosse complication pour que le père ou la mère puisse arriver à faire que l'enfant comprenne. Même dans le couple il y a des choses qui ne marchent pas et ce qui arrive c'est qu'il y a des cas de séparation. Ils se séparent de la famille alors c'est tout à recommencer. C'est vraiment encore compliqué et chacun fait son chemin.

Au sujet du délai d'attente, plusieurs intervenants dénoncent une situation encore plus dramatique pour les ressortissants de pays moratoires. Les personnes qui sont sous moratoire[37] sont des personnes qui se sont vu refuser le statut de réfugié. Cependant, le gouvernement canadien a reconnu qu'on ne devrait pas les renvoyer vers leurs pays[38] à cause de la situation de risque généralisé auquel est exposé l'ensemble de la population civile. Ces personnes peuvent rester au Canada pendant une période de temps qui peut aller au-delà de six ans sans avoir un statut particulier sur le territoire.

En conclusion, ce statut limite non seulement l'accès aux services publics et l'incorporation à la société civile, mais aussi la possibilité d'initier les démarches pour une réunification familiale exacerbée par un long délai d'attente. À ceci s'ajoutent les effets néfastes sur la santé et le bien-être des familles.

Le rôle des organismes communautaires dans le processus d'incorporation des demandeurs d'asile

Les intervenants ont décrit le mandat et les services offerts par leurs organismes, ainsi que les lacunes et les obstacles constatés pour venir en aide aux demandeurs d'asile. La

plupart des organismes ont comme premier mandat la prestation de services aux nouveaux arrivants, ce qui comprend les résidents permanents et les réfugiés sélectionnés par le Canada à l'extérieur du pays ou les réfugiés acceptés sur place. Cependant, bien que les demandeurs d'asile soient généralement exclus de leurs mandats ou missions, en raison de leur précarité et leurs besoins réels, tous les répondants des organismes rencontrés aident régulièrement les demandeurs d'asile qui sollicitent leur aide, comme l'explique un des intervenants :

> Je ne trouve pas ça correct qu'on nous dise de donner seulement le service de logement aux *revendicateurs*. Ils sont comme tous les immigrants, ils ont besoin de toutes sortes de choses. Si on les regarde bien, ils ont besoin même de plus de choses, en commençant par le support moral, parce que ce sont des personnes qui fuient leur pays donc leurs problèmes sont plus graves que ceux qui arrivent comme indépendants parce qu'ils choisissent de venir et ils sont préparés pour faire le deuil de l'immigration. Tandis que les *revendicateurs* c'est complètement différent, ils fuient leur pays d'où ils sont, donc il faut qu'on les soutienne, qu'on aide ces personnes et dans bien des cas, ce sont des personnes qui arrivent pas nécessairement avec leur famille et donc c'est comme, beaucoup de stress pour elles. […] On rencontre aussi des personnes qui ne parlent pas le français. Ici on a plusieurs niveaux de français, on a à peu près une vingtaine de cours par semaine et normalement ces cours sont adressés aux personnes qui ont un statut, pas de *revendicateurs*. Et quand les *revendicateurs* sont acceptés comme réfugiés, ils peuvent participer, ils ont droit comme tous les autres immigrants. Mais les *revendicateurs,* ils ont un peu moins de chance et il arrive quand même que le coordonnateur prenne l'initiative d'accepter quelques *revendicateurs.*

Dans le but de pallier les restrictions structurelles auxquelles font face les demandeurs d'asile, notamment à cause d'un manque de financement gouvernemental et d'un choix de politique étatique, certains organismes communautaires aident bénévolement les individus dans les processus de détermination du statut de réfugié et d'incorporation à la société québécoise. Ces organismes offrent des services tels que le support moral, l'information et les références, le programme de jumelage social avec des Québécois ou Canadiens, le suivi psychologique, la préparation du dossier de demande du statut de réfugié, l'accompagnement aux audiences devant la CISR. Certains groupes communautaires reçoivent une aide financière afin d'être en mesure d'offrir l'hébergement temporaire et l'aide à la recherche d'un logement.

Toutefois, plusieurs intervenants témoignent leur difficulté à venir en aide à cette clientèle en raison de leurs restrictions budgétaires, de la surcharge de travail et du manque de personnel. De ce fait et pour remédier à ces lacunes, les intervenants ont signalé que les organismes collaborent souvent entre eux afin de pouvoir combler ces insuffisances. En effet, la concertation communautaire en vue d'aider les demandeurs d'asile à intégrer la société québécoise est une pratique courante.

Conclusion

Cet article a permis d'examiner en partie le processus d'incorporation des demandeurs d'asile au Québec et, dans la mesure où ce processus peut y trouver une application plus générale, dans le reste du Canada. Celui-ci diffère du processus d'intégration en ce qu'il considère le demandeur d'asile comme un citoyen à part entière, c'est-à-dire un membre actif dans la société, ayant des droits et des obligations dès son arrivée et, a priori, non soumis à une discrimination au sein d'une population diversifiée.

Comme les informateurs-clés en témoignent, les demandeurs d'asile sont confrontés à différentes barrières lors du processus d'incorporation. La réticence du gouvernement à investir auprès de cette population autant qu'il le fait pour les autres catégories d'immigrants s'explique par le risque de la voir quitter le pays lors des expulsions ou des déportations, du fait que le taux d'acceptation des demandes de statut de réfugié frôle le 50 %. Le processus qui conduit à une décision gouvernementale cause aussi de nombreux préjudices à la population acceptée puisque les demandeurs d'asile en attente d'une décision vivent une situation d'altérité et de marginalisation sociale, quelle que soit la province d'accueil. D'autre part, ceux qui seront acceptés seront retardés dans leur processus d'incorporation ce qui produira un impact négatif sur le tissu culturel et socio-économique, tant régional que national. Il est aussi important de mentionner que ce long délai de traitement de la demande du statut de réfugié, l'incertitude entourant la décision d'acceptation et la séparation familiale aggravent les difficultés que vivent les demandeurs d'asile.

Le rôle des organismes communautaires dans le processus d'incorporation des demandeurs d'asile est très important, car leurs services pallient les lacunes des politiques gouvernementales et municipales. Ces organismes ont un manque flagrant et chronique de financement et de personnel. Une concertation intersectorielle, une collaboration et une communication de meilleure qualité entre les divers pouvoirs publics et les organismes sont aussi requises et mentionnées systématiquement dans les récits des intervenants.

Les constats des chercheurs montrent que les limitations appliquées aux demandeurs d'asile définissent leur situation et minimisent leurs contributions. L'ostracisme

déterminé par leur statut provisoire et caractérisé par une absence d'action et une exclusion participative dans la société d'accueil devient démobilisateur. Le processus d'incorporation favorise l'examen des rapports qui sous-tendent les mécanismes structurels, politiques et sociaux définissant les politiques d'intégration. Ce dispositif permet d'élaborer les stratégies nécessaires pour pallier les politiques administratives insuffisantes et diminuer l'exclusion des individus déjà soumis à la souffrance dans leur pays d'origine et au déracinement dans la société d'accueil.

L'examen du mode d'incorporation montre que les demandeurs d'asile sont particulièrement conditionnés par les instances qui élaborent et gèrent les politiques et les lois. Ces rapports influencent intimement leur destinée en limitant leur niveau de participation et jouent sensiblement sur leur capital humain et symbolique. La distribution irrégulière des droits tant symboliques que pratiques s'oppose à la réalité où leur présence ne peut être niée en leur déférant un statut moindre. D'autre part, les politiques gouvernementales interviennent de façon fondamentale dans le processus migratoire en raison des structures qu'elles mettent en place. Si le processus d'incorporation est bien un processus multidimensionnel, il est possible d'envisager le degré de participation, voire d'appartenance des demandeurs d'asile dans la société d'accueil. L'hiatus entre l'application des politiques, la pratique et les besoins de cette population particulièrement sensible dessert les objectifs du pays d'accueil qui sont, au préalable, de protéger et de traiter tous ses résidents d'une façon impartiale. En outre, elle amenuise les capacités des demandeurs d'asile par cette étanchéité.

Le processus d'incorporation permet d'approfondir le niveau de responsabilité du pays d'accueil engagé dans le respect des droits accordés aux résidents qui demeurent sur son territoire. Le pays d'accueil doit garantir cette protection et l'accès aux ressources selon l'élargissement des droits et des discours transnationaux. Cette garantie s'étend implicitement aux demandeurs d'asile malgré la forme provisoire de leur statut. Les initiatives prises par les politiques et les expériences des demandeurs d'asile s'inscrivent dans le répertoire institutionnel du système des politiques d'accueil. Cet appareil concerne le modèle politique, les structures organisationnelles et les discours sur l'appartenance qui sont reconfigurés selon les prescriptions modernes de l'élément global du développement de la notion universelle de la personne influençant les politiques nationales[39].

Pour les demandeurs d'asile, ce processus d'incorporation commence dès la réception dans le pays d'accueil et s'achève dans un premier temps lorsqu'ils sont acceptés comme réfugiés. Pendant ce laps de temps qui peut durer des années, cette population appartient *de facto* au système politique et participe à la société d'accueil. La méthode de réception inscrite dans les politiques migratoires et l'expérience éprouvée par les demandeurs d'asile interfèrent dans la rencontre avec le groupe dominant, d'où la nécessité d'élever l'analyse à une unité sociale plus large qui comprend l'État et la société civile. Ainsi, le concept d'incorporation permet d'apprécier tous les processus par lesquels les nouveaux arrivants deviennent des membres à part entière de la société d'accueil dans une vision plus globale. Cette perspective permet de prendre en compte les dynamiques politiques enchevêtrées dans l'activité sociale où interagissent les demandeurs d'asile et les membres de la société d'accueil en préconisant un accès commun aux droits et privilèges puisqu'ils deviennent des acteurs sociaux dès leur arrivée[40]. Cette conception évite de catégoriser le demandeur d'asile dans une altérité qui le classe dès le départ dans une situation inférieure en prenant acte de sa participation et de sa perception d'acceptation par les membres de la société d'accueil. Ainsi, ce procédé s'intéresse à tous les aspects de la vie et aux rapports structurels dans lesquels sont engagés les individus dans une société civile et politique[41]. Le processus d'incorporation, dès la mise en cheminement de la demande d'asile, encourage davantage la participation active, l'égalité et le dialogue entre les cultures dans une société caractérisée par la diversité[42].

Notes

1. Les réfugiés et les personnes en situation semblable sélectionnés à l'étranger, accueillis à la charge de l'État ou dans le cadre du programme de parrainage collectif, sont exclus de cette analyse. Reconnus réfugiés par le gouvernement fédéral avant leur arrivée sur le sol canadien, ces derniers bénéficient dès leur entrée au pays du statut de résident permanent. De ce fait, les réfugiés parrainés au Canada, contrairement à notre groupe d'étude, bénéficient de l'aide à l'établissement dès leur arrivée au Canada, bien que certains d'entre eux puissent ignorer leurs droits.

2. *Convention relative au statut des réfugiés*, adoptée le 28 juillet 1951 par une conférence de plénipotentiaires sur le statut des réfugiés et des apatrides convoquée par l'Organisation des Nations Unies en application de la résolution 429 (V) de l'Assemblée générale en date du 14 décembre 1950. *Convention relative au statut des réfugiés,* 28 juillet 1951, 189 U.N.T.S. 150, Can. T.S. 1969/6 (Entrée en vigueur le 22 avril 1954; accession par le Canada le 2 septembre 1969).

3. Personne visée par la *Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants,* signée à New York le 10 décembre 1984 et entrée en vigueur le 26 juin 1987.

4. Toute personne peut présenter une demande en vue de rester au Canada pour des motifs d'ordre humanitaire. Ceci comprend les personnes qui demandent l'asile, mais dont la de-

mande n'a pas été approuvée par la Commission de l'immigration et du statut de réfugié. Les demandes de résidence permanente pour des motifs d'ordre humanitaire ne sont approuvées que dans des circonstances exceptionnelles. Il peut arriver que le traitement d'une demande prenne plusieurs années et il n'existe pas de droit d'appel d'une décision négative de Citoyenneté et Immigration Canada. Dans certains cas, toutefois, il existe la possibilité de demander à la Cour fédérale du Canada de contrôler la décision. Citoyenneté et Immigration Canada (CIC), *Examen des considérations humanitaires*, <http://www.cic.gc.ca/FRANCAIS/ausujet/immigration/humanitaires.asp> (accédé le 18 septembre 2007).

5. De nombreuses personnes issues de pays visés par un moratoire ont dû mettre leur vie en suspens plusieurs années depuis qu'elles sont au Canada. Elles se trouvent dans un vide juridique parce qu'elles n'ont pas obtenu le statut de résident permanent; pourtant, elles ne peuvent retourner dans leur pays en raison de l'insécurité qui y règne, un danger d'ailleurs reconnu par le gouvernement du Canada, qui a imposé un moratoire sur les renvois dans ces pays. (CCR, 2006). *Des vies en suspens. Les limites des considérations humanitaires*, 6 septembre 2006, Conseil canadien pour les réfugiés (CCR), <http:// www.ccrweb.ca/communviessept06.html> (accédé le 3 octobre 2007).

6. Consulter les accords conclus avec les provinces et les territoires : *Accord Canada-Québec relatif à l'immigration et à l'admission temporaire des aubains* (signé le 5 février 1991); *Accord Canada-Manitoba en matière d'immigration* (signé le 22 octobre 1996 et renouvelé le 6 juin 2003); *Accord Canada-Saskatchewan sur l'immigration* (signé le 16 mars 1998 et renouvelé le 7 mai 2005); *Accord relatif à la collaboration entre le Canada et la Colombie-Britannique en matière d'immigration* (signé le 19 mai 1998 et modifié le 15 juin 2005); *Entente Canada-Nouveau-Brunswick sur les candidats de la province* (signé le 22 février 1999 et modifié le 29 mars 2005); *Entente Canada-Terre-Neuve et Labrador sur les candidats de la province* (Signé le 1er septembre 1999. Lettre de prolongation : 10 janvier 2005); *Accord relatif à la collaboration entre le Canada et l'Île-du-Prince-Édouard en matière d'immigration* (signé le 29 mars 2001); *Accord de collaboration Canada-Yukon en matière d'immigration* (signé le 2 avril 2001); *Entente Canada-Alberta sur les candidats de la province* (signé le 2 mars 2002. Lettre de prolongation : 11 avril 2005); *Entente Canada-Nouvelle-Écosse sur les candidats de la province* (signé le 27 août 2002); *Accord Canada-Nouvelle-Écosse sur l'immigration* (signé le 19 septembre 2007).

7. *Accord Canada-Québec relatif à l'immigration et à l'admission temporaire des aubains*, signé le 5 février 1991.

8. *Loi sur l'immigration au Québec*, L.R.Q., chapitre I-0.2.

9. Marie Lacroix, "L'expérience des demandeurs d'asile : vers l'élaboration de nouvelles pratiques sociales," *Nouvelles pratiques sociales* 16, no 2 (2003) : 188.

10. Jacqueline Oxman-Martinez et Jill Hanley, "L'identité assignée du statut d'immigration précaire et l'accès aux services de santé : la construction sociale de l'exclusion," dans *Éthique*

de l'altérité, F. Saillant (dir.) (Québec : Presses de l'Université Laval, sous presse).

11. Par exemple, les soins en matière de contraception, de prénatalité et d'obstétrique, les médicaments essentiels sur ordonnance, etc.

12. Jacqueline Oxman-Martinez, Jill Hanley, Lucyna Lach, Nazilla Khanlou, Swarna Weerasinghe et Vijay Agnew, "Intersection of Canadian policy parameters affecting women with precarious immigration status: A baseline for understanding barriers to health," *Journal of Immigrant Health* 7, no 4 (2005) : 247–58.

13. Commission de l'immigration et du statut de réfugié du Canada (CISR), *Statistiques 2006 pour la Commission de l'immigration et du statut de réfugié, Décisions de la Section de la protection des réfugiés*, <http://www.irb-cisr.gc.ca/fr/index_f.htm> (accédé le 13 mars, 2007).

14. Elizabeth Mestheneos et Elizabeth Ioannidi, "Obstacles to refugee integration in the European Union member states," *Journal of Refugee Studies* 15, no 3 (2002) : 304–20.

15. Stephen Castles, Maja Korac, Ellie Vasta et Steven Vertovec, *Integration: Mapping the Field*, avec l'aide de Katrin Hansing, Fiona Moore, Emma Newcombe, Lucy Rix et Soojin Yu, rapport d'un projet réalisé par le Centre for Migration and Policy Research et le Refugee Studies Centre de l'University of Oxford pour le Immigration Research and Statistics Service (IRSS) du Home Office, décembre 2002, Home Office Online Report 28/03, <http://www.homeoffice.gov.uk/rds/pdfs2/rdsolr2803.doc> (accédé le 16 mars 2007).

16. Oxman-Martinez et Hanley, *"L'identité assignée du statut d'immigration précaire."*

17. Jacqueline Oxman-Martinez et Jill Hanley, "Health and Social Services for Canada's Multicultural Population: Challenges for Equity." Policy Forum. Canada 2017. *Serving Canada's multicultural population for the future. Policy Forum.* Discussions Papers. Canadian Heritage, Multiculturalism. March 22–23 2005: 19–32, <http://www.pch.gc.ca/progs/multi/canada2017/index_e.cfm> (accédé le 3 octobre 2007).

18. Mestheneos et Ioannidi, 304–20; Lacroix, M., "Social work with asylum seekers in Canada : The case for social justice," *International Social Work* 49, no 1 (2006) : 19–28; Oxman-Martinez et Hanley, *supra* note 10.

19. Mestheneos et Ioannidi, *ibid.*; Lacroix, *ibid.*

20. Par exemple, un manque de financement public.

21. Lacroix, *"L'expérience des demandeurs d'asile,"* 188; Lacroix, "Social work with asylum seekers in Canada," 19–28.

22. *Charte canadienne des droits et libertés*, édictée comme l'annexe B de la *Loi de 1982 sur le Canada*, 1982, ch. 11 (R.-U.), entrée en vigueur le 17 avril 1982; *Singh c. Ministre de l'Emploi et de l'Immigration*, [1985] 1 R.C.S. 177.

23. Yasemin Nuhoglu Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago et Londres : University of Chicago Press, 1994).

24. *Accord Canada-Québec, supra* note 7.

25. Mestheneos et Ioannidi, 304–20; Lacroix, "Social work with asylum seekers in Canada," 19–28; Oxman-Martinez et Hanley, "L'identité assignée du statut d'immigration précaire."

26. Oxman-Martinez et Hanley, *supra* note 17; Oxman-Martinez et Hanley, *supra* note 10; Lacroix, *supra* note 9; Lacroix, *supra* note 18.

27. Barney Glaser et Anselm Strauss, *The Discovery of Grounded Theory* (Chicago : Aldine Publishing Company, 1967); A. Michael Huberman et Matthew B. Miles, "Data management and analysis methods," *Handbook of Qualitative Research,* Norman K. Denzin et Yvonna S. Lincoln (dir.), (Londres : Sage, 1994), 428–44.

28. Le Programme canadien de réinstallation des réfugiés et des personnes protégées à titre humanitaire comprend l'octroi des fonds en vue de contribuer au paiement des frais liés à l'accueil du réfugié à l'aéroport ou au point d'entrée; l'hébergement temporaire; l'aide nécessaire pour trouver un logement permanent; l'achat des articles de base pour la maison et la prestation d'une orientation générale de la vie au Canada. Les fonds octroyés sont aussi utilisés pour fournir au réfugié un soutien de revenu pour une période pouvant atteindre un an, ou jusqu'à ce que la personne puisse subvenir seule à ses besoins, selon ce qui se produit en premier.

29. *Loi sur l'immigration et la protection des réfugiés*, L.C. (2000), ch. 27 [*LIPR*], article 95 (2): « est appelée personne protégée la personne à qui l'asile est conféré ».

30. Commission de l'immigration et du statut de réfugié au Canada (CISR), <http://www.irb-cisr.gc.ca/en/index_e.htm> (accédé le 26 septembre 2007).

31. Citoyenneté et Immigration Canada, *Droit à l'emploi, à l'éducation et aux services de santé*, <http://www.cic.gc.ca/francais/refugies/asile-5.html> (accédé le 31 mars 2007).

32. Lacroix, *"L'expérience des demandeurs d'asile," 188.*

33. La Section compte atteindre un délai moyen de traitement de 11 mois pour l'exercice 2006–2007 pour en arriver un jour à un délai moyen de traitement de six mois.

34. Consulter le site du Conseil canadien pour les réfugiés, « *Tu me manques... »*, *Campagne en faveur de la réunification familiale*, <http://www.web.net/~ccr/reunificationfr.html> (accédé le 3 octobre 2007).

35. D'ailleurs, en matière d'immigration, la *LIPR* a pour objet de veiller à la réunification des familles au Canada (Art. 3. (1) d)).

36. L'importance de la réunification familiale dans le cadre de l'intégration est reconnue dans les objectifs de la *LIPR*, qui stipule que la loi vise à « encourager l'autonomie et le bien-être socioéconomique des réfugies en facilitant la réunification de leurs familles au Canada » (art. 3(2)(f)), tandis que la *Loi sur l'immigration au Québec,* en vertu de l'article 3 alinéa b), a pour objet de faciliter la réunion au Québec des citoyens canadiens et résidents permanents avec leurs proches parents de l'étranger.

37. *Règlement sur l'immigration et la protection des réfugiés*, DORS/2002–227, art. 230.

38. Actuellement (mars 2007), en raison du risque généralisé qui y prévaut, le gouvernement du Canada impose un moratoire sur les renvois vers huit pays : l'Afghanistan, le Burundi, Haïti, l'Irak, le Libéria, la République démocratique du Congo, le Rwanda et le Zimbabwe. Source : Conseil canadien pour les réfugiés, campagne Des vies en suspens, <http://www.ccrweb.ca/fra/accueil/accueil.htm> (accédé le 17 avril 2007).

39. Mestheneos et Ioannidi, 304–20; Lacroix, "Social work with asylum seekers in Canada," 19–28; Oxman-Martinez et Hanley, "L'identité assignée du statut d'immigration précaire."

40. *Supra* note 11.

41. *Supra* note 7.

42. Oxman-Martinez, Hanley, Lach, Khanlou, Weerasinghe et Agnew, 247–58.

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"Upon the Limits of Rights Regimes": Reception Conditions of Asylum Seekers in the Republic of Ireland

Liam Thornton

Abstract

Only in recent years has Ireland had to deal with appreciable numbers of asylum seekers coming to her shores. The reception of asylum seekers awaiting determination of refugee claims has drastically altered in that period. From inclusion to exclusion has been the hallmark of the legal regulation of reception conditions for asylum seekers. Legal protection from the Irish courts in ensuring a degree of socio-economic protection to asylum seekers is unlikely to be forthcoming. Traditional arguments on asylees' rights as being "different" from Irish citizens and those of other residents have been utilized to justify exclusion from the welfare state. Ensuring the reception of asylum seekers within traditional welfare state structures, where their rights and needs are considered in a similar manner to those of citizens, is the underlying argument of this paper.

Résumé

Ce n'est qu'au cours de ces dernières années que l'Irlande a eu à faire face à un nombre sensible de demandeurs d'asile arrivant sur ses rivages. Durant cette période, l'accueil des demandeurs d'asile en attente de la détermination de leurs revendications du statut de réfugié a radicalement changé. Le cadre légal des conditions d'accueil des demandeurs d'asile est passé de l'inclusion à l'exclusion. Il y a très peu de chance de voir les tribunaux irlandais fournir une protection légale aux demandeurs d'asile, ce qui leur assurerait un degré quelconque de protection socio-économique. Les arguments traditionnels selon lesquels les droits des personnes admises à titre d'asile sont " différents " des droits de citoyens irlandais et d'autres résidants, ont été utilisés pour justifier cette exclusion de l'État-providence. L'argumentation sous-jacente de cet article est la nécessité d'assurer l'accueil des demandeurs d'asiles à l'intérieur des structures traditionnelles de l'État-providence, où droits et besoins sont considérés de façon semblable aux citoyens.

Introduction

The hallmark feature of the Irish reception system for asylum seekers has been the continual withdrawal and diminution of social rights on the grounds of preserving the integrity of immigration controls and protection of the welfare state from those who are viewed as not having a definitive right to be within the country. The Irish reception system separates asylees from mainstream welfare provision. It denies an asylum seeker the right to be self-sufficient. The reception regime insists that the asylee reside in particular locations, away and apart from the host community. The asylum seeker is viewed as neither a citizen nor a warranted class of individual deserving of social rights on par with others in need. The development of a separated social welfare regime for asylum seekers was not inevitable. However, past exclusionary practices towards immigrants may have underpinned Irish Governmental responses to the creation of the current reception conditions for asylum seekers.

This article will first consider European law and international law relating to the reception of asylum seekers and socio-economic rights thereof. After a historical analysis of reception conditions within Ireland, current reception conditions for asylum seekers will be considered. Both the protection offered by the Irish courts and political and societal responses to reception standards and practices will also be examined.

From a country of mass emigration to a country of net immigration, Ireland only began to experience appreciable asylum flows in the last decade.[1] Throughout this period there has been a tendency to exclude asylum seekers from supports that are seen as essential to allowing citizens and legal residents to live with a basic degree of dignity. "Reception conditions" refer to those social support conditions in place which are provided to asylum seekers whose claim for refugee status has not yet been determined. These supports range from accommodation, provision of food, and clothing to financial assistance. Further supports include education for children and, in some cases, the right to work or the right to participate in vocational training for adult asylees.

The Irish welfare system, wherein access was once based on the "need" of an individual, must now consider a person's legal status in the country. Asylum seekers, who have authorized presence within Ireland,[2] have been greatly affected by exclusion from the traditional structures of the welfare state. Justifications have been proffered for a separate welfare system for asylum seekers, on the basis that "[v]oters became concerned that the welfare state should not be a honey pot which attracted the wretched of the earth."[3] The argument is made that while in the host State an asylum seeker enjoys a standard of living far higher than she would enjoy if she were back in her country of origin. This, it has been argued, attracts asylum seekers from their countries of origin.[4]

Within Ireland, asylum seekers exist as a unique category of immigrant, wherein there are no statutory or constitutional rights to social support. Support is provided on the basis of ministerial circulars, wherein parliamentary scrutiny for the whole system of reception for asylum seekers is absent. Limitations that exist within the reception system for asylum seekers do not sit well with the Irish government's commitments to social inclusion, solidarity, multiculturalism, and anti-racism.[5] This article considers the legal and political debates which led to the exclusion of asylum seekers from a formerly inclusive social welfare system.

European and International Law

European Union Law

The Tampere Conclusions committed the European Union to create "a Common European Asylum System (CEAS), based on the full and inclusive application of the Geneva [Refugee] Convention." The CEAS was to include *inter alia* the creation of minimum conditions of reception of asylum seekers.[6] The legal basis for the EU's actions within the asylum and migration field is located within Title IV of the Treaty Establishing the European Community (TEC).[7] Due to the difficult nature of negotiations with Denmark, European countries agreed that this country would not be bound by any legal standards of CEAS. In relation to Ireland and the UK, both countries had an option to opt in to CEAS measures. This allows both countries to choose which instruments to adopt under the CEAS. Therefore, there is no compulsion to adopt measures which Ireland or the UK feels to be detrimental to their own interests.

In the field of reception of asylum seekers, the European Union has adopted the Reception Standards Directive.[8] Ireland did not opt in to this directive. The Reception Standards Directive seeks to ensure that asylees within the EU will have a dignified standard of living for the duration of their asylum claim.[9] The directive also aims to prevent secondary asylum flows within the Union due to a perception of more generous reception conditions in other EU countries.[10] The directive sets out a number of very limited and qualified rights which the applicant may be entitled to. The right to maintain family unity within state reception measures,[11] the right to work after one year if the asylum application has not been considered at first instance,[12] the right of minors to receive education,[13] the right to basic health care,[14] and the right to reception conditions that can sustain an individual adequately[15] are all provided for in the directive. The directive allows for the reduction or withdrawal of reception conditions in specified circumstances.[16] There are provisions to provide for more ample reception conditions when dealing with an individual who has a special need.[17] A process must be in place so that those who are refused reception may challenge that decision in an appeal to a court or tribunal.[18] The socio-economic rights of asylum seekers under Irish law therefore remain beyond the remit of the Reception Standards Directive.

International Law and Standards

Ireland is a signatory to many international treaties which directly impact on the rights of asylum seekers. The 1951 *Convention relating to the Status of Refugees* [*Refugee Convention*] protects the rights of asylum seekers in a number of respects.[19] The United Nations High Commission for Refugees (UNHCR) has argued that asylum seekers must be treated on the assumption that they are refugees.[20] In this regard, those claiming refugee status who are "within the territory of"[21] and/or "lawfully present in"[22] a Member State should be entitled to a number of significant rights. The legal basis for entitlement to these rights is the *Refugee Convention* itself.[23] Depending on the rights in question, the level of rights protection need either be on par with that of nationals[24] or be no less than that accorded to aliens generally.[25] UNHCR has stated that reception conditions of asylum seekers must acknowledge the "centrality of applicable in-

ternational human rights law and standards in the development and implementation of reception policies."[26] The maintenance of human dignity and self-sufficiency should be the core aims of reception conditions.[27] Asylees should have access to their basic support needs,[28] which should include support for vulnerable asylum seekers[29] and which should ensure family unity.[30]

The *International Bill of Human Rights*[31] recognizes the vast array of civil, political, economic, social, and cultural rights which humanity possesses. These rights inhere in all individuals "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[32] The rights granted within the *International Bill of Human Rights* inhere in "everyone,"[33] in "every human being,"[34] to "all persons,"[35] and "no one"[36] can be arbitrarily deprived of these rights. The supervising bodies of the civil and political treaty (Human Rights Committee)[37] and the socio-economic treaty (Committee on Economic, Social and Cultural Rights)[38] have outlined the significance and applicability of both treaties to non-nationals.[39] Asylum seekers also enjoy the rights set out in the other main international human rights treaties to which Ireland is a party.[40]

Historical Analysis of Reception Conditions in Ireland

Introduction

The Irish welfare system is very much influenced by the welfare system of its former colonial ruler, Britain.[41] Cousins surmises that the other factors which contributed to the overall development of the Irish welfare state were the role of the Catholic Church and the emphasis on family,[42] the (until recently) underdeveloped nature of the Irish economy,[43] and the role of the State.[44] The Irish welfare state is very much influenced by the Beveridge welfare state model. This model advocates three kinds of benefit: social insurance, social assistance, and universal child benefit.[45]

The Early Arrivals

Ireland had very little experience with catering for asylum seekers and refugees prior to the 1990s. Refugee status determination procedures were only put in place in the latter part of the twentieth century. The State had played a less than honourable role in refugee protection during World War II.[46] Ireland acceded to the *Refugee Convention* in 1956 and to the *Protocol* in 1967.[47] Ireland accepted 539 Hungarian refugees in 1956 who had fled following the failed uprising.[48] At a governmental level an Interdepartmental Conference on Hungarian Refugees[49] was established to prepare for the hosting of this refugee population. The Irish Red Cross was

responsible for seeing to their material needs. Some money was provided and the refugees received free medical attention, clothes, food, and other essential items.[50] There was severe discontent within the army camp where the refugees were housed, mainly arising from matters to do with resettlement in other countries. One resident of the camp noted,

> [w]e were kept in unheatable wooden huts, on unhealthy food without the possibility of schooling…We do not expressly wish you to transfer us to the US or to Canada, but you have promised us life not concentration camps depriving us of work and hope of life."[51]

The reaction of some elected representatives was less than sympathetic to the plight of the Hungarian refugees. Some members of Dáil Eireann (Irish Parliament) felt that the Hungarians would take the jobs of unemployed Irish people.[52] One Dáil deputy suggested, in response to the hunger strike by the refugees, that the Government take a "firm stand" against the refugees' action.[53]

From 1973 to 1974 a small group of Chilean refugees arrived in the state. There were no apparent refugee status determination procedures. A voluntary group, Committee for Chilean Refugees in Ireland, with the help of religious groups, provided direct support to the refugees for about two years.[54] The Chileans received local authority accommodation; however, English classes were only provided for in 1977 and then for just two hours.[55]

In 1979 Ireland took in 212 Vietnamese program refugees.[56] Seventy-five per cent of the Vietnamese refugees who came in 1979 were accommodated in reception centers. The remainder were housed by religious and charitable organizations.[57] Most expressed satisfaction with their initial reception within Ireland.[58] The Vietnamese were dispersed and only the most limited of English language support was provided. Vietnamese children were place in mainstream education without additional educational supports.[59]

Ireland took in 455 Bosnian program refugees between 1992 and 1998.[60] This was the first refugee program, set up, run, and funded by the State. Bosnians were dispersed around the country and accommodated by the local authority. Both the Vietnamese and Bosnian refugees had a right to work. Both groups were also entitled to access social supports under the Irish social welfare law. While Kosovar arrivals[61] were not granted the status of "program refugee," they were allowed work and received welfare entitlements if they satisfied the same conditions as applicable to Irish nationals.

Asylum Seekers within the Modern Irish Welfare State

Formation of the Current Asylum Support System

In 1986 the Commission on Social Welfare stated that any welfare system should have three aims: the abolition of poverty, redistribution of income, and protection of the standard of living of welfare claimants. The Government, agreeing with these aims, stated that policy within welfare provision is to ensure that "no one is left behind and that we achieve the common goal of building a true and inclusive society *for all*."[62] The Governmental policy document *Building an Inclusive Society*[63] defines a person as living in poverty if their "income and resources (material, cultural and social) are so inadequate as to preclude them from having a standard of living which is regarded as acceptable by Irish society generally."[64] Unable to work,[65] asylees have no option but to rely on State provision for the duration of their asylum claim.[66]

Originally, asylees within Ireland were catered for within traditional welfare state structures. Entitlement was based solely on need. Asylum seekers were accommodated by the Directorate of Asylum Seeker Support (DASS) under the aegis of the Department of Justice, Equality and Law Reform.[67] Asylum seekers (and dependents) were initially accommodated in an induction centre. The stay in this induction centre would usually last for one week. After this period, the asylum seeker and any dependents would move into the private rented sector. The Health Service Executive (HSE) would provide asylum seekers with supplementary (rent) allowance.[68] This would substantially cover the cost of renting the property from a private landlord.

Since asylum seekers could not work, or could not seek work, they were not entitled to unemployment assistance.[69] The asylee, in line with Ireland's then needs-based approach to welfare, was, depending on her circumstances, entitled to a number of social assistance contingency payments including non-contributory state pension, if s/he was over sixty-six years of age;[70] blind pension;[71] non-contributory guardian's payment;[72] one-parent family payment;[73] carers' allowance;[74] and illness benefit.[75] All persons with children in the State, regardless of legal status, were entitled to child benefit.[76] These payments would be conditional on the asylum seeker meeting the requisite compulsory requirements. For example, only an asylum seeker who was blind would have been entitled to blind pension, or a single parent entitled to one-parent family payment, etc. Medical services were (and still are) free of charge to asylum seekers who satisfy a non-discriminatory means test.

Asylum seekers or dependents of asylum seekers of school-going age[77] are entitled to be educated in a local school. In 1999 the Refugee Legal Service[78] was set up as an adjunct to the Legal Aid Board and provides, subject to a means test, legal services for an asylum applicant and may represent her at the Refugee Appeals Tribunal for a fee.[79]

If an asylum seeker did not qualify for one of the social assistance payments, she may have been entitled to supplementary welfare allowance.[80] Supplementary welfare allowance (SWA) is administered by the HSE on behalf of the Department for Social and Family Affairs (DSFA). SWA provides a residual and support role within the overall income maintenance structure. It aims to provide immediate and flexible assistance to those in need who do not qualify for other state schemes. It seeks to ensure a basic minimum income and, for those with low incomes, to provide support to meet their needs on a day-to-day basis or in emergency situations.[81] Prior to the introduction of the habitual residence condition, SWA was available to "every person in the State whose means are insufficient to meet his needs…"[82] The HSE could also make exceptional needs payments[83] and urgent need payments[84] if the circumstances so warranted. Cash is usually provided to meet an individual's need, but in "exceptional circumstances" the HSE or a deciding community welfare officer may provide goods or service in lieu of monetary payment.[85]

Direct Provision

The legal basis for the system of direct provision and dispersal was Ministerial Circular 04/00, issued by the Department of Social and Family Affairs (DSFA). However, the Reception and Integration Agency (RIA), located within the Department of Justice, Equality and Law Reform (DJELR), were allocated responsibility for the reception of asylum seekers.[86] This system was introduced on the premise that the "rights of asylum seekers and refugees are different."[87] Under direct provision and dispersal, bed and board accommodation is provided by the Reception and Integration Agency in hostels, guesthouses, and holiday camps around Ireland. A weekly stipend of €19.10 is paid to each adult and a sum of €9.60 for each dependent child. Two exceptional needs payments of €100 are given per year to asylum seekers. These payments are administered by Community Welfare Officers (CWOs) who are employees of the HSE. The level of payment has not changed since 2000.

DSFA Ministerial Circular 05/00[88] made a number of exceptions to the general policy of direct provision. Heavily pregnant women, nursing mothers, and families were to be catered for within the traditional welfare state apparatuses. Asylees were still entitled to the contingency welfare payments, *i.e.* child benefit, blind pension, one-parent family payment, etc. Despite the discretion of CWOs, many refused to increase the _19.10 payment.[89] In 2003 asylum seekers and those who were in the country illegally were

legislatively barred from receiving rent supplement.[90] This prevented CWOs from placing any asylum seeker outside of the direct provision system. DSFA Circular 02/03[91] stated that all the needs of asylum seekers, including those with medical or special needs, were now being catered for within the direct provision system.[92]

Asylum seekers are not obliged to accept the offer of direct provision. However, with the introduction of the habitual residence requirement (discussed below), the element of choice has been somewhat removed for those asylum seekers with no other means.

Accommodation centres issue each asylum applicant with a booklet.[93] This outlines the services provided by the reception centre; the accommodation rules; and the procedures to be adopted in withdrawing the right to access the accommodation centre. The obligations of the accommodation centre include the provision of a safe, hospitable and clean living environment; the obligation to treat the asylee with dignity and respect; provision of meals and school lunches for children; sanitary facilities; and the obligation to ensure all complaints are dealt with in a fair and efficient manner.[94] In return, asylum seekers are expected to *inter alia* treat all persons in the centre with respect, to ensure the safety of their children, to keep noise to a minimum, not to engage in criminal behaviour, and to keep their living space clean and tidy.[95] Asylum seekers must inform the management of the reception centre of any reasons for absences overnight, or where the asylum seeker moves out of the centre permanently.[96] Part III of the booklet outlines the complaint procedures in place, in relation to the standards of the accommodation centre and behaviour of residents. In circumstances of extreme seriousness, an asylum seeker may be expelled from the direct provision system entirely.[97]

Habitual Residence and Accessing the Welfare State for Asylum Seekers

Since May 1, 2004, social assistance contingency payments including SWA and child benefit are subject to the "habitual residence" requirement.[98] It is therefore presumed, until the contrary is proven, that a person is not habitually resident, unless she has been present in Ireland or Common Travel Area[99] for a continuous period of two years.[100] There does not have to be a long-term plan to reside in the country.[101] The 2004 Act was introduced to prevent abuse of the social assistance system by foreign nationals, and the Dáil debates usually referred to those coming from the (then) ten new European Union accession states.[102] The Minister for Social and Family Affairs, Ms. Mary Coughlan, T.D., stated that the habitual residence requirement was necessary "to safeguard our social welfare system from … people from other coun-

tries who have little or no connection with Ireland."[103] However, to ensure compliance with European Community law, EU nationals are entitled to a number of "family" payments which consist of child benefit and one-parent family payment. All EU nationals may also be entitled to SWA where they can show that they are in "genuine and effective employment" and satisfy the legislative criteria for grant of SWA. The granting of SWA would also allow an EU national access to supplementary rent allowance.

Those who applied for asylum after May 1, 2004, were very much affected by the habitual residence requirement. The asylum seeker who has a "temporary residence certificate"[104] and has the right to remain in the state pending final determination of her application would find it difficult to prove that her residence is "habitual" for the purposes of accessing social welfare supports. This ensures that asylum seekers are wholly excluded from mainstream social welfare. Instead, asylum seekers are catered for within an exclusive and excluding direct provision system.

Reception of Unaccompanied Minors

Unaccompanied asylum seekers under the age of eighteen are under the care of the HSE.[105] The Separated Children Seeking Asylum Service (SCSA) is the grouping within the HSE which caters for the needs of unaccompanied minors. While minors are in the care of the HSE, provisions of the Child Care Act 1991 apply.[106] The HSE is under an obligation to promote the welfare of children who are not receiving adequate care and attention.[107] The welfare of the child is the paramount consideration.[108] The HSE is obliged to do all that they reasonably can to reunite the child with its family, if this is in the best interests of the child.[109] An unaccompanied minor must be accommodated and maintained by the HSE.[110] This care can be given in a number of ways, including placement with foster parents,[111] placement in residential care,[112] or making such other suitable arrangements as the HSE thinks proper with regard to the circumstances of the case.[113]

Overview of UK Reception System

The Irish system of reception for asylum seekers was heavily influenced by British models of social support. Unlike Ireland's, the British system is highly legalized and the system of asylum supports has been subjected to parliamentary scrutiny.[114] Britain has attempted to withdraw all forms of support from asylees on a number of occasions.[115] Such attempts were met with judicial censure.[116] In 2000 Britain introduced a policy of asylum seeker dispersal, and provision for needs by way of accommodation and voucher support. Vouchers could be exchanged for goods at select supermarkets, with access to a very limited amount of cash.[117] The voucher system was eventually phased out in

2002. A direct provision system, similar to that operated by Ireland, was to be introduced on a limited and pilot basis.[118] Britain has in place measures for the suspension or discontinuation of asylee support in specified circumstances.[119] Within the UK unaccompanied minors are entitled to care and protection by virtue of the Children Act 1989. Similar to Ireland, children may be placed within foster care, residential homes, with extended family, and also within independent and semi-independent accommodation.

Irish Law and International Obligations

In relation to Ireland's obligations under international law, a number of issues arise. Ireland is failing to comply with the exact requirements of Article 18 (self-employment) and Article 26 (right to choose place or residence) of the *Refugee Convention*. Those asylum seekers who are "lawfully present in" the State are entitled to be treated no less favourably than aliens generally. The Ombudsman for Children has expressed her concerns in relation to Ireland's non-compliance with the *Convention on the Rights of the Child*.[120] The only other definitive statement on compliance of Ireland's reception conditions came from the Committee on the Elimination of Racial Discrimination.

The *Covenant on the Elimination of All Forms of Racial Discrimination* [CERD] provides that the Convention does not apply to "…distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens."[121] The Committee has, however, noted with concern the policies of dispersal and direct provision within Ireland. States parties to CERD are under an obligation to "take all necessary steps with a view to avoiding negative consequences for individual asylum seekers and to adopt measures promoting their full participation in society."[122] The Committee had previously criticized the United Kingdom for withdrawing certain social services to asylum seekers and expressed the view that "…it is a matter of great concern that most of the affected persons would be persons belonging to ethnic minorities."[123] In remains to be seen whether the other human rights treaty bodies will comment on Ireland's international obligations in relation to the direct provision system for asylum seekers.

It appears, however, that the *Refugee Convention* and international human rights law have not been considered within the formation of reception conditions for asylum seekers within Ireland. UNHCR recommendations of ensuring human dignity and self-sufficiency within reception policies have remained unheeded. Since none of treaties mentioned above are incorporated into Irish law,[124] it is unlikely that the Irish courts will intervene to ensure compliance.

The Courts and Asylum Seekers
Constitutional Rights and Asylum Seekers

Ireland's constitution, Bunreacht na hEireann (1937), recognizes "Fundamental Rights" under articles 40 to 44.[125] In earlier jurisprudence personal rights of individuals were viewed as emanating from the "Christian and democratic nature…" of the State.[126] Walsh J. in the *McGee* case stated that "…natural rights or human rights, are not created by law, but that the Constitution affirms their existence and gives them protection."[127] Rights concepts were based on precepts of natural law. This natural law "…is of universal application and applies to all human begins…"[128]

Socio-economic Rights and the Irish Courts

Can the Irish constitution assist asylum seekers in preventing exclusion from the traditional structures of the welfare state? Article 45 of the Irish Constitution is entitled "Directive Principles of Social Policy." Article 45 envisages a social order wherein the State protects the welfare "of the whole people." "Justice and charity" inform all the institutions of national life.[129] However, this provision is for the "general guidance" of the Oireachtas (Parliament and Senate) and is not to be cognizable in any court.[130] In the case of *Ryan v. Attorney General*[131] Kenny J. stated:

> [w]hen dealing with controversial social, economic and medical matters on which it is notorious views change from generation to generation, the *Oireachtas* has to reconcile the exercise of personal rights with the claims of the common good and its decision on the reconciliation should prevail unless it was oppressive to all or some of the citizens...[132]

The Irish courts have shown themselves willing to deal with socio-economic issues where specific constitutional rights are at issue, such as the right to education[133] or the right to private property.[134] However, it has proven difficult for the Irish courts to develop any jurisprudence on constitutional social rights. In the case of *O'Reilly v. Limerick Corporation*[135] Costello J. rejected *inter alia* the argument that the constitutional rights of dignity and vindication of the person extend to ordering the State to protect socio-economic rights of individuals.[136] The learned justice utilized Aristotelian divisions of justice into commutative and distributive fields. Costello J. stated that the court cannot decide whether an individual has been deprived of what is his or her due. Although the Constitution "embraces the notion that the nation's wealth should be justly distributed,"[137] this is for elected officials to decide, and not the courts.

Impact on Asylum Seekers

The issue of asylum seekers, direct provision, and social rights has, as yet, not come before the courts. In the Supreme Court case of *T.D.*[138] Murphy J. stated that Ireland has no obligation to provide "any form of socio-economic benefit for any of its citizens, however needy or deserving."[139] In an *obiter* statement in the *Lobe and Osayende* decision, Hardiman J. noted that "…the State makes available to [asylum] applicants an elaborate system of legal advice and free legal representation as well as social welfare or direct provision for their needs. All this is as it should be…"[140] It therefore would seem that like citizens and other residents, asylees could not rely on Irish constitutional provisions in arguing that their reception conditions are insufficient or inadequate.

British Courts and the Reception of Asylum Seekers

Even before the adoption of the Human Rights Act 1998, the British courts had taken some tentative steps towards protecting the socio-economic rights of asylum seekers. The British courts have, in general, never declared a common law right to a certain minimum standard of living.

The withdrawal of social rights of asylum seekers by means of a statutory instrument was prevented by the Court of Appeal.[141] However, the effect of this judgement was later reversed by a legislative amendment.[142] After this withdrawal, the British courts relied on section 21(a) of the National Assistance Act 1948[143] to ensure that illegal immigrants and asylum seekers did not become destitute and received some assistance.[144] The New Labour government gave asylum seekers limited rights to social support in the Immigration and Asylum Act 1999. Section 21 was amended to exclude those subject to immigration control, including asylum seekers.[145] The British courts continued to ensure a certain minimum level of socio-economic protection would be available to *certain* excluded immigrant categories. In *Westminster* the Law Lords set down the definitive test which applies under the amended section 21.[146] A person must be in need of care and attention, and this must arise from one or a combination of the following factors: age, illness, disability, or other circumstances. Any such care and attention must not be provided for by any other statute. This excluded able bodied asylum seekers from its ambit.

Section 55 of the Nationality, Immigration and Asylum Act 2002 attempted to withdraw any entitlement to support for those asylum seekers who did not apply for status "as soon as reasonably practicable." In *Limbuela* the House of Lords utilized article 3 of the *European Convention of Human Right*s to ensure that asylees received a certain minimum level of State support so as to prevent destitution.[147]

All the Law Lords emphasized the specifics of the *Limbuela* case. Asylum seekers who were lawfully in the country were unable to work. Asylees who were new to the UK and unfamiliar with language and legal requirements had to apply for asylum as soon as the Secretary of State found it would have been reasonably practicable to do so. If an asylum seeker failed to apply for asylum "as soon as reasonably practicable," they were denied any form of State support. Those who failed to gain any familial or charitable support were expected to live on the streets without access to food, water, shelter, heat, or clothing. Baroness Hale noted that:

> [t]he State has taken the Poor Law policy of "less eligibility" to an extreme which the Poor Law itself did not contemplate, in denying not only all forms of state relief but all forms of self sufficiency, save family and philanthropic aid, to a particular class of people lawfully here.[148]

Ireland has not attempted to withdraw social rights from asylum seekers to the same extent as the UK. The impact of the *European Convention on Human Rights*[149] within the Irish courts on issues relating to socio-economic rights of asylum seekers has yet to be tested before Irish courts. It is, however, highly unlikely that the courts would stray from their traditionalist interpretation regarding the non-justiciability of claims to social rights.

Political and Societal Responses to Reception of Asylum Seekers

Societal Responses

Ireland has only recently emerged from the pain and tragedy which mass emigration caused to the population, economy, and national psyche. For much of the nineteenth and twentieth centuries, Irish people had constant need to seek sanctuary for political and economic reasons in countries afar. Irish history and culture is supposedly marked by the Judaeo-Christian tradition, where the "welcoming of the stranger…becomes the occasion of blessing and fruitfulness."[150] Saorstát Eireann (The Irish Free State) along with the Republic of Ireland had a shameful history in the treatment of European Jewry and Hungarian political persecutees. Chilean, Bosnian, and Kosovar refugees fared somewhat better.

Rather than recognizing the historical parallels with Ireland's past, the increase in the numbers applying for asylum saw a reactionary response from the popular press.[151] Ireland was portrayed as "swamped" by "bogus" asylum seekers. Asylum seekers and refugees were classed as rapists[152] and criminal thugs.[153] Asylum seekers were seen as responsible for diverting state resources away from the more

destitute Irish people.[154] Asylum seekers were dehumanized[155] and rumours about their wealth increased. Popular myths among the public included beliefs that asylum seekers were receiving social welfare payments to purchase cars, designer clothes, and mobile phones and for socialization in pubs.[156] So widespread were the rumours, UNHCR and the National Consultative Committee on Racism and Interculturalism (NCCRI) held an information campaign and produced leaflets which were widely distributed to inform the Irish public on the true nature of the reception system for asylum seekers within Ireland.[157]

Political Responses

The reaction to the increase in asylum seekers was met with puzzlement and despair by the then Minister for Justice, Mr. John O'Donoghue. The Minister expressed surprise at the level of applications due to a lack of conflict near Irish borders. The fact that Ireland was not a colonial power further added to the surprise in the rise of asylum applications.[158] Direct provision was justified on the basis of maintaining a Common Travel Area with the UK. The then Minister for Justice also cited the introduction of a new social support scheme for asylum seekers within Britain as a further reason for the introduction of direct provision within Ireland.[159] This seemed to suggest a perception that there would be further asylum flows to Ireland, were measures not taken to greatly limit and reduce support to those who applied for asylum.

The system of direct provision within Ireland was promoted as being a "fair and effective" means of meeting the basic needs of asylees.[160] Those asylum seekers who were "genuine" would, according to the Minister, appreciate that one of the purposes behind direct provision was the prevention of fraud.[161] This statement suggested that the traditional welfare structures which were in place were being used fraudulently by some asylum seekers. Evidence for this contention was not provided by the Minister.

The British asylum debate proceeded on the basis that a large number of economic migrants were bypassing the immigration system through claiming asylum.[162] The 1998 British White Paper on immigration sought to ensure asylum seekers would not be destitute while their asylum claim was processed.[163] However, asylum seekers were expected to seek support in their "*own communities*" before seeking government assistance.[164] The British Government saw its role as providing a "security net" for those without any other means, on a cashless basis and, as with Ireland, accommodation was provided on a no-choice basis.

The separation of asylum seekers from traditional welfare structures was achieved by the creation of separate welfare bodies. The Reception and Integration Agency (RIA) within Ireland and the National Asylum Support Service (NASS) within Britain were located within home affairs ministries rather than within social affairs governmental departments. Within both Ireland and Britain, the establishment of these agencies led to an exclusive and isolated welfare system for asylum seekers.

Unaccompanied minors are the one group that remains within legislated social care protection. However, the extent to which unaccompanied minors receive adequate protection has been questioned. The Irish Refugee Council (IRC) has noted the care provided for unaccompanied minors by the HSE is less than adequate. Unaccompanied minors presenting to immigration officials out of hours are often placed in homeless hostels for the first night. There is much less of a care service provided to unaccompanied minors in comparison with Irish children in need of care. The IRC report recommended that a guardian *ad litem* be appointed to each unaccompanied minor to represent her interests.[165] The report further recommended a movement away from a hostel type of accommodation, with foster placements to be considered much more readily.[166]

The Ombudsman for Children, Ms. Emily Logan, has criticized the nature of some of the hostel accommodation centres where unaccompanied minors are living.[167] The standards of these accommodation centres differed greatly, from excellent to less than desirable.[168] The Ombudsman stated her belief that the differences between care provided to Irish children and that provided to unaccompanied minors breached non-discrimination provisions of the *Convention on the Rights of the Child*.[169] Similar concerns have been expressed in relation to the level of care and support which unaccompanied minors received in comparison with other children in the care of the British social services.[170]

Asylum Seekers: From Need to Status within the Irish Welfare State

The Irish Government deems it acceptable to give asylees a standard of living well below that of others who rely on the "Welfare State." It is Irish governmental policy that all people should live in dignity, where the most vulnerable are "cherished and cared for."[171] Government policy is to ensure that those relying on the welfare system "can sustain dignity and avoid poverty."[172] However the inclusion of asylum seekers within anti-poverty strategies and social inclusion measures seems superficial.

The welfare state has become a forum for deciding who can be a "full" member of a society, deserving of support, and who may not.[173] Prior to 2000, when direct provision was introduced, the Irish welfare system recognized "the essential oneness of humanity."[174] Need was the main basis for accessing welfare support. Irish discourses on "social

inclusion," elimination of poverty, full employment, and equality are sparsely applied to the asylum seeker. The involvement of the Irish Justice Department and British Home Office has ensured that asylum seekers' basic needs are treated as lesser than those of others in need. The "oneness" of the poor is separated between the "undeserving" asylee poor and the "deserving" indigenous pauper.

The *National Action Plan against Racism 2005–2008* has five key objectives to combating racial discrimination.[175] The National Action Plan recognizes that racism occurs against labour migrants, refugees, and asylum seekers through overt discrimination, assaults, and other types of behaviour, institutional racism, and labelling.[176] There is an express commitment to the inclusion of ethnic and racial minorities in tackling poverty and ensuring social inclusion.[177] However, this is tempered by statements that refugees and asylees are not a "homogenous community"[178] in terms of access to rights, services, and integration.[179] While the National Action Plan notes the harmful effects of discrimination and labelling[180] it does not fully engage in a discussion on the rationale behind the separation of asylum seekers from the traditional forms of welfare support.[181]

While the Government is committed to developing a more detailed asylum support policy, it will only be done in the framework of direct provision.[182] Ambiguity remains about the extent to which the system of direct provision can truly avoid a situation wherein an individual can be said to be living free from poverty and living in an inclusive society which fosters interaction, equality of opportunity, and respect.

Challenging the "Welfare Apartheid"

Within Ireland, asylum seekers live on "the limits of rights regimes."[183] Fanning argues that Irish responses to asylum seekers "have been shaped by a legacy of exclusionary state practices and racism."[184] Ireland has played a reluctant host to asylees where "[r]acism within Irish society continues to be mobilised for administrative purposes."[185] Irish politicians rely on actions of foreign governments as a legitimization for our reception policies towards asylum seekers. The exclusion from the "inclusion debate" marks the asylum seeker as a unique entity within Irish anti-poverty discourses. National welfare states which on their own have been described as being a "threshold of inequality"[186] in and of themselves can, in relation to asylum seekers, be viewed as creating a "new apartheid."[187] Sales notes that changes to the general welfare system have made asylum seekers more visible.[188] Geddes feels that the "bogus myth of welfare scrounging"[189] is polluting contemporary immigration debate. The separate welfare system and the lack of educational and employment opportunities contribute to the "unde-

serving" label applied to asylum seekers.[190] Moran opines that it is the policies of differentiation of the asylee, through the system of direct provision post-2000, that have sown the seeds of racist and xenophobic reaction of the press and society. [191] The almost natural exclusion of asylum seekers from traditional welfare state structures is in stark contrast to attempts to foster intercultural debates and to challenge institutionally racist practices.

Conclusion

State-centric concerns surrounding immigration control and abuse of the asylum system have trumped the ideals of poverty prevention and tackling racial discrimination. Universality and inclusion were at the core of the initial reception system for asylum seekers. However, by 2000, Ireland limited social rights and placed asylum seekers within accommodation centres. Over the years, further restrictions on monetary support were introduced. The *de facto* exclusion of unaccompanied children who seek asylum from full social care protection is particularly evident when compared to the protection given to Irish children. This further underlines the exclusion of asylum seekers from the welfare state and social care structures. Irish courts have failed to recognize socio-economic rights as inherent within liberal democratic constitutional fundamental rights provisions. This stands in contrast to the approach taken by the British courts. The British courts have placed concepts of human dignity and prevention of inhuman and degrading treatment at the core of social rights protection for asylum seekers. A fundamental re-evaluation of the natural-law-based human rights protection within the Irish Constitution is needed.

Concerns also exist in relation to Ireland's lack of compliance with international law, in particular the *Refugee Convention* and the various treaties which make up the international human rights treaty regime. While there are a number of flaws within the Reception Standards Directive, had Ireland exercised the opt in, a fully legislated system of asylum support might have been put into place. This would have ensured a number of improvements, in particular regarding the (limited) right to work and a fairer and more transparent system for the complaints of, and against, asylum seekers.

The obstinate response of the press fuelled the perception of asylum seekers as undesirable. The reaction of Irish politicians was not much better. The historical parallel between anti-Irish discrimination in other countries and the discrimination in place for asylum seekers has been ignored. Provision of support and services for asylum seekers through the mainstream welfare state should be the core aim of Government policy. The adoption of a rights-based

approach to minimum social entitlement for asylum seekers will ensure a more inclusive and participatory democratic society. Such aims would also honour the Irish Government's commitments to poverty prevention, social inclusion, and anti-racism.

Notes

1. For a breakdown of the Irish statistics on asylum applications, please see online: cf2 <http://www.orac.ie/> (date accessed 3 October 2007).
2. Section 8(1)(a) of the *Refugee Act 1996* (as amended).
3. *Westminster City Council v. National Asylum Support Service*, [2002] UKHL 38, para. 20, per Lord Hoffman.
4. *Ibid.*
5. See Department of Social, Community and Family Affairs, *National Anti-Poverty Strategy* (Dublin: Stationary Office, 1997); Department of Justice, Equality and Law Reform, *Integration: A Two Way Process* (Dublin: Stationary Office, 2000), Department of Social, Community and Family Affair *, Building an Inclusive Society* (Dublin: Stationary Office, 2001), Department of Justice, Equality and Law Reform, *National Action Plan against Racism 2005–2008* (Dublin: Stationary Office, 2005), Department of An Taoiseach, *Towards 2016 : Ten-year Framework Social Partnership Agreement 2006–2015* (Dublin: Stationary Office, 2006), Office of Social Inclusion, *National Action Plan for Social Inclusion 2007–2016* (Dublin: Stationary Office, 2007).
6. Paras. 13 and 14 of the Tampere Conclusions.
7. *Consolidated Versions of the Treaty of the European Union (*TEU*) and of the Treaty establishing the European Community* (TEC) [2006] *Official Journal* C.321.E/1.
8. *Council Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers* [2003] *Official Journal* L.31/18. The UK did opt in to this directive and therefore is bound by its terms.
9. Preamble 7 of Reception Standards Directive [RSD]. Under article 4 of the Directive nothing prevents member states from adopting more favourable conditions.
10. Preamble 8RSD.
11. Article 8 of the Directive states that if families are provided with housing, the Member State should "as far as possible" maintain family unity.
12. Under article 11RSD, member states may provide for the right to work at an earlier stage of the asylum process; however, member states may also specify that nationals of member states or other third country nationals should have priority over asylees in gaining access to the labour market.
13. Article 10RSD. However, education may take place in reception centres, or a child's access to education may be delayed for a period of up to one year. In that period, the child should be following a specified education program which would see her accessing mainstream education in the future.
14. The right to health care under article 15RSD may be limited to emergency or essential treatment of illness.
15. Articles 13 and 14 of the Directive set out the rights and entitlements of asylees and the modalities of reception conditions including allowing States a variety of means to implement reception conditions be it by accommodation, cash, or in-kind support.
16. Article 16RSD provides for the withdrawal or reduction of reception conditions where a claim has not been made as soon as reasonably practicable, the asylee abandons his accommodation, has already lodged a claim in another member state, or has sufficient means to support him/herself. Supports must be withdrawn or reduced only after a careful and objective decision is reached on the individual case at hand.
17. Articles 17–20RSD. Unaccompanied minors, minors, pregnant women, victims of torture or sexual abuse, the disabled, and the elderly are all considered as being vulnerable.
18. Article 21RSD.
19. The *Convention relating to the Status of Refugees*, 28 July 1951, 189 U.N.T.S. [*Refugee Convention*].
20. UNHCR documents have often noted the need for protection of asylees given that all refugees were also, at one time, asylum seekers. UNHCR, *Notes on International Protection* (Geneva,: UNHCR, 1993), para. 11. Indeed the definition which UNHCR gives to "asylum" in refugee contexts is quite apt: "Asylum, in the core sense of admission to safety in another country, security against refoulement, and respect for basic human rights, is the heart of international protection. Without asylum, the very survival of the refugee is in jeopardy." (para. 8)
21. Art. 3 (non-discrimination), art. 4 (the right to practise religion and instruct children on religious matters), art. 7(1) (exemption from reciprocity), art.8 (exemption from exceptional measures against the person, property, or interests of the nationals of a foreign State, where the refugee is a national of that State), art. 13 (the right to acquire moveable and immovable property), art. 16(1) (free access to Courts), art. 20 (the right to be included in rationing measures), art. 22 (the right to public elementary education), art. 27 (the right to identity papers), and art. 33 (the prohibition of *refoulement*).
22. Art. 18 (the right for a refugee to lawfully engage "on his own account" industrial, commercial, agricultural or handicraft self employment), art. 26 (right to choose place of residence and the right to move around freely) and art. 32 (a right not to be expelled except on the grounds of national order or public security).
23. This interpretation is shared by a number of well-established academic authorities. See in particular A. Grahl-Madsen, *A Commentary on the Refugee Convention 1951* (Geneva: UNHCR, 1997); J. Hathaway, *The Rights of Refugees under International Law* (Cambridge: Cambridge University Press, 2005), especially c. 3, 4, and 5.
24. Under arts. 4, 14, 16, 20, 22(1), 23, 24, and 29 (fiscal charges and taxes) treatment on these issues must be at least as favourable as that given to nationals.
25. Arts. 7(1), 13, 15, 17, 18, 19, 21, 22(2) (post-primary education), and 26.

26. Executive Committee Conclusion No. 93 (LIII) of 2002, preamble, para. 3, UNGA Doc. No. A12 (A/57/12/Add. 1).
27. *Ibid.* at para. (b)(i).
28. *Ibid.* at para. (b)(ii)
29. *Ibid.* at para. (b)(iii)
30. *Ibid.* at para. (b)(iv).
31. This is the name given to the three main human rights instruments within the UN human rights protection framework: the *Universal Declaration of Human Rights* [UDHR], GA Res. 217A(III) UN Doc. A/810: the *International Covenant on Civil and Political Rights* [ICCPR], UN Doc. A/6316 (1966); and *International Covenant on Economic Social and Cultural Rights* [ICESCR], UN Doc. A/6316 (1966).
32. Art. 2, UDHR; art. 2(1), ICCPR; art. 2(2), ICESCR.
33. Art. 3, 6, 8, 10, 11, 13, 14, 15, and arts. 17–29, UDHR; arts. 9, 16, 18, 19, and 22, ICCPR; arts. 7, 8, 9, 11, 12, 1, and 15, ICESCR.
34. Art. 6, ICCPR.
35. Arts. 10, 14, and 26, ICCPR.
36. Arts. 9, 1, and 15, UDHR; arts. 7, 8, 9, and 15, ICCPR.
37. Art. 28 *et. seq.*, ICCPR.
38. The functions of the Committee originally lay with the Economic and Social Council (ECOSOC); however ECOSOC Resolution 1985/17 assigned this competency to a group of independent experts who examine state compliance under the Covenant.
39. See generally Communication No. 965/2000 *Karakurt v. Austria*, ICCPR, UN Doc. A/57/40, CCPR/C/74/D/965/2000, Vol. 11 304 (4 April 2002); Communication No. 1054/2002 *Kriz v. Czech Republic* UN Doc. CCPR/C/85/D/1054/2002; ICESCR General Comment No. 4, para. 6, "[t]he right to adequate housing applies to everyone and in accordance with article 2(2) not subject to any form of discrimination."; General Comment No. 14 *The Right to the Highest Attainable Standard of Health (Article 12)* UN Doc. E/C.12/2000/4 (11 August 2000), para. 3, "The right to health is closely related to and dependant on the realization of other human rights including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality and the prohibition against torture."
40. *Covenant on the Elimination of All Forms of Racial Discrimination* [CERD], UN Doc. A/6014 (1966); *International Convention on the Elimination of Discrimination Against Women* [CEDAW], UN Doc. A/34/46 (1979); *International Convention on the Rights of the Child* [CRC], UN Doc. A/44/49 (1989). See in particular General Recommendation No. 30, *Discrimination against Non-Citizens*, UN Doc. CERD/C/64/Misc.11/rev.3 (February/March 2004). Hathaway in *The Rights of Refugees under International Law*, at p. 146, states that there is a need for all the treaty supervisory bodies to reject the notion that differences based on citizenship can in some way be "reasonable."
41. M. Cousins, *Explaining the Irish Welfare State: A Historical, Comparative and Political Analysis* (Dublin: Edwin Mellen Press, 2005) at 8.

42. *Ibid.* at 13.
43. *Ibid.* at 14.
44. *Ibid.* at 15.
45. See M. Cousins, *Social Welfare Law* (Dublin: Thomson Roundhall, 2002). The Beveridge idea of universal and free health service was never adopted within the Republic of Ireland.
46. See generally D. Keogh, *Jews in Twentieth Century Ireland: Refugees, Anti-Semitism and the Holocaust* (Cork: Cork University Press, 1998).
47. For a list of signatories and ratifications to both the *Refugee Convention* and the *1967 Protocol,* see online: lang1033 <http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3b73b0d63> (date accessed: 3 October 2007).
48. E. Ward, "'A Big Show Off of What We Could Do'— Ireland and the Hungarian Refugee Crisis of 1956" (1996) 7 *Irish Studies in International Affairs* 131–141.
49. *Ibid.* at 136.
50. *Ibid.*
51. *Ibid.* at 138–139. Ward notes that food was served cold, the Hungarian refugees were effectively confined to the camp, education for children was provided for inside the camp and not alongside local children. This, she argues, "exaggerated feelings of being in a ghetto." Most of the refugees resettled in Canada and the camp closed on 15 December 1958. Ward ultimately concludes that this episode was a failure and a "big show off to show what we could do." Deputy McQuillan to Minister Aiken, *Dáil Debates* vol. 161, col. 630 (2 May 1957).
52. Deputy J. Murphy, *Dáil Debates,* vol. 161, col. 629 (2 May 1967).
53. Deputy Hillery, *Dáil Debates* vol. 161, col. 630 (2 May 1967).
54. B. Fanning, *Racism and Social Change in the Republic of Ireland* (Dublin: Manchester University Press, 2002) at 95.
55. *Ibid.* at 97.
56. From 1981 to 2000 the Government granted family reunification to 591 applicants. There were 200 births, 33 deaths, and 147 individuals departed to third countries. See online: <http://www.ria.gov.ie/integration/programme_refugees/vietnamese_programme/> for full figures (date accessed 3 October 2007).
57. C. O'Regan, *Report of a Survey of Vietnamese and Bosnian Refugee Communities in Ireland* (Dublin: Refugee Agency, 1998) at 46.
58. *Ibid.* at 48.
59. *Ibid.* at 98.
60. There were 886 persons admitted to the State for family reunification, while 174 individuals voluntarily repatriated themselves in this period, with just 35 people departing to a third country. See online: <http://www.ria.gov.ie/integration/programme_refugees/bosnian_programme/> for full figures (date accesssed 3 October 2007).
61. In 1999 there was an intake of 1,032 Kosovar refugees. There were 31 applications for family reunification approved, 39 births, and 2 deaths. In contrast with the Vietnamese and

Bosnian repatriation rates, 956 Kosovar refugees were repatriated, with just 144 remaining in Ireland after 2001.

62. Foreword by An, Taoiseach, Mr. Bertie Ahern T.D., An Tánaiste, Mr. Michael McDowell T.D. and Minister for Social and Family Affairs, Mr. Séamas Brennan, T.D. in *National Action Plan for Social Inclusion 2007–2016,* at 4 [emphasis added].

63. *Supra* note .

64. *Ibid.* at 6.

65. Section 9(4)(b) of the *Refugee Act 1996* (as amended). Although generally prevented from working, a concession was made to asylum seekers who were in the country for a period of at least twelve months prior to 27 July 1999. For more information on the limited and unsuccessful nature of this scheme, see B. Fanning *et al.*, *Asylum Seekers and the Right to Work in Ireland* (Dublin: Irish Refugee Council, 2000).

66. On the other hand, those granted refugee status are entitled to all the same rights as Irish citizens, including the right to work, the right to social welfare on the same basis as nationals, the right to health care, the right to reside in the State, and the right to travel (excluding travel to their country of origin); see s. 3 of the *Refugee Act 1996* (as amended).

67. The Directorate of Asylum Seeker Support, which was under the Department of Justice, Equality and Law Reform and the Refugee Agency, under the auspices of the Department of Foreign Affairs, merged in April 2001 to form the Reception and Integration Agency (RIA).

68. This legislative base for this payment is now to be found under part III, c. 9 of the *Social Welfare (Consolidation) Act 2005* [the 2005 Act]. It should be noted that the 2005 Consolidation Act includes the "habitual residence" requirement. When discussing the asylum support system prior to 1 May 2004, readers should ignore the habitual residence requirement. The 2005 Consolidation Act (as amended by the *Social Welfare Act 2006* and the *Social Welfare Law Reform and Pensions Act 2006*) simply restates the current law within one statute. The previous consolidation act was the *Social Welfare (Consolidation) Act 1993*.

69. Section 141 of the 2005 Act. To qualify for unemployment assistance (now renamed jobseeker's allowance, see Schedule One of the *Social Welfare Law Reform and Pensions Act 2006*) an individual must prove that she is actively seeking work. Since asylees are prevented from working (section 9(4)(b) of the *Refugee Act 1996*), which if breached could result in a fine and/or up to six months in prison, they would be incapable of entitlement to jobseeker's allowance.

70. Now provided under s. 153 of the 2005 Act.

71. S. 161 of the 2005 Act.

72. S. 163 of the 2005 Act provides an entitlement for all those looking after orphaned children to be entitled to a welfare payment. Guardian payment was originally named orphan's pension (see Schedule One of the *Social Welfare Law Reform and Pensions Act 2006*).

73. S. 173 of the 2005 Act.

74. S. 180 of the 2005 Act.

75. S. 210 of the 2005 Act. This payment had previously been known as disability benefit (see Schedule One of the *Social Welfare Law Reform and Pensions Act 2006*).

76. Ss. 219–223 of the 2005 Act.

77. Art. 42.4 of Bunreacht na hEireann provides that the State shall provide for free primary education. S. 31 of the *Education (Welfare) Act 2000* sets the minimum school leaving age at sixteen years.

78. Provisions of this scheme are now set down in *Civil Legal Aid (Refugee Appeals Tribunal) Order 2005* (S.I. No. 750 of 2005).

79. A person's income must be below _13,000.The current rates are _6 for advice and _29 for representation before the Refugee Appeals Tribunal or the High Court.

80. Chapter 11, Part III of the 1993 Act contained the universalistic clauses; the current SWA requirements are contained within Chapter 9, Part III of the 2005 Act (this includes the habitual residence requirement).

81. See L. Thornton, "Discretion and Law in the British and Irish Social Welfare Systems" [2005] *Cork Online Law Review* X.

82. Full-time students, those in full-time employment, and persons involved in a trade dispute are not entitled to receive SWA. See ss. 190, 191, and 193 of the 2005 Consolidation Act.

83. Exceptional needs payments (ENP) (s. 201 of the 2005 Act) are paid to cover one-off events, where a person could not reasonably expect to pay from their weekly income. ENP are usually made to those who are in receipt of some other social assistance payment. Examples of when the payment may be given include the purchase of utensils and furniture for a new house, purchase of clothing, and visiting family in hospital or prison.

84. Urgent needs payments (UNP) (s. 202 of the 2005 Act) are paid in times of hardship caused by a fire, flood, or some other natural disaster. This payment is not subject to a "habitual residence" test.

85. Section 200 of the 2005 Consolidation Act.

86. Copy on file with the author.

87. *Integration: A Two Way Process*, *supra* note 5 at 50. Such a distinction continues, in the *National Action Plan against Racism 2005–2008*, *supra* note 5 at 66. The DJELR justified the provision of basic accommodation and living supports for asylum seekers as they made "…a clear distinction between the integration of refugees and the social supports provided to asylum seekers."

88. Copy on file with author.

89. Supplementary welfare allowance (SWA) is a discretionary payment and is hence governed by administrative law rules regarding exercises of discretion. A CWO must therefore come to their own decision on whether an individual has enough income to meet her needs and must act in a genuinely independent manner, and not come to a decision due to undue pressure, real or perceived, from an outside body. For a more detailed analysis see, Free Legal Advice Centres, *Direct Discrimination?An Analysis of the Scheme of Direct Provision in Ireland* (Dublin: Printwell Co-op, 2003) at 24–26.

90. Section 13 of the *Social Welfare (Miscellaneous Provisions) Act 2003* inserted section 174(3) and (4) into the *Social Welfare (Consolidation) Act 1993* and prevented payment of rent allowance to those unlawfully in the State and also to those who had made an application for refugee status. This section has been replaced by section 198(3) of the 2005 Consolidation Act.

91. This circular replaced circular 05/00 and reflected the legislative changes which occurred in the 2003 *Social Welfare (Miscellaneous Provisions) Act 2003*. Copy on file with the author.

92. While asylum numbers since 2003 have decreased, the numbers within direct provision accommodation have increased. Please see the table below for last set of full figures available, which are accurate as of April 2005. The RIA was expecting a large decrease in use of direct provision after many asylees staying in accommodation centres were granted residence on the basis of their Irish-born child. See Department of Justice, Equality and Law Reform, *Value for Money Report on Asylum and Immigration* (Dublin: Stationary Office, 2006).

2001	4,752	2004	6,785	
2002	4,316	2005	8,080	(up to April 2005)
2003	5,838			

93. DJELR, *Direct Provision Reception amd Accommodation Centre Services, Rules and Procedures* (29 September 2005). This booklet is currently undergoing an internal review. Booklet on file with the author.

94. *Ibid.* at 4.

95. *Ibid.* at 5–7.

96. *Ibid.* at 6.

97. Ibid. at 11.

98. Section 17 of the Social Welfare (Miscellaneous Provisions) Act 2004. This is now contained in section 246 of the 2005 Consolidation Act.

99. This refers to the United Kingdom, Northern Ireland, the Channel Islands, and the Isle of Man.

100. The "soft law" *Social Welfare 108 Handbook on the Habitual Residence Condition* (DSFA, 2004) makes it clear that the question of whether a person is habitually resident or not is for the deciding officer solely. Handbook SW 108 outlines five factors for considering "habitual residence": length and continuity of residence; length and purpose of any absence from a country; the nature and pattern of any employment; the applicant's main centre of interest; and the future intention of the applicant as it appears from all the circumstances. These factors are non-exhaustive and no single factor is more important that the others.

101. *Re. J.* [1990] 2 AC 562. In *Trotter v. Trotter* (1992) DLR 554 (Enforcement of an English maintenance judgement in Ontario), a person who had applied for residence, but was still on a visitors permit, was held to have become habitually resident.

102. On 1 May 2004, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia be-

came members of the EU. On 1 January 2007, Romania and Bulgaria also became part of the EU.

103. Ms. Mary Coughlan, T.D., Dáil Debates (10 March 2004). The Minister's statements were highly misleading as European

120. Ombudsman for Children, "Report to the UN Committee on the Rights of the Child" (April 2006). The report may be accessed on the Web site of the Ombudsman, online: <http://www.oco.ie>, under the "Policy documents" section. See below where this issue is explored in more depth.

121. Art. 1(2) of CERD.

122. Concluding Observations, Ireland, CERD, UN Doc. CERD/C/IRL/CO/2 (14 April 2005), para. 13.

123. Concluding Observations, United Kingdom of Great Britain and Northern Ireland, CERD, A/51/18 (1996) 35 at para. 235.

124. Ireland operates a dualist legal system and under the Constitution, Bunreacht na hEireann, international agreements must therefore be incorporated into the domestic legal system before an individual can rely on their provisions in an Irish court. See also *Siritanu v. Director of Public Prosecutions* [2006] IEHC 26. Ms. Justice Elizabeth Dunne confirmed that the *Refugee Convention* did not form part of Irish law.

125. Under these articles *inter alia* the right to equality, personal liberty, education, family rights, property rights, freedom of expression, peaceful assembly, etc. are all protected. Limitations on these rights are usually included, generally in the interest of the common good. For a full appreciation of the nature of fundamental rights in Bunreacht na hEireann, see G. Hogan, and G. Whyte, *The Irish Constitution*, reprint (Dublin: Tottel, 2006).

126. *Ryan v. Attorney General* [1965] I.R. 294 at 312.

127. *McGee v. Attorney General* [1974] IR 284 at 318.

128. *Northants Co. Council v. A.B.F.* [1982] ILRM 164 at 166, per Hamilton J.

129. Art. 45.1, Bunreacht na hEireann.

130. Art. 45, preambular paragraph, Bunreacht na hEireann.

131. [1965] I.R. 294

132. [1965] I.R. 294 at 312.

133. Art. 42, Bunreacht na hEireann.

134. Art. 43, Bunreacht na hEireann.

135. [1989] ILRM 181. This case centred on the rights of members of the Travelling Community for sanitary and other water services to be provided in a site where the Travellers could place their caravans.

136. Art. 40.3.2 provides, "The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name and property rights of every citizen."

137. [1989] ILRM 181 at 195.

138. *T.D. v. Ireland* [2001] 4 I.R 259.

139. [2001] 4 I.R 259 at 316.

140. *Lobe & Osayende v. Minister for Justice, Equality and Law Reform* [2003] 1 I.R. 1 at 128.

141. *R. v. Secretary of State for Social Security (ex parte Joint Council for the Welfare of Immigrants)*, *R. v. Secretary of State for Social Security (ex parte B)* [1997] 1 W.L.R. 275.

142. *Asylum and Immigration Act 1996.*

143. S. 21 (1) (a) states that: "A local authority may, with the approval of the Secretary of State and to such extent as he may direct, shall make arrangements for providing :
(a) Residential accommodation for persons aged eighteen or over who by reason of age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them…"

144. See generally *R. v. Westminster LBC et. al (ex parte M. et al.)* (Unreported, Court of Appeal, 17 Feb. 1997).

145. S. 116 of the 1999 Act inserted s. 21(1A) into the 1948 Act. The section states that s. 21 of the 1948 Act does not apply where an asylum seekers' need for care and attention has arisen solely because she is destitute; or because of the physical effects, or anticipated physical effects, of destitution.

146. *R (Westminster City Council) v. NASS* [2002] UKHL 38. See also *R. v. Wandsworth LBC et al. (ex parte Bhikha et al.)* [2000] 1 WLR 2539 and *R (Mani) v. Lambeth LBC* Unrep. Court of Appeal 9 July 2003 (Times Law Reports, 23 July 2003).

147. *R(Adam, Limbuela & Tesema) v Secretary of State for the Home Office* [2005] UKHL 66.

148. [2005] UKHL 66 at para. 77.

149. The *European Convention on Human Rights* has been incorporated into Irish law by virtue of the *European Convention on Human Rights Act 2003*.

150. P. Roe, "Refugees and the Challenge of Horizons: A Theological Interpretation" in T.R. Whelan, ed., *The Stranger in Our Midst: Refugees in Ireland: Causes, Experiences and Responses* (Dublin: Techman, 2001) at 97.

151. See generally NCCRI/Equality Authority, *Media Coverage of Asylum Seekers and Refugees in Ireland* (Dublin: NCCRI/Equality Authority, April 2003). All examples below come from this publication. It should be noted that the press paid little attention to the different legal status of "asylum seeker" or "refugee." Applicants for asylum were often referred to as "refugees."

152. "Refugee Rapists on the Rampage" *The Irish Daily Star* (13 June 1997).

153. "Refugees; Police Act to Smash Gang" *Evening Herald* (6 June 1997).

154. "Asylum Seekers and Homeless Vie for Shelter, Agency" *Irish Times* (9 May 1997); "Refugees Get £20 Million Payments" *Evening Herald* (6 June 1997).

155. "Refugee Tried to Bite Me to Death" *Sunday World* (February 2000).

156. "Free Cars for Refugees; Cash Grants Buy BMW's" *Irish Daily Mirror* (16 December 2002).

157. The most current leaflet in the campaign was produced in 2006 and is accessible online: cf2 <http://www.nccri.ie/pdf/MythsRefugees-AsylumSeekers.pdf> (date accessed: 3 October 2007).

158. Mr. John O'Donoghue T.D., Minister for Justice, Equality and Law Reform, Dáil Debates, Vol. 488, Col. 737 (10 March 1998). "It is a source of puzzlement to many people that at a time when there are no conflicts taking place near our borders … when we have no colonial links with countries in which political turmoil is taking place and when the number of claims for refugee status is declining in other European states, the Irish state shows a major increase."

159. Free Legal Advice Centres, *Direct Discrimination? An Analysis of the Scheme of Direct Provision in Ireland* (Dublin: Printwell Co-op, 2003) at 8, see also the statements of Mr. John O'Donoghue T.D., Minister for Justice, Equality and Law Reform, *Dáil Debates*, Vol. 528, Col. 300, 12 December 2000.

160. *Dáil Debates*, Vol. 528, Col. 301, 12 December 2000.

161. *Dáil Debates*, Vol. 513, Col. 674, 27 January 2000

162. Preface by Right. Hon. Jack Straw M.P., Home Secretary, in *Fairer, Faster, Firmer* (White Paper on Immigration, 27 July 1998).

163. *Ibid.* at para. 5.5.

164. *Ibid.* at para. 8.17 [emphasis added].

165. *Ibid.* at 43.

166. *Ibid.* at 44.

167. Ombudsman for Children, "Report to the UN Committee on the Rights of the Child," *supra* note 120.

168. *Ibid.* at 36.

169. *Ibid.* at 36. The Ombudsman also noted the lack of consultation with the children in the hostels, and, like the IRC report, called for a guardianship system to be put in place for all unaccompanied minors.

170. Given that this article will not be going into detail on the modalities of the British system of reception, for further background and detail see F. Mitchell, "The Social Services Response to Unaccompanied Children in England" (2003) 8 *Child and Family Social Work* 179–189.

171. Preface by An Taoiseach (Prime Minister), Mr. Bertie Ahern T.D., in *Transforming Ireland: A Better Quality of Life for All*, National Development Plan 2007–2013 (Dublin: National Development Plan, 2007).

172. *Building an Inclusive Society*, *supra* note 5 at 6.

173. A. Bloch, "Asylum and Welfare: Contemporary Debates" (2002) 22, no. 3 *Critical Social Policy* 393–414.

174. R. Dannreuther, and K. Hutchings, *Cosmopolitan Citizenship* (London: Macmillan Press, 1999) at 12.

175. See *National Action Plan against Racism 2005–2008* at 27. These objectives include effective legal protection against racism, ensuring economic inclusion and equality of opportunity, accommodating diversity in service provision, ensuring anti-racism awareness, and promoting diversity, along with ensuring the full participation of migrants in Irish society.

176. *Ibid.* at 29.

177. *Ibid.* at 31.

178. *Ibid.* at 54.

179. For a governmental appraisal of its direct provision policies and provision of ancillary services to asylees, see *ibid.* at 68.

180. *National Action Plan against Racism 2005–2008* at 58–60.

181. The National Action Plan speaks of the need to ensure an "equitable approach" to the provision of services to asylum seekers, ensuring a safe and hospitable reception centre with complaint mechanisms, reasonable accommodation of food preferences and cultural and religious diversity; *ibid.* at 127.

182. *Ibid.* at 155.

183. S. Benhabib, *The Rights of Others: Aliens, Residents and Citizens* (Cambridge: Cambridge University Press, 2004) at 163.

184. Fanning, *supra* note 54 at 87.

185. *Ibid.* at 109.

186. M. Bommes and A. Geddis, *Immigration and Welfare: Challenging the Borders of the Welfare State* (London: Routledge, 2000) at 1.

187. E. Mynott, "From a Shambles to a New Apartheid" in S. Cohen *et al.*, eds., in *From Immigration Controls to Welfare Controls* (London: Routledge, 2002).

188. R. Sales, "The Deserving and Undeserving? Refugees, Asylum Seekers and Welfare Law" (2002) 22 no. 3 *Critical Social Policy* 456–478 at 466.

189. A. Geddes, "Denying Access and Welfare Benefits in the U.K." in M. Bommes and A. Geddes, *supra* note 186 at 139.

190. *Ibid.*

191. J. Moran, "Refugees and Social Policy" in S. Quin, P. Kennedy, A. Matthews, and G. Kiely, *Contemporary Irish Social Policy* (Dublin: University College Dublin Press, 2005) at 270.

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Living with Precarious Legal Status in Canada: Implications for the Well-Being of Children and Families

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Abstract

This study focused on the effects of precarious status on the well-being of fifteen participants with particular attention to their attempts to claim services, their feelings of belonging and sense of social support, and the effects of parents' status on children. It investigates ways in which the status of one family member can affect the well-being of the entire family. Those who had children reported that the family's status disadvantaged their children, whether they were Canadian or foreign-born, as parents' status was used to justify denying children rights to which they are entitled by international, national, and provincial laws. The paper challenges approaches to citizenship and immigration status that fail to consider the implications of legal status for a person's primary social units and networks.

Résumé

Cette étude examine les conséquences du statut précaire sur le bien-être de 15 participants, en se penchant tout particulièrement sur leurs efforts pour revendiquer l'accès aux services, leurs sentiments d'appartenance et de soutien social, ainsi que les répercussions du statut des parents sur leurs enfants. Elle examine les différentes façons par lesquelles le statut d'un membre de la famille peut affecter le bien-être de la famille toute entière. Ceux ayant des enfants ont rapporté que ces derniers, qu'ils soient nés au Canada ou à l'étranger, avaient été défavorisés par le statut de la famille, étant donné que le statut des parents était employé pour justifier le déni aux enfants de droits qui étaient les leurs en droit international et selon les lois nationales et provinciales. L'article remet en question les façons d'aborder la question de statut de citoyenneté et d'immigrant qui ne prennent pas en ligne de compte les conséquences du statut juridique sur les unités sociales de base et les réseaux sociaux pour chaque personne.

Canadian citizens, secure in their full legal status, often take for granted many of the rights and entitlements that citizenship bestows on them. However, for other members of the population including, for example, non-citizen or not-yet-citizen refugees and immigrants, the question of status and thus of rights and entitlements is much less certain.[1] In some cases, even citizens may encounter difficulty in accessing and obtaining services and protections to which they are entitled by virtue of their citizenship. This latter situation is not uncommon, for example, among Canadian-born children whose parents have uncertain legal status. Although recognized as citizens by birth, they may face barriers in accessing education and other entitlements. Drawing on qualitative data from fifteen interviews, this paper looks at the experience of precarious legal status for families and children in Canada.[2] In particular, it investigates various ways in which the uncertain legal status of one or more family members can affect the well-being of the family as a whole, including Canadian citizens. Our approach challenges perspectives on citizenship and legal status that privilege the status of individuals in their definitions, and which fail to consider the implications of status for a person's primary social units and networks.

Key Concepts: Status and Well-Being

Berinstein, McDonald, Nyers, Wright, and Zeheri and the Status Campaign used the term "non-status" to refer generally to individuals who do not have the required permissions or documents that would establish their legal and undeniable right to live and work in Canada on a temporary or permanent basis.[3] However, we use the term "uncertain status" and also follow Goldring, Berinstein, and Bernhard's use of "precarious status" in order to stress that the question of one's legal position in the country—and hence the question of one's rights, entitlements, access to services, obligations, responsibilities, and so on—cannot always be determined as a strictly black-and-white matter.[4] People may shift between statuses, and there are a number of grey areas to consider, which Goldring *et al.* refer to as "gradations of status."[5] For the purposes of our study, the concept of precarious status is applied to individuals in a range of categories, who may also experience shifts between different types of legal status over the duration of their presence in Canada.[6] Factors such as gender, ethnicity, class background, racialization, employment status, income, life cycle, age, and presence of young children are known to affect people's well-being. We add uncertain status as an important determinant of well-being.

Well-being refers not only to mental and physical health, but also to an individual's level of social and economic security. The conditions surrounding immigrant settlement, including immigrant status, are crucial to newcomer well-being. In her work with asylum seekers in Australia, Rees defined well-being as "a holistic state that includes psychological, physical, spiritual, social and cultural contentment and welfare…that incorporates both a public/social standard, as well as a personal/private viewpoint."[7] Rees's definition is not only relevant to cases of uncertain legal status, but is typical of work that considers human health from a broad, "social determinants of health" perspective.[8] Such an approach emphasizes the impact of poverty and inequality on health and on well-being, and it recognizes that there are also gendered and ethnoracial dimensions to these conditions.[9] Well-being, in sum, reflects the individual's ability to function in and adapt to the new society.

Well-being is a key factor in settlement, playing a role in both adaptation and integration. A variety of experiences and factors before, during, and after migration contribute to individual and family well-being. There is growing recognition that "geopolitical, economic and cultural influences affect the health of immigrants."[10] According to Beiser and Hou, the main challenges to well-being during the settlement process include economic factors such as unemployment or underemployment, discrimination, and language barriers.[11] Another significant challenge to well-being in the context of the settlement process is seeking a sense of belonging and welcome in the society of which one is now a part, as well as feeling valued and respected by members of that society.[12] This would include a sense of one's ethnoracial and religious identity, and feeling oneself to be a member of a community – in the host country, one's native country, and/or a transnational community.[13]

In countries such as Canada, where public services provide education and health care to the population, being able to access social services is crucial to well-being. Several Canadian reports provided important insights for our study, particularly in highlighting the existence of a population living with uncertain status in Canada and raising questions about their access to services.[14] The report by Berinstein *et al.*, for example, drew attention to the fear experienced by non-status persons and pointed in particular to the vulnerability of non-status women to domestic violence.[15] They discussed impacts on health including incidents of depression and documented lack of access to various services often because of the extreme demands of job situations. Challenges also arise from restrictions on labour market participation and mobility, as well as from lack of access to a range of services. Several researchers have identified fear as a barrier to obtaining services, and in particular have found negative outcomes in the areas of health and education due to this fear.[16] Families with uncertain status who have children must make difficult choices with respect to livelihood in order to be able to care for their children. All of these factors cause many families to feel insecure and unwelcome, and this state of limbo results in precarious settlement.

Research on Precarious Status in Canada

The general topic of living without full legal status in Canada, and the specific study of families with uncertain or precarious status in Canada have remained under-researched for many reasons, including the inherent difficulties of working with "invisible" people, many of whom wish to stay below the radar of government authorities.[17] Beyond the methodological challenges of establishing trust with people who are in precarious situations, the requirements of university ethics committees to protect the identities of these people can present serious obstacles to researchers, who may not conduct follow-up research, as that would involve retaining contact information. A major concern of such committees is the extent to which researchers might be compelled to provide information about participants to authorities.[18]

Nevertheless, there is growing interest in the topic, spurred in part by a series of arrests and deportations that

took place during the summer of 2006, which shed light on a topic that has received sporadic media attention.[19] In the US, the Census Bureau[20] has been counting and providing estimates of the undocumented population since the early 1980s, and academics have studied undocumented migrants from a number of disciplines and perspectives.[21] However, in Canada there are no official statistics on the population with uncertain status, and available research on the topic, while important, is scarce.[22]

In the US, as in Canada, undocumented families experience significant challenges in terms of limited access to and differential outcomes in education and health.[23] While the Canadian context is different from the more well-studied US case, findings from studies of the undocumented in general, and families in particular, provide an important literature and should inform Canadian research. A recurrent theme in this work is that undocumented or uncertain status compounds other forms of exclusion and marginality, making it difficult for those without full status to experience well-being. At the same time, the presence of a large undocumented population can mitigate the effects of individual undocumented status.

In his work with undocumented Mexicans and Central Americans in San Diego and Dallas, Chavez examined the multiple understandings of one's sense of community, noting that it may be "imagined" and not confined to a specific geographic area. Ideally, suggested Chavez, migrants, even though undocumented, come to have "a sense of belonging to multiple communities."[24] In his sample, 60 per cent of Mexicans and 50 per cent of Central Americans felt they were a part of their American community. For these individuals, a sense of community came from shopping, having friends, and participating in community events including church functions. Chavez underscored the fact that for most of these people, feeling a sense of belonging to their American community was separate from other feelings of severed ties with the "home" community. His regression analysis yielded some important correlates of belonging, for instance, residing in the US for more than three years, higher family income, and intention to stay permanently.

However, contrasting findings were reported by Rees in her qualitative study of East Timorese women asylum seekers in Australia. She found their sense of well-being to be "dangerously compromised." Some had been tortured or traumatized in East Timor and their difficulties during the asylum-seeking process can be considered re-traumatization. Rees quoted a typical informant as stating that the several years of waiting for a decision on their case had an effect, which was "absolutely overwhelmingly enormous. Many people are becoming mentally ill or having total breakdown."[25] She mentioned such factors contributing to

the lack of well-being of the participants as access to medical care and access to post-secondary education.

Menjivar's studies of Salvadoran and Guatemalan immigrants of uncertain legal status in the US presented similar disturbing findings. She particularly stressed the all-pervasive effects of long-term uncertainty about one's legal status. She proposed the concept of "liminal legality" to capture the ambiguity between documented and undocumented status that she has observed in research she conducted between 1989 and 2001. For many of her participants, their existence in the US was "a condition of permanent temporariness."[26]

Impacts on Children

Parents' immigration status often disadvantages their children even if these are native-born.[27] This calls into question the mainstream assumption that citizenship or legal status operates at the level of the individual, describing citizenship (or – by extension – lack thereof) as a status conferred on individuals by the state or a relationship between an individual and a polity.[28] While feminist and other scholars have critiqued Marshall's classic formulation, citizenship theorists have been largely silent on the issue of children, as childhood has been seen as a transitory status on the way to adulthood and citizenship.[29] While limited, existing research on children and legal status points to the importance of considering the impact of parents' status on the entire primary social unit.

Young's study of youth living with uncertain status in Toronto explored how they experienced their legal status, particularly its impact on their feelings of belonging and their ability to have agency. She found that youth with limited status were trying to participate and lead "normal" lives but found themselves in a position of having to constantly negotiate their status and explain why they did not have key documents such as health cards. Although at times they could be with their friends and try to forget about their status, they also indicated that they felt like outsiders who did not belong and worried about their own and their family's futures.[30]

In the US, the five-year Longitudinal Immigrant Student Adaptation (LISA) study carried out by Suarez-Orozco and Suarez-Orozco looked at immigrant youth's academic engagement and outcomes and made a point of noting which participants were undocumented.[31] Parents and children living in this situation viewed teachers, nurses, police officers, and other authority figures with distrust and fear, and worried that they could be detained and deported at any moment. The researchers reported that many of the children they interviewed felt "constantly hunted" or worried that if one of them was detained, "they will never be reunited with their parent."[32]

It is worth looking in more detail at the specific effects of parents who decline to register their children for school or health-care access.[33] Parents are often fearful of revealing their status to authorities. In Toronto, families with uncertain status are not eligible for subsidized childcare and the cost of child care is prohibitive to many families, even those with full legal status.[34] In addition, they are ineligible to receive the Canada Child Tax Benefit that is in place to support families with children under age eighteen.[35] Bernhard *et al.* found that this lack of access to services for children placed a strain on mothers with uncertain status who were often hesitant to even find out whether they were eligible for various services. Crucially, the high cost of child care influenced some mothers' decisions to send their children to be cared for by relatives in the home country for a time, which was a source of shame both while they were separated and once they were reunited.[36]

Of particular relevance to the present paper are US attempts to prevent undocumented parents from benefiting from their US-born children's citizenship status, with some policy makers and lobbyists calling for the abolition of birthright citizenship which is currently constitutionally enshrined. Fix and Zimmermann point out that implementing such legislation would bring hardship to both the families and citizen children involved as their rights may be affected by restricting their access to services or, in some cases, by their even being forced to leave the country.[37] Children born in Canada to parents with uncertain status have been deported along with their parents.[38]

The present study focuses on the effects of precarious status on well-being with particular attention to factors including access to education, health care, settlement services, and housing. We address the following three topics and associated research questions: (1) *Attempts to claim services*. What discrepancies are there between the services that persons with precarious status are actually able to access and those to which they and their children are legally entitled? How does this gap affect well-being? (2) *Feelings of belonging and sense of social support*. To what extent does the uncertain status of parents affect their well-being, specifically their sense of belonging to a community and their hopes for themselves and their children? What are the negative effects on emotions? (3) *Effects of parents' status on children*. To what extent does the uncertain status of one or both parents limit the ability of children, including Canadian-born citizen children, to access the services to which they have rights? What impact does this limitation have on the children's well-being?

Method and Sample

The findings reported in this paper emerged from a mixed-method pilot study. The study, the most recent collaboration by a team of researchers that has worked together for several years on issues relating to immigrants and refugees in Canada, focused on fifteen individuals (twelve females and three males) living with precarious legal status in Toronto. In addition, a telephone survey of sixty-two agencies serving newcomers was also conducted to ascertain the extent to which agencies restricted services due to legal status.[39] The study of the fifteen individuals consisted of a semi-structured interview protocol that was administered in the language with which the participants were most comfortable. We sought to ensure the validity and authenticity of the data by using interviewers who were fluent in the native languages of the interviewees as well as familiar with the cultures involved. The languages represented in the study were: English (three participants); French (two); Spanish (five); Portuguese (two); and Tamil (three).

The interview guide included questions in the following areas: socio-economic profile; participants' migration and status histories; social networks; and use of services. The open-ended interview questions provided participants with an opportunity to discuss their experiences, particularly barriers faced when accessing services, in greater detail. The interviews were audio-recorded and transcribed, and lasted between forty-five minutes and two hours. Participants received a Canadian $50.00 honorarium as compensation for their time and participation.

In order to maintain the confidentiality of participants, interviewers and researchers were not permitted to record participants' names or contact information. A number of additional measures were taken to preserve the confidentiality of information and ensure that the participants had all the benefits of a research process that conformed to the university's research ethics review process.[40] Community-based workers and researchers from front-line service-providing organizations that work with individuals and families with uncertain status (including health-care centres, legal clinics, and settlement agencies) recruited participants; consequently, the sample was not random. Reliance on community organizations as points of entry limited the selection of participants to clients of those organizations who were available for interviews during the working hours of the organizations. The sample did not include individuals who have never sought help at an organization and who may be quite isolated.

Profile of the Respondents

The fifteen participants represented a broad range in terms of country of birth, age, ethnoracial background, and education. Three respondents were from Sri Lanka, two each were from Brazil, Costa Rica, the Democratic Republic of Congo, Grenada, and Mexico, one was from Chile, and one from St. Vincent. The respondents ranged in age from 23 to 64; four were between 21 and 30 years of age, five were 31–40, four were 41 to 50, and one was over the age of 61. Just under half of the respondents (seven) had some high school education or had graduated from high school. Six had some college or university (four) or trade certification (two), and two respondents were university graduates.

Data on marital status and parenthood did not present surprises, although the proportion of single respondents (46.6 per cent) was high. One-third (five) lived with a spouse or partner, two were widowed, and one was divorced. Two-thirds of the respondents (ten) had children. Of these, one respondent had six children, the others had from one to three, for a total of twenty-three children.

The children's place of birth and current location combined to create cases of mixed-status families and geographically dispersed families. Half of the respondents with children (five) had children who were all born outside of Canada; two respondents had children who were all born in Canada; three had children of whom some were born in Canada and some abroad. That is, five adult respondents with less than full status had at least one child born in Canada, placing one-half of those with children in the category of mixed-status families (or one-third of the total sample). Furthermore, the current location of children was not always the same as their place of birth. Thirteen of the children, belonging to seven respondents, were living in Canada, while ten children were living abroad. More specifically, six respondents had children born outside of Canada who were living with them in this country (accounting for nine children),[41] four had Canadian-born children with whom they lived in Canada (four children), three had children born outside of Canada who were not living with them (seven children).[42] Three respondents had children living outside of Canada, and two of these also had a Canadian-born child living with them in the country.

In terms of migration history, it was the first time coming to Canada for ten of the individuals (two-thirds of the sample), while for five it was their second. Five (one-third) of the participants had been in the country with uncertain status for more than six years, three had been in Canada from four to six years, two from two to four years, four between one and two years, and one for less than one year. At the time of the project interviews, seven participants were awaiting the outcome of a Humanitarian and Compassionate (H & C) application or appeal, three were awaiting the outcome of a refugee claim, three were denied refugee claimants (one of whom had received a deportation order), and two had overstayed their visas. Despite the fact that the participants constitute a heterogeneous group, we suggest that there are similarities in their experiences because of their uncertain legal status.

Findings

Finding One: Limited access to services due to uncertain status affects the well-being of all family members.

Several participants spoke of their inability to access health care due to their uncertain status and lack of health coverage. Thus, they experienced barriers due to their lack of full status and/or documentation as well as financial constraints. For example, although Ms. Rodriguez[43] and her family were eligible for limited health coverage under the Interim Federal Health Plan, it took three years for her husband to succeed in gaining medical attention:

> Even though I tried to do everything they would tell me, even following the process, it took me three years to be able to find a doctor for my husband. So this was a very difficult time for him and for my son because it was all at the same time—the medical attention for my husband, the need to eat—but we managed. We would make the rounds going to the different shelters, stopping for coffee in one, eating in another, and we continued making stops like this, going from one place to another. And then, we would primarily look for my husband's medication. Then he was happy. The fact that we were here made him very happy. But we ended up dead tired, just dead.

Significantly, Ms. Williams revealed that she was turned away from a health clinic because of her lack of status:

> They said to me, "You know what? You don't have full status. We are booked with non-status women." And I was pregnant, sick, nauseated, depressed—everything. And they told me, "You don't have status. You need to find another clinic. We don't have space."

Ms. Rodriguez spoke of the different treatment she experienced in attempting to access health care without full status and documents:

> Yes, you see this is the problem. The health clinic is very good when one has papers; there is all the help in the world. But when one does not have papers, that is a totally different question. And, if you go once to the centre, you can't go back because then

you are risking your status. In other words, you risk your ability to stay in the country.

In addition to the restrictions faced by individuals with uncertain status in receiving medical treatment, the cost of health care is prohibitive and is a significant barrier to accessing services for those people who are not covered by health insurance plans. Tellingly, Ms. Jackson indicated, "I'm praying not to get sick because it's very expensive and I don't have the money right now to go to the doctor."

A few participants spoke of being denied employment or having difficulty finding and keeping a job due to their lack of papers and status. For instance, Ms. Jackson found that "some places, they don't want to hire you because you don't have certain documents. It's really hard." Similarly, Ms. Williams was constantly asked for various documents when she was looking for work: "It's hard. When you go job searching, they ask 'Do you have a social insurance number, do you have a work permit, do you have…?' It's very hard for non-status. And not only non-status, women especially."

Mr. Raveendran indicated that he was regularly asked to show two pieces of identification, which he did not have, in situations ranging from when he attempted to open a bank account to when he tried to register for English as a Second Language classes. In addition, he felt that the document he was given to indicate his status as a refugee claimant was problematic:

> We have no ID to give. When I filed the refugee claim, they gave me a big sheet. We cannot take that document everywhere. Hence, they should give us a small ID. They should definitely make a change regarding this. They should give a small document with an ID number on it to keep in our wallet. Because it is a big sheet, we cannot take it everywhere.

Several participants mentioned the high financial and emotional costs of the migration process, particularly in terms of figuring out applications, working with lawyers, and facing uncertainty. Ms. Williams pointed to the financial barriers that she experienced: "Because sometimes you don't have the money. Number two, to go to get help is another problem. Lawyers' fees are one problem." Similarly, Ms. Rodriguez revealed that her family did not even have money for the necessary bus fare as they attempted to navigate the immigration system on their own:

> In order to be able to explain my husband's case and to be able to say what was happening to him—that was the worst. There were times when we'd spend hours looking for a bus transfer on the ground that was still valid so we could take the bus. And to

think of the number of times we would get to a lawyer's office and they would say, "You don't qualify," or "Do you have your return ticket all in order?" We always left crying. And in many places they said to us, "You don't have a case." But even so, we persevered. We persevered and each day I would try harder and harder to find a place where they would give me good information.

The significant time spent on learning the legal intricacies of a complex system and having to constantly explain their eligibility for essential services took a high toll on the participants and their children.

Finding Two: Precarious status leads to pervasive feelings of fear and isolation.

Feelings of fear and isolation limit positive interaction for people with precarious status, limiting their interaction within their ethnoracial communitiesand in Canadian society more broadly. Moreover, the stress of uncertain status manifested itself in disturbing ways. In the case of Ms. Latouré, her husband became abusive:

> At the beginning, I even tried to be among women who are victims of violence to join their support group. Because then, when my husband and I would begin to talk about this problem around the papers, he would get irritated. And when I would say something, or he would ask me for something and I did not do it right away, he would get irritated and he would come towards me to try to hit me. And the children would tell him, "No, daddy, you mustn't do that, because when you do that, the neighbours will call the police. We will have serious problems and our chance to get papers will be finished. Our file cannot have a police blot on it." So really he was very aggressive until he found a job, then he calmed down a bit. But when we started talking about the problem around the papers, then he started to act up again.

Some of the participants spoke of the social isolation they experienced due to their uncertain status. Mr. Raveendran revealed that he felt so separate even from his own ethno-racial community that he at times believed it would be better for people living with uncertain status not to interact with the larger society, or even their ethno-racial peers, until they had some documentation or official status:

> We Tamil people are unable to show our identity. We're in a situation where we need to isolate ourselves. When we look at other families, those who lived here before look down upon those who came later. It's true. This is because they did everything officially. Hence, they continue to do everything. We are unable to do anything officially. That is the basic problem. If we

were able to do everything officially, then we also could fight. This is a problem. Therefore, we should get all documents legally and quickly. If we get them, only then we can do it. So if not, until we get at least some document in the society we should not be permitted to mingle in society.

Ms. Bolaños expressed similar feelings of isolation on many levels:

> And for this reason you become completely isolated from your community, from people, from everything. And it is because of the fear of being deported that we live with. One becomes totally isolated to the point that, I don't even go to the church where they speak my language … it is because people will ask uncomfortable questions.

Significantly, Ms. Rodriguez spoke of not being able to speak about her situation and of not having a sense of security:

> And if there is still work to do [available], it does not matter because you know that you may have to move to another city or another job at the moment when you least expect it. You do not have a sense of security around other people. You do not have that. You almost have to walk around without saying a word all the time. You can't comment on anything.

Ms. George outlined a vision of how she would like to participate and live in Canada, a vision that was limited by her immigration status: "Oh, it's so hard. I guess for the things that I want to do. I want to go to school. I want to have a good job that I can count on. I want to do so many things. I want to give back to the community, what they give to me, but it's too hard."

Mrs. Jackson vividly illustrated her fears:

> Because sometimes you gotta be scared. I used to be scared a lot. Because true like other people telling me stuff, and you know that if Immigration tells you that you're gonna get deported, and stuff like that. So I used to be really scared! Sometimes I don't even want to go out and deal with all this stuff.

Finding Three: According to parents, the family's uncertain status had a strong impact on children in particular, both Canadian and foreign-born (raised in Canada).

It is important to remember that there are a number of special considerations that attach to the situations of children in families where one or both parents have uncertain status. Children themselves are entitled to a number of legal rights. Indeed, they are guaranteed a full range of rights under international—and consequently national and pro-vincial—laws. For instance, all children in Canada have the right to attend school regardless of their own or their parents' legal status.[44] Moreover, the UN Convention on the Rights of the Child affirms that in all decisions affecting children, the best interests of the child must be primary.[45]

The children of the individuals who participated in this study were particularly affected by their families' precarious legal status. Ms. Bolaños spoke about the challenges her children faced at school and of not being in a position to seek help from school authorities due to the family's status. Other students bullied her children but she felt there was no recourse due to their status situation. In addition, the school identified that Ms. Bolaños daughter would benefit from seeing a speech pathologist, but that due to her legal status, they could not refer her to one:

> The simple fact of seeing my children so isolated is incredibly painful. Now when they meet people, they are shy and withdrawn. Even in school my children have been abused in the sense that there are children who hit them. My daughter, for example, is a child who has trouble speaking. When she is very nervous, sometimes she can't speak at all. I was looking for a way to get her therapy. They told me that she needs a speech pathologist, but unfortunately they haven't been able to help her with this because of my legal situation.

Canada, as a signatory to the UN Convention on the Rights of the Child, is obligated to uphold the best interests of the child in all decisions that affect them regardless of their legal status. The school's inability to help Ms. Bolaños's daughter to access a speech pathologist due to her mother's legal status contravenes the spirit of the Convention.

Another challenge faced by the families in this study was that of overcoming their fear due to their status and registering their children in school, according to their right under international, national, and provincial legislation. It is important to reiterate that this right applies to Canadian-born and non-Canadian-born children alike. Ms. Ayala's family faced a peculiar situation while living with precarious status after she had overstayed a tourist visa: she had two children, the older born outside of Canada and the younger in the country. Interestingly the younger, Canadian-born child was not in child care (as the mother did not qualify for subsidized child-care rates due to her uncertain status), while the older, non-Canadian-born child was attending school. In this case, the younger child was experiencing the impact of her mother's status while the older one was successful in accessing her right to education regardless of her own and her mother's status. In addition, Ms. Ayala was unable to submit a claim for alimony from her former husband due to her status, a limitation that disadvantaged both of her children.

In the case of Ms. Latouré, she was unhappy that her children would be unable to pursue post-secondary education due to the family's uncertain status in Canada. They were in high school and in two or three years would be ready for university; however, they would be considered international students and as a result would be required to pay much higher tuition fees than their peers. This cost would be a barrier for the family and the children would not be able to pursue their studies:

> And even if my children are in school – they will soon be old enough to attend university – they won't go to university. This, this is what hurts me very deeply, again for my children…. Not to have papers in Canada, for me it's really, it's as if your life has been cut off. Because for me in any case…we have children, the children grow up, they have to study. Children are tomorrow's future.

Although the situation of these children would not likely fall under the terms of the UN Convention, as it applies to children up to age eighteen only, it is nonetheless problematic and disadvantages the children on the basis of their uncertain status, regardless of how long they may have lived and studied in the country.

Finally, the fear of their status being discovered may cause parents to limit their children's and their own interactions with people outside of the family. For example, Ms. Bolaños noticed that her children were quite shy and suggested that this could be due to their limited interactions with other children:

> For example, my two children are very shy because they live only with their mother and father and are always at home. That's all we do. There is no comradeship so that they can say, "This weekend we are going to play with our friends, with the children of my father's friends." We don't have anything like that.

Five of the fifteen participants in the study had Canadian-born children. These women faced considerable challenges in accessing services on behalf of their children, especially services such as Ontario Health Insurance Plan (OHIP) coverage and health-care access to which these children were entitled as Canadian citizens. For instance, Ms. Jackson was a denied refugee claimant awaiting the outcome of a Federal Court Review and she had a seventeen-month old, Canadian-born daughter:

> I find they give you a really hard time when you don't have status because, for instance, my daughter was born here and some things I can't get for her. For instance I can't get child tax benefits for her. I only get a year…. I have to renew her health card every year. And I find that that should not be. I find this

very hard. Regardless of the parent's status, I find they should give the child what belongs to them because they were born here. That's what I find. I don't find they should take away the child's rights because of the parents.

Ms. Williams, who had a three-year old, Canadian-born son, found that her status had a negative impact on her ability to access services for him: she had been unable to get full OHIP coverage for him. She went on to speak more generally about the impact of the uncertain status of parents on Canadian-born children:

> I believe that as a Canadian-born, a child should have access to everything. Whether a woman doesn't have status, or the father doesn't have status, or whatever, the child is a Canadian-born. They should have everything that is supposed to be for them. For example, you can't file for baby bonus for them because of status. You cannot file for childcare because of status. It's not really fair for the kids that because the mother and the father don't have status, they cannot have access. So it's really unfair. You know, because they have to survive as any other kid in this country.

In such cases, the parents' status means that their children could not benefit from the financial assistance of the child tax benefit or subsidized child care. For example, Ms. Williams's son was not in child care because of her uncertain status, her low income, and the high cost of programs:

> For the money. You have to give the money but it's too much. Because I tried for him, and for one month, the cheapest child-care I got was $700 dollars a month. And it's very hard for non-status who only take a job at a time….and, not only that, the little income they get is very hard too.

Ms. George's four-year-old, Canadian-born son was also not in child care and she could not afford to take him to other children's programs offered in the community:

> I stayed home because I didn't have money to put him in childcare, and it was easier for me. That's the way that we grew up, that we take care of the babies for a certain time. It was kind of hard. There were programs that I wanted to take him to but I didn't have money, so I did it on my own.

Ms. George was deeply affected by not being able to provide adequately for her son:

> There is one thing that I wanted to do, that was go to school and take care of the child's health care. And I needed a social insurance number for that. You can't have that, so right about there, I think my heart was broken. So I just gave up.

Discussion

As our data demonstrate, the precarious status of one or two parents can have negative repercussions on the well-being of the entire family. The stresses reported were shared among all members of the families we interviewed. There were some families who felt isolated and had to deal with constantly being turned away or turned down by the organizations where they went to seek help. Some parents found that their children were shy and isolated and at times unable to receive services that other children are offered through the school. This is consistent with Young's findings of youth being constantly confronted by their precarious status and reminded that they were different from their friends.[46] Our findings also agree with those of Suarez-Orozco and Suarez-Orozco who observed fear and distrust of authority figures among the undocumented children and youth in their study.[47]

We found fifteen different experiences of uncertain legal status lived by the fifteen participants. Some were likely destined for eventual success in regularizing their legal status, as they had fewer legal hurdles to overcome than others in securing permanent residence for themselves and their families. Our findings demonstrate that if one member of a family does not have full legal status, all members will have limited rights and entitlements. They also lend support to non-binary conceptions of legal status such as Menjívar's "liminal legality" and Goldring, Berinstein, and Bernhard's "precarious status."[48] Regardless of their different pathways to uncertain status, the fact of being in a grey legal area and an unclear social situation dominates the accounts of the people we interviewed. In short, we found that living with precarious status had the "overwhelmingly enormous effect" reported by Rees.[49]

Regarding our first question about accessing services, common to the reports of most participants was the inability to access vital services, especially health care. Many of these difficulties occurred along with problems in finding employment. Consistent with earlier findings, participants in this study were often afraid to even ask about their eligibility for various services even when their children were Canadian-born.[50] In our interviews with participants we were constantly reminded of the pervasive effects of instability and uncertainty in areas such as settlement, child care and education. "Normal" family life seemed to disappear in the constant struggle to survive.

Why are we hearing such reports when in the city of Toronto, for instance, there are dozens of community agencies that do not ask about their clients' legal status? Of the sixty-two agencies we surveyed during this project, most said they did ask about legal status and a majority (77 per cent) stated that they do not turn people away for any reason.[51] The answer appears to be that a participant's chances of facing barriers even in potentially friendly agencies is quite high: this is related not to the presence or absence of goodwill toward people living with uncertain status at the level of an agency or worker but instead to restrictions on access to programs funded by government agencies.[52] This raises the question of why clinics that do not ask any questions are not accessed by more people with precarious status? Further research is necessary to identify deficiencies in public awareness campaigns directed toward immigrant communities and the effects of funding constraints. We can state, however, based on our interviews, that fear of the authorities is apparently uppermost in the minds of these people. Perhaps if churches and settlement workers were provided with additional information, individuals living with uncertain status would be able to overcome their fears and seek support from appropriate community agencies.

On questions of the extent to which people with precarious status feel a sense of belonging and social support, our participants' described pervasive feelings of fear and isolation. This finding is consistent with work by Menjívar, Rees, and Wayland[53] Uncertain status undermines one's ability to develop networks within both one's own community and the host society. One respondent, Ms. Bolaños, indicated she did not go to the church where they spoke her language because people would ask uncomfortable questions. We were surprised at the number of participants who felt separate even from their own ethnoracial, religious, or linguistic communities. It is often assumed that people living with precarious status derive benefits from established communities of their peers. The facts are not so simple. Mr. Raveendran spoke of those in the Tamil community who are already established and had done everything officially. These people, he said, "look down" on later arrivals so a person's official designation as legal or illegal has inescapable consequences even at the micro level of intracommunity interactions.

Regarding the extent to which the families' precarious status influenced the experiences of their children, we found that the participants in our study were not clear about their children's rights, and, as a result, children's entitlements were curtailed. Similar to Young's report, we found participants greatly affected by the lack of key documents, especially health cards.[54] Two of the most glaring gaps had to do with children's access to medical services and education. The fact that in principle, the law establishes the rights of these children does not mean that in practice the law is working as intended. In simple terms, Canada has not succeeded in meeting its obligations to children. This study has found that there is a particular impact on children living in families with uncertain status despite the protections that ought to be afforded them under the UN Convention on the Rights of the Child.[55] The absence of systematic data on people with un-

certain status makes it difficult to estimate the magnitude of the problem, but there may be several thousand children in Canada who are not able to obtaining their basic rights under national and international law.

It is crucial to highlight here a group that is particularly disadvantaged: the Canadian-born children of individuals with uncertain status. Although these children are born in Canada and have rights as citizens, they seem to acquire their parents' precarious status rather than having their citizenship taken as their status. There experiences of the mixed-status families in our sample are consistent with Fix and Zimmerman's finding that the uncertain status of parents has, in their words, a "chilling" effect on the citizen children's use of benefits. All of these findings undermine the common belief among Canadians that the children of immigrants usually end up in a better situation than that of their parents.[56]

This pilot study has several limitations. Chief among them is the fact that the small sample we worked with may not be representative; however, our aim was to produce a qualitative research study that would be illustrative of a range of experiences and situations. Secondly, all of the participants we interviewed were living in Toronto. It is likely that individuals living with uncertain status in smaller Canadian cities or rural locations would have different experiences due to lower availability of services and less awareness of the presence of a population living with precarious legal status. Of course, it is also possible that in small communities residents ignore the uncertain status of long-time residents, or people who have fallen out of status—including workers who fill labour market needs.

Conclusion

The present study provides a glimpse of a social problem whose dimensions are largely unknown. The accurate enumeration of adults and children living with precarious legal status in Canada has not been carried out. We know of no coordinated efforts underway to improve the delivery of settlement, health, and education services to these individuals, especially to children. The funding restrictions under which many agencies work are likely to remain in place. Our general conclusion is that an unknown but not insignificant portion of the Canadian population, including vulnerable children, is accessing far fewer of the benefits available in Canadian society than they might reasonably expect. Further research is needed to establish the scope of this dimension of social exclusion.

A key finding of our research is that an individual's status has broader repercussions: parents' status in particular can contribute to barriers for children and seems to be used to justify denying children rights to which they are entitled by international, national, and provincial laws. It is crucial to delve further into this question, not merely in the case of mixed-status families,[57] but rather in all cases where children are involved and where they risk being disadvantaged as a result of their parents' or their own legal status. Furthermore, this study sheds light on the financial, social, and emotional burdens experienced by individuals and families living with precarious legal status in Canada. In particular, fear and isolation both play a role in people's ability and willingness to access services such as health care and education. Notions of status and access to services become complicated, as fear and lack of information (or misinformation) blur lines drawn around rights and entitlements.

It is important to recognize that there is a distinction between inability to access services or claim rights and unwillingness to do so, yet this distinction is not always clear to individuals living with uncertain status or to the service providers and practitioners who work with them. The resulting uncertainty is likely to lead to inequitable access and differential outcomes. This unevenness has important implications for service providers and practitioners, including settlement workers, teachers, and health-care providers: these individuals ought to be aware that the families they work with may be in precarious situations and fearful of accessing services for themselves and for their children, or to participate in programs. We emphasize here that the legal rights of the children of people with precarious status are, in many respects, quite clear, at least on paper. Hence it is a matter of our society implementing the necessary means to arrive at policy objectives which are already agreed upon and in legislation. All service providers and educators need to make greater efforts to help give these children the life in Canada to which they are entitled.

Appendix A: Socio-Demographic Profile

Area	Number	Percentage
Status Upon Entry to Canada		+
Tourist visa	9	60%
Refugee claimant	3	20%
Missing data	3	20%
Current status (at time of interview)		
Awaiting outcome of refugee claim	3	20%
Awaiting outcome of H&C or appeal	7	46.6%
Denied refugee claimant (1 with deportation order)	3	20,0%
Visa overstayer	2	13.3%

Notes

1. In recent years, media coverage has begun to draw attention to the presence of persons living without status in Canada (Marina Jimenez, "200,000 Illegal Immigrants Toiling in Canada's Underground Economy," *Globe and Mail,* November 15, 2003; Nicholas Keung, "Hope Fades for Plan to Aid Illegal Workers: Illegal Workers Fear Effect of Election," *Toronto Star*, May 16, 2005; Maureen Murray, "Hopes, Dreams but No Status: Illegals Meet to Share Stories," *Toronto Star,* November 15, 2003; Grant Robertson, "Canada Has No Handle on Illegal Immigrant Workers," *Edmonton Journal*, May 30, 2005; Isabel Teotonio, "Working in the Shadows," *Toronto Star,* March 25, 2006.). However, it has been difficult to get an idea of the precise size of this population as there are no census data or reliable published sources providing accurate counts. Estimates have ranged from 200,000 (Peter Cheney and Colin Freeze, "200,000 May Be in Canada Illegally: Economic Underclass Faces Bleak Future, But Now Everyone Supports Amnesty," *Globe and Mail*, May 26, 2001) to 400,000 "underground workers" (Robertson). Possible regularization programs have also been discussed, although their implementation at this time seems, due to recent changes in the federal government, particularly unlikely (CTV, "Panel Discussion on Immigration Amnesty Program," *CTV Sunday Edition*, CTV Television Network, 1994); Keung; Status Campaign, "Non-Status Immigrants: Not So Underground, Not So Visible," <http://www.ocasi.org/status/index.asp> (accessed December 20, 2006).

2. This paper reports on findings from a pilot study carried out as part of a Social Sciences and Humanities Research Council developmental grant under the Community-University Research Alliance funding program. This community-university partnership involved representatives from Access Alliance Multicultural Community Health Centre, Community Legal Education Ontario, Community Social Planning Council of Toronto, Davenport-Perth Neighbourhood Centre, FCJ Refugee Centre, Folk Arts Council of St. Catharines, Hospital for Sick Children (Community Health Systems Resource Group), Laidlaw Foundation, London Cross Cultural Learner Centre, Metro Toronto Chinese and Southeast Asian Legal Clinic, New Canadians' Centre of Excellence, Ontario Council of Agencies Serving Immigrants, Ryerson University, and York University.

3. Carolina Berinstein, Jean McDonald, Peter Nyers, Cynthia Wright, and Sima Zerehi, *"Access Not Fear": Non-Status Immigrants and City Services* (2006), <http://www.dadt-toronto.org/members/publications/Access%20Not%20Fear%20Report%20(Feb%202006).pdf> (accessed April 19, 2006); Status Campaign.

4. Luin Goldring, Carolina Berinstein, and Judith Bernhard, "Institutionalizing Pathways to Precarious Legal Status in Canada" (unpublished, 2007), based on Luin Goldring and Carolina Berinstein, "More and Less Legal: Bringing Legal Status and Rights into the Open in Canada" (presented at Migration and Integration in the Americas, annual conference of the Centre for Research on Latin America and the Caribbean, York University, Toronto, September 19–20, 2003).

5. *Ibid.*

6. Examples of categories of uncertain status situations include: (1) denied refugee claimants; (2) approved Convention Refugees who did not apply for landing within the required 180-day limit; (3) persons with work permit breakdown; (4) expired visa holders; (5) persons with sponsorship breakdown; (6) refused Humanitarian and Compassionate (H & C) applicants; (7) persons refused by various other programs. This list is not exhaustive, as people can move into uncertain status through various means, including changes in administrative procedures. See Goldring, Berinstein, and Bernhard for more detail. The situation of refugee claimants and asylum seekers is a case in point. After the December 2004 implementation of the Safe Third Country Agreement, claimants from other countries who had stopped in the United States or another country considered to be "safe" became ineligible to apply for refuge in Canada. At the same time, opportunities for making inland claims were limited severely. This affected many potential claimants already in Canada, as well as those in the United States but on their way to Canada. See CBC News, "Refugee Claims Down 40% in Deal's Wake," (July 27, 2005), <http://www.cbc.ca/story/canada/national/2005/07/27/refugee-claims050727.html>.

7. Susan Rees, "Refuge or Re-trauma? The Impact of Asylum Seeker Status on the Wellbeing of East Timorese Women Asylum Seekers Living in the Australian Community," *Australasian Psychiatry* 11 (2003): 98.

8. Access Alliance Multicultural Community Health Centre, *Racialised Groups and Health Status: A Literature Review Exploring Poverty, Housing, Race-Based Discrimination and Access to Health Care as Determinants of Health for Racialised Groups* (Toronto: Access Alliance Multicultural Community Health Centre, 2005); Dennis Raphael, *Social Determinants of Health: Canadian Perspectives* (Toronto: Canadian Scholars' Press, 2004).

9. Goldring, Berinstein, and Bernhard; Rees; Carola Suarez-Orozco and Desiree Baolian Qin, "Gendered Perspectives in Psychology: Immigrant Origin Youth," *International Migration Review* 40 (2006): 165–198; Helen Schwenken, "For All: The Political Self-Organization of Female Migrant Domestic Workers in the European Union," *Refuge* 21 (2003): 45–52.

10. Denise Gastaldo, Gavin Andrews, and Nazilla Khanlou, "Therapeutic Landscapes of the Mind: Theorizing Some Intersections between Health Geography, Health Promotion and Immigration Studies," *Critical Public Health* 14 (2004):162.

11. Morley Beiser and Feng Hou, "Ethnic Identity, Resettlement Stress and Depressive Affect among Southeast Asian Refugees in Canada," *Social Science and Medicine* 63 (2006): 138.

12. Leo Chavez, *Shadowed Lives: Undocumented Immigrants in American Society,* 2nd ed. (Toronto: Harcourt Brace College

Publishers, 1998); Gastaldo, Andrews, and Khanlou; Jessica Goodkind, "Promoting Hmong Refugees' Well-Being through Mutual Learning: Valuing Knowledge, Culture and Experience," *American Journal of Community Psychology* 37 (2006): 77–93; Suarez-Orozco and Qin; Anne-Marie Wallin and Gerd Ahlström, "Unaccompanied Young Adult Refugees in Sweden, Experiences of Their Life Situation and Well-Being: A Qualitative Follow-up Study," *Ethnicity and Health* 10 (2005): 129–144.

13. Luin Goldring, "Blurring Borders: Constructing Transnational Community in the Process of Mexico-U.S. Migration," *Research in Community Sociology* 6 (1996): 69–104; Luin Goldring, "The Power of Status in Transnational Social Fields," *Comparative Urban and Community Research* 6 (1998): 165–195; Patricia Landolt, "Building Communities in Transnational Social Fields: The Case of Salvadoran Refugees, Migrants and Returnees," *Estudios Migratorios Latinoamericanos* 17 (2004): 627–650.

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15. Berinstein, McDonald, Nyers, Wright, and Zerehi.

16. M. Bannerman, P. Hoa, and R Male, *South Riverdale Community Health Centre's Exploration of Services for Non-Insured People in East Toronto* (Toronto: South Riverdale Community Health Centre, 2003); Berinstein, McDonald, Nyers, Wright, and Zerehi; Committee for Accessible AIDS Treatment (CAAT), *Improving Access to Legal Services and Health Care for People Living with HIV/AIDS who are Immigrants, Refugees or Without Status* (Toronto: Regent Park Community Health Centre, 2001); Community Legal Education Ontario, *Every Child's Legal Right to Education* (Toronto: Parkdale Community Legal Services), <http://www.cleo.on.ca/english/pub/on-pub/PDF/immigration/ev chlde.pdf>; Wayland; Maria Yau,

Refugee Students in Toronto Schools: An Exploratory Study (Toronto: Toronto Board of Education, Research Services, 1995).

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18. John Lowman and Ted Palys, "Ethics and Institutional Conflict of Interest: The Research Confidentiality Controversy at Simon Fraser University," *Sociological Practice* 2 (2000): 245–264.

19. Peter Gorrie, "Tories Begin Deporting Illegal Workers," *Toronto Star,* March 21, 2006.

20. Margaret E. Martin *et al.,* "Report of the ASA Technical Panel on the Census Undercount," *American Statistician* 38 (1984): 252–256; Jeffrey S. Passel, "Undocumented Immigration," *Annals of the American Academy of Political and Social Science* 487 (1986): 181–200.

21. Frank D. Bean *et al.,* "Circular, Invisible, and Ambiguous Migrants: Components of Difference in Estimates of the Number of Unauthorized Mexican Migrants in the United States," *Demography* 38 (2001): 411–422; Marc Berk and Claudia Schur, "The Effect of Fear on Access to Care among Undocumented Latino Immigrants," *Journal of Immigrant Health* 3 (2001): 151–156; Chavez, *Shadowed* Lives; Wayne Cornelius, "Interviewing Undocumented Immigrants: Methodological Reflections Based on Fieldwork in Mexico and the US," *International Migration Review* 16 (1982): 378–411; Passel.

22. Berinstein, McDonald, Nyers, Wright, and Zerehi; Chakkalakal and Neve; Community Legal Education Ontario, *Every Child's Legal Right to Education*; Wayland.

23. Berk and Schur, Chavez, *Shadowed Lives*; Michael Fix and Wendy Zimmermann, *All Under One Roof: Mixed-Status*

Families in an Era of Reform (Washington, D.C.: Urban Institute, 1999); Gabrielle Lessard and Leighton Ku, "Gaps in Coverage for Children in Immigrant Families," *The Future of Children* 13 (2003): 100–115; Carola Suarez-Orozco and Marcelo Suarez-Orozco, *Children of Immigration* (Cambridge, MA: Harvard University Press, 2001).

24. Leo Chavez, "The Power of the Imagined Community: The Settlement of Undocumented Mexicans and Central Americans in the United States," *American Anthropologist* 96 (1994): 68.

25. Rees.

26. Cecillia Menjívar, "Liminal Legality: Salvadoran and Guatemalan Immigrants' Lives in the United States," *American Journal of Sociology* 111 (2006): 1030.

27. Committee for Accessible AIDS Treatment (CAAT); Fix and Zimmermann; Suarez-Orozco and Suarez-Orozco; Wayland.

28. Trevor Marshall, *Citizenship and Social Class* (New York: Cambridge University Press, 1950).

29. Alison Brysk, "Children across Borders: Patrimony, Property, or Persons?," in *People Out of Place: Globalization, Human Rights, and the Citizenship Gap,* ed. Alison Brysk and Gershon Shafir (New York: Routledge, 2004).

30. Julie Young, "'This is my life': Questions of Agency and Belonging among Youth Living with Less than Full Status" (master's major research paper, Ryerson University, Toronto, 2005).

31. Note that the LISA researchers did not explicitly ask about uncertain status, but instead they were able to discern this status through the interactions they had with families throughout the duration of the project and through responses to particular questions. For example, if the question was, "What was the most difficult part of the immigration process?" and the response was, "Crossing the border," it was probable that this child was undocumented at some point (Suarez-Orozco and Suarez-Orozco).

32. Suarez-Orozco and Suarez-Orozco.

33. Committee for Accessible AIDS Treatment (CAAT); Jimenez; Ratna Omidvar and Ted Richmond, *Perspectives on Social Inclusion: Immigrant Settlement and Social Inclusion in Canada* (Toronto: Laidlaw Foundation, 2003); Wayland.

34. City of Toronto, *Subsidized Childcare: How Do I Apply for a Fee Subsidy?* (Toronto: City of Toronto), <http://www.city.toronto.on.ca/children/subsidy.htm>; Martha Friendly and Donna Lero, *Social Inclusion through Early Childhood Education* (Guelph: Laidlaw Foundation, 2002), <http://www.laidlawfdn.org/cms/file/children/lero.pdf> (accessed January 7, 2007).

35. In order to qualify for this benefit, the applicant or their spouse or common-law partner must be "a Canadian citizen, a permanent resident, a protected person, or a temporary resident who has lived in Canada for the previous 18 months" (Canada Revenue Agency, 2005).

36. Cheryl Teelucksing, Luin Goldring, and Judith Bernhard, *Survey of Agencies Serving Persons with Less Than Full Status.* (Toronto: Ryerson University, 2005).

37. Fix and Zimmermann.

38. Young.

39. Teelucksing, Goldring, and Bernhard.

40. The agency personnel screened potential participants and retained all identifying information, which never appeared in the researchers' records. Participants gave verbal (rather than written) consent and were clearly informed that they were free to withdraw at any time during the process. In addition, they were asked to give double consent to participate: first to the community service providers who recruited them, and second to the researcher who carried out the interview. The service provider made clear that whether or not an individual chose to participate in the study, her/his access to services at the organization would not be affected. Moreover, the double consent process ensured that service providers would not know who did or did not choose to participate in the project.

41. This group includes one woman whose grown daughter, over age thirty, lived in Canada. Note that participants may be counted under more than one of these categories.

42. This group includes one woman with two children over age twenty-five.

43. All names used are pseudonyms.

44. Section 30(2) of the Immigration and Refugee Protection Act (IRPA) states: "Every minor child in Canada, other than a child of a temporary resident not authorized to work or study, is authorized to study at the pre-school, primary or secondary level." In Ontario, children of temporary residents may be permitted to attend school but they are required to pay international student fees in the range of Can. $7,000 to10,000 per year, which is a barrier for many families; this fee has been waived for children whose parents have submitted an application for permanent residence (Community Legal Education Ontario, *Every Child's Legal Right to Education*; Government of Canada, *Immigration and Refugee Protection Act* (2001), <http://laws.justice.gc.ca/en/I-2.5/64755.html> (accessed June 10, 2006); Government of Ontario, *Educational Act* (1990), <http://www.elaws.gov.on.ca/DBLaws/Statutes/English/90e02_e.htm>. (accessed April 19, 2006).

45. United Nations, *Convention on the Rights of the Child* (1990), <http://www.unicef.org/crc/crc.htm> (accessed April 19, 2006).

46. Young.

47. Suarez-Orozco and Suarez-Orozco. .

48. Menjívar; Goldring, Berinstein, and Bernhard

49. Rees.

50. Judith Bernhard, Patricia Landolt, and Luin Goldring, *Transnational, Multi-Local Motherhood: Experiences of Separation and Reunification among Latin American Families in Canada* (Toronto: Joint Centre of Excellence for Research on Immigration and Settlement, 2005).

51. Teelucksing, Goldring, and Bernhard.

52. Berinstein, McDonald, Nyers, Wright, and Zerehi; Wayland.

53. Menjívar; Rees; Wayland.

54. Young.

55. United Nations, *Convention on the Rights of the Child.*

56. Fix and Zimmermann.

57. *Ibid.*

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I's Wide Shut: Examining the Depiction of Female Refugees' Eyes and Hands in Stephen Frears's *Dirty Pretty Things*

Jenny Wills

Abstract

In 2002, Stephen Frears directed Dirty Pretty Things *– one of the few mainstream fictional films to highlight the effects of exile, the complexities of refugee status, and the trials of migrant labour in the "Western" world. Thus far, the minimal number of "refugee" films produced is mirrored by the minimal discussion about those films (or their absence). This essay examines Frears's film with a critical lens that incorporates both theoretical evaluations and aesthetic choices. For instance: how do media representations of refugees and migrants relegate the signification of refugee-ism to visceral, silent, repetitiv,e and subordinated signifiers? Additionally, this essay narrows its interest upon Senay, the female lead of Dirty Pretty Things, to open up a dialogue about fragmented body: missing hands / hyperbolized eyes. Drawing on knowledge of the theoretical implications of those choices, this paper addresses refugees and illegal migrants in film with the hope of initiating conversation about an otherwise relatively silent and untouched cinematic subgenre.*

Résumé

En 2002, Stephen Frears réalisa Dirty Pretty Things *– un des rares films de fiction grand public à mettre en exergue les contrecoups de l'exil, les complexités liées au statut de réfugié et les tribulations du travailleur immigré dans le monde "occidental". Jusqu'ici, le nombre infime de films réalisés sur le thème des "réfugiés" est reflété par le peu de débats sur ces films (ou sur leur absence). Cet essai examine le film de Frears avec un œil critique qui intègre aussi bien des évaluations théoriques*

que des considérations esthétiques. Par exemple : comment les représentations des réfugiés et des immigrants dans les médias relèguent-elles le sens du statut de réfugié à des signifiants viscéraux, muets, répétitifs et subordonnés? De plus, cet essai porte un intérêt particulier à Senay, l'actrice principale de Dirty Pretty Things, *dans le but de lancer un débat sur la fragmentation du corps : les mains absentes/l'hyperbolique des yeux. S'appuyant sur la connaissance des significations théoriques de ces choix, cet article traite du thème des réfugiés et des migrants illégaux dans les films, dans l'espoir de déclencher un débat sur un sous-genre cinématographique relativement confiné au silence et très peu abordé.*

Doctor]:   How come I've never seen you people before?

Okwe]:   Because we are the people you do not see. We are the ones who drive your cabs. We clean your rooms. And suck your cocks. – *Dirty Pretty Things*[1]

In one of the most anxiety-filled moments of the film *Dirty Pretty Things*, Stephen Frears's primary character, Okwe, speaks out against the organized dehumanization of refugees[2] and migrants while he participates in the very trafficking that constructs this version of the London "underground." *Dirty Pretty Things* (2002), nominated for numerous industry awards, including an Oscar in the category of "Best Writing" for screenwriter Stephen Knight,[3] is one of few contemporary, non-documentary, mainstream feature films that addresses the after-effects of illegal immigration and the continuousness of refugee and migrant exploitation in the West[4] as its primary narrative plot.[5] With a filmography of relatively few works, refugee narratives lack

the volume necessary to qualify as an obvious cinematic genre, and therefore are struggling to make the political impact that thinkers like Michael M. J. Fischer argue they are capable of.[6] Furthermore, and as a result, there is an absence of critical theory surrounding the limited number of films that exist that fittingly parallels the silence of the subjects themselves. Even Terrence Wright, one of the few theorists who have published on the topic of refugees and motion pictures, inadvertently draws attention to the lack of unique criticism granted to refugee and migrant fiction film. Situating refugee films within broader generic groups that homogenize the experiences of refugees and archetype the works in a manner that could potentially be disempowering, Wright is forced to look outside of the limited selection of filmic examples to determine generic qualities with which to connect the texts. Describing the goal of his introductory essay entitled "Refugees on Screen," Wright announces that his work "considers the ways that the refugee story has been structured in fiction film and proposes that feature film portrayals can conform to the "road movie" film genre."[7] By acknowledging refugee and migrant[8] labourer fiction film within the qualifying characteristics of another genre, Wright points to the lack of individualism, subjectivity, and voice of cinema featuring refugee narratives.

Allen Feldman takes a more visceral approach to examining representations of refugees and illegal migrants on screen:

> Generalities of bodies – dead, wounded, starving, diseased, and homeless – are pressed against the television screen as mass articles. In their pervasive depersonalization, this *anonymous corporeality* functions as an allegory of the elephantine, 'archaic,' and violent histories of external and internal subalterns.[9]

What is clear from Allen Feldman's observations is that the refugee is overtly visualized in the media, reduced to her body in a visceral, sensationalized, and grotesque manner that is best described as Julia Kristeva's "abject."[10] Emphasizing the corporeality of media representations of the refugee and migrant labourer (in this case, in non-fiction) therefore illustrates the simultaneously trivialized and essentialized underminings of the political or psychological profundity of the migrant state – relegating her signification to the visual suffering of her isolated body. Prem Kuma Rajaram notes that "the refugee is lost. […] Without citizenship her plight is not to be characterized as merely culturally or physically precarious, she is without help, without the means to call on the protective agency as state,"[11] drawing attention to the refugee's political lack, while highlighting the necessity to evaluate refugee status beyond her physical experience. Thus, characters like Okwe, who identify with

the refugee's desire for asylum, but who are politically invisible, are emblematic of the invisibility of refugees beyond their alien bodies. Yet further in his article, Rajaram poignantly recognizes that "refugees *are* consigned to their bod[ies]"[12] – an acknowledgement that suggests the futility of challenging media representations of illegal migrant bodies. Rather than disavowing the physical depiction of refugees and migrant bodies on screen, it instead becomes a crucial task to evaluate and deconstruct the mythological meanings behind these representations – highlighting the generated implications of those cinematic choices. Thus, this article will evaluate the visualized representation of the female migrant body as it appears in Frears's *Dirty Pretty Things*, examining how cinematography perpetuates the fragmentation and corporeality of the illegal alien body – and the latent inferences of those methods. For within Frears's narrative, the female migrant body is depicted not only by excessive focus on Senay's eyes but also by the absent representation of her hands through framing and camera angle. Alluding to specific qualities of migrant and refugee status, including melancholia, silence, mechanization, and liminality, this article will illustrate how the filmic depiction of Senay's eyes and hands metaphorically highlight the social, psychological, and political characteristics of her exile.[13]

Set within the paradoxical sceneries of panicked sweatshops and classy hotels, Frears's film highlights the sordid world of migrant labour in London. Okwe, a former Nigerian doctor, and Senay, his Turkish co-worker and friend, struggle to survive while deceiving the immigration department, by working as a hotel receptionist/taxi driver/unlicensed surgeon and chambermaid/sweatshop worker respectively. Both Okwe and Senay are dehumanized by the employment options available to them – options that are interestingly similar, despite their dissimilar alien statuses. Following their troubled relationship, *Dirty Pretty Things* takes a surprising turn when Okwe discovers that his employer, Señor "Sneaky" Juan, traffics not only drugs and sex, but human organs as well. With the promise of citizenship, passports, and security (promises that appeal to Okwe as an illegal migrant despite his need for refugee status, and to Senay as a legal migrant, but who finds herself even more restricted and monitored than her friend), Juan encourages illegal migrants to "donate" their organs to his black-market industry, blackmailing Okwe to put his former medical expertise to work as a surgeon. Okwe consults his friend Guo Yi, a mortician at the hospital, for advice and support, but ultimately complies with Juan's demands. Senay, on the other hand, finds herself easily dispensable in a sweatshop after immigration officers target her for deportation. Two burly men search her apartment and follow her around London, fixated on the task of uncovering the truth about

Senay – that she has indeed been working regardless of her non-citizen status. Forcing their way into her apartment and searching her belongings, and later, almost catching her coming to work at the hotel where she works with Okwe and Juan, the immigration officers follow Senay to her new job at a garment factory. Her employer, aware of her precarious position, repeatedly rapes her with forced fellatio, relegating her formerly industrialized corporeality to one of sexual subordination as well. After repeatedly submitting to her boss's demands, Senay eventually breaks free. In an interesting parallel, Senay must seek refuge from the sweatshop – and eventually does so by fleeing the country. Unfortunately, before she is able to 'escape' into the United States, she is lured by Señor Juan into both sleeping with him and selling her organs on his black market.[14] Objectified by both the dehumanizing nature of her employment and various forms of inflicted sexual assault, Senay is uncomfortably silent and passive, until the conclusion of the film when she is able to assist in the reclamation of empowerment – taking back what was stolen from her and other trapped migrants: ownership of her own body.

Psychoanlaysis and Cinema: Translating the Refugee's Body on Screen

When Sigmund Freud differentiates the concept of mourning from melancholia, he contends that both states are triggered by a "reaction to the loss of a loved person, or to the loss of some abstraction which has taken the place of one, such as one's country, liberty, and ideal, and so on."[15] He goes on to note that the act of mourning progresses by means of a successful experience of grief, relinquishing emotional ties to the lost concept.[16] Melancholics, conversely, are unable to rid themselves of their loss, instead absorbing the loss into themselves. Two things are highlighted by Freud's statements. First, the elements included in the above citation ("country, liberty, and ideal") make an interesting allusion to the exiled individual, or at least to migrant experience or Diasporic subjectivity. For refugees and migrants are not uncommonly noted as troubled by their lack of nationality, citizenry, political and financial freedom, and ethnic ideology. Freud's emphasis on the above-listed constituents of "loss" suggests his awareness of the inherent and unavoidable melancholia of refugees, exiles, and migrants. Second, Freud claims that melancholics are incapable of successful mourning – and, thus, cannot remove themselves from their grief-stricken state. However, melancholy is a component of mourning – a melancholic disorder forming whence the griever is unable to progress from a melancholic state into one of natural mourning and, eventually, to relief. I contend that the numerous narcissistic objects contributing to the migrant's ego that are lost (home, family, nationality, cul-

ture, history, etc.) result in an inability to accurately recognize the specific amalgamation of objects of loss – thereby disabling proper mourning and resulting in perpetual melancholia. In other words, the assortment of the migrant's losses – citizenship, ethnicity, security, subjectivity, and liberty (to name a few) – produce so disarrayed a source of anxiety that none are properly overcome (*i.e.* mourning is unachieved), and, thus, the migrant suffers melancholic despair. Add to this circumstance the impossibility of ever regaining that stability of that previous national identification, or at the very least, the nostalgic comfort of one's country (or culture) of origin, and it becomes clear that the refugee state is one of melancholic unbalance.

Edward Said likewise incorporates Freud's notions of mourning and melancholia when he writes his numerous texts concerning exile.[17] Said contends that the exile's present behaviour is linked directly to her loss of the past. In the essay "Reflections on Exile," he notes that being an exile implies that one is in a "fundamentally […] discontinuous state of being. Exiles [including refugees] are cut off from their roots, their land, their past."[18] This severance results in psychological sorrow and what Bruce Robbins refers to as "dizzying unanchoredness."[19] Robbins goes on to elaborate on the melancholic effects outlined in Said's work, asserting, "Said is our foremost specialist in polymorphous disorder […] the chronic ache of exile from origin, tradition, and home culture that enervates modern critical consciousness."[20] Emphasized in Robbins's statement is the non-linear web of lost (abstract) objects that the refugee lacks – reiterating the melancholic disarray of anxiety previously outlined in this article. Polymorphous disorder, or "assuming […] various forms; multiform"[21] suggests a connection between Said's theory and melancholia (as opposed to mourning) both by its allusion to numerous objects of loss *and* by its classification as a disorder (Freud claims that mourning is natural but that melancholia is not[22]).

I wish to impose a brief literary examination to link the act of looking and eyes to the representation of mourning (as the encompassing term that *includes* melancholia) before returning to the filmic representation of the female migrant's body in relation to Freud's and Said's analyses. First, Freud's description of E. T. A. Hoffmann's narrative "The Sand-Man" alludes to "the fear of damaging or losing one's eyes."[23] The psychoanalyst later reveals that the anxiety related to potential blindness is synonymous in degree only with the anxiety of castration – implicitly equating the eyes with the phallus – the egotistical narcissistic object.[24] The narcissistic object, in turn, gains importance, as it is through ego development that natural mourning is overcome. Furthermore, the trope relating eyes to mourning is

popular in both narrative and visual genres. Consider Shakespeare's likening of eyes to literal in Sonnet 132 ("Thine eyes I love […] / Have put on black, and loving mourners be […]" and "As those two mourning eyes become thy face")[25] or the tragic eyes of the saints and followers in Raphael's *The Entombment*.[26] Many artists have notoriously located mourning and melancholia within their subjects' eyes, not only as the sites of purgation through tears, but also as signifiers that emblemize sorrow and pathos. Consider the affective portrayal of emotion through eyes in Munch's *The Scream* for an obvious example of how pain and passion are hauntingly expressed through the character's eyes.

Perhaps the basis of the link lies within the noiseless yet unsilenced manner that expression is revealed through a mourner's eyes, enabling profound articulation of pain that is beyond any vocalization of the like. In *Dirty Pretty Things*, it is through her eyes that Senay expresses the depth of her sadness. As the camera frequently moves into close-up on Senay, it is her haunting eyes that capture the viewer's attention – eyes that are large with both naïveté and experience. For instance, Senay's face is framed between the clothing racks, her anxious eyes peering over the metal bars while the rest of her face remains hidden from the screen. The audience reads from her expression the profundity of her terror – both of immigration officials and of the exploiters of her limited status in England (*i.e.* her boss who forces her to perform fellatio upon him, threatening that he will otherwise report her to the government). Even from the first appearance of Senay – as she turns her face upward into the surveillance camera's view – her eyes are mysterious and sad, expressing the dehumanizing mechanization of her employment, a component of her refugee status. It is in her eyes that Senay demonstrates the melancholy of exile described by Freud and Said – eyes that are large with grief, dark with anxiety, and open with expression.

In response to Spivak's famously asked question, "Can the Subaltern Speak?"[27] Frears acknowledges varying methods of communication that, although not as effective as voice in immediate force, are subtly haunting and express more than words ever could. For it is with her eyes that Senay *speaks* her emotions. Her unblinking gaze at Okwe makes apparent her love for him, but also illustrates that she simultaneously fears that love and its repercussions. Her fixed stare sizes up Señor Juan when she agrees to undergo surgery, illustrating both the terror and desperation that have led her to this decision. Senay's unsilenced eyes express the emotions that her speechless voice is unable to, whether out of propriety or dread. When Barber Ali's character first forces himself onto Senay amongst the racks of clothing, he holds her mouth shut while uttering his

request. Her jaw restrained, it is only in Senay's unforgettable eyes that the viewer understands her profound grief. She cries to Okwe on the telephone afterward, yet her voice is incoherent and uncommunicative, as Okwe struggles to find meaning in her words. However, there is no miscommunication between them when he finds her in the office of the taxi company he works for. Shortly after Senay has refused to be victimized by her sweatshop boss, she waits silently for Okwe in the backroom. Upon looking into the darkness of her eyes, he is aware that something horrendous has occurred.

And it is not surprising that the female migrant's voice is constricted in *Dirty Pretty Things*, and is thus projected onto other body parts. For, as Prem Kumar Rajaram would suggest, speechlessness is a universalizing characteristic common in all refugee experiences. In an article entitled "Humanitarianism and Representations of the Refugee," Rajaram contends that the refugee's political and social abandonment leaves her with only "biological corporeality,"[28] negating any voice of assertion of empowerment[29]. Rajaram writes:

> The connection of political identity and discourse to the territorial state means that those without citizenship or bereft of it are speechless (or taken to be speechless), requiring an agency or expert to speak for them. The 'speechlessness' of refugees reinforces the state-centric political imagination.[30]

Implicit in Rajaram's passage is the relationship between the refugee's lack (nationality, political support, financial and familial provision) that contributes to her voicelessness. Similar circumstances factor into Senay's silence in Frears's narrative, as Senay is denied speech due to the restrictions placed on her "legal" migrant status.[31] She cannot report her boss's wrongdoings, as she will be revealed as working illegally against the terms of her residency. Thus, she remains silent throughout the attacks, unprotected by the police as a result of her marginalized position, with only her eyes to express her devastation at the situation.

Kerry Demusz offers an alternative potentiality for refugee silence. She notes of the conflict zones in Sri Lanka that the "voices of the refugees, the displaced, the mothers and the children who have to live in a world torn apart by conflict or by natural disaster" are restricted by so-called government aid agencies, such as Oxfam.[32] Demusz contends that it is specific political agendas that silence refugees and disallow them a voice. Rajaram extrapolates Demusz's ideas in his essay. He acknowledges the consequences of politically imposed silence on refugees, stating that "they are rendered speechless and without agency, a physical entity, or rather a physical *mass* within which individuality

is subsumed. Corporeal refugees are speechless and consigned to 'visuality': to the pictorial representation of suffering and need."[33] In a like manner, while Senay's political desperation instigates her silence, her body becomes the visual focal point of her so-called subjectivity.

Unfortunately, Senay's silent body quickly becomes Orientalized by cinematic observers of dominant culture. Embodying many of the qualities characteristic of the Oriental (mystery, exoticism, passivity, and silence), her character risks perpetuating the migrant stereotype in film and media. Rajaram continues his argument by alluding to the refugee's place in the culture industry. He notes that "[o]ne of the central effects of this consignment [of the refugee to her corporeal body] is the 'commodification' of the refugee experience. […] [R]efugee events and experiences become a site where Western ways of knowing may be reproduced and recycled."[34] Being adopted into the culture industry as the stereotypical Oriental,[35] Senay's body perpetuates Western ideologies that consistently render the migrant silent by their corporeal visualizations and depictions. These expectations, in turn, eliminate the individuality of the migrant, thereby restricting her subjectivity. For, as Liisa H. Malkki notes in her essay "From 'Refugee Studies' to the Natural Order of Things," media archetypification results in an oversimplification of refugee features. She writes that:

> the term refugee has analytical usefulness not as a label for a special, generalizable "kind" or "type" of person or situation, but only as a broad legal or descriptive rubric that includes within it a world of different socio-economic statuses, personal histories, and psychological or spiritual situations.[36]

Malkki's statement suggests the impersonal, overarching potential of a term like "refugee," as it removes individuality from the exile, similar to the processes of cinematic stereotypification. The same could be said for discourses surrounding "exiles," "others," and "migrants." For Senay's silent performance renders her as Oriental, thus fuelling expectations and perpetuating archetypes of being alien that rely on silence and bodily representation.

Rey Chow adopts this notion of bodily objectification through silence in her essay "Postmodern Automatons," which appears in Judith Butler and Joan W. Scott's anthology, *Feminists Theorize the Political*. She contends that "one of the chief sources of the oppression of women lies in the way they have been consigned to visuality."[37] This visuality, in turn, results in archetypification and expectation, performances of repetition that are predictable and thus mechanized. Chow suggests that the female body is turned into an "automaton," and citing J. Smith characterizes such

as a being that "can be guaranteed to think, speak and act exactly as you would expect."[38] In other words, the visuality of the female body reduces her to mechanical predictability, hyperbolizes stereotypes, and thus commodifies the female body into an industry that perpetuates its ideology using her image as a conduit for mythological dissemination.

Not only does Senay's body in *Dirty Pretty Things* illustrate this process of archetypification stemming from speechlessness and bodily representation (and, arguably, expressions from the eyes), but her body likewise is transformed into the automaton Chow speaks of through additional means, including economics. The mechanical nature of female migrant labour results in mundane, uncreative, and silent employment patterns whose foundations rely on the worker's repetition of particular movements. When Judith Butler concludes her foundational text, *Gender Trouble*, she makes the important claim that "the subject is not determined by the rules through which it is generated because signification is *not* a founding act, but rather a regulated process of repetition."[39] In other words, a subject is not defined through self-decided acts, but instead is recognized within a structure of repeated performances – performances that, if unquestioned, construct a socially subordinate object. Butler's theory can be extended to evaluate the repetition of movements performed by Senay as her body is visualized as executing the same actions repeatedly When Senay finds employment at the sweatshop, she replicates her movements in order to mass-produce the proper garments. She is objectified by her work merely from her repetitious, non-agency performances, only gaining subjectivity and freedom from the structure when she subverts the system. Senay's declaration that "today I bit. I bit. I bit" represents her refusal to perpetuate the repetitious cycle of her objectification – finally breaking out of the performance she was forced to embody for so long. For, similar to the Victorian industry of textiles, an industry that Beth Harris claims embodies "the dull, repetitious act of plying the needle represent[ing …] unfair confinement,"[40] until this subversion, Senay's employment consists of pattern following – unoriginal, uncreative, and tedious. Even sexuality (as it is related to employment) is a repetitive performance, as Senay's repeated forced-fellatio upon her boss is painfully constructed by her expectant reaction to the demand and repeated voiceless compliance of it.

I wish to now shift the focus of this article from the relationship of eyes to mourning and speechlessness (and thus bodily visualization) to the mutually significant depiction of the female migrant labourer's hands. For, further emphasizing the robotic nature of the marginalized female migrant, work is her undeniable relationship to machinery –

in *Dirty Pretty Things,* Senay's hands work in accordance with technology. Often observed as the user of factory machinery, female migrants in film are visualized in relation to their technical instruments – whereas male migrants use their own hands and voices to perform their work. Consider Okwe's occupations in *Dirty Pretty Things*. Aside from his taxi driving position when he obviously has to rely on technology to properly do his job, when he works as an unlicensed doctor or as a hotel concierge, he is frequently pictured as using his hands to directly perform his work. Senay, by comparison, is only seen working as an extension of the sewing machine that she utilizes at the sweat shop. Unlike her boss, who is twice pictured as sewing by hand, or Guo Yi, who hand-sews the pockets shut on his Asian morgue patients, Senay performs the same duty but through the conduit of a machine. Her hands remain unseen.

So often does the cinematic representation of female migrant labourer's work construct the machine as an extension of her own body that her own identity eventually coincides with the mechanical nature of her employment. In her text, "The Female Machine in the Postmodern Circuit," Annemarie Kemeny cites Hanjo Berressem when he says that "the concept of […] psychic and cultural colonization […], is a gesture that invades the 'other' and redefines the subject as a pure object[…] result[ing] in a universal streaked through with the mechanical. The female body, however, seems to be the privileged site for this mutation."[41] To clarify, Kemeny suggests that the female body is mechanized in an attempt to maintain the dominant class – by disenfranchising it as the other – the incorporeal. She notes that "the deliberate creation of lack as a function of market economy is the art of a dominant class" – emphasizing the utilitarian motives behind roboticizing female workers to serve economic purposes.[42]

Frears's Cinematic Codification
Returning to the visualization of migrants and refugees in film, I contend that the disenfranchised nature of the female migrant results in what W. E. B. DuBois would call "double consciousness"[43] – or the act of constantly looking at oneself through the eyes of the dominant culture. The female migrant-turned-refugee in *Dirty Pretty Things* is thrice-"othered" due to her lack of national identity, ethnic resemblance, *and* phallus. As a result, she becomes emblematic of and ideal for Kemeny's "site of mutation" – or the sacrificial being transformed into the figurative gynoid for the benefit of dominant ideology. In other words, the female migrant is an abject whose signification, due to her politically, economically, and socially vulnerable position, quickly becomes synonymous with machinery – suggesting her un-originality, archetypification, and lack of subjectivity. Thus,

both Senay's haunting silence (and, therefore, corporeal display) *and* the representation of her body as mechanized perpetuate the myth of the alien (or the "alientalization") prevalent in mainstream cinema.

Yet while Senay's body is positioned so mechanically (in terms of repetitive performance and in relation to machines), there is a striking *absentia* of filmic framing of her working hands – assumedly the most significant phsyical tool for manual labour. Frears continually alludes to Senay's industrious motions; however, the viewer is offered only a brief glimpse at Senay's working hands as she labours at the sweatshop – but again, her hands work in conjunction with the mechanical sewing machine that she operates. The most common representation of Senay's work pictures her sitting in front of the machine, concentrating downward; motioning with her shoulders to insinuate the nature of her labour – but Frears never allows the camera to actualize these assumptions. This framing choice has the potential to likewise contribute to ideological formation similar to the visualization and mechanization of the female migrant body. For, as John Fiske notes in "Television Culture," "encoding conventions"[44] or "links between producers, texts, and audiences [that] are the agents of intertextuality through which texts interrelate in a network of meanings that constitute our cultural world"[45] eventually "attempt […] to control and focus […] meaningfulness into a more singular preferred meaning that performs the work of the dominant ideology."[46] To clarify, repetition of particular cinematic techniques (including camera angles, editing, casting and *mise en scène*) construct "codes" that translate into archetypes and expectations. Thus, Frears's fragmentation of Senay's body through the act of un-representing her hands deconstructs the female migrant body in a manner that has the potential to create an archetype so overly signified that the practice becomes a code (or "rule-governed system of signs"[47]).

The significance of fragmentation of the female body on screen is evaluated in Laura Mulvey's foundational text, "Visual Pleasures and Narrative Cinema," wherein she claims that the cinematic gaze (*i.e.* the camera angle) replicates the male gaze that objectifies women's bodies. With specific interest in the manner with which the cinematic gaze deconstructs the female body into fetishized parts (assumedly by means of close-up, camera pan, and American-shot), Mulvey suggests that the fragmentation of the female body eliminates the cinematic heroine's threat to the male phallus (both of her co-star and of the male audience). She claims that:

the male unconscious has two avenues of escape from … castration anxiety: reoccupation with the re-enactment of the

original trauma […] counterbalanced by the devaluation, punishment or saving of the guilty object […]; or else complete disavowal of castration by the substitution of a fetish object or turning the represented figure itself into a fetish.[48]

The fetishized figure is the female body, and although Mulvey suggests that visual framing traditionally sexualizes the heroine (by means of a "close-up […] of legs (Dietrich, for instance) or a face (Garbo)"[49]), I maintain that the essential motivation – to disempower the body through fragmentation – extends to correlate female migrants in film. For, intimidated by the enigmatic existence of the female refugee, the male cinema gaze creates either a monster or an object of desire out of her – therefore allowing itself justification of its defence mechanism – the unprotected objectification through filmic framing. Furthermore, the removal of visual representation of hands is significantly important in these films – as hands pose the greatest threat of castration to the male actor and viewer – although Senay makes her mouth equally dangerous.

However, I would like to propose an alternative to this feminist theorization – one that returns to Said's argument of exile and mourning. Recall that it is mourning, for Said, which motivates the actions of refugees, exiles, and diasporic people, as they are fractured from their original culture, history, and family. "Reflections on Exile" identifies the subject in relation to his or her previous ethnicity, nationality, and identity – as opposed to her present state of marginalization within her "host nation" typical of most refugee and migration analysis.[50] In an earlier text, Said elaborates on the liminality of exiled experience – existing within a chasm formed between the past and present (national) identity. He writes that the exiled person is in a

> state of never being fully adjusted, always feeling outside the chatty, familiar world inhabited by natives […] Exile for the intellectual in this metaphysical sense is restlessness, movement, constantly being unsettled, and unsettling others. You cannot go back to some earlier and perhaps more stable condition of being at home; and, alas, you can never fully arrive, be at one in your new home or situation.[51]

Said's reiteration that exiles are "cut off"[52] from both present socialization and their past lives, including nation, family, and culture, illustrates a fragmentation of identity represented literally by Senay through the cinematic fragmentation of her literal body. In other words, the filmic deconstruction of the female migrant body potentially mimics the psychological fracture occurring between her and her original identity/nationality.

Proof of this claim lies in the economic symbolism that Senay's hands represent. As noted above, the female migrant labourer's hands are her primary source of survival – as she financially provides for herself through manual labour. I would argue that the migrant's body represents her past identity – one that dances and sings to music,[53] one that can sexually protect itself and is not objectified by the coercive demands of policing immigration officials. Comparatively, her hands embody the nature of their manual labour – her industrial slavery and sexual exploitation – that coincides with her marginalized status. By separating images of the labouring hands from the body, Frears's film illustrates the binary of Said's past versus present exile status. The fragmentation of Senay's migrant body implies the destabilized nature of her character – liminal between nationalities, ethnicities, and identities. For it is only when the subaltern rejects her status as an industrial slave – a slave of her status and her new country of residence – that her working hands are finally visualized. Recall how Senay's hands, when assisting Okwe with the surgery on the sleeping Señor Juan, are unmechanized, valued, and visible. Senay is liberated shortly after her working hands become visible – given a new identity that will release her from her migrant status and bodily distortion associated with manual labour in film. Therefore, once Senay's visualized body is repaired and represented in full she is able to overcome the limitations of her metaphoric refugee state (as a persecuted, violated, and abused figure who seeks freedom from the nation that politically allows these oppressions upon her). Although her newly constructed identity will only perpetuate Said's melancholia of liminality in New York (as she must repress her previous nationality entirely – therefore, failing to overcome her grief and disallowing proper mourning to occur), Senay is now granted subjectivity both from her liberation from repetitive manual labour and from the wholeness of her body.

In his text "The Mirror State," wherein he employs psychoanalysis to the process of subject-formation, Jacques Lacan notes that anxiety over "the fragmented body […] disjointed limbs" creates a phantasmic "fragilization"[54] that is evident as a symptom of hysteria. Fortunately, recognition of the self's reflection, the reassemblance of the visualization of the literal body, correlatively occurs with "the formation of the I" or the development of subjectivity.[55] Likewise, Senay's construction of the "I" of her subjectivity parallels the moment of liberation when her body is reassembled on the screen. Furthermore, when Lacan suggests that that conscious-subconscious binary is developed during the process of subject formation, he implicitly relates linguistic development with the construction of the "I." In a previous essay entitled "The Instance of the Letter in the

Unconscious or Reason since Freud," Lacan writes that "what the psychoanalytic experience discovers in the unconscious is the whole structure of language."[56] Implied by this statement is the interrelatedness of subjectivity and language (as both are formed out of repression). What becomes interesting, thus, is that Senay is able to vocalize her identity (albeit her "false" identity) for the first time in the film once she gains her illegitimate passport. Whereas the viewer never hears Senay use language to identify herself when she is the visually fragmented migrant, she is able to repeat her name convincingly *after* her subjectivity has been regained through the cinematic assemblage of her body. No longer does she have to rely on her eyes for expression or her hands for identity – as her voice is developed alongside her new-found subjectivity.

Of course, Senay's constructed identity is problematized by the mere fact that she must perform a culture, status, and name that do not belong to her. However, recalling the works of noted scholars, such as Rey Chow – whose much-cited notion of "coercive mimeticism" points to the constructed and performed nature of culture, ethnicity, and (implicitly) race – it is revealed that Senay's relegation to a new cultural identity is not one of necessary loss through assimilation/transformation. Instead, Frears concludes his film by acknowledging the inescapability of performing culture; he somehow optimistically guides the viewer to understand that Senay, with her family in New York, will maintain a cultural identity (possibly further graduating from the melancholia of exile to mourning), not as a superficial and essentialized performance, but rather as the substance and identity beneath her disguise.

Subjectivity, it is made evident, is the plight of migrants and refugees in the film (mimicking reality), as Senay works toward reconstituting herself in a manner *not* solely based on her body. The audience is left to believe (with some naive relief) that Senay's new identity allows her to experience ethnicity in New York without the specific fragmented objectification and excessive bodily emphasis that she has previously endured. After all, the image of the migrant implies so much more than the visual representation presented in cinema. Senay is a hybrid of the past and the present, seeking to gain her own identity by reassembling her body and shifting her archetypical recognition from corporeality to her voice.

Notes

1. Steven Frears directs *Dirty Pretty Things* (UK: Miramax, 2003). As the film nears its conclusion, Okwe makes an illegal trade with the black-market doctor. His response to the doctor's questioning encompasses the various "jobs" performed by the marginalized and dehumanized refugees throughout the film.

2. The term "refugee" is defined in the 1951 Refugee Convention and is often a politically loaded term that implies asylum for individuals from another geographic location who find themselves in circumstances where they are persecuted because of their race, class, political opinion, sexuality, etc. The characters in *Dirty Pretty Things* are, for the most part, illegal migrants. However, Okwe is a transmigrant who is forced to leave his country of origin, Nigeria, due to the unjust legal system that presumes his guilt for the murder of his wife. Despite the fact that his circumstances do not necessarily meet the legal definition of "refugee" - I contend that his circumstances in his country of origin are so threatening that he had to seek asylum in Britain. Furthermore, Okwe's situation is complicated by this unacknowledged status as a refugee - at least in terms of immigration policy. Thus, I refer to Okwe as a refugee not in the conventional, legal manner, but instead based on his desperation to leave Nigeria as a result of the dangerous and oppressive moral and legal systems.

3. "Awards for *Dirty Pretty Things*" in *Internet Movie Database*, <http://www.imdb.com/title/tt0301199/awards> (accessed December 6, 2005).

4. I use this terms "West" and "Western" ideologically rather than geographically, to include Britain, the United States, and Canada.

5. While there are several non-fiction journalistic or documentary accounts of refugees (including films that centre on contemporary issues such as Taran Davis's directed film, *Afghan Stories* (US: Seventh Art Releasing, 2002) and films that contextualize historical events, like director Mark Jonathan Harris's *The Long Way Home* (US: Seventh Art Releasing, 1997), there is a striking lack of fictional filmic narratives that articulate the hardships of refugee status. In 1948, director Lewis Milestone released *Arch du Triumph*, starring Ingrid Bergman (US: United Artists), and in 2003 Nigel Barker directed *Asylum* about a Christian minister who protects Iraqi refugees by hiding them in his church (UK: Committee Films, 2003).

6. Michael M. J. Fischer, "Starting Over: How, What, and for Whom Does One Write about Refugees? The Poetics and Politics of Refugee Film as Ethnographic Access in a Media – Saturated World," <http://www.ssc.uwo.ca/anthropology/farah/anthro507/Presentations/Anthropology507b-14%5B1%5D.1.doc> (accessed December 6, 2005). Fischer argues that cinema is an ideal medium through which refugees and former refugees can speak out against the mainstream cultures of their new countries. Not only is the creative process therapeutic in Fischer's eyes, but the vocalization and visualization of refugee experiences enables the works to "intervene in the international public culture."

7. Terrence Wright, "Refugees on Screen" (RSC Working Paper no. 5, Refugee Study Centre, University of Oxford, 2000).

8. I hesitate to use the term "immigrant" due to the implications of assimilation and permanency that surround such vocabulary. Rather, I lean toward the definition provided by *Nations Unbound*, that notes that the "migrant" condition is one of temporality, national un-identification, and movement. As is

demonstrated by that characters' constant repositioning in *Dirty Pretty Things,* the term "migrant" is far more fitting to their experiences. For more on the difference between migrancy, immigrancy, and transmigrancy, see Linda Green Basch, Nina Glick Schiller, and Cristina Szanton Blanc, *Nations Unbound* (NY: Routledge, 1994).

9. Allen Feldman, "On Cultural Anaesthesia: From Desert Storm to Rodney King," *American Ethnologist* 21 (1994): 407, 404–18.

10. Julia Kristeva, *Pouvoirs de l'horreur* (Paris: Seuil, 1980).

11. Prem Kuma Rajaram, "Humanitarianism and Representations of the Refugee," *Journal of Refugee Studies* 15, no. 3 (2002): 248, 247–64.

12. *Ibid.*, 251 [italics added].

13. Unlike Okwe, who is an illegal migrant, Senay has gained some political acknowledgement as a legal immigrant – still unable to work in Britain. Interestingly, Senay's legal status thrusts her into the same situation of hiding that Okwe finds himself in, as she is prohibited from working. While Okwe flees his past, Senay must flee her present, as immigration officials' surveillance follows her wherever she goes. Together, Okwe and Senay demonstrate the likenesses of the trials encountered by migrants to the West, regardless of their location on the continuum of immigration.

14. Throughout the film, Senay's protects her virginity as is dictated by her Muslim faith. Her loss of innocence is matched by her loss of faith ("My God does not speak to me anymore," she admits) – and the audience is to understand that losing her organs pales in comparison to this violation.

15. Sigmund Freud, "Mourning and Melancholia," *Standard Edition of the Complete Psychological Works,* vol. 14, trans. James Strachey, 243, 243–58.

16. Tammy Clewell, "Mourning beyond Melancholia: Freud's Psychoanalysis of Loss," *Journal of the American Psychoanalytic Association* 52, no. 1 (2004): 44, 43–67.

17. Although being an "exile" and a "refugee" are distinct subjectivities, here I connect them on the grounds that they both feel political and/or social pressure to leave their countries of origin and, therefore, must relocate in an unfamiliar, and at times hostile, environment.

18. Edward Said, "Reflections on Exile," in *Reflections on Exile and Other Essays* (Cambridge, MA: Harvard University Press, 2002), 177, 173–86.

19. Bruce Robbins, "Homelessness and Worldliness," *Diacritics: A Review of Contemporary Criticism* 13, no. 3 (1983): 69, 69–73.

20. *Ibid.*, 69.

21. *Oxford English Dictionary Online* (accessed December 19, 2005).

22. Freud, "Mourning and Melancholia," 244–45.

23. Sigmund Freud, "The Uncanny," in *Literary Theory: An Anthology,* 2nd ed., ed. Julie Rivkin and Michael Ryan (Malden: Blackwell, 2004), 424, 418–30.

24. *Ibid.*, 424.

25. William Shakespeare, Sonnet 132, lines 1–3, 9, in *The Norton Shakespeare*, ed. Stephen Greenblatt (New York: W.W. Norton, 1997).

26. Raphael, *The Entombment*, Galleria Borghese, Rome.

27. Gayatri T. Spivak, "Can the Subaltern Speak?" in *The Post-Colonial Studies Reader*, ed. B. Ashcroft, G. Griffiths, and H. Tiffin (New York: Routledge, 1995), 24–28.

28. Rajaram, 252.

29. Again, despite the fact that Senay is a legal migrant in England, she mirrors the refugee experience when she is forced to seek asylum from the sexually exploitative, violating, and dehumanizing social system of immigrant lifestyle. She is hunted by immigration officers representing the nation and must buy her freedom to the United States as a means of fleeing her current state. Interestingly, Senay is transformed into a "refugee" from *not* her country of origin, but the country of her migration.

30. *Ibid.,* 251.

31. Despite the fact that Senay is a legal migrant, she is pursued and limited in a manner that suggests wrongness on her part. Similar to the effect of the panopticon, the surveillance by the immigration officials and the sexual predators leaves Senay marginalized by the threat of discipline.

32. Kerry Demusz, *Listening to the Displaced: Action Research in the Conflict Zones of Sri Lanka* (Oxford: Oxfam, 1995), 7.

33. Rajaram, 251.

34. *Ibid.,* 251.

35. Which is different from being a model minority, as an Oriental is never assimilated or viewed in any way as Self instead of Other.

36. Liisa H. Malkki, "Refugees and Exile: From 'Refugee Studies' to the Natural Order of Things," *Annual Review of Anthropology* 24 (1995): 496, 495–525.

37. Rey Chow, "Postmodern Automatons," in *Feminists Theorize the Political*, ed. Judith Butler and Joan W. Scott (New York: Routledge, 1992), 101–17.

38. *Ibid.,* 5, citing J. Smith, *Melodrama* (London: Methuen, 1973).

39. Judith Butler, *Gender Trouble* (New York: Routledge, 1999), 185.

40. See para. 11 in Beth Harris's "Slaves of the Needle: The Seamstress in the 1840s," on *The Victorian Web*, <http://www.victorianweb.org/gender/ugoretz1.html> (accessed December 6, 2005).

41. Annemarie Kemeny, "The Female Machine in the Postmodern Circuit," in *Liminal Postmodernisms: The Postmodern, the (Post-)Colonial, and the (Post-)Feminist,* ed. Theo D'haen and Hans Bertens (Amsterdam: Atlanta, 1994), 261, 255–73.

42. *Ibid.,* 261.

43. For more on DuBois, consider "W.E.B. DuBois and Double-Consciousness," California State University, 2000, <http://www.csudh.edu/dearhabermas/dubois.htm> (accessed December 6, 2005).

44. John Fiske, "Television Culture," in *Literary Theory: An Anthology*, 2nd ed., ed. Julie Rivkin and Michael Ryan (Malden: Blackwell, 2004), 1277, 1274–84.

45. *Ibid.,* 1275.

46. *Ibid.,* 1274.

47. *Ibid.,* 1275.

48. Laura Mulvey, "Visual Pleasures and Narrative Cinema," *Screen* 16, no. 3 (1975): 10, 6–18.

49. *Ibid.,* 12.

50. For instance, see Mireille Rosello, *Postcolonial Hospitality: The Immigrant as Guest* (Stanford: Stanford University Press, 2001).

51. Edward Said, *Representations of the Intellectual: The 1993 Reith Lectures* (New York: Pantheon Books, 1994), 39.

52. Said, "Reflections," 177.

53. In one scene, Senay is pictured recalling her ethnic past, dancing fanatically to Turkish music in her apartment. This unsettling scene, wherein she is wide-eyed and moves chaotically, suggests that her country and culture of origin are both the cause and (unknowable) cure for her pain.

54. Jacques Lacan, "The Mirror Stage as Formative of the Function of the I as Revealed in Psychoanalytic Experience," in *Literary Theory: An Anthology*, ed. Julie Rivkin and Michael Ryan (Malden: Blackwell, 2004), 444, 447–61.

55. *Ibid.,* 444.

56. *Ibid.,* 447.

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Migration Workers as Political Subjects: Globalization-as-Practices, Everyday Spaces, and Global Labour Migrations

Hironori Onuki

Abstract

Within the currently intensified labour flows from developing societies to highly industrialized areas, the Philippines has been the largest supplier of government-sponsored contract workers. Overseas contract employment was institutionalized by the Philippine government in 1972 to tackle the problems of unemployment and foreign debt. The remittances from migrant workers have become a major source of foreign currency for the national economy, which led the then president Aquino to call overseas workers "national heroes." In this light, building upon Louise Amoore's conceptualization of globalization as sets of globalizing social practices, my essay will investigate the concrete, contingen,t and situated practices of global labour migration. By so doing this analysis will stress that these migrant workers are not passive recipients of Philippine state policies but are agential political subjects. It will argue that the structured social practices of global labour migrants not only participate in and depend on, but also contest and negotiate, the (re)constitution of capitalist relations of production and social reproduction within the neo-liberal restructuring of global order. The objective of my essay is to contribute towards both the illustration of global politics as social relations produced by various actors in multiple spheres and emergent crucial efforts to pursue the possibilities for an emancipatory project and political resistance.

Résumé

Dans le contexte des flux de travailleurs – flux actuellement intensifiés – allant des sociétés en développement vers des zones hautement industrialisées, les Philippines a été le plus grand pourvoyeur de travailleurs-sous-contrat parrainés par un gouvernement. L'emploi à l'étranger sous contrat a été institutionnalisé par le gouvernement philippin en 1972 comme mesure pour régler les problèmes du chômage et de la dette extérieure. Les envois de fonds des travailleurs expatriés sont devenus une source importante de devise étrangère pour l'économie nationale, ce qui avait amené la Présidente Aquino, présidente à l'époque, à qualifier les ouvriers expatriés de " héros nationaux ". Dans cette optique, et en élaborant sur le modèle de Louise Amoore qui a conceptualisé la globalisation comme étant des ensembles de pratiques sociales globalisantes, mon essai examinera les pratiques concrètes, contingentes et localisées de la migration globale de travailleurs. Ce faisant, cette analyse soulignera le fait que ces travailleurs migrants ne sont pas les bénéficiaires passifs de la politique de l'état philippin, mais sont en fait des acteurs politiques. Elle soutiendra que les pratiques sociales structurées des travailleurs immigrants à l'échelle globale, non seulement participent à, et dépendent de, la reconstitution des rapports de production capitalistes et de reproduction sociale dans la restructuration néolibérale de l'ordre mondial, mais qu'elles remettent en question et négocient ces mêmes rapports. L'objectif de mon essai est, d'une part, de concourir à illustrer la politique globale en tant que relations sociales produites par divers acteurs dans des sphères multiples, et de l'autre, de contribuer aux efforts décisifs émergents pour examiner les possibilités d'un projet émancipateur et une résistance politique.

... what we call globalisation is best understood as representative of sets of complex and often contradictory globalising social practices.

– Louise Amoore[1]

The rapidly deepening penetration of liberal market discipline into political, social, and cultural realms has become fundamentally and contradictorily associated with the reconfigurations of the global division of labour as well as with the intensification of exploitation, alienation, and commodification of human beings and nature. Within such a context, usually labelled as "globalization," the literature that attempts to conceptualize social and political relations on the global scale has been voluminous in the fields of International Relations (IR) and International Political Economy (IPE). Yet, largely due to these disciplines' preoccupation with the emergence of the modern nation-state and to the rise of the bourgeoisie as a dominant social class through the consolidation of capitalist economy, IR and IPE scholars predominantly tend to focus on elite forms of transnational, state, or corporate agents with direct, top-down decision making and thus distance global politics from contextualized experiences.[2] In this respect, the objective of this essay is not to depict international relations "from the bottom up" by advocating the ambiguous notion of "global civil society,"[3] but rather to unpack the linkages between global politics and individuals' everyday spaces by deeming global politics to be "social relations produced by a broad array of actors in multiple spheres."[4] To do so it will investigate the concrete, contingent, and situated practices of global labour migration and eventually contribute towards emergent crucial efforts to pursue the possibilities for an emancipatory project and political resistance.[5] In particular, building upon Louise Amoore's conceptualization of globalization as sets of globalizing social practices, this essay will explore: how and with what consequences are migrant workers, as active participants, contradictorily/paradoxically complicit and yet opposing to the neo-liberal restructuring of global order?

International labour migration is not a historical novelty, but its unprecedented magnitude and wide geographic dispersion, together with its potential as a force for social transformations in both the societies of origin and those of destination, has led Stephen Castles and Mark J. Miller to predict that the closing years of the twentieth century and the beginning of the twenty-first will be "an age of migration."[6] Within the currently intensified transfers of migrant labourers from developing societies to highly industrialized areas, the Philippines is the largest supplier of government-sponsored contract labour with over seven hundred thousand workers "deployed" annually to over 160 countries and territories.[7] Whereas in the early 1970s Philippine migrant labourers were overwhelmingly male and worked in the oil-producing states in the Middle East, their contemporary patterns highly consist of female workers who are mainly destined to other Asian countries. Labour migration in the form of overseas contract work was institutionalized by the Philippine government in 1972 as a stop-gap measure to tackle the persistent problem of unemployment and the lack of foreign exchange.[8] The remittances from overseas contract workers have become a major source of foreign currency for the national economy.[9] Based upon a specifically economic calculus and an unquestioned belief in the national development potential of this income stream, the then president of the Philippines, Cory Aquino, called overseas workers "national heroes."[10] In this light, this analysis will stress that these migrant workers are not passive recipients of the Philippine state policies that facilitate overseas employment but are agential political subjects, by arguing that the structured social practices of global labour migrants not only participate in and depend on, but also contest and negotiate, the reconfigurations of labour-capital relations in the (re)constitution of capitalist relations of production and social reproduction within the neo-liberal restructuring of global order.

To systematize this analysis, the section that follows will assess existing approaches to international labour migration, especially paying attention to perhaps the most influential leftist tradition of thought in IR and IPE, neo-Gramscian perspectives that have radically addressed the problem of power dynamics among social forces within capitalist modes of production and enhanced an understanding of the agency/structure relation in the historical transformations of world order. In the next section, the elitist bias of the neo-Gramscian approach will be problematized through perspective of globalization-as-practice, while drawing on emergent literature on the everyday spaces of global political economy. In the concluding section, it will be briefly illustrated how the perception of migrant workers as political actors in the restructuring of the global political economy ontologically and epistemologically questions the traditional notion of "North"–"South" divide.

Power, Production, and Global Labour Migration

Various orthodox social-scientific disciplines have devised different approaches to the study of international labour migration – broadly categorized into functionalism and structuralism in terms of their appreciations of the relationship between human agency and prevailing socio-economic structures in exploring the question of why people migrate.[11] However, the gulf between these two paradigms has become

reified into an unproductive polarization, sustaining a separation between micro and macro scales of analysis and inducing individualistic and structural determinisms.[12] To more precisely interrogate the complex dynamics of global labour flows, it thus becomes vital to transcend the theoretical impasse that has been created between functionalist and structuralist accounts through reconciling and even transcending the artificially constructed dualism of agency-structure. In this light, the neo-Gramscian approach helps to explore the dialectic relationships between agents and social structures within the reciprocal interactions between rapidly intensified flows of migrant workers and the restructuring in the social relations of production, forms of state, and configurations of power dynamics among various social forces. Although there is no one specific neo-Gramscian approach constructing a cohesive "school"[13] and it remains uncertain whether the neo-Gramscians provide a final resolution for the problem of agency-structure that may well prove to be tangled up in a "Gordian knot that cannot be unraveled or solved,"[14] their development of a social ontology associated with a distinct notion of "historical structures" contributes to reveal agency within the apparent objective status of social structure.

A neo-Gramscian perspective, first pioneered by Robert W. Cox, has promoted a historicist mode of thought, in contrast to the positivist production of an absolute and transhistorical knowledge based on sets of *a priori*, ontologically autonomous categories (agents or structures) in mainstream IR and IPE.[15] By extending Gramsci's approach into the study of global power relations, Cox attempts to rethink a historical materialist problematic of social transformation in world order that revolves around the *social ontology of historical structures* and to expose the contradictions within it in order to channel structural change in an emancipatory direction. For him, the social ontology of historical structures is conceptualized as "persistent social practices, made by collective human activity and transformed through collective human activity."[16] Put alternatively, it emphasizes historical change as "the reciprocal relationship of structures and actors"[17] within the "limits of the possible" that are not fixed and immutable but exist in the connections between past, present, and future.[18] Indeed, Cox's formulation of ideas-institutions-material capabilities as social forces operating in the social ontology of historical structures composed of three basic levels – production, forms of state, and world order – makes it possible to explore how structures are socially constructed and consequently become part of the "objective" world by virtue of their existence in the intersubjectivity of various agents.[19]

Within the social ontology of historical structures, Cox underscores the analytical primacy of "the reciprocal relationship between power and production"[20] in the constitution of a normative and material totality of world order. "Production," as he explains, "generates the capacity to exercise power, but power determines the manner in which production takes place."[21] It is argued that modes of social relations of production are not only confined to everyday conduct entailed in the production and consumption of physical goods but also cover the (re)production of knowledge, morals, and institutions that are required to warrant the hegemony of existing capitalist social order.[22] Since the 1970s, according to Cox and others, fundamental "structural changes" within the social relations of production have resulted in a crisis of post-war hegemonic world order that crafted a mechanism of reconciling domestic pressures with the requirements of a world economy.[23] These changes are largely characterized by the internationalization of the state and production through what Cox calls "global perestroika,"[24] a political project somehow coordinated by a *nébuleuse* (an indistinct constellation) of an emerging "transnational managerial class" agency consisting of dominant actors in global capitalism and state officials.[25] In this vein, the scholars who explicitly and implicitly rely on the neo-Gramscian methods of historicity argue that the contemporary dynamics of global labour migration shape and are shaped by such neo-liberal reconfigurations of the global political economy.

The question of whether the national state still matters in the context of the increasingly globalizing economy has generated controversy among scholars, ranging from some who posit the imminent "retreat of the state" to others who consider the state as one of the main "authors" of globalization.[26] In this regard, the interactions between migration policies and labour flows not only display the continuing weight of state capacity in regulating the transfers of labour across borders but also underline the qualitatively changing nature and function of the state through "the global process whereby national policies and practices have been adjusted to the exigencies of the world economy"[27] – what Cox calls the "internationalization of the state."[28] In examining the shifts in immigration policies among OECD member states that have encountered massive inflows of foreign workers, Hélène Pellerin and Henk Overbeek highlight the growing convergence in adopting highly selective and restrictive modes of regulation to manage the logic determining both the instances and places of the mobility-fixity of capital and labour within global capitalism.[29] On the other hand, in the peripheral societies, as Pellerin notes, "[c]onditions for new credit are generally translated by skewed spending priorities of states and they result in the exclusion of large sections of

the population."[30] With the prioritization of development strategies in favour of foreign capital through the internationalizing of the state, the outflows of people are perceived as beneficial in bringing foreign currency in the form of remitted wages and in alleviating the employment situation at home. In the case of the Philippines, since the mid-1970s the state has created a policy framework for controlled emigration flows that encourages citizens to seek employment opportunities overseas while forming bilateral agreements with labour-importing countries.[31]

In Cox's view, the internationalizing of the state is intimately associated with the distinctive restructuring of the capitalist world economy expansion, *i.e.*, the "internationalization of production" that denotes "the integration of production processes on a transnational scale, with different phases of a single process being carried out in different countries" and that "currently plays the formative role in relation to the structure of states and world order."[32] The contemporary globalizing of production relations, corresponding with a rise of the structural power of internationally mobile capital,[33] has spatially rearranged the traditional international division of labour at the global, and more particularly the regional, level leading to the formation of global assembly lines boosting flexible capital accumulation. Pellerin's analysis of the global restructuring of the agro-food industry demonstrates that the introduction of capital-intensive modes of production into peripheral societies has ruined pre-existing socio-economic organization and intensified labour emigration from these societies.[34] Indeed, the increasing feminization of the new proletariats owing to the recruitment preference at the labour-intensive production plants constructed in the developing regions through the transnational relocation of production has not only disrupted their traditional production and reproduction processes but also contributed to male emigration.[35] Unstable employment situations in these export-processing zones have also promoted the growing prominence of female emigrants.[36] Furthermore, as Pellerin notes, a rapid expansion of service industries and the deindustrialization of highly industrialized societies has generated structural shortages of low-wage labour, inducing massive inflows of foreign workers as flexible and "disposable" cheap labour sources.[37]

Thus, the neo-Gramscians' social ontology of historical structure provides an important analytical framework for capturing the interplay of agents and structures, while highlighting dialectical development between global labour displacements and the internationalizing of state and production. From this viewpoint, Pellerin regards transnational migration as a differential agency of change in the world order through the contradictions that its dynamics involve.[38] However, she together with other neo-Gram-

scians does not precisely elaborate the politics of migrant workers, largely due to their concentration on co-operation of, and fractional conflicts within, the transnational managerial class in analyzing the restructuring of the global political economy. Put differently, the questions left out within their work are: how have migrant labourers experienced the implications of the neo-liberal restructuring of the global political economy in their everyday life?; and, how is it possible to understand the viable political agency to promote emancipatory transformations amongst migrant workers that are antagonistic to the dominant global order? In this light, built upon Amoore's conceptualization of globalization as practices, the next section will problematize the silence of neo-Gramscian approach in these regards and, more importantly, attempt to shed light on ways in which the structured social practices of migration workers as agential political actors not only participate in and depend on but also contest and negotiate the reconfigurations of the global political economy.

Globalization-as-Practices and Everyday Spaces: Filipino Migration Workers as Political Subjects

The conception of the restructuring of world order as a "strategic political project," which characterizes the neo-Gramscian approach, assumes that globalization is coherently designed and directed by the purposeful and rational actions of individuals and collective agents (transnational managerial class) who are instilled with a unitary identity defined by the shared project itself. Amoore posits that this perspective can provide vital insights "about the elite actors who contribute to a discourse of global restructuring, but little about the everyday forms of thought and action that characterise the nature of that restructuring."[39] More strikingly, a neo-Gramscian focus on elitist agency presupposes migration workers as passive recipients of state policies and/or as victims of geographically uneven and fragmented development of capitalist economy. It also overestimates the hegemony of transnational capital by diminishing the possibility for transformation within world order,[40] too often leaving questions regarding counterhegemonic forms of resistance for future research. To critically analyze the potentiality for social change, notes André C. Drainville, it is imperative to "reason from concrete, contingent and situated practices" by seeking "the possibility that the world economy may be a significant context for social forces to meet [and negotiate], where might be defined new modes of social relations."[41] In this light, Amoore's argument of globalization as structured social practice should be taken seriously to explore ways to articulate the politics of global labour displacements and to view migrant workers as agential political actors.

The conception of globalization as a political project, as Amoore points out, essentially underestimates the emerging social relations of neo-liberal globalization constituting and shaped by the structured social practices that make these possible. She emphasizes it as key to recognize that neo-liberal restructuring of global political economy is "experienced, given meaning, reinforced/challenged in the everyday social practices of individuals and groups at multiple levels...."[42] By viewing globalization as significantly contested through and contingent upon structured social practices, Amoore argues *both* that it is the everyday practices of labourers that make particular forms of global production possible *and* that the restructuring of work potentially may shape contested and contradictory dynamics of social change in the current and future conditions. Such a practice-centred view of global politics calls for bringing workers, including transnational labour migrants, as not passive but rather as agential subjects, into a critical understanding of global political economy. Here, whereas Amoore does not specifically expound the analytical edifices to systematically capture the complexities of practices, Matt Davies and Michael Niemann's engagement with the work of Henri Lefebvre provides useful insights to further elaborate the globalization-as-practices perspective.

Davies and Niemann argue that the addition of Lefebvre's concepts of "everyday life" and "social space" to the analysis of global politics allows for a more comprehensive and more concrete understanding of social practices than much of the work done in IR, by offering a tool to overcome the reification of international relations in social life.[43] For Lefebvre, "everyday life" is a contested place characterized by mystifications that derive from the experience of alienation in the context of modern society and the struggle to overcome them, while "space" is socially produced as the precondition and the outcome of practices "that permit fresh action to occur, while suggesting others and prohibiting yet others."[44] By utilizing these conceptualizations, he sees the possibility for emancipatory action in recognizing the contradictions between the actual experience of everyday life and the ideological claims about it, which are mystified through the process of extending abstract space – the space of capitalism, in his view – into all spheres of human life. Derived from Lefebvre's insistence that lived space is a strategic location for social struggle to overcome mystifications, Davies and Niemann stress that "we must account for the waxing and waning of the capacities of specific social agents to effect global politics, and for the circulation of struggles among different actors and between the various levels of social life."[45] They also regard social spaces of family, work, and leisure as crucial arenas in which the emancipatory potential in everyday life can be

pursued and international relations be retrieved from the realm of experts and statesmen. In interviewing the Philippine female migrant workers, Pauline Gardiner Barber notes:

> ...discussion of the contingencies of migration are [*sic*] set aside through reference to the Filipino cultural idiom of *bahala na*, which communicates not only a sense of fatalism but also an expression that fate is "in God's hands." By the same token, I also wish to emphasize that fate is negotiated with agency.[46]

In this respect, to highlight Filipino workers as politically agential actors in negotiating their fates and shaping the structures of social and world order, what is crucial is to illustrate global labour migration as practices by concretizing the lived experiences of migrant workers and their struggles within the everyday spaces of family, work, and leisure.

The households' strategic responses to the penetrations of the capitalist social relations of production into the countryside through the neo-liberal economic transformation of the Philippines in part explain the increasing feminization of labour migration since the 1980s.[47] Within the contradictory processes of land concentration and land fragmentation through expanded mechanization of agricultural production, Filipino families have tactically centralized marginal landholdings in the hand of sons, while "selecting out" young, single women for migration to cities and urging them to get an education.[48] Due to unequal gender relations in the Philippines that view female workers as a secondary workforce, as Elizabeth Uy Evita discerns, these women who obtain high education attainment often encounter the conditions of underemployment, which leads them to seek higher-income overseas employment opportunities.[49] James A. Tyner elucidates by drawing on the work of Jamie Peck that "the lack of opportunities outside the waged labo[u]r system, coupled with limitations within the waged system, contribute to the incorporation of workers into the overseas employment program."[50] Most of the Filipino female migrants who engaged in domestic work abroad, in fact, have an above-average education and many are teachers and nurses.[51] Such situations where the decisions to obtain overseas contract work have been more progressively prompted by a condition of underemployment rather than unemployment not only problematize the prevailing hypothesis that it is surplus labour that emigrates but also indicate a certain degree of ingenuity and agency of migrant workers in the migratory decision-making processes.

Some studies on Philippine migration also emphasize the importance of obligatory and reciprocal relations within the Filipino family.[52] Particularly, "[f]or a woman to

be mindful of well-being of her family, primarily parents but also dependent siblings, fulfils one of the dictates of Philippine femininity."[53] The incentive to become a dutiful daughter by providing "help" to her parents and relatives as remittances therefore may influence the labour migration decision-making process among Filipino women. As women begin to play the role of central breadwinner in their families by means of remittance, they have posed challenges to the historically constructed sexual division of labour in Philippine society.[54] Furthermore, Tyner presents the narrative of a Filipino migrant who worked in the sex industry in Japan to illustrate how she has obtained a sense of her own independence, both financially and personally, through her experiences of overseas employment.[55] Nevertheless, Barber more cautiously notes that some women feel liberation from the cultural constrains of marriage, while others find economic gains for their families at the expense of personally fulfilling marital relationships.[56] Combining these perspectives, therefore, a keen attention must be paid not to essentialize individual Filipinos or the Philippine family in order to precisely capture the agential negotiation of female migrant workers in the social spaces of the family with locally recognized forms of femininity and their complex struggles in the lived experience of overseas employment.

Indeed, to examine the lived experience of Filipino migrant workers in their contested spaces of work, the reformulation of political action as everyday social relations that involve covert and overt (re)negotiation of power in its material and non-material dimensions, rather than only as activities associated with the formal conduct of governance, is important. Christine B.N. Chin's emphasis on the "infrapolitics" of Filipino and Indonesian women who perform commoditized domestic labour in Malaysia provides vital insights in this respect thereby problematizing the socially constructed perception of these women as objects to be controlled and as passive victims powerless to change and challenge employer-employee relations.[57] "Infrapolitics" refers to the everyday forms of resistance conducted singularly and/or collectively by marginalized or subordinate groups, which are not openly expressed in most cases, largely due to existing power imbalances in most forms of dyadic dominant-subordinate relations, such as that of employer-domestic workers.[58] Chin sheds light on the infrapolitics of foreign domestic workers by exposing the "hidden" transcripts composed of what these workers say and how they act beyond the realm of the public transcripts in which employers overtly create their superiority within and beyond the workplace. Her analysis of migrant women's narratives on their relationship with employers discerns these workers' rejection of the degree of dehu-

manization that inheres in the exchange of domestic work for wages by frequently employing the slave metaphor. In this sense, she advocates that:

> If Filipina and Indonesian women's verbal and nonverbal infrapolitical activities are considered within the boundaries of what acts are and are not possible unlegislated work environments that retain the remnants of slavery, then foreign domestic workers are political actors who attempt to renegotiate employer-employee relations in the household in particular, and the Malaysian public's perception of foreign servants in general.[59]

Whereas the effectiveness of foreign domestic servants' infrapolitical activities remains debatable, analysis of these actions highlights the agency of these workers in strategic (re)negotiation with the unequal distribution and exercise of power in the social spaces of their workplace.

Founded upon Lefebvre's argument of the family as the crucial space in which the social relations of production has been (re)produced, the growing participation of migrant women in the commoditized domestic services makes possible the (re)production of social relations of production under the neo-liberal restructuring of the global political economy. The commodification of domestic work not only indicates the deep penetration of the abstract space of market relations into people's everyday life but also disrupts the assumed separation of productive and reproductive spheres that is left unquestioned in much of IR and IPE literature. In Malaysia, as Chin notes, demands for foreign female domestic workers are fuelled by sustained economic development that enlarged the middle class, while providing greater employment opportunities for, and heightening the job expectations of, working class Malaysian women.[60] Here, Brigitte Young sheds light on the link between the feminization of work and the increasing polarization or segmentation among women, especially in the highly industrialized societies. She argues that the contemporary reorganization of the international division of labour in the decentralized "flexible accumulation" processes[61] of the global economy involves the emergence of the new "mistress" and her "maid." The growing participation of professional women in the labour market is accompanied by the development of paid work in the private sphere of family, which allows these women to rely on other women, often foreign migrant women, in order to cope with the increasingly reprivatized housework. This formation of a new power relationship *between women* through the marketization of household-oriented services, as Young warns, has led to the creation of "a new ethnically defined female underclass that lacks political rights and legal rights."[62] That is, to concretely explore the dynamics of work spaces that

female domestic worker are involved in, the contextualization of their lived experience needs to take into account these processes of the feminization of work and the concomitant reprivatization of household work and their implications for creating the heterogeneity of the category "woman" in terms of class, gender, and ethnicity.

In terms of the social space of leisure, as Lefebvre contends, leisure provides compensation for the alienation of work inasmuch as it offers the possibility of pleasure, but its time and space are not uncontested, where alienation also takes place.[63] The spaces of leisure for Filipino migrant workers, especially female domestic servants, are highly circumscribed. On their limited days off the most common places which Philippine female domestic workers occupy are shopping centers.[64] Although the analysis does not clarify whether these women actually purchase goods and/or services there, the production of migrant workers in the Philippines and the exchange of their labour power in the global labour market are closely interrelated with the encouragement of consumerism. In fact, routinely published advertisements in Philippine newspapers and magazines have extolled the material benefits of oversea employment by showing returning migrant workers laden with consumer goods.[65] The enhanced consumption practices in the Philippines through the escalation of international labour migration are also reflected in the dispersal of overseas remittance incomes to small-scale "unproductive" investments, which has created the effect of increasing social and economic polarization at the village level.[66] Overall, as the general need for leisure finds expression as consumerism, people encounter leisure not as the avenue through which they can obtain compensation for the fragmentation and alienation of work but rather as the further alienating spaces predetermined by the need to accelerate the circulation of commodities.[67]

In contrast, Katherine Gibson *et al.* illustrate how the Asian Migrant Center (AMC) in Hong Kong creates the social space of leisure in which the empowering process for the Filipino migrant women are empowered to effect changes in social, economic, and political structures while promoting "development" not necessarily defined in the capitalist mould in their "home" communities.[68] The AMC encourages migrant women to participate in its training modules in their leisure time in order to acquire new entrepreneurial capacities and skills. These female migrants are also assisted in obtaining the capacity to manage hard-earned wages in their absence and not to depend on husbands or other family members. In other words, the strategies pursued by the AMC not only show how the Filipina migrant contract domestic workers are potentially progressive economic activists but also highlight the mul-

tiple and interdependent class subjectivities open to these workers. One of the most clearly advocated critiques of the AMC's program points to its possibility of inducing returning migrants to become capitalists, whereby fortifying the bourgeois nature of Philippine society and accelerating its incorporation into a global capitalist system. However, such a viewpoint, as Gibson *et al.* claim, reduces all happenings that occur in the period of global capitalism to indication of the hegemonic power of capitalism. These authors underline the importance of de-linking analysis from any notion of historical necessity or homogeneity within a static and teleological framework, while stressing the AMC's efforts as liberating migrant workers and complexifying futures.

Thus, the exploration of the lived experience of Filipino migrant workers and their struggle in the social spaces of family, work, and leisure shows how these workers are contradictorily complicit but at the same time opposing to the neo-liberal restructuring of the global political economy. Nevertheless, these existing studies focus on the specific collective and/or individual actions by the specific types of Filipino workers, such as female domestic workers, in the confined space and time. Future studies are recommended to overcome this limitation in order to more holistically analyze the dynamics of migrant workers' everyday spaces. In this vein, what is the most crucial to keep in mind is, as Davies and Niemann precisely put it, to realize that "the possibility for emancipatory action lies in the possibilities of differential spaces, where we recognize difference and thus oppose the homogenization of abstract space [of capitalism]."[69]

Concluding Remarks

Reflecting the current dynamics of global labour migration, the prevailing fascination with the elites in the field of IR and IPE, which is exemplified by neo-Gramscian perspectives, denies the agency of migrant workers and obscures the complexity of their lived experience. In this regard, Amoore's globalization-as-practices facilitates the concretization of the contingent and situated processes of international labour migrations. Founded upon this framework while referring to Davies and Niemann's rethinking of Lefebvre's work, this essay emphasizes migrant workers as political subjects who are contradictorily complicit in and yet opposed to the neo-liberal restructuring of the global political economy. By particularly focusing on the practices of Philippine migrant workers, it demonstrates how their struggles within the everyday spaces of family, work, and leisure not only participate in and depend on but also challenge and (re)negotiate the neo-liberal transformations of the global political economy. Further, such a perception of

global labour migration problematizes the traditional divide between "North" and "South" in the ontological and epistemological senses. In the Philippines, with the largest flows of overseas contract workers in the global economy, transnational experiences are "localized" through the anticipation of departures and the enthusiasm created by returning migrants. Circular flows of people, information, materials, and cash produce an imaginative, new form of "place" that stretches across national boundaries as well as core-peripheral and rural-urban distinctions by making it difficult to believe in the "magic of straight lines"[70] that ontologically differentiate the "North" and "South." On the other hand, the emphasis of Filipino migrant workers as agential political actors poses serious challenge to the myth in the dominant study of IR that locates the subject that speaks through production of universal, theoretical knowledge only in the "North," while viewing the subject in the "South" as the provider of empirical data. To overcome this epistemological presumption, as Ramón Grosfoguel reminds us,

> Critical border thinking…redefines modernity from the cosmologies and epistemologies of the subaltern, located in the oppressed and exploited side of the colonial difference…. [Only such a perspective makes possible] a redefinition of citizenship, democracy, human rights, and humanity, beyond the narrow definitions imposed by European modernity.[71]

Notes

1. Louise Amoore, *Globalisation Contested: An International Political Economy of Work* (Manchester and New York: Manchester University Press, 2002), 7.
2. *E.g,* André C. Drainville, *Contested Globalization: Space and Place in the World Economy* (London and New York: Routledge, 2004).
3. For the critical study of the problems in the concept of "global civil society," see Mustapha Kamal Pasha and David L. Blaney, "Elusive Paradise: The Promise and Peril of Global Civil Society," *Alternatives* 23, no. 3 (1998): 417–450; Louise Amoore and Paul Langley, "Ambiguities of Global Civil Society," *Review of International Studies* 30, no. 1 (2004): 89–110. Also, see Edward A. Comor, "The Role of Communication in Global Civil Society: Forces, Processes, Prospects," *International Studies Quarterly* 45, no. 3 (September 2001): 389–408, on the important account of the concept of global civil society through the lens of the critical political economy of international communication.
4. Matt Davies and Michael Niemann, "The Everyday Spaces of Global Politics: Work, Leisure, Family," *New Political Economy* 24, no. 4 (2002), 557.
5. *E.g. ibid*. and Drainville.
6. Stephen Castles and Mark J. Miller, *The Age of Migration: International Population Movements in the Modern World*, 2nd ed. (New York and London: Gulford Press, 1998).
7. James A. Tyner, *Made in the Philippines: Gendered Discourses and the Making of Migrants* (London and New York: Routledge, 2004), 21. This number does not include approximately 1.9 million Filipinos living abroad with "unauthorized" status. Furthermore, according to Kanlungan Centre Foundation in the Philippines, the estimate 7.29 million overseas Filipino workers – both sea- and land-based – are spread out in more than 180 countries and destinations, which constitute over 10 per cent of the country's population and at least a fifth of its labour force. Kanlungan Centre Foundation, *Fast Facts on Filipino Labor Migration 2000* (Quezon City: Kanlungan Centre Foundation Inc., 2000); quoted in Mary Lou L. Alcid, "Overseas Filipino Workers: Sacrificial Lambs at the Altar of Deregulation," in *International Migration and Sending Countries: Perceptions, Policies and Transnational Relations*, ed. Eva Østergaard-Nielsen (New York: Palgrave Macmillan, 2003), 99.
8. For a detail review of this history, see Joaquin L. Gonzalez III, *Philippine Labour Migration: Critical Dimensions of Public Policy* (Singapore: Institute of Southeast Asian Studies, 1998).
9. The annual average of remittance was US$6.5 billion from 1999 to 2001, which is the single biggest source of foreign currency for the Philippines; see Alcid, 100. Indeed, for 2003, remittance totalled US$7.6 billion, accounting for 7.5 per cent of the GDP; see *Asian Migrant Yearbook 2004: Migration Facts, Analysis and Issues in 2003* (Hong Kong: Asian Migrant Centre [AMC], 2004), 249.
10. Katherine Gibson *et al*., "Beyond Heroes and Victims: Filipina Contract Migrants, Economic Activism and Class Transformations," *International Feminist Journal of Politics* 3, no. 3 (Autumn 2001): 367.
11. Caroline B. Brettell and James F. Hollifield point out, in the study of international migration, a deep separation of those social scientists who take a top-down "macro" approach from those whose approach is bottom-up "micro" oriented. Caroline B. Brettell and James F. Hollifield, "Migration Theory: Talking across Disciplines," in *Migration Theory: Talking across Disciplines*, eds. Caroline B. Brettell and James F. Hollifield (New York and London: Routledge, 2000), 2. Also, the broad review of existing different theories of international labour migration, see Douglas S. Massey *et al*., "Theories of International Migration: A Review and Appraisal," *Population and Development Review* 19, no. 3 (September 1993): 431–466.
12. Jon Goss and Bruce Lindquist, "Conceptualizing International Labor Migration: A Structuration Perspective," *International Migration Review* 29, no. 2 (Summer 1995): 318.
13. Andreas Bieler and Adam David Morton, "Introduction: Neo-Gramscian Perspectives in International Political Economy and the Relevance to European Integration," in *Social Forces in the Making of the New Europe: The Restructuring of European Social Relations in the Global Political Economy*, ed. Andreas Bieler and Adam David Morton (New York: Palgrave, 2001),

6, 17. Also, Adam David Morton, "The Sociology of Theorizing and Neo-Gramscian Perspectives: The Problems of 'School' Formation in IPE," in *Social Forces in the Making of the New Europe: The Restructuring of European Social Relations in the Global Political Economy*, ed. Andreas Bieler and Adam David Morton (New York: Palgrave, 2001), 25–43. Stephen Gill addresses the same point much earlier by noting that: "As there is no single school of Marxism…so too is there no single Gramscian or 'Italian' school." Stephen Gill, "Gramsci and Global Politics: Towards a Post-Hegemonic Research Agenda," in *Gramsci, Historical Materialism and International Relations*, ed. Stephen Gill (Cambridge: Cambridge University Press, 1993), 2. For the variety of neo-Gramscian perspectives dealing with a diversity of issues, see Adam David Morton, "Social Forces in the Struggle over Hegemony: Neo-Gramscian Perspectives in International Political Economy," *Rethinking Marxism* 15, no. 2 (April 2003): 165–67; and Morton, "The Sociology of Theorizing and Neo-Gramscian Perspectives," 37–41.

14. Andreas Bieler and Adam David Morton, "The Gordian Knot of Agency-Structure in International Relations: A Neo-Gramscian Perspective," *European Journal of International Relations* 7, no. 1 (2001): 5–35.

15. *E.g.* Robert W. Cox, "Social Forces, States, and World Orders: Beyond International Relations Theory," in *Approaches to World Order*, ed. Robert W. Cox with Timothy J. Sinclair (Cambridge: Cambridge University Press, 1981/1996), 85–123; and Robert W. Cox, *Production, Power, and World Order: Social Forces in the Making of History,* vol.1, *Power and Production* (New York: Columbia University Press, 1987).

16. Cox, *Production, Power, and World Order*, 4.

17. Cox, "Critical Political Economy," in *International Political Economy: Understanding Global Disorder*, ed. Björn Hettne (London: Zed Books, 1995), 33.

18. Gill, "Gramsci and Global Politics," 8–9; and, Gill, "Epistemology, Ontology and the 'Italian School,'" in *Gramsci, Historical Materialism and International Relations*, ed. Stephen Gill (Cambridge: Cambridge University Press, 1993), 22.

19. According to Cox, (1) *the social relations of production*, encompassing the totality of social relations in material, institutional, and discursive forms that engender particular social forces; (2) *forms of state*, articulating the historically contingent state/civil society complexes; and (3) *world order*, as the ensemble of power among diversified social forces which not only represent persistent patterns of stability and conflict but also permit scope for thinking about how alternative forms of world order might emerge. Cox, "Social Forces, States, and World Orders: Beyond International Relations Theory," 97–101. More recently, Isabella Bakker and Stephen Gill consider Cox's triadic formation of human activity "not as levels as [he suggests], but as different moments in the constitution of a contradictory totality of world order." Isabella Bakker and Stephen Gill, "Ontology, Method, and Hypotheses," in *Power, Production and Social Reproduction: Human In/security in the Global Po-*

litical Economy, ed. Isabella Bakker and Stephen Gill (New York: Palgrave Macmillan, 2003), 25.

20. Cox, *Production, Power, and World Order*, 1.

21. *Ibid.*

22. Cox, "Production, the State and Change in World Order," in *Global Changes and Theoretical Challenges: Approaches to World Politics for the 1990s*, ed. Ernst-Otto Czempiel and James N. Rosenau (Lexington, MA: Lexington Book, 1989), 39; quoted in Bieler and Morton, "The Gordian Knot of Agency-Structure in International Relations," 24.

23. *E.g.* Cox, "Global *Perestroika*"; Cox, "Social Forces, States and World Orders"; and Gill, "Gramsci and Global Politics."

24. Cox, "Global *Perestroika.*"

25. Cox, "Social Forces, States and World Order," 111. For the critical discussion regarding the idea of "*nébuleuse*," see Drainville, "Of Social Spaces, Citizenship, and the Nature of Power in the World Economy," *Alternatives* 20 (1995): 51–79. Here, it may be argued that the neo-Gramscian view of the neo-liberal restructuring of the global political economy as political project is derived from Karl Polanyi's analysis of the deliberate construction of liberal economy as a utopian model in the nineteenth century by the state officials. Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Boston: Beacon Press, [1944] 1957).

26. Susan Strange, *The Retreat of the State: The Diffusion of Power in the World Economy* (Cambridge and New York: Cambridge University Press, 1996); Leo Panitch, "Globalization and the State," *Socialist Register: Between Globalism and Nationalism*, eds. Leo Panitch and Ralph Miliband (London: Merlin Press, 1994), 60–93; and Panitch, "Rethinking the Role of the State in an Era of Globalization," in *Globalization: Critical Reflections*, ed. James H. Mittelman (London and Boulder, CO: Lynne Rienner Publishers, 1997), 83–113.

27. Cox, *Production, Power, and World Order*, 253.

28. *Ibid.*, 253–65. Also, see Cox, "Social Forces, States and World Orders," 230–32. For a similar but competing interpretation of the "internationalization of the state," see Sol Picciotto, "The Internationalization of the State," *Capital and Class* 43 (Spring 1991): 43–63.

29. Hélène Pellerin and Henk Overbeek, "Neo-Liberal Regionalism and the Management of People's Mobility," in *Social Forces in the Making of the New Europe: The Restructuring of European Social Relations in the Global Political Economy*, ed. Andreas Bieler and Adam David Morton, foreword by Robert W. Cox (New York: Palgrave, 2001), 137–157.

30. Hélène Pellerin, "New Global Migration Dynamics," in *Globalization, Democratization and Multilateralism*, ed. Stephen Gill (New York: St. Martin's Press, 1997), 111.

31. Gonzalez III, 33–36.

32. Cox, "Social Forces, States and World Orders," 109.

33. Stephen Gill and David Law, "Global Hegemony and the Structural Power of Capital," *International Studies Quarterly* 33, no. 4 (1989): 484.

34. Pellerin, 115–16.

35. *E.g.* Jean L. Pyle, "Sex, Maids, and Export Processing: Risks and Reasons for Gendered Production Networks," *International Journal of Politics, Culture and Society* 15, no. 1 (September 2001): 55–76.

36. For the case of the U.S. immigration, see Saskia Sassen, *Globalization and Its Discontents: Essay on the New Mobility of People and Money* (New York: New Press, 1998).

37. Pellerin, 112–13.

38. *Ibid.*, 122.

39. Amoore, *Globalization Contested*, 6.

40. Drainville, "Of Social Spaces, Citizenship, and the Nature of Power in the World Economy."

41. Drainville, *Contesting Globalization*, 32, 30.

42. Amoore, *Globalization Contested*, 7. Also, see Paul Langley, "The Everyday Life of Global Finance," *IPEG Papers in Global Political Economy* 5 (February/March 2003), http://www.bisa.ac.uk/groups/ipeg/papers/PaulLangley.pdf (accessed April 14, 2005).

43. Davies and Niemann.

44. *Ibid.,* 559, quoting Henri Lefebvre, *The Production of Space* (Oxford: Blackwell, 1991), 73

45. Davies and Niemann, 567.

46. Pauline Gardiner Barber, "Agency in Philippine Women's Labour Migration and Provisional Diaspora," *Women's Studies International Forum* 23, no. 4 (2000): 403.

47. In 1987, women comprised 47 per cent of land-based overseas worker. As of July 2002 they constituted 73 per cent of annual contract labour deployment of land-based workers. POEA, "Deployment of Land-Based Newly Hired Overseas Filipino Sorkers by Skills, Category and Sex," <http://www.poea.gov.ph>; quoted in Alcid, 103.

48. Elizabeth Uy Eviota, *The Political Economy of Gender: Women and the Sexual Division of Labour in the Philippines* (London and Atlantic Highlands, NJ: Zed Books, 1992).

49. *Ibid.*, 90–94.

50. Tyner, 77.

51. Eviota, 144.

52. Tyner, 116–17.

53. Barber, 402.

54. Eviota, 145.

55. Tyner, esp. chap. 5.

56. Barber, 405.

57. Christine B.N. Chin, *In Service and Servitude: Foreign Female Domestic Workers and the Malaysian "Modernity" Project* (New York: Columbia University Press, 1998).

58. James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven: Yale University Press, 1990). Also see James C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven: Yale University Press, 1985).

59. Chin, 163.

60. *Ibid.,* 353.

61. David Harvey, *The Conditionality of Postmodernity* (Oxford: Blackwell, 1989); quoted in Brigitte Young, "The 'Mistress' and the 'Maid' in the Globalized Economy," in *Working Classes, Global Realities: Socialist Register 2001*, ed. Leo Panitch and Colin Leys (London: Merlin Press, 2000), 316.

62. Young, 322.

63. Davies and Niemann, 571.

64. Brenda S.A. Yeoh and Shirlena Huang, "Spaces at the Margins: Migrant Domestic Workers and the Development of Civil Society in Singapore," *Environment and Planning A* 31 (1999): 1149–67.

65. Tyner, 62.

66. Gibson *et al.*, 369.

67. Davies and Niemann, 572.

68. Gibson *et al.*, 380.

69. Davies and Niemann, 575.

70. R.B.J. Walker, *After the Global/Before the World* (Cambridge: Cambridge University Press, forthcoming), 63; quoted in Naeem Inayatullah and David L. Blaney, *International Relations and the Problem of Difference* (New York and London: Routledge, 2004), 187.

71. Ramón Grosfoguel, "The Implications of Subaltern Epistemologies for Global Capitalism: Transmodernity, Border Thinking, and Global Coloniality," in *Critical Globalization Studies*, ed. Richard P. Appelbaum and William I. Robinson (New York and London: Routledge, 2005), 288. Also, see Mustapha Kamal Pasha, "Islam, 'Soft' Orientalism and Hegemony: A Gramscian Rereading," *Critical Review of International Studies and Political Philosophy* 8, no. 4 (December 2005): 543–58.

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