

**Beyond Borders: Unaccompanied Refugee Minors and Access to Refugee Protection**

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**Abstract:**

The thesis seeks to explore the challenges faced by unaccompanied refugee minors when seeking refugee protection. It will examine the way in which discourses and policies, both in Canada and internationally, undermine unaccompanied refugee minors accessing refugee protection or being successful in their claim. Relying mainly on post-colonial theory, the thesis will address the historical context that created the phenomenon of forced migration of children, and the role the Global North plays in perpetuating it. Further, the thesis questions and problematizes knowledge that it is taken for granted. It relies mainly on postcolonial theories and Foucault's concept of power to understand how human subjects, especially those from the Global South, have been constructed. It also examines how this population of children became constructed as "problems" and the role of discourses in assuming the nature of these problems. The thesis also provides an in depth analysis of policy concerning unaccompanied refugee minors. Three international protection instruments will be focused on: *the Convention of the Rights of the Child (CRC)*, *1951 United Nations Convention Relating to the Status of Refugee* and *UNHCR 1997 Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, and two Canadian protection instruments, *the Child Refugee Claimants Procedural And Evidentiary Issues* and the *Immigration and Refugee Protection Act*. This thesis aims to shift and alter popular beliefs and perceptions about the issue of unaccompanied refugee minors in the hope of bringing about cultural-philosophical shift in attitudes.

## Résumé

Ce mémoire étudie les défis auxquels les enfants réfugiés non accompagnés d'un adulte sont confrontés dans leur démarche de recherche d'une terre d'accueil. On y examine comment les discours et les politiques tenus tant au Canada qu'ailleurs dans le monde, minent les efforts des enfants réfugiés non accompagnés d'adulte dans leur tentative d'accéder au statut de réfugié et d'obtenir une réponse positive à leur requête. En se basant principalement sur des théories post colonialiste, ce mémoire rappelle le contexte historique à la base du phénomène de l'immigration forcée des enfants et souligne le rôle que les pays du nord continuent de jouer en perpétuant cette réalité. On questionne également, dans ce mémoire, les lieux communs qui sont généralement acceptés par le plus grand nombre. En plus des théories post colonialistes, l'argumentaire s'appuie principalement sur le concept du pouvoir de Foucault pour comprendre le conditionnement que les hommes, principalement ceux des pays du sud, subissent. On y étudie aussi comment on en est venu à percevoir ces enfants comme « un problème » et le rôle qu'a joué l'argumentaire dans la construction de cette perception. Ce mémoire propose également une analyse en profondeur des politiques concernant les enfants réfugiés non accompagnés d'un adulte. On n'y étudie trois mécanismes internationaux de protection: the Convention of the Rights of the Child (CRC), 1951 United Nations Convention Relating to the Status of Refugee and UNHCR 1997 Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, ainsi que deux mécanismes canadiens: the Child Refugee Claimants Procedural And Evidentiary Issues and the Immigration and Refugee Protection Act. Le but de ce mémoire consiste à apporter un éclairage différent sur la situation des enfants réfugiés non accompagnés d'un adulte. L'auteur espère ainsi changer les perceptions et croyances populaires afin qu'un changement profond des attitudes culturelles et philosophiques s'amorce.

**Introduction:**

The cover magazine of the fourth edition of the 2007 UNHCR magazine, *Refugee*, displayed a picture of a young African man trying to escape drowning. The coastguards on the boat are trying to pull him out of the water by a rope to save his life. Spain, like other European countries with a coastline, has been a crossing point for many people from the African continent and the Middle East, making their way to Europe either as economic migrants or as refugees. Many people have lost their lives while trying to make this hazardous seaward journey. These journeys, according to Watters (2008), are “notoriously precarious with many of the crafts barely seaworthy and often seriously crowded” (p. 30). The editor of the magazine states that whether the young man in the picture is a ‘deserving’ refugee is not relevant, as he needed to be saved at that moment. He then goes on to argue that undermining refugee claims and sending people back to face persecution would be in some ways like the coastguards in the cover photo cutting the rope off, which, according to the editor, is unthinkable.

The young man in the picture could very likely be a minor. However, given the brutality of law enforcement in Europe, and to some extent in North America, young men and women are being cut off from safety on a daily basis before being afforded the opportunity to speak of their circumstances. For example, a 2006 report by Amnesty International states that migrants and refugee children in Italy are likely to be sent back to their countries of origin despite potential persecution or serious human rights violations. The report also notes that the Italian authorities are likely to use collective expulsions, while maintaining discriminatory access to asylum-seekers. Finally, the Italian immigration authorities have been accused of using inadequate identification procedures including age assessment as well as disregarding obligations that prohibit certain treatments, such as detention practices, for vulnerable groups. Thus, in spite of the growing global concern about children, through treaties and conventions (i.e. the Convention on the Rights of the Child, the Universal Declaration of Human Rights, and the 1951 Refugee Convention), children, like their adult counterparts, are often portrayed as ‘undeserving

migrants' and are viewed with suspicion. According to Watters (2008), 'asylum-seekers' is "a term in everyday discussion inextricably linked to imagery of cunning and manipulative foreigners securing generous material rewards from a hopelessly gullible government(s)" (p. 47).

This picture however raises two more important and related issues; the first is that of how this image and similar ones of abandoned, diseased, and starved children (and sometimes of war-stricken countries in which children are the primary victims of adults' "evil deeds") informs our knowledge about unaccompanied refugee minors seeking protection in the North, and how this knowledge is being manifested in policy. The second question raised is how it comes to pass that this image tends to be associated with primarily the people of the South.

Recognizing the benefits of these images to raise awareness and provide 'help' for children and refugees, their coverage fails to adequately address the complex social, political and economic realities of these young adults. Further, it perpetuates these young adults as docile victims, as well as apolitical actors, an image that corresponds with the expectation of childhood in the West. It also plays on the emotional and sentimental levels of the Western viewer, while forgetting the moral and the legal responsibility of the Western societies to protect these children. It also ignores the role of the North in causing socio-economic instability in the South. Finally, it reduces intervention to a matter of a 'charity from a distance,' in which should there be any feeling of responsibility from the North it is usually under 'Not In My Backyard' conditions. In other words, we are willing to send aid (usually in terms of things that we do not need), but not to welcome these 'aliens' here. This notion was described by Robins (2003) as "a feel-good fairy tale about the human spirit and the generosity of the mythical American heartland..." (p.31).

The main theme in this thesis is the concept of responsibility. The thesis aims to locate the site of responsibility for refugee minors from the South with the former colonial Northern states that are also the destination point for many of these refugees. In addressing the question



of responsibility, the thesis will shift focus away from refugee protection as humanitarianism, and move towards a conception of refugee protection as a normative claim based on a historical, economic and political account of North-South relations.

***The research question:***

The thesis seeks to explore the challenges faced by unaccompanied refugee minors when they seek refugee protection. It will examine the way in which fundamental discourses and policies, both in Canada and internationally, work to undermine unaccompanied refugee minors accessing refugee protection or being successful in their claim.

***Methodology and Chapters Organization:***

This thesis relies mainly on an in depth analysis of discourses and policies related to unaccompanied refugee minors. It is the premise of this thesis to question and problematize knowledge that it is taken for granted. It relies mainly on postcolonial theories and Foucault's concept of power to understand how human subjects, especially those from the South, have been constructed. It will also examine how these children became constructed as "problems" and the role of discourses in assuming the nature of these problems. Thus this discourse analysis requires the knowledge of the sociology of childhood, forced migration as well as national and international legislations and policies on child welfare and on refugees. The policy part has been examined through a discourse analysis of UN major treaties and agreements, and other government legislation. The rest of the thesis will rely mainly on reviewing the literature. While this thesis will bring new insight into the study of unaccompanied refugee minors, there is no doubt that this study has its own limitation. It is believed that unaccompanied refugee minors will be best tellers of their stories, especially through the use of qualitative participatory method. This method contributes by empowering children and giving them a sense of ownership and agency. The voice of these young people will add greatly to the literature

since until now, their voice has been missing (Chatty et al, 2005). Finally, it will emphasize the inclusive social context, personal experiences, relationships, values and culture, and place the needs of children within a collective, rather than individualized, perspective (Chatty et al., 2005). However, given the interest of this thesis in exploring the perspectives of those excluded from protection and the difficulties in reaching out to this community—as well as the time constraints of this thesis—analysis of discourse and policy deemed to be the most appropriate.

In this thesis the term unaccompanied and separated refugees will be used interchangeably. According to the United Nations High Commission for Refugees (UNHCR) (1994) unaccompanied minors are persons who are under the age of 18 and “who are separated from both parents and are not being cared for by an adult who, by law or custom, is responsible to do so” (p.52). Along the same line, the Immigration and Refugee Board (IRB) in Canada defines unaccompanied minors as children under the age of 18 who “are alone in Canada or without their parents or anyone who purports to be a family member” (IRB, 1996). Children who are trafficked by adults are included within this category (Ali, Taraban, & Gill, 2003). Recent trends encourage more the use of ‘separated’ rather than ‘unaccompanied,’ partly because it better defines the problem faced by these children, particularly for those who are being trafficked, smuggled, or being taken care of by an adult that is not responsible for them once arriving to the new country. The differences in the legal definitions, according to Ali et al (2003), have an impact on the way children access services and protection in the country. For example, in Canada there is a provincial variation used for children for the purpose of care and protection. It also has an impact in cases where there is a questionable relationship of the adult accompanying the child.

The concepts of South/North, Third/First world, developed/ underdeveloped will be applied to this thesis. While recognizing the historical and political differences amongst these three dichotomies, for the sake of simplicity the thesis will be using these terms interchangeably.

The focus, however, will be on the South/North nomenclature. This division is not however meant to be geographical but rather a socio-economic and political one. It is only a distinction based on the differences between the 'haves' and 'have nots.'

The first chapter of this thesis will provide an outline the history and current realities of unaccompanied minors around the globe. It will examine how childhood became associated with innocence, and separated from adulthood. The final part of this chapter will provide a historical account of child migration both internationally and in Canada. The main premise of this chapter is to emphasise the concept of childhood as a social construct that should be located within historical, economical, and political contexts. It will also emphasise how child migration to Canada was based on economic, political and social needs, rather than the needs of the children themselves. This chapter will highlight the way the concept of childhood has been manipulated to fit the agenda of immigration control. It will also be shown that in the past few decades the phenomenon of migration is associated with people of the South.

The second chapter will present the thesis theoretical framework. Relying mainly on post-colonial theories, it will be argued that unaccompanied refugee minors are product of colonization, neo-colonization, imperialism, and globalization. The chapter will provide a view from the South, and a story from those whose voices are silenced. This chapter aims to locate responsibility over forced migration in the hands of countries of the North. It will be argued that unaccompanied refugee minors should not be viewed as subjects for humanitarian and charity intervention, but rather as a product of the Northern economic, political and social domination. Thus, a normative claim based on economic, political and social injustice should be adopted instead of the humanitarian discourse. This chapter will provide the space for a new knowledge to be constructed about unaccompanied refugee minors.

The third chapter provides a view from the North. It will examine the dominant discourses being circulated in the North that undermine refugees and unaccompanied refugee

minors from seeking and attaining protection. Relying primarily on Foucault's ideas of power, knowledge and discourses, this chapter will attempt to uncover and unpack oppressive discourses and provide the space for the constructive discourses discussed in the previous chapter to predominate. The chapter will examine general discourses being constructed against refugees, unaccompanied refugee minors, and female refugees.

The fourth chapter will expose inconsistencies and gaps in policies concerning unaccompanied refugee minors both in Canada and internationally. The first section of the chapter will provide a historical snapshot of the formation of children's rights policies. It will also provide a brief discussion of the significance of the international protection instruments. The second part will provide a discussion of the limitations and gaps manifested in these instruments. It will be argued that there is an urgent need to address the gaps in international policy so as to ensure a fair, just and long-lasting solution for unaccompanied refugee minors. The second section of the chapter will discuss policy relating to unaccompanied refugee minors on the national level. The first part will present the main policies that deal with unaccompanied refugee minors at the federal level. The second part will discuss the main gaps and inconsistencies in these policies. The third part will discuss how provincial jurisdiction has an impact on unaccompanied refugee minors. For this part, I will focus on the three provinces of Ontario, Quebec and British Columbia, as the majority of unaccompanied refugee minors settle and claim refugee status in these provinces (Ayotte, 2001).

# ***CHAPTER 1 –History and Realities***

This chapter will tackle the issue of childhood, and how childhood evolved to become associated with innocence and protection. It will also elaborate on the formation of childhood as a separate development stage from adulthood, as well as in need for protection. The final part of the chapter will provide a historical overview of child migration to Canada and an assessment of the current situation of unaccompanied refugee minors to Canada.

## ***CHILDHOOD in GLOBALIZED WORLD***

### **Childhood as Social Construct - Changing attitudes towards children**

While the idea of childhood as a social construct has gained more recognition amongst theorists (Aries, 1962; Stephens, 1995; Stasiulis, 2002; Cannella and Viruru, 2004; Prout and James, 1997), modern ideas about childhood are still predominant in our society. Relatively recent sociological theories of social construction purport that childhood is formed and transformed by a range of social, historical, political and economic factors (Stasiulis, 2002). The argument within this new trend of thought is focused on the view that childhood is embedded in society, in which children are actors and actively participating in constructing their environment. Furthermore, current sociological theories maintain that children are capable of acting and articulating their own experiences, as well as persons in their own right (Viruru, 2005). This is why there has been an effort to recognize the voices and the agency of children. This new perspective also views children as a product of complex circumstances in which race, gender, sexuality, class, socio-economic status and culture play an increasingly critical role.

Childhood in modern terms is viewed as a linear, rational and universal process which all children must undergo in order to achieve healthy maturity (Viruru, 2005). While most historians agree that modernity and the Enlightenment had a great impact on transforming attitudes

towards children (as will be discussed in depth in the next chapter), there has been no consensus among historians as to which other factors contributed to those changes. For example, Aries attributes this transformation to the growing importance of family. Demographic theorists take Aries argument a step further to affirm that demographic factors are the most important factor in transforming childhood.

Aries states that the modern conception of childhood as a separate stage from adulthood is a recent phenomenon. It emerged in Europe between the fifteenth and eighteenth centuries along with notions of “families, private and individuality” (Aries, 1962, p.5). Before this period, children were viewed as mini-adults inasmuch as they were essential for the economic and social survival of the society. In fact, the collective existence of these times did not leave any room for private space. In the medieval period, there was no place for childhood as it was an unimportant phase of which there was no need to keep a record (Aries, 1962). During this time period, it was considered inappropriate to become attached to something that is likely to be lost since only a small number of children survived.

The emergence of the Enlightenment resulted in new ideas about care and education of children being put forward (May, 2001). One crucial idea from this period is that children need an education in order to moralize society, as children were viewed naturally innocent and in need of protection from the ills of society (Aries, 1962). This idea was a combination of two notions of childhood. Firstly, parents began ‘to recognize the pleasure they got from watching children’s antics and “coddling” them’ (Aries, p.127). Childhood within this construction was said to last beyond infancy. Secondly, moralists stressed that children are fragile beings of God and are, as a result, in need of being safeguarded and reformed (Cunningham, 2005). Thus, schooling—with the help of the family—was crucial in carrying out such a moralistic task. Children became quarantined, prevented from joining the adult life, and gradually ceased to have any economic value. Within this new conception, parents became responsible for the education of their children. In addition to the attention paid to their emotional development,

children became the target of formal prolonged education. This practice placed children in the heart of the family and eventually increased a child's isolation from society (Cunningham, 2005). By the eighteenth century, children became a "distinct group" separate from adults. Governments became more involved in establishing laws to end child labour and to ensure children's healthy upbringing (Cunningham, 2005). During the nineteenth century, the idea of the child as a subject in need of protection intensified. 'Saving the child' from improper childhood became the aim of many organizations, especially those religiously (i.e. Christian) oriented. This, according to Cunningham (2005), implied:

... A childhood separated from the adult world in innocence and dependence. Children, for most Christians, ceased to be trained with original sin. Slowly this vision of a proper childhood for all children began to be put into place, with the child and adult worlds separated out as far as humanly possible (p. 203).

Aries affirms that the lack of parent-child attachment during the medieval period was one of the reasons why children did not have any special status. Building on this argument further, some theorists argue that demographic factors are the main reason for why some parents became emotionally attached to their children while others didn't and, as a result, designated childhood as a separate stage in need of protection. New ideas in the sciences presented during the age of Enlightenment decreased child mortality as well as extending the time children spent with their parents.

While Aries is one of the pioneers in introducing the idea of childhood as a social construct (Cunningham, 2005), there are some issues that he dismissed in his analysis. For example, his starting point of analysis is that in medieval times childhood did not exist. He minimized the impact of some powerful forces that operated before the medieval period, and those which were enforced by Christianity. He did not attempt to understand how the experiences of the female child might have been different from those of male child, and whether the powerful force of patriarchy had any influence on the way attitudes about childhood were formed. Further, he

ignored the fact that a family exists within particular economic structures, and that these structures will have an impact on the ways in which childhood is viewed.

The twentieth century witnessed another dramatic transformation of the way childhood was conceived. May (2001) eloquently summarizes this transformation by stating:

By the 1950s ... children not attending preschool came to be regarded as unfortunate; by the 1960s deprived or disadvantaged; by the 1970s-80s disenfranchised, and by the end of the century, 'at risk' (p. 7).

This transformation was largely attributed to new theories regarding child development as well as the political, social, and economical context following the Second World War. Within this century, childhood moved from the outside to the inside realm of the state. Within this framework, childhood, according to Rose (1990) became:

... The most intensively governed sector of personal existence...The modern child has become the focus of the innumerable projects that purport to safeguard it from physical, sexual and moral danger, to ensure its 'normal' development, to actively promote certain capacities of attributes such as intelligence, educability and emotional stability (p.121).

Stephens concludes this transformation by stating that the new ideological and modern concept of childhood assumes a privileged domain in which childhood can be achieved (Stephens, 1995). This domain of "spontaneity, play, freedom, and emotion" (Stephens, p. 6) refers to a society that is able to withdraw from this private domain of childhood as a basis for "public culture, discipline, work, constraint, and rationality" (p.6). Further, this modern conception of childhood calls for the separation of children from the harsh realities of the adult world. Thus, children have to be protected from difficult work, or have any relation with the productive sphere. Within this new conception children become "relatively worthless (economically) to their parents, but priceless in terms of their psychological worth" (p. 14).

### **Children as "in need of protection"**

During the first-half of the twentieth century the vulnerability of children became the main target of Modern States (Bhabha, 2004). For example, the first draft of the 1924 Declaration of



the Rights of the Child to the League of Nations, the precursor to the 1989 Convention on the Rights of the Child (CRC89), incorporates reference to the suffering of refugee children. Orphans under the age of 16 were recognized by the 1946 Constitution of the International Refugee Organization (IRO) as one of the four categories of persons who are defined as refugees (Bhabha, 2004).

It was the Second World War that brought formal international recognition of the special needs of children who are refugees. The Holocaust and the execution of millions of Jews in Europe raised the concern for the need to protect minority groups (Wajsman, 2003) and as a result the recognition of children as a distinct group. Stasiulis (2002) states:

The immediate post-war international human rights declarations articulated the idea that all humans possessed certain moral-political claims on their governments and societies, irrespective of their 'race, color, sex, language, religion, national or other social origin' or other social distinctions. Half a century of international rights law, however, has established diverse forms of 'differentiated citizenship' for many groups, including women, indigenous peoples, and national minorities, who were recognized as groups or collectivities possessing features or histories that legitimized particular sorts of moral and legal-political claims, and necessitated particular types of rights and forms of recognition (p.510).

Although the distinct needs for children who are refugees, specifically those from Europe, were recognized in international instruments, Bhabha (2004) states that it took decades to recognize and address child-specific persecutions. Different child welfare movements challenged the adult-centered nature of asylum procedures and arbitration. There was also a push for recognizing the Child as an independent and autonomous agent, one who is able to express his or her opinion and has agency. The increased number of unaccompanied refugee minors seeking protection in the developed world furthered the need for proper international intervention. As a result, in 1989 the United Nations adopted the 1989 Convention on the Rights of the Child. Bhabha and Young (1999) state that the CRC treaty revolutionized the way children are perceived. They turned from family positions into individual agents and from objects into subjects. The treaty provides a universal set of internationally endorsed standards of rights and aspirations of children (Bhabha & Young, 1999). The CRC applies to each child within state

jurisdiction, including “aliens, refugees or stateless” (Bhabha & Young, 1999, p. 94), assuming they fall within state jurisdiction.

### **Statistical realities- refugee children and unaccompanied refugee minors**

A significant set of data about the state of refugee children is provided by the UNHCR. Of the available data about the numbers of *persons of concern*<sup>1</sup> provided in the 2006 UNHCR Statistical Year Book, it was indicated that the number of this population has increased from 11.1 million in 2005 to 13.9 million the year after. Although not fully representative, the available information indicate that women represent the majority of returnees (51%), IDP<sup>2</sup> (51%) and stateless persons (51%). In contrast, they represent only 46 per cent of refugees and asylum-seekers. Information on the age breakdown itself was available for only about one quarter (24% or 7.8 million persons) of *persons of concern*. The availability of data on age has improved considerably. In absolute terms, in 2006, the breakdown by age was available for an estimated 2 million persons more than in 2005, when such data was available for only 5.8 million individuals. On average, some 45 per cent of these 7.8 million persons of concern for which age data is available are children under the age of 18, with 11 per cent being under the age of 5 and 19 per cent between 5 and 11 years. Half of the population of refugees is between the ages of 18 and 59 years, whereas 5 per cent are 60 years old or more. It further confirms that children and adolescents represent the majority of “persons of concern” in UNHCR’s regions of Central Africa and Great Lakes and Southern Africa (54% each) and around half (49%) in the East and Horn of Africa. The lowest proportion of children is found in the Americas region (26%). A similar

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1 “Persons of Concern” include asylum seekers who may be defined as those who flee their own country and seek protection in another states (Watters, 2008, p.5) as well as IDPs

2 According to the UNHCR Internally Displaced People (IDP) are “individuals or groups of people who have been forced to flee their homes to escape armed conflict, generalized violence and human rights abuses” (UNHCR, 2006). Civilians who have been made homeless as a result of natural disasters fall under this definition. However, usually the UNHCR is not involved with the second group. It is also worth noting that internally displaced people, constituted mainly of women and children, are not afforded protection under the Geneva Convention, even though they have similar needs to those under the Convention’s definition (Agar, 1999).

trend is present in refugee camps. For example, children below the age of 18 represent more than half (55%) of the camp populations in Africa and 49 per cent in Oceania while they represent only two per cent in Latin America and the Caribbean, and 21 per cent in Europe (UNHCR, 2006).

Further, the 2001 UNHCR report indicates that the number of refugee children under the age of 5 ranges from 17% in Africa to only 6 % in Europe. Countries with the highest proportion of refugee children under the age of 5 are Togo (26%) and Burundi (24%), Bangladesh (24%) and East Timor (24%). Large displaced populations with a very small percentage of children are located in Armenia (3%) and Croatia (5%). The 2001 reports show similar trends for those from under the age of 18 to those under the age of 5. For example, the largest proportion of refugee children is hosted in Africa (56%), while the smallest (23%) is in Europe. Even within Europe there are significant differences. For example, children in Bosnia and Herzegovina and the former Yugoslav Republic of Macedonia constitute almost half of the refugees (21% in Croatia and 17% in the Federal Republic of Yugoslavia). Further, in eight asylum countries, under 18 population group constitutes 60% or more of the total refugee population. Angola hosts the youngest refugee population with 69% of the population below the age of 18.

While the phenomenon of child separation in times of conflict is not new, modern conflicts increased the number of children who became separated from their parents (Mann, 2004). For example, during World War II, it is estimated that Europe was a home to 50,000 – 200,000 unaccompanied refugee children (Montgomery & Shermarke, 2001). The United Nations Department of Social Affairs 1952 report indicates that approximately 60 million children were in need of help after World War II, and about 13 million were orphans (Pask, 1989). Similarly, following the Hungarian Revolt in 1956 many unaccompanied minors are known to have migrated to North America and the rest of Europe. Further, According to Kohli (2007), the exodus of ‘boat people’ in the mid-1970s from Vietnam left close to 22,000 unaccompanied

children in Vietnam as adults fled. The Vietnamese crisis late in the 1970s left behind similar numbers.

Other crises and conflicts in late the 1980s and the early 1990s across the world also generated large numbers of unaccompanied minors, most of who were internally displaced persons (IDP), and never made it to Europe or North America. For example, the war in Rwanda caused 150,000 children to be separated from their families. The majority of these children (100,000) remained in Rwanda and the rest moved into neighboring countries (such as Tanzania). Another large-scale displacement of unaccompanied minors occurred in the late 1990s with the breakup of the Yugoslavian Republic (Bosnia, Kosovo, and Croatia) and events in Afghanistan, Iraq and the Horn of Africa (Ayotte, 2000).

As will be discussed in the coming few chapters, the vast majority of refugee children have neither the resources nor the capacity to seek sanctuary in wealthy countries and as a result, stay in poor countries. It is also important to note that these numbers fluctuate year-by-year, and month-by-month, reflecting the reality of wars, human rights violations and environmental catastrophes (Watters, 2008).

## **CANADIAN CONTEXT**

### ***Canadian response to refugees:***

Since the eighteenth century, starting with the United Empire Loyalists, Canada became the home of many refugees (Dirks, 1977). While many were welcomed, others were denied. A decision to accept or deny resettlement of refugees always depended upon economic, political, ideological, and to some extent humanitarian factors (Dirks, 1977). For example, the need for agricultural labourers to settle in western Canada was the main reason why many refugee groups, including children, such as the Mennonites, and Doukhobors were approved to stay in post World War II displaced persons camps. Economic reasons, however, were also factors in determining whether refugees were worthy of protection or not. For example, throughout the interwar period and World War II, economic refugees were feared to become a burden on state

welfare (Dirks, 1977). But on the other hand, political and ideological factors were the main motives for admitting Hungarian and Czechoslovakian refugees in 1956 and 1968 respectively: support for the United States of America in its campaign of eliminating communist regimes in Eastern Europe. Yet, European Jews, during World War II, and Chileans, in 1973 and 1974, were widely refused entry due to anti-Semitism and disinterest in Latin American affairs (as well as the ideological stance of the Chilean Refugees) (Dirks, 1977). The humanitarian factors in admitting refugees is hard to pin down as it is usually rhetoric that the public expects and it accounts for customary platitudes rather than practice (Dirks, 1977). Dirks, in fact, concludes his argument by re-affirming that ideological factors are the most important consideration in determining admission.

It is important to note that prior to the Immigration Act of 1976, there was no formal policy towards the treatment of refugees. Up until the adoption of the United Nations High Commission for Refugees (UNHCR) convention relating to the Status of Refugees in 1951<sup>3</sup>, the term 'refugee' continued to be used flexibly to cover many kinds of categories (Lanphier, 1981). As Lanphier notes:

Efforts in the creation of any coordinated policy on refugees, per se, were halting, despite the creation of a Department of Citizenship and Immigration in 1946. That department was unable to accede to the provisions of the UNHCR Convention on the Status of Refugees in 1951; rather, it remained an implicit set of working definitions for the Canadian government until final ratification of the Convention in 1969 (p.113).

### ***Unaccompanied Child Migration:***

While it is recognized that the large scale of unaccompanied children immigrating to Canada did not begin until 1869, it is believed that the process of advocating and preparing for such migration started decades before. In fact, the first systematic movement of unaccompanied

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<sup>3</sup> **1951 Convention relating to the Status of refugees** (sometimes called "the 1951 Convention") - the 1951 United Nations Refugee Convention is a universal instrument to provide basic, and minimum legal standards to protect refugees. With just only one amendment in 1967, the convention continues to be the major tool for the international regime in respect to refugees (Goodwin-Gill, 2001). Over 120 states ratified this Protocol.

children from England to British North American colonies took place as early as 1830s. Even though child immigration engineers presented migration as a response to child 'vagrancy,' poverty and crime (Neff, 2007), there was no doubt that it carried with it certain economic, political, and social agendas.

Neff (2007) states that the first organization to take the responsibility of supervising a systematic immigration for children was the Society for the Suppression of Juvenile Vagrancy, which later was renamed as the Children's Friend Society (CFS). The aim of this society was to "rescue destitute children" from "vice and wretchedness," and therefore to provide the children with "useful, healthy, and profitable employment, for that idle and disorderly Course of Life" (Neff, p. 235). In reality, however, there was considerable support for child migration as there was a great demand for labour (Neff, 2007). Children who immigrated to Upper Canada were usually between ten and fourteen years of age; some as young as nine years old were recruited. Those admitted were described as: "orphans; children much exposed to the crime and vice of their parents; children of parents who are in a state of great destitution, but a noble feeling prevents them from applying to the parish; and children who are actually inmates of the workhouse" (as cited by Neff, 2007, p. 235). Between 1833-1836 about 141 children were sent to Lower-Canada, while seventy of them went to Upper Canada. Following the political unrest of the rebellion in 1837, lack of adequate funding for the Society, fear of children escaping from Upper Canada to the United States—or returning back to England-the Children's Friend Society ended its operations. However, the allegations of child exploitation and abuse were the main cause for discontinuing child migration.

Even though the child migration scheme was short-lived, it proved that children were able to find homes and work in Upper and Lower Canada (Neff, 2007). It also paved the way for a new wave of unaccompanied child migration in the 1850s. The new wave of the 1850s was largely constituted of older juvenile offenders who were given a chance to start a new life, as well as being a long-term solution to increased juvenile criminal activities (Neff, 2000). Between

1854, 1868 and 1898 children emigrated initially to Canada West (now Ontario), a small number went to New Brunswick, and at least 166 went to Quebec.

The period from 1868 to 1925 witnessed a large scale of child migration from England to Canada. It is believed that at least 80,000 emigrated as agricultural labourers and domestic workers. According to Coldrey (1999), the large-scale child migration from Britain to the British colonies after 1870 was triggered by harsh economic conditions, the cholera epidemic, the bad harvest of 1867, and widespread unemployment. A third of these migrants were orphans, while the rest were not accompanied by their parents. In addition to the economic gains, Parr (1980) states that this migration is also attributed to revivalist-evangelicals who believed in family ties and family-modeled institutions. These pioneers, many of whom were social workers, used emigration to separate children from their family. Thus, instead of stimulating family life, these institutions split families apart. Throughout this period more British children were taken away from their native country than any other time (Parr, 1980). Maddrell (1998) maintains that juvenile and child migration was not only a partial remedy for employment, but it also reduced future problems. It is also worth noting that child migration was gender-imbalanced. For example, girls represented only 25 per cent of children sent to Canada throughout 1888-1914 (Maddrell, 1998).

Following World War I, migration from Britain was suspended and when it resumed in 1920, it was on a smaller scale. By 1920, as a result of powerful interest groups in Canada who opposed the entry of unaccompanied children, child migration gradually diminished and eventually stopped during the great depression. After 1932, evidence shows that no more children were placed in Canada (Coldrey, 1999).

The Second World War brought the issue of child migration back to the agenda. Montgomery & Shermarke (2001) note that the term 'unaccompanied minors' came into usage during this period. As early as the 1940s, Canada put in place different programs to prepare for the arrival of young refugees. The first program provided protection for close to 6,000 'British

Guest Children'—fifteen hundred of which were unaccompanied. These programs were meant to provide a temporary protection for children and most returned home after the war. A second program began in 1943 with the objective to provide protection for 1,000 Jewish youth from unoccupied territories in France. This program was short-lived because of the German invasion of these territories.

The Russian invasion of Hungary in 1956 brought in another wave of unaccompanied migrant children. While the number that reached the shores of Canada is not known, close to 6,000 unaccompanied Hungarian minors are believed to have been accepted to the USA (Montgomery & Shermarke, 2001). Between 1978 and 1983 close to 900 unaccompanied minors arrived from Vietnam, Laos and Cambodia (known also as the “boat children”). The arrival of these children drew a great response from Canadians, many of whom opened their doors to them and pressured policymakers to debate immigration and placement measures (Montgomery & Shermarke, 2001).

The period between 1999-2000 witnessed an unusual flow of unaccompanied minors to Canada (Stasiulis, 2002). For example in the summer of 1999, 134 separated minors between the ages of 11-17 reached the coast of British Columbia. In early 2000, another group of unaccompanied minors were detained when trying to be transported from Ontario and Quebec to the United States of America. Stasiulis (2002) maintains that while most of these children applied for refugee protection, only a few were recognized as Convention refugees. Some of these children were detained for a long period of time on the grounds that detention was necessary to protect them from exploitation and child-trafficking (Stasiulis, 2002). In addition, some of the Chinese boys in British Columbia were detained for as long as seven months on the suspicion that they were involved in organized crime. Montgomery and Shermarke (2001) provide a detailed account of demographics of unaccompanied minors reaching the shores of Canada in 1999. The majority of them were from the African and Indian continent, 48% and 35.3% respectively, while the remaining 16.4 percent were from South America and Europe.



The countries most represented were: Congo (20%), Rwanda (8.2%), India (13.5%) and Sri Lanka (12.4%). Other countries of origin include Afghanistan, former Soviet Union countries, China, Peru, Guatemala, and Colombia.

While recent years witnessed an increase in the flow of unaccompanied minors, compared to other asylum-seeker countries of destination, Canada received relatively fewer unaccompanied minors (Wouk et al, 2006). By 2002 the number of children claiming for protection increased to 1830 from 380 in 1999 (Ali et al, 2003). From 2000 to 2004 there were a total of 172,516 adult and minor claimants; 6,627 were principal applicants under the age of eighteen. Estimates indicate that 2770 were unaccompanied and separated minors, and 3,857 non-separated minors (58.2 per cent) (Wouk et al, 2006). The UNHCR estimates the number of unaccompanied minors to be between two to five per cent of the total number of the refugee population. The unaccompanied refugee minors in Canada count for only 0.63 per cent. Further, despite the fact that females constitute the majority in refugee community, there is a higher proportion of male asylum seekers than female, a trend that is consistent among unaccompanied minors throughout all industrialized countries (Wouk et al, 2006). This trend is partly attributed to the fact that women and children often lack the necessary resources and skills to make their way to Canada or other Western asylum countries to claim asylum. This issue will be further discussed in the next chapter.

## **Conclusion:**

This chapter affirmed the notion of childhood as a socially constructed concept. It was argued that in order to understand the modern concept of childhood in the North, it is essential to look to the social forces that created this new concept. This chapter relied mainly on two perspectives, Aries' social construct theory and its emphasis on family and education as the main factors that created the concept of childhood, and demographic theories. While all theories discussed above have a different approach to how the new phenomenon of 'childhood' was

formed, it is important to note that they all provide important insight and as such all need to be taken into consideration when trying to understand 'childhood'. The change in attitude about children was a product of many factors, including social, political, economic and demographic factors. This chapter also presented a historical account of how children became viewed as in need of protection and as subjects. It was noted that the discourse of protection was historically aimed towards Europeans, while protecting children from the South is gaining momentum only in the last few decades. The final part discussed the Canadian context of migration. It was demonstrated that "refugee-hood" in Canada is not only about humanitarian discourse but also political, economic, and ideological discourses.

The chapter also offered a historical account of unaccompanied child migration into Canada. While the aim of this migration was to save these children from destitution and poverty, the truth of the matter is that these children were used as labourers in Canada, as there was a serious shortage of agricultural workers—especially in the western provinces. Child migration, however, stopped after allegations of abuse, as well as a growing acknowledgment of the need to end child labour.

It is the intention of this chapter to prepare the groundwork for the next few chapters. The coming chapter will present the theoretical framework of this thesis. Relying mainly on post-colonial theories, it will be argued that unaccompanied refugee minors are a product of colonization, neo-colonization, imperialism, and globalization.

## ***CHAPTER 2 - A View from the South***

*...every citizen of a nation is responsible for the actions committed in the name of that nation...*

- Franz Fanon from "Black Skin, White Mask".

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### **Introduction**

It is the notion of responsibility and accountability of which Fanon speaks of in the quote above, that this chapter will focus on. The phenomenon of unaccompanied refugee minors is located in an historical, political and social context. In order to fully understand this phenomenon, one needs to understand the root causes. This chapter will explain the unique position of these children, and the social and global forces that create this phenomenon. Relying mainly on postcolonial theories, this chapter will lay the foundation in which the coming chapters will be based upon. It will offer a view from the south, and a voice for those who are affected the most by forced migration. It will be argued that unaccompanied refugee minors are a product of colonization, neo-colonization, imperialism, capitalism and globalization. It is a product of Northern domination of the South. This is where Fanon's idea of responsibility will be applied. Unaccompanied refugee minors should not be viewed as subjects for humanitarian and charity intervention, but rather as a product of this Northern domination. However, given the knowledge being generated and constructed by powerful media outlets about unaccompanied refugee minors while being supported by neo-liberal ideologies, it comes as no surprise that these children are being marginalized and largely ignored.

The theoretical account of this chapter will ultimately lay the foundation into understanding how knowledge and discourse about these children are being constructed (chapter 3), and as a result how policy (chapter 4 and 5) is being formed and transformed.

## **Post-Colonial theory:**

In his book *Postcolonialism*, Young (2001) asserts:

...Many of the wrongs, if not crimes against humanity are a product of the economic dominance of the north over the south (p.6).

Postcolonial theory professes that the current state of the people of the South is a result of a long lasting legacy of colonization, racism and power being exercised by the North. Post-colonial theory, as proposed by Young (2001), and many other postcolonial theorists such as Fanon (1952 & 1961), Memmi (1965), Nkrumah (1970), Said (1994), Mohanty (2003), Bhabha (1994), Loomba (1998) and Ghandi (1998), focus on different forms of oppression, domination, and difference present in contemporary societies. These forms must be situated in a historical context. Without a historical understanding of the past, any intervention in the present would be ineffective (Young, 2001). As Hegde (1998) notes:

...The balance between continuity and rupture, tradition and modernity, past and present has been reshuffled in the lives of people in many societies because of the impact of colonialism and racism (p.276).

In order to understand these forms of domination, one needs to decolonize, unpack, and rewrite history, discourses, and representation from the point of view of those who have been silenced. It is, then, a theory of resistance (Young, 2001).

Postcolonial theory is interdisciplinary and transcultural both in its understanding and effect (Young, 2001). It encompasses feminist, marxist, sociological and anthropological perspectives (Mohanty, 1991). It emphasizes the interdependencies, and dialectical interconnections (Hedge, 1998), linking the past to the present. As Prakash (1992) points out, postcolonial criticism forces “a radical re-thinking and re-formation of forms of knowledge and social identities authored and authorized by colonialism and western domination” (p. 8). It is within this context that current issues of unaccompanied minors should be situated, as their plight is a direct consequence of a long legacy of colonization, imperialism, capitalism and globalization. Without these forces, it is highly unlikely that the issue would have existed. Refugee-hood is not a product of oppressive

regimes, and practices in the Middle East, Africa and Latin America, but rather the causes in which these regimes, and practices are sustained and promoted. By the same token, the phenomenon of 'unaccompanied refugee minors' should not be viewed as product of 'stolen childhood,' but rather as a product of social, historical, economic, and political marginalization.

A postcolonial theory recognizes the complex relations of globalization, nationalism, transnationalism and imperialism, as well as the importance of linking the global to the local. It questions the ideological discourses that construct Western domination as natural, and seeks to undo Euro-centrism (Hedge, 1998). Hedge (1998) summarizes the postcolonial contribution to theory by affirming that this theory is:

- (a) offering a way of situating and historicizing difference by studying the systematic manner in which exclusions have been legitimized in Western scholarship, (b) dismantling binaries of West-rest tradition, modernity and showing how the colonizer-colonized are in fact dialectically related and constituted, and (c) problematizing culture as a "pure," homogenous entity and providing the analytical construct of hybridity (p. 283).

Post colonialism, then, is a theoretical and political perspective that supposes an intervention within these oppressive circumstances discussed above. In addition to its ability to uncover the agency of the colonized, it uses Foucauldian analysis to understand how individuals are placed in oppressive structures. Thus, while this theory revises the past, it also provides understanding of the current, fast-changing world (Loomba, 1998).

### **The Construction of South/North, First World/ Third World dichotomies**

Colonization, neo-colonization and imperialism entail the subjugation and domination of one people in relation to the other. However, there are clear distinctions between these forces and the impact they carry on the colonized people. Colonization, as Loomba (1998) points out, in its essence involves producing an economic imbalance that was essential for the growth of European Capitalism and industry. Loomba (1998) eloquently notes:

...colonialism was the midwife that assisted at the birth of European capitalism, or that without colonial expansion the transition to capitalism could not have taken place in Europe ( p.10).

Further, colonization fundamentally involves acts of geographical violence on human beings (Cannella & Viruru, 2004). Imperialism, on the other hand, is described as an exercise of power either directly (via conquest) or indirectly through political and economic domination (Cannella & Viruru, 2004). Unlike colonization, which was driven by pragmatic needs (i.e. population needs, poverty, etc.) imperialism is motivated by an ideology from the metropolitan centre that is concerned with expansion and assertion of state powers. It is a product of contradictory ideology. Cain and Hopikns (1993a) describe it as 'gentlemanly capitalism,' in which "gentlemen are not capitalists, and capitalists are not gentlemen" (as cited by Young, 2001, p. 28).

The development of imperialism in the nineteenth century served as the historical continuity of colonization to further support the *Empire*. While it brought little difference to colonial subjects as long as the land remained a colony (Young, 2001), it caused tremendous economic gains to the imperialist powers. Young (2001) describes the difference between both of these forces as a change between the addressees from the colonized subjects to the increasing rivalry between imperial powers. The significance of this ideological French invention lies in its quest for bringing French culture, language, and religion to the unenlightened races of earth - mission *civilisatrice* (Young, 2001). Thus, cultural imperialism was an essential part to accomplish this mission in which the colonized subjects had to abandon their culture and religion. This French model was adopted by other colonial powers, such as the English, Danish, Portuguese and Spanish. The main objective of imperialism was to provide domestic political and economic stability as well as national and international prestige. Although it functioned globally, the different imperial powers operated with distinct national and ideological identities. It is safe to say that all imperial powers involved imposing certain western cultural dominance.

Following World War II, the European and North American imperial powers were no longer able to sustain direct domination as human rights regimes were gaining in popularity. Thus,

these imperial powers had to find new, subtler, ways to assure their economic and political gains. As colonized countries were in the process of asserting their independence, European and American countries began providing assistance to these countries, claiming that it was to 'help' build these 'new' nations. However, if anything, the assistance tied these new countries into further financial debt and placed them in a dependency state. Thus, while some of these countries gained legal independence, they all remained dependent on major world powers economically and politically (Young, 2001). The formation of the World Bank and the International Monetary Fund (IMF) are examples of such dependency. As a result of neo-liberal policies of the World Bank and the IMF, countries in the South lack control over their own agenda (Nkrumah, 1965). The impact of neo-colonization according to Nkrumah (1965):

...Is that foreign capital is used for the exploitation rather than for the development of the less developed parts of the world. Investment under neo-colonism increases rather than decreases the gap between the rich and the poor countries of the World (p. x).

This issue will be explored further below when discussing modernity, and globalization.

## **Modernity**

The Enlightenment is regarded as one the most influential eras in European history (Cannella & Viruru, 2004). It is the backdrop of scientific progress and reason, which contributed greatly to the formation of the present-day concept of democracy, equity, justice, modernism, capitalism, and socialism (Cannella & Viruru, 2004). Cannella and Viruru (2004) maintain that even though the Enlightenment is not viewed as a colonialist project, imperialism remains with no doubt one of its long-lasting legacies. The Enlightenment marks the beginning of an era of beliefs in ration, progress, science and free inquiry, referred generally as modernity. Modernity in this sense is a vehicle to transform pre-modern, superstitious societies into a rational order of individuals (Adelman, 1999) in which the state is the main regulator of ensuring this order. It assumes capacity for reasoning in a society that promotes individuals' self-interests and desires. Individualism is an important contribution from modernity. As Adelman notes, "...if

negative freedom is defined by rights, positive freedom is defined by interests. If individual rights are the bedrock norms of the individual in the nation state, possessive individualism is the most positive expression of that freedom” (p.85).

The project of colonization was justified under such conditions of modernity. It aimed to spread ration and reason to ‘a barbaric world.’ The colonizers assumed superiority over indigenous populations. The colonialist knowledge and discourses were taken for granted and viewed as the “truth”, while there was very little recognition of any other way of knowing. This knowledge continues to be imposed on the colonized population on the people of the south. The indigenous colonized people, mainly people of colour, became part of this discourse. The European majority within this association are imagined to commonly share cultural and moral superiority as well as being uniquely committed to human rights, modernity and democracy. On the other hand, the culture of the peoples of the South tends to be viewed as backward, oppressive, and forever frozen at all levels (Cannella and Viruru, 2004). According to Razack (2005), this line of reasoning leads to the conclusion that:

...We have reason; they do not. We are located in modernity; they are not. Significantly because they have not advanced as we have, it is our moral obligation to correct, discipline, and keep them in line. In doing so, the West has often denied the benefits of modernity to those it considers to be outside its bounds. Evicted from the universal, and thus from civilization and progress, the non-West occupies a zone outside the law. Violence may be directed at it with impunity (p.56).

This is the same line of thinking that appears to be used today to justify ‘intervention,’ including waging war, and sanctions around the world—a phenomenon that is creating millions of refugees and displaced people. Modernity, Said (1994) concludes, allowed ‘humans’ to form “a marvelous almost symphonic whole whose progress and formations, again as a whole, could be studied exclusively as a concerted and secular historical experience, not as an exemplification of the divine” (p.44).

### ***Modernity: The impact on females***

Modernity has a particular importance in the lives of women, especially those from the



South. Cannella and Viruru (2004) state that the construction of women is consistent with the imperialist legitimization of colonization and modernity. It is a result of the hierarchal and linear view of the world that women became inferior to men. Females are viewed as essentially different than males. Thus, while males are rational, and naturally stronger, females are imagined to be emotional and weak. Commenting on the gendered discourse of colonization in the 'Orient,' Said (1994) notes that 'Oriental' women became the subject of the Orient by the Occident. It is a vision imposed and constructed of the 'other' as exotic and romantic. Women of the Orient have been constructed as oppressed and passive, yet highly sexualized. Cannella and Viruru affirm Said's observation and argue that gender inequality is an integral part of the colonial logic, whereby sexual control is its key feature (Cannella & Viruru, 2004). For example, colonizers implemented moral codes concerning sexual behaviors throughout the colonies. The purpose of these codes was both to distinguish Europeans from the indigenous population, as well as 'civilizing' the indigenous population.

This tendency of gendered discourse is still present today in the West. Surprisingly, it appears in Western feminist discourses (Mohanty, 2003). It has been argued that the current discourse of liberal and radical feminism assumes the application of homogeneity in the category of women in the third world (Mohanty, 2003). This discourse, as Mohanty notes, appropriates "the pluralities of the simultaneous location of different groups of women in social class and ethnic frameworks...in doing so it ultimately robs them of their historical and political agency" (p.39). Further, the persistence of Marxist feminists in locating women on the basis of the "sociological 'unity' of their role in domestic production and wage labour," defines women from the third world as "subjects outside social relations, instead of looking at the way women are constituted through these very structures" (p.40).

When legal, economic, religious, and family structures are defined as "underdeveloped" or "developing," women are placed within these structures. This is how the image of the 'average' third world woman is produced (Mohanty, 2003). For Western feminists, "oppressed

third world women,” may become an additional attribute to the category of “oppressed women.” Thus, gender differences may become ‘Third World difference’ (Mohanty, 2003, p. 40). This difference, according to Mohanty, creates a paternalistic attitude toward women in the Third World. Third World women as a group become defined as “religious” (not progressive), “family-oriented” (traditional), illiterate (ignorant), “domestic” (backward), while women in the west view themselves as “secular,” “liberated,” and “having control over their lives.” The basic assumption in this categorization is that the Third World did not evolve to the extent that the West did. Without this representation of women in the third world, the self-representation of women in the first world cannot be sustained. Thus, this monolithic representation of women in the third world ties into the “larger economic and ideological praxis of ‘disinterested’ scientific inquiry and pluralism that are the manifestations of a latent economic and cultural colonization of the ‘non-Western’ world” (Mohanty, p. 42). Mohanty concludes by stating that it is time to move beyond Marx’s possible interpretation, “if they cannot represent themselves, they must be represented”(p.42).

### ***Modernity: The impact on children***

In the same way women were constructed as inferior, traditional and backward, children of the colonized peoples were constructed as “savage, incompetent, out of control, and incomplete” (Viruru & Cannella, 2004, p.87). In fact, Cannella and Viruru (2004) argue that the whole concept of childhood is a form of colonization that tries to construct subjects and objects for the sake of the Empire. Children within this framework became “defined, described, known, and controlled” (Viruru & Cannella, p.97) so as to further serve the agenda of the colonizers. They assert that Western ideas of science and reason were all taken around the world through imperialist and colonist actions. As conceptions of proper childhood were developed in the western bourgeois family, deviance, backwardness, dangerousness and abnormality in other classes of children were increasingly becoming a concern. This difference in children’s lives gave the legitimacy of the colonizers to impose a universal notion of ideal childhood, through

discourses of control and violence. This is why it comes of no surprise that colonial project, with its political and economic agenda, would also target children to be able to function in a system that would be beneficial to the colonial project. The modern notion of childhood formed in the West was exported to the colonized indigenous people. This was the basis in which missionary schools were formed across North America and the South so as to impose new identities on children (Stephens, 1995). The discourse of control is obviously also used with parents, particularly women. It is through this discourse that families are judged, and are constructed as morally responsible for the healthy upbringing of their children.

Said (1994) provides a lens in which childhood can be examined and deconstructed. He maintains that the beliefs about the “orient” were European inventions. The discourse surrounding these beliefs is coded by western superiority, and it does not reflect the beliefs of the people of concern. Ideas of dualism, progress, and reason placed younger humans at lower hierarchies while masking circumstances of harsh social conditions faced by all members of society. The belief in human (child) progress created those who are advanced and those who are developed. Within this hierarchy younger human beings became immature, innocent, ignorant and less logical while those with adult Western logic are positioned in position of power. Further, child centeredness, as it was promoted by Piaget theory of child development, gives the illusion that children think and function freely, when in fact it signifies Euro-American, male rationalism.

Progress is a fairly new concept. For example, the ancient Greeks cared about social order and not progress as the latter was established. Humans, according to the Greeks, had already become resourceful enough and they only need to worry about human degeneration. However, new ideas about nature and truths embraced the concept of scientific progress. Accepting progress as a universal law eventually generated claims about sequent stages of change. Human progress and development as a linear concept was never questioned, and was treated as a truth (Cannella & Viruru, 2004). Contradictory individual and diverse cultural ways

of functioning were ignored. This belief in human development is the corner stone of the construct of the child. As important was the belief of the fathers of the Enlightenment (European males) in their own superiority as unsurpassed. These theorists wanted to understand development as it related to them, and the forms of thoughts that they believed most advanced (Cannella & Viruru, 2004). This is how children became the subject of surveillance of adults, as well as being viewed as prefigured, and foreshadows of adults. This construction further legitimized administrative systems of control over them. From infancy, children became the evolutionary baseline in which human truths must be revealed (Cannella & Viruru, 2004). Further, the adult group generally uses ideas of progress and development to regulate and control the group of children. Thus, adult Westerners will impose physical and intellectual imperialism over children. Female children may be in an even worse situation than male children as they have to deal additionally with the sexist attitudes that accompanied colonization.

### **Post-Modernity:**

Many rejected the modernist approach on the grounds that it is another form of colonization, in which the west dictates the “universality of the truth” across all borders. To replace this oppressive discourse, new ideas of post-modernism emerged. Noble (2004) states that the post-modern agenda calls for acceptance of a multiplicity of discourses from those differently placed through geographic background or economic, social, ethnic, gender or age difference. This “politics of recognition” is evident in promoting and celebrating difference, while acknowledging the importance of social inclusiveness. So, it follows, “this concern of ‘otherness’ accepts that all individuals and groups have a right to speak for themselves, in their own voice, and to have that voice accepted as authentic and legitimate” (Noble, 2004, p.296). The concept of ‘white voice’ is replaced by indigenised and multicultural voices.

Postmodernism encourages us to question our beliefs and to approach the narrative of emancipation cautiously. Healy and Leonard (2006) argue that this approach provides space for

recognizing the limitations of all theorization. It also allows the space for inclusiveness. Thus, the meta-narrative of universality, reasoning and order is challenged on the basis that it avoids the contemplation of difference. While these contributions of post-modernism create space for scepticism, it has been criticized for being overly simplistic to the extent that it rejects universality outright.

A criticism of postmodernism, which was voiced by Sewpaul (2005), is its rejection of meta-narrative, which means a rejection of the universal discourses of human rights and social justice (p. 212). Ife (2000) cautions against the postmodernists' cultural relativist definition of human rights, one that has been used to justify gross human rights violations in different parts of the world. For this reason, Ife (2000) affirms that the politics of difference must be grounded in universal principles; an understanding of what it means to be human and an understanding of what unites humanity. Ife's argument is also supported by Said (as cited by Sewpaul, 2005), who argues that over-emphasis on difference has its problems. Said states that cultural exclusivity has created two separate dichotomies – the West and the rest of the world – with the West claiming superiority over all others. Said argues that this rhetorical separation of cultures assures “a murderous imperial contest between them” (Said, 2001, p.32). Sewpaul (2005) concludes her argument by stating:

The dangers of an over reliance on difference, on the one hand, or on essentialist notions of identity and experience, on the other hand, is that these may be used to justify stereotyping, exclusion of people, violation of human rights and a claim to the cultural superiority of the West (p. 217).

While recognizing the short-comings of postmodernism articulated by Sewpaul, Said and Ife, Hedge (1998) suggests that postmodernism can be useful in legitimizing and deconstructing the contradictory discourses that underlie the realities of people. Post-modernism, as proposed by Foucault, helps to understand how subjects are being constructed as well as how power relations are authorized, determined and normalized. It also provides the space to understand

knowledge that are being obscured and those that are being reproduced. This issue is highly important in the lives of unaccompanied refugee minors.

## **Globalization**

Sewpaul (2006) maintains that globalization creates unparalleled inequality and misery particularly among people from the South. In addition to its distortion of development between the north and south, globalization created inequality within the nation state by further marginalizing women and children. The growing inequality caused by neo-liberal capitalism concentrated the wealth in the hands of few, while creating 'wasted lives,' comprising of 'superfluous' populations of migrants, refugees and other outcasts (Bauman, 2004). Sewpaul provides a snapshot of the impact of these forces in the lives of 6.3 billion people in the world, She states (2006):

...about half are malnourished; one billion live in slums; one billion have no access to clean water; two billion have no electricity; two-and-a-half billion have no sanitary facilities; one billion children, i.e. half of the world's total, suffer extreme deprivation because of poverty, war and disease, including HIV/AIDS; and half of humanity lives on less than US\$2 per day (p. 426).

Castells (2000) views these marginalized communities that Sewpaul (2006) speaks off as 'fourth world people' that compromises:

large areas of the globe, such as much of sub-Saharan Africa, and impoverished rural areas of Latin America and Asia. But it is also present in literally every country, and every city, in this new geography of social exclusion. It is formed of American city ghettos, Spanish enclaves of mass youth unemployment, French banlieues warehousing North African, Japanese Yoseba quarters, and Asian mega-cities' shantytowns (Castells, 2000, p. 168).

Shiva (1997) eloquently opens her essay "Economic Globalization, Ecological Feminism, and Sustainable Development" by stating that, "the imperialistic category of global is a disempowering one at the local level. Its coercive power comes from removing limits for the forces of domination and destruction and imposing restrictions on the forces of conservation." For her, globalization is a process of ascending hierarchies and power. It is a process of excluding people from participating in the politics and economy of their own society. Shiva,

rightly so, warns against the Western tendency to identify problems as 'global.' According to her this tendency ignores the responsibility and the complicity of the Western World in creating these problems. The term 'global' in this context does not represent universal human interest, but rather a particular local interest that seeks global control. For example, the World Bank does not reflect the interests of the world communities, but the interests of those who have voting weight by the economic and political powers of donors. Shiva (1997) eloquently describes the 'global' of modern days, as of "the global reach of the handful of British merchant adventurers who raided and looted large parts of the globe as the East India Company, and which then became the British Empire" (p.22).

### **Modernity, Post-modernity, Globalization and Asylum Seekers**

While recognizing the complexity of the refugee experience, it is safe to claim that this experience is framed by modernity, post-modernity and globalization. Some, in fact, assert that the refugee experience is a product of globalized modernity, in which capitalism and neo-liberal policies are viewed as the main reason people are forced to flee (Adelman, 1999). Others point out the danger of relying heavily on post-modern discourse as it is justified for human rights violation. Ager (1999) on her part recognizes how each of these discourses can be used to advantage or disadvantage refugees. She notes that:

...postmodernist framework serves refugees well when it fosters the valuing of their perspective as an otherwise devalued 'other.' It serves them less well if the moral claim of their experience on the world community—very much a modernist, if not pre-modernist, conception—is rendered impotent" (p.18).

Adelman (1999) identifies three different phases of globalization that intensifies the refugee experience: physical, normative and economic. Physical globalization for Adelman represents the idea of the Earth as becoming one entity and as sharing one environment. Thus, in addition to the ease of traveling, global warming has an impact on all lives. For example, the Indian Ocean tsunami of 26th December 2004 displaced many people in countries around the world, including Canada (Toronto Sun, 2008). Adelman notes that the most important aspect of the

physical globalization is the division of the world into one political system of nation states. Normative Globalization, on the other hand, allows notions of individual rights, and universal norms as manifested in modernity. The Convention on the Rights of the Child (CRC) is one example of the normative discourse. This convention (chapter 3 will address this issue) compiles all states to protect children against human right abuses, and to guarantee that all children will enjoy basic human rights, regardless of the child's legal status (i.e. asylum seekers are entitled to such a right too). However, these universal rights may be undermined and ignored when they conflict with state interests. They may also undermine unique cultural practices.

Economic globalization is characterized by the ability to extract capital regardless of the consequences, in the form of rapid and readily transferable 'money' to any part of the world for investment in the hope of the best return (Adelman, 1999). The market, in this context does not have boundaries, whether they be tariffs, duty, or currency control (Adleman, 1999), and is completely detached from history or nature. Its main concern is the faith in the global system where the market is the arbiter of rationality. In this way, Adelman argues, the neo-liberal ideologies sustain both the subjective consumerism and the bureaucratic objective so as to maintain the foundation of global economic order. Within this system governments become the agent of "trade boosters" of enterprises and as a result depart from their role as guarantors of the wellbeing of the commonwealth. Massive restructuring of the state's welfare programs, such as health and education becomes the norm. Adleman summarizes this impact of these three forces of globalization of refugees, by stating:

A third refugee regime is emerging which goes back to the basic principles of modernity, stressing individual rationality, self-reliance and self-determination in resolving the plight of refugees, once again restoring to placing the primary stress on nation state (...) as the instrument of modernity with which to deal with a refugee crisis (p. 83)

Adelman (1999) provides an interesting and compelling account of the multiple dimensions of globalization. His argument can be used to further support the need for recognizing economic refugees as persons in need for protection. It is the separation of economic deprivation from



other human rights abuses that are being used to separate economic migrants and asylum seekers. The argument goes that there should be distinction between these categories as presenting them as one category undermines the ability of those who are 'really' in need for protection (i.e. those who are 'truly' refugees) from having guaranteed protection. However, this line of thinking ignores economics as an important factor in basic human rights. Deprivation of food and shelter is as significant (some might in fact argue that it is more significant) as the right of freedom of expression. As Bauman (2004) notes, the difference between these two categories are small as both are a product of globalization. He notes:

The sole difference between the two kinds of 'wasted humans' is that while asylum seekers tend to be products of successive installments of order-designing and order building zeal, economic migrants are a side-product of economic modernization, which (...) has by now embraced the totality of the planet (p.58).

Asserting Adelman's (1999) observation, Bauman (2004) maintains that the economic system of modernity creates a surplus of outcast people who lack the opportunities in their home countries and as a result seek opportunities elsewhere. These people according to Bauman are 'collateral casualties' of economic progress, in which:

In the course of economic progress... the extant forms of 'making a living' are successively dismantled, broken up into components meant to be reassembled ('recycled') into new forms. In the process some components are damaged beyond repair, while of those that survive the dismantling phase, only a reduced quantity is needed to compose the new, as a rule smarter and slimmer, working contraptions (Bauman, 2004, p.39)

While Adelman (1999) provides interesting insight, he downplays the impact of post-modernity discourse on what the refugee experiences. For example, he ignores the 'new normative approach.' This approach is derived from post-modern thought. Human rights within this new approach depart from positivism towards a more "reflexive, interpretive, and critical approaches to the world of politics" (Nyers, 1999). Nyers problematizes this shift for two reasons: Firstly, he argues that this new approach is based on liberal-rights that rely on dominant western traditions. Nyers (1999) characterizes this approach as being chauvinistic since the morality and ethics of non-Western ethical traditions are being excluded from the global scope. Secondly, Nyer (1999)

points out how this approach accepts a distinction between lives inside and outside of sovereign states. He notes that this acceptance:

does not change the considerable difficulties that come with extrapolating ethical categories from state-centric moral philosophies to the global stage of “international ethics.” The major concern here is that such applications tend to forget the conditions under which these moral philosophies owe their existence. In particular, they obscure the considerable violence that is expended to sustain and reproduce the sovereign political space that allows for the development and performance of ethical principles (p.6).

This new approach is crucial in the lives of asylum seekers. It essentially obscures their right for protection, as sovereign states are unwilling to provide the same rights for ‘refugees’ as they do for their own citizens.

Shabani (2007) provides another useful analysis. He eloquently remarks that Western societies are the main beneficiaries from the global institutional order (Shabani, 2007). It is an institution that maintains the subordination of South towards the North, and contributes to the increase disparity between the South and the North. Shabani (2007) asserts that if we examine closely the wealth in the western societies and the history of its economy, it is quite clear that it is sustained through global interdependencies, which produces benefits to the North and burdens the South. Thus, Shabani concludes by asserting that:

... from a moral point of view we cannot consider the problem of immigration solely from the perspective of the people of affluent countries and have to take into account the perspective of the refugees, asylum seekers, and immigrants; and ... the growing interdependency of global economies gives rise to a moral obligation to assist the immigrants with special duties devolving upon the First World as the result of the history of colonization (p.92).

## **Refugee Children**

Castells (2000) asserts that there is a direct link between what he calls the “unchecked characteristics of informational Capitalism” (p.162), and the destruction of the lives of many children around the world. For Castells (2000) children are caught between supply and demand. Supply of children is attributed to the collapse of the traditional societies throughout the world and the wake of large-scale state deregulation enforced by mega global networks. Within these

new structures children are being “sold for survival, are sent to the streets to help out, or ended up running from the hell of their homes to the hell of their non-existence” (p.163). The process of globalization on the other hand creates demands for criminalization of certain economies, advanced communication, famine, disintegration of states and societies, and massive uprooting by wars. For example, Hick (2001) points to the impact of globalization on warfare, and its manifestation in the lives of children. He states that the change in the nature of warfare is a result of an increase in poverty, weapon sales, new economic relations, and corporate intrusions. Three factors, in particular, contribute to new war-torn countries: the free trade and direct foreign investment, forced structural adjustment by the World Bank, and increased sales of weapons as a result of the end of the Cold War (Hick 2001). As a result of this new shift in warfare, children became affected in many ways:

Due to armed conflicts, children are displaced and become refugees; children are recruited or abducted to become child soldiers; girls are sexually assaulted and exploited; wars disrupt the education of children; HIV/AIDS is spread by soldiers, who infect increasing numbers of women and children; and children going out to play are killed and maimed by land mines (Hick, 2001, p.107).

Brysk (2004) points out another, yet no less important, aspect of how modernity and globalizing encourages children to be ‘people out of place.’ She states that childhood can be viewed as “an evolving relationship between pre-modern identities, modern citizenship, and post-modern mobility” (p.154). Within this representation, children experience a series of ongoing struggles and contradictions between identity, commodification and rights (Brysk, p.154). The logic of patrimony is manifested in the view of children as a bearer of a family, ethnic group, nation. This view surpasses the child’s right as individuals of their own. From the moment a child is born, she becomes immediately the property of her parents. Thus, children’s property status is pitted against the child’s right of personhood and citizenship. If parentless, children will be constructed as both miniature adults, and vulnerable in need for protection (Statsiulis, 2002). This issue is of great importance in the lives of unaccompanied minors and as a result will be further revisited in the coming few chapters.

The past few decades however, witnessed growing recognition of children as persons. The comprehensive and widely endorsed UN Convention of the Rights of the Child is a result of this notion of recognition. However, as will be discussed in chapter 3 and 4, the children's rights regime is far from being complete, and is filled with contradictions. It also proves that it is inadequate to the demand of globalization (Brysk, 2004). For example, the commodification of children places children into labour migration and trafficking. Further, as a result of poverty and social exclusion manifested in underdevelopment, political conflict, and new divisions of reproductive and productive labour, children in the South are forced to cross borders as dependents, migrant labourers, refugees and adoptee. Children are compelled to adopt new roles stretching from maid to prostitute to orphan to soldier in armies, rebel militia, and into gangs of bandits. There is a tension then between the economic value of the children and their liberal rights. Further, while migrant children as subjects of humanitarian dependency are in theory entitled to relatively more rights than adults, their patrimonial status undermines their power and reinforces their second-class citizenship. This contradiction will be further explored in the coming few chapters as it is the basis in which unaccompanied refugee minors are being exploited, excluded, devalued, and ignored.

While all theorists discussed thus far provide compelling insights into the impact of colonization, imperialism, neo-colonization, globalization and capitalism upon the lives of children, some argue that these theorists tend to perpetuate children as victims, or as "an angel caught in the storm" (Burman, 1998, p. 60). This conceptualization of children is a consistent theme in literature. For example, Chatty et al. (2005) maintains that over 80 percent of the articles about refugee children were published in medical or health sciences, psychology, or psychiatry, while only 12 percent were published in social science journals. These trauma-based studies usually reflect the globalization of Western tendencies to individualize, pathologize, and medicalize. Further, it simplifies complex realities in terms of pathology, all of which can be profoundly disempowering and stigmatizing (Chatter et al., 2005). According to

Boyden and de Berry (2004) this individualization of the highly political phenomenon portrays children as passive recipients of adult agency and purely as victims of the conduct of “others.” The reality is that many children can be very active in defining their own allegiances during conflict, as well as economic hardships, while blurring the dichotomy between adult as active perpetrator and child as passive victim (Bhabha, 2001; Boyden & de Berry, 2004). Unaccompanied refugee minors reaching the shores of Canada are an example of the way these children can participate in crafting their own destiny, making sense of their lives, and finding ways to transform their destinies.

## **Conclusion**

This chapter sought to lay the theoretical foundations for the thesis, relying upon post-colonial theory, encompassing feminist, Marxist, sociological and anthropological perspectives. This theory is useful in understanding the issue of forced migration, as well as the way the notion of childhood was imposed on the children of the South. It is also useful in paving the way to deconstructing the dominant discourses surrounding unaccompanied refugee minors. It is essential to understand the historical, political, economical and social forces that leads to the issue of refugee-hood, particularly of those who are unaccompanied minors. The premise of this argument is that asylum-seekers should not be viewed as a case of charity, or in terms of humanitarian crisis but rather as product of long legacy of colonization, neocolonization, imperialism, capitalism, and globalization. The principle victims of these forces are people of the South, particularly children. However, it is important to note that refugees, including unaccompanied children, are nonetheless successfully managing to find ways to survive these oppressive forces.

Building further on themes identified in this chapter, the next chapter will critically assess how factors such as context, dominant discourses, and power relations operate and contribute to regulating the number of unaccompanied refugee minors seeking protection in industrialized countries.

## CHAPTER 3: A View from the North

"Ideas, cultures, and histories cannot seriously be understood or studied without their force, or more precisely their configurations of power, also being studied."

- Edward Said

*The business of obscuring language is a mask behind which stands the much bigger business of plunder.*

- Franz Fanon

### **The significance of discourses**

"A view from the North" is an attempt to understand how unaccompanied refugee minors are being excluded from seeking protection in the North. It will be argued that the dominant Western discourses undermine unaccompanied refugee minors' ability to seeking protection, or at best being successful in their claim. The chapter will examine how refugees in general, and unaccompanied minors in particular, are constructed as a particular type of subject, a construction that is used for exclusion. These dominant discourses are the ones to define policies as well as informing societal knowledge. Burr (2003) maintains that discourse defines and produces the object of knowledge, and determines the way people talk and reason about an issue, which influences social practices, and in turn facilitate and maintain control of others. With this knowledge, some powerful groups have the privilege to communicate it to others and treat it as 'the Truth'. Knowledge is clearly tied to the notion of power. According to Foucault (as cited by Burr, 2003), "power is an effect of discourse" (p. 68). Power is exercised rather than possessed. Foucault argues that having the power to claim resources to control others depends on the "knowledge prevailing in the society." Thus, power and knowledge for Foucault go hand in hand. Representing a certain discourse in an "acceptable matter" is the power to define others. In this way knowledge can become a way to regulate and discipline people, rather than a way to free humanity (Burr, 2003). Foucault's interest lay in exploring the power of 'how':

... to understand how power operated in specific methods and strategies, how major shifts such as the increased disciplining of individuals in modern western society

had taken place, and how one could show the political and economic dimensions of changes in power (Barrett, 1992, p. 136).

Discourses are closely connected to institutional and social practices and remarkably influence the way we live our lives. Exclusion is a key concept in these discourses (Mills, 1997). It determines what can be said and what can count as knowledge. It follows, then, that there may be different and contradictory discourses operating in any situation, each of which claims to be the Truth (Burr, 2003). However, only discourses that are available in a culture and will eventually be fitted to the interests of the relatively powerful groups are the discourses that are likely to dominate. Fook (2003) maintains that in order to deconstruct the dominant discourses we must question them, search for their contradictions, and find alternative perspectives and interpretations. Importantly, power does not have to be exclusively negative (Barrett, 1992). By providing different interpretations, one can produce new kind of knowledge that will be more accurate in portraying the reality of those who are affected by oppression.

It is necessary to critically assess how factors such as context, dominant discourses and power relations operate and contribute to maintain oppression. This part will be an attempt to challenge prevailing discourses and power relations, and their impact on unaccompanied refugee minors. By applying Foucauldian view of power to the issue of unaccompanied refugee minors, I hope to provide a better understanding of how the refugee system works and the impact that it has on this population. This chapter will explore the following questions: How are refugees, particularly unaccompanied refugee minors, being constructed? How do dominant discourses impact upon them? How is the refugee system being controlled, and by whom? And if knowledge is not separated from power, how is the privileging knowledge surrounding unaccompanied refugee minors informing policies which in turn determines the 'deserving' and the 'undeserving'?

Recognizing Foucault's belief in the limitation of resistance to such discourses, it is my belief that uncovering these dominant discourses, while providing a different narrative from the

South (as discussed in the previous chapter), will provide the context for new knowledge, and as a result in a new dominant discourse which will bolster unaccompanied refugee minors when seeking protection. The coming chapter will be divided into three parts: the first will discuss general discourses surrounding refugees, the second will examine discourses constructed about unaccompanied minors, and the third will provide an assessment of discourses that impact female refugees.

### **Discourses constructed about refugees and asylum seekers**

There are many discourses operating when dealing with children's forced migration. Within each agency, whether it is institutional, social or organizational, these discourses have a tremendous impact on the refugee community in general and children in particular and work to exclude this community from a guaranteed safe status. The dominant discourses associated with asylum seekers range between humanitarian, economic, social and political concerns, as well as policies and practices (Lacroix, 2006, p.21). It is worth noting that such discourses were not the case in the early years of refugee flow. For example, Lanphier (1981) indicates that during the Second World War, refugees were promoted as 'freedom fighters.' Further, the refugees of the 1990s from former communist countries were viewed as morally untouchable political refugees. Chimini (1998) attributes this shift of discourse to oppressive relations exercised by Northern countries on people from the South. Chimni (1998) states that before 1945 the needs of refugees, including children, from the third world were neglected. Throughout the cold war period (1950-1989) refugees from former Communist countries possessed ideological and geographical value, and as such were welcomed in the West (Chimni, 1998). It was not until the 1980s that the 'new asylum seekers' (Chimni, 1998, p. 351) from the third world emerged at the gates of Western Countries. However, upon their arrival and with the end of the Cold War, refugees were no longer welcomed in the North, and a non-entrée regime became the custom. Chimni (1998) notes:



Western states portray the non-entrée regime as being composed of measures, which merely seek to check abuse of refugee status, by individuals seeking a better life in the affluent North. Coupled with the growing inability of improvised Third World states to carry the burden of refugees, the new approach led to the increased acceptance of the involuntary of refugee, the new approach led to increasing acceptance of involuntary repatriation and a focus on in-country protection and internally displaced persons (IDPs) (p.352).

Thus, refugees became constructed as ‘undeserving,’ and ‘bogus’ claimants using asylum as a means of economic advancement (Giner, 2007). The main goal of this new discourse is to reduce the number of asylum seekers, a tendency which Thänhardt and Miles (1995) call the “predominant logic of exclusion” (p. 3). The key concept in exclusion is citizenship. This concept will be further discussed below.

### ***Importance of Language***

It is impossible to speak of discourse without touching on the power of language in constructing knowledge. Language, according to Fook (2003), is not neutral. It is an indication of which value system is dominant and which is not. Language is about power—and not only about words. It is about struggle over representation. This representation according to Mills (2005) informs racist knowledge and practices. Thus, the contestation of language usage leads to political actions (Mills, 2005). As Foucault notes:

Discourses are not once and for all subservient to power or raised against it, any more than silences are. We must make allowances for the complex and unstable process whereby discourse can be both an instrument and an effect of power, but also a hindrance, a stumbling block, a point of resistance and a starting point for an opposing strategy. Discourse transmits and produces power; it reinforces it, but also undermines it and exposes it, renders it fragile and makes it possible to thwart it (Foucault, 1978, p. 100).

The language that is used to describe refugees is very similar to that of colonial discourse language. This language is denigrating, representing negativity, and constructs the subject (the “natives” or refugees, as the case may be) as the ‘other’ (Mills, 2005). For example, according to Soguk (1999) the term ‘refugee’ can only make sense when it is opposed to the term citizen, as someone residing in her own ‘state.’ Thus, the lack of state is what defines

refugees, which according to Soguk (1999) further reinforces the state's centrality. Thus, refugees are defined as abnormal, and 'other' while normality and belonging is attributed to citizens who reside in their own territorially bounded state. In this sense 'states' are the legitimate form of political organization where by 'citizens' are the only legal individuals allowed existence (Soguk, 1999). More importantly, the language used usually constructs refugee as being tragic victims of circumstance or of their own doing who are in need of help. The language usually uses racist discourses and undertones, whereby they are viewed as needing to be civilized or, worse, of being fundamentally different (such as "they don't belong") (Stolcke, 1995). It obscures agents of persecution and issues of why refugees seek protection (through the use of "neutral" words such as "displaced"), while ensuring that their situation is beyond understanding. Further, the language used usually dehumanizes all refugees by the generalizations underlying their origins and nature in such expressions as "Arabs are terrorists," "Africans are corrupt," and so on. This generalization according to Mills (2005) makes these communities of individuals an indistinguishable mass, about whom one could amass 'knowledge' or which could be stereotyped. For example, Robins (2003) points out how 'the lost boys of Sudan' were portrayed as 'boys' rather than young men, a notion that further serves the racist characterization of Africans, as these black men have been 'Othered' as foreigners. Robin notes that this language encourages a 'common-sense' and 'uncontestable acceptance of the status quo' (p.30).

### ***Citizenship and Exclusion***

The contested concept of citizenship is one of the most debated concepts in recent years (Yuval-Davis, 1997). While Dominelli (2004) views citizenship as the way individuals feel a sense of belonging or being part of a greater society, the truth is that citizenship is still highly associated with "nationality and ethnicity tied to a particular geographical area." Citizenship is defined as a status given to those who are full members of a community (Lister, 2003). Within the nation-state model, this status is marked by documents

certifying their membership, i.e. passports or birth certificate (Castles, and Davidson, 2000). The contractual relationship between 'citizenship' and sovereign state is a new phenomenon, just over two hundred years old (Lipschutz, 2004). Lipschutz (2004) attributes this relation to the rise of Capitalism. Citizenship implies certain civil, political and social rights and obligations aiming to create a sense of belonging for its members. However, this sense of belonging is denied to certain groups and individuals. Dominelli (2004) describes how this exclusion works. She states:

The realization of an active citizenship amongst society excluded people is crucial in a society endorsing human rights within a framework of social justice because it provides the basis from which to justify claims to social resources necessary for wellbeing... (p.232).

The lack of political subjectivity (i.e. political power) manifested in the narrow sense of citizenship clearly silences refugees. This power allows for meaningful political presence as well as demands for rights. Thus Nyers (1999) proposes that:

the language of humanitarianism and human rights which surround refugee situations should be connected to some fundamental questions about the nature and location of political community as well as the corresponding range of ethical possibilities that are related to this understanding (p.10).

Lister (2003) accurately divides citizenship exclusion into two forms; there are "those who are excluded from without" and "those who are excluded from within." The target of the former one is migrants and refugees from the South; while the latter are those who are second-class citizens (i.e. women, children, people with disability, etc). Some in fact have described the former as "a conspiracy against outsiders" (as cited by Lister, 2003, p. 44). The guiding principle of this former exclusion is maintaining containment, restrictionism and regulation of migration, which is one of the most defining notions of the current century (Zetter, 1999). Regulation, restrictionism and containment discourses are used as an excuse by many countries to protect their national and ethnic identity, and economic capacity. Refugees in particular are perceived with suspicion and as the most threatening category of migrants. Thus, within this discourse asylum-seekers are constructed as "threatening unassimilable strangers" (Yuval-Davis et al,

2005, p. 516) and “burdensome, needy and costly” (Humphries, 2004, p.101). Further, in post-9/11 times, asylum seekers are also viewed as “potential terrorists” and a “security risk,” especially the young men. This construction has created exclusive guidelines and procedures within Northern countries that make it hard for refugees to seek protection. Such exclusion is directed to anyone who is seen to be “different,” and as a result contributed to more racialization of the other (Yuval-Davis et al, 2005).

### ***Borders and Control***

In present times, ‘secure borders’ has become a pre-condition for ‘secure boundaries’ of the national collectivity and of identity (Yuval-Davis et al, 2005). Borders in this sense operate both as open-ended surveillance, and as an instrument of institutional violence and policing (Côté-Boucher, 2008). The mere purpose of this phenomenon is to limit the movement of people from the South. The guidelines and procedures to deal with asylum seekers are not only about controlling the number of unwelcome aliens, but also a way to preserve the collectivity of Eurocentric populations as well as policing the deserving and non-deserving of citizenship (Yuval-Davis et al, 2005). Yuval-Davis et al (2005) assert that such a trend is not clear-cut. They note that securing borders in the era of globalization requires contradictory manoeuvring in which “a very clear pull between wishing to extract the maximum economic benefit from global processes while constraining the cultural and social diversity that would ensue from a more truly globalized immigration, but that is feared might threaten social cohesion” (p. 517). Thus, attempts by Western governments since late 1980s to adopt immigration policies that reduce the number of asylum-seekers are being advanced in parallel with the internationalization and transnationalization of economic markets that surpasses state control and capacity to respond social needs (Lacroix, 2006).

This phenomenon of confinement and border control is not new (Côté-Boucher, 2008). For example, during the 19<sup>th</sup> century, travel documents were used to protect European sovereignty over colonial territories and guarantee their access to these colonies. New borders

to secure the European expansion in the colonized world created “a colonial economy of violence” via policing, and military deployment, while Europe was constructed as a safe place (Côté-Boucher, 2008, p.147). Thus, Côté-Boucher (2008) notes:

the monopolization of the legitimate means of violence by Westphalian European states emerged in conjunction with the “legitimate means of movement”... that is the means through which one is authorized to move across spaces, employing borders as liminal spaces permitting forms of violence legitimated by state authorities (p.147).

Côté-Boucher (2008) maintains that the analysis of borders as a violent economic and political project provides the space in understanding the present day combined-borders’ logic of control with sovereign measures. This combination according to Côté-Boucher is believed to secure ‘democratic societies’ from outside and inside threats. In order to sustain such borders, a variety of information technologies, and confinement sites. These include, counter-terrorism legislation and regulations, intelligence exchanges (such as the one was used to deport Syrian-Canadian Maher Arar back to Syria), interrogations, prosecutions, detention (and sometimes indefinite detention) and deportation of undocumented migrants and refugees by using immigration law as an anti- terrorism tool. Locating airports as a place for interrogation, renditions, unlawful imprisonment, and deportation, aims at preventing certain individuals from accessing refugee protection in North America. As a result of these measures these individuals are being deprived from securing their basic rights (Côté-Boucher, 2008).

It comes as no surprise that states in Europe and North America would actively encourage the creation and containment of settlement camps as far away as possible from their borders and would pressure third world governments, who are unable to provide for their own populations, to accommodate those refugees (Zetter, 1999). Through programs such as Canada’s “Refugee and Humanitarian Resettlement Program,” some privileged few will be, as Yuval-Davis et al (2005) put it, “cherry-picked on the grounds of skill and potential, rather than need for protection” (p.518). There is an enormous implication of this process on women and children. Firstly, on what grounds would one be chosen? Would a child be chosen over a young

man? Would a man be chosen over a single mother? Would a female child be chosen over a male child?

***Dependency: not in my backyard, but someone else's backyard.***

According to Zetter (1999) the dependency discourse is another powerful tool used to restrict and contain refugees. Refugees tend to be viewed as a “burden of dependency on the international community” (Zetter, p.73). Within this view, dependency and survival go hand in hand. This image of refugees corresponds with images broadcast in major media outlets, highlighting these refugees as encamped, vulnerable. Refugees are the victims of exodus, with little control from their side, or as survivors of human rights abuses. Within these two cases, Zetter states:

...The concept of sanctuary coupled with the loss of familiar economic and social support systems and individual autonomy combine to construct a powerful image of dependency and the need for assistance (p. 74).

Zetter questions whether those refugees are, in fact, a burden. He argues that the interests of all actors, with the exception of refugees, are to contain and control refugees politically, diplomatically, logistically, and in terms of security considerations and media profile, by sustaining dependency. The only way to maintain the relief regime is by sustaining the image of dependency.

***Humanitarianism and the Art of Silencing***

The dependency discourse goes hand-in-hand with the humanitarian discourse. The humanitarian discourse is one of the most widespread and powerful discourses in present times associated with refugees. It constructs refugees as *object* of humanitarian emergency, as well as a crisis in international order (Nyers, 1999). Malkki (1996) argues that this representation of refugees manifested in refugee agencies, government and non-government organizations as well as media have serious consequences on the lives of refugees. While Malkki (1996) recognizes that these representations help to raise funds and resources, they have serious

consequences on the lives of those who qualify as 'refugees.' One of these consequences is silencing. She eloquently describe this silence as:

...refugees suffer from a peculiar kind of speechlessness in the face of the national and international organizations under whose object of care and control they are. Their accounts are disqualified almost *a priori*, while the languages of refugee relief, policy science, and "development" claim the production of authoritative narratives about refugees (p. 386).

Malkki (1996) illustrates how these images whether visual (such as the ones portrayed by the UNHCR, and other aid agencies) or verbal (such as the "language of raw human needs") are much more widespread than the displaced person own accounts of exile. These images are linked to speechlessness of refugees, as these helpless refugees need someone to speak for them (p.388). She states that these sentimental images, mainly of women and 'innocent' children, are the ones to be used so as to get to the heart of humanity, to our humanitarian side. This image of 'suffering of people' and humanitarian representation, the core of 'humanitarian concern' and 'humanitarian compassion,' is embodied in a history of charity, a history of international law and peacekeeping, a history of banishment and a history of missionary, colonial and imperial rule. Yet, these images obviously depoliticize and dehistoricize the refugee experience. They "tend to hide the political, or political-economic, connections that line television viewers' own history with that of "those poor people over there" (Malkki, 1996, p.389). From this perspective, these humanitarian practices do not only dehumanize, but also merely diminish humanity to bare, naked, or minimum of humanity (Malkii, 1996). In order to address this issue, Malkki suggests that one needs not only to recognize human suffering but also "narrative authority, historical agency, and political memory" (p. 398) as all of that might uncover struggles of Truths, and history. She concludes by stating:

It is a historicizing (and politicizing) humanism that would require us, politically and analytically, to examine our cherished notions of mankind and the human community, humanitarianism and humanitarian "crisis," human rights and international justice. For if humanism can only constitute itself on the bodies of dehistoricized, archetypal refugees and other similarly styles victims-if clinical and philanthropic modes of humanitarianism are the only options-then citizenship in this human community itself remains curiously, indecently, out-side of history (p.398).

### **Discourses about unaccompanied refugee minors**

In addition to the discourses discussed above faced by the whole community of refugees, unaccompanied refugee minors are faced by a further set of dominant discourses. For example, while the issue of citizenship impacts all refugees, it has a particular impact on children, particularly those who seek protection. Children tend to be viewed as “future citizens,” and citizens-in-the-making rather than full or “regular” citizens (Stasiulis, 2002). Lister calls this exclusion an “exclusion from within.” This discourse prevents young refugees from being active participants in shaping their own destiny. It is the adult belief in the antinomy between children’s protection rights and their rights to active citizenship that creates a serious ideological barrier to children becoming active citizens (Stasiulis, 2002). Stasiulis states:

When children are considered to lack the requisite reason, wisdom, competence and autonomy to make decisions about their affairs, or when they are viewed merely as potential adults or incomplete persons, their status as autonomous citizens capable of exercising their political will and participating in political and social life, is severely undermined (p. 511).

The discourses apparent in inconsistencies of state intervention in North America present another obstacle for unaccompanied refugee minors. Bhabha (2001) notes that these inconsistencies are a product of “two opposing normative frameworks—immigration control preoccupations on the one hand—and welfare protection (including child’s rights) concerns on the other” (p. 293). Immigration control is concerned with the child’s alien and irregular status. Children are viewed as illegal migrants, in the same vein as illegal adults, who have lied in order to cross borders by presenting false documentation and travelling on fraudulent identities. Within this line of thinking, children are assumed to be ‘bogus’ migrants, even before a determination is made as to their need for help. Further, children are presumed to be older than they claim, or at least they are not real children like “ours.” Through such rationalizations, child migrants can be treated as adults (Bhabha, 2001). The concept of childhood is not applicable to these children, who are placed into a category of exceptionalism, because of the “traumatic



quality of their life experience” (Bhabha, 2001, p. 294). Bhabha asserts that these children are seen as “out of place,” in which “...heightened scepticism and hostility rather than compassion are thus, paradoxically, typical official responses.” (p. 294).

The welfare protection discourse, on the other hand, views the child migrant first and foremost, as *child*, and secondly as an asylum seeker or alien. This view is based on the idea that children are vulnerable, dependent and legally incompetent and, as a result, they are in need of special protection. Children’s victimhood is emphasized in this approach. While some benefits might be generated from this view, it also brings with it skepticism about the children’s agency, competence, reliability and “knowledge.” From the point of view of extra benefits, children will have the privilege of receiving a generous and liberal interpretation of the law when their fear of persecution is articulated. Decision makers, as it is encouraged by the UNHCR, give children the benefit of the doubt, and to suspend their normative evaluation procedures. Further, they are also encouraged to take into consideration other circumstances such as the family and the country’s situation. However, children’s agency within this view is undermined. Children are the only group that have no right to hold an office, to vote, or in the case of refugee children, to be able to sponsor their parents, a right that is available to adults. The right of a parent to a child is not questioned, but the other way around is not provided. Thus, the child’s right to a family life, according to Bhabha (2003), is pitted against the state’s interest in immigration control. This comes back to the idea that children are not ‘real’ citizens, because if they were they should have the right to sponsor their families.

The Canadian Council for Refugees (CCR) insists that children should not only be viewed as bodies that are fully influenced by adults, but also as agents that are motivated by the same motives as adults. This idea calls into question that a child is a distinctive type of human being (Bhabha, 2006). Some children are coerced into becoming a child soldier while actively killing, kidnapping and torturing, especially when it comes to other child soldiers, or into becoming

politically active children. However, others are joining the struggle just like their adult counterparts, out of loyalty to certain groups and community – suicide bombing is an example of this phenomenon – a lack of better choices, for survival, or for excitement (Bhabha, 2006, p.1532). This dilemma presents a serious struggle both for the international community trying to accommodate refugee minors and for the minors themselves who are seeking protection. With this regard Bhabha (2006) poses the following questions:

What does it mean for children's responsibility, culpability, accountability before war crimes tribunals and disqualification from refugee protection—measures that affect adult soldiers engaged in genocide acts or crimes against humanity? Do the arguments about neurobiological evolution justify differential punishment, or does acknowledgment of a child's agency suggest a correlative obligation to allocate responsibility?

Bhabha goes on to argue that the purity and innocence assumed in the Western society towards children supposes that children lack reason and conscience. Only under these measures can human rights protection be justified. If it were otherwise, children would not be receiving privileged treatment. In fact, Bhabha (2001) notes that children who present their asylum claims based on their vulnerability and victim-status have had more success in securing refugee status than those who based their asylum claims on their political beliefs, activism and their role as decision makers.

One can identify two different strands to the rejection arguments above (Bhabha, 2006). First, children in the first group are viewed as “not really” children and as a result they should be treated as adults with no special consideration. The second argument views children as incapable of political activism, or of being viewed as a political threat, or in fact of being capable of providing reliable testimony about their political activities. Both of these arguments stem from the notion of childhood innocence discussed earlier. Bhabha (2006) states that our idealized vision of children dominates our thinking, while the notion of children's agency is suppressed. Childhood, according to Bhabha (2006), is conceptualized in romantic, utopian terms, while children are in fact disempowered and disenfranchised (p. 1528). For example, while children

are the only group expressly protected under international law, this protection is still subject to the actions of adults for compliance and enforcement. O'Connell Davidson addresses this issue by raising the following question:

“[I]s the utopianism embodied in dominant children's rights talk, with its emphasis on children's universal right to 'childhood,' likely to address the structural inequalities and oppressions that affect particular sections of humanity, both child and adult?” (As cited by Bhabha, 2006, p. 1534)

Bhabha concludes by asserting that the view of the child as a competent agent and decision-maker is in conflict with the passive victim protectionist approach. Presenting the child as “an active participant” in the process of seeking flight calls into question the child's motives for migration.

Another important discourse operating against unaccompanied refugee minors is related to their status as “unaccompanied” by their parents. Unaccompanied refugee minors are viewed as the cargo of human traffickers, or as “anchors” that were sent by their parents, so they follow them (Bhabha, 2006). Thus, immigration control believes that taking care of these children will only encourage exploitative parents and traffickers. However, there is no doubt that this discourse is further used to restrict the number of those seeking asylum without any regard to their circumstances. As some have argued, parents are generally in as much need as their children for protection.

### **Females within these discourses**

It is generally believed that males are persecuted more than women and this is the reason, the argument goes, that we see larger number of refugee males than women. The reality, however, is not that females are targeted less but rather, females face more barriers in accessing asylum. Newland (2004) credibly asserts, that there are certain obstacles women and girls face in seeking and gaining asylum. First, women and girls are not as visible in the public sphere as men. As a result, females appear less in registration lists for selecting refugees. In addition, barriers to access are also related to logistical, informational, cultural and

psychological reasons. Sometimes it can be as simple as the fact that women and girls in particular are less mobile and are unable to reach the location where they can claim asylum. Women's responsibility over children makes it even harder for travelling, as women rarely have the luxury of travelling alone. Further, women are generally more illiterate than men (Newland, 2004). This makes it a challenge for them to access information and to apply for asylum. In addition, many women are reluctant to speak about their experiences, especially where their past involves sexual assault or exploitation. The reality that determination hearings tend to be conducted by males does not help. Another reason for such obstacles is that, generally, the harm females suffer or fear suffering is less recognized and acknowledged. Thirdly, there is very little recognition of the forms of persecution specific to women in the public sphere. Finally, it is hard to qualify for refugee status based on the persecution they experienced.

The 1951 Convention does not specifically mention gender or sex as a basis for persecution—a glaring omission, considering that sex and gender are among the primary characteristics of human beings. In fact, there is ample evidence that women, who are usually seen as symbolic bearers of the honour of their families, ethnic groups and clans, are the first to be targeted for persecution in times of war and conflict (Albanese, 2001). Women and girls are the primary victims of persecution for reasons of their sex, particularly in war times. Women within this category are persecuted regardless of their own views or beliefs, based solely on their kinship or tribal affiliation. It is not surprising that for many of these women, it is exceedingly onerous to establish the necessary connection between their persecution and the five grounds stated in the 1951 Convention (Newland, 2004). Further, traditional and historical practices, such as forced marriages, spousal battery, genital mutilation, honour killings, etc. are still viewed as “private” matters that need to be resolved within the private sphere, and are disengaged from state intervention. With that being said, it is worth noting that the government of Canada is a pioneer in introducing gender guidelines, recognizing violence against women as a particular form of persecution that qualifies for asylum protection. However, these guidelines

do not help many refugee women who remain in refugee camps. Callamard (1999) argues that women remain highly vulnerable to discrimination in terms of accessing international assistance, income and physical protection. She further states:

...discrimination and violence against women are politically determined and politically sanctioned, under the actions or influence of international, national and local actors, and therefore that the situation of many refugee women in camps amount to persecution under the accepted definition (p. 197).

Building further on Callamard (1999) argument, Akram (2000) points out to how issues faced by women in the south are being used by western feminist groups as well as other neo-liberal groups to further perpetuate oppression against these women. She argues that a discourse of “neo-orientalism” has emerged from the work of feminist human rights advocates. The perspective of this neo-orientalism is manifested by the stereotypes attributed to the East; and valuing Western or Western feminist perspectives over an accurate interpretation of human experiences. This discourse depicts women from the East as “a backward victim caught up in the clutches of tradition (Hedge, p. 285). This discourse of cultural reductionism certainly undermines the accurate interpretation of the type of persecution women face in the “East” and can mischaracterize the human rights protections to which they are entitled. In this process, neo-orientalism silences refugee females by “falsely characterizing Muslim women’s claims as gender-based persecution” (Akram, 2000, p. 26).

To illustrate her point, Akram (2000) speaks of a case of a young Saudi woman, Nada, who claimed refugee status in Canada on the basis of political beliefs of feminism and her membership in a particular ‘social group.’ Nada claimed that she was persecuted in her country for refusing to wear the veil and for protesting the sexist laws of the Saudi regime. The Canadian Immigration and Refugee Board rejected her claim on the basis that it is not credible that an Arab Muslim woman would oppose the authorities of an Arab Muslim state. Further, the Refugee Board found that Nada’s feminism was not a “political opinion” and thus she should comply with the general norms and laws of her country. Subsequently, the Immigration Minister commented on Nada’s case, stating that Canada does not want to impose its own values on the

rest of the world. Eventually Nada, with the assistance of pressure from human rights groups, was granted the right to remain in Canada on humanitarian and compassionate grounds. When she was asked about her case, Nada publicly expressed the Orientalist views she faced in Canada. She stated:

The discrimination and repression I lived with in Saudi Arabia had political and not cultural roots. When governments impose a certain set of beliefs on individuals, through propaganda, violence or torture, we are dealing not with culture but rather political expediency. The claim that such practices are cultural is dangerous, if not racist. When a woman walks down the street in Saudi Arabia without a veil and the Mutaww'ain (religious police) flog her, this is not cultural, it's political. Who gave permission to the Mutaww'ain? The government. They fear that women will try to change things, and they'll lose their political power... The status of women in the Middle East is deteriorating, not because of Islam as some claim, but because of political oppression. Islam is being manipulated. In the Middle East, as everywhere else, men would do anything to preserve their power and authority...In the Middle East, men chosen to exploit Islam for their own interests, not out of piety or fear of Allah. But elsewhere men have used other religious ideologies to achieve personal political gains...Women are repressed everywhere around the world, no matter what the religions, no matter what the culture (As cited by Akram, 2000, p. 26).

Such discourse is also used to justify militaristic intervention or to support repressive regimes, or to rationalize other discriminatory practices against people from the East, while females remain the main victim of such action. Bhabha (1999) further supports this argument and maintains that foreign policy uses feminist arguments to propagate western values while attacking and essentializing Islam. Bhabha asserts that, in the meanwhile, non-Western females may now have increased chance in defending their decision to break away from certain imposed norms. Bhabha doubts whether this will bring overall success in gaining refugee status, as it is clear that there is a decline in access in the first place and increased hostility to migration from non-Western countries.

## **Conclusion**

This chapter has endeavoured to articulate and critically analyze the context, discourses and power relations that shape the context of unaccompanied refugee minors. This has included an analysis of language, discourse practices and socio-cultural practice. The first part

presented the main discourses regarding refugees seeking protection in the North. It was argued that the Northern states have been actively and increasingly closing the gates, and creating further barriers to people in need of protection. The justification of these policies lies in constructing dominant discourses that serve to exclude these refugees. These discourses can be seen in the language used toward refugees as well as discourses of citizenship, security, dependency, and humanitarianism. Refugees are constructed as costly, criminal, burdens and as a result, unworthy of protection. It was noted that these discourses at their best hide a racist, capitalist agenda. The second part of this chapter discussed the discourses associated with unaccompanied refugee minors. Yet again, these discourses further perpetuate the biases being used against children by the Northern countries' protection system. It was argued that Northern countries, including Canada, have been inconsistent with their treatment to minors. The final part discussed the reasons why females are almost invisible in the asylum-seekers community and the challenges they face when trying to seek protection. This chapter opens up possibilities for re-evaluating and reconstructing new discourses that will nonetheless benefit unaccompanied minors.

The coming chapter will provide an analysis of how these discourses are being translated to policy and examine the actual policies that deal with unaccompanied minors both within Canada and internationally.

# CHAPTER 4- International and National Policies

## INTERNATIONAL POLICIES

This chapter will discuss the gaps in international and national policy concerning unaccompanied refugee minors. Focusing on the discursive (deconstructive) policy analyst, this chapter will identify some discourses that are privileged over others and how these particular policy discourses legitimize specific courses of political actions. Politics and public policy are shaped by socially interpreted understanding, meanings, and dominant discourses being circulated (Fischer, 2003). Thus, this chapter will demonstrate that politics and policy are grounded in subjective factors. It will further show the identification of 'facts' and 'truths' is the product of what Fischer calls "deeper, less visible, political presuppositions..." and as "the stuff of policy politics" (p.13). The same interpretive methods used in the previous chapter will be used for greater complexity in analysing competing definitions, questionable explanations and debatable arguments. This policy analysis will expose aspects of policymaking that are overlooked or obscured by the 'myth of the given' (Fischer, 2003, p.13).

The first part of this chapter will discuss the international policies concerning unaccompanied refugee minors. It will provide a historical snapshot of the formation of children's rights policies as well as a brief discussion of the significance of these instruments. It will further discuss the limitations and gaps manifested in these instruments. It will be argued that there is an urgent need to address the gaps in international policy so as to ensure a fair, just and long-lasting solution for unaccompanied refugee minors.

### **Major conventions and agreements to protect children**

The mid 20<sup>th</sup> century witnessed an increased interest in protecting the rights of children, and to some extent refugees. Several international conventions and agreements govern the treatment of asylum-seeking children. Most notable of these instruments are the 1951 UN



Refugee Convention and 1967 Protocol Relating to the Status of Refugees, and the 1989 UN Convention on the Rights of the Child (CRC) (Bierwirth, 2005). Other significant instruments include the UNHCR's 1994 "Guidelines on Protection and Care" and the UNHCR 1997 "Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum" (referred to usually as '1997 Guidelines'). The UNHCR is currently working on a new draft called "Age-Sensitive Interpretation of the Refugee Definition as Contained in Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees" to address the needs of refugee children (Halvorsen, 2004).

The first international instrument to emphasize children's rights is the 1924 Declaration of the Rights of the Child, otherwise referred to as the Geneva Declaration. The Geneva Declaration is a short statement addressing the duties of men and women in protecting children, regardless of race, nationality, and creed. The five main principles of this declaration stressed the need to provide "means for normal development; protection against hunger, sickness, truancy, homelessness, and distress; protecting against exploitation; and support to earn livelihood" (Stasiulis, 2002, p. 514). Children throughout this document were referred to as 'it,' which provides some insight into how children were viewed at the time. Children were dehumanized, objectified, and denied identities. It is worth noting too that the document makes no reference to gender, as females were of no concern to the fathers of this declaration (Ensalaco, 2005).

In 1946, in the aftermath of the Second World War, the international community created the United Nations International Children's Emergency Fund (UNICEF). Initially a temporary fund, it became a permanent organization in 1953, integrated as a central part of the UN system. This move marked the recognition of the dangers facing children (Ensalaco, 2005). However, this was not enough to articulate the needs and entitlements of children.

The next major international statement to make a reference to children was the Universal Declaration of Human Rights (UDHR) adopted in December 1948. This reference was

later incorporated into the League of Nations in Geneva and were codified in the Convention on the Rights of Children (CRC) (Ensalaco, 2005). The UDHR was understood to encompass children's rights, as it was feared that an independent children's right declaration might undermine the authority of the 1948 declaration. Additionally, it was believed that a child is unable to 'exercise his own power' ...as... 'adults exercised them for the child' (as cited by Stasiulis, p. 514). The UDHR significance also lays in its recognition for the need to protect individuals from persecution. Article 13 and 14 of the Declaration embodied the principles of the sanctity of human life, freedom of movement, as well as the right to seek asylum from fear of persecution. Today, the obligation of States to refugees originated in the 1951 Convention Relating to the Status of Refugees and its Protocol of 1967 (usually referred to as 'the 1951 Convention').

The 1951 United Nations Refugee Convention is a universal instrument to provide basic, and minimum legal standards to protect refugees. With only one amendment since 1967, the Convention continues to be the major tool for the international regime of refugee law (Goodwin-Gill, 2001). According to Bhabha and Crock (2007), the Convention is age-neutral and it makes no reference to children. A child, like any other asylum-seeker, has to fit into the definition of Article 1A(2) of the Convention in order to be granted refugee status (Hunter, 2001). Recognizing an individual as a refugee depends on the host state and their own procedural interpretation as there is no authoritative body that interprets the Convention. According to Hunter (2001) the main principle in the Convention to provide protection is the principle of 'non-refoulement,' article 33 (1) of the Convention. The article reads:

No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

This principle, according to Hunter (2001), provides a minimum standard that States should abide by when a decision to remove individuals to a country where his/her life might be in

danger is made. It is worth noting however, that even though the Convention does not contain child-specific provisions, the United Nations High Commissioner for Refugees (UNHCR) has addressed some specific needs of asylum-seeking children (Bhabha & Crock, 2007). In its 1979's "Handbook on Procedures and Criteria for Determining Refugee Status" the UNHCR established three main principles: assessing the maturity and mental development of the child in relation to the asylum claim, ensuring the interest of the applicant minor as safeguarded (such as appointing a guardian), and applying a liberal benefit of the doubt by States when determining well-founded fear by the minor (Bhabha & Crocker, 2007).

Children's rights were finally given official recognition in 1959, with the adoption of the United Nations Declaration of the Rights of the Child. The 1959 principles go beyond the 1924 Geneva Declaration to ensure fuller access to a greater range of protections, required by the "the child's need for special safeguards and care ... by reason of his physical and mental immaturity" (as cited by Stasiulis, 2002). The 1959 Declaration establishes the right of children to a separate nationality and identity as well as entitlement from birth to a name and a nationality. According to Stasiulis (2002) the emphasis of the 1959 Declaration is on protection and welfare, but there was no recognition for children's autonomy, views, or recognition of empowerment. In 1989, following the end of the Cold War, the United Nations adopted the most comprehensive articulation of the rights of the child with the 1989 Convention on the Rights of the Child, referred to usually as the CRC.

All States with the exception of Somalia and the USA have ratified the CRC. It is in fact the most widely ratified binding human rights instrument (Bhabha & Young, 1999). It provides a new child-centred approach through establishing a near universal set of standards, and aspirations for children (Bhabha & Young, 1999). It views children as agents and bearers of rights, instead of objects of adult concerns. According to Bhabha and Young (1999) the CRC applies to 'each child within (the State Parties') Jurisdiction' and does not allow for any discrimination. The CRC also applies to children who are 'aliens,' refugees, or stateless granted

that they fall within State jurisdiction. Bhabha (2004) maintains that there is no other group of human beings, other than children, that enjoy such extensive protection of interests under international law.

The key principles of the CRC are Article 2, dealing with non-discrimination; Article 3, dealing with the child's best interests; Article 12, dealing with the child's right to be heard; and article 22, dealing with the right of refugee children (Ayotte, 2001). Bierwirth (2005) states that the principle of non-discrimination maintains that States should under no circumstances discriminate against children regardless of their parents' or guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. States should also ensure that all children receive the same social rights. However, it is granted from this principle that children might have different needs depending on their health, level of trauma, age...etc. The best interests of the child stipulates that a child must be the starting point for determining protection needs, with a clear and comprehensive assessment of his/her background, and particular vulnerability (Bierwirth, 2005). States should also consider the child's 'best interests' both when decisions are made on an individual level, as well as when drafting broader policies to eliminate the oppressive living conditions of children (Maloney, 2000). The CRC also requires States to pay attention to the medical and emotional care of the children. As such, the CRC prohibits States, as does the UNHCR 1997 Guidelines, from detaining children except in situations of last resort, and requires the best interests of the child to be taken into account in every decision made.

The CRC principle of participation is an essential tool presented to children, as in principle it allows them to argue for the full extent of their asylum procedures (Bierwirth, 2005). Article 22 of the CRC is the only explicit refugee-related provision for children in any international instrument (Bierwirth, 2005). Article 22 (1) states:

States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or

accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instrument to which the said States are Parties.

Article 22 also allows the UNHCR to provide assistance to States to seek the child's family for the purpose of reunification.

### **Policies Concerning Unaccompanied Refugee Children**

Following Canada's IRB lead in issuing children's guidelines in September 1996, the UNHCR issued its own guidelines in 1997 called "Guidelines on Policies and Procedures in dealing with Unaccompanied Minors Seeking Asylum" (the UNHCR guidelines surpass the Canadian guidelines in their scope). The first guidelines regarding refugee children to be adopted by the UNHCR's were the 1988 "Guidelines on Refugee Children," which were issued in 1994 in a document called the "Guidelines on the Protection and Care of Refugee Children" (Fagen, 2003). The 1997 Guidelines are an outgrowth of the 1994 UNHCR guidelines on Protection Care of Refugee Children. The 1997 guidelines stipulate general key child-specific issues when seeking protection, such as initial identification, interviewing process, appointing a guardian, prioritizing children's applications, the need for providing interim care, and implementing durable solutions for these children (Bhabha and Crocker, 2007). According to these guidelines:

Although the same definition of a refugee applies to all individuals regardless of their age, in the examination of the factual elements of the claim of an unaccompanied child, particular regard should be given to circumstances such as the child's stage of development, his/her possibly limited knowledge of conditions in the country of origin, and their significance to the legal concept of refugee status, as well as his/her special vulnerability. Children may manifest their fears in ways different from adults. Therefore, in the examination of their claims, it may be necessary to have greater regard to certain objective factors, and to determine, based upon these factors, whether a child may be presumed to have a well-founded fear of persecution (Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, 1997, p.12).

Further, these guidelines stipulate that final decisions on determination should be based on a case-by-case examination, while taking into account the special circumstances of each case such as child's personal, family, and cultural background. The 1997 guidelines also

acknowledge the unique circumstances of child persecution (i.e. recruitment of children for regular or irregular armies, forced labour, child trafficking, child prostitution and sexual exploitation and the practice of female genital mutilation) as well as the subjective perception of children of this persecution. The guidelines also emphasizes the need of States for prioritizing children application, and prohibiting detention unless as a last resort.

Other international instruments of concern to unaccompanied refugee minors include the International Labour Organization Adoption of the Convention on the Worst Forms of Child Labour in 1999. Further, as a response to widespread use of child soldiers, an Optional Protocol to the CRC was adopted by the UN General Assembly in 2000 to prohibit the forced recruitment of children under the age of 18 to armed forces (state and non-state actors). Note that the age limitation of the Optional Protocol of the CRC is different than that of the Protocol I of the Geneva Convention 1977, which applies to the direct involvement of children in conflict under the age of 15 (Grover, 2008). In the same year, the Convention against Trans-national Organized Crime was adopted together with its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children (Ayotte, 2001) and the Protocol against Smuggling of Migrants by Land, Sea, and Air. The Trafficking Protocol deals with 'victims of trafficking' who have been forced into transport for exploitative purposes. It makes special provisions (such as support, protection, rehabilitation, and regulation) for trafficked persons, including children (Bhabha and Crock, 2007). The Smuggling Protocol, on the other hand, applies to those who consensually enter a financial agreement to be assisted in crossing borders. The later Protocol does not designate any special treatment for children, or any differentiated human rights protection. However, it encourages states to be mindful for vulnerable migrants.

## **Discussion**

While the international instruments discussed above created a positive impact on the lives of unaccompanied refugee minors, these instruments contain major gaps and flaws, which

undermine children's ability to guarantee protection and safety. These instruments have also been alleged to affirm one dominant cultural conception of childhood (i.e. colonial discourse), while subordinating 'primitive' notions of childhood in differing contexts. Stephan (1995) asserts that the colonial arguments goes as follows: "we take away and colonize your primordial spaces and then give you in return goods and rights, including the right to remake yourselves in our images" (p. 36). This image is consistent with that of an adult, white and Western form. These tendencies can be viewed, for example, in the CRC language of the right of "the child," as opposed to rights of children. Thus, the CRC assumes universality and freestanding, individual child (Stephens, 1995, p. 36). It stipulates all 'children' as one entity that have the same needs, regardless of their social, political, historical and economical context. The CRC also assumes biology as the fundamental base of relationships between parents and children, while clearly ignoring other significant types of relationships. Family, according to the CRC, is "the fundamental group of society and the natural environment for the growth and well-being of all its members." One cannot but be left to wonder, what about other forms of family? Can an extended family, non-kinship based family...etc be considered as a family? This provision clearly has an impact on unaccompanied children from the South, as families are not only related through biological ties. Thus, when family members are being sought for unification with their children, it is only those with close kinship ties that are considered. This modernist vision of the CRC according to Stephens is not surprising, since the UN is "the supreme mediator of the principle of liberal democratic rule globally" with a "strong interest in spreading to the poor countries of the South the values and codes of practice devised in the public sector of the industrialized North" (as cited by Stephens, 1995, p. 39).

The CRC also fails to acknowledge and address the impact of colonization, global, political and economic inequalities as major causes that lead many children to flee their home countries. Without acknowledging the history of oppression, the treatment of refugee children will always be a bandage solution. Thus, just and fair solutions will never be achieved, and as a

result children will continue to flee their country of origin to seek safety. In fact, it comes as no surprise to see that this instrument was ratified so widely as these states are not likely to endorse radical political and economic transformation. Further, given the fact that the CRC is not legally binding and it has very few mechanisms to deter states from violating the convention, many states have violated the convention in some ways or the other. Thus, without a proper mechanism to ensure compliance to the CRC states will continue to violate the convention.

Apart from the Western bias and the lack of radical political will manifested in these internationally instruments, these instruments as it stands today embody certain ambiguities, gaps, and inconsistencies. These tendencies are evident in ambiguous definitions and as well as allowing states' leeway in determining the deserving and non-deserving refugees through exploiting 'the child's best interest' provision. Ambiguity in the definition of 'refugee' is the major challenge that faces unaccompanied refugee minors seeking protection as burden of proof lies with them. Article 1 of the 1951 Convention (UNHCR, 2001) applies to:

Any person who owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside his (sic) country of nationality and is unable ...or unwilling to avail himself of the protection country.

This definition, as some have pointed out, excludes those who are seeking protection on humanitarian grounds (Vincent, 1989). The convention provides leeway for states to determine the status and the right to asylum. Thus, while the Convention created the status of a refugee, the 1951 Convention is not binding (Zetter, 1999). Zetter further notes that the definition of refugee applies only to *individual* claims to "a well founded fear of persecution" (p.49). Such a definition does not include millions of people, especially those from the South, who as a result of ethnic conflict, insurrection against colonial powers, and systematic political oppression, have been living under human rights abuses. They cannot claim protection either because they have not been displaced across international borders, or may not be able to generate 'individual' claims. Others point to exclusion of internally displaced persons (IDPs) from this definition



(Ager, 1999). According to the UNHCR, IDPs are “individuals or groups of people who have been forced to flee their homes to escape armed conflict, generalized violence and human rights abuses” (UNHCR, 2006) as well as civilians who have been made homeless as a result of natural disasters. It is worth noting however that internally displaced people, comprised mainly of women and children, are not afforded protection under the Geneva Convention, even though IDPs have similar needs to those under the Convention’s definition (Ager, 1999).

Along the same lines, Bhabha and Young (1999) state that the five grounds of persecution contained in the ‘refugee’ definition lack the child-specific forms of persecution. Further, immigration officials tend to view children who are active participants in shaping their own circumstances (such as joining political forces with the aim of bringing social change) with a great deal of suspicion. In order for children to qualify for political asylum they must, like their adult counterparts, meet Article 1 of the 1951 Convention. Thus in addition to proving the well-founded fear based on the five grounds of persecutions (race, religion, nationality, membership in a particular social group, or political opinion), children should also prove that they were persecuted in the past or have a well-founded fear that they will be persecuted in the future. Finally, they have to show that the government is targeting the persecution, or that agents of the government are unable or unwilling to provide protection (Young & Bhabha, 1999).

Bhabha and Young maintain that the adult-centred approach (i.e. the Convention serves and accommodates the needs of adults but not those of children) of article 1 of the Convention, tends to predominate and undermine children’s ability of being protected regardless of whether a persecution is specific to children (for example, cases of child abuse, child sale, child marriage, child female genital mutilation...etc) or not (i.e. where a child is targeted because of his political activity, race, ...etc). Bhabha and Young argue that even in cases where unaccompanied minors seek protection for reasons that are unrelated to their status as children, procedural obstacles tend to be present. These procedures’ obstacles are ignored by the current approaches of the CRC and the 1997 guidelines (Bhabha and Young 1999). For

example, children are not usually taken seriously by adjudicators for their political activities, as they are usually believed to be too innocent to be political, or to consider them as a real threat. However, if these children asserted themselves and their political activities, then the question of age would be at issue. Thus, adjudicators, according to Bhabha and Young, may make unfavourable decisions on credibility based solely on age.

Bhabha and Young (1999) also argue that even in cases where children claim protection where their status as children is central to their claim, they continue to be neglected by the adult-centred approach. Cases such as “infanticide, conscription as a child soldier, child abuse, female genital mutilation (...for young girls), bonded or hazardous child labour, child sale, child marriage, and religious sexual servitude” (Bhabha & Young 1999), where children are persecuted solely because of their age, are not clearly articulated by the CRC as a basis for protection. Instead, the CRC sets examples in which the human rights of the children are ‘at issue.’ Those examples include “separation from family, deprivation of education, heightened vulnerability following civil upheaval, homelessness, prostitution, and trafficking (Bhabha & Young, 1999). As with gender, age does not account for separate grounds for persecution. The adult-centred approach fails to address the above situations. Finally, children also have to demonstrate that protection is not available to them at their country of origin. This can be particularly difficult when persecution is in the hands of a non-state actor, such as their family in cases of child abuse (Bhabha & Young, 1999).

Another issue of concern that has an impact on unaccompanied refugee minors relates to age (Bhabha & Young, 1999). The United Nations High Commission for Refugees (UNHCR) defines unaccompanied minors as persons who are under the age of 18 and “who are separated from both parents and are not being cared for by an adult who, by law or custom, is responsible to do so” (UNHCR 1997 guidelines, p. 1). Bhabha and Young (1999) state that such an age cut-off denies protection to those who lack the maturity of the proceedings in which they have been placed. They argue that individuals between the age of 18 and 21 of age need

special attention too, especially when considering the long-term impact of traumatic experiences on children under the ages of 18 (which also led them to flee) (Bhabha & Young, 1999). Others point out to the inconsistencies of medical exams as a determinant of child age. These tests in many cases have proven to be inaccurate and culturally insensitive (Kumin & Chaikel, 2001). For example, research suggests that undernourished children have different levels of physical development (Kumin & Chaikel, 2001), which these tests might be unable to detect. Considering the significance of age in determining the nature and the extent of the social support given to unaccompanied refugee minors as well as the impact that it has on recognizing them as refugees (Watters, 2008), one would expect that the age of the child should be viewed with extra caution. To rely on inaccurate tests would be to deny these children treatment that they deserve. Thus, it would be more sensible to give these children the benefit of the doubt on their age claim, which in fact is what States are obligated to do when they ratified the CRC.

Bhabha and Young also highlight the problems present in the current definition of 'unaccompanied' as defined by the 1997 guidelines. Under this definition the parental relationship is unquestionable. However, the guidelines propose that non-parental relationships should be scrutinized by States so as to determine whether the adult accompanying the child is actually the caregiver or not. Bhabha and Young argue that this determination is not an easy task particularly when there are no documents to determine the relationship. This determination is of particular importance, as it will imply how a child will be treated, and which other measures of social support will be available to him or to her.

Another major gap in policy is the ambiguity of *the best interests of the child's* provision present both in the CRC and the 1997 Guidelines. The issue of best interest has generated a great debate over the years (Maloney, 2000): What are the best interests of the child? Who determines these interests? How much power does the child have in the determination process of his/her best interests? Can the child's particular case of best interest be translated into general guidelines? Does the best interest provision in the CRC conflict with that of the

participation provision? While the CRC, as indicated earlier, provides special privileges for children as they are the only group who are protected under international law, this protection is clearly constructed and controlled by adults. Bhabha and Young (1999) note “adult assessments of what promotes the child’s welfare maybe at odds with enhancement of a child’s autonomy” (p.95). Best interest in the case of a child asylum seeker is not a supreme consideration, but a secondary one, as other factors (such as immigration control, national security...etc) will override the child’s best interests (Bhabha, 2004). Further, for an adult, a decision to return the child to his country of origin might be justified as in the best interest of the child, even though the child might actively express his opposition for this action, which completely contrasts the child’s right of participation (as articulated in article 12 of the CRC). As such, one is left to draw the conclusion that either the child does not have a right to determine his/her fate, or that the adult opinion supersedes the child’s. Boyden and Hart (2007) eloquently highlight this paradox. They state:

The Convention has institutionalised children’s difference from adults by suggesting, on one hand, that they have special rights over and above those enjoyed by adults while implying, on the other hand, that they are incapable of exercising these rights themselves (p. 241).

This problem rises partly because of the narrow definition of ‘refugee’ as it does not encompass the best interest of the child. While it must be considered, it does not determine the outcome (Bhabha & Young, 1999). Further, there is no place in the CRC to spell out what the ‘best interests’ of the child are. As a result, the ‘best interest’ of the child continues to remain highly subjective (Giner, 2006). Indeed, Veerman states that anyone can “make a case in the best interests of the child” (as cited by Giner, 2006, p.188). Bhabha and Young (1999) assert that in fact in majority of cases *it is of the best interests* of the child to be granted refugee status “both in terms of their immediate protection needs and their future legal status and standard of living” (p. 98).

Detention is a clear example of how States can use the provision of the child's best interests so for States to advance their own agenda. The 1997 guidelines provide a leeway for states to use detention. Article 7.7 of the guidelines states:

States which, regrettably and contrary to the preceding recommendation, may keep children seeking asylum in detention, should, in any event, observe Article 37 of the Convention of the Rights of the Child, according to which detention shall be used only as a measure of last resort and for the shortest appropriate period of time (Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, 1997, p. 10)

The argument usually used by governments to justify detention of children goes that keeping these children in 'protective custody' will reduce their vulnerability as it will protect them from unscrupulous adults, smugglers, and child traffickers, while also providing them with their basic needs (i.e. food and shelter, etc.). Meanwhile States, the argument goes, will be investigating the child's case, and the situation in the country of origin (Ali, Traban and Kaur-Gill, 2003). However, this claim completely ignores the negative impact of detention. Not only that these children might be vulnerable to the exploitation of criminals that they live with, but also detention will have damaging effects on their psychological and social health (Ali et al, 2003). It is worth noting that Western countries, including Canada have and continue to use detention. For example, the government of Canada was responsible in detaining unaccompanied Chinese minors in 2000 that arrived by boat to BC. The government also used the same tactics to detain children who were being smuggled from Ontario and Quebec to the USA in 2001. Some of these children were detained up to six months (Ali et al, 2003). Children under no circumstances should be detained. Instead States should find alternative and more sensible measures to accommodate those who might be vulnerable to child smugglers, while keeping the best interest of the child as *the primary* consideration.

Another strange paradox manifested in the best interests provision of the CRC is the inability of this instrument to legally enforce the right of children to initiate family reunification, even though it clearly recognizes the right of children to family life. In most States, children need

to be 18 years of age in order initiate family reunification. It follows then that “children’s vulnerability and difference thus become not a reason of a best interest calculation or an assessment of the validity of a child’s claim but, to the contrary, a spur to harsher, discriminatory policies. Herein lies the paradox of the special position of childhood—uniquely vulnerable and thus uniquely targeted” (Bhabha, 2005, p. 1531). This issue stems from the fact that children are not viewed as ‘real’ citizens, but rather citizens-in-the-making. Once they become real citizens (i.e. adults) they will be able to sponsor their families.

In addition to its problematic application of the child’s best interests provision, it is worth noting that it is also limited in its scope, as this provision does not apply to certain segments of children. A highly controversial issue that is generally ignored by international child protection instruments is the issue of inapplicability, or inadmissibility provisions provided by the 1951 Convention. Minors who are suspected of having committed war crimes, or belonging to organized crime or terrorist groups, might, just like their adult counterparts, be denied protection. As a result of this provision, they are also likely to be detained, deported, or stay in a limbo without status for years at a time. This issue is of particular importance to children who have been recruited to become a child soldier, as children become increasingly targeted both by State and non-State actors (Singer, 2005). The exclusion clause of the United Nations Conventions Relating to the Status of Refugees indicates that the Refugee Convention ‘shall not apply to any person in respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity as defined in the international instruments drawn up to make provisions in respect of such crimes.’ This clause is applicable for all, regardless of age. According to Grover (2007), the standard of proof of involvement is rather “akin to one of reasonable and probable cause to believe that the child committed an international crime” (p. 53) and regardless of the reasons why children were involved in committing atrocities (or whether their recruitment was voluntarily or not). In order to avoid the Refugee Convention exclusion clause, a child must prove that he/she was under

“imminent threat of grievous bodily harm or death to himself or others directly in relation to any refusal on his or her part to commit atrocity... the harm done cannot be greater than the harm to self or others that the child sought to avoid” (Grover, 2007, p.55).

The exclusion of these children from the Refugee Convention shifts the burden of responsibility onto the children, when States are the ones who failed to protect the most vulnerable from participating in such hostilities. States under Article 77 of Protocol I Additional to the 1949 Geneva Convention (1977) and Article I of the Optional Protocol to the CRC on Children’s Involvement in Armed Conflict (2000) are obligated to prevent child involvement in hostilities. What is even more surprising is that there is no article in the CRC or the Optional Protocol to the CRC concerning the Children Involvement in Armed conflict (2000) that sets out whether children who are believed to have committed conflict related international crimes can lawfully be excluded from refugee status. This issue should be of a priority to policy makers, and other child protection agencies since denying these children protection means doubly jeopardizing them, both by denying them their childhood, and holding them responsible for adults’ actions. The absurdity of the international law lies also in its indecision about what it means to be a child. So for example, while children under the age of 18, globally, are not allowed to vote, or to hold an office at any level, children over the age of 15 are permitted to be ‘voluntary’ child soldiers in State armed forces. One also needs to question the extent to which a child’s participation is really ‘voluntary.’ For example, are children who joined the armed forces because of serious economic deprivation, or any other serious human right violation against them, still viewed as ‘voluntary’ participants?

## **Conclusion**

To conclude, this chapter attempted to tackle the issue of international policy as it relates to unaccompanied refugee minors. It was stated that the main international instruments used to facilitate children’s ability to claim protection include the 1951 The United Nations Convention Relating to the Status of Refugees, the CRC and the 1997 guidelines. It was argued that while

these guidelines provided a legal framework for many children to claim refugee status, these instruments were found to have major gaps that may ultimately undermine children's success and ability to claim status. Some of the major gaps are manifested in the vague definitions provided by the CRC and the 1951 Convention. Other problems are manifested in the determination of the 'best interests' of the child, as those are open to debate and often used by State actors to scrutinize immigration and the ability of minors to claim protection. It was also argued that a just solution for unaccompanied minors cannot be resolved without addressing the inequalities between the South and North, and the legacy of colonization. Finally, the chapter addressed the need for the CRC to acknowledge particular groups of children, such as child soldiers, as worthy of protection, as States should be the ones to hold responsibility for allowing such atrocities among children. Children should not be penalized for the inability of States (all States that might be directly or indirectly involved in a conflict) to protect them. To deny them protection, means to fail them yet again in their basic rights.



# CANADIAN POLICIES

Internationally, Canada is considered to have one of the most advanced legal systems for asylum-seekers. This is especially true when it comes to accommodating children and women (Ajemian, 2007). For example, in 1993 Canada was the first country to publish guidelines with regard to gender persecution – the *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution* – and, in 1996, it was the first country to establish guidelines dealing with child refugee claimants – *Child Refugee Claimants: Procedural And Evidentiary Issues* – (Sadoway, 2001), neither of which is legally binding. However, the Canadian refugee system is revealed to have certain serious inconsistencies and inadequacies that undermine children's ability to seek protection, and their chances of being successful on their claims. This section will expose these inconsistencies and the ways in which they impact unaccompanied minors. The first part will state the main policies that deal with unaccompanied refugee minors at the federal level. The second part will discuss the main gaps and inconsistencies in these policies. The third part will discuss how provincial jurisdiction has an impact on unaccompanied refugee minors. For this part, I will focus on the three provinces of Ontario, Quebec and British Columbia, as the majority of unaccompanied refugee minors settle and claim refugee status in these provinces (Ayotte, 2001). It is worth noting that many of the same gaps and inconsistencies manifested in international policy are also present in the Canadian federal policy. While these gaps will not be repeated, the assumption is that the Canadian policy gaps and inconsistencies are an additional burden on unaccompanied refugee minors. Finally, this section will briefly address the Humanitarian Resettlement Program (HRP).

## **Immigration and Child protection policies**

In addition to its obligations under the 1951 United Nations Convention Relating to the Status of Refugees, Canada has ratified major conventions and agreements to protect the rights

of refugee children since the 1990s. For example, in 1991, Canada ratified the Convention on the Rights of the Child (CRC). The following year, Canada ratified the International Labour Organization's 1999 Convention on the Worst Forms of Child Labour (Ajemian, 2007). In the same year, Canada was the first country to sign the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict. Due to complications between federal, provincial and territorial jurisdictions (an issue further discussed below within the context of jurisdiction), Canada has not yet ratified the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (Ajemian, 2007).

Additional to Canada's commitment to these agreements and conventions, the Canadian Government adopted its own laws and policies to protect the rights of refugee children. The Immigration and Refugee Protection Act (IRPA), the Canadian Constitution (including the Charter of Rights and Freedoms), the Privacy Act, and the 1996 Guidelines represent the main instruments – legal, administrative and procedural – to deal with unaccompanied refugee minors. In 2002, Canada introduced Bill C-11, the new Immigration and Refugee Protection Act (Ajemian, 2007). One of the objects of the Act is to ensure Canada's compliance with international human rights instruments, to which Canada is a signatory. It is also reaffirmation of Canada's commitment to human rights (Stasiuis, 2002). The Act gives power to the Immigration Minister and Appeal Division in granting permanent residence status on Humanitarian and Compassionate (H&C) grounds while taking the best interests of the child affected into consideration when making a decision (Stasiuis, 2002). The Act also affirms that children shall only be detained as a last measure.

Section 15 (1) of the Charter of Rights and Freedoms asserts that every individual is equal under the law and has a right to equal protection regardless of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. The Supreme Court has read additional grounds into the equality clause, including sexual orientation and citizenship. On the

other hand, the 1996 Guidelines stress the need for special treatment of refugee children. Under these Guidelines, the Immigration and Refugee Board (IRB) encourages the use of non-adversarial, child-friendly techniques when interviewing children so as to understand better their claims. It also states that each unaccompanied minor should have a “designated representative” who is responsible for advocating for the child’s best interests, as well as “investigating the child experience” (Maloney, 2000, p. 107).

The Canadian system provides two ways in which refugees can access asylum, the In-Canada Refugee Protection Process and the Refugee and Humanitarian Resettlement Program (Woul et al, 2006). The Humanitarian Resettlement Program is designated for foreign nationals applying for protection from outside of Canada (Wouk et al, 2006). Resettlement involves both the selection of refugees overseas and assisting them once they are in Canada for integration. There are two principal programs in which the Canadian government is involved to assist refugees: the Government Assisted Refugees (GARs), and the Privately Sponsored refugees (PSRs). GARs are refugees who are referred by the UNHCR and supported through the Resettlement Assistance Program. The PSRs on the other hand are refugees who are supported by voluntary sponsoring groups providing care and settlement assistance (Wouk et al., 2001).

The In-Canada Refugee Protection process is designated for people who claim refugee protection from within Canada. It is usually the Refugee Protection Division (RPD) that determines claims made within Canada (Immigration and Refugee Board, 2008). Claims are received either at the port of entry through the Canada Border Services Agency (CBSA), or at a Citizenship and Immigration Canada (CIC) Immigration Centre (IRB, 2001). Cases of unaccompanied refugee minors, according to the Immigration Manual, should be referred to a senior immigration officer, who must determine the age and whether the child is accompanied or not (Ali et al, 2003). The CIC defines an unaccompanied child as “one below 18 years of age

who arrives in or is already in Canada” (Ali et al, 2003, p, 8), and is alone or accompanied by a person who is not a family member (as defined by the IRPA). Claims made by unaccompanied minors are processed similarly to those made by adult asylum-seekers (Ali et al, 2003). Once children are determined to be eligible for claiming protection, and for being unaccompanied minors, their claims are referred to the IRB to determine their eligibility for protection.

The IRPA broadens the definition of “refugee” provided by the 1951 UN Refugee Convention to include “persons in need of protection.” These are persons “whose removal to their country of origin would subject them personally to: a danger of torture, a risk to their life, or a risk of cruel and unusual treatment or punishment” (IRB, 2001). If the IRB decides not to provide “Convention Refugee” status, or “protected person” status, the claimant can be removed from Canada. However, pursuant to Canada’s commitment to international treaties and conventions, a person can apply for a Pre-Removal Risk Assessment (PRRA) if she believes that she will be at risk if she were to be removed. In addition, if a claimant believes there has been an administrative mistake made in his case, he can appeal the decision to the Federal Court (IRB, 2008). Finally, a claimant can at any time apply to stay in Canada for Humanitarian and Compassionate (H&C) reasons. In making an H&C decision, the best interests of the child must be taken into account (IRPA, 2001).

## **Discussion**

Many applaud Canada for its leading role in adopting the 1996 Guidelines, and its comparative advancement in dealing with unaccompanied refugee minors. However, the 1996 Guidelines, unlike the gender persecution guidelines, do not provide any substantive protections, but only assurances of procedural and evidentiary fairness (Martin and Curran, 2007). Thus, issues of a child particularity in persecution is not explored in the Guidelines, or in any other legally binding document, despite the fact that some forms of child-specific persecution constitute crimes against humanity (Grover, 2007). For example, child trafficking, child marriage, child abuse, child selling, and hazardous child labour are not considered as a

ground for claiming refugee status in Canada. This issue of exclusion stems partly from the CRC's inability to highlight child-specific persecution as a basis for protection. The CRC only recognizes "... in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration..." (CRC, Preamble). However, it does not specify that some of these conditions constitute persecution against the child. Further, the CRC also leaves a leeway for countries to determine which forms of persecution are considered worthy for protection and which are not. Considering the increasing immigration control trend in Canada, it comes as no surprise that child persecution will be narrowly interpreted and applied by the IRB.

The most apparent inconsistency in Canadian asylum policy lies in the lack of clarity with respect to the application and interpretation of the "best interests of the child" test. For example, while the 1996 Guidelines state that a child should be given "primary consideration at all stages of processing these claims" (Immigration and Refugee Board Canada Guideline 3, 1996), the IRPA states that a child's best interests should only be "taken into account" (IRPA, Division 7, article 60). The interpretation of the best interests of the child is of particular importance for unaccompanied refugees minors, especially when it comes to issues of family reunification, detention, and deportation (discussed further below). If, as a matter of public policy, Canada views the child's best interests as a primary consideration, then it is clear that children would be united with their families on an urgent basis, and detention and deportation would be avoided except as a measure of absolute last resort. Canada with all of its policies and actions must comply with the CRC, which states that child best interest shall be a primary consideration (Article 3).

The lack of an appeal process and other institutional safeguards to ensure proper treatment for unaccompanied minors presents another major challenge for unaccompanied minors' asylum-seekers. As it stands today, once a decision is made by the IRB, the individual cannot appeal the decision, even when the IRB makes factual mistakes (for an administrative

mistake claimants could appeal the decision to the Federal Court) (IRB, 2001). The only option left to “failed” claimants is to ask for the Minister’s special consideration on humanitarian grounds, or to apply for a PRRA. However, for unaccompanied minors this process is lengthy, complicated and costly. Legal aid is only available for the initial claim of the Personal Identification Forms (PIF) and for the PRRA. It is highly unlikely for refugee claimants to get financial support for their humanitarian application (Grover, 2007). An appeal process will be in compliance with Canada’s commitment to article 22 of the CRC, as well as with its own laws, i.e. the IRPA. Further, there is no watchdog to monitor the government’s treatment of refugee children. In fact, there is not even reliable data on the number of unaccompanied refugee minors seeking protection, in detention or being deported. The data provided by the CIC and the IRB, according to Kumin and Chaikel (2002), is “partial at best” (p. 74). By providing more attention to this issue, there will be more understanding of the scope of the issue, which will allow for greater advocacy for policies that will better reflect the spirit of protection of unaccompanied minors.

The following highlights other major limitations and inconsistencies within the Canadian Refugee Protection system and specifically concerning unaccompanied minors:

#### *Family reunification*

According to Grover (2006) Canadian refugee law does not permit children who are applying to include their biological family (or primary caregiver) on their refugee claim in order to bring them to Canada. Interestingly enough, the reverse is possible. As noted earlier, an adult refugee can include her children on her application for sponsorship. This differential treatment is contrary to article 2 of the CRC, which prohibits all forms of discrimination (Grover, 2007). Further, there is no doubt that it is not in the child’s best interests to be separated from her family. This phenomenon of exclusion and discrimination is a widespread problem in Canada. According to the Canadian Council for Refugees (CCR) (2005), almost half of all families have to wait at least 13 months to be re-united. Further, one in five waits more than 26 months for

reunion. Grover, rightly states:

The right then in practice under the Canadian refugee system is a *parental right* to family reunification and does not encompass a child's right to family re-unification. Thus, the child has no affirmative rights in this regard even where family re-unification is essential for the child's mental health (p.238).

Grover (2007) further indicates that IRB justification for this behaviour is that the Canadian government does not want to convey the wrong messages or create a perverse incentive for families who would send their children on the risky journey in order to establish a base for the entire family in Canada. The CCR (2005) noted that such reasoning is faulty at best, as in most cases parents are very likely to suffer the same persecution as their children suffer and would thus qualify for a refugee claim. Further, this rationale ignores the child's affirmative rights and personhood. It ignores the fact that children have views and opinions and they could be active participants who make their own decisions, rather than merely passive and subservient pawns under their parents' control.

### *Detention*

According to Martin and Curran (2007), while Canada detains a smaller number of child migrants than other industrialized countries and for relatively shorter periods, it still employs this practice. A child can be detained, like their adult counterparts, on the basis of a lack of proper identification, for potentially posing a security risk, for making serious misrepresentations, etc. (Grover, 2007). Other times, the justification of detention is to ensure a child's safety, as in the case of children vulnerable to trafficking and smugglers. Such was the case of the detention of Chinese children in British Columbia in 1999. Although there are no Canadian statistics on the detention of children, CIC estimates that over 338 children were detained and 86 were separated from their families (Martin & Curran, 2007). In terms of length of detention, the majority were detained for only one day, while 42 children were detained for over 30 days. According to the CCR (2005), between June 15, 2003 and March 31, 2005, there were on average 16 minors in detention each week, of which 13 on average were accompanied, and

four on average were unaccompanied. The CCR notes that the number has since fallen, representing an average of 11 accompanied minors per week, and one unaccompanied, in 2005. Since April 2005 the CBSA has started to compile detention data on a monthly basis rather than weekly. Thus, between April and June 2005, there were on average of 47 accompanied minors detained each month and seven unaccompanied minors (CRC, 2005). While the IRPA indicates that detention should be used as a measure of last resort, it is obvious that in practice, border officials use detention far more commonly. Detention, it seems, is used to discourage unaccompanied minors from seeking protection in Canada (Grover, 2007). By continuing to detain a high number of minors, Canada violates article 37 of the CRC, which establishes the protection against “arbitrary deprivation of the child’s liberty” (Grover, p. 356).

#### *Deportation of Children to their Country of Origin*

Even though deportation, like detention, should only be used as a measure of last resort (Grover, 2007), the reality is that this practice is commonly deployed in order to effectuate the removal of children to their country of origin. There is no exact data available to document the number of unaccompanied minors being deported from Canada after failing their refugee claim, or to those who were deemed to be inadmissible or unable to make an application for a claim. Grover notes, for example, that in 1998-99, 1,147 children were removed from Canada, of which 874 were under 10 years of age, while 273 were between 15 to 18 years old (p. 358). Once a child has failed on all of his appeal options, the Government must ensure, prior to removing the child that the child will be met either by family or child welfare officials. However, there are no clear guidelines in Canada of how to ensure such measures (Grover, 2007). Risks and safety concerns, as proposed by Hepburn, Williamson, and Wolfram (2004), should be assessed within the internal and external conflict situation as well as localized factors, such as family abuse.

It is established that persecution can be caused both by State and non-State actors. If the State is unable or unwilling to offer protection, children should not be returned home, as



their best interests will be undermined. Returning an unaccompanied child home should start with an assessment of the child's family's willingness and ability to receive the child (Hepburn, Williamson, & Wolfram, 2004). Cases of child trafficking or family abuse should be under particular consideration, as families might actually be involved with their child's trafficking. In other instances families may be unable, for economic reasons, to provide short and long term care, while other times families might be unwilling to have their child returned (Hepburn, Williamson & Wolfram, 2004). Finally and most importantly, the CRC states that the child has the right to form and express his views. If a child is unwilling to be returned to his home country, a court ruling under the jurisdiction of the child welfare rather than immigration procedure should take place for determination (Hepburn, Williamson, & Wolfram, 2004). Involuntary return, on the other hand, may induce the child to enter the "underground" economy, where the likelihood of these children being abused or harmed is heightened. Another important issue relating to forced return is the potential emotional and physical consequences on these children, especially in cases where children are not welcomed in the community. For instance, many female children who are sexually abused also face exclusion by their own community. Even in cases of voluntary return, one must be sceptical about the assertion that a lack of any other alternative available to the child makes her decision voluntary. For example, children who are held in prolonged detention may express a preference for living in a conflict situation in their country of origin rather than to continue to be detained.

Other factors that immigration authorities need to take into consideration when deciding to deport children are the socio-economic conditions in the country of origin as well as the stability of the infrastructure, especially in the situation of conflicts and war. As a result of poor socio-economic conditions, a child might be deprived of well-being and be placed at risk, such as through the inability to access food, housing, clothing, health care, social security, education, etc. (Hepburn, Williamson, and Wolfram, 2004). In these cases a child's best interests cannot sustain a return to such conditions. Within this frame of consideration, families' ability to provide

for their child should also be reviewed closely. States should also assess the level of integration of the child into the society. This issue is of particular importance for children who have spent most of their lives in the country in which they seek asylum and have very limited memories of their home countries. Some of these children might have strong emotional ties to the host state. Depriving and disrupting their social ties will not be of their best interests (Hepburn, Williamson, & Wolfram, 2004).

### **Provincial Jurisdiction**

While the federal government of Canada is authorized to make laws with regard to “naturalization and aliens,” the provinces have jurisdiction over “property and civil rights” of people living in the provinces. This provincial jurisdiction includes authority over the administration of justice, child welfare, education, health infrastructure, residential facilities for the legally incapable, charities, prisons, and reformatories, etc (Sadoway, 2001). In recent years, provinces have gained more power in matters of immigration and refugees, especially in Quebec. In fact, Quebec has its own Immigration Act, and provincial administration over this Act, which also includes seven offices outside of Canada (Services d’immigration du Quebec-SIQ). The federal government, for its part, provides funding for settlement services to each province. Under new federal-provincial agreements, some provinces adopted certain components of administering settlement services for immigrants and refugees within their boundaries. For example, Quebec is the only Province to have settlement services being organized in a comprehensive way by the Provincial Government. With regard to child welfare, provincial and territorial governments have jurisdiction over child welfare protection and social services (Ayotte, 2001). Each province has its own child welfare and guardianship legislation. As a result, the treatment of unaccompanied children varies from one province to the next. For example, there are provincial differences in the definition of a “minor.” While British Columbia defines a minor child as anyone under the age of 19, for most services in Ontario, a minor is under 16, and for other services it is under 17 (Wouk et al, 2001). Provinces are responsible to

ensure that the care and welfare of the child is compatible with the CRC, the UNHCR 1997 Guidelines, and the federal policies discussed above (i.e., 1996 Guidelines, IRPA, etc.) (Ayotte, 2001).

The only accommodation for children under Canadian immigration law is the requirement of having a “designated representative” (DR) at a hearing or inquiry (Sadoway, 2001). Once an unaccompanied minor makes a claim for protection, the IRB 1996 Guidelines state that there is a need to appoint a DR, who can be a friend or a professional. Certain criteria, however, must be fulfilled (Elgersma, 2007). The aim of the DR is:

...to retain counsel; to instruct counsel or to assist the child in instructing counsel; to make other decisions with respect to the proceedings or to help the child make those decisions; to inform the child about the various stages and proceedings of the claim; to assist in obtaining evidence in support of the claim; to provide evidence and be a witness in the claim; to act in the best interest of the child (As cited by Ali, Taraban, Gill, 2003, p. 10).

It is worth noting that the three provinces that have the most unaccompanied refugee claimants have created their own means of providing a DR. According to Sadoway, the appointment of the DR does not create a role of legal guardian, but only provides a litigation guardian in the refugee hearing. The DR is not appointed until a hearing or any other legal immigration proceeding regarding the case is about to take place (Sadoway, 2001). Further, the DR does not accompany the minor in the initial interview at the point of entry or in the inland immigration office. Sadoway (2001) notes that:

...under the *Act* the only protection for a separated refugee child is to have an adult representative *at the refugee determination hearing*. There is no information in the *Act* as to how such representatives are to be chosen or the role they would have at the hearing or outside the hearing although some policy guidelines have been developed for immigration adjudicators and for members of the Convention Refugee Determination Division (p. 353).

Once the IRB hearing is over, the DR is not obligated to act on behalf of the child. An effective legal counsel would ensure that a child’s case is properly advocated for, especially in cases where children are only left with the option of making a “humanitarian and compassionate

grounds” application or seeking a judicial review in Federal Court. It comes as no surprise, then, that there is considerable anecdotal evidence suggesting that unaccompanied minors are less likely to successfully obtain refugee status compared to adults, which could be attributed to the “difficulty accessing adequate counsel and inordinate delays and interruptions in the processing of the case” (Grover, 2007, p.358).

Some provinces appear to be better in their treatment of unaccompanied refugee minors than others. While Quebec is widely viewed as the most satisfactory in the treatment of unaccompanied minors, Ontario sits at the other end of the spectrum as the least satisfactory (Ayotte, 2001).

#### **Quebec:**

When an unaccompanied minor arrives in Quebec during regular business hours, immigration officials immediately contact PRAIDA (Programme régional d’accueil et d’intégration des demandeurs d’asile), which is an agency deriving its authority from the Ministry of Social Services. After hours, the CIC officials contact the regional Director of Youth Protection (Centre Jeunesse). The PRAIDA, according to Ali et al. (2003), provides two caseworkers (who generally are social workers) for each child, one to act as the DR, retaining counsel to represent the child at the determination hearing before the IRB, and the other to provide support in obtaining housing, education and health services (traditional social work functions). According to Sadoway (2001), the PRAIDA works closely with the Centre Jeunesse de Montreal (Ministry of Social Services) to ensure the child’s placement in care (i.e. foster care, group homes, semi-independent living, etc.), while sometimes placing these children in *familles d’entraide*, (i.e. which are host families consisting of newcomers themselves, similar to foster families, but notably less funded).

The DR in Quebec represents the child in the determination hearings before the IRB. This DR has knowledge of the “ins and outs” of Canadian immigration law and other legal proceedings relevant to unaccompanied refugee minors (Sadoway, 2001). However, Quebec

provides no legal guardian to ensure that the best interests of the child are protected (Ayotte, 2001). PRAIDA is also involved with the Red Cross to trace the parents of the child or any other family members, and makes necessary application for unification, if that is a possibility. If the child fails in the claim, the PRAIDA gets involved both in the PRRA, the “humanitarian and compassionate grounds” application, or an application to the Federal Court. Once the refugee hearing is over, there is no statutory authority for the DR. The Montreal Director of Youth Protection does not guarantee youth protection for the fact of being a “separated asylum-seeking child” (Sadoway, 2001). Recognizing this as a *vide juridique* – a legal vacuum – PRAIDA acts on behalf of the separated child without any official guardianship status (Sadoway, 2001).

It is also worth noting that PRAIDA is under-funded and as a result, according to Ayotte (2001) there are only 15 social workers that carry heavy caseloads (Ayotte, 2001). This issue obviously brings challenges to unaccompanied minors as some might receive inadequate treatment because of the heavy load that the social worker might have. Further, the fact the *familles d’entraide* receive less funding than foster families might discourage newcomers from taking these children into their care, and as a result deprive asylum-seeking children of a culturally appropriate environment. Finally, the PRAIDA must raise funds to retain a lawyer or must secure pro-bono legal assistance.

#### **British Columbia:**

The British Columbia Ministry of Children and Family Development (MCFD) provides a Migration Services Team, which is both responsible for protection and support services for children until the age of 19, as well as acting as the DR in the IRB hearing. The Migration Services team was established after the arrival of more than 100 unaccompanied refugee minors on the British Columbian shores in summer 1999 (Sadoway, 2001). Two statutes in particular are of importance to unaccompanied refugee minors in B.C.: *the Child, Family and Community Service Act, 1996* (CFCSA) and the *Family Relations Act* (FRA). The CFCSA states

“the Act must be interpreted and administered so that the safety and the well-being of children are the paramount considerations” (s. 2, as cited by Ayotte, 2001). It also establishes the factors in which the best interests of the child should be considered. Once the child is determined to stay in Canada, the CFCSA allows the Ministry of Children and Family Development (MCFD) to investigate the child’s circumstances whether to take him/her into care or to be “removed” (Sadoway, 2001). The MCFD takes a charge of 72 hours to allow this investigation. The FRA on the other hand deals with the guardianship of the child. It stipulates that under certain circumstances, such as the case of unaccompanied refugee minors, a child should have a guardian without a court decision. The Migrant Service Team uses the FRA to assess the needs of children seeking protection on a case-by-case basis. When the CIC contacts the MCFD, the MCFD, through the Migrant Services Team, appoints a DR to act on behalf of the unaccompanied refugee minors so to ensure that the best interest of the child are safeguarded (Sadoway, 2001).

With regard to the removal of unaccompanied refugee minors, in the case of the Chinese children, the MCFD did not oppose the removal of the minors, but it did express its concern for their safety (Ayotte, 2001). However, the CIC provided a letter to the MCFD indicating that it believed the children would not be harmed upon their return. Sadoway notes that the role of MCFD has been a positive one because of their dual position as both DR and a guardian, which promotes the child’s best interest. Further, the MCFD is known to have a good relationship with the CIC and the IRB assuring that care and protection of the child takes precedence over enforcement procedures (Sadoway, 2001).

## **Ontario**

Ontario, the province that receives that largest number of unaccompanied refugee minors (Sadoway, 2001), has no agreement between the IRB and Children Aid Society (CAS) (or the Catholic Children’s Aid Society) to provide guardians or DR in Ontario (Ali, Taraban, and Gill, 2003). The CAS, funded by the provincial government and acting under the Child and Family

Services Act (CFSA) provides child welfare services in Ontario. Under this Act, immigration officials must immediately contact CAS if they believe a child under the age of 16 is in need of protection (Ayotte, 2001). Children between 16 and 17 years of age do not get assistance from the CAS; instead they are left to other non-profit agencies, or to their own communities, to assist them. In some instances, these children have to rely on themselves and other young people for care (Ayotte, 2001). With regard to guardianship, sections 1(a) and 37(2) of the CFSA establish the principle of the best interests of the child, as well as the circumstances in which a child should be considered in need for protection. The latter includes the need to protect a child who has been abandoned or whose parents are unavailable to presume custodial responsibility over the child. The CFSA also permits CAS to take the child five days before a court order of 'Interim Care and Custody.' Further, the CAS must make the effort to contact the parents of the child. However, if the child remains in the care of CAS, the agency could normally obtain temporary ward-ship, which usually lasts up to 12 months. If there is no hope for family reunification, a permanent or Crown ward-ship is also available (Ayotte, 2001). This permanent ward-ship stays in place until the child reaches 18 years of age.

Once a child is 18, the youth can be eligible for Extended Care Maintenance, which involves social work support and financial assistance (Ali et al, 2001). The majority of unaccompanied minors to Ontario arrive at Pearson International Airport in the Region of Peel. Thus, the Peel CAS is the agency most commonly contacted by the CIC. The Peel CAS must obtain permission from the Ontario court in order to be awarded guardianship of these children. Once children are in the care of the CAS, the Societies can become involved in proceeding on behalf of the child. The role of the DR in Ontario is limited to providing legal support (the DR is usually composed primarily of a panel of immigration lawyers) for unaccompanied minors before the IRB (Elgersma, 2007). Further, under the CFSA, once a child reaches 16 years of age, the CAS is no longer authorized to supervise the child's care. Sadoway summarizes the situation in Ontario as follows:

The situation of separated refugee children in Ontario continues to be precarious, a hit-or-miss scenario with no child welfare agency taking responsibility to ensure that the child receives proper protection and care and that the child is assisted in all the necessary steps to obtain secure legal status. It is to be hoped that the protocols that were developed by the Migrant Children's Task Force will constitute the first step towards a comprehensive plan of protection to properly meet the needs and protect the best interests of separated refugee children in Ontario.

### **Divided Jurisdiction**

Sadoway (2001) maintains that one of the most challenging issues in protecting unaccompanied refugee minors in Canada is the divided jurisdiction between provinces, especially in Ontario where the majority of unaccompanied children are found. For adult asylum-seekers, this lack of coordination does not present a serious problem (Sadoway, 2001). However, it does for children, as their needs for immediate and comprehensive assistance is crucial especially when the parent is absent to provide their daily needs. The lack of coordination between the federal government and the provinces is partly from the unwillingness of each government to take responsibility over unaccompanied refugee minors. While the federal government views child welfare, including unaccompanied refugee minors, as a matter of provincial responsibility, the provinces believe that the federal government should be responsible for refugees. Recent reductions in social welfare spending have increased tension over this issue (Ayotte, 2001). Reductions in social spending continues at the provincial level, and as a result less money is being spent on child welfare, particularly unaccompanied refugee minors who are usually viewed as a matter of last priority. Since children have no legal immigration status, Provincial child welfare agencies are hesitant to become involved with these children, claiming that it is costly and the jurisdiction of "naturalization and aliens" falls under the federal heads of power. In fact, with the exception of Quebec, no province prior to the late 1990s designated any special training or service for unaccompanied refugee minors. They were treated as any other child in need of protection in the province; no special consideration for their legal status or any efforts to unite them with their families were made. Thus, a national standard is needed, both for bringing Canada's compliance with the CRC, and with its own commitment



to the child's best interest, as well as providing an effective access to protection of unaccompanied refugee minors (Grover, 2007). Further, there is also a need to harmonize the role of refugee protection (assisting in the asylum-seeking process) and child protection in order to ensure the child's best interests are the main consideration in this process (Kumin and Chaikel, 2001)

## **Conclusion**

This chapter highlighted the major gaps and inconsistencies in Canadian refugee policy concerning unaccompanied minors. The chapter stated that while Canada comparatively is better than other affluent countries in processing and protecting unaccompanied refugee minors, Canada still has a long way to comply with its international commitments to unaccompanied refugee minors. The chapter argued that different governmental practices create serious barriers to unaccompanied refugee minors from seeking safety. In fact, in some instances these policies and practices may actually intensify the child's safety and put them at risk. Some of the major issues identified in this chapter include the detention of children, family reunification, deportation, and the divided jurisdiction between the provincial and the federal government. The Canadian government must comply with its obligations under the CRC, as well as under domestic law, which view the child's best interests as the driving consideration. Unaccompanied refugee minors should not pay the price for political buck-passing between provinces and the federal Government. The child's best interest is the primary consideration as spelled out in the 1996 Guidelines and the CRC. While these children are not Canadian-born, one needs to consider the long, hazardous journey they make in order to seek safety, as well as the global factors that lead them to seek protection. The Canadian government should not fail these children, as the system has already failed them many times.

## Chapter 5- CONCLUSION

*I urge everyone to join in and not leave the field of values, definitions, and cultures uncontested. They are certainly not the property of a few Washington officials, any more than they are the responsibility of a few Middle Eastern rulers. There is a common field of human undertaking being created and recreated, and no amount of imperial bluster can ever conceal or negate that fact.*

-Edward Said

Homi Bhabha (1994) eloquently and beautifully recounts the story of *Beloved*, by Toni Morrison. The main character, Sethe, commits an act of infanticide against her beloved child. Bhabha views this act as an act of love and resistance against the oppressive master. Bhabha asserts that “these extreme forms captured the essence of the slave woman’s self-determination” (as cited by Bhabha, p.24). The tragic act of violence was performed in order to push the boundaries of the slave world. A mother kills her child out of love because she wanted to secure the child’s safety. Her act is an assertion of freedom as well as act of defense (Bhabha, 1992). The mother did not want the child to become a slave or to be owned by a master. For Morrison, Bhabha notes, *Beloved* is about the historical and “discursive boundaries” of colonization, as well as dealing with memories of colonization and slavery at the present time. *Beloved* explores the emotional, physical and spiritual devastation, and the loss of identity that was brought by slavery, colonization and modernity, which still continues to haunt formerly colonized and enslaved peoples up to the present day. The novel is also about the quest for freedom, and resisting oppression.

The theme of loss is prevalent in the experiences of people throughout the global South. Children of the South are increasingly estranged from their culture and their families. As a result of war, poverty, environmental disasters and oppressive regimes, they are forced to migrate in search of better living conditions. It is the same assertion of freedom about which Morrison writes so evocatively that motivates real-life children of the South to turn their oppressive conditions into acts of freedom. They decide to undertake hazardous journeys and seek

protection in the North. Their act is one of defense, of necessity, as they seek release from the oppressive social, political and economic conditions into which they have been enslaved.

Morrison through *Beloved* asserts the need to address the legacy of slavery, colonization and the contemporary problems of racism and discrimination in order to move forward and to reconcile with history. However, there is no doubt that racism continues to thrive in contemporary western societies. The dominant discourses being constructed about refugees as well as the policies being adopted to deal with forced migration are a striking example of such manifestations of racism. This thesis has argued that current and dominant discourses in the North divert the attention from the real issues faced by unaccompanied refugee minors. The language used against refugees is generally aimed to essentialize, dehumanize, criminalize and stereotype refugees. These preserve and maintain a European identity and its social, political and economic dominance. These discourses, which deny protection for people who face serious human rights abuses in their home countries, paradoxically ensure a form of dependency from a distance, such as by providing the charitable status or through “not in my backyard” policies.

It is no wonder that both the UNHCR and Northern countries are forcing poor countries from the South to accept refugees in their territories. For example, the current assault by the USA on Iraq in the name of promoting democracy, prosperity and a better life has resulted in more suffering and a greater number of refugees than the oppression that it ostensibly aimed to overthrow. The main victims of the U.S. invasion are women and children. With the exception of a few refugees that were allowed protection in Europe, many of these refugees are living in poor conditions in refugee camps in neighbouring Syria and Jordan. In fact, many of these Iraqi refugee women and children are forced into prostitution so to be able to provide for their daily existence (The New York Times, 2007). Not only that these countries are ignoring their role in creating such a great number of refugees, but also putting more social and economic constraints on Syria to clean the mess that was created by an unjust invasion.

In addition to the physical and emotional devastation brought by colonization, modernity, imperialism and neo-colonization, globalization creates economic, and political dependency that has a particular influence on children. Countries in the South are unable to confront the World Bank's intrusive structural adjustments programs. The few cases in which some countries have managed to confront such manipulation, sanctions have been imposed on them. In the majority of cases, neo-orientalism, neo-conservative and neo-liberal policies are used to support oppressive regimes in the South for financial gains. These restructuring policies create further oppressive conditions, in which children are the main victims. Children, both girls and boys, in the South are the target of the manipulation of imperialism and oppressive regimes. At the same time, they are being used to cover up contemporary faults, corruption, political, and economic gains. As a result of this new and not so new world order in which the North continues to exhort financial gains from the South, children of the South must adapt to new roles. These roles stretch from maids to prostitute to orphans, soldiers in armies, rebel militia, migrants and gangs of bandits.

While this trend continues in the South, increasingly conservative migration policies are being adopted in the North. These policies are the product of the dominant discourses and are being used to scrutinize migration despite the commitment to the CRC and the 1951 United Nations Convention Relating to the Status of Refugees. These two international instruments provide the space for unaccompanied minors to secure access to protection. However, it was argued that the limitation of these instruments is that they are not legally binding. Furthermore, they have major gaps and inconsistencies. Some of these gaps are manifested in the vague definition provided by the UN. Other inconsistencies are in the determination of the best interests of the child, which is a test that is open to debate and is usually used by state actors to scrutinize immigration and the ability of minors to claim protection. It was also argued that there is a need to address the failure of the CRC to clearly acknowledge child soldiers as worthy of protection, and to require states to give them refuge. The argument was advanced that children

should not be penalized for the inability of states (all states that might be directly or indirectly involved in a conflict) to develop adequate protection regimes.

This thesis highlights that universal protection instruments reflect a western ideal of human rights and of childhood. The western conception of childhood is becoming a global measure for assessing and generating assumptions about children in the South. This notion has a tremendous impact on children of the South. Not only does it divide children into those 'deserving' and 'non-deserving' of childhood, but it also views them as putative citizens or "citizens in-the-making," rather than as actual citizens with all the attendant rights and entitlements of full citizenship. The western conception of children treats 'other' children as backward, superstitious and, as a result, in need of "fixing" to fit into this new, 'modern', ideal conception of childhood. For example, it was argued that children who portray themselves as vulnerable victims are more successful in their asylum claims than children who are seen as active agents of their own destiny, such as politically involved children. The former category of children fit the western ideal of children as "innocents", while under the latter category, children are viewed as adults and therefore less deserving of the state's sympathy. More importantly, the international instruments fail to recognize the impact of colonization, imperialism and globalization in creating "people out of place", or as Bauman (2004) calls it, "wasted lives".

The trend of exclusion located in international instruments is also present in the Canadian context. While it is believed that Canada is doing better than other Northern countries in their record of protection and its progressive protection policies, the Canadian protection system has its own failures and inconsistencies. Indeed government policies can create serious barriers to unaccompanied minors. Some of the major issues identified in this thesis include the detention of children, family reunification, deportation and the split jurisdiction between the provincial and the federal government. Moreover, the treatment of unaccompanied minors in Canada is not consistent with the CRC complying with its obligations under the CRC, as well as under domestic law, which view the child's best interests as the driving consideration. It was

also argued that unaccompanied refugee minors are ultimately paying the price for political buck-passing between provinces and the federal government.

In his book the '*wretched of earth*', Fanon (1961) notes:

Europe is literally the creation of the Third World. The wealth which smothers her is that which was stolen from the underdeveloped peoples. The ports of Holland, the docks of Bordeaux and Liverpool were specialized in the Negro slave trade, and owe their renown to millions of deported slaves. So when we hear the head of a European state declare with his hand on his heart that he must come to the aid of the poor underdeveloped peoples, we do not tremble with gratitude. Quite the contrary; we say to ourselves: "It's a just reparation which will be paid to us." (p.102).

While Fanon penned these thoughts nearly fifty years ago, this thesis has shown that little has changed. The states of Europe and North America continue to derive much of their wealth from the South through measures of economic exploitation that are "softer" than colonialism but which achieve the same objectives. At the same time, the North denies responsibility for the impact of its actions on the people of the South. The North, including Canada, has a duty to take responsibility for patterns of global inequality and to take more effective measures to ensure safety for unaccompanied refugee minors. The argument hinges on a refocusing of the issue away from the humanitarian argument, and instead to concentrate on a normative claim based on a historical, economic and political account of north-south relations. While some might level the charge of naivety against this project, one does not need to look far to realize that the early formation of the civil rights movement, or the women's liberation movement were also viewed as naïve projects at their inception. In the 1980s, very few people believed that apartheid would actually fall in South Africa within a few years. Today, just 14 years later, the idea of institutionalized racial segregation seems to us a relic of the distant past. This thesis, then, aims to shift and alter popular beliefs and perceptions about the issue of unaccompanied minor refugees, both nationally and internationally, in the hope of bringing about a cultural-philosophical shift in attitudes. As Edward Said (1993) once noted:

Look at situations as contingent, not as inevitable, look at them as the result of a series of historical choices made by men and women, as facts of society made by human

beings, and not as natural or god-given, therefore unchangeable, permanent, irreversible (p. 378).

In a country that prides itself for its democracy, freedom and human rights, Canadian citizens have not only the right but also the responsibility to hold their government accountable for its actions and inactions. Citizens have the power, and therefore the responsibility, to remedy the injustices that are carried out in the name of the values and priorities that have created the north-south imbalance that exists today. It is this imbalance that forces many children in the South to leave in search of safety. Canadian citizens should be mindful of their individual responsibility for the failings of their state when it comes to fulfilling its role in protecting these minors. What is needed is the political will to bring into fundamental change. With knowledge comes political will. Such is the same political will that motivated the civil rights movement to pick up and bring about real change. This thesis has aimed to put forth the social, historical, legal and political factors that shape the landscape and create the problem. It is left to others to develop strategies and programs to galvanize public opinion about unaccompanied refugee minors and to lead the call for political action. For the sake of the children who are the subject matter and inspiration of this research, it is hoped that this call to action will be undertaken sooner rather than later.

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