

# **Opinion**

**The 1951 Convention relating to the Status of Refugees and the Obligations of States under Articles 25, 27 and 28, with particular reference to refugees without identity or travel documents**

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Canada**

## Opinion

### The 1951 Convention relating to the Status of Refugees and the Obligations of States under Articles 25, 27 and 28, with particular reference to refugees without identity or travel documents

#### Introduction

1. I have been requested to advise on the interpretation of Articles 25, 27 and 28 of the 1951 Convention relating to the Status of Refugees (CSR51), with reference to the situation of refugees recognized in Canada, who are without identity documents.
2. In particular, I have been asked for an Opinion on the scope of Article 25 CSR51, and whether Canadian law and practice, including the use of administrative discretion, are compatible with the obligations assumed under this provision. Article 25 CSR51, so far as relevant to this Opinion, provides as follows:

#### *Article 25 B* Administrative assistance

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.
2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.
3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary...
5. The provisions of this Article shall be without prejudice to Articles 27 and 28.

3. Second, I have been asked to advise on Article 27 CSR51, and whether it obliges States party to issue identity documents to recognized refugees, whether landed or not, and whether Canadian practice conforms with the obligations assumed under this provision. Article 27 CSR51 provides as follows:

*Article 27 B Identity papers*

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

4. Third, I have been asked to advise on Article 28 CSR51, and whether it obliges States party to issue Convention travel documents (CTDs) to recognized refugees, whether ~~landed~~ or not, and whether Canadian practice conforms with the obligations assumed under this provision. Article 28 CSR51, so far as relevant to this Opinion, provides as follows:

*Article 28 B Travel documents*

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require...

5. In preparing this Opinion, I have been asked to consider the possible danger to recognized refugees and their family members still in the country of origin which may be created by requiring such refugees, directly or indirectly, to obtain identity documents from their ~~national~~ authorities in order to be eligible for permanent residence (landing).

6. In assessing legislation and practice, I have taken note of the consequences said to result from the present arrangements, such as are relied on in proceedings currently in the Federal Court, or which have been referred to in judgments of the Federal Court, or reported in the media.

Hussein Jama Aden, Fadumo Guire Ali, Fosiya Riyale, Aden Moallimaden, Abdulaziz Mohamed Abdi, Mohamed Ali Abdi, Sharmarke Mohamed Saleh, Aminia Nuri Jama Hassan, Ali Haji Mohamed, Madina Mohamud Hassan, Mariam Abdullahi Dirie, Plaintiffs, and Her Majesty the Queen, Defendant: Amended Amended Statement of Claim, 28 May 1997, Court File No. IMM. 500/501-96;

*Popal v. Canada (Minister of Citizenship and Immigration)*, Court File No. IMM-525-99, Federal Court **B** Trial Division, Gibson, J., Toronto, Ontario, 17 March 2000;

›Iranian refugee claimant can't prove identity. Can't get passport after Immigration says birth certificate is forged', *Globe and Mail*, 14 Dec. 1999; ›Somalis fight immigration rules', *Ottawa Citizen*, 31 Dec. 1999; ›Settle Somali issue out of court', *Ottawa Citizen*, 7 Jan. 2000.

7. The disadvantages referred to in paragraph 6 above have been acknowledged in Citizenship and Immigration Canada (CIC) Operations Memoranda dealing with the situation of recognized refugees seeking to be landed. For example, on the general issue of the time frame within which Convention refugees should apply, the Regulatory Impact Analysis Statement accompanying Operations Memorandum IL 95-02, 16 October 1995, notes that:

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

CIC, Operations Memorandum, IL 95-02, 16 October 1995,  
›Refugees' Time to apply for Landing' Regulation 40.=

## Organization of the Opinion

8. This Opinion deals (1) with the applicable principles of international law, followed by (2) a review of the background to and scope of Articles 25, 27 and 28 CSR51; it then provides (3) a brief examination of selected State practice, (4) a summary account of current Canadian law and practice, and (5) an evaluation of that practice against the international standards established in the preceding paragraphs. It concludes (6) with a number of recommendations.

### 1. Applicable Principles of International Law

## 1.1 Treaties and Domestic Law and Practice: General Considerations

9. Canada ratified the 1951 Convention and the 1967 Protocol relating to the Status of Refugees on 4 June 1969, and both instruments entered into force for Canada on 2 September 1969. Canada's accession was made subject to the following reservation with respect to Articles 23 and 24 CSR51: >Canada interprets the phrase 'lawfully staying' as referring only to refugees admitted for permanent residence; refugees admitted for temporary residence will be accorded the same treatment with respect to matters dealt with in Articles 23 and 24 as is accorded visitors generally.= Articles 23 and 24 CSR51 deal with >Public relief= and 'Labour legislation and social security', respectively. However, this reservation was not made in regard to any other provision of the 1951 Convention.

10.

11. In the relation of national law to international law, it is a >fundamental principle of international law that international law prevails over domestic law.=

International Court of Justice, *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, [1988] ICJ Reports 12, 31-2, para. 47

## 1.2 Implementation of Treaty Standards in National Law

12. Nothing in the 1951 Convention specifically requires Contracting States to incorporate its provisions by national legislation, but the failure to incorporate can lead to a number of problems, particularly in States where treaties do not automatically have the force of law.

13. The duty of a State party to ensure that its domestic law is in conformity with its international obligations is beyond question (see generally paras 17-21 below). A decision to ratify a particular treaty and not formally to incorporate it, however, will generally be based on an assessment of national legislation at the time of ratification, considered in light of the prevailing factual circumstances. A change in circumstances (for example, greater demand for Convention travel documents resulting from increased opportunities for international travel) can often highlight the deficiencies in a national system where at one time administrative discretion could be used to ensure that refugees received appropriate treatment. From an international law perspective, the question becomes one of effectiveness of implementation.

Goodwin-Gill, G. S., *The Refugee in International Law*, Oxford: Clarendon Press, 2<sup>nd</sup> edn., 1996, 234-41;

Lauterpacht. H., *The Development of International Law by the International Court* (1958), 257, 282;

Article 31 (1) of the 1969 Vienna Convention on the Law of Treaties:  
1155 *UNTS* 331; UKTS 58 (1980), Cmnd. 7964.

14. In addition to assuming obligations with regard to the status and treatment of refugees, States ratifying the 1951 Convention and the 1967 Protocol necessarily undertake to implement those instruments in good faith. The choice of means in implementing most of the provisions is left to the States themselves; they may select legislative incorporation, administrative regulation, informal and *ad hoc* procedures, or a combination thereof. The test is whether, in the light of domestic law and practice, including the exercise of administrative discretion, the State has attained the international standard of reasonable efficacy and efficient implementation of the treaty provisions concerned.

15. The effective implementation of the 1951 Convention must therefore first take into account whether States parties have taken steps to incorporate or otherwise implement their obligations, particularly those most important obligations governing (a) the legal definition of the term 'refugee'; (b) the application of the Convention to refugees without discrimination; and (c) the issuing of identity and travel documents to refugees. These topics fall, somewhat loosely, within an area of law that is most usually of general application; Convention rights and benefits are therefore likely to be denied unless special measures are taken to single out the refugee, and thereby ensure the requisite protection.

16.

17. Secondly, the Convention defines a status to which it attaches consequences, but it leaves it to the ratifying State to determine how it will identify those who are to benefit. In Canada, since 1989, the determination of refugee status has been governed by statute providing for an oral hearing and a quasi-judicial procedure within the jurisdiction of a decision-making body which stands among the most highly regarded in the world.

18. Apart from the determination of refugee status, however, and the statutory eligibility for permanent residence which flows from recognition as a refugee, no statutory measures have been taken to ensure that the refugee is otherwise able to enjoy his or her rights under the Convention as a whole.

### **1.3 Treaties: General principles of law**

19. The 1969 Vienna Convention on the Law of Treaties, although non-retroactive, is largely declaratory of general international law.

Article 4, 1969 Vienna Convention on the Law of Treaties;

Brownlie, I., *Principles of Public International Law*, Oxford: Clarendon Press, 5<sup>th</sup> edn., 1998, 607-8.

20. Among others, it is a well-settled rule of international law that Every treaty in force is binding upon the parties to it and must be performed by them in good faith. B the principle of *pacta sunt servanda*.

Article 26, 1969 Vienna Convention on the Law of Treaties; Brownlie, I., *Principles of Public International Law*, Oxford: Clarendon Press, 5<sup>th</sup> edn., 1998, 620.

21. In addition, a State which has contracted valid international obligations is bound to make in its legislation such modifications as may be necessary to ensure the fulfilment of the obligations undertaken.

Permanent Court of International Justice, *Exchange of Greek and Turkish Populations*, (1925) PCIJ, Ser. B, No. 10, 20.

22. A State party may not invoke the provisions of its internal law as justification for its failure to perform a treaty...=

Article 27, 1969 Vienna Convention on the Law of Treaties.

23. While reservations may often be made to treaties, a State may not formulate a reservation which is prohibited by the treaty

Article 19, 1969 Vienna Convention on the Law of Treaties.

24. A valid reservation to a treaty has the effect of modifying the provisions of that treaty to which the reservation relates to the extent of the reservation.

Article 21, 1969 Vienna Convention on the Law of Treaties

#### 1.4 Relevant principles of treaty interpretation

25. The Vienna Convention on the Law of Treaties confirms that a treaty »shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in the context and in the light of its object and purpose«.

Article 31(1), 1969 Vienna Convention on the Law of Treaties.

26. For the 1951 Convention relating to the Status of Refugees, this means interpretation by reference to the object and purpose of extending the protection of the international community to refugees, and assuring to »refugees the widest possible exercise of... fundamental rights and freedoms«.

1951 Convention, Preamble, paras. 1-3.

27. The rules of treaty interpretation permit recourse to »supplementary means of interpretation«, including the *travaux préparatoires*, only where the meaning of the treaty language is »ambiguous or obscure; or leads to a result which is manifestly absurd or unreasonable'. If the meaning of the treaty is clear from its text when viewed in the light of its context, object and purpose, supplementary means are unnecessary.

Article 32, 1969 Vienna Convention on the Law of Treaties.

28. For the purposes of the present Opinion, the *travaux préparatoires* are used to confirm the ordinary meaning of the words in the articles under consideration.

## 2. Background to and scope of Articles 25, 27 and 28 CSR51

29. The origins of Article 25 CSR51 (administrative assistance), Article 27 CSR51 (identity documents) and Article 28 CSR51 (travel documents) can be found in the first efforts of the League of Nations to address the problems of refugees. The 1926 Arrangement regarding Russian and Armenian Refugees, for example, was specifically organized around the objective of certifying the identity and the »position« of refugees.



Arrangement relating to the Issue of Identity Certificates to Russian and Armenian Refugees, 12 May 1926: 84 *LNTS* No. 2006. See also Arrangement relating to the Legal Status of Russian and Armenian Refugees, 30 June 1928: 89 *LNTS* No. 2005.

## 2.1 Administrative assistance

30. Article 25 of the 1951 Convention continues this practice and obliges Contracting States to provide the assistance normally afforded by national authorities, including the issue of >documents or certifications= which are to >stand in the stead= of official instruments and to >be given credence in the absence of proof to the contrary=. It draws no distinction between the stateless refugee and the refugee possessing a nationality, and the obligation is incumbent on the State in whose territory the refugee is residing; in contrast to a number of other Articles of the Convention, the refugee's residence is not qualified by the requirement that it be >habitual=.

31. In discussion on the draft Article on administrative assistance in the *Ad hoc* Committee on Statelessness and related Problems (later renamed the *Ad hoc* Committee on Refugees and Stateless Persons) in 1950, the United Kingdom representative, Sir Leslie Brass, observed that this was not a problem in the UK. Given the availability of affidavit evidence, as Mr. Weis, representing the International Refugee Organization, remarked, >in common law countries, no new legislation or administrative procedures were required to protect refugees=.

*Ad hoc* Committee on Statelessness and Related Problems, UN doc. E/AC.32/SR.19, 8 Feb. 1950, Meeting of 1 Feb. 1950, 4, 6. See also Mr. Hoare (United Kingdom), Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, UN doc. A/CONF.2/SR.11, 22 Nov. 1951, 15.

32. The Committee was nevertheless concerned that, without such assistance, refugees might not be able to enjoy the rights accorded them. As the representative for Belgium said at the 1951 Conference, this provision,

>was designed to meet one of the most constant and essential needs of refugees... [H]e could not agree that the administrative assistance [to be afforded by Contracting States] should be made optional... [I]f

governments were permitted to grant or refuse them the necessary documents at their discretion, the rights which the Convention was intended to confer on refugees would be jeopardized.=

Mr. Herment (Belgium), Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, UN doc. A/CON

F.2/SR.11, 22 Nov. 1951, 11-16, at 12, 14.

33. Recognizing that documentation issued to refugees must be credible and authoritative, the *Ad hoc* Committee also expressed its intention to have the Contracting States give documents issued... *the same validity* as if the documents had been issued by the competent authority of the country of nationality...=

Report of the *Ad hoc* Committee on Statelessness and Related Problems:  
UN doc. E/1618 and Corr.1, 17 Feb. 1950, Comments to (then) draft  
Article 20.

34. This was amended by the 1951 Conference to >credence in the absence of proof to the contrary= **B** an understandably lesser standard of validity than that of >original= documents. Such >lesser validity= is inherent in the circumstances **B** documents issued under Article 25 are clearly not originals **B** but the standard also happens to reflect the practical experience with affidavit evidence familiar to common law countries and the legal principle that evidence given under oath should be presumed to be true.

>When an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness=: *Villaroel v. Minister for Employment and Immigration* (1979) 61 NR 50; *Maldonado v. Minister for Employment and Immigration* (1980) 2 FC 302, 305, cited with approval in *Sathanandan v. Canada (Minister of Employment and Immigration)* (1991) 15 Imm. L.R. (2d) 310 (Federal Court of Appeal), *Fajardo v. Canada* (1993) 21 Imm L.R. (2d) 113, and *Siad v. Canada* [1997] 1 F.C. 698.

35. The standard of >credence= also serves to protect the interests of Contracting States which remain competent to annul or modify any document, or benefit granted on the strength of any document, on the basis of later contrary evidence.

36.

37. Finally, Article 25(5) CSR51 confirms that the Article is without prejudice to Articles 27 and 28, which deal with identity documents and travel documents, respectively. However, these Articles may need to be read together (for example, Article 25 with Article 27; Article 25 with Article 28), as part of single system of protection of the refugees' entitlement to identity and documentation. As a practical matter, the issuance of identity documents under Article 27 may be contingent on the issuance and acceptance of the necessary antecedent documents under Article 25, relating, for example, to births and deaths, marriages and civil status generally.

## 2.2 Identity documents

38. The first United Nations study on statelessness and refugees recognized the value of improving the lot of refugees by measures designed to determine or clarify their personal status and to provide them with identity documents.

*A Study of Statelessness*, UN doc. E/1112, 1 Feb. 1949, 24-5, 41-4, 53.

39. The question of identity papers for refugees was considered at both sessions of the *Ad hoc* Committee in February and August 1950. This Committee considered a draft convention prepared by the UN Secretariat, Article 22 of which provided: >The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document issued pursuant to Article 23.=The Secretariat comment invoked the precedent of Article 2 of the 1933 Convention relating to the International Status of Refugees,

>Each of the Contracting States undertakes to issue Nansen certificates, valid for not less than one year, to refugees residing regularly in its territory.= Article 2, 1933 Convention relating to the International Status of Refugees, 159 *LNTS* No. 3663.

and noted that, >It is a general principle to issue identity papers, under various designations, which serve both as identity cards and as residence permits=.

*Ad hoc* Committee, Draft Report, UN doc. E/AC.32/L.38, 15 Feb. 1950.

40. In debate on the proposal, the Belgian representative, Mr. Herment, proposed qualifying the phrase »in their territory» with the word »lawfully». He failed to see how any contracting party could agree to issue identity papers to refugees who were unlawfully in its territory, or who were there on an essentially temporary basis. However, the U.S. representative, Louis Henkin, stated that at the invitation of the International Refugee Organization (IRO), »the Committee had agreed to extend the provisions of [the] Article... to all refugees.» The IRO's representative, Paul Weis (later to become the first UNHCR Legal Adviser) confirmed the Committee's intention that »every refugee should be provided with some sort of document certifying his identity».<sup>1</sup>

*Ad hoc* Committee, Summary Records, UN docs. E/AC.32/SR.15, paras. 57-129 (the first session debate dealt almost exclusively with issues of residence and security); E/AC.32/SR.38, pages 23-5 (a Canadian comment in the debate suggests some confusion between identity documents and travel or re-entry documents: p.23); E/AC.32/SR.41, page 20 (the draft Article was adopted with the substitution in the French text of the heading of the phrase »Pièce d'identité» for »Carte de légitimation»); E/AC.32/SR.42, pages 11-35 (primarily discussing the meaning of the French phrase, »résidant régulièrement»).

41. At the 42<sup>nd</sup> Meeting of the *Ad hoc* Committee, there was a long debate on the interpretation of the words »résidant régulièrement». The French representative, Mr. Juvigny, remarked that the articles where they occurred generally implied »that the presence of the refugees was more or less permanent... a settling down and, consequently, a certain length of residence». This was to be distinguished from the meaning inherent in the phrase »se trouver», which »in the terminology and general structure of the Convention... had a very special significance, and was used only in the article concerning identity papers, i.e. it referred to a procedure which could not be refused to anyone, whatever his status or the legality of his presence in a given territory.»

*Ad hoc* Committee, Summary Records, UN docs. E/AC.32/SR.42, 12, 23.

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<sup>1</sup> Mr Weis also noted that, »A man without papers was a pariah subject to arrest for that reason alone» UN doc. E/AC.32/SR.38, 26 Sept. 1950, 24. It was nevertheless recognized that the issue of identity papers was without prejudice to the right of the government to expel a person illegally present.

42. Article 27 lays down a straightforward, unequivocal obligation on Contracting States, which shall issue identity papers to any refugee in their territory who does not possess a valid travel document. The duty is subject to no exceptions, and the *travaux préparatoires* make it clear that every refugee was intended to benefit from this provision.

*Ad hoc* Committee on Refugees and Stateless Persons, UN doc.  
E/AC.32/SR.38, 26 Sept. 1950, 23-5.

43. Article 27 is within the category of provisions to which States may make reservations (Article 42(1) CSR51), but neither Canada nor any other State party has done so.

### **2.3 Travel documents**

44. Article 28 CSR51 maintains the practice of issuing travel documents to refugees, initiated under the League of Nations, and paragraph 2 provides for documents issued under earlier arrangements to continue to be recognized.

45. The operative part of Article 28 is succinct: >The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require...=. As noted in para. 9 above, Canada did not make a reservation to Article 28 with respect to its interpretation of “lawfully staying” or any other matter.

46. Delegates at both the *Ad hoc* Committee and at the 1951 Conference recognized clearly that the criterion of entitlement, >lawfully staying=, was likely to place the refugee in a better position with regard to the issuance of travel documentation than the citizen of the State in which he or she resides. At that time, global travel was far less common, and the issuing of passports to nationals was less routine; nevertheless, it was agreed that refugees should be entitled to a travel document in light of their extremely vulnerable circumstances. Where the applicant for a Convention travel document satisfies the criteria of entitlement, Article 28 permits few exceptions to the obligation to issue. The reference to >compelling= reasons of national security and public order as justifying an exception clearly indicates that restrictive interpretation is called for; it was thus emphasized at the 1951 Conference that the refugee is not required to justify his or her proposed travel.

UN docs. E/AC.32/SR.16, 13-15; SR.42, 5-7; A/CONF.2/SR.12, 4-13; SR.17, 4-11.

### 3. Practice of States in relation to identity and residence

47. In 1984, UNHCR submitted a paper on identity documents to the Executive Committee's Sub-Committee of the Whole on International Protection. This noted, *inter alia*, that »in order to benefit from treatment in accordance with internationally accepted standards, the refugee needs to be able to establish his or her identity and refugee character vis-à-vis government officials. The paper recounts the history of identity documents for refugees and observes that the obligation under Article 27 can be satisfied by the issuance of a Convention travel document under Article 28. It also emphasizes the value of identity documentation for government officials who, being readily able to ascertain that someone is a refugee, can facilitate implementation of the Convention and avoid administrative error. UNHCR also observed that, »It is the general practice of States with established procedures for determining refugee status to provide recognized refugees with some form of documentation attesting *to their identity and to their status as refugees.*»

48.

UNHCR, »Identity Documents for Refugees« UN doc. EC/SCP/33, 20 Jun. 1984, paras. 3, 4-8, 10, 12 (emphasis supplied).

49. In its Conclusion adopted after debate on the matter, the UNHCR Executive Committee (of which Canada was then and remains now a member), reaffirmed the importance and necessity of identity documents for refugees, that Article 27 CSR51 »requires Contracting States to issue« such documents, and »Noted with approval the general practice of States to provide refugees with documents, in the form prescribed by their national legislation, enabling them to establish their identity and their refugee status, and recommended that States which have not yet done so should ensure that refugees are provided with such documentation«.

UNHCR Executive Committee Conclusion No. 35 (XXXV) C 1984:  
Report of the 35th Session: UN doc. A/AC.96/651, para. 87(3).

### 3.1 Implementation of Articles 25, 27 and 28 CSR51 in national law

50. The following brief survey provides examples of practice in selected States which have legislated to implement the obligations accepted in Articles 25 and 27 CSR51, and in some cases also in regard to Article 28 CSR51.<sup>2</sup>

**51. Belgium:** Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers. In force 1 July 1981. Unofficial consolidation. The original Act was published in the *Moniteur Belge*, 31 December 1980; amended to Act of 15 July 1996, *Moniteur Belge*, 5 October 1996.

Article 57/6. Le Commissaire général aux réfugiés et aux apatrides est compétent:...

4E Pour délivrer aux réfugiés et aux apatrides les documents visés à l'Article 25 de la Convention internationale relative au statut des réfugiés, signée à Genève, le 28 juillet 1951, et à l'Article 25 de la Convention relative au statut des apatrides, signée à New York, le 28 septembre 1954.

52. See also Arrêté Royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers. In force 27 October 1981. Unofficial consolidation. Amended to the Arrêté Royal of 11 December 1996, *Moniteur Belge*, 7 January 1997.

53.

Article 72. Les autorités chargées du contrôle aux frontières remettent à l'étranger qui se présente à la frontière sans être porteur des documents requis et qui se déclare réfugié, un document conforme au modèle figurant à l'annexe 25...

Article 73. Les autorités désignées à l'Article 71bis, 2, remettent à l'étranger qui est entré dans le Royaume sans être porteur des documents requis et qui se déclare réfugié, dans les huit jours ouvrables de son arrivée, un document conforme au modèle figurant à l'annexe 26...

Article 76. Sous réserve de l'effet suspensif prévu par l'Article 57/11, 1er, alinéa 3, de la loi, l'étranger reconnu comme réfugié est, sur le vu du certificat de réfugié remis par l'autorité compétente, mis en possession du certificat d'inscription au registre des étrangers...

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<sup>2</sup> Unless otherwise indicated, the title, translation and source of the legislation in question is UNHCR, *RefWorld*, 8<sup>th</sup> edn., July 1999, the CD-ROM database collection, section on National Legislation.

Article 78. Les autorités chargées du contrôle aux frontières remettent à l'étranger qui entre régulièrement dans le Royaume et qui se déclare réfugié un document conforme au modèle figurant à l'annexe 26.

**54. France:** Ordonnance n° 1945-2658 du 2 novembre 1945 relative aux conditions d'entrée et de séjour en France des étrangers et portant création de l'Office national d'immigration. In force 2 November 1945. Unofficial consolidation. The Law was first published in the *Journal Officiel*, 4 November 1945, with corrections in the *Journal Officiel*, 7 November and 13 December 1945. Amended to the Loi n° 1998-349 du 11 mai 1998 relative à l'entrée et au séjour des étrangers en France et au droit d'asile, *Journal Officiel*, 12 May 1998.

Section 2. Des étrangers titulaires de la carte de résident.

Article 14. Sauf si la présence de l'étranger constitue une menace pour l'ordre public, la carte de résident est délivrée de plein droit, sous réserve de la régularité du séjour:...

10E A l'étranger qui a obtenu le statut de réfugié en application de la loi n° 52-893 du 25 juillet 1952 portant création d'un Office français de protection des réfugiés et apatrides, ainsi qu'à son conjoint et à ses enfants mineurs ou dans l'année qui suit leur dix-huitième anniversaire lorsque le mariage est antérieur à la date de cette obtention ou, à défaut, lorsqu'il a été célébré depuis au moins un an, sous réserve d'une communauté de vie effective entre les époux...

Article 16. La carte de résident est valable dix ans. Sous réserve des dispositions de l'Article 15 bis et de l'Article 18, elle est renouvelable de plein droit.

**55. Germany:** Act concerning the Entry and Residence of Aliens in the Territory of the Federal Republic (Aliens Act). In force 1 January 1991.

Article 39 Substitute identity documents.

(1) An alien who does not possess a passport and cannot reasonably obtain one will satisfy the obligation to hold an identity document by producing a certificate, bearing his personal details and a photograph (substitute identity document), showing that he has a residence authorization or a temporary consent to remain.

(2) The Federal Minister of the Interior may determine, by means of a statutory instrument issued with the consent of the Bundesrat, that aliens who do not possess a passport or passport substitute, and cannot



reasonably obtain one, may be issued with a travel document as a substitute for a passport, may be given a certificate of entitlement to return to Federal territory, and may be exempted from the obligation to produce a passport for the purpose of crossing the frontier.

**56. Switzerland:** Loi sur l'asile du 26 juin 1998 (Etat le 28 septembre 1999):

Article 60 (Règlement des conditions de résidence) 1. Quiconque a obtenu l'asile en Suisse a droit à une autorisation de séjour dans le canton où il séjourne légalement...

57. See also Ordonnance sur la remise de documents de voyage à des étrangers (ODV) du 11 août 1999 (Etat le 28 septembre 1999):

Article 1 (Compétence)... 2. L'office fédéral [des réfugiés], se conformant aux dispositions ci-après, remet aux réfugiés reconnus, aux apatrides et aux étrangers sans papiers, aux personnes admises à titre provisoire, aux personnes à protéger et aux requérants d'asile les documents de voyage suivants, requis pour leur départ de Suisse: a. titre de voyage; b. passeport pour étrangers; c. certificat d'identité...

Article 2 (Titre de voyage pour réfugiés) L'étranger qui a obtenu l'asile en Suisse ou y a été admis provisoirement comme réfugié a droit à un titre de voyage pour réfugiés conformément à la Convention du 28 juillet 1951 relative au statut des réfugiés...

Article 4 (Certificat d'identité) 1. L'office fédéral peut remettre un certificat d'identité aux personnes à protéger, aux personnes admises à titre provisoire et aux requérants d'asile s'ils sont sans papiers...

Article 6 (Etranger sans papiers) 1. Un étranger est, au sens de la présente ordonnance, considéré comme étant sans papiers lorsqu'il ne possède pas de documents de voyage nationaux valables et qu'il ne peut être raisonnablement exigé de lui qu'il demande aux autorités compétentes de son Etat d'origine ou de provenance de lui en délivrer un ou de prolonger la validité. 2. Des retards d'ordre technique lors de l'établissement des documents de voyage nationaux ou de la prolongation de leur validité ou encore des refus justifiés de la part de l'autorité compétente ne constituent pas un motif pour remettre un document de voyage suisse. 3. Le fait qu'un étranger est sans papiers est constaté par l'office fédéral dans le cadre de l'examen de la demande.

58. United States of America: Immigration and Nationality Act: 8 U.S.C. Section 1158(d)(5)(A); section 208 (d)(5)(A):

Procedures. The procedure established under paragraph (1) shall provide that (i) asylum cannot be granted until the identity of the applicant has been checked against all appropriate records or databases maintained by the Attorney General and by the Secretary of State... to determine any grounds on which the alien may be inadmissible to or deportable from the United States, or ineligible to apply for or be granted asylum...

8 C.F.R. s. 210.3, which deals not with asylum but with eligibility for temporary residence for agricultural employment, establishes, in the documentary proof of identity relevant to adjustment of status, the following descending order of preference:

(i) Passport; (ii) Birth certificate; (iii) Any national identity document from a foreign country bearing a photo and/or fingerprint (e.g., *Acedula*, *Acartilla*, *Acarte d'identite*, etc.); (iv) Driver's license or similar document issued by a state if it contains a photo; (v) Baptismal record or marriage certificate; (vi) Affidavits, or (vii) Such other documentation which may establish the identity of the applicant.

Likewise, in regard to the provision of temporary protected status for nationals of designated States, 8 CFR Part 244, s. 244.9 provides, *inter alia*, that the Immigration and Naturalization Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable, but that if any required document is unavailable, an affidavit or other credible evidence may be submitted.

### **3.2 Summary evaluation of State practice**

59. State practice generally confirms the importance which States party to the 1951 Convention attach to the entitlement of the refugee to documentation attesting to identity and status, acknowledges the obligation to provide such documents, and recognizes the necessity for such documentation to be *effective* in enabling the refugee to benefit from the provisions of the Convention.

## **4. Summary of Canadian law and practice**

#### 4.1 Identity and credibility before the Immigration and Refugee Board

60. In proceedings in Canada for the determination of refugee status, applicants are already on notice of the necessity and importance of providing accurate information as to identity. The Immigration and Refugee Board has established checks and methods for the determination of identity, which are recognized as essential to the verification of claims and the assessment of credibility.

Immigration and Refugee Board, Legal Services, ~~Commentary on Undocumented and Improperly Documented Claimants: Assessing the Evidence, Enhancing Procedures, Ottawa, March 1997, Section IV, Evidentiary and Procedural Issues in Processing Claimants Lacking proper Documentation.~~

61. Decisions of the Immigration and Refugee Board confirm the seriousness with which the question of identity is taken, and where the CRDD is not satisfied, a refugee claim is likely to fail. In *Re H. (C.J.)*, 19 January 1993, the applicant claimed to be a Somali citizen. She submitted a copy of her Somali driver's licence and a copy of her Somali passport, together with other documentation, including her Personal Information Form. The CRDD had serious doubts about the claimant's general credibility and about her identity in particular. Doubts regarding the genuineness of her passport were raised by the fact that the claimant did not tell the truth when asked if it was ~~genuine and correct~~, that she had destroyed another (Kenyan) passport claimed to be false, and because of inconsistencies and implausibilities in the account given of her travel to Canada.

*Re H. (C.J.)*, Nos. M-01654-M92-01658, CRDD, Ottawa, Ontario, 19 January 1993.

62. The CRDD will also ~~vacate~~ a determination found to have been based on misrepresentations as to identity. In *Re Q.Z.D.*, 4 March 1999, for example, the CRDD vacated a determination that the Respondent was a refugee, on the ground that his application was not supported by the evidence that he was a citizen of Liberia. Tests showed that his passport and identity card were both false and/or had been altered, which facts were admitted by the Respondent. Looking at the evidence as a whole, including information provided on his application and explanations given subsequently, the CRDD concluded that the Respondent had knowingly concealed material facts relating to his identity.

*Re Q.Z.D.*, No. M-98-00395, 4 March 1999, CRDD, Montreal, Quebec, paras. 18-30.

#### 4.2 Identity for the purposes of landing

63. Until 1993, Convention refugees applying for permanent residence in Canada after recognition by the Immigration and Refugee Board were effectively exempt from furnishing identity documents in any particular form. Following the enactment of amending legislation in that year, however, the *Immigration Act* now requires that,

An immigration officer shall not grant landing either to an applicant under subsection (1) [i.e., any person who is determined, by the Refugee Division to be a Convention refugee] or to any dependant of the applicant until the applicant is in possession of a valid and subsisting passport or travel document or a satisfactory identity document. *Immigration Act* section 46.04(8).

64. Satisfactory identity document is not defined in the *Act*, which also provides no list of acceptable documents.

#### 4.3 Effects of law and practice on undocumented recognized refugees

65. Before the 1993 amendment, Canada appears to have complied with Articles 25 and 27 CSR51 largely by default. Since 1993, however, large numbers of Convention refugees recognized in Canada have been unable to enjoy the benefits of landing and, by comparison with other Convention refugees, have suffered from administrative discrimination.

*Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, OEA.Ser.L/V/II.106 Doc. 40 rev. OAS Inter-American Commission on Human Rights, paras. 74-79 (<http://www.cidh.org>).

66. The effects of denying or suspending access to permanent residence status have been noted to include:

**Denial or delay of family reunion:** UN Committee on Economic, Social and Cultural Rights, ›Concluding Observations= UN doc. E/C.12/Add.31, 4 Dec. 1998, para. 37;

**Limited access to post-secondary education in comparison with other Convention refugees recognized and landed in Canada:** UN Committee on Economic, Social and Cultural Rights, ›Concluding Observations= UN doc. E/C.12/Add.31, 4 Dec. 1998, para. 39;

**Denial of Convention travel documents and guaranteed re-entry to Canada:** Article 28 and Schedule CSR51.

**Restrictions on freedom to take employment:** Article 17 and Article 3 CSR51.

#### **4.4 The Undocumented Convention Refugees in Canada (UCRC) Class**

67. In an attempt to remedy the situation of several thousand ›undocumented= Convention refugees in legal limbo, in January 1997 the Government introduced the Undocumented Convention Refugees in Canada Class. This seeks to allow certain Afghan and Somali undocumented refugees to be landed after a 5-year waiting period; this was reduced to 3 years in December 1999.

Operations Manual IP97-02e, 30 January 1997, Undocumented Convention Refugees in Canada Class; Citizenship and Immigration Canada, News Release 97-05, 22 January 1997; Citizenship and Immigration Canada, Fact Sheet for UCRC Class, 30 December 1999.

68. In 1997, when the Undocumented Convention Refugee in Canada Class was introduced, it was estimated that there were ›approximately 7,500 persons in Canada who have been determined to be Convention refugees, whose country of origin is Somalia or Afghanistan. Of these, it is estimated that just under half have not applied for permanent residence; the remainder who have applied for permanent residence have not been landed, for the most part, because they are unable to obtain a passport, travel document or other satisfactory identity document.=

CIC, Operations Memorandum, IP 97-02e, 30 January 1997,  
 >Undocumented Convention Refugee in Canada (UCRC) Class=  
 Background.

69. Gibson J. remarked in *Popal v. Canada* that, >That number does not reflect the number of dependants both within Canada and outside Canada who had not themselves been found to be Convention refugees=  
*Popal v. Canada*, Court File No. IMM-525-99, FC-TD, Toronto, 17 March 2000, para. 24. It also does not reflect the number of 'undocumented' refugees recognized in Canada, who originate from countries other than those listed in the UCRC Class.

70. For the purposes of this Opinion, it suffices to note that:

\$ the class is limited to refugees from Afghanistan and Somalia;

\$ applicants for permanent residence without identity documentation will not be considered for 5 (3) years, >until and unless additional documentation is provided=;

\$ eligibility thereafter depends, *inter alia*, on the applicant making >a written solemn declaration with respect to the accuracy and completeness of identity information submitted=;

\$ Afghanistan and Somalia are formally described as >countries experiencing sustained and extreme political turmoil, and the lack of effective central government prevents many nationals and former habitual residents from obtaining identity documents=;

\$ no provision is made to include dependants overseas within the class, but >family class sponsorship= may only be submitted >once permanent residence status= has been granted.

71. Operations Memoranda issued in implementation of the UCRC Class appear to compound the difficulties facing refugees seeking landing after recognition by the Immigration and Refugee Board. In IP 97-07, 27 March 1997, Citizenship and Immigration Canada advised that >The passport issuing practices of [the Afghani Embassy and consulates in the United States]... give reason to question the presumption that the holder of an Afghani passport is an Afghani national=. It is unusual for one State to query the sovereign acts of the representative of a foreign government; in this case, it was apparently due to the fact that the Afghan passports and identity documents demanded by the Canadian authorities were being issued on the basis of documents themselves issued by the Canadian authorities.

CIC, Operations Memorandum, IP-97-07, 27 March 1997, >Processing of Convention Refugee Applications for Landing; Particular Problems with Afghani Passports and Identity Documents.=

72. The refugee is effectively caught in a *circulus inextricabilis*: Being without identity documents and yet required to obtain such documents, documents obtained are nevertheless found unsatisfactory.

#### 4.4.1 *The question of discrimination*

73. The circumstances attending its introduction indicated that the UCRC Class was created in order to minimize the hardship imposed by the requirement to have a satisfactory identity document. The immediate cause of the problems for recognized refugees, however, is to be found in the amendment to the *Immigration Act* in 1993, and in its interpretation in practice thereafter (see paras. 58-61 above). Moreover, in its content and implementation, the creation of a special class of refugees appears to raise very serious issues of discrimination, both in relation to Article 3 CSR51:

>The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin=

and generally by comparison with other refugees recognized in Canada and granted permanent residence status.

#### 4.4.2 >Satisfactory identity document= Guidelines

74. Operations Memorandum IP 97-09, 4 April 1997, provides guidance on the evaluation of a statutory declaration to determine if it can be accepted as a satisfactory identity document. It recalls Operations Memorandum IS 93-19 which defines a >satisfactory identity document= as a document which >is genuine; belongs to the Convention refugee; provides evidence of the person's identity; normally predates the claim to refugee status.= (Emphasis in original) It advises that >statutory declarations and other documents presented for the purpose of complying with= section 46.04(8) >should be reviewed with [these] criteria in mind.=

Operations Memorandum IP 97-09, 4 April 1997, »Landing of Undocumented Convention Refugees and A46.04(8): Evaluating a Statutory Declaration to Determine if it can be Accepted as a Satisfactory Identity Document«, re-issuance with further guidance of OM IP 95-19, 7 December 1995.

75. The general approach to documentation suggests that in practice nothing other than a valid passport or travel document is accepted as satisfactory, and that documents otherwise acceptable under Canadian law (and recognized as sufficient by common law countries participating in drafting the 1951 Convention), such as affidavits and statutory declarations, are in fact declined by the authorities without valid reason or good cause, contrary to the letter and spirit of the Convention.

76. Operations Memorandum IP 97-09 does not advert to the presumption of credibility attaching to sworn evidence, absent evidence to the contrary; or to the relevance and weight of »predating« to the authority of such evidence; or to the validity in practice accorded to documents confirming recognition of refugee status issued by the Immigration and Refugee Board (and accepted by other Canadian governmental and non-governmental entities as sufficient for identity purposes, for example, for the issue of driving licences and the opening of bank accounts). Operations Memorandum IP 97-09 also fails to advise of the requirement to provide reasons for finding any particular document to be unsatisfactory, a point highlighted by Gibson J. in *Popal v. Canada* at paragraph 33 of the judgment cited above.

77. The case of *Popal v. Canada*, Court File No. IMM-525-99, FC-TD, Toronto, 17 March 2000, arose out of an application for judicial review of the failure to grant permanent residence status to an Afghan citizen recognized as a Convention refugee on 15 November 1994. In his judgment, Gibson J. sets out in detail the considerable delays and demands which accompanied the application. Notwithstanding official recognition of Afghanistan as a country »experiencing sustained and extreme political turmoil, and the lack of effective central government prevents many nationals... from obtaining identity documents« (UCRC Class, section 7), the applicant was nonetheless requested to obtain documents such as an original marriage certificate or a birth certificate. When he did so, they were rejected as unsatisfactory, despite the fact that, as Gibson J. remarked, »in Islamabad, much closer to the reality of the situation in Afghanistan and Pakistan, the principal applicant's documentation was found [by the Canadian visa officer] to be much above the average for persons fleeing Afghanistan«. <sup>3</sup>

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<sup>3</sup> Although it was held in an earlier case that the decision, whether an applicant had provided a »satisfactory identity document«, was a »discretionary decision«, *Osman v. Canada*, Court File No. IMM-329-97, FC-TD, Joyal J., 21 January 1998, this does not appear to be correct as a matter of law. What is »satisfactory« in relation to proof of identity can clearly be determined on the basis of objective criteria, and is not a matter of choice between two equally valid alternatives.



*Popal v. Canada*, 17 March 2000, Judgment, paras. 11, 17, 18.

#### 4.4.3 *Contacts with the country of origin*

78. In addition to the immediate legal disadvantages of delay, suspension of processing, or non-acceptance (no provision at all is made for undocumented refugees from countries other than Afghanistan and Somalia), the advice provided directly to applicants for permanent residence and to officials appears to be premised on the assumption that refugees are able to, and should, seek relevant documentation from the authorities of their country of origin.

CIC, Operations Manual, IP27-02e, Appendix A, Sample Letter No. 1;  
Section VI(7), List of Countries.

79. To require of recognized refugees that they should contact the officials of their country of origin is incompatible with the object and purpose of the 1951 Convention, namely, the protection of refugees. It may put at risk others remaining in the country of origin, and it also jeopardizes the status of the applicant who, because of such contact, may be considered to have ceased to be a refugee by reason of re-availment of (national) protection.

*Immigration Act*, section 2(1),(2); 1951 Convention, Article 1C(1);  
Goodwin-Gill, *The Refugee in International Law*, 80-3.

80. Even though the presumption may be rebuttable, particularly where the contact has been required by authorities in the country of asylum, it is not reasonable to impose such a burden on a recognized refugee, which may be difficult or impossible to satisfy, and likely to be objectionable also in most cases.

#### 4.4.4 > *Effectiveness=of the Class*

81. It is not clear what advantages are or have been secured through the imposition of a five, now three, year period of >suspension=prior to acceptance for permanent residence processing of recognized refugees considered not to have satisfactory identity documents. There is no evidence to suggest that large numbers of refugee claimants have in fact been recognized on the basis of false documentation as to identity.

82. The imposition of a delay period appears to be unnecessary and to bear no relationship of proportionality to the objective, namely, the documentation of identity. In *Popal v. Canada*, Gibson J. noted in regard to the UCRC Class that:

the waiting period was intended to be used to allow identification of non-deserving claimants. There was no evidence before the Court in this matter to demonstrate that the waiting period had been so used by the respondent in the case of the principal applicant. To the contrary, the respondent would appear to have adopted an entirely passive role throughout the waiting period... Communication with the principal applicant would appear to have been less than full and open. Identity documents thought to be less than adequate were never sent for verification when they should have been and were alleged to have been. = *Popal v. Canada*, Court File No. IMM-525-99, FC-TD, Toronto, 17 March 2000, paras. 24, 25.

83. In the post-recognition phase, there is also no evidence to suggest that satisfactory identity documents are somehow likely to appear during this five/nor three year period (although Stage 2 of the Operations Memorandum IP97-02E requires the processing officer to advise the applicant that no further consideration can be given until and unless additional documentation is provided=).

84. Applicants may infer from this advice that they should seek such documentation from the authorities of their country of origin. However, no caution is given regarding the legal risks in approaching the country of origin, which may be viewed as a desire to re-avail oneself of national protection. Such contact, construed as a re-availment of national protection, would potentially vitiate their status as refugees under Canadian law.

85. Such contact was indeed initiated by the applicant in *Popal v. Canada*, but the document obtained thereby was also rejected as unsatisfactory=.

86. Moreover, the waiting period may well have the undesirable effect of encouraging refugees not yet 'landed' to resort to fraudulent documentation in order to be reunited with family members or to obtain other benefits available to permanent residents.

#### **4.5 Passports and refugee travel documents**

87. In Canada, passports and travel documents are issued under the prerogative of the Crown.

Peter W. Hogg, *Constitutional Law of Canada*, 3<sup>rd</sup> edn., 1992, 15.

Authority for the issuance of passports and travel documents in Canada is vested in the Passport Office, itself a unit within the Department of Foreign Affairs and Trade. The *Canadian Passport Order*, SI/81-86, governs the issue of passports and provides that >No passport shall be issued to a person who is not a Canadian Citizen...= Section 4(2).

88. The *Order* makes no provision for refugees and stateless persons, but information provided by the Passport Office refers to other documents, including a >Refugee Travel Document: (United Nations Convention relating to Refugees, 1951) issued to permanent residents (occasionally those on a Minister's permit) who have refugee status in Canada as determined by the Department of Citizenship and Immigration (sic)=. Applicants must supply, among other documents, their >original Record of Landing (IMM 1000)= or Minister's Permit.

Canadian Passport Office, Refugees and Stateless Persons,  
<http://www.dfait-maeci.gc.ca/passport/refuge-e.asp>

89. In the absence of any other published order, it is presumed that the issuance of Convention travel documents also takes place in exercise of the prerogative, and in the absence of published regulations. There is thus no evidence that the requirements of Article 28 CSR51 are in fact incorporated in the procedure; on the contrary, in practice it seems that neither the formal requirements of Article 28 nor those of the Schedule are taken into account.

90. In *Mobarakizadeh v. Canada*, an unsuccessful application for the extension of a refugee travel document, the Court noted that the Plaintiff had been issued with a refugee travel document valid from 2 July 1991 until 21 January 1992, slightly more than six months, whereas paragraph 5 of the Schedule to the 1951 Convention provides clearly that >The [Convention travel] document shall have a validity of either one or two years, at the discretion of the issuing authority.=

*Mobarakizadeh v. Canada*, Action No. T-2230-93, FC-TD, Montreal,  
 Quebec, Nadon J., 15 December 1993, para. 10

## 5. Evaluation

91. The above review indicates the existence of legislative provisions which, taken together with an administrative practice or practices (or >course of conduct=, as Gibson J. described it in *Popal v. Canada*), are incompatible with obligations accepted on ratification of the 1951 Convention relating to the Status of Refugees. This situation appears to have arisen rather as a result of failure to act and to adopt the necessary measures, rather than because of any intent to avoid the implementation of Convention obligations.

92. These practices can be identified as follows (1) the failure to issue identity documents; (2) the non-implementation of the provisions on administrative assistance, either generally or in matters bearing on personal identity and status; (3) the non-acceptance of affidavit evidence or statutory declarations as sufficient in matters of identity; and (4) the failure to issue Convention travel documents to refugees recognized and >lawfully staying= in Canada but >ineligible= for permanent residence.

93. The consequences of these practices include immediate and, in some cases, eventual ineligibility for benefits otherwise due to lawfully resident refugees, either in right of the 1951 Convention, or on the basis of equality with other refugees and permanent residents.

94. It also appears that refugees without a >satisfactory identity document= who are required to wait for landing thereby suffer a further delay in eligibility for naturalization; if this is the case, the situation appears incompatible with the undertaking in Article 34 CSR51:

>The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.=

This issue may require fuller investigation of the respective position of such refugees and others accorded landing within normal time periods, in order to determine whether they are treated equally with other refugees/permanent residents. In practice, it may also be the case that, though subject to >suspension of processing=, the UCRC class of refugees are in fact better off than similarly situated refugees from non-listed countries, who may have no prospect at all of being admitted to permanent residence and thus to naturalization.

95. In addition, the above practices also result in the creation of a situation in which certain classes of recognized refugees may be constrained, if not coerced, into approaching the authorities of their country of origin, thereby putting at risk not only their own status as refugees, but also such family members as may have remained behind.

## 6. Conclusions and recommendations

96. The situation described above tends to results which are incompatible with the obligations assumed by Canada on ratification of the 1951 Convention relating to the Status of Refugees. Specifically, three obligations deserve further attention:

- the obligation under Article 25 CSR51, to provide administrative assistance to refugees who have been recognized under domestic law and procedure, but who are without the documentation required to exercise rights available to other refugees similarly situated;
- the obligation under Article 27 CSR51 to »issue identity papers to any refugee in their territory who does not possess a valid travel document«, to which no exceptions are permitted and to which no reservations have been made; and
- the obligation under Article 28 CSR51, to »issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory«, so far as refugees recognized in Canada but denied processing for permanent residence are nevertheless »lawfully staying« in Canada.

## 6.1 Recommendations

1. Compliance with the scheme of obligations set out in the 1951 Convention could be achieved in a number of different ways.
2. For example, the issuing of *Convention travel documents to refugees upon recognition* by the Immigration and Refugee Board would satisfy the need for an identity document.
3. Alternatively, *identity documents could be issued*, either by the Immigration and Refugee Board or by Citizenship and Immigration Canada.
4. *The identity documents so issued* should be accepted as *satisfactory identity documents* within the meaning of the *Immigration Act* section 46.04(8), and generally for the purposes of Canadian law. By analogy with Article 25(3) CSR51, they should *stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of evidence to the contrary* (emphasis added). Under no circumstances should recognized refugees be referred to their country of origin to obtain documents.
5. In view of the distinctions inherent in the treatment of different classes of Convention refugees identifiable by reference to their country of origin, *the UCRC Class should be abolished*. All recognized refugees without identity documents should be treated equally and accorded Convention rights upon recognition.
6. In the alternative, and consistently with the views expressed in relation to common law countries, both in the *Ad hoc* Committee and at the 1951 Conference, affidavit evidence or statutory declarations as to identity should be accepted in accordance with the normal principles, and without the limiting reservations presently included in operational instructions. Evidence submitted in Personal Information Forms or in proceedings before the Refugee Division of the Immigration and Refugee Board should be given due weight; if it was considered sufficient to satisfy the Canadian determination process, then it can also be said to meet the requirements of Articles 25 and Article 27 CSR51.
7. The interests of the state are sufficiently protected by the general principle of law that *fraud vitiates everything*. In the common law, it has long been recognized that fraud vitiates proceedings, whether civil or criminal.

de Grey, C.J., *Duchess of Kingston's Case* (1776) 20 St. Tr. 355, 544;  
 Lord Brougham, *Earl of Bandon v. Becher* (1835) 3 Cl. & Fin. 479,  
 510.

8. Thus, the CRDD's findings as to identity should be treated as presumptively valid also for all purposes, absent cogent evidence to the contrary.