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Examining the Need for Comprehensive Refugee Protection and Asylum Seekers Policy in Ireland Today

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Submission: October, 2013.

This paper is submitted in partial fulfilment of the MSc degree in Social Science, Sociology of Law

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ACKNOWLEDGEMENTS

I dedicate this paper to the three hundred African Refugees who died this month (October 2013) after their boat sank off the remote island of Lampedusa. I know none of them but their courage is more than worthy of this dedication. I have been supported by many kind individuals to fulfil this thesis along the way. I would like to thank my supervisor, Prof.Håkan Hydén for his enthusiasm, his patience and his good advice and my mentor - my wife whose advice and presence has kept me calm and focused. I am blessed with an exceptional family and some very special friends. Particular thanks to Prof Per Wickenberg and Eva Schömer for facilitating and giving me constructive advice to fulfil this piece of work. My profound thanks to all of the individuals who gave of their time so generously and shared their personal experiences with me for this research. I have been inspired and humbled. Finally, I would like to thank all asylum seekers and refugees in Ireland their friendship have enriched my life in unimaginable ways.

Abstract

Asylum seekers and refugees are one of the most demonised and marginalised social groups in Europe. Ireland's current agenda for dealing with refugees and asylum seekers is inadequate. The government of Ireland is aware of the inadequacy of response and has proposed to make a number of changes that will improve the standard of living for those who chose to apply for inclusion in Ireland. However, many of the issues that are discussed in the *Core Policy Objective: Intercultural & Migration Issues* have already been addressed in the set of directives, regulations, and guidance provided by the EU on the topic of immigration and refugee policy. Ireland has opted out of participating in several of these programs, choosing instead to establish its own policies of caring for the disenfranchised who seek refugee status. While change in legislation in Ireland is taking place, it is evolving slowly, and many of today's greatest issues are being addressed very cautiously. As a result, many of the humanitarian provisions adopted by the EU are just now being considered by Ireland. This project examines the need for Comprehensive Refugee Protection and Asylum Seekers Policy in Ireland today.

Keywords:

Ireland immigration, refugees, direct provision, institutional living

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Examining the Need for Comprehensive Refugee Protection and Asylum Seekers Policy in
Ireland Today

Introduction

Ireland's current agenda for dealing with refugees and asylum seekers is inadequate. Cullen (2004, p. 24) considers it to be shameful. The government of Ireland is aware of the inadequacy of response and has proposed to make a number of changes that will improve the standard of living for those who chose to apply for inclusion in Ireland. However, many of the issues that are discussed in the Core Policy Objective: Intercultural & Migration Issues have already been addressed in the set of directives, regulations, and guidance provided by the EU on the topic of immigration and refugee policy. Ireland has opted out of participating in several of these programs, choosing instead to establish its own policies of caring for the disenfranchised who seek refugee status. While change in legislation in Ireland is taking place, it is evolving slowly, and many of today's greatest issues are being addressed very cautiously. As a result, many of the humanitarian provisions adopted by the EU are just now being considered by Ireland (Joyce, 2011). Laws intended to bring Ireland into complicity with EU provisions lapsed when the 30th Dáil was dissolved on 1 February 2011 (Joyce, 2011).

The field of sociology of law proposes that law and regulation is only part of the process of law. Law is comprised not only of legislative pronouncements but also the social structure that underlies legislative intent (Goodrich, Douzinas & Hachamovitch, 1994). Thus, normative factors are considered when the law is being examined and applied. In this particular case, the law and directives that form the policy of the EU regarding freedom of movement of refugees and asylum seekers have been developed by more than just the legislature. Instead, there are a great many social and political influences that result in the development of these directives. To some extent we must consider not only legislation but legislative intent.

Gessner and Nelken (2007) suggested that the search for European identity has clashed with the national identity for quite some time. Europe itself is quite diverse; it is comprised of a large number of cultures and populations. These conditions have greatly impacted the way the EU has developed and also the development of the sociology of law. As we will show later in the

project, this concept is very important indeed in Ireland, where the Irish population has long regarded itself not as a different nation but as a different *race*. Developing a shared enterprise is always accompanied by a number of considerations and challenges (Gessner & Nelken, 2007).

However, this concept becomes paramount when attempting to combine a number of languages, cultures, peoples, and traditions. Further, and again this will be addressed later in the paper, it is integral to the way that the people regard the law. The differences in cultures, peoples, and traditions even impact the methods of how people look at the law. Thus, the process of developing a comprehensive refugee policy will have many states of mind and perspectives.

Unaccompanied minors seeking asylum are a relatively new phenomenon to Ireland with the first separated children arriving in Ireland for the purpose of seeking asylum being identified in 1996. Many of these children may have high levels of vulnerability and have experienced gross trauma. In addition they face problems and challenges on issues including separation and bereavement from family and friends, social isolation, language barriers, emotional and mental health problems, discrimination and racism. Practice in this area still reflects the need to see these children as children first – rather than asylum seekers first. Many refugee children come from cultural and religious backgrounds, with which staff in local statutory services are unfamiliar with. Moreover, the decision as to whether it is in the best interests of the child to make an application for asylum is needed to safeguard the fundamental rights of the European Union. According to the European Commission on rights of the child, “All policies and actions with an impact on children must be designed, implemented and monitored in line with the best interests of the child”. However, European Politicians are keen to demonstrate the effectiveness of immigration control, often viewing children seeking asylum as 'aliens' first and children second.

Rationale and Significance of the Research

The purpose of this project is to investigate how a system of immigration and asylum can be developed that will integrate up to 100,000 asylum seekers a year into Ireland (Ruhs, 2009). This figure is based on the immigration high of well over 100,000 immigrants in 2007. It is significant that of the 100,000 or more immigrants who entered Ireland in 2007, only 4,000 applied for asylum. The rate of approval was considerably lower. One of the chief questions that must be asked is why this rate of application is so low.

Brophy Solicitors (2013) reported that the 27 member states of the EU granted protection to 102,700 individuals seeking asylum in 2013, up significantly from 2011. Of these 102,700 individuals receiving asylum, only 1,625 were granted asylum in Ireland. Of the 1,625, only 935 were instances of first application, while 690 of the acceptances were on appeal from previous rejection. The total of positive decisions amounted to 140; 115 of these were refugees and 30 were subsidiary protection cases. Significantly, there were not successful decisions in Ireland related to Humanitarian leave (Brophy Solicitors, 2013). With an average approval rate in Europe of 25.2%, it is critical to determine why Ireland's approval rate is only 8.6%. The striking difference between the number of applicants in 2008 and in recent years, combined with an extremely low rate of acceptance, signifies that there are severe difficulties and inequities in the Irish immigration system that must be explored and remedied.

Research Questions, Aims, and Objectives

The aim of the research is to determine why the disparity in the numbers of applicants to Ireland for immigration compared to the other EU nations exists. The objective is to determine why so few individuals apply to Ireland for immigration, and why the rate of acceptance is so low compared to the rates of acceptance of other EU nations. It is vital to investigate and analyze thoroughly the conditions for immigration to Ireland and the factors that both impede and enable asylum. The research questions that will guide the investigation are:

1. Why is there a very significant disparity in the distribution of individuals seeking refugee status, humanitarian status, or asylum?
2. Does the high percentage of non-Caucasian refugees, combined with pitifully low subsistence payments, the policy of forbidding refugees from working, and a lack of provision of health care and education signify institutional racism on the part of the government of Ireland?
3. Is there some more equitable way to distribute the care of unaccompanied minors and other individuals or groups who may need extensive care or intervention?

Some of the factors that impact immigration and asylum in Ireland may be applicable to other nations. Still other factors will be limited to Ireland. It is important to determine which of the factors are indeed limited to Ireland and may be contributing to the abnormally low rate of both application and acceptance in the nation. The health of refugee children, as with any young

person, must be considered within a wider context, recognising issues, which impact upon health, such as housing, education, economic and family stress. Providing health care for these children must extend beyond ensuring access. To respond adequately, health professionals must appreciate the wide range of problems faced by asylum seeking and refugee families and the multiply disadvantages experienced by unaccompanied minors.

Methods of Investigation: Design, Context, Sampling, Data Collection and Analysis

The methodology of the study will be a review of the pertinent literature relating to immigration and asylum procedures with an emphasis on the case of Ireland. The literature reviewed will consist of primary and secondary sources including legal materials, governmental sources, and peer reviewed journals. This project will utilize qualitative methodology in a pragmatic paradigm to determine why the disparity in the number of application for asylum in Ireland exists and why so few applications that are proffered are accepted. This disparity is particularly pronounced in light of the 2007 immigration figures.

The research will involve a search of governmental, media, and academic research. This exploratory case study will ask why there is such a disparity in immigration in Ireland and whether or not the high percentage of non-Caucasian applicants had an impact on the development of policies of immigration that appear to be unreasonably unfriendly to applicants particularly when compared with the policies of other nations.

Knowledge Bases/Literature Review

Gessner and Nelken (2007) have stated that they wonder how the *one Europe* concept was able to evolve. The diverse population brings with it a wealth of experience and viewpoints, and striving for homogeneity seems counterproductive. However, since one set of laws and one set of knowledge is the end goal, we face the issue of blending cultures and experiences into a total without losing the sole parts. Von Benda-Beckmann (2002) questioned whether or not “it is possible to have more than one legal order or mechanism within one socio-political space, based on different sources of ultimate validity and maintained by forms of organization other than the state” (p. 37). This project is approached from the theoretical perspectives of normative and legal pluralism. As Twining (2010, p. 481) stated, “in considering legal pluralism, we can focus our attention on social norms” of the various systems that are involved, making this theoretical

background ideal for the study of asylum and immigration issues on a global or international level.

Legal practice in English common law forms the basis of law for approximately 80 nations that were once a part of the British world, including Ireland (Central Intelligence Agency, 2013). Law in the British system was once localized, but when Henry II took the throne he standardized law throughout the kingdom. The basis of this law is not legislative law but rather *stare decisis*, or prior decisions in the law. In Ireland, then, interpretation of the law is based on case law rather than strictly on the laws that are in the books. When judges are asked to consider an issue, they look to previous decisions as well as to legislative intent. This interpretation of law becomes quite important as we consider the sociological changes that can occur when immigrants come into a country on a large scale. It seems counterproductive to take a population with a wealth of varied experiences and attempt to distill this experience into a single set of laws.

As Gessner and Nelken (2007) suggested, by seeking to homogenize government and law, do we not necessarily seek to homogenize the peoples and cultures. Gessner and Nelken wonder why we seek to develop a European sociology of law, but the question might well be why are we seeking to develop a European system of law and then apply it to individual nations, particularly under the conditions that exist as they are flooded with applicants from non-EU nations? If we agree that there is a sociology of law, and then the sociology of the nations becomes a huge issue, particularly as most of the immigrants are coming from outside of the EU and understand neither the law nor sociology of the EU nations.

If, as Gessner and Nelken (2007) have suggested, it is a given that sociology of law is a two way process, not a unilateral one, should we not investigate how changes in the system of law may change the cultures, in the process of assimilation. The sociological and legal implications of this question go far beyond face value; the UN, for example, has consistently held that people have a right to their cultures, religions, and ways of life. Yet The European Union is endeavoring to implement one system of law throughout the EU nations, particularly regarding immigration; and the cultures and legal systems of the immigrants from a variety of nations are being completely ignored in favor of following the universal declaration of the Union. Trondal (2010) has suggested that supranational roles such as the one undertaken by the

EU regarding immigration require a “shift of loyalty” and a “sense of community” central to the actors’ self-perceptions. Clearly the shift of loyalty and change in sense of community would diminish the importance of the cultures that originated the immigrants, and may well diminish their own self-worth.

What happened to the uniform EU approach? Reception Conditions Directive 2003/9/EC established the minimum conditions to be provided at refugee reception and living areas for those who are choosing to ask for asylum or emergency immigration. The UN Declaration of Human Rights also establishes minimum living standards (UN, 1948). Nation States who participate are encouraged to provide facilities that are better than the minimum, but this document established the need to provide a certain bare existence minimum position. Yet Ireland, who now asserts that conditions must be changed and new rules must be established, opted out of complicity with the Directive that established these minimum standards. The nation has been far too slow in enacting replacement or equivalent regulation.

When Ireland has tried to implement a streamlined process for admission, it was chastised because it was perceived that the nation was trading fairness for quicker resolution (Oakley, 2007). This led to the question over whether or not it would be possible for Ireland to develop a process that might be both fair and efficient. Ireland took the step of establishing a procedure for further appeals and subsidiary protection, should the initial application for asylum and refugee protection be denied (Department of Justice and Equality, 2006).

Ireland: So Few Applicants

Today, Ireland has far fewer applicants for refugee and asylum status than many of the EU nations. Is there a connection between their failure to adopt the Directive for minimum standards and decreasing numbers of applicants, or are other factors at work? In years past, the refugees who seek assistance from Ireland have tended to be other than Caucasian. Half of the refugees come from the nations of Zimbabwe, Nigeria, and DR Congo and to a lesser degree from Pakistan and China. Many of these refugees have been severely disillusioned as they struggle with discrimination (Emory, 2011). It is only since 2004 that the emphasis on research regarding immigration and asylum has been replaced with an emphasis on integration, suggesting according to Mac Einri and White (2008) that the nation is gradually coming to grips with the increased numbers of non-monochromatic residents. The numbers of children born to

immigrant mothers and Irish fathers is forever changing the face of Ireland (Shandy, 2008) in a very real and tangible way.

The European Commission has reported that the numbers of refugees around the world have been increasing since the 1980s (European Commission, 2012). Other sources counter this figure and go so far as to suggest that the number of refugees and the amount of asylum seekers is actually lower now than it has been in past years. Hatton and Williamson (2004, p. 1)¹ suggest that the worldwide numbers of refugees has actually increased by a factor of four since the 1970s, with the numbers increasing from roughly 3 million to roughly 12 million. Importantly, the distribution of those seeking asylum has changed. Prior to the 1980s the vast majority of refugees sought sanctuary in third world or developing nations. Today, the pattern has changed, by a factor of 10. While roughly 50,000 individuals per annum sought sanctuary in developed nations in the early 1970s, by 2001 the figure was approaching a half million (Hatton & Williamson, 2004, p. 1). The numbers of refugees seeking asylum in Europe has increased and decreased, based on the political situation in the nations surrounding the EU's borders. It is an ebb and flow that develops directly from the policy and politics of surrounding nations. Further, the applicants seeking asylum varies depending on the nation. Ireland has fewer applicants than the average, but France and Germany have far more than the average. In 2011, the total of asylum applications registered in the EU overall was 300,000 for the year (European Commission, 2012). This represents the highest rate since 2003.

Why do figures vary so much, depending on the source? Hatton and Williamson (2004, 2) may offer insight when they point out that not all statistical sets measure the same subset of those fleeing their homes. As an example, UNHCR estimates show that there was a dramatic increase in the number of refugees in the early 1970s, that there was a peak to 18 million in 1992, and a fall to 12 million in 2001. However, this statistical set excludes those who were internally displaced and those who were living in *refugee-like conditions* but were not outside of their country of origin. While this difference in statistical calculation will not affect the discussion of Ireland; this next disparity will: The statistics do not account for changes that may occur as a result of what Hatton and Williamson term “considerable turbulence and turnover”

¹ This work exists both in chapter form from a larger work and in this initial, working paper form. The difference is solely in the page numbers.

(2004, p. 2). As an example, the number of refugees reflected in the statistics may have fallen by 5.8 million between 1992 and 2001, but the statistics do not reflect the reality that 10.7 million new refugees arrived at various locations and 16.5 million refugees exited various locations. In the analysis, we will show why this is a critical element of the difficulties facing Ireland today.

Asylum can be granted to those who seek international protection by a state. Asylum is normally granted to individuals who are not safe in the country that is considered their customary residence. This fear can result from general political and social unrest or from specific applications of prejudice relating to the person's race, sexual orientation, gender, or cultural background (European Commission, 2012). The development of the asylum framework is relatively recent, however:

In the early years of the Geneva Convention recognition as a refugee in Europe was not a problem. Everyone knew who refugees were. UNHCR saw no need to produce a handbook to guide asylum determination procedures until 1979. In the new millennium, European governments tend to apply the Geneva Convention's provisions in an increasingly legalistic way and thereby contain their responsibilities towards people at risk of ill-treatment who might otherwise be able to find the protection from expulsion which the Geneva Convention was designed, in part, to provide. That role is now arguably more effectively performed in the European context by general human rights instruments and in particular by the European Convention on Human Rights (Mole & Meredith, 2011, p. 11).

According to Regulation 862 (2007) of the European Parliament and European Council (EC), the Member States of the EU are required to keep statistics on population, migration, and citizenship acquisition. The maintenance of immigrant statistics allow the EU and international governing bodies to study and maintain information that will allow the respective governmental units to observe and address trends in asylum seeking that may show negative intent or discrimination of receiving nations. Individuals who emigrate from the Member State must also be recorded, with the record showing countries of next usual residence. This is also part of the Regulation No. 862.

The UN Refugee Agency (UNHCR) maintains an extensive database on asylum trends that has been compiled over the years. The most recent report prior to this investigation shows

that the numbers of asylum applications received in Ireland in 2012 are down 27% from the preceding year, and are down from 75.71% since 2008. The total number of applications for asylum in Ireland from 2008 to 2012 is 10,730 (UNHCR, 2012).

The intent of Regulation 862 is to be able to show the role of Member States in protecting asylum seekers and refugees in the EU. By carefully tracking the number of refugees and where they settle, the EU hopes to be able whether or not the responsibility of the Nation States for caring for refugees and asylum seekers is being equally shared amount to EU members. If the burden is being unequally shared, then a realignment of responsibility can be arranged. The question arises, and it is more than a rhetorical one, *does anyone really believe that the responsibility and burden is being equally shared at this point?*

Factors in Determining Where Refugees Go

While the reasons for picking a nation in which to apply for asylum are quite varied, the European Commission (2012) has indicated that there are certain trends. In general, refugees are likely to pick a designation in which they have some type of tie to the people. They also tend to choose an area that they believe will welcome them, will not discriminate, and which has a sturdy economy. Asylum seekers tend to leave nations with high levels of organized crime, gang violence, drug cartels (UNHCR, 2012, p. 9) or war or genocide. Nations which are isolated, especially island nations, also tend to have fewer asylum seekers.

Implications of Nationalised Racism

However, the question must be asked: Does the high percentage of non-Caucasian refugees, combined with pitifully low subsistence payments, the policy of forbidding refugees from working, and a lack of provision of health care and education signify institutional racism on the part of the government of Ireland? Pieper, Clerkin, and MacFarlane (2009) have stressed that refugee health care needs, in particular, are not being met and do not meet EU standards. Christie (2008) asserts, however, that the problem of racism in Ireland existed well before the wave of immigration. It is important to explore these questions relating to discrimination.

The further question must be raised: Have the impact points on the state's economy been the catalyst for attempting to place controls on the number of approved immigrants per annum in each fiscal cycle? (Barrett, Bergin, & Duffy, 2006). The apparent upsurge in the state's

economy during the 1990s and into 2000s tended to draw increased attention from immigrant populations within the expanded EU member states as well as those nations with refugees needing to be safely relocated. Preference was placed with the incoming member state citizens who had standing employment offers in hand. This was a low impact addition to the population. No special funding was required to admit these immigrants, no emergency housing or health care was expected. Attempting to integrate the skilled as well as the unskilled immigrants had to be attempted to be balanced against the population already resident as citizens. One cannot simply push aside a resident to place an immigrant, regardless of the level of employment from the highest to the meanest.

Adding to the equation were those immigrants who attempted, most unsuccessfully, to enter the state illegally (Department of Justice and Equality, 2013). Of the number returned to their country of origin, either voluntarily or by deportation, it was shown there were a significant number who had already attempted entry through another state and were using assumed identities on their application to Ireland. Attempts to circumvent normal visa procedures and paths to citizenship by producing a local born child have been curtailed by the changing of the laws of Ireland. Today, citizenship is not automatically bestowed on any child born within the state if the child's parents are foreign nationals. A child can no longer then be used as a de facto anchor for other family members without due process, or indeed for itself, without complying with due process in the matter.

Unlike countries with land borders with other nations whose citizens may attempt to cross over without papers, Ireland has a nearly nil percentage to detract from other immigrant issues. Stowaways on ships do occur but not in the numbers afforded by a walking path. That does not mean that caution and care should be cast aside in the processing of incoming persons. The attempt to curtail the numbers of incoming immigrants to manageable levels saw the number at the 2010 level with approximately 162,396 registrations being processed from all categories of petitioners, new and renewals. (Joyce, 2011, pg xviii).

Valid immigration issues are, however, also intertwined with issues of resistance of the resident population to change. Long historical issues over forced resettlement of populations from the Vikings and the Romans, to the more recent waves have built a cultural resistance that is difficult to overcome. Not necessarily based, as one may think, on just the tone of skin or an

accented speech. The Irish have been known through history to speak of themselves as a 'race', historically claiming no kinship to other nationalities regardless of color. Add to that the massive emigrations of Irish nationals to other countries during the times of famine and economic depression. The mindset of 'us and them' is deeply ingrained, and in some citizens takes on the fanatical zealotry of religious fervor.

This is little different than many other nations and like those other nations there will be difficulties with the changes in attitude and the acceptance that the international community is altering. The face of Ireland is changing with the fact that immigration now out paces emigration. Not only are the expatriates returning but the residents of other nations are requesting entry.

The employment potential is great, but not yet great enough to be proof against any lingering prejudice. To all intents and purposes the law of Ireland is to be applied equally, with all legal residents able to partake. In reality, people are those who apply the law. People are, in their own minds, fair and equable with others. New residents have their own perceptions of how they are being treated as well. They know full well when they are being shunned but may not always be as cognizant of subtleties of the culture they are integrating into. There is also a learning curve for the citizens in understanding what they may see as a normal gesture is not well received by someone from a different cultural background. These things cannot be easily quantified nor changed except by time and patience.

UN and EU: Broad Scope Requirements

The directives the UN and the EU are broad in scope as to what is expected accommodation of a member state in providing for refugees. Not every member nation had facilities or personnel to implement those directives. Programs had to be developed. If housing was not available it must be built. Funding had to be budgeted, appropriated and raised in some cases. Service providers must be put into local proximity of the housing projects. This is neither impossible nor an overnight event. It is possible that decisions taken regarding starting projects, placement of facilities and acquiring service providers are all informed by the resistance to change. To deny such probability is to deny human nature. In the larger scheme of implementing the processes one has to hope that eventually the prayed for balance is attained.

International human rights, international law as practiced globally does inform the processes as they go forward. Ireland is a member state of the EU and a signatory to the UN. Compliance with immigration under those bodies will go forward. Perhaps it will proceed not as smoothly or without rancor as could be hoped for, but forward nonetheless.

Legal Instruments Governing Asylum

According to Mole and Meredith (2010) there are four main documents within the EU that relate to asylum: the Dublin II Regulation (Council Regulation 343/2003); the Reception Conditions Directive (2003/9/EC), the Qualification Directive (2004/83/EC), and the Asylum Procedures Directive (2005/85). There are also a number of plans and Communications that may apply. According to Eur-Lex (2003), The Receptions Commission Directive establishes minimum standards for the conditions that the asylum seekers must be held in. This Directive becomes very important when discussing asylum-seeking in Ireland because the conditions in Irish Receptions are controversial.

The Asylum Procedures Directive (2005/85) establishes procedures that the Member States must apply when evaluating applications for refugee or asylum status (Eur-Lex, 2005). Qualification Directive 2004 establishes the standards that must be utilized to qualify third party applicants (Mole & Meredith, 2010). The European Council Regulation 2003 develops criteria to be utilized in determining the responsibility of the various Member States to examine an application (Mole & Meredith, 2010). Council regulation 343 is also known as Dublin II Regulation (Mole & Meredith, 2010).

In recent years the European Commission has endeavoured to further develop the Common European Asylum System or CEAS. The intent is to develop a more integrated approach to processing of asylum and refugee applications (European Commission, 2008).

Reception Conditions

While Reception Conditions Directive 2003/9/EC (Eur-Lex, 2003) clearly defines the standards that must be applied to the reception conditions for asylum seekers, Ireland and Denmark have opted out of complicity with this directive. In opting out, Ireland asserted that it did not have to maintain the minimum standards assigned in the directive. However, in March 2013, the Irish Presidency announced that it would take steps to establish “compromise texts” on

a revamping of Asylum Procedures Directive and Eurodac Regulation. In addition, the Irish president announced plans to work on a new agreement for Seasonal Workers and incorporate transfers. Part of this package involves establishing security for internal security and external borders (Irish Presidency Programme, 2013).

Thornton (2007) suggested that one of the primary reasons that issues of asylum, particularly as they relate to reception, have been so pronounced is that Ireland simply has not been experienced in receiving large numbers of refugees. In the context of this discussion it must be remembered that the concept of large numbers of refugees is relative; it is not large numbers *per se* but rather large numbers relative to what Ireland had become accustomed (Thornton, 2007, p. 86). The goal established by the Directive, to establish a “dignified standard of living “ became a source of contention from a sociological viewpoint as the traditional arguments emphasised that the rights of asylum seekers should be different from those of Irish citizens. This type of provincial way of looking at the refugee has led to situations where refugees and asylum seekers have been virtually excluded from the welfare system. By excluding these immigrants from the welfare system a certainty was established that asylum seekers could not become self-sufficient. Without the capacity to earn an income, dependence on the welfare system remained a necessity and the prophecy that refugees would depend upon the welfare system became an assured reality.

Thornton perceived that the net effect of the current Irish reception system has been to ensure that asylum seekers face continual diminution of their social rights, under the guise of protecting both the welfare state and the nation itself from those individuals perceived as not having a right to be in the nation. While the Directive 2003/9/EC endeavoured to bring asylum seekers and refugees into a more natural form of life relative to the nature of the individual nations, Ireland withdrew from this directive in part because it wanted to keep asylum seekers in a separate welfare system. The result was that “past exclusionary practices towards immigrants may have underpinned Irish Governmental responses to the creation of the current reception conditions for asylum seekers” (Thornton, 2007, p. 86).

How was it accomplished that the Irish government was able to undermine the entire thrust of the refugee program? The answer is both complex, and simple. The key to understanding what occurred lies with the 1986 commission on Social Welfare, which provided

Ireland with new goals for social welfare. The trifurcated approach would abolish poverty, redistribute incomes, and protect the standard of living for all individuals on welfare. The goal of the inclusive policy was to achieve a “true and inclusive society for all” (Thornton, 2007, p. 89). The policy guideline, termed Building an Inclusive Society, defined the right of people in poverty to be able to rely on the government of provide them with a minimal standard of living or support.

The key to understanding what happened is to understand the welfare system itself. Anyone with a child was entitled to a child benefit; families with a blind member were entitled to a blind pension, individuals who could not work could not receive unemployment but were entitled to social welfare. Even if the asylum seeker did not qualify for any other funding they would qualify for this supplementary welfare. However, when the government added the requirement to be a habitual residence of Ireland into the code, it excluded immigrants and asylum seekers because they were not habitual references. The home office was also allowed to provide goods or services in lieu of monetary payments in extenuating circumstances, and it is this loophole that allowed the community welfare officers to set up direct provision and dispersal bed and board. In 2003 further legislation banned welfare officers from allowing rent supplements to be distributed and forbidding the placement of asylum seekers outside of direct provisions (Thornton, 2007, p. 89-90). While asylum seekers are certainly not required to accept direct provision, there is no way for them to get any other monies since they are not allowed to work. As a result it is clear that asylum seekers are discriminated against utilizing the fiction of protecting Irish citizens financially by requiring a habitual residence.

In 2013, the High Court of Ireland determined that conditions in the reception centres for asylum seekers in Ireland were so contrary to humane living that they found that the UK Border Agency did not act in the international standard of *best interests of the children* when they ruled that a Sudanese family seeking asylum should be removed from the system of the UK and moved into the Irish system. The Court cited Irish regulations that prevent parents and youth from working as primary conditions for the decision. In addition, the Court emphasised the “the likelihood of the emergence of health and psychological problems due to a lengthy stay in Ireland’s Direct Provision system, possibly leading to mental illness” (ECRE, 2013). The Court

went so far as to state that it was “disturbing” that Ireland recognized so few asylum seekers (ECRE, 2013).

The Irish Refugee Council pounded out that in Ireland, asylum seekers were literally forced to live in institutionalised poverty, while in nearby national jurisdictions, asylum seekers could live reasonable lives (ECRE, 2013). One of the greatest issues faced by asylum seekers in Ireland is the fact that Ireland opted out of the Reception Conditions Directive, which established the minimum standards for reception conditions, and allows asylum seekers to seek employment nine months after filing applications for asylum. The goal of the EU was to enhance the self-sufficiency of applicants and to allow them to integrate into society (Council EU, 2012). In addition, the revised rules would have required special safeguards for minors and torture victims. Health care for asylum seekers was required by the modified rules, as well as medical and psychological treatment for victims of torture, rape, and serious violence. The revised rules allowed states to provide better conditions than those specified (Council EU, 2012). Certainly the revised regulations were never intended to allow nations to provide conditions so bad that the courts would rule that to stay in mandated housing would be contrary to the best interests of a child.

Irish Citizenship Reform of 2004

The consideration of contexts shows that the relationship between immigration restriction and citizenship proscription is not fixed set of circumstances. It is possible for member states to place serious restrictions on immigration, yet to grant citizenship a small numbers of migrants who are permitted who entered the country under work permits. In fact, the encouragement of immigration by residents of member states to fill positions in the growing economy was evident.

In practice, many European states embrace this scenario. Far from simply excluding foreigners, millions of non-EU nationals are living and working within its borders, legally resident in Europe and were encouraged to immigrate by the host countries. In Ireland, the state promoted immigration on the basis of work permits during the period of the economic boom increasing the number of permits issued to non-European Economic Area (EEA) citizens from 5,750 in 1999 to 40,504 in 2002. These work-permit holders far outnumbered the asylum seeking migrants who were the focus of the referendum. Work-permit immigrants (i.e., immigrants on work permits) outnumbered asylum seekers approximately 4 to 1.

In 2004, Ireland was one of three states in the newly enlarged EU to permit the entry of unrestricted numbers of workers from the new accession states, leading to a sudden rise in immigration from eastern European and Baltic states, so that by 2006 more than 160,000 registered permits had been issued to citizens of accession countries. While immigration has been encouraged by Ireland and selects other EU states, this encouragement has not been equaled with liberalization of citizenship laws. In fact in the states permitting the most unrestricted immigration from Member States (Sweden, the United Kingdom and Ireland), the trend has been to tighten access to citizenship for these new residents. Ireland is newer to the change in the concept of *jus soli* than many other EU nations. No single nation in Europe grants unrestricted territorial birthright citizenship to people born within its borders. Germany introduced reforms regarding *jus soli* in 1999, giving rights to citizenship for second-generation immigrants at birth, provided one parent had been legally resident in Germany for eight years. The Netherlands, Belgium, and other countries have restricted *jus soli* provisions as part of their standing *jus sanguinis* (right of blood) traditions. Italy and Malta have increased restrictions on citizenship through territorial naturalization or birth even as they have expanded access to citizenship via *jus sanguinis*. Austria, which also has a large population of alien residents, has made no change in its citizenship law and has no *jus soli* component. In the case of *jus soli* and *jus sanguinis* changes to the laws of Ireland it would appear that they are following suit with other EU nations rather than simply targeting their immigrant population.

The Question of Direct Provision

In Ireland, intended short term accommodation has become institutional big business and a virtual prison system for refugees (O'Sullivan, 2013). What had been, originally, a scheme to house the incoming refugees on the short term while initial processing took place has now become a large, independent financial concern. Private companies are earning in the millions for administering housing that is little better than a prison in its current state of affairs. Families are grouped together in single sleep rooms which allow for no privacy between adults and children. Food is prepared by the administration at the barest subsistence ration and little, if any, variety of offerings. Laundry facilities are often inadequate for the number of persons being housed or in such disrepair as to make them unavailable for use (O'Sullivan, 2013).

For persons coming into a country in hopes of finding a safe home the concept of staying

in the direct provision housing for the immediate time was not daunting in that it was intended to not last more than approximately six months. However, there are currently residents now who have been languishing in these temporary quarters for periods of six to seven years while their petitions move through the courts and bureaucracy of Irish immigration procedures (O'Sullivan 2013).

While in these projects the residents are prohibited from applying for employment, asylum must be granted for work status to be approved. Skilled and unskilled refugees are paid a petty stipend per week per adult with a smaller sum per each child (E 19.10 and E 9.60 respectively). Sums that are not only viewed by the public at large as being sponged from their taxes, but do not cover even the most basic of needs. This leaves the residents in a literal no-man's land with no income, no ability to get income, and no way to live anywhere else because there is no permission, no income, and no way to get income. It is this very conundrum that has led other nations to veer away from the notion of direct provision housing.

In the meantime, administrative firms are paid very well to maintain these housing blocks and to provide cooked meals to the residents. Judging by information had from residents within the projects the administrators have little interest in making the conditions tolerable for them. In one case a call to a taxi was suggested by an administrative worker rather than calling for an ambulance for an injured child. The ambulance was eventually called by someone outside the housing facility.

Refugee families may not cook for themselves at all. The provided meals prepared are said to rarely vary, being based on rice and potatoes with scant other offerings. One would expect riots in the prisons under those circumstances, yet the refugees, who are simply waiting for asylum processing, are expected to accept the conditions indefinitely (O'Sullivan, 2013). One instance where a survey of a facility was to be undertaken resulted in hurried cleaning and repair work. The survey team, however, spent little time and less effort to examine the structure, let alone the living conditions. There is little evidence that the investigation of allegations regarding substandard housing were taken seriously by those tasked with the review (O'Sullivan, 2013).

The companies administering the housing projects have no incentive to alter their practices because the practices are profitable. Failure to provide a basic standard of living within what both the UN and the EU have delineated appears to carry no consequence. Refugee

residents of these projects are reluctant to speak out and possibly jeopardize their pending application to immigrate. Local citizen residents have little incentive to be proactive on behalf of the refugee population when many are under the impression that the refugees are living free and comfortably so, on the backs of the tax payers with the country going from a booming economy into recession just as other member states of the EU and the world (O'Sullivan, 2013).

The international community and those seeking asylum expect a reasonable level of living accommodation. The UN has established basic minimums for provision of housing, but the basic minimums are not being reached by the current Direct Provision scheme as it has come to be. The temporary solution to the influx of refugees has spiraled into a shambles of the intentions. A single solution of dismantling the current scheme is no better than allowing it to continue. Asylum decisions need to be taken up so as to avoid the delay of years that is now occurring in the courts. Reasonable housing needs to be provided for refugees who are in process beyond the first month if there is no immediate cause shown to detain or deport them. Normalization of family life needs to be encouraged for persons bringing their children to lessen the impact on them for the duration of the asylum process. If the refugee is capable of work, and work is available, they should be encouraged to enter the labour force to provide for their own support and lessen the impact on the infrastructure resources.

It can be and has been argued that the Direct Provision scheme fulfills the letter of the law when it comes to providing the minimum core obligation of basic shelter, basic sanitation, and basic subsistence. It does, in fact, do that – in the lowest possible common definitions of the terms. A room with a door, bedding, and space for clothing shared amongst all members of a family is shelter so basic that one would expect to see it in a relief setting for a disaster. The same for the common washrooms and toilets shared with all the families in a section of the housing. It is very likely that in a disaster the variety of food would possibly be more varied and not simply because of ‘what was found that day’.

In a disaster the point is to move the refugees from this basic point on to a more normalized family setting as soon as possible. In the case of the immigrants the fact that the maintaining of the housing projects are turning a profit for some appears to have slowed the incentive to move the families to more appropriate accommodation. This is a situation of being refugees in a reasonably peaceful region, not off the edge of a war zone. When a group has already lived

through what refugees have experienced, establishing normalcy to the greatest degree possible will help with eventual re-establishment of productive citizenship.

Available Housing: Supply and Demand

If it were simply a matter of moving refugee families from the asylum centers to area low cost housing there would not be the bottleneck currently seen. Low cost housing in Ireland is not something in great supply. Not because has not been built, but because the properties include purchase schemes for the families who qualify for rental assistance. O’Sullivan points out that the welfare regimes and housing plans that have been in place offered families a path to home ownership that is not the most common of practices globally (O’Sullivan, 2004).

In most countries with low cost housing and subsidies for families needing assistance the thought and practice was to have those families moving to other homes for purchase making room for the next family that needed accommodation. This provides a more accessible stock of housing vacancies, nearly a pick off the shelf availability by comparison.

With the low income families able to purchase the home they were in, staying and building neighborhoods and community the Irish avoided some of the worst issues found in the more transient type of housing scheme used in other locations. It did, however, mean that with the incoming refugees as well as other immigrants there simply was not the open housing built and ready for occupation by people in the asylum centers. The further competition for available resources caused by the recession in the economy did not allow immediate placement of all persons needing housing assistance. Citizens and refugees both needed to be accommodated, again with declining resources.

The Policy of Direct Provision took the most immediate steps to house and care for the incoming asylum seekers. The application of the scheme, however, had the practical effect of curtailing the available services and access to rights as laid out by the UN, the EU and international law. The most pointed effect was to the children (Breen, 2008) as the most vulnerable of the refugee population. Children crowded together in such an institutional setting were not only being segregated from the other children they encountered at school but were being subjected to housing little better than the tent cities some had left behind in their homelands.

Asylum centers provided a roof, a toilet and food. There nothing else of benefit to the

children as such. No sense of security and safety. No sense that they were the least welcomed as possible new citizens. There is little in the centers that fulfill the directives of the housing defined by the UN and EU. Again, the letter of the law is not the intent of the law to provide proper housing for even temporary residents. Leaving families, children to languish within the walls of the asylum centers over the years some of them must wait for either approval or denial of their petitions is patently unacceptable from a humanitarian standpoint.

Analysis of Policy

The political situation throughout the world today is extremely tense. Increasing numbers of areas are becoming inhospitable to native populations due to war or intra-national fighting. Populations from these areas seek safer areas in which to live and migration is the solution that they choose. However, applicants do not distribute themselves according to the capacity of the nations to which they apply. Inequities can result that may potentially impact the acceptance or rejection of applications. It is critical to develop a plan of immigration that meets the needs of asylum seekers and refugees without putting a stress on any Nation State's resources. This project seeks to develop recommendations for a modified asylum seeking and refugee plan that will result in more equitable distribution of responsibility. Finally, the question of whether or not caring for refugees and asylum seekers represents a burden or a responsibility is discussed and recommendations to emphasize responsibility rather than burden are produced.

This project has examined the background issues relating to the role of member states in protecting asylum seekers and refugees in the EU. It has provided a brief review of the guidance that has been developed for ensuring a more robust but consistent handling of individuals who may apply for asylum or for refugee status. While the majority of the nations in the EU have agreed to participate in the program and comply with the regulations, in several cases Denmark has opted out of participation. Ireland has also declined to participate in part of the program, that portion which pertains to minimum standards applied to conditions for refugees and asylum seekers. Ireland also has far fewer applicants for asylum than other nations, suggesting that applicants seek better treatment than may be afforded by the nation of Ireland when they seek asylum.

One other possibility for the small number of applications for asylum to Ireland relates to the culture and history of Ireland. The research showed that refugees tend to select destination Nation States where family or friends reside, or Nation States that the refugee has personal knowledge of or of similar culture. The culture of Ireland is significantly different than that of many nations and this may account for the lowered rate of voluntary immigration.

However, the question naturally arises as to whether or not the disparate level of treatment represents a form of discrimination on the part of Ireland, based on the likelihood that fewer refugees apply to Ireland for asylum based on the fact that Ireland does not follow the Directives. This possibility will be investigated in the future.

Several questions have not been answered. In investigating the distribution and disposition of the requests for asylum on a Nation State basis, it became clear that there is a very significant disparity in the distribution of individuals seeking refugee status, humanitarian status, or asylum. Germany and France receive the most applicants, followed by Italy, Belgium, Sweden the United Kingdom, and Switzerland. Ireland receives less than 1300 applicants a year, with a significant portion of those immigrants being minors with young parents (less than age 34). Slovenia receives very few applicants but has a higher portion of unaccompanied minor applicants than any other nation, by a significant percentage. In 2011, Slovenia received 360 applications for asylum or refugee status, but 16.7% of those were unaccompanied minors between age 14 and 17.

The research showed that unaccompanied minors represent the most resource intense refugee group. Other nations with high percentages of unaccompanied minor applications have less than have of the percentage of applicants that Slovenia has. This is particularly of concern given that Slovenia itself is not a rich nation. To place this in perspective, if Slovenia were to receive 26,000 applications (similar in number to the United Kingdom or Belgium) then they would have over 4,300 applications from unaccompanied minors, compared to the 4.8% (or 1,268) received by the United Kingdom or the 6.4% (2043) received by Belgium. A logical reason exists for this high percentage of unaccompanied minor immigrants, however. Slovenia represents the first safe harbour for young victims of war in Croatia. While Hungary is also close in physical proximity, it has few unaccompanied minor applicants. Determining why so many young refugees seek assistance in Slovenia, rather than Hungary and Romania, would be worth

exploring in future research. Determining why this occurs would provide insight into how to redistribute refugees and asylum seekers, particularly those with high needs, in a manner that will allow better sharing of responsibility.

The financial cost and cost to resources of accepting care for unaccompanied minors can be very high. Not only must they be sheltered, but resources must be devoted to attempting to locate relatives who can care for younger minors. An investigation must be conducted into the best interest of the child, and a determination must be made as to the youth's ability to care for him or herself. If the youth is allowed to remain on his or her own, then schooling and shelter must be provided along with mental health and health care. Thus, while care of refugee applicants is a significant stressor to a host nation, the care of unaccompanied minors represents both a financial stress, a legal and social stressor.

Distribution of care arrangements must be made in a more equitable manner, particularly in the care of unaccompanied minors. While caring for them is a responsibility, a higher level of need with this population can represent a significant burden to a country such as Slovenia, which is barely more than impoverished itself. Determining the method of the redistribution of care of this population, along with more equitable distribution of care responsibilities for other populations as a whole will be the subject of future research.

Out of all the EU states, Ireland and Iceland are the most recent to find themselves selected by the refugee population for resettlement. The two nations bear some similarities, including their isolated nature of being islands and of having financial instability until the recent years. In the past these two nations were not seen as favored by the refugees themselves. As a result neither nation was prepared for the upswing in refugee population. Ireland, in particular, was not prepared for the incoming population increase by either budget provision or cultural model.

The Irish scheme for assisting low income families into housing included the concept of *Comhar* or Community from the Gaelic. Instead of blocks of transient 'low rent' buildings the residents were offered a path to homeownership. Pride of place and ownership meant the residents were less likely to allow the housing to fall into disrepair, into slums as other forms of 'projects' have in other nations (Clinch, Ferreira, Brereton, Moro, & Bullock, 2006). While this

concept was good for the general populace it did mean that there were no stockpiles of housing standing ready to take in the refugee population from the asylum centers.

The business boom that created the interest in resettlement of the refugees to Ireland was not as long lived as it was hoped it would be. It had opened the gates for expatriated citizens and other citizens of the EU to apply for work permits and travel visas to fill open jobs within the businesses as the economy grew. Those immigrants brought with them resources, had employment in hand and integrated into the communities with much greater ease than the refugee population not having the need to process through the courts to obtain asylum status.

As the refugee population grew the economy in the EU slid into recession and funding in all the member states became much less available. Budget shortfalls meant housing would be delayed. Bureaucracy cut backs slowed the processing of asylum status slowed with it. Funding for subsistence fell in the budget shortfall as well. Asylum centers meant to house refugee families for up to 6 months became long term shelters as processing dragged longer. Attempts by some refugees to venue shop and move repeatedly to 'better nations' slowed processing as did persons who had been rejected in one member state who tried under assumed identities. Background checks found many of the illegal immigrants but processing for deportation was yet another drain on personnel resources and funding.

The asylum centers are just as they were planned to be. The first stop, a short term shelter for those coming in with often nothing but the clothing on their backs. The private companies that administer the centers, while well paid for it, did not create homelike comforts as that was not the intention of the centers. Industrial kitchens are staffed by cooks who provide scheduled meals. Today, however, communal facilities and family sleeping rooms are serving for years instead of the intended first few months.

Some point to the Citizenship issue taken up by the Referendum of 2004 as a show that Ireland is not ready to welcome the refugees into their nation. The change which removed *Jus Soli* or the right of automatic citizenship by being born within the territory is not new to the EU States. Ireland is actually one of the last to adopt the change. Being born on the soil is no longer a way to exempt refugees from due process based on their newborn child's automatic citizenship. This also stopped the splitting of families whose children were citizens and were retained if the rest of the family failed in their appeal for asylum and deported.

From an historical standpoint Ireland has been forced to accept cultures outside their own, on the terms of the colonizers (i.e. Romans, Vikings, and English). This kind of historical legacy does inform interactions with other cultures attempting to integrate into the current nation. There will be resistance to some refugee groups expecting areas dedicated to their original cultural identity be immediately designated. Cultural reserves are likely not the scheme that will be followed and would actually be more likely in a nation where segregation is more prevalent.

In the meantime, it might be helpful to take another look at the housing situation in the context of the overall nature of Irish society. As Clinch et al. (2006) pointed out; the Irish are very philosophical about issues that many nations would consider mundane or routine:

The ultimate goal of public policy is the improvement of well-being in society. Economists have traditionally employed the concept of ‘utility’² to measure welfare, which in traditional economic models is assumed to be an increasing function of present and future consumption of goods, leisure and amenities. Due to the difficulty of measuring utility, income was generally used as a proxy, using personal income at an individual level, and national income –Gross National Product (GNP) and Gross Domestic Product (GDP) – at the macro level, as measures of individual and societal performance. However it has long been recognised that such measures are poor indicators of the sustainability of an economy and society and of the quality of life or well-being of individuals and the population (e.g., United Nations, 1954; Erikson, 1993). As Robert F. Kennedy declared (perhaps rather generously) “*GDP measures everything...except that which makes our lives worthwhile*” (p. 40).

It is this very approach to life that makes it difficult for the Irish to accommodate large numbers of refugees. While the refugees worry about their very lives, the Irish people have a philosophical approach that causes them to take the long term view of integration into society. As a result, they have not been prepared for the influx of people, especially people of vastly differing cultures who do not understand the nature of the Irish philosophy of Comhar or community.

The Irish approach to the economy is such that the nation does not even like to have its economy evaluated in terms of Gross Domestic Product, or GDP; they argue instead that:

... economic measures such as GDP is that these tend to equate societal welfare with consumption measured according to revealed preferences based on purchases of material goods. An obvious problem with this approach is that there is no market for public goods such as environmental quality and or social cohesion. Consequently, environmental goods that may be critical to continued consumption and to sustainable development are abused or depleted in the absence of market prices that signal their true value or scarcity. Furthermore, environmental goods provide utility in their natural state as well as through consumption. As well as the stock of natural capital, there are issues in relation to the quality of the environment that may have a great influence on quality of life. Measures of GNP and GDP also exclude all interpersonal relationships not based on money and the destruction of utility is partly measured as output and thus raises GDP. Aspects of income distribution and its change are also neglected, though it is known that relative income matters greatly for well-being (Luttmer, 2004, cited in Clinch et al., 2006, p. 41).

Recommendations

The logical response to Luttmer's comments would be to suggest that no one is asking that the Irish give up their way of life to accommodate a vast influx of refugees, but this conclusion may not be completely true. For all intents and purposes there are three separate agendas involved in dealing with the refugee situation in Ireland: that of the government of Ireland, that of the UN, and that of the European Union. The Irish government is, understandably, intent on preserving the Irish way of life and the Irish culture. The UN is concerned with the overall humanitarian nature of immigration and asylum, on a global basis. The EU, however, makes no secret of the fact that it drives for unity of people and purpose. Clearly this philosophy is in clash with the Irish national philosophy and this may represent some of the problem with the refugee situation.

Organizations that are able to adapt to one crisis at a time, and to develop policies and procedures to address those issues, may not be able to adapt to a number of crises at once. This appears to be the case with Ireland, which undoubtedly feels under pressure from all sides. They are being bombarded with large numbers of extra nationals, the need to comply with UN directives, and the need to comply with what they believe to be interference by the EU in their personal affairs. These pressures, combined with the prospect of losing their national identity

through a combination of influence by the immigrant populations and EU policies, may simply be causing a rebound reaction that is backfiring on those that need assistance the most.

A good first effort at resolving these issues would involve lessening the pressure by the EU for complicity. This is extremely unlikely to occur. The EU would be better served, however, to offer to assist with paperwork, processing, or the provision of services and to offer to do so in politically non-threatening terms. It is also not enough to determine that the refugee population equals a certain percentage of total population and thus is or is not within the range that other countries tolerate. The Irish culture is so different in some respects from the culture of other nations that the EU and UN must consider two factors when pressing for change.

The first factor (and this would apply to Iceland, as well as Ireland) is that island nations have less room to expand and less room to absorb large populations quickly. In the case of both Ireland and Iceland, the populations have had very poor financial basis until quite recently. The infrastructure and economic background that Germany, Great Britain, and many of the other EU nations enjoy has not been possible in these two nations. It is for this reason that merely figuring out the percentage of refugees to population is not enough; the EU and UN must determine a better method of calculating a nation's ability to support a large population influx.

The second factor that must be considered is the population of the nation and the difference from the average or typical norm that exists. Cultural differences can have as much impact as economical bases. For this reason, it may be as unreasonable to expect Ireland to absorb large numbers of refugees as it would be to expect Nigeria to absorb large numbers, but for different reasons. One nation (Nigeria) might be destroyed financially if this were to occur; but the other, Ireland, may well be destroyed culturally. And, as Cline et al. (2006, p. 40) pointed out, economic indicators of survival may well be "poor indicators of the sustainability of an economy and society and of the quality of life or well-being of individuals and the population."

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