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## **How long is too long?**

Questioning the legality of long-term  
encampment through a human rights lens

Sarah Deardorff  
sarah.deardorff@gmail.com

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## List of acronyms

CIREFCA	International Conference on Central American Refugees
CPA	(Indo-Chinese) Comprehensive Plan of Action
EU	European Union
ICARA (I/II)	International Conference on Assistance to Refugees in Africa
ICCPR	International Covenant on Civil and Political Rights
IDP	Internally Displaced Person
LRA	Lord's Resistance Army
LTE	Long-term Encampment
NGO	Non-governmental organization
OAU	Organization of African Unity
PRS	Protracted Refugee Situation
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UDHR	Universal Declaration of Human Rights
USCRI	US Committee for Refugees and Immigrants
WFP	World Food Programme

### **How long is too long?**

#### **Questioning the legality of long-term encampment through a human rights lens**

*Refugees' "...right to life has been bought at the cost of almost every other right"  
(Crisp 2003: 125).*

*The tragedy is that the camp that once ensured the life of a refugee becomes, over time, the prime vehicle for denying that same refugee the rights to liberty, security of person and other rights enshrined both in the Universal Declaration of Human Rights and in the refugee instruments. The price of extending this short-term measure year after year is paid in terms of rights frustrated, capabilities deprived and expectations unmet (Jamal 2008: 146).*

# 1 Introduction

Is long-term encampment (LTE) consistent with international human rights law? Is denying refugees the right to work or freedom of movement for years on end within the confines of the 1951 Convention Relating to the Status of Refugees<sup>1</sup>?

While encampment has become one of the most common methods of dealing with large scale refugee flows, the reality is that the word “camp” is not even mentioned in the Convention, and it appears as though the framers did not envision encampment, especially long-term camps, to become a common response to displacement. Indeed, many of the rights that are denied in camps, such as the right to work and freedom of movement, are explicitly mentioned in Articles 17 and 26 of the Convention.

Nevertheless, the use of camps has been deemed a convenient way to protect refugees and facilitate aid distribution. In addition, they have become a favored choice of host nations concerned with control and security. Camps account for a disproportionate amount of refugees assisted by UNHCR: some 87.6% are encamped, most in Africa and Asia (Agier 2002: 320). However, despite their widely accepted use, a closer look at LTE reveals that refugees’ human rights are consistently violated and restricted in these situations, making them inconsistent with international law.

LTE is one manifestation of a protracted refugee situation (PRS), where populations have remained displaced for years due to a lack of solutions. Approximately two thirds of the world’s 11.4 million<sup>2</sup> refugees live in protracted situations (Loescher et al 2008: 20).

Protracted exile affects a broad range of the displaced, including those confined to camps, those settled in urban areas, those who are internally displaced, and a range of others who may or may not be under the protection of UNHCR. While it is clear that protracted exile is not a new phenomenon, scholars, NGOs and UNHCR are paying increasing attention to these seemingly unsolvable problems. In order to understand LTE, it is thus important to understand the characteristics and definition of PRS.

This paper will question the legality of LTE on the grounds that it denies refugees’ basic human rights in an arbitrary and discriminatory way, and is therefore inconsistent with international human rights law.<sup>3</sup> Although there are some clear conditions where encampment makes sense, such conditions rarely justify rights restrictions after extended periods of time from a moral or legal standpoint. After establishing this, the paper will explore an argument for placing time limits on rights restrictions in camp settings, following the three-year limit set out in Article 17 of the Convention as a point of departure. It will argue that not only would time limits on rights restrictions enable a

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<sup>1</sup> Hereafter referred to as “the Convention.”

<sup>2</sup> This number refers only to refugees under UNHCR’s care, and thus the total number is higher in reality.

<sup>3</sup> It will not go so far as to say camps are always illegal. In addition, I am not a lawyer and therefore will not make definitive legal determinations. Rather, I will raise questions about the legality of LTE.

closer adherence to international law, but that they may also improve conditions for refugees, host states and regional actors. Overall, then, this paper is situated within an argument for greater access to human rights, and hopes to prompt further research on how best to achieve this.

### **Outline of paper**

The paper will first analyze encampment itself, defining what is meant by LTE and camps in general by exploring camp concepts, characteristics, uses and historical evolutions. This will demonstrate that LTE is not consistent with the rights outlined in the Convention. Freedom of movement and the right to work will be the main rights explored, with a brief discussion of other related rights. The paper will then consider common reasons for the denial of such rights in closed camp settings<sup>4</sup>: mainly a prioritization of rights in “emergency” situations, and a derogation from responsibilities on the part of host states. It will argue that an unclear understanding of when an emergency ends allows states, donors, UNHCR and NGOs to use LTE, and the consequent denial of a range of rights, to continue for years.

The second section of the paper will explore an argument for limiting the length of time restrictions on rights can occur in camps—in a sense time limits on encampment itself. Because the majority of long-term camp situations are closed camps, granting refugees access to the rights to which they are entitled does not necessarily mean doing away with the camp altogether, but might transform a camp into a settlement, or at the very least into an open camp, if the political will is there.<sup>5</sup> I will then consider the feasibility of limiting rights restrictions from political, economic and security perspectives of states and donors, and whether such an approach may help prevent long-term camp situations from developing in the first place. Finally, I will mention areas for further research to work toward solutions, as it is important to understand how LTE can be avoided.

Like all protracted situations, LTEs are complex, relating to numerous root causes and tensions among refugees, local populations, NGOs, UNHCR, host governments, the country of origin, non-state actors, and regional actors. Therefore, this paper does not pretend to provide a “quick-fix” solution. However, it does seek to situate itself within existing PRS literature and the “Anti-Warehousing Campaign,”<sup>6</sup> using a human rights lens to promote the rights laid out in the Convention and question LTE as it exists today.

To explore the legality of LTE is to understand more clearly what is meant by camps—both in today’s context and historically. It is to contextualize what it means to force people to remain in camps with severe restrictions on human rights, limiting their capacities and increasing their vulnerabilities. Moreover, it is to consider how to overcome this injustice with new avenues for research and new potential solutions.

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<sup>4</sup> The paper recognizes that some camps are considered more “open” than others, but is focusing on the majority, which are “closed.”

<sup>5</sup> I am not saying open camps are necessarily the best response to displacement. However, from a human rights law perspective, allowing greater access to rights is more consistent with the Convention.

<sup>6</sup> See US Committee for Refugees and Immigrants ([www.refugees.org](http://www.refugees.org)), or Smith (2004) and Chen (2005) for more.

## 2 Background

Because LTE is one type of protracted refugee situation, it is first necessary to conceptualize what is meant by PRSs, as well as what is meant by camps. This will provide context for understanding why protracted situations emerge, and why camps are commonly used. It will also provide insight into the causes, consequences and characteristics of LTE, many of which form the basis for rights restrictions. Therefore, this section will define and contextualize both LTE and PRS.

### **Protracted Refugee Situation defined**

UNHCR defines a PRS as a situation where “a refugee population of 25,000 persons or more has been living in exile for five years or longer in a developing country” (UNHCR 2008: 5). It is a situation where “refugees find themselves in a long-lasting and intractable state of limbo. Their lives may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfulfilled after years in exile. A refugee in this situation is often unable to break free from enforced reliance on external assistance” (UNHCR 2008: 5). According to this definition there were 33 PRSs in 2004, totaling 5,691,000 refugees (Loescher and Milner 2007: 2). This definition does not include Palestinian refugees, or the scores of internally displaced people (IDPs) and urban self-settled refugees, who also face prolonged exile. I will use a similar definition to explore the legality of LTE: A mandatory living situation in a densely populated place (25,000 persons or more) with severe restrictions on rights, in particular the right to work and freedom of movement, for a duration of five years or more.<sup>7</sup>

The majority of PRSs, many of which are camp situations, occur in Africa and Asia, and affect some of the most fragile states. It is often the case that those hosting the largest numbers are least able to cope. Some of the largest cases originate from Burundi, Afghanistan, Liberia, Myanmar, Sierra Leone, Somalia and Sudan (Loescher and Milner 2008: 3). PRSs are caused by a range of economic and social factors, and political action and inaction that occurs in the country of origin, the country of asylum, and among international actors (Loescher and Milner 2005). They continue because of “ongoing problems in the country of origin, and stagnate and become protracted as a result of response[s] to refugee inflows, typically involving restrictions on refugee movement and employment possibilities, and confinement to camps” (UNHCR 2004: 1). These situations also remain unresolved due to a failure on the part of superpowers like the EU and US to engage in finding solutions (Loescher and Milner 2005: 19). The consequences of PRSs are also varied, and can affect a range of political, social, economic, financial, and environmental areas. As will be explored later, protracted exile and camps in particular can sometimes be linked to serious security concerns, as political violence, cross-border fighting and militarization may occur.

It is important to realize, however, that only seeing PRSs as a state of limbo with people frozen in time, is a misguided view. Indeed, Gil Loescher and James Milner emphasize the

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<sup>7</sup> Definition formulated with the help of Jean-François Durieux.

limitations to the UNHCR definition, stating that it “reinforces the popular image of PRSs as static, unchanging and passive populations and groups of refugees that are warehoused in identified camps” (2007: 5). Rather, it is important to remember that in reality, many refugees who are forbidden from moving or working still manage to find ways to do so; they “do not sit around with their hands in their laps” (Turner 2001: 161). Finally, it is also important to remember that many refugee camps are not homogenous groups of people, but house diverse populations, sometimes of different ethnic groups, languages and religions.

### **Conceptualizing a “camp”**

To understand LTE as a protracted refugee situation in camp form, it is important to explore what is meant by “camp” in relation to other types of refugee settlements. Understanding the specific characteristics of a camp is necessary to understand where human rights violations occur, and thus their legality. It is also important to understand why and how they are used—in short or long-term situations (where the same rights may be denied, but more thoroughly over time and with less justification)—in order to seek alternative solutions. Finally, while it may be easy to think of a camp in terms of a rigid definition, the idea of a camp is far more fluid, and can be understood in different ways according to space, time and culture.

### **Camp characteristics and concepts**

Various scholars have defined what makes a camp, but many practitioners and scholars still discuss “camps” without defining their characteristics in light of other types of settlements (Schmidt 2003). Karen Jacobsen (2001) outlines the various types of settlements that occur:

- **Self-settlements** occur when refugees settle amongst the local community without assistance from any government or international body. Refugees choose where they live, are able to work (though not necessarily legally), and usually do not receive formal protection from UNHCR or another body.
- **Assisted settlements** are intended to house refugees temporarily, and can be seen in camps and local settlements in rural areas, and mass shelters or public buildings in urban areas.
- **Camps** are “purpose-built sites, usually close to the border, and thus usually in rural areas” (Jacobsen 2001: 8). They are meant to be temporary, and thus refugees are not expected to be self-sufficient. They are geared toward repatriation, and most are closed, not allowing refugees to come and go freely (though it can vary).
- **Local settlements** are like camps in that they are planned and segregated villages created specifically for refugees, but differ in that they are intended to promote self-sufficiency.

Jacobsen emphasizes that refugee settlements are “seldom fixed” but are rather formed by “a fluid process, in which refugees settle in different situations” (2001:8). For the purposes of this paper, camps are seen as different from settlements in that they severely restrict rights and freedoms, in particular the freedom of movement and the right to work.

Thus, some common characteristics of camps that separate them from other settlements are:

- Freedom of movement is limited.<sup>8</sup>
- Refugees have little possibility for self-reliance, and are thus generally dependent on aid.
- The mode of governance is one of control over refugees (Chambers 1979; Hyndman 1997).
- It is designated as temporary (UNREF 1958). It is also meant as a “last resort,” when all other options are exhausted (UNHCR Emergency Handbook 1999: 134).
- The population size and density is large in comparison to freedom of movement, planning and economics (Black 1998; Clark and Stein 1985).

Similarly, Anna Schmidt adds that camps “...serve to sustain the distinction between refugees and the citizens” (2003: 3). Such distinctions are often visible in the location of camps, the majority of which are located in “remote, politically marginal border areas,” as Tania Kaiser writes of Sudanese camps in Kenya and Uganda, which reflect “the governments’ desire to maintain the separation of refugee populations, positively preventing integration” (2008: 257).

According to Schmidt’s characterizations, camps also demonstrate a unique set of power relations. She argues that in light of Foucault’s description of order and control, camps may be seen as more about containment than shelter or relief (Foucault 1986). She also claims that Goffman’s “total institution” ideas apply, as refugees are handled through bureaucracy and administration, organized by “daily routines that are introduced by an institution, i.e. waiting in line for food...[and] medicine...” (Schmidt 2003: 6). All activities are controlled, and information filtered. Implementing organizations have power over passive aid recipients, and it is this power over the refugees and their situation that is at the heart of encampment (Harrell-Bond 2002). Caroline Moorehead writes, “The poverty of camp refugees is about more than just not having things; it is about having no way in which to get them, and no means of altering or controlling one’s own life...” (2005: 156).

However, it is also important to remember that while closed camps confine people’s movement and work, many refugees adapt and cope. Even where restricted, they find ways to “leave the camps to find work, to trade, to explore repatriation options, to join the rebels, to visit the city or to move there” (Jacobsen 2001: 8). The experience of refugees in camps is not static. Camps are also seen as places of dependency and isolation, which some have categorized as being similar to the life of a prisoner (Kibreab 1991, cited in Schmidt 2003). Refugees are seen as “outsiders and potential returnees who lack...rights and often social networks” (Waldron 1987). In response, it has become commonplace that their identities should be fixed and their movements controlled. In his article about the urbanization of refugee camps, Michel Agier emphasizes that camps are places where

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<sup>8</sup> For example, Rwandan refugees perceived their settlement to be a camp, arguing, “It is a camp because we cannot leave when we want to” (Malkki 1995: 139).

undesirables are put “outside of the places and outside of the time of a common ordinary, predictable world” (2002: 323). He argues that camps are “both the emblem of the social condition created by the coupling of war with humanitarian action...and the experimentation of...large-scale segregations...” (Agier 2002: 320). Camps are thus collections of “victims” in a humanitarian space that has been professionalized with an emergency rhetoric that is prone to take root, allowing a situation to become protracted (Agier 2002). This emergency label will be explored in a later section.

### **How encampment became mainstream**

While camps have generally always been about control (and only assistance to some extent), the nature of why and how camps are used has shifted over time. Schmidt demonstrates that camps were historically modeled after concentration camps or transfer camps, as methods of “control and purposeful containment of populations who are held as quasi-criminals alongside the distribution and equally purposeful services to people who are seen as victims” (Malkki 1995: 499). It is according to this model that “the various technologies of power associated with the care and control of refugees first became standardized practice,” making people “accessible to a whole gamut of intervention” (Malkki 1995: 498-500).

During the Cold War UNHCR became increasingly active with refugees outside of Europe (Loescher 2001). In many cases, refugees were political pawns for state ideologies, as states resettled or locally integrated refugees who held their same political views (Rogge 1981). However, with the end of the Cold War, sentiments toward refugees shifted, and the international community became more interested in the containment of refugees in their region of origin (Loescher 2001). Resettlement and local integration became less favorable, and refugees were left with temporary asylum in camps with no prospect for a long-term solution (Loescher, Betts and Milner 2008). In many cases, this made encampment more common, particularly in the 1980s in places like Southern Africa, the Horn of Africa, Pakistan and other parts of South Asia (Loescher 2009).

Containment was favored for several reasons. First, no longer seeing refugees as politically useful, developed countries “put forward a new state-centric approach, grounded in the refugees-as-burdens view” (Smith 2004: 44). Refugees were seen as “passive aid recipients” at best, and security threats at worst. In response, donor countries would rather see this “burden” or “drain” in camps overseas than at their shores. Host states like Kenya and Uganda, for example, chose encampment because “...when refugee settlements are more fully serviced by the international community, refugees are also less likely to be perceived as a burden by local hosts” (Kaiser 2008: 256). This in turn meant that in some cases, aid was conditional upon encampment. Merrill Smith writes, “When a tight-fisted international community says to a very poor country it will provide help for refugees in camps...this evidently encourages that poor country to root out refugees who are integrated and plunk them into camps” (Weighill 1997, cited in Smith 2004: 48). The view that refugees are a burden is also linked to increases in mass influx refugee situations, which encourage encampment as a way to control seemingly overwhelming numbers (Durieux and McAdam 2004).

Many host and regional states also consider camps a good way to maintain security for their own population, as well as the refugee population, who may be in danger of cross-border attacks. Indeed, many states have tried to “control security, stability and economic concerns by making entry conditional upon encampment” (Jamal 2008: 146). Similarly, UNHCR acknowledges the drawbacks of camps, but still finds camps one of the most convenient ways to protect refugees (Jamal 2008). Somali refugees in Kenya, for example, were encamped to “...reduce the real or imagined threat that refugees posed to national security,” designating responsibility to UNHCR and as a result, “pushing refugees to the margins of society...” (Kagwanja and Juma 2008: 221). Security is arguably one of the biggest motivators for encampment policies, as will be discussed in greater detail later.

The evolution of mainstreaming encampment can also be traced to modernization efforts, particularly in Africa and Asia. Whereas many countries, especially in post-colonial Africa, welcomed refugees from neighboring states, seeing their movement as part of the natural migration patterns from earlier generations, new economic pressures to modernize took precedence in the post-colonial period (Bakewell 2000). In fact, “placing refugees in camps was actually consonant with, indeed borrowed from, economic development models then in vogue” (Smith 2004: 44). According to some World Bank and UNDP initiatives, concentrating refugees in one place would bring about development (Gardner and Lewis 1996, cited in Schmidt 2003). In some cases, refugees were even seen as an opportunity to cultivate unused land and bring about development to remote areas (Schmidt 2003: 5). Therefore, modernization plans such as these supported refugee settlements in the name of development (Smith 2004; Harrell-Bond and Voutira 1997, cited in Schmidt 2003). Governments also felt that they could extend greater control and organization over rural populations with refugees in “directly accessible nucleated settlements” as opposed to “scattered residential clusters” (de Wet 1995: 29).

Since the end of the Cold War, UNHCR has become more involved in protracted situations, and has also played a major role in mainstreaming encampment (Loescher and Milner 2005). Generally, having refugees in centralized camps has been seen as a more convenient way to distribute aid to large numbers of people. For example, encampment was a default response to the large numbers of Somali and Sudanese that arrived in Kenya and Uganda in the 1990s (Kaiser 2008: 258). Refugees were sent to camps along the coast until they could be sent to Kakuma or Dadaab, as “the expansion of UNHCR’s role in refugee management and assistance in Kenya at that time led to an increased reliance on the use of camps” (Verdirame 1999: 57). Similarly, Arafat Jamal writes, “No matter how clearly one might recognize the dangers and slippery compromises involved in camp creation, UNHCR staff time and again resort to camps because they see them as the most effective and initially uncontroversial means of responding to mass influxes” (2008: 146). While certain situations may have warranted this as the best response, other situations may also be influenced by a western, paternalistic way of intervening, using relief as a business and unaccountable charity model (Harrell-Bond 2002).

UNHCR began to see repatriation as the favored durable solution in the 1980s and 1990s, particularly in cases of large scale influxes (Loescher 2001). This further enhanced a camp approach, as refugees needed to be “held” somewhere until they could return home. Kenya and Uganda, for example, made it clear that they preferred voluntary repatriation for the large numbers of Sudanese refugees they received, and thus chose encampment to encourage them to go home (Kaiser 2008: 254). As will be explored in the next section, viewing repatriation as the favored durable solution has also “contributed to some PRSs of today,” as host states and other actors hold out for repatriation, rather than applying other durable solutions (Smith 2004: 44).

### **Temporary nature of camps**

While all of the characteristics explored above demonstrate the dynamic nature of a camp, I will now focus specifically on the temporary nature of camps, which clashes directly with the reality of LTE. Despite being anything but temporary, long-term camps often fall under this label. Even though many camps take on the characteristics of small cities over the years (Agier 2002), camps are meant to be emergency “holding places” or “temporary structures” that are “seldom planned for long duration or population growth” (Jacobsen 2001: 7). In turn, those running and supporting them are often less concerned with the range of rights to which refugees are entitled.

Camps are characterized as temporary for a number of reasons. One strategic reason is to encourage people to go home. Jacobsen argues that even in camps where refugees are given some relative freedom to work and leave the camp, there remains a sense of temporariness and emergency to keep refugees from making a camp their home, or becoming self-sufficient. She writes, “One reason host governments and many relief agencies prefer camps is that in addition to making the management of assistance easier, camps are seen as facilitating repatriation—not least because the austere conditions discourage people from staying in them long” (2001: 7). Somali refugees in Kenya’s Dadaab and Kakuma camps, for example, endured detestable conditions, as architects of the camps thought that this policy of encampment—remote, impoverished, and lacking security—would discourage others from coming and make those already there push for return (Kagwanja and Juma 2008). Likewise Rohingya refugees from Burma were subject to “a harsh and inhumane camp environment...both to encourage camp-based refugees to return home and to discourage Rohingya from fleeing Myanmar” (Loescher and Milner 2008: 320).

The temporary nature of camps is also displayed in host community perceptions. Because they do not see camps as a permanent new “city,” refugees and hosts may “form two distinct social entities with limited social and cultural interactions, where host communities generally view refugees as their guests” (Kibreab 1989: 476). This “guest” temporariness sometimes makes hosts more eager to assist, but also makes integration slower and more difficult (Jacobsen 2001). In other cases, as the situation becomes protracted, host communities may become resentful and initially welcoming attitudes may turn to seeing refugees as a threat or a burden when the label “temporary” is no longer applicable (Jacobsen 2001).

Overall, when a camp that is meant to be temporary continues to exist beyond any stretch of the word “temporary,” the consequences for refugees, states, donors and regional bodies are significant. There may be an avoidance of dealing with rights violations, as well as other issues such as livelihoods, the feasibility of repatriation in light of other solutions, and the political, security and economic burdens of encampment.

### **Arguments for encampment**

Briefly, it is important to mention some of the positive arguments for encampment in order to understand the full scope of why and how camps are used. As previously mentioned, states, donors, UNHCR and NGOs may have good reason to use encampment, both for their own interest and for refugee interests. Camps may maintain security and material assistance to refugees, and enable an easier monitoring of protection issues (Jacobsen 2001; Kibreab 1989; Smith 2004). Jamal writes:

With refugees sequestered, concentrated, visible and presumably out of harm’s way, camps represent a convergence of interests among host governments, international agencies and the refugees themselves. They are not ideal for anyone but they help focus attention and provide a safety net. Host governments...see camps as a means of isolating potential troublemakers and forcing the international community to assume responsibility....Refugees understand that camps make them visible, and keep their plight, and the politics that underpin it, in the world’s consciousness. ....To insist that poor African nations should not only accept thousands of refugees but also let them spread throughout the country is unreasonable (2003: 4).

Thus, various interests may converge to make encampment a positive response to displacement. Jamal also argues that encampment may even encourage states to accept the presence of refugees, rather than simply ignoring them, as the camp is a visible sign of a need for help from the international community (2003: 4).

In addition, as Jamal notes, refugees may also be politically motivated to remain in camps. Camps may keep a particular struggle alive and visible as time lapses, particularly in places like Palestine, where camps are seen as the heart of the struggle.<sup>9</sup> Giving the international community a central focus, such as a camp, as opposed to undetermined numbers spread around a host country, may place more responsibility on the international community by keeping their needs visible during initial emergency phases.<sup>10</sup>

Still, despite these reasons why encampment can be a positive response, it is doubtful that UNHCR or any state wants a camp to grow to be long-term. These arguments may hold for short amounts of time, but seem to make less sense after decades of encampment without access to basic rights, as will be explored in the next section.

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<sup>9</sup> For more on Palestinian camps, see Dumper (2008).

<sup>10</sup> Or it may be an excuse for even less burden-sharing, as states could argue that refugees’ needs are met in camps and no further action is needed.

### 3 Questioning the legality of LTE

This section will question the legality of LTE through an exploration of human rights restrictions.<sup>11</sup> Camps as a space on their own are not necessarily illegal, and this paper is not claiming that camps should never exist according to international law, or that there are not conditions where some limitations on rights are acceptable. However, the human rights violations that occur because of LTE, mainly concerning the right to work and freedom of movement, do provide grounds for questioning the legality of LTE. Jeff Crisp writes that a common characteristic of protracted exile "...is the inability of exiled populations to avail themselves of basic human rights—including those rights to which refugees are entitled under the provisions of the 1951 Refugee Convention and other international instruments" (2003: 124-125).

This section will focus on the rights specified in the Convention, many of which are also outlined in the UDHR, ICCPR, the 1969 OAU Convention, the Cartagena Declaration and other international human rights law instruments. Specifically this section will demonstrate how freedom of movement and the right to work are severely restricted in long-term camp situations, and how this leads to other rights restrictions. While the violation or restriction of a human right does not necessarily mean that a camp is illegal (as not all rights are absolute), this section will reveal the arbitrary and discriminatory nature of these rights violations over time. This will show that they are not consistent with the spirit of the Convention or international human rights norms, and thus call into doubt the legality of LTE. Jamal writes:

The tragedy is that the camp that once ensured the life of a refugee becomes, over time, the prime vehicle for denying that same refugee the rights to liberty, security of person and other rights enshrined both in the Universal Declaration of Human Rights and in the refugee instruments. The price of extending this short-term measure year after year is paid in terms of rights frustrated, capabilities deprived and expectations unmet (2008: 146).

Similarly, Elizabeth Ferris writes, "Restrictions on employment and on the right to move beyond the confines of camps deprive long-staying refugees of the freedom to pursue normal lives and to become productive members of their new societies...Containing refugees in camps prevents their presence from contributing to regional development and state-building...It also increases the vulnerability of refugees to other forms of exploitation" (2008: 88). Therefore, the effects of the rights denials in relation to other rights and capacities are also important to explore.

Currently most refugee influxes are dealt with in an ad hoc manner at first, only focusing on the most immediate right of non-refoulement, "with relief management occurring at the expense of individual rights and freedoms" (Schmidt 2003: 7). In most cases, no legal excuse is given for curtailing the rights stipulated in the Convention (Schmidt 2003).

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<sup>11</sup> I am aware that not all long-term camp situations entail the denial of these rights, but the vast majority do (confirmed in conversation with Gil Loescher May 2009), and thus this paper is directed at those situations.

While this may be justified early on, as will be explored in a later section, the problem occurs when rights continue to be denied over time.

### **Freedom of movement**

One of the clearest restrictions common to LTE is the denial of the freedom of movement—which in camps, “tends to be the exception rather than the rule” (Schmidt 2003: 7). Freedom of movement is one of the most fundamental and essential liberties, yet international and domestic legal interpretations of what it means differ (Beyani 2000). While some restrictions on movement are normal and even necessary for a stable society, the arbitrary and often discriminatory use of restrictions on movement within camps is inconsistent with international human rights law, and appears to be more politically motivated than anything else (Beyani 2000).

Article 26 of the Convention states: “Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances” (United Nations 1951). While it is the most reserved article among states that have signed the Convention, its scope and legal intention are clear.<sup>12</sup> Only in situations of mass influx, or while investigating a possible security threat, can a state limit the freedom of a refugee’s movement (Hathaway 2005: 705). As soon as the refugee is “regularized,” or has launched an application for asylum (even if it has not yet been accepted), his or her movements cannot be restricted (Hathaway 2005: 417, 707; Goodwin-Gill and McAdam 2007: 522). Put simply, as long as the refugee has complied with the required obligations and poses no security threat, there can be no limitations on the freedom of movement. Moreover, James Hathaway writes, “Once status is regularized, including by the lodging of an application for recognition of refugee status and completion by the individual concerned of the necessary steps to enable a state to assess his or her claim, all refugee-specific restrictions on the right to move freely and to choose one’s residence must end in accordance with Art. 26” (2005: 708). Article 31(2) of the Convention also affirms this, indicating that states can only “...curtail asylum seekers’ movement...until their identities are established and basic security concerns have been investigated” (Hathaway 2003: 11). Likewise Article 12 of the ICCPR indicates that any restrictions on movement cease after regularization, and that those lawfully in a state be allowed to move throughout the entire state, not just a part of it (as a camp allows). Therefore, even a generous interpretation of the amount of time it takes to determine a refugee’s identity and security risk would not be enough to justify restrictions on the freedom to move over years, and sometimes decades.

Similarly, Article 9(1) of the ICCPR states that any form of detention requires justification and must only be for a short amount of time to determine the identity or security risk of a person. While detention may constitute a different form of confinement than

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<sup>12</sup> Countries with reservations to Article 26 include: Botswana, Burundi, Angola, Honduras, Iran, Latvia, Malawi, Sudan, Suriname, Mexico, Mozambique, Namibia, the Netherlands, Papua New Guinea, Moldova, Rwanda, Spain and Zambia.

encampment, they share a strict limitation on freedom of movement. In fact, UNHCR defines detention as “confinement within a narrowly bounded or restricted location, including prisons, *closed camps*, detention facilities or airport transit zones, where freedom of movement is substantially curtailed, and where the only opportunity to leave this limited area is to leave the territory [emphasis added]” (UNHCR Detention Guidelines, cited in Hathaway 2005: 413). Indeed, UNHCR affirms that closed camps (which are the majority of LTEs) are a form of detention, which, over long periods of time, is heavily denounced in human rights law. Thus, one can argue that because long-term camp situations are like detention and go beyond the amount of time necessary to determine the identity or security risk of a person, they violate human rights instruments, such as Article 9(1) of the ICCPR.

Restrictions on movement may also interfere with livelihood strategies being pursued by refugees in long-term camp situations, which are supported by many donors and NGOs and are linked to other rights like adequate food and shelter. This may cause further dependency on aid.<sup>13</sup> Burundian refugees in Tanzania, for example, were given opportunities to undertake income-generating activities in the camps, but in many cases, “the restrictions on movement prevent[ed] refugees from purchasing raw materials or selling their products, or create such barriers to entry in the market as to render the activities economically unsustainable” (Chen 2005: 3). Similarly encamped Rohingya refugees’ “...freedom of movement and freedom for refugees to engage in income-generating activities are extremely restricted...” (Loescher and Milner 2008: 320).

In addition, the WFP reported that restricting refugees’ movements can lead to deteriorating food security situations among refugee households and even an increase in crime, as refugees are forced to choose “detrimental coping strategies” in light of threats to their personal security (Chen 2005: 4). In Kakuma, Sudanese refugees’ lack of freedom to move left them in impoverished conditions without any action available to them. Rations in the camp were inadequate and unreliable, and they were discouraged from taking part in agricultural practices (Kaiser 2008). Therefore, a host of other rights can also be linked to freedom of movement. Others include healthcare that goes beyond what is available in the camps, access to better education, access to courts, and contact with family that may be living elsewhere. Chaloka Beyani writes, “Arbitrary restrictions on [freedom of movement] can...often lead to the denial of both economic social and cultural rights including employment and civil and political rights...” (2000: 3).<sup>14</sup> Ultimately, then, the freedom of movement is fundamental to a host of other rights, and is arguably one of the most basic and immediate rights.

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<sup>13</sup> “The pattern of humanitarian assistance has led to overwhelming dependency by the refugee population. The size of the plastic sheet determines the size of the house. The food ration is for 30 days but it is calculated on kilocalories and not quantity. It finishes within 10 days, but there is not enough land to grow food. The non-food items given are not replaced and there are not enough income-generating jobs for the refugees to earn money to buy their own...” (Ferris 2008: 89).

<sup>14</sup> For more on freedom of movement, see Beyani (2000). Political perspectives on a potential response to rights violations in LTE will be explored in the next section.

## **Right to work**

Article 17 of the Convention requires that the right for refugees to work be equal to that which other foreign nationals are allowed (United Nations 1951). The right to work is a fundamental human right, and the framers of the Convention recognized this. For example, during early discussions of the framing, one representative stated, “Without the right to work all other rights were meaningless. Without that right no refugee could ever become assimilated in his country of residence” (Hathaway 2005: 745).

Nevertheless, refugees forced to remain in camps are often denied the right to work. Even where many find ways to work illegally within or outside the camps, the restriction is still explicit. Crisp writes, “In some countries of asylum, refugees are confronted with legal constraints on their economic activities: they do not have access to land, they are not allowed to enter the labor market, they cannot take out commercial loans, and restrictions on their freedom of movement make it difficult for them to engage in trade” (2003: 126). Therefore, it is common for refugee skills and capacities to be ignored in long-term camp situations. The last section has shown that the right to work is tied to the freedom of movement. Burmese refugees in Thailand, for example, were given no opportunities to work, and after Thailand attempted to increase defense along its border, refugees were consolidated in camps and subject to severe restrictions: they “were not allowed to work locally on Thai farms or as day laborers,” which many had done previously (Loescher and Milner 2008: 307).

Denying refugees the right to work, like denying freedom of movement, has resulted in dependency on food aid over time in many LTE cases. Burmese refugees in Thailand, for example, “became entirely dependent on international aid,” as a result of the denial of the right to work (Loescher and Milner 2008: 308). Similarly, Gregory Chen writes, “...donors continue to favor traditional ‘care and maintenance’ programs that keep refugees dependent on aid. This trend has lent support to the [Tanzanian] Government’s position that it should confine refugees to camps rather than allow them to work” (2005: 2).

Likewise, an ECHO statement indicates that “...refugees...may end up becoming totally dependent on the routine actions of...receiving food” (Chen 2005: 12). Such practices not only create a culture that discourages refugees from working, but leave little room to exercise the right to work, even if donors and states wanted to encourage or allow for it. In addition, as with the freedom of movement, maintaining refugees in camps without the right to work brings instability and even danger when rations and other aid supplies are low, creating a host of new problems relating to crime and instability (Chen 2005). Not being able to work also promotes inadequate food and shelter, and insufficient access to healthcare and education, as resources are scarce.<sup>15</sup>

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<sup>15</sup> Camps are also often close to the border and in remote areas, making work conditions difficult even if it was allowed.

The right to work is also closely linked with dignity, which, when denied for years, can have serious consequences for refugees' psychological and physical wellbeing.<sup>16</sup> While it seems difficult to legally define when the dignity associated with work is denied over the course of encampment, legal documents and court opinions underscore the importance of work and its connection with dignity. For example, Hathaway cites the South African Supreme Court: "the freedom to engage in productive work—even where that is not required in order to survive—is indeed an important part of human dignity...Self-esteem and the sense of self-worth—the fulfillment of what it is to be human—is most often bound up with being accepted as socially useful" (Hathaway 2005: 745). Matthew Craven also writes, "[n]ot only is [work] crucial to the enjoyment of 'survival rights' such as food, clothing, or housing, [but] it affects the level of satisfaction of many other human rights such as the rights to education, culture and health...[W]ork is an element integral to the maintenance of the dignity and self-respect of the individual" (1998: 194).<sup>17</sup> The sense of dignity which comes through work, therefore, affects the overall wellbeing of refugees and relates to other rights.

The right to work and freedom of movement are the most visibly violated in LTE. The two are closely related, though one might argue that freedom of movement ought to be more urgent, as the right to work is an economic, cultural and social right. Regardless, their restrictions enable the violations of a range of other rights, including the right to choose one's residence, the right to adequate food and shelter, and freedom from discrimination. In addition, one could argue that the right to adequate healthcare and education, access to courts, the right to cultural and religious practices, the right to security of person and arguably the right to a timely solution and due process (which also relates to obtaining access to other rights in a timely fashion) are also related and raise questions about the legality of LTE.

### **Ranking rights and legal derogation: An over-prioritizing of non-refoulement?**

While LTE's inconsistencies with human rights law are clear, its legality must also be viewed according to reasonableness, proportionality and balancing rights within the host state. Jamal writes, "...long-term refugees have been provided with a very conditional form of asylum. They are generally...spared the threat of refoulement...But the right to life has been bought at a cost of almost every other right" (2000: 7). Indeed, many developing states that host large numbers of refugees argue that they cannot be expected to provide a full range of rights to refugees when their citizens are not even enjoying some of those same freedoms. In truth, many host communities do not have access to quality healthcare, education, or adequate work, food or shelter, and thus it may be unreasonable to hold a host country to such standards, particularly in cases of mass influx (which are most LTE situations). Furthermore, developing host states may argue that core "priority" rights—such as the right to life and the right to non-refoulement—are all that can be

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<sup>16</sup> See Horst (2006) for more information on the psychological wellbeing of camp refugees.

<sup>17</sup> For more on dignity, see Bradley (2007).

expected to be provided.<sup>18</sup> Such arguments relate to a host of larger debates, and questions of burden-sharing, the enforcement of rights, and how some rights can be balanced against others are complex, and will be explored in the next section.

The prioritizing of some rights over others may make sense during the initial emergency phase, but not as time goes on. In their article about mass influx situations, Jean-François Durieux and Jane McAdam write, “While a temporary suspension of rights and freedoms at the start of a refugee emergency will generally be regarded as non-problematic, as the situation drags on the same limitations are likely to be seen as increasingly intolerable” (2004: 7). They continue to argue that in specific cases of mass influx, the long-term provisions in the Convention, such as the right to work (which is to be granted after three years), are sacrificed to the immediate norm of non-refoulement and the immediate imperative of admission to safety (Durieux and McAdam 2004). According to Guy Goodwin-Gill, such actions are politically motivated, as some states accept large numbers of refugees on the grounds that they can enact a “de facto suspension of all but the most immediate and compelling protections provided by the Convention,” in a sense leaving people safe from return to persecution, but “left in legal limbo” (1996: 196).

This trade-off of rights seems an acceptable “lesser of two evils” to UNHCR, despite the recognized drawbacks of rights restrictions with encampment. Jamal writes:

Most humanitarian workers dealing with protracted refugee populations feel that, whatever the drawbacks of the care and maintenance approach, at least the refugees are protected...from being forced back to the countries in which they may have been hounded, tormented, tortured and raped. So tenuous can the right of non-refoulement seem that UNHCR accepts a degraded state of affairs—far from anything envisaged as a minimum standard of treatment in the refugee instruments—simply to avoid the realization of any lurking, implied or explicit threat to deport refugees to their home countries (2008: 146).

Although there are few legal reasons for the long-term denial of rights, this trade-off is widely accepted (Goodwin-Gill and McAdam 2007: 467). Durieux and McAdam argue that “despite there being no legal excuse for denying large groups of refugees all of the provisions in the Convention, the international community seems to have conceded that granting full Convention rights to refugees in mass influx situations cannot be realistically pursued” (2004: 13). However, few legal instruments have been put in place to oppose this unregulated denial of rights. Some suggest a greater level of accountability for UNHCR and NGOs, inserting human rights more deeply into camp life and obliging all actors to promote durable solutions (Ferris 2008). This idea will be commented upon in later sections.

### **When the emergency ends**

In light of the denial of some rights in the name of upholding others, particularly over long periods of time, a host of questions emerge. Of course some rights are absolute. However, under what conditions can some rights, such as the right to work and freedom

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<sup>18</sup> For more on rights, see Shue (1996).

of movement, be denied? As was discussed earlier, the main conditions for derogation from rights responsibilities relate to reasonableness, and security or identification reasons. However, these conditions are generally considered to exist during the emergency phase only, not, say, 20 years down the line.

In many cases, refugee rights in long-term camp situations are denied because host states, NGOs and UNHCR perceive the refugee situation as remaining continually in an emergency phase. As mentioned, it may be reasonable to reach such a conclusion during the beginning of a refugee crisis (for example, it would seem absurd to worry about people's long-term education when they have fled across the border overnight and are in need of food, shelter, water and security). However, it becomes difficult to determine when the emergency phase is over as time passes, and a range of rights quickly become issues for encamped populations. Durieux and McAdam write, "Emergency situations must be acknowledged and catered for, but must also be justified, and their attendant restrictions on rights must be limited to the strictly necessary" (2004: 4). They argue that an emergency is extraordinary and immediate, and that "it is equally well established in human rights law that any suspension of rights and freedoms must also be limited to those places actually affected by the emergency" (Durieux and McAdam 2004: 18, 20).

While it may seem clear that rights denials are only acceptable during the emergency phase, a time-specific definition of when the emergency ends is lacking in international law. The UNHCR *Handbook for Emergencies* indicates that the emergency phase is a time when "the life or well-being of refugees will be threatened unless immediate and appropriate action is taken, and which demands an extraordinary response and exceptional measures..." (UNHCR 1999: 4). Yet it provides no clear definition of when an emergency ends or phases into something else, and camps in particular make it difficult to know (Goodwin-Gill and McAdam 2007: 466). Goodwin-Gill and McAdam write,

"Refugee camps are also more commonly in evolution, from emergency reception, shelter, and assistance locations, through to more settled communities of greater or less permanence. Even for the State, in situations which may reasonably be classified as 'emergency' at one or other stage, exactly what human rights are due is not always clear" (2007: 470).

Whether this lack of clarity emerges from political motives or logistical blunders, it appears that the shift from emergency camp management towards "the political recognition of their [camps'] enduring reality" is rare (Agier 2002: 337).

States and other actors may have any number of reasons for continually categorizing a refugee influx as an emergency, not least because resources are needed, and donors are more likely to provide if a situation is labeled as such. In some cases, they may have no choice but to continue to portray it that way to try to get what is needed. Michael Van Bruaene writes of the Tindouf region in Algeria, "The inordinately low visibility and high donor weariness has produced a major funding shortfall...even for essential relief items...which reasonably should have been secured after 25 years of continuous crisis...The main priority...is still centered on emergency food supplies" (2001: 7-8). This

example shows that in some cases the emergency actually continues for years, particularly in cases where waves of violence send new groups of refugees year after year and supplies are not received. However, many LTE situations, like those in Tanzania or Thailand, do move out of the initial emergency phase. Another reason a host state may benefit from calling a camp situation an emergency is that it emphasizes the temporariness of the situation to constituents. If they begin to use “non-emergency” language, they may appear too welcoming to refugees, allowing them to stay longer than necessary or for new groups to come. Likewise UNHCR, NGOs, and other actors stand to gain from continually referring to a refugee situation as an emergency, as they may have greater access to an area, instead of having to request numerous approvals from the host government.

However, using an emergency label is a double-edged sword. Where refugees, host states, UNHCR, and NGOs may gain more resources from donors by calling it an emergency, such labels are easily used to deny refugees the rights to which they are entitled, which may perpetuate poorer conditions and thus the need for more resources again. This also breeds an ongoing care and maintenance approach, rather than a solutions-oriented or rights-based approach.<sup>19</sup> As will be seen later, poor conditions in camps over long periods of time can also generate instability.

In response, Durieux and McAdam suggest that a derogation clause be created in order to hold states accountable for how long they can “freeze refugees in a legal limbo” without full access to their Convention rights (2004: 21). They argue that “a derogation clause would make it clear that the suspension of specific refugee rights cannot last longer than the emergency itself,” restoring full Convention rights as soon as possible (Durieux and McAdam 2004: 21). This would need to take place in conjunction with a clearer understanding of when the emergency ends.

With respect to developing countries that are clearly unable to provide the full range of rights to which refugees are entitled over the course of LTE, they assert that “exceptional measures are justified in response to an immediate problem, but these should cease once the urgency of the problem diminishes,” regardless of the host state’s ability to provide access to them (Durieux and McAdam 2004: 14, 18). As will be explored in the next section, such an approach would therefore require increased burden-sharing from the international community, while also providing a realistic understanding of the conditions of host states. In turn it would hold all actors accountable to the extent to which refugee populations can be denied rights. It would also emphasize that temporariness is a key aspect of proportionality within an emergency phase, and possibly even prevent long-term camp situations from emerging in the first place (Durieux and McAdam 2004).<sup>20</sup>

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<sup>19</sup> For more, see Loescher et al (2008).

<sup>20</sup> Though beyond the scope of this paper, the denial of rights in LTE relates to broader issues of mass influx, geographic location (keeping refugees in remote areas along the border as camps often do) and how states legally interpret refugees being “lawfully in” their territory. The monitoring of rights is another contentious area, as some human rights agencies do not monitor refugee rights as closely because refugees are supposed to be under the care of UNHCR, where their rights are presumably accessible (see Durieux and McAdam 2004; Ferris 2008; Goodwin-Gill and McAdam 2007: 469).

## 4 What can be done?

LTE is a highly complex problem with a range of root causes. The High Commissioner's Dialogue in December 2008 addressed some of the issues around protracted exile in camps, and the US Committee for Immigrants and Refugees' Anti-Warehousing Campaign has pushed for an end to LTE. In addition numerous scholars have proposed a variety of steps to solve protracted camp situations (and PRS in general), including increased burden-sharing, issue-linkage, and rights-based approaches. Indeed, one of the main challenges with LTE "lies in regulating the manner in which the passing of time affects the accrual of States' obligations under the Convention, beyond the *non-refoulement* standard which is both peremptory and immediate" (Durieux and McAdam 2004: 14). This section will attempt to build on this notion of limiting how long rights can be denied, and to add to these solutions as they relate to LTE by exploring the question of limiting the amount of time rights can be restricted in camps; in a sense, limiting the length of time camps, the majority of which are closed and thereby entail the denial of rights, can exist in the forms that they most commonly do today. Such an idea will hopefully help prevent long-term camps from forming, and either close down or greatly improve current ones. I will then consider political, economic and security perspectives on the feasibility of the idea, and the concerns that go with it, as well as some areas for further research.

### **Time limits on encampment**

Although the only way to truly end LTE is to eliminate the root causes of displacement altogether, limiting the length of time rights can be restricted, and thus the time refugees can be forced to remain in camps, would greatly improve conditions, ultimately making refugees and the host state better off. While I have shown that there can be good reason for encampment, it is clear that the long-term denial of rights arising directly from LTE is inconsistent with international human rights law. Placing a limit on how long rights can be denied (whether in the name of an emergency, security or identification purposes) would prevent long-term camp situations from forming in the first place and push for solutions in those already occurring, as accessibility to rights is part of finding solutions (UNHCR 2008).<sup>21</sup> Moreover, it would enable a closer adherence to the Convention. This does not necessarily mean that camps would cease to exist after a certain amount of time (though they may instead be called settlements if rights were accessible), but that refugees could only be denied access to their rights for a short period (Durieux and McAdam 2004). If durable solutions were not found and camps continued to exist, they would at least be more open with respect to movement and livelihoods.

In the next part I will suggest that Article 17 may be a useful starting point for advocacy around limiting the length of time refugees can be confined in camps. I will continue to focus primarily on the freedom of movement and the right to work, as these are the most significant violations with respect to LTE.

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<sup>21</sup> UNHCR (2008) has even inferred that a lack of rights in long-term camp situations prevents solutions from being found.

### **Time limits and rights through the lens of article 17**

On the basis of my argument so far, limiting the time refugees are forced to remain in camps with restrictions on movement and work would be more consistent with the Convention. Though it would seem unrealistic to try to limit the amount of time people are forced to remain in camps, the Convention not only allows for it, but requires it. Durieux and McAdam write, "...the Convention architecture is itself characterized by a gradual improvement of standards of treatment over time. On a literal reading, access to such rights is dependent on the nature of the refugee's stay in the host State, rather than on the State's capacity to accord such rights" (2004: 14). Therefore, regardless of the host state's abilities, the passing of time invalidates some rights denials.<sup>22</sup> One of the clearest provisions for this is in Article 17, which relates to the right to employment:

...restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of the Convention for the Contracting State concerned, or who fulfills one of the following conditions:  
a.) He has completed *three years' residence in that country*... [emphasis added]  
(United Nations 1951)<sup>23</sup>

In addition, a closer look at the intentions of the framers of the Convention reveals that this detail in Article 17 was no accident, and must not be confused or subject to expansive interpretation. Hathaway writes that Article 17(2)(a) was originally worded as requiring "at least three years' residence," but was amended for fear it would be taken too lightly, and thus, "on the basis of this exchange, it is clear that states have no discretion to prolong the three-year delay set by Art. 17(2)(a)" (2005: 756). He continues, "...there seems to have been a clear awareness among the drafters that there are few rights more central to refugee self-sufficiency than the right to work," and that a timely allowance for this was essential (Hathaway 2005: 745).

Similarly, framers did not want states to freely interpret the term "in residence," as an excuse for prolonging the denial of the right to work. Rather, the term "in residence" was intended to "refer to de facto ongoing presence rather than to legal notions such as the establishment of domicile...*time spent in the reception state since the lodging of an application* for refugee status verification should be understood to count toward satisfaction of the three-year threshold [emphasis added]" (Hathaway 2005: 756). In other words, "three years in residence" is meant to be interpreted "as liberally as possible, so as to include anyone who has been physically present in the country for a period of three years, irrespective of whether his presence has been lawful or not" (Hathaway 2005: 756).

The Convention makes no distinction between refugees living in camps, settlements, or cities, and thus, even camps that may be allowed under domestic law must permit

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<sup>22</sup> See Durieux and McAdam (2004) for further discussion of the accrual of rights over time, and the balancing of rights, reasonableness, and proportionality.

<sup>23</sup> Eight states (Austria, Botswana, Burundi, Ethiopia, Iran, Latvia, Papua New Guinea, and Sierra Leone) hold a blanket reservation to the article (Hathaway 2005: 747).

refugees to work after no more than three years if human rights law standards are to be respected.<sup>24</sup>

The limitation mentioned in Article 17 also implies that the framers did not foresee rights limitations such as the right to work, and possibly displacement on the whole, from continuing beyond three years. With the exception of Article 7, Article 17 is the only place where the Convention specifically allows for a delay in the enjoyment of rights. All other rights are assumed to be immediate, and thus the long-term denial of rights that occurs with LTE is not consistent with the Convention, and time limits would help correct this (Smith 2004; Chen 2005).

Though arguably still a long time, three years is a guideline, and would be a drastic improvement to current situations of LTE. Simply encouraging states to abide by this article would be significant progress for refugee rights, especially since the right to work relates to a host of other rights, including freedom of movement which is arguably even more urgently needed. And as the next section will show, if Article 17 were used as a launching point for a further opening up of rights denied in long-term camp situations, refugees and host countries alike would be better off, while also being better aligned with the Convention. They might also be encouraged to seek durable solutions earlier. I will now explore how realistic the proposed time limits are, and how well they could be implemented from political, economic, and security perspectives.

### **Time limits from a political perspective**

It has been shown that LTE evolved as a mainstream response to displacement for a number of reasons. First, it gives host states a sense of control, allowing them to believe that they are quarantining an economic and security threat. It also helps them maintain an image of deterrence, not wanting to appear too generous for fear of further influxes. Likewise it enables UNHCR, NGOs and other actors to deliver aid more easily, and, some argue, to better protect populations. Some refugees even prefer encampment, feeling that they are safer, or that they will be able to return home more easily from a camp. Media and some donors may even romanticize the drama of camps, using images of refugees in camps who need “rescuing” to catch the public’s attention. Moreover, camps may keep refugees from becoming an economic burden on the host country, leaving them as a responsibility of the international community.

Given these motives for encampment, would limiting rights restrictions in camps be politically feasible among states and other actors? As previously mentioned, this would, in a sense, mean ending encampment according to its definition (defined in part by rights restrictions), making it an open settlement, or allowing a durable solution of resettlement,

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<sup>24</sup> Another legal provision in the Convention which uses a specific time limit is Article 7(2): “...after a period of three years’ residence, all refugees shall enjoy exemption from legislative reciprocity.” In other words, host states must apply the same standards to refugees as foreign nationals of states with a “special relationship.” While legal interpretations of “special relationship” are complex, the three-year limit is yet another example of the framers’ intentions to limit the length of time rights are restricted. See Hathaway (2005) or Goodwin-Gill and McAdam (2007) for more.

local integration or repatriation to erase the need for any settlement at all. Though likely to differ according to situations, such an approach could have positive political repercussions, as discussed below.

First, host states may adopt such possibilities on several grounds. For one, they may be convinced that allowing refugees to work and move freely is in the interest of the development of their state. This would require a different understanding of the skills refugees bring, and their potential as laborers (Jacobsen 2001).<sup>25</sup> Having a three-year limit on rights limitations (and thus a limit on the camp itself) would also allow politicians to save face in front of their constituents, arguing that it is only for a limited time that they are expected to be hosting refugees in camps, and that durable solutions will be enacted within three years (and if they refused local integration or open settlements with accessible rights, other durable solutions would need to be found). Many politicians do not want to appear sympathetic to refugee populations, particularly in areas where the host population is receiving little assistance from the government. Actually having a camp as temporary (and not just continually labeling it so over the years) may alleviate some fear or anger over hosting a refugee population.

A three-year limit on encampment would also maintain a tangible end in sight to the situation, requiring durable solutions to be enacted sooner. Where a rights trade-off is in place in the short-term, a solution is expected to follow with the help of the international community (Goodwin-Gill 1996: 202). If the host country has formally proclaimed that three years is the maximum it will encamp a refugee population, it may be more likely to push for a political solution in the country or origin, and by extension a durable solution of repatriation for the refugee population. Even if the intentions are to avoid accommodating the refugee population after three years with accessible rights, the action would be there, as opposed to leaving camps politically to stagnate.

Donor states may also have an interest in limiting encampment—the most obvious reason being that camps are expensive. The amount spent on the care and maintenance of refugee camps, particularly long-term camps, is exponential to that spent on finding durable solutions that respect rights (Smith 2004). Nevertheless, history has shown that donors want to see solutions-oriented projects, with an end in sight.<sup>26</sup> UNHCR stated, “Tensions over the ‘developmentalization’ of camps persist among donor governments, which are wary of investing too heavily...and host governments that have been legitimately concerned with ensuring adequate burden-sharing and compensation for refugee settlements” (UNHCR 1994, cited in Muggah 2005: 153). For example, Rohingya camps in Bangladesh received less funding over time, as “the donor community repeatedly expressed its reluctance to continue to fund the Rohingya relief operation for an indefinite period without any durable solution in sight” (Loescher and Milner 2008: 320). Thus, rather than feeling like they are writing a blank check, entangling themselves

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<sup>25</sup> The next section will address this in greater depth.

<sup>26</sup> Betts (2006; 2008) argues that this was one of the failures of ICARA I and II: both sought funding for projects that seemed ongoing, whereas donors wanted to see solutions.

in something that is not defined, a time limit on how long a camp can exist (through the limitation on how long rights can be denied) may even increase generosity from donors, as the fear of open-ended funding may decrease.

Similarly, donors may be interested in touting the achievement of prioritizing human rights. Entire campaigns could be waged linking rights with solutions (Smith 2004; Chen 2005). Regional and other international actors might also take a similar interest in time limits, appreciating having an “end in sight” and the search for durable solutions where instability exists. In addition, time limits are not foreign concepts to most governments, particularly in the developed world. Indeed, many countries have time limits for how long someone can be detained, or how long an asylum applicant can be forced to wait for an answer. Making the leap to limiting how long refugees can be confined in camps without access to rights is not foreign when compared to these practices.

Most of all, limiting the duration of encampment through limitations on rights restrictions would put the issue of responsibility-sharing on the table sooner and more clearly, requiring powerful states to act in solidarity with host countries (Durieux and McAdam 2004). Though it is likely that all actors will always practice some form of responsibility-avoidance, a clear end to confinement would require all partners to seek solutions together. Local integration and resettlement would need to be increasingly considered in cases where wars in the country of origin continue after several years. And if no country wanted to take in the refugees, states might be more motivated to work toward stopping the fighting in the country of origin sooner (in order to promote voluntary repatriation) to avoid their responsibilities.

In order for such an approach to work without harming refugees, UNHCR would need to be dedicated to preserving the principle of non-refoulement as its main role, as well as urging all actors to responsibility-share in seeking solutions earlier. It would need to pressure western countries to take a bigger role, using issue-linkage as a key tool, as was demonstrated with CIREFCA and the Indo-Chinese CPA, to help developed countries see why it is in their interest to avoid long-term camp situations.<sup>27</sup> UNHCR might also encourage more resettlement for those who want it. Finally, even if UNHCR was unsuccessful in removing the image of refugees as a burden, it could employ time limits as a catalyst for solutions beyond LTE.

### **Time limits from an economic perspective**

Limiting LTE through limitations on rights restrictions might also have positive economic effects. If states with camps must provide more accessibility to rights over time (particularly relating to movement and work), refugees may become self-sufficient sooner. In addition to saving money that would be spent on care and maintenance, this might allow for local integration to occur more smoothly, which is more consistent with the intentions of the framers of the Convention (Smith 2004). Smith cites the Secretary

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<sup>27</sup> For more see Betts (2008).

General, “The refugees will lead an independent life in the countries which have given them shelter... They will be integrated in the economic system of the countries of asylum and will themselves provide for their own needs...” (UN Secretary General 1950: 6-7). Therefore, local integration and the numerous rights that go along with it, were intended to be a main solution to displacement.

Limiting encampment by allowing some local integration would also have positive effects on the host country. Jacobsen writes, “Simply by not restricting refugees to camps and by allowing them freedom of movement, refugees are able to negotiate arrangements with local landowners and employers, engage in trade, and otherwise pursue livelihoods. Freedom of movement... means that refugees have the opportunity to become economically active and participate in the local economy, contributing to its growth, rather than wasting their economic potential in camps” (2001: 23).

This has been witnessed in practice. For example, Kaiser writes that “Sudanese refugee communities in Uganda have had a positive impact on the local economies in the areas where they have been permitted to make a contribution via agricultural activity or business” (2008: 256).

She argues that the longer refugees are encamped, the worse off they become. But if given the “liberty to settle freely and negotiate access to land in places where conditions for agricultural activity and trade [are] favorable, their potential contribution... could well increase markedly” (Kaiser 2008: 262).

Hence, limiting restrictions on freedom of movement and the right to work would prevent people’s deskilling through enforced idleness and dependency, opening up camps to economic growth and turning them into settlements with greater refugee self-reliance. In an example of the economic benefits of self-sufficiency among Burundian refugees, Whitaker writes: During the height of the refugee presence... there were few restrictions on the mobility of refugees and hosts. Tanzanian- and refugee-owned businesses thrived. Refugees provided labor on Tanzanian farms... and Tanzanians moved in and out of the camps to conduct business, socialize, and make use of camp-based resources such as water taps and hospitals... After 1996, however, the government controlled more carefully the movement of refugees... the tighter controls on refugee-host interactions affected the extent to which hosts could benefit... Villagers complained that they were prevented from exchanging goods in refugees’ markets and that refugees were restricted from leaving camps to work as laborers on their farms (2002: 351-352).

This example demonstrates that freedom to move and work benefits the local community as well as the refugees and can expand the capacity and productivity of local markets, especially in underdeveloped and under-populated areas (Bakewell 2000; Callamard 1994; Zetter 1995, cited in Jacobsen 2001). Jacobsen (2001) argues that self-settled refugees have also stimulated some sectors of the local economy in Pakistan, Malawi, Zambia, and eastern Sudan. If refugees’ economic potential can be seen “as an asset,” it would seem reasonable from an economic perspective to limit the amount of time they are confined to camps, unable to move or work (Jacobsen 2001: 28).

Finally, refugees may also be able to use skills they learn in exile to rebuild their home countries upon return (Smith 2004). This serves as a reminder that the full range of solutions needs to be drawn upon to solve protracted encampment, and resettlement and voluntary repatriation must not be discounted either (Loescher et al 2008). Therefore, whether they locally integrate, remain in the settlement, repatriate, or are resettled, there is evidence that refugees and the states involved would be better off from an economic perspective if rights restrictions were limited.

### **Time limits from a security perspective**

Refugee influxes can cause enormous strain on a host country, and may have serious security implications for the host state, the country of origin, the region, and refugees seeking protection. Additionally, it is clear that security, not human rights, is one of the main preoccupations of states requiring refugees to reside in long-term camps, reacting with policies of confinement and little respect for rights beyond non-refoulement (Loescher et al 2008). Sometimes states even argue that such actions are for the safety of refugees as much as host populations. However, as will be shown below, LTE can also have many negative consequences for hosts, refugees, and the region. Consequently in some cases, the opposite of what was intended occurs: a state thinks it will be more secure by confining refugees, when in fact it is less so. Therefore, removing rights restrictions within camps over time (thereby preventing long-term camp situations from forming) may actually make states safer.

Sarah Kenyon Lischer (2005) explores cases where refugee camps become militarized hubs for instability, cross-border fighting and terrorist groups. Furthermore, closed camps may become havens for organized crime, as placing refugees in camps may worsen, rather than address security problems for refugees and the host country (Jacobsen 2001). Thus, having the opposite of the intended effect, “camps sequester refugees...[but] do not solve security problems and are in fact added sources of instability and insecurity...because they aggravate existing security problems and create new ones” (Jacobsen 2001: 13). In other words, while camps may not necessarily be the source of security problems, they may exacerbate tensions between warring states or groups. Security in Bhutanese camps in Nepal, for example, was a major concern (Lama 2008), as was also the case in Ugandan camps, which were frequently targeted by the LRA (Kaiser 2008: 258). Bulcha (1998) also argues that idleness and frustration causes conflict among encamped refugees, which may exceed the potential conflict between refugees and hosts.

Spill-over conflict across borders may also be a direct consequence of long-term camps, which are often located along borders, as well as “arms trafficking, drug smuggling, trafficking in women and children, and the recruitment of child soldiers and mercenaries” (Loescher and Milner 2005: 8). For example, Kenya’s Dadaab Camp, which hosts large numbers of Somali refugees, has become a haven for violence, abuse and criminality (Crisp 2000). It is one example of how camps left to fester for years can become havens for refugee warriors and militant groups (Lischer 2005). Some young and frustrated Somali refugees have also been recruited into militant groups over the course of LTE, and now use “camps as humanitarian shields,” ultimately exacerbating insecurity (Kagwanja

and Juma 2008: 222). Moreover, Thai camps have hosted some refugee warriors, serving as bases for cross-border attacks (Loescher and Milner 2008). The Thai government has also accused refugees of being involved in the drug trade, and thus moved all refugees to border camps (Loescher and Milner 2008).

A host of indirect security consequences may also contribute to instability, such as competition for resources, environmental changes, and ethnic conflict. Somali refugees in Kakuma and Dadaab, for example, have had conflict with locals over resources (Kagwanja and Juma 2008). Likewise Thai officials have complained that Burmese refugees are a drain on local resources (Loescher and Milner 2008). Most long-term camps are also accompanied by international humanitarian involvement, and result in some strained diplomatic ties between states in the region (Loescher and Milner 2005).

In addition, since 9/11, refugees are increasingly linked with security: “A new security agenda has sharpened the association between refugees, asylum seekers and illegal migrants on the one hand, and insecurity on the other” (Loescher and Milner 2005: 29). In response, many countries now see refugees as security threats (Van Selm 2003). These broader securitization trends have led many states to believe that encampment improves security. However, as has been shown, encampment itself may lead to insecurity, and thus limiting encampment to a time period of three years may release some of the tensions that cause security concerns.

Of course, one cannot prove that all camps will become militarized, nor can one assume that stopping a conflict will solve the protracted situation and allow camps to close (Morris and Stedman 2008). Moreover, it is undeniable that some camps provide people with much-needed protection, though it is not always clear who is best positioned to provide that protection (UNHCR, governments, or refugees themselves). Nevertheless, preventing long-term camps from forming and allowing refugees access to their human rights may diffuse some security problems and ensure that basic rights are respected.

### **Concerns**

While the arguments for limiting restrictions on rights in long-term camp situations have been explored, it is also important to examine the concerns that arise with such an approach. The most significant concern would be the refoulement of some refugees. If UNHCR, the host state and other actors feel the pressure of a time limit, they may push refugees to repatriate when conditions remain unsafe. This may occur especially in cases where local integration is vehemently opposed, and resettlement is not an option. Such an approach may also force refugees into durable solutions that are premature or not of their choosing. This would be inconsistent with the Convention, which “gives priority to allowing refugees to make their own decisions about how best to respond to their predicament,” even if that means some refugees will not act right away (Hathaway 2006)<sup>28</sup>.

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<sup>28</sup> For example, UNHCR encouraged the premature repatriation of Rohingyas after seeing appalling camp conditions (Human Rights Watch 1996; also see Hathaway 2006). It should be noted, however, that while

Limiting rights restrictions may also inadvertently encourage a delay in rights, as states may realize that three years is an acceptable amount of time to derogate from rights responsibilities, when in reality rights ought to be enjoyed as much as possible from the onset. In other words, if given the option, limitations on rights restrictions may be used as an excuse to deny rights during early stages that might otherwise have been provided. Similarly, pushing UNHCR and other actors to concentrate on rights and finding a solution relatively quickly may divert energy and resources from dealing with the emergency at hand. It would also be difficult in the many situations where refugees do not all flee at once, but come in waves over a period of time. It would be difficult for UNHCR to attend to the needs of new arrivals, still in the emergency phase, while also looking ahead to solutions and the rights-based approach for those who arrived earlier. Likewise, camps are places where growth happens, and life is not frozen in time. Such an approach may focus too much on hurried solutions, rather than the quality of life and dynamic nature of the community within a camp.

In addition, limiting encampment would enable refugees and hosts to see their situation as temporary. A temporary mindset, though inevitable on some levels and positive for reasons mentioned in previous sections, may impede integration with the host community, thus keeping refugees on the fringes and marginalized even more with worse resources, and possibly in conflict with the hosts. Communities that may have originally viewed refugees as their guests may become resentful and initially welcoming attitudes may turn to seeing refugees as a threat or a burden (Jacobsen 2001).

A temporary label may also cause refugees more anxiety if they are unsure of what will happen to them after three years when the camps are closed or phased into settlements. Host states may even find ways to hold rights ransom in order to obtain international aid. In addition such an approach may cause states and donors to play “hot potato” or “musical chairs,” not wanting to be the one caught with the responsibility when the three-year limit on rights restrictions arrives.<sup>29</sup> Treating refugees in this manner would most certainly be to their detriment.

It may also be difficult to overcome the interests of those in governments, UNHCR and NGOs who profit from camps (Smith 2004). States may remain focused on containment, having little interest in responsibility-sharing, particularly in the form of resettlement. One could also argue that even with open settlements and full access to rights, geographic locations, prejudice, and dangers would still keep refugees from obtaining the freedom to move and work. In addition, limiting how long rights can be restricted in camps, and thus how long camps can exist, encourages settlements, which, though presumably better than camps, are not without drawbacks either.<sup>30</sup> Thus, the notion of time limits in a system of containment, refolement and responsibility-avoidance raises some concerns that must not be ignored.

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Hathaway’s argument that refugees be in charge of their own solutions holds, the Convention also has a cessation clause. For more, see Hathaway (2005) or Goodwin-Gill and McAdam (2007).

<sup>29</sup> Though one could argue this happens anyway.

<sup>30</sup> See Schmidt (2003).

### **Suggestions for further research**

A number of areas for further research emerge through a discussion of rights restrictions in LTE. Many have already been examined to some extent in the analysis of the paper, but deserve further exploration on their own. In addition, while solutions to PRS have been explored in recent literature, a greater focus on avoiding LTE, and issues that contribute to LTE would be helpful in understanding what responses are necessary for future displaced populations.

First, it is important to question whether voluntary repatriation should remain the favored solution by UNHCR and states, as holding out for return is one reason camp situations become protracted. In recent years UNHCR has viewed voluntary repatriation as “the most viable solution for the majority of people who find themselves in PRS” (UNHCR 2008: 9). However, many camp situations also become protracted as states wait for repatriation conditions, ignoring other solutions (Jacobsen 2001). It is also difficult to determine whether it is always truly voluntary, and UNHCR’s role has, at times, been questionable (Chimni 1999; Zieck 1997). Zieck writes, “...UNHCR decides the if, when...and how of return movements...without including the refugees in any of the formal decision-making processes” (1997:120). It is also unclear whether favoring voluntary repatriation is in the spirit of the Convention. Smith writes, “...the Convention’s framers envisioned permanent local integration in countries of first asylum as the most desirable outcome of refugee situations” (2004: 42). Therefore, whether voluntary repatriation should be the favored solution to long-term exile is unclear, and deserves further attention.<sup>31</sup>

Another area for further study would be to better identify when the emergency phase ends. As much a political as a technical issue, a clearer understanding would bring greater accountability for states that are denying refugee rights under the “emergency” label. It would be helpful to explore under what conditions states may be willing to provide greater access to rights. This links to broader questions about the relief to development gap and the “relief to freedom gap,” of refugee rights in camps (Smith 2004: 44). Similarly, clearer guidelines on when states can derogate from providing refugee rights may further uphold rights in the end, as better monitoring can be done (Durieux and McAdam 2004).

In addition, there is a need for new models of distributing aid and protecting refugees that are not only possible in camps where rights are restricted, but in open settlements and even urban areas. Jamal writes, “UNHCR and other international agencies need to be able to offer security without tying it to encampment” (2008: 154). One could also explore the professionalization of camp management and the urbanization of camps in relation to PRS (Agier 2002).

Another area for further exploration would be the extent to which UNHCR and other NGOs could consider reframing the way they discuss refugee influxes. If refugees were

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<sup>31</sup> The use of resettlement is also often neglected, even though it has helped unlock some protracted situations, such as with Bhutanese refugees in Nepal.

seen not as a burden, but as human beings with rights and economic potential, or even as assets, there might be room to move away from the trend of confinement and LTE (Jacobsen 2001). While this would require more research, good leadership, historical insight and creative thinking, it might also enable actors to draw on resettlement and local integration more. The extent to which UNHCR is positioned and able to do this would also need further research.

While many human rights organizations leave refugee issues to UNHCR, a greater involvement of the human rights community in camps might increase rights accessibility in long-term camp situations (Ferris 2008; Smith 2004). This would require openness on the part of UNHCR and implementing partners to allow human rights organizations to infiltrate their “territories.” Further study on how this could be achieved, and who is best suited to advocate for the human rights of refugees would be needed to fully explore these questions. This also relates to situations where UNHCR, rather than states, becomes seen as being responsible for rights (Goodwin-Gill and McAdam 2007).

The aforementioned question also relates to applying a rights-based approach, and to what extent UNHCR and its implementing partners are able to do that with respect to LTE. Clearly a rights-based approach is central to eliminating any protracted exile situation and replacing the care and maintenance approach would benefit refugees in long-term camp situations. However, more research would help further explain what this actually means, and how the denial of rights can serve as an obstacle to finding solutions.<sup>32</sup> Burden-sharing and issue-linkage are also related to this concept, and their relation to LTE is an important point of further inquiry.

Finally, there is a need for more research on self-reliance initiatives and their connections to solutions. The care and maintenance approach that has been employed in most LTE situations has led to over-dependency, tensions with host communities, and under-resourced refugees. Camps that exist over long periods of time must see “a transition from a service-delivery culture to one that engages the capacities of refugees in their own development and treats them as agents rather than subjects” (Muggah 2005: 153). Self-reliance initiatives have been a strategy in a number of camps, though it is clear that they must be realistic (simply giving refugees the opportunity to work and move but none of the land or resources to do so makes the gesture meaningless) (Crisp 2003).<sup>33</sup> This also relates to questions about how rights are interconnected, and how the denial of one right ensures the denial of another, as has been seen in the domino effect displayed when the right to work and freedom of movement are denied.

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<sup>32</sup> See Loescher et al (2008) for more discussion on rights-based approaches.

<sup>33</sup> In addition, not immediately cutting aid when camps open up is important (Muggah 2005).

## 5 Conclusion

In conclusion, this paper has questioned the legality of LTE with respect to human rights. LTE is one type of protracted refugee situation, which denies refugees a range of rights. As I have shown, requiring refugees to remain in camps for years on end is not consistent with international human rights law, particularly the rights outlined in the Convention. To better understand this, I have first examined the characteristics of LTE, and then the concepts and characteristics of camps, including how they became mainstream, their temporary nature, and arguments for encampment. I then demonstrated that LTE violates a range of rights, most clearly the freedom of movement and the right to work. This also required a discussion on how states derogate from making these rights available in emergency situations, and the murky lines between when a camp is in an emergency phase and when it is not.

The second part of this paper argued that placing time limits on rights restrictions, and by extension on encampment itself, may help prevent camps from becoming protracted. Ensuring that refugees have access to their full range of rights may mean that the camp itself may still exist as an open settlement with international aid, or that the durable solutions of local integration, voluntary repatriation or resettlement may occur, thus eliminating the need for a camp or settlement altogether. Limiting the denial of rights clearly does not address the root causes of protracted exile and LTE, and should not be seen as a “quick-fix” solution. However, I have explored how it may serve as a catalyst for swifter responses from regional and international actors to avoid some of the negative political, economic and security repercussions that occur because of LTE situations. Overall, limiting rights restrictions in camps is in the spirit of the Convention and other human rights law, and acquiring rights as soon as possible is part of the process of finding durable solutions. Thus, using a model where encampment is truly a temporary response to an emergency, rather than a care and maintenance operation that continues for years on end, would not only be more consistent with international legal norms, but ultimately benefit all involved.

Of course there are a range of concerns to explore when considering how to prevent and end LTE as it exists today. The puzzle is far from solved, and further study is necessary to better understand which solutions make the most sense with respect to PRSs, and more specifically, LTE. What is clear, however, is that a further incorporation of rights into camp situations as outlined in international law can only bring positive changes in the lives of refugees and hosts.

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