Comparative international approaches to establishing identity in undocumented asylum seekers

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Comparative international approaches to establishing identity in undocumented asylum seekers

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ABSTRACT

Identity is a fundamental part of the obligations assessments of asylum seekers: the reasons for persecution are inherently linked to the individual’s identity. However, the nature of forced migration means that many will not have access to such documentation, as demonstrated by the Australian experience. Still, there is no global consensus on how to establish identity in undocumented asylum seekers. This working paper assesses some of the measures taken internationally to address this, and proposes a multilateral data capture and sharing arrangement to assist in establishing a consistent and traceable identity profile and to support the verification of asylum seekers’ claims for protection.
INTRODUCTION

In 2016 the United Nations High Commissioner for Refugees (UNHCR) reported that forced displacement from conflict or persecution was at an all-time global high and that the trend was increasing. A total of 65.3 million people were displaced as at the end of 2015, an almost 10 per cent increase from the previous year.¹

What frequently complicates the effort to protect vulnerable people is their lack of verifiable identity. Whether due to failures of government in their country of origin, the need to flee without supporting documentation, or the destruction of such supporting information, those most in need of protection are often those with the most limited access to documentation that verifies their identity to an administrative standard.

For states in receipt of asylum seekers,² the challenge of verifying identity is well known, and most states have developed legislative and procedural requirements to meet it. Yet there is no recognised international consensus about how to best establish an individual’s identity.³

While identity plays a critical role in establishing an asylum seeker’s claims for protection, it also plays a critical role in their onward migration options and settlement opportunities. Given the increase in persons displaced by conflict and persecution in recent years, there is a need for international cooperation on the best methods for establishing identity in asylum seekers, as well as on internationally recognised standards for documentation. There is also a need for agreements on sharing data. Australia is well positioned to drive the implementation of regional and global data sharing networks.

A DEFINITION OF IDENTITY

Identity operates in a unique context in the international protection regime. The concept of identity is only briefly acknowledged in the 1951 Convention relating to the Status of Refugees (Articles 27 and 28 relate to issuing identity papers and travel documents), and not at all in its 1967 Protocol.⁴ While the most recent UNHCR Handbook for determining refugee status notes that those seeking protection may “have arrived with the barest necessities and very frequently even without personal documents”, there are no guidelines for establishing identity in asylum seekers.⁵ It has been left to individual assessing states to develop their own processes, procedures, and legislative guidance.

² For the purposes of this paper, the term ‘asylum seeker’ refers to those people travelling outside their country of residence but who have not yet been recognised as engaging protection obligations; ‘refugee’ refers to someone who has been found to be owed protection and granted the corresponding visa; and ‘migrant’ is a broad term used to describe all people travelling outside their country of origin in order to settle, whether through an irregular method or through the regular process of the settling country.
It might seem a simple question: what constitutes a migrant’s identity? While a contemporary approach to identity in Western democracies involves proof of personal information such as name and date of birth, identity has a much broader meaning in the context of assessing protection claims and can include country of nationality or habitual residence, citizenship, ethnic group, language, and religious sub-sector. Every element of an individual’s experience can contribute to their cumulative identity in distinguishing them from others.

No two countries have the same definition of what constitutes identity for the purposes of migration. Some countries have legally established definitions, while others have practical or policy-based definitions. In practice, these policy-based definitions represent a more open approach to defining identity, allowing for consideration of the numerous characteristics that determine an individual’s identity.

In Australia, the National Identity Proofing Guidelines, established by the Attorney-General’s Department, defines identity as “… some combination of characteristics or attributes that allow a person to be uniquely distinguished from others within a specific context”.7 Under section 91W of the Migration Act 1958, the Minister may request an asylum seeker produce “documentary evidence of the applicant’s identity, nationality or citizenship”. There is, however, a third pillar in establishing identity: ‘narrative’.

The Department of Home Affairs (the Department) relies on a system that establishes a migrant's identity by exploring the ‘three pillars of identity’, regardless of whether they are applying for protection or more regular migration pathways. The three pillars are: biometrics (physical attributes); documentation; and narrative. The narrative pillar comprises both objective data points such as nationality and ethnicity and subjective material including family composition, schooling, employment and training, or travel history.

None of these pillars can, in isolation, account for identity. Biometrics provide useful physical reference points for differentiating one individual from another. Genuine documentation provides the endorsement of the issuing country that the bearer is as named. However, it is the narrative — the accumulation of life experiences unique to the individual — that provides context to the other pillars.

In combination, these pillars allow for a comprehensive picture of an asylum seeker’s identity to be built from often incomplete data. Yet as the case studies in this paper show, a range of complex factors can cloud that picture. This in turn can inhibit the Department’s confidence in the identity that has been claimed. The Department uses an increasing scale to categorise their level of confidence in a protection applicant’s claimed identity.

<table>
<thead>
<tr>
<th>Identity as claimed</th>
<th>The unverified identity of the applicant as claimed to Australian authorities.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identity supported</td>
<td>Applicant’s claimed identity is supported by a combination of the three pillars of identity (narrative, biometrics, documentation).</td>
</tr>
<tr>
<td>Identity confirmed</td>
<td>Genuine identity document produced and no adverse information around identity.8</td>
</tr>
</tbody>
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6 Country of nationality is the country of a person’s citizenship or country in which the person is deemed a national. Country of habitual residence refers to the state in which a person has consistently lived regardless of whether they are deemed a citizen or national.


8 Note, citizenship applications require a confirmed identity.
THE AUSTRALIAN CONTEXT

On 25 March 2015, the Australian Parliament passed the *Migration Amendment (Protection and Other Measures) Bill 2014*. Among other changes, the bill created grounds to refuse a protection visa application when an applicant refuses or fails to establish their identity, nationality or citizenship. A few months earlier in December 2014, Parliament passed the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*, which codified the Australian interpretation of protection obligations under the 1951 Refugee Convention into Australian domestic law.

Both pieces of legislation arose from concerns over the scope of existing legislation to meet the evolving challenges of the asylum seeker caseload. Delays in processing of asylum seekers who had arrived on or after 13 August 2012 led to a backlog of over 25 000 claims.⁹

Significantly, the Protection and Other Measures Bill included amendments relating to the provision of documentary evidence of identity, nationality or citizenship for the purposes of a protection visa application. Schedule 1 amended section 91W (Evidence of identity and bogus documents) of the *Migration Act 1958* and inserted section 91WA (Providing bogus documents or destroying identity documents) to the Act, establishing the mandatory refusal of a protection visa to an applicant who:

- refuses or fails to provide evidence of identity, nationality or citizenship when requested to do so;
- provides a bogus document in response to such a request or provides bogus documents for the purposes of their application; or
- destroys or disposes of documentary evidence of identity, nationality, or citizenship, or causes such evidence to be destroyed or disposed of.

The refusal power had the broad caveat of not applying in circumstances where the applicant has a reasonable explanation and either produces documentary evidence of their identity, nationality or citizenship or has taken reasonable steps to provide such evidence.

The legislative changes coincided with, and were likely in response to, a series of challenges presented by undocumented asylum seekers arriving in Australia claiming protection. These challenges include: weak governance in the country of origin; complex ethnic interactions and statelessness; document destruction; security risk; and integrity of documents.

WEAK GOVERNANCE

In cases of forced displacement, the predominant challenge for states in receipt of asylum seekers is the temporary or structurally weak oversight of government administration in the country of origin. Consequently, in many cases asylum seekers are unable to obtain documents to the standards required by the assessing country. This is exacerbated by confusing identity scenarios brought about by porous frontiers and weak border management. One example is the Hazara population of Afghanistan.

The Hazara ethnic minority has a long history of persecution due to their Shia faith. In Afghanistan they are easily identifiable as a result of their Asiatic features and their use of the Persian dialect of Hazaragi.

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Hazaras have often fled to neighbouring countries: in 2015, the UNHCR estimated there were 2.7 million Afghan refugees registered in Pakistan and Iran, and the unregistered population is unknown.

At least four decades of such border-hopping means some people who are technically Afghan nationals were born and raised outside of that country: Hazaras, for example, have been present in Pakistan for several generations. Afghans are known to move easily between states for security or economic opportunity. This limits their access to even arbitrary and poorly secured certificates of identity from their country of origin, while in some cases allowing them to build a number of documents from a country they reside in illegally. Similarly, some claiming status as an Afghan Hazara may indeed be Pakistani or Iranian, raising issues not only of identity but also of effective protection.

Hazaras have traditionally formed a significant proportion of Afghan asylum seekers arriving in Australia. Of particular concern to Australia are Pakistani citizens claiming to be Afghan. In Afghanistan the most prevalent identity document is a taskera certificate, one page outlining basic narrative details such as name, date of birth and birthplace alongside a photograph. The format is non-standard and lacks any modern security features. A signature and stamp are often affixed by a local elder as an endorsement. Further, a taskera certificate is often accepted for preparing official documents, including Afghan passports.

The ease with which bogus Afghan documentation can be obtained — in either Afghanistan or Pakistan — makes it difficult to either verify or refute a claimed identity. A 2011 report by the US Embassy in Kabul noted that “Most, if not all, Afghan documents are ripe for fraud ... they remain handwritten, usually unsealed and quite commonly do not contain true information”.

Perhaps unsurprisingly, applicants who list Afghanistan as their country of origin demonstrate high rates of fraudulent behaviours compared to other cohorts. However, this is not necessarily representative of active attempts to deceive Australian authorities, but rather an indicator of how easily fraudulent documents can be obtained in Afghanistan as well the prevalence and normality of fraudulent documents. It highlights the difficulty for asylum seekers in understanding what a bogus, non-genuine, or fraudulent document is, and what is required by Australian authorities and why.

COMPLEX ETHNIC INTERACTIONS AND STATELESSNESS

In the case of some persecuted peoples, racial and ethnic identity is complex and difficult to distinguish. This is perhaps best exemplified by the case of the Rohingya in Myanmar. Generally, Myanmar has a complex system of identity interaction, involving elements of race and ethnicity, religion, language, and geographic location. A Department of Foreign Affairs and Trade Country Information Report for Myanmar

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10 UNHCR, “Global Trends: Forced Displacement in 2015”.
12 Ibid.
notes “different members of the same family may identify as belonging to different races, and the officially recognised race or religion may be different to how they self-identify”.16 Added to this are the comparable narrative and ethno-linguistic traits between the Rohingya of Rakhine state in Myanmar and Southern Bengalis.

The Rohingya are not recognised as citizens of Myanmar, despite residing in Rakhine for several generations. They lack citizenship documentation and face severe restrictions on freedom of movement, access to health care and education, and are the target of systematic extortion and harassment.

In the past, Rohingya have been issued documents of identity; however, these do not qualify as evidence of their citizenship. The Temporary Registration Cards issued in the mid-1990s were deemed invalid and removed from the populace. The mid-2015 ‘turquoise card’ for identity verification required participants to list their nationality as ‘Bengali’, clouding the veracity of their use as identity documents.

The uptake of such documents has been limited and the majority of Rohingya remain undocumented or improperly documented with compromised information. When Rohingya asylum seekers arrive in Australia, they cannot provide documentary evidence of identity. Further, those who fraudulently seek protection, for example citizens of Myanmar or Bangladesh or Bengali-speaking Indians, may dispose of their documents to obfuscate their identity.

DOCUMENT DESTRUCTION

Not all asylum seekers who arrive in Australia have such difficulties as the Rohingya in obtaining or retaining official forms of documentation. In some cases, asylum seekers admit to having destroyed their documents for a range of reasons, usually because they were advised to do so by people smugglers. Most often, this occurs en route to the asylum seeker’s final destination. In some cases asylum seekers have been found to have purposely destroyed or disposed of documentation in an effort to cloud the opportunities for their return (in most cases a country in receipt of a failed asylum seeker requires a confirmed identity before accepting their return).17

Destruction of documents is not confined to any single cohort of undocumented arrivals, but rather covers the range of asylum seekers coming to Australia. Some asylum seekers have reported to the Department that they flew to their Indonesian staging point before boarding boats to Australia, having either destroyed their travel documents before arrival or claiming to have travelled on a bogus document.

In these cases, there is an added complexity in establishing identity. If asylum seekers knowingly destroyed their documents or offered their official documents up for destruction by smugglers, they may fall under the refusal clauses established under the Protection and Other Measures Bill. If they claim to have travelled on a bogus document, this must be explored to ensure there has not been an active attempt to defraud the protection system.

The destruction or disposal of documents is not a comprehensive indication of fraud, and those who eradicate evidence of their identity may still have recognisable claims under the legislation. However, such actions may indicate an attempt to obfuscate and complicate the identification process.


SECURITY

Given the current international environment and the threat of terrorism, asylum seekers have assumed a national security profile. Chaotic and unmanaged border crossings offer opportunities for all transnational threats to spread. A lack of verifiable identity documents increases exposure to such risk and raises suspicion in the receiving community.

This is perhaps best exemplified by the Pashtun ethnic group. Pashtuns are the largest ethnic group in Afghanistan and the second-largest in Pakistan. Pashtuns are adherents of Sunni Islam, and the most significant insurgent groups in the conflict in Afghanistan, including the Taliban, are predominantly Pashtun.

Many Pashtuns who have arrived in Australia have claimed their place of birth or habitual residence to be the volatile Afghan provinces of Khost and Paktia, which border Pakistan’s Federally Administered Tribal Areas. These provinces are known for a consistently high level of insurgent activity and weak border management that has led to their use as a thoroughfare for insurgents seeking temporary sanctuary.

However, there is country information that indicates the Pashtuns have faced persecution by the Afghan insurgency, particularly on the basis of imputed political support for the Western forces. Given the ongoing nature of the conflict in Afghanistan, there is a belief in the asylum seeker community that Pashtuns are more likely to be granted refugee status if they claim to be Afghan nationals, rather than Pakistanis.

Ethnic allegiances in Afghanistan are such that there has always been the possibility that Pashtun asylum seekers could have been supporters or members of the Taliban or other insurgent groups. Equally, having resided in areas where they were likely to have direct dealings with such groups, it must be considered that they may well face a greater chance of being persecuted. Identification of such individuals can therefore be as much about protecting the Australian community as protecting the individual from persecution in their home country.

Speaking in 2017, UNHCR Assistant High Commissioner for Protection Volker Türk noted the parity between security and refugee protection:

“Good practice also involves cooperation between the asylum authorities and the security and intelligence services. Both have a role to play in identifying persons who may fall within the scope of an exclusion clause or who otherwise require appropriate measures to ensure the security of the host country and its community … Cooperation between different services needs to be based on a clear understanding of the special situation of refugees and asylum-seekers.”

Consideration of security is an important part of bolstering public confidence in the border management system. Although there is no evidence of a causal relationship between refugees and terrorism in Australia. Director-General of Security Duncan Lewis noted the Australian Security Intelligence

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Organisation’s concern over individuals is invoked “when there is a matter of security concerned”. Understandably, most states prefer that non-citizens released into their communities are not a threat to public safety. Such considerations may also affect whether the applicant meets the exclusion clauses in the Migration Act 1958 relating to committing a serious crime (section 5H(2)) and section 36(2C) or the security risk criteria for grant of a visa (section 36(1B) and section 36(1C)).

INTEGRITY

In accordance with Articles 27 and 28 of the 1951 Refugee Convention, many countries and organisations issue their own documents of identity or registration. For example, the Department issues Immicards, which document the current migration status of visa holders. Other examples include Red Cross Cards, UNHCR letters of registration, and IOM cards.

However, these documents are often issued with only superficial, if any, investigation of identity, with self-reported assertions often taken at face value. As they are not intended as an official identity document, the threshold for issuing such documents is lower. Rather than act as an anchor point for a verifiable identity profile, these documents often perpetuate the cycle of inaccuracy, contributing to the problem of multiple, unverified, or unsubstantiated identity. For example, a temporary document issued with incorrect details could be used to obtain other, more readily accepted documents, such as local driving licences, or social security cards, or even bills and bank account statements issued in that claimed name. This, in turn, establishes further narrative information in support of the applicant’s unverified identity. In lieu of official and verifiable identity documents officials often rely on unofficial documentation which uses a consistent identity.

METHODS OF ESTABLISHING IDENTITY

In response to these challenges, the international community has developed methods of establishing the identity of undocumented asylum seekers. These methods, which rely on a similar foundation to the ‘three pillar’ model of identity verification and build confidence in a claimed identity, include: supportive

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21 Section 5H(1) of the Migration Act 1958 sets out the substantive meaning of ‘refugee’; however, that section is qualified by operation of the exclusions clause in section 5H(2) which provides that section 5H(1) does not apply if the Minister has serious reasons for considering that an applicant: has committed a crime against peace, a war crime or a crime against humanity, as defined by international instruments prescribed by the regulations; or has committed a serious non-political crime before entering Australia; or has been guilty of acts contrary to the purposes and principles of the United Nations.

22 Section 36(2C) of the Migration Act 1958 provides that a person will be taken not to satisfy the complementary protection criterion if the Minister has serious reasons for considering that the applicant: has committed a crime against peace, a war crime or a crime against humanity, as defined by international instruments prescribed by the regulations; has committed a serious non-political crime before entering Australia; or has been guilty of acts contrary to the purposes and principles of the United Nations; or the Minister considers, on reasonable grounds, that the non-citizen: is a danger to Australia’s security; or is a danger to the Australian community, having been convicted by a final judgment of a particularly serious crime (including a crime that consists of the commission of a serious Australian offence or serious foreign offence).

23 An adverse assessment issued by ASIO.

24 Danger to Australia’s security or the Australian community.
legislation; narrative interview; biometric capture; document examination; and social media mapping and analysis.

SUPPORTIVE LEGISLATION

A 2013 European Migration Network study on establishing identity for international protection notes that:

“Rather than presenting valid identity documents, applicants tend to declare their identity. When third-country nationals do present identity documents, there are often difficulties in assessing authenticity, due to the presentation of false documents and claims of multiple identities. Moreover, there are attempts to mislead authorities and/or a lack of cooperation of the applicant, which not only impedes the assessment of an application for international protection but may also severely obstruct implementation of a return decision in cases when the asylum application is rejected.”

As noted above, neither the Refugee Convention and its Protocol nor the UNHCR Handbook for determining refugee status offer guidance on establishing identity of undocumented asylum seekers. Rather, individual states have developed their own bodies of legislation to support officials in meeting the challenges posed by lack of documentation.

For example, section 106 of the Canadian Immigration and Refugee Protection Act includes a specific, mandatory requirement to consider a claimant’s lack of documents to establish identity in assessing a claim for refugee protection:

“The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.”

This is bolstered by Rule 11 of the Refugee Protection Division Rules, which stipulates that the asylum seeker “must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them.”

The Canadian legislation and regulations provide powers relating to findings of general credibility where an applicant lacks documentation and cannot explain why. Legislation in Australia as well as many other jurisdictions now takes a similar approach, with the onus of proof being on the applicant to provide evidence to establish their claimed identity.

NARRATIVE INTERVIEW

Alongside biometric photographs, narrative interviews are the most common method used to establish identity in undocumented asylum seekers. In cases where an asylum seeker is unable to provide documentation in support of their identity, detailed interviews are conducted regarding their claimed identity in order to establish the credibility of their claims. These interviews are often lengthy and require significant research and preparation time.

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A study by the European Migration Network indicates the importance of interviews to establishing identity: conducting interviews with applicants for protection is mandatory or standard practice in 24 European Union member states and Norway. The exception to this trend is Poland, where conducting an interview is optional.26

The benefit of narrative interviews is they can be conducted in almost any location globally and do not require significant technological resources. A method of recording data and an interpreter are the minimum practical requirements. Consequently, this method is often used in cases of extreme migration pressure on border systems, including the emergencies seen in Iraq and Syria. Though resource-intensive, interviews offer the most comprehensive method to confidently arrive at an identity finding in undocumented or improperly documented asylum seekers.

BIOMETRIC CAPTURE

The Swedish Migration Board (SMB) is responsible for establishing identity in the approximately 90 per cent of applicants for international protection who do not present a passport at the time of their application.27 The SMB relies heavily on the results of fingerprint scans to locate data sources that may assist in establishing identity.

“By searching fingerprints through national and European databases we can see if the applicant has applied for a visa in another country, if the applicant has applied for international protection in another Schengen state or if the applicant has previously applied for international protection in Sweden. The sources can in turn be used to establish identity.”28

While biometrics are the easiest and most reliable method of identifying an individual, it requires that individual's identifiers to have previously been entered in a database alongside narrative or biographical data, and may further require data-sharing arrangements in place for authorities to access. States in the European Migration Network have access to the EuroDac (European Dactyloscopy) fingerprint database to assist in identifying asylum seekers and irregular border crossers. Further, the European Commission has legislation in place to support such capture and data-sharing arrangements. For a country like Sweden, which is rarely a country of first asylum, access to these biometric databases is extremely valuable.

However, transit and registration through a third-party country with more recognised systems of population and identity verification does not exclude the possibility of identity obfuscation and, given the lack of integrity measures in place during periods of high-flow irregular migration may also contribute to the problem.

26 Ibid, 16.


28 Ibid, 17.
DOCUMENT EXAMINATION

Document examination is vital to immigration, and specialised document examination officers provide technical skill in the verification of identity documents. Some countries have also established ‘centres of excellence’ to further refine and progress this skill set. The Norwegian ID Centre is one such organisation.

Between 2007 and 2011, Norway experienced an average rate of 94 per cent of protection applicants who were undocumented at the time of lodging their application.29 The Norwegian ID Centre reported the misuse of 996 documents by 821 persons in 2016. Various national ID cards, passports, and driving licences made up 70 per cent of the misused documents, of which a third were ID cards.30

In line with increased intakes from Iraq and Syria, the Centre also noted that 25 per cent of all persons reported were from Iraq while 15 per cent claimed to be from Syria. Importantly, the Centre identified that approximately 40 per cent of misused documents were from European Union or European Free Trade Association member countries.31

Document examination such as that by the Norwegian ID Centre allows for statistical analysis, risk profile generation by country cohort, and a targeted response to fraud and misuse of documents.

Also of note is the SMB’s approach to document examination. It recognises that measures used to establish identity in the absence of credible documentation and/or biometric matching are resource-intensive, and does not prolong the handling time for applicants from certain countries where credible documentation cannot or is unlikely to be produced, for example Somalia, Afghanistan, and other countries with inadequate population registration systems.32

SOCIAL NETWORK MAPPING AND ANALYSIS

Recent leaps in portability and cheap production of technology have played a role in the proliferation of social media, which can assist authorities in establishing identity. A social media profile often includes data consistent with that required to establish identity: name, age and date of birth, gender, country of origin, religion, political preference, familial relations, and even migration pathways. It can therefore be a useful tool in establishing the credibility of asylum seeker claimed persecution as well as claimed identity.

Social networking analysis can indicate connections between actors and have a secondary effect regarding identification of other asylum seekers and cohorts. The rise of social media networks has facilitated this process for authorities by replacing traditional, resource-intensive observation and mapping processes with more efficient (though still time-consuming) desktop analysis.33

31 Ibid.
IDENTITY ANCHOR: A MULTIPASS

Australia’s national framework and procedural methodology for establishing identity is aligned with countries experiencing a similar level of undocumented arrivals as well as with international best practice.

The instruments found in section 91 of the Migration Act 1958 place the onus of proof for establishing identity on applicants themselves, and reflect international trends towards refuting untested claims of identity. The legislation could be more effective by establishing an ‘anchor’ for that individual’s identity at the start of the asylum seeking process. This would give asylum seekers without adequate documentation the opportunity to establish a consistent identity foundation in the first instance.

With an appropriate legislative framework and regulatory practice in place, there is scope for Australia and our regional partners to collaborate on ensuring asylum seekers arriving in Australia have an identity anchor established as early as possible in their migration pathway, even if they are undocumented. This can be achieved through the development of an internationally accepted standard of identity document — such as a Multipass — which commences at the point of first interaction with officials and contains as much verifiable data as possible. The Multipass is then connected to that individual through a combination of finger, palm, and iris scan. The asylum seeker’s claimed identity at Multipass enrolment becomes an anchor point that can be used for establishing identity as part of the asylum process, as well as for onward migration and other settlement options.

BIOMETRIC IDENTITY MANAGEMENT AND THE ASIA-PACIFIC

Recording and retrieving biometric data such as iris scans, fingerprints, and facial features is one method of ensuring a more stable identity anchor. It is an area already being explored by the international community as an accurate way of verifying identity. Although many countries, including Australia, take some biometric information from asylum seekers as part of their application for protection status, the real benefit is in the comparison of such inputs to existing databases and the linked information they contain.

In accordance with its 2010 Policy on Biometrics in Refugee Registration and Verification Processes, the UNHCR notes that biometrics should be used as part of identity management to ensure that refugees’ personal identities cannot be lost, registered multiple times, or stolen. In February 2015 it completed development of a new Biometric Identity Management System (BIMS). The BIMS project was developed in conjunction with corporate partners and built on the UNHCR’s successful use of biometrics across a number of its global operations.

The aim of the BIMS project was to link easily captured biometric data to refugee registration data in order to anchor an individual refugee’s claimed identity with a verifiable and easily checked source of biometric identity data. The pilot program was field tested in a range of UNHCR operations in India, Thailand, and Chad, among others. As at mid-2017, the program had been rolled out to 26 UNHCR field operations, and deployment is ongoing.

The system comprises a single global database of captured identity data that is verified through a biometric anchor. When someone is registered on the system, BIMS searches the database to ensure they have not been registered previously, and will alert the operator and cease enrolment if that biometric

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34 For the purposes of this paper, an ‘identity anchor’ is defined as the first verifiable identity details officially stored by authorities and matched to biometrics. It forms the starting point for asylum seekers to present a consistent identity to authorities and reduces the risk of multiple or unverifiable identities.


36 Tamas Almos, Associate Registration Officer, Biometrics, UNHCR Copenhagen, interview with the author, 11 May 2017.
datapoint (that is, an individual’s iris or fingerprint scans) already exists. BIMS plays an active role in addressing identity fraud and scenarios of multiple identity. The system takes an average of five seconds to identify a refugee when two identifiers — consisting of fingerprints or iris scans, or a combination of the two — are presented.

Enrolments take three to five minutes, depending on the level of data being captured. Aside from biometrics, the system also captures core data sets including name, parents’ names, date of birth, gender, country of origin, and previous residential address, but can also include religion, education, and occupation.37

The system allows for anchoring the asylum seeker’s claimed identity as close as possible to their first interaction with the organisation, and provides a portable, easily searchable reference point for all further interactions, including determination of refugee status. In this way, the system helps provide increased integrity in the asylum seeker’s identity and persecution claims history.

The UNHCR is also working with international partners to explore the viability of BIMS to contribute to resettlement through its humanitarian program. However, what is required is the development of a similar type of model for Australia’s Permanent and Temporary Protection Visa systems.

A similar system to BIMS could be developed in the Asia-Pacific region to enrol, document, and create identity anchors for irregular migrants.

Given Australia’s existing legal provisions for such biometric collection measures under section 257A of the Migration Act 1958,38 it would be well placed to lead the region in the development of such identity efforts.

**BENEFITS AND CHALLENGES**

There are a number of benefits and challenges of a Multipass system.

**ONWARD MOBILITY AND REFUGEE AGENCY**

In Australia, a protection visa grants residency rights, either permanent or temporary, to the recipient in the country of issuance, but does not always lead to citizenship conferral or the ability to travel.

An internationally or regionally recognised Multipass would confer some state protections on the visa holder for the purposes of travel and, importantly, state endorsement of the bearer’s identity, all without conferring citizenship of the issuing state. Where existing travel documents (non-passports) compliant with the International Civil Aviation Organization have limited acceptance among some states, a key function of a Multipass must be its multilateral acceptance as an identity and limited travel document.

The ability for a recognised refugee to travel within the Asia-Pacific for work offers agency to those who require protection but still have skills, knowledge, and labour to utilise, and connects these irregular migrants with regular migration pathways into the future. In essence, this would recategorise their emergency migration from a passive journey into an active one.

While many state’s issue identity and travel documents in line with their obligations under the 1951 Refugee Convention, Convention Travel Documents (CTD) do not provide for international mobility in lieu

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37 Ibid.

38 Section 257A of the Migration Act 1958 states that a person may be required to provide personal identifiers as defined under section 5A(1)–(3), including fingerprints, facial images, and iris scans.
of a national passport. In theory, for example, a refugee with a CTD should be able to immigrate “to Canada as a refugee from Afghanistan living in Iran”. In practice, however, CTDs are difficult to obtain and not widely accepted by states as travel documents.

Many states hinder the ability of refugees and asylum seekers not only to seek protection, but also their access to onward migration and the opportunities such migration brings. A Multipass system could support access to existing legal migration outcomes. In the case of Australia and our region, offering refugees mutual access to legal migration channels facilitates skilled and unskilled labour movement and connects refugees with opportunities.

But the many benefits of verifiable identity in the long or short term start with early, comprehensive registration. Standardised and digitised registration containing both biometric and biographical data would simplify many later processes including applying for visas, the issuance of identity documents, and security screening.

A Multipass system could also assist with returning asylum seekers who are found not to be owed protection. The returns process requires a high standard of identity assuredness and the acceptance of the first country, usually through issuance of a travel document. A Multipass system could support returning countries in establishing the identity of unfounded asylum applicants, and in engaging the returns process.

INTERNATIONAL NORMS AND PROTECTION OF LABOUR MIGRANTS

Arguably the single largest challenge to the 1951 Refugee Convention and 1967 Protocol is the lack of unanimous acceptance among members of the United Nations. As noted by Koser in 2015:

“The often cited statement that there are no signatory countries lying between some of the main origin countries for asylum seekers in Australia (Afghanistan, Iran, Sri Lanka) and Australia itself is not quite true (Cambodia, China, Papua New Guinea, and the Philippines are all signatories to the 1951 Convention, as are some of the Pacific islands). However, it is true that none of the major transit countries for these asylum seekers — India, Indonesia, Pakistan, Thailand — are signatories.”

Koser argues that rather than a significant hindrance, this provides an opportunity for Australia to take the lead in shaping an asylum system that these neighbours would be willing to endorse and implement.

Given these migrants would already have recognised identity credentials and residency rights in a Multipass ‘member country’, there would likely be a decreased risk of exploitation of migrant workers and would build on existing mechanisms protecting labour migrants. Such measures would also bolster the integrity of border management and security in the region.

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43 Ibid.
DATA SHARING
A Multipass identity document is not, in itself, revolutionary. Most governments with control of such administrative systems issue documents and certificates of identity, many of which include biometric data. What would make the Multipass proposal successful where others are limited is in the sharing of data between states and multinational organisations. The challenge this presents is also why such a proposal has likely not yet been implemented.

The sharing of identity data between states is a complex issue. Concerns about privacy, integrity of data storage, longevity, corruption, and identity theft are all significant considerations for any such proposal. While such considerations are under discussion through the Bali Process sub-committee on Biometric Data Sharing for Identity Verification, the current discussions operate under a limited scope.

The concept of sharing personal identifier data across international borders also raises complex legal and ethical issues. These must be addressed for public confidence in the integrity of the Multipass proposal. Alongside foremost concerns about privacy and the use and storage of personal data there is also function ‘creep’ — the gradual increased scope for the use of data beyond the purpose for which it was originally intended. Such concerns are valid; however, given Australia’s strong legislative and judicial system and privacy laws, as well as our key position in multilateral organisations that would implement any such system (such as the Bali Process), this is a concern that could be overcome.

PRIVACY
A founding consideration of any such Multipass system must be the protection of information and of individual privacy, especially when considering the sensitivities around claims for protection. Australian management of personal information is protected by the Privacy Act 1988, in particular the Australian Privacy Principles (APP) contained in section 1 of the Act. More specifically, the APPs place increased weight on the protection of ‘sensitive information’ such as biometric information, but also race and ethnicity, political opinions, religious beliefs, and sexual orientation — the very information that the Multipass system would seek to capture.

While the scope and depth of the data-sharing arrangement would be more significant under the system, Australia already has legislative provisions in place to protect data captured through immigration processes. It also has data-sharing arrangements for immigration purposes with specific international partners.

The Five Country Conference (FCC) is an international immigration arrangement allowing for the sharing of data between Australia, Canada, New Zealand, the United Kingdom, and the United States. The agreement uses fingerprint searches to request biodata from other partner organisations. The arrangement is governed by a set of agreed principles: if a country receives a request and finds no

match in their database, the fingerprint is destroyed; no information is shared unless a fingerprint is matched; and member countries do not share the personal data of their own citizens.47

Using these systems as a foundation for best practice management of private, personal, and sensitive data-sharing would allow for the development of a secure and durable multilateral data-sharing arrangement.

CONCLUSION

The establishment of identity in an asylum seeker has both administrative and operational value. A verifiable identity can significantly contribute to an individual’s claims for protection, for example by establishing a profile or reason for persecution. Alternatively, a lack of documentary evidence for the identity of an asylum seeker is not considered a valid ground to reject their application.48

Faced with unprecedented levels of undocumented asylum seekers, Australia’s legislative, regulatory and administrative practices of establishing identity meet with the standards found in other processing countries internationally. Australia could reinforce this legislative framework and practical endeavours through a regionally accepted approach to the enrolment, verification, and documentation of identity in asylum seekers as early as possible in the migration process.

Doing so through the realisation of proposals such as a Multipass system will not only benefit Australia through expedited asylum processing, but through processing integrity, and migration and permanency outcomes for asylum seekers and refugees. A focus on establishing identity will help Australia to better offer protection to more people in need.


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