REFUGEE UPDATE

ISSUE NO. 47 A JOINT PROJECT OF FCJ HAMILTON HOUSE REFUGEE PROJECT AND THE CANADIAN COUNCIL FOR REFUGEES SPRING 2003

INSIDE:

BORDER ISSUES PAGE 2
IRPA 8 MONTHS ON PAGE
THE VIEW FROM DOWN UNDER PAGE 6
GENDER ANALYSIS PAGE 9
A STORY FROM THE BORDER PAGE 11
STATISTICS PAGE 14

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Since the end of January, the Canadian government has forcibly returned to the United States hundreds of people trying to seek Canada's protection. They are given an appointment to return to Canada to pursue their claim, but, as the Canadian government is fully aware, many of them are detained by the US authorities and therefore unable to return to Canada. Others avoid being directed back by trying to make an appointment in advance, but the immigration department has allowed the system to backlog and waits are up to 7 weeks, during which time many families have no means of supporting themselves.

The Canadian Council for Refugees continues to urge the Canadian Government to cease returning refugee claimants to the US, especially when they risk detention and when they have no resources to care for themselves during the waiting period. The government should increase resources at the border points in order to process claims in a timely manner.

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FORCED RETURNS OF REFUGEE CLAIMANTS TO THE US BY THE CANADIAN GOVERNMENT

Questions and Answers prepared by the Canadian Council of Refugees (CCR)

What has changed in how refugee claimants are treated at the US-Canada border?

On January 27, 2003, Citizenship and Immigration Canada issued new instructions stating that refugee claimants at the US-Canada border who cannot be immediately processed on arrival in Canada may be given an appointment to return to Canada later and directed back to the US to wait for the appointment. Reversing earlier policy, these new instructions say that direct backs are permitted even if the claimants will be detained by the US and therefore unable to return to Canada for their appointment.

Since the end of January, most refugee claimants coming to the border have been forced back to the US. Canada has international obligations towards anyone who comes to the border and seeks our protection.

What happens to claimants forcibly returned to the US?

On return to the US, most men and boys over 16 years of age are detained by the US immigration authorities if they do not have legal status in the US. This is particularly the case with nationals of Middle Eastern and South Asian countries currently targeted by US policies. Some of those detained have been able to be released by paying bonds, ranging from $1,500 to $20,000. Collectively refugee claimants directed back have paid up over $100,000 in bonds to the US government. Little of this money will be recovered by claimants who come back to pursue their claims in Canada.

Detainees not able to pay the bond or not offered release on bond are sent to jails in the US where they are detained alongside criminals. Conditions are grim, communication with family and friends difficult, and access to legal assistance minimal or non-existent.

What happens to those not detained?

Refugee claimants are having to wait 6-7 weeks for their appointment to enter Canada, even though they may have no means of supporting themselves. There are no established services for claimants sent back from Lacolle (south of Montreal). The Salvation Army and Vermont Refugee Assistance have responded to the crisis by providing emergency shelter, but the scale of the need is beyond their means. Centres assisting refugees in Detroit and Buffalo are seriously over-taxed by the long waiting times. Refugee families are in a state of extreme anxiety as they wonder how they will provide for themselves during the long wait.

Why are numbers of claimants at the border up?

Many (but not all) refugee claimants at the border are of nationalities, notably Pakistani, targeted by recent discriminatory registration programs in the US. Male adults from the age of 16 up of countries that are predominantly Muslim are required to register themselves if they do not have permanent status in the US. Those without status may be detained and processing will begin for removal. The registration requirements have added to the climate of fear among affected communities, who remember the thousands arrested in the aftermath of September 11, and held for months, often in disregard of due process rights.

Why don't people claim refugee status in the US instead of coming to Canada?

Many people come to Canada because they do not believe they will get a fair hearing in the US. The US has a rule that refugee claims must be made within one year of arrival in the US. Many of those fleeing the registration programs have missed that deadline. Many Pakistanis also fear that the close cooperation between the US and Pakistani governments means that refugee claims accusing the government of persecution will not given a fair hearing. Similarly, many Colombians do not wish to claim in the US because of the US government's involvement in conflict taking place in their country.

Aren't many of the claimants economic migrants rather than refugees?

A person may be a refugee with a valid fear of persecution even if they have been living in the US without claiming refugee status. People are often unaware of their rights, especially since legal aid is not available in the US. Also, as long as they were safe and there was no threat of deportation, they did not need refugee status. Now that the situation is changing in the US, people who fear persecution in their home country are asking themselves how they can best find protection.

Don't people without status deserve to be detained?

The US economy has long depended on the contributions of workers without status. There are an estimated 7 million people living in the US without status. For years this has been treated as normal, but now the rules are changing and people are being penalized. While

any country has the right to remove people without legal status, it does not follow that they should be jailed, particularly, as happens in the US, alongside criminals and in often appalling conditions, with very limited access to legal counsel.

What should the Canadian Government do?
The Canadian government should revert to its earlier policy of not forcing back to the US any claimants who will be detained by the US. In addition, extra resources should be allocated to processing claims at the border. In June 2002 when there was a similar increase in numbers at the border, the Canadian government assigned more officers to process claims. This time,
however, there has been no effort to respond to the increase in claims by increasing resources. The result is a denial of the fundamental rights of claimants detained in the US and a humanitarian crisis.

IRPA 8 MONTHS LATER: A SNAPSHOT VIEW ACROSS THE COUNTRY

BRITISH COLOMBIA

BY ALISTAIR BOULTON

Even with the Safe Third Country Agreement with the USA stalled, the overall number of refugee claims in the B.C. region has declined. There has not yet been a noticeable improvement in the speed of processing, however, due to the size of the pending caseload and the failure to fill vacancies at the Refugee Division.

The Refugee Division's expanded jurisdiction has given rise to some positive decisions but these have been few. According to a former Refugee Division Member at a seminar in December 2002, few claimants are arguing the expanded jurisdiction, even where it may be fruitful to do so, for example in lack of nexus or harsh prison condition cases.

Despite the Minister's promise to the Canadian Council of Refugees last May in St. John's, Newfoundland to implement the Refugee Appeal Division (RAD)within one year, the RAD appears no closer to being established. One negative and largely unforeseen implication is that refugees whose claims have been refused are given only 30 days from the date the order comes into force to leave voluntarily in order to avoid being deemed deported and requiring the Minister's consent to return. No substantive review of the negative decision can take place in this time. This discourages certain unsuccessful claimants, who may have immigration options to return to Canada from leaving.

The new risk determination process (PRRA) initially suffered confusion about who was entitled to comprehensive reconsideration and who could only submit new evidence but this seems largely now to have been resolved. Decisions are not always provided in a timely way and there are persisting issues with respect to the adequacy of separation between enforcement and risk review functions.

A positive development in Vancouver is the creation at Canada Immigration of a specialized Pre-Removal Risk Assessment/Humanitarian and Compassionate (H&C) unit. These officers are charged with determining H&C applications involving a risk element, of which there are apparently 500 presently in backlog. The officers are trained in both risk and H&C grounds. The delays inherent to the former process of framing risk decisions out to PCDO have been eliminated and interviews now cover all the asserted grounds in the H&C application. Initial impressions of applicants and advocates attending these interviews have been positive.

Alistair Boulton is a lawyer working in Vancouver

WINNIPEG

BY JANIS NICKEL

It is the consensus of the private sponsorship, family class sponsorship and in-Canada protection areas that IRPA has created a lot more work for us; the forms are longer and more complex, information and/or assistance from Canada Immigration is increasingly difficult to access and there is a general offloading of responsibility to applicants, sponsors and NGOs. Positive aspects of IRPA has been the successful sponsorship of dependants up to the age of 21 and, although some of the available options put additional responsibility on sponsors, it theoretically reduces some of the processing times. In reality we have not noticed any shortening of the processing times for family class and the private sponsorships seem to be taking even longer than before.

The largest impact has been felt by in-Canada protection. The combination of the single Immigration and Refugee Board (IRB) member and lack of a Refugee Appeal Division (RAD) has put several claimants at serious risk. I can site three compelling cases where a particularly mean-spirited Board member gave negative decisions - an Iranian woman with charges pending in the Islamic court, the well documented case of a Peruvian doctor and a Roma minor - which would have had excellent potential in an appeal on merit.

The combination of IRPA and the Board rules has seriously increased our workload. The forms are complex, requirements are stringent and rules have usurped common sense: The interpreter declaration we have used for years had to be changed, documents not 8 ½ x 11 have been rejected, additional information not signed by the claimant is no longer acceptable, abandonment notices have been sent out when a Personal Information Form (PIF) is two days late, pre-school children need to submit 21 page PIFs - in triplicate, etc., etc. Up-front information and documentation is essential and new or expanded details presented at hearings is increasingly suspect. Although our local Board members need to be commended for their efforts to ease the transition the rules are, nevertheless, obsessive.

We are seeing an increase in participation by the Minister's office, although more frequently by documentation than attendance at hearings. In one case CIC did extensive investigations in the claimants' country of origin with questions directed at the persecuting bodies, using as justification absurd allegations of war crimes, and submitted a 295 page intervention document to the Board.

Recently two claimants (Iranian and Afghan) were excluded under 1Fa, both of which appear to be based more on opinion than fact.

PRRA applications for failed claimants are largely redundant and generally serve only to buy some additional time before removal. This has, however become an important factor for all the rejected sponsorship applications submitted by Canadian spouses of refugee claimants.

It appears that many individuals and lawyers are unaware that refugee claimants can no longer be sponsored as an in-Canada spouse. Many applications are being returned by Vegreville with a rejection letter some four to six months after the application was made. By this time the removal clock is ticking and we are pressed for time to submit the correct (H&C) application. In addition, there is no clear indication in the H&C application as to how this is to be used with a sponsorship by a spouse as the sponsored individual must still prove excessive or unusual hardship. This is only one other way in which refugee claimants are being penalized by CIC for being in Canada.

The border situation, which has long been deplorable, is now worse. Although our numbers are very small, those being directed back are in precarious situations equal to that of the hundreds in Eastern Canada. The difference is that it is difficult to get any information about what is happening at the smaller Ports of Entry.

My general perception in working with claimants under IRPA is the underlying CIC message:

1. We don't want you here and will do all we can to keep you out
2. If you manage to get here we will treat everything you do or have done with suspicion
3 If you have used false documentation or information to get here it will be used against you
4. If you manage to get recognized as a "Person in need of protection" we will put all possible obstacles in your way in your efforts to become a permanent resident.
5. If you manage to become a permanent resident your residence here will remain forever insecure.

Janis Nickel is a Refugee Claimant Advocate at Welcome Place, Winnipeg

PROTECTED PERSONS IN IRPA

BY RAOUL BOULAKIA

The Immigration and Refugee Protection Act, which came into effect June 28, 2002, introduced a new dimension to refugee hearings. In addition to having the power to determine claimants to be "Convention refugees", under the established international law definition (s. 96), Board members can now determine that a person is at risk of torture (s. 97(1)(a)) or at risk to their life, or of cruel and unusual punishment (s. 97(1)(b)). Most valid refugee claims present an overlap between being a Convention refugee, being at risk of torture, and/or being at risk of death or cruel and unusual punishment. When there is an overlap (i.e. a person fears being detained and possibly tortured and killed by her government because of her political opinions), and the person can be determined a Convention refugee, the Board members are expected (by the Board's administration) to base their decisions on the Convention grounds alone. In practice this is what they do. I haven't participated in a hearing where the Board could have ruled on two or three of the provisions and did so. This is logical, since Convention refugee protection is a concept recognized in international law, and carries greater weight than "protected person" status -which depends solely for its interpretation on the current statute. In theory a Convention refugee is entitled to the rights set out in the Convention, and in litigation these can be asserted in interpreting the Immigration Act. For example, when we litigated the issue of Somali refugees not being landed for lack of identity documents, the argument relied on was the Convention provision that host states should facilitate the integration of Convention refugees. While there is little case law on applying the international law rights of refugees, Canada's commitment to them theoretically goes beyond what the Act says. I would always prefer to have a client declared a Convention refugee.

However there are cases where a person is at risk, but it is either impossible to classify them as a Convention refugee or the Board is more comfortable defining them as a protected person. Abstract examples would be a petty thief from a country where maiming is the penalty for theft, or a person fears being killed by criminals and cannot get state protection. An example of a case where the Board member felt more comfortable relying on the protected person classification is a recent case I acted in for a Sri Lankan asylum seeker. The claimant had presented a detailed written statement, asserting that he had been specifically targeted for abuse because he is a Tamil. Days before the hearing, he advised me that he had lied and wanted to admit this, but he still feared returning to Sri Lanka. Although he had not suffered any specific abuses, he felt generally insecure in Sri Lanka because there are often abuses against Tamils, and he expected that if he were deported he would be imprisoned and tortured. Sri Lanka passed a law in 1998 requiring that all people who try to escape Sri Lanka illegally shall be detained for a minimum of one and a maximum of five years. In practice this is applied to Tamil deportees, who are generally rejected refugee claimants. In practice they are held in pretrial custody for a long time, often over a year, before sentencing, and they are often tortured in detention. I argued that this risk of detention can be seen as linked to the Convention grounds, since it mainly targets Tamils, but in the alternative the claimant was a person in need of protection, being at risk of torture and/or cruel and unusual punishment. The Board felt that the claimant's general fear of abuse for being Tamil was speculative, however it was concerned with the issue of detention of Tamil deportees. In the end it issued a written notice of decision declaring the claimant to be a protected person. The Board had clearly accepted the claimant solely based on the risk of deportation. However the Board issued no reasons discussing this issue which is (to the extent Board decisions have persuasive value) rather precedent-setting. Subsequently I represented a refugee claimant who had been horrifically maimed, sexually abused, cut and beaten by the rebel soldiers. Since then the same soldiers had joined the national army as a result of a peace accord. The Board member advised me that she felt the claimant could

be determined to be a person in need of protection, because of her vulnerability to further abuse whether or not this would be linked to political persecution. However the Board member preferred to rely on the Convention definition, and accepted her as a Convention refugee. I was told that the Board members are leery of relying on the protected persons categories because Immigration is aggressively litigating any positive decision made determining people to be protected persons. It seems that the Board members are hesitant to rely on the protected persons categories for a combination of reasons. One is that it is most often logical to base a positive decision on the Convention. A second is that the protected persons categories are new and unfamiliar. A third is that Immigration is trying to give with one hand and take back with the other. Rather than encouraging the Board members to be creative and develop their own tribunal jurisprudence on this new aspect of the law, Immigration wants the interpretation of it to be constrained.

Raoul Boulakia is a refugee lawyer working in Toronto

COMMEMORATE REFUGEE RIGHTS DAY
APRIL 4 - 2003

"WAR PRODUCES REFUGEES"

. This year marks the 18th Anniversary of the Supreme Court of Canada ruling in what has become known as the **Singh Decision** - that refugees are entitled to fundamental justice. Refugee Rights Day is a time to remember the struggles th refugees go through, the many and varied contributions they make to our countr and the hope that Canada will continue to maintain its resolve in protecting refu ee rights, both at home and abroad.

Show your support for true equality, for justice and for peace.

For information on program on April 3 in Toronto, phone: Marta Orellana (416)322-4950

"WRONG PLACE, WRONG TIME, WRONG DREAM AND WRONG COLOUR"

THE CRISIS OF REFUGEE PROTECTION IN AUSTRALIA

BY KEN LUCKHARDT

So ends the second line of the chorus to "Ibrahim", a powerful musical indictment of the treatment of refugees in Australia by Eric Bogle, one of the most progressive English-language folk singers in the world today.

Within days of my arrival in Melbourne, news reports began documenting another five days (December 27-31, 2002) of "rioting" (read: resistance), "attempted breakouts" (read: attempts to gain freedom) by "asylum seekers" (read: refugee claimants) at five of Australia's seven notorious immigration detention centres.

Fires and other damage deliberately initiated by the detainees led one sympathetic Australian to write in a letter to The Age (Melbourne) that she does "not begrudge the incineration of (her) tax dollars if those dollars have contributed to the institutionalization of human rights abuse."

Such views are slowly gaining ground as more and more

Australians finally comprehend the inhumane realities for the unfortunate detainees in these centres. It is in these virtual prisons that the Howard Government's principal method of responding to boatloads of desperate peoples fleeing repressive regimes plays itself out.

There is a superficial irony in all this: the very people who were victims of a dictatorial regime (in Iraq) and fundamentalist regime (in Afghanistan) are languishing in concentration camps surrounded by barbed wire that were created by the same government that can't do enough to be George Bush's deputy sheriff in the South Pacific. Below the surface however, there is no irony at all...only an ugly national chauvinism that is rooted in colonial values and skin colour.

Prime Minister Howard, against the overwhelming will of the Australian people, commits Australian troops to a US-led war in Iraq, while he simultaneously heads an administration that has given new life to the historic and very racist "White Australia" policy that was officially ended in 1966.

In this context, it is only fitting that the privatized management of these detention centres that house over 8,000 human beings has been a subsidiary of the U.S. security multinational, the Wackenhut Corporation.

The past decade has witnessed a horrendous litany of refugee abuse in a country which had, in contrast, successfully and peacefully settled tens of thousands of Vietnamese refugees in the mid-1970s. Australia has become, for example, one of only four countries (along with Greece, Turkey and Poland) to put ALL "asylum seekers" in prison/detention AS A MATTER OF POLICY.

The geographical remoteness and exclusion of media scrutiny from the centres has rendered invisible the constant neglect, the use of tranquilizing drugs and the deliberate sexual abuse and violence against detainees. Over time, the very process of removing those who arrive by boat from the larger Australian community has made it easier to foist a calculated and repressive ideology upon the body politic, namely that the boats arriving are full of "criminals" or at least "queue jumping invaders" who needed to be "locked up". Once these innocent refugee claimants are behind lock and key, the presumption of criminality is easier to peddle through the state propaganda machinery.

Policy now dictates that these "unlawful" arrivals who come by boat can, at best, receive 3-year protection visas while also being denied other programs (e.g. ESL courses) available to "bona fide" refugees. The protection visas further prevent spouses and children of detainees from joining them in Australia.

Kosovars, in contrast and not surprisingly, received a specially-created "safe-haven" status in 1999, while East Timorese who arrived in Australia after the independence referendum the same year were subject to much tighter controls. When Kosovars returned to Kosovo they were each given $300, yet when East Timorese returned to East Timor they were given a groundsheet, blanket and sack of rice.

Such policies and practices reached a climax in 2001 when the Australian government refused to allow a boatload of potential refugees to land on Australian soil. The infamous "Tampa incident" is well known to most followers of refugee developments, and it set in motion the even more ominous proposal of a "Pacific solution". Such a solution amounted to finding a suitable dumping ground (in this case, the island of Nauru). However, it is well within the political purview of other developed Western countries to seek similar "off-shore" locations as more and more people from the South try to escape the political and socio-economic realities of neo-liberalism and war.

The combination of racist ideology and institutionalized repression worked: John Howard's right-wing government recaptured the political momentum and was reelected in the Fall of 2001. By creating a crisis out of the Tampa incident, "Australia had its race election at last", in the view of political commentator Mungo MacCallum. Sadly, the Labour Party hid from taking on the issue and in so doing betrayed not only all prospective refugees in Australia but its party membership as well.

The Howard Government policies have taken their toll: no boats of "unlawful" arrivals have landed on Australian shores since December 2001, a period of 14 months. Even more alarming are the now documented effects on the detainees in these centres over the past three years.

As Peter Mares states in his excellent book on the refugee situation, Borderline:

"By early 2002 it had become almost commonplace to read....of detainees damaging their own bodies, whether it was slashing themselves, banging their heads against brick walls, swallowing shampoo, overdosing on pain-killers, refusing to eat or, indeed, suturing their lips.....(T)here were 264 incidents of self-harm (in the detention centres) between 1 March and 30 October 2001—an average rate of one incident every day." (Pp.16-17)

As the number of detainees decline, those remaining fear the worst: imminent deportation when their temporary "protection visa" expires. This trauma in itself leads to further injury. As an example, an Afghani doctor whose protection visa was to expire in April of this year committed suicide during the first week in February.

With each additional death or attempted suicide, the extent of the mental health crisis amongst detainees becomes

better understood. The Royal Australian and New Zealand College of Psychiatrists has recently called for an urgent, independent review of the mental health of detainees in the centres.

Although it is impossible to hear the music or the passionate voice of Eric Bogle when he sings his tribute to refugee detainees, the power of the lyrics from "Ibrahim" are unmistakable:

"Hey Ibrahim tell us what do you think of Australia
Do our beautiful desert sunsets fill you with wonder?
As the sky catches fire and the trees and the mountains change colour
But I guess the view from this side of the barbed wire's much better.

So, Ibrahim, can you tell us, why did you come here
What dream were you chasing and what did you hope to find here?
Did you flee from your own native land because your life was in dange
Or were the reasons much more mundane, just poverty and hunger?

Wrong path, wrong choice, wrong creed, wrong culture
Wrong place, wrong time, wrong dream and wrong colour

You see Ibrahim, you've become a bit of a problem
The world's full of refugees fleeing poverty, war and oppression
So to take in queue-jumpers like you, well it's out of the question
It would give the world's hungry and poor the wrong impression

I'm afraid Ibrahim, it's time to be totally candid
You had Buckley's chance* right from the moment you landed
Already to many a danger and a threat you were branded
And all because you follow the prophet Mohammed

You didn't count, Ibrahim, on political opportunism
Our leaders knew that to many Australians the very word "Muslim"
Meant Al Queda, Hamas, the Taliban, terrorism
And that's why you and your family are locked up in prison.

*"Buckley's chance" is an Australian expression which means "no chance at all". The title of Eric Bogle's new CD which includes "Ibrahim" is entitled "The Colour of Dreams".

Ken Luckhardt sits on the Editorial Board of Refugee Update and is currently in Australia while on sabbatical leave from the International Department of the Canadian Auto Workers-Canada. He hopes to submit a second article for the next issue of Refugee Update on the current attempt by the Australian Government to deport some 1,500 East Timorese back to their homeland.

GENDER BASED ANALYSIS IN IRPA:
WILL IT MAKE A DIFFERENCE FOR REFUGEE WOMEN?

BY NAOMI MINWALLA

Gender Based Analysis (GBA) is the assessment of how legislation and its accompanying regulations and policies affect men and women differently. The new Immigration and Refugee Protection Act (IRPA) requires the Minister of Citizenship and Immigration (the Minister) to analyze the differential impacts of the IRPA and report the GBA results annually to Parliament. While this unprecedented initiative of the federal government is laudable in theory, it is questionable whether, in practice, the GBA will truly improve things for refugee women.

Areas in the IRPA can already be identified as negatively impacting women more than men. The Safe Third Country Agreement, soon to be in force with the United States, is a prime example. For instance, the American asylum system has no equivalent of the Canadian Gender Guidelines for refugee women. The Canadian Gender Guidelines ensure a fair process for female refugees fleeing female-specific persecution such as domestic abuse, forced marriages or female genital mutilation. Pursuant to the Safe Third Country Agreement, refugee women who are sent back to the United States from Canada will no longer benefit from the Gender Guidelines. Canada prides itself on being a primary protector of female refugees and it was the first country in the world to establish gender guidelines. It is thus surprising that the Canadian government is now content with sending refugee women back to a country without any assurances that an equivalent of our Gender Guidelines would apply in their refugee status determination. Additionally, in certain refugee claims, such as sex trade cases, the very persecutors of refugee women arriving at Canadian borders may be living in the United States; sending those refugee women back to the United States means sending them back to the very persecution from which they fled in the first place. Detention rates are also higher in the United States and no legal aid exists for refugees there. All of this will put refugee women, more than men, at greater risk when sent back to the United States pursuant to the Safe Third Country Agreement.

Similarly, there are no guarantees that Canadian Pre-Removal Risk Assessment (PRRA) officers will view female PRRA applications with a gender-sensitive lens. The current draft version of the Citizenship and Immigration Canada (CIC) PRRA manual states that the PRRA has the same protection objectives as the Immigration and Refugee Board (IRB) process. Yet, there is only passing indication in the CIC draft manual that PRRA officers are "invited to consult" the IRB Gender Guidelines. There needs to be a stronger mandate for the application of the IRB Gender Guidelines in PRRA applications, as well as specialized training of PRRA officers on gender-related issues. There should also be clear recognition in the CIC PRRA manual that female-specific persecution which may not have been dealt with at the woman's refugee hearing. This may be for reasons such as shame, fear of reprisals from family members, or over-emphasis on the husband's claim as the principal claim. This should be considered and accepted as new evidence in the PRRA application. Without these assurances in place, women with female-specific fears will not benefit equally from the PRRA process.

The new right of the Minister to intervene in refugee hearings also impacts refugee women more than men. The presence of Minister's counsel at refugee hearings has become almost commonplace. When the Minister intervenes, the refugee hearing environment becomes adversarial with more vigorous and aggressive cross-examination. Minister's counsel apparently receive no special training for handling gender claims. All of this makes it more difficult for women, particularly those with sensitive female-specific claims, to freely present their experiences at their hearings. The adversarial nature of the hearings is also contrary to the UNHCR Guidelines on Gender-Related Persecution, which states that persons raising gender-related claims require a supportive environment in which they can present their claims.

The IRPA also creates a higher onus for refugee claimants to establish identity at their hearings via documentary proof, and it is more difficult to be released from custody without established identity. For reasons of prevailing traditions or cultural norms, women, more often than men, have less access to documentation. In some

instances, a woman may not even be entitled to photo identification in her country of origin.

There is also no mechanism in the IRPA to accelerate permanent residence applications for successful refugees, nor to allow family members left in the country of origin to travel immediately to Canada. Often it is women and children who are left in danger in the country of origin while waiting for the husband's application for permanent residence to process in Canada.

For those women who do succeed as refugee claimants in Canada, payment of the $550 application fee for permanent residence within six months will often be more burdensome for refugee women than for men; this is especially so for single mothers.

There are currently only about two people working in the IRPA GBA unit in Ottawa, and they are responsible for all aspects of GBA. This gross dearth of resources is testament to the lack of genuine commitment that the federal government has for the GBA. Worse than this is that the GBA is nothing more than an "analysis" to be reported annually to Parliament. There is no corresponding mechanism requiring the federal government to actually do something about the annually reported differential impacts on women. As such, it is fairly easy to conclude that, although the GBA is a small step in the right direction, it is, at this point, only a token gesture that will not improve things for refugee women.

Naomi Minwalla is a Refugee Lawyer in Vancouver and Chair of the Canadian Bar Association (B.C. Branch) Refugee Lawyers Committee.

PRESS RELEASE

ON 10TH ANNIVERSARY OF GENDER GUIDELINES, CCR CELEBRATES CANADA'S PROTECTION OF WOMEN FLEEING GENDER PERSECUTION

6 March 2002 -- (Montreal) -- With the tenth anniversary of Canad's guidelines to protect refugee women fleeing gender persecution, the Canadian Council for Refugees is celebrating lives saved - and calling on the Immigration and Refugee Board to renew its commitment to gender-sensitive refugee determination.

The Guidelines on Women Refugee Claimants fearing Gender-Related Persecution were issued by the Immigration and Refugee Board (IRB) in March 1993 — and have had a profound influence on women's rights and international law.

"The gender guidelines marked a turning point both in Canada and internationally," said Kemi Jacobs, president of the Canadian Council for Refugees. "Before the guidelines, there was a lot of debate about whether women persecuted because of their gender could or should be accepted as refugees. By showing how to take women's realities into account, the guidelines helped to make sensitivity to gender-based claims a normal part of refugee determination."

In 1992, a Saudi woman known as "Nada" faced deportation back to her home country after the Immigration and Refugee Board rejected her claim that as a woman she was denied basic rights and faced persecution when she tried to exercise those rights. The Board in its decision minimized her rights as a woman. Following media coverage of her case, "Nada" was granted special permission to remain in Canada. In March 1993, the Chairperson of the Board issued guidelines to ensure that in the future decision-makers gave equal consideration to the rights and realities of women and girls claiming refugee status.

Canada's guidelines made our country a world leader.

"Canada was the country that really led the way in terms of the international community granting protection to women fleeing gender persecution," said Wendy Young, Director of Government Relations, Women's Commission for Refugee Women and Children.

Other countries have followed the Canadian example, although implementation remains incomplete, and in the United States there are now indications that the government is about to take a dramatic step back.

Ten years after the gender guidelines, the Canadian Council for Refugees calls on the IRB to renew its commitment to ensuring gender-sensitive refugee determination. Ten years later, it is also time for the Immigration and Refugee Board (IRB) to issue new ground-breaking guidelines,

"SO, YOU ARE A PAKISTANI CITIZEN," HE SAYS...

BY MUZAFFAR IQBAL

I arrived at Toronto airport at 1:50 pm (December 12, 2002) after a four hour flight from Edmonton. I had one hour to clear US customs and immigration before boarding my flight for Washington DC. I had been invited by the Georgetown University's Center for Christian-Muslim understanding for the meeting of the Advisory Committee for planning a major conference next year, "Science in the Islamic World."

At the immigration counter, I hand my Canadian passport to a Mr. Kulczyk, who scans it and stares at his computer screen. He asks the usual questions: where are you going, why, for how long. I explain. Then he looks at his computer screen again and after a few seconds, he turns off the screen, picks up his stamp and walks to a counter; this one says: Immigration Supervisor. But on his way, he meets another officer and says something to him. "For sure," the other officer says, "for that you have to second him."

Mr. Kulczyk talks to his supervisor and comes back to me. "Come with me, sir," he says. I follow him to another office. There are 10 other people sitting there, including a very old woman in a wheelchair. They all look upset and exasperated.

I sit quietly and wait. Time passes. Five immigration officers continuously walk in and out of their offices which are made by erecting walls in the hall where we are all sitting. People are taken in, they are interviewed and some come out in tears, others are given some papers and still others are being fingerprinted and photographed. Everything is happening in slow motion. No one is in a rush.

2:45: My flight is at 3:00. Will I make it?

"Aslamo Alaikum," the person sitting next to me says quietly. We talk. He is an Afghan who has lived in the United States for more than a decade. He came to Canada two weeks ago to visit his cousin. Now he cannot go back. "I am US citizen, but they say they cannot find my citizenship records in their computers. They have called my wife, my employer, everyone, but still, I am sitting here for the last four hours."

The old woman in the wheelchair is also sitting there since morning. She only speaks Persian. She does not understand why she is being held. No one explains.

New passengers arrive. Each one in fury. But after a while, they resign to their situation and sit. Some talk to each other. There is one Anglophone, all others are from somewhere outside North America. Five passengers who were brought to the room after me were processed while I remained sitting there.

3:50: I go to the Supervisor, an Afro-American. "I have already missed my flight. I understand your need for security, but you have no right to disrupt people's lives. Can you tell me what is going on. Is there an order? Why are others being processed and I am held."
"Sir, we are doing our best. Some cases are more complicated."
"I understand, but if I could make the 4:50 flight, I would appreciate it."
"I will see, just have a seat." I go back to my seat.
Ten minutes later, the supervisor passes by. I get up. "Oh, just a minute," he says, as if he has just recalled something. He goes to a room and returns. "Someone will be with you shortly."
When I am called, I go to one of the side rooms with an officer. "So, you are a Pakistani citizen," he says.
"No, I am a Canadian citizen, you have my passport in front of you."
"I mean you were born in Pakistan." "Yes."
"When were you in Pakistan last time?" "2000."
"Where else have you been?" "Since when?"
"During the last few months." "Saudi Arabia, Spain, England, Kazakhstan."
"What were you doing in Saudi Arabia?"
"I went for Pilgrimage." "Kazakhstan?"
"A UNESCO conference." "What do you do?"
"I am a writer." "I will be back in a few minutes."
He leaves the room with my passport.

He returns after 5 minutes and asks the same questions, more or less. I repeat my answers.
"Come with me," he says, "this is not my computer. We need to go to another office."
In the new office, he tells me that he will have to enroll me in the program called "Special Registration Procedures for Visitors and Temporary Residents." The way he said it, it sounds like a reward air miles program that would allow fast entry to the US. He gives me a piece of paper, which is a photocopy of a brochure by the U.S. Department of Justice, Immigration and Naturalization Service (Form M-526(09/11-02).

"I will have to ask you a few questions," he says, "but I give you this other information which I generally give out at the end." He gives me a few more sheets of paper.
"If I could make the 4:55 flight, that would be great."
"We will try." "What is your postal address?"
I tell him my address. "Postal code?"
I tell him the postal code which he mistypes. I point out the mistake. He corrects it and then moves the computer screen away from my sight.

I sit back and quickly glance at the brochure. I read: "You will be fingerprinted, photographed, asked to show documents, and interviewed as to the length and purpose of your stay in the United States."
"Does this apply to me?" I ask, "this fingerprinting stuff."
"Yes," he says, still looking at his computer screen.
"I refuse to be treated as a criminal. I have lived in Canada for 22 years and your Secretary of State has just assured us that we will not be discriminated on the basis of our country of birth."

"I will have to call my supervisor." he said and left the room, only to return with the supervisor-the same person with whom I had talked earlier.
"Let me explain to you, Mr. Iqbal," the supervisor says, picking up my passport from the desk, "what this program is about."
Now I have a name. I look at him. He is wearing a name tag: He is M. Samuel. "I have already read the brochure," I say, "I refuse to be treated like a criminal. I have been invited by the Georgetown University to help them in planning a conference and I am not interested in subjecting myself to this treatment. Your Secretary of State was in Ottawa recently and he made a public statement that no Canadian Citizen will be discriminated on the basis of country of birth."
"You know how politicians have to make such statements," Mr. Samuel says, "but we have to follow the rules."
"I understand that. But rules are only accessible to you. The general public goes by what they are told through public statements." "We have to protect our country."
"Indeed, you have the right to do so, but you cannot humiliate citizens of other countries. There is an 85 year old woman sitting in a wheel chair outside this room. Do you think she is going to attack your country? She can hardly stand on her feet."
"We go by the rules, sir," he says.
"I refuse to be fingerprinted. Our government has also assured us that it will not tolerate such things."
"That is your choice. We will have to refuse entry or say that you withdrew your application."
"That is fine."
I quickly pick up my passport because just then I gleaned from the brochure that "If you decide that you do not want to or cannot follow the special registration procedures, you may be allowed to withdraw your application for admission into the United States, but you may still be fingerprinted, photographed, and interviewed by INS inspecting officer as part of the withdrawal process."

The brochure also explains that all registered persons are required to report to the INS if they are staying more than 30 days. The registered visitors can only leave the United States from certain designated points of departure and they must report their departure to INS, failing which, they can be arrested, fined or both. If they travel to different places in the US, they are required to "bring documents to INS to show who and where [they] are visiting."

I realize suddenly that the registration system is much more than just initial fingerprinting; it is a complete code of apartheid based on race, religion and country of origin.
"What happens if Air Canada does not book me on today's flight to Edmonton?"
"They will put you on the next available flight, we have an understanding with the airlines."
"But what if they have no seat? Will INS cover the hotel expenses?"
"No, we do not have such provisions."
"So, what would I do?"
He has no answer, he shrugs his shoulders.
I leave with the officer, who takes me to the Air Canada counter. No one is now responsible for my wasted time.
The person at the Air Canada counter sends me to the domestic counter and there I am booked on a flight back to Edmonton. My ticket is not changeable; I cannot even return without a Saturday stay but after a few minutes of arguments, the supervisor waives the conditions and the additional charges and I arrive back in Edmonton at 10:00 pm, 14 hours after leaving.

NATIONAL NETWORK ON SEPARATED CHILDREN

Editor's note: Compiled from the report of the Conference on Separated Children held in Toronto on Feb.19, 2003

Introduction
Separated children and youth, be they asylum seekers, undocumented migrant children or child victims of trafficking, are arriving in ever greater numbers in the West, including Canada, USA and Europe. They are part of the immense movements of people resulting from armed conflicts, persecution, widespread and serious violations of human rights and in specific of children's rights, environmental disasters and the pressures of globalization. The International Organisation for Migration estimates that 150,000 million people are currently on the move.

Background to National Network Meeting on Separated Children
Separated children and youth are highly vulnerable, marginalized and little understood in the countries of reception or asylum. While there are many organisations and professionals working with separated children across Canada, there are limited opportunities for them to work together at the national level. In order to facilitate networking and support for those working in the field and to officially launch the *Best Practice Statement on Separated Children in Canada* a meeting was held in Toronto on February 19th, 2003. Participants included international, national and local NGOs working on refugee and immigration issues, children's rights, homelessness and the commercial sexual exploitation of children and youth; the UNHCR; and professionals such as social workers, lawyers, health and education specialists. In addition, a small number of organisations from the USA were invited in order to provide a comparative perspective and to discuss matters of common concern. Participants were

provided with a number of background documents that are available on the website (www.ibcr.org) of the International Bureau of Children's Rights (IBCR).

The meeting was organised by the International Bureau for Children's Rights (IBCR) via its Focal Point on Separated Children in the Americas with assistance from a number of organisations, in particular: the Canadian Council for Refugees (CCR), the Child Welfare League of Canada (CWLC), International Social Service Canada (ISSC), Save the Children Canada (SCC), the UN High Commissioner for Refugees (UNHCR) and World Vision Canada (WVC). Funding for the event was provided by the Child, Family and Community Division of Human Resources and Development Canada.

Outline of Meeting

The meeting was opened by Ruth daCosta, executive director of Covenant House Toronto, a shelter for homeless youth, and part of an international Covenant House network. In Ontario separated youth who arrive in Canada aged 16-17 years are not eligible for child welfare services. Thus, in recent years Covenant House began receiving homeless separated youth seeking asylum. Although the current numbers are less, in the year 2001, 70% of their residents were separated youth from some 54 countries. While separated and street youth have similar needs in some areas, Covenant House had also to develop new services and expertise in relation to the experiences of separated youth, their cultural needs and refugee/ immigration processes. Given the current lack of clear policies for separated children, Ms daCosta stressed the importance of partnership, networking and advocacy in order to provide appropriate services for them, to educate officials and service providers and to achieve necessary policy changes.

In order to provide current information and to set the scene for the discussions in the three working groups that followed, the first part of the morning session was given over to four presentations. Participants then broke into three working groups to identify common issues of concern. Brief presentations on the situation in the USA were provided. The afternoon working groups completed an action plan where each produced three key objectives. In conclusion participants agreed to send a joint letter to the federal government to stress the need for the development of a national policy on separated children.

Participants identified nine objectives that they consider to be urgent and vital for the effective support and protection of separated children and the implementation of their rights under Canadian and international law. As such, they commit to promote the following:

1. To ensure that the Government of Canada develops a national policy on separated children that is consistent with the criteria contained in the *Best Practice Statement on Separated Children.*
2. To develop a national protocol for the reception and referral to care of separated children in keeping with provincial child welfare legislation and Canada's international commitments.
3. To promote the development of a comprehensive policy and practice towards Designated Representatives in immigration and refugee processes.
4. To ensure that no separated child is removed from Canada without having comprehensive safeguards in place in the country of return, as set out in the *Best Practice Statement.*
5. To establish appropriate identification mechanisms and communication systems in order to ensure the rights of separated children to quality education.
6. To ensure that separated children have access to a comprehensive health care program, equivalent to that available to national children.
7. To carry out research and data gathering on child trafficking in Canada, including the trafficking of children across borders and within Canada.
8. To encourage the adoption of anti-child trafficking legislation in Canada.
9. To promote within Canada, public education on child trafficking and its consequences for children.

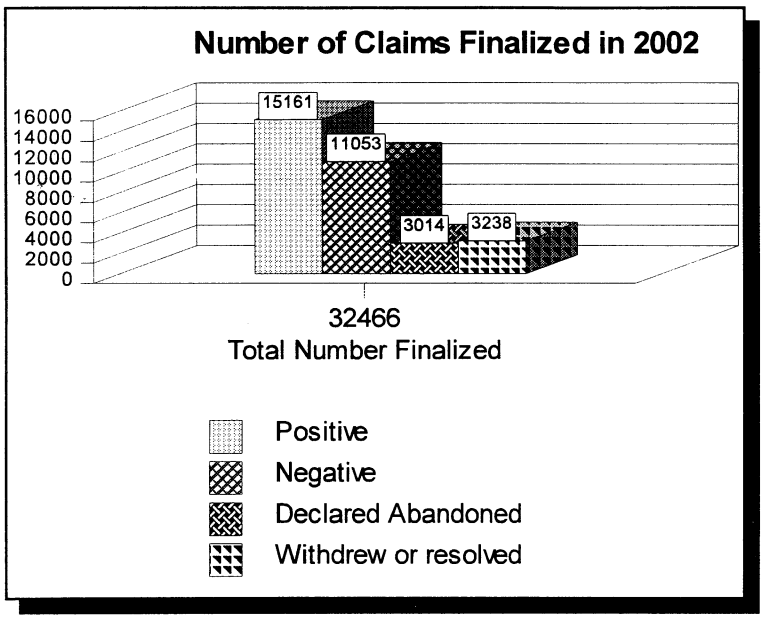
A letter was sent to the Minister of Citizenship and Immigration outlining the above and was signed by 24 organizations.

New statistics, which are provisional, show that some 587,400 asylum claims from all nationalities were lodged in 37 industrialized countries in 2002, compared to 621,100 claims filed the previous year. This is against a background of some 13 million refugees and asylum-seekers throughout the entire world at the end of 2001, most of them in developing countries.

UNHCR

Immigration and Refugee Board statistics for 2002

(Refugee Claims made in Canada)

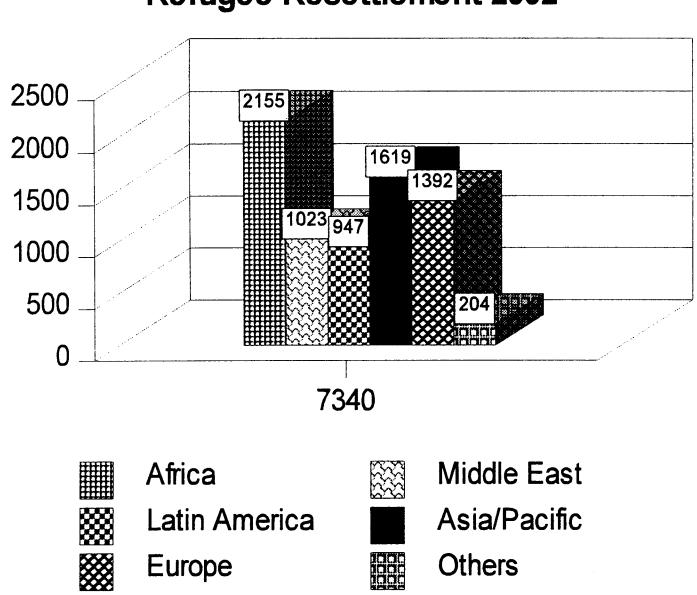


39,498 claims were referred to the IRB in 2002 (compared to 44,038 in 2001 and 34,253 in 2000).

At the end of the year there were 52,761 claims pending (compared to 45,804 at the end of 2001 and 30,177 at the end of 2000). Given the number of claims finalized in 2002, if the IRB continues at the same rate it will take more than 19 months to finalize the claims pending.

(Refugee claims made abroad)

Government Assisted Refugee Resettlement 2002



There were 3,045 privately sponsored refugee landings in 2002, representing 105% of the lower end target of 2,900 (the target range was 2,900 - 4,200). This compares with 3,570 in 2001 and 2,914 in 2000.

DETENTION NETWORK: A NEW INITIATIVE

BY LOIS ANNE BORDOWITZ FCJ

As a result of a workshop on detention at the Spring 2002 CCR Consultation, a network was established.

Network Demographics

There are currently 65 members of the Detention Network. Members are in the following cities: Burnaby, Calgary, Halifax, Hamilton, Kingston, Montreal, Ottawa, Saskatoon, St. Catharines, St. John, Toronto, Vancouver, Windsor, and Winnipeg. We have a wide range of professional training and skills.

Toronto Working Group Meeting Inland Protection, Friday 21 February 2003

The Detention Network is connected to the Canadian Council for Refugees through its Inland Protection Working Group. During the recent meeting in Toronto, many people interested in the Network met for pizza and discussion. Two significant outcomes of the meeting were that terms of reference were adopted and a committee was established to plan a detention workshop for the CCR Spring Consultation in Ottawa. We also talked about the nature and purposes of our listserve. Katherine Petit at the CCR office has responsibility for this group. Members are encouraged to share information from their area.

Some of the main issues that concern those working on detention issues are:

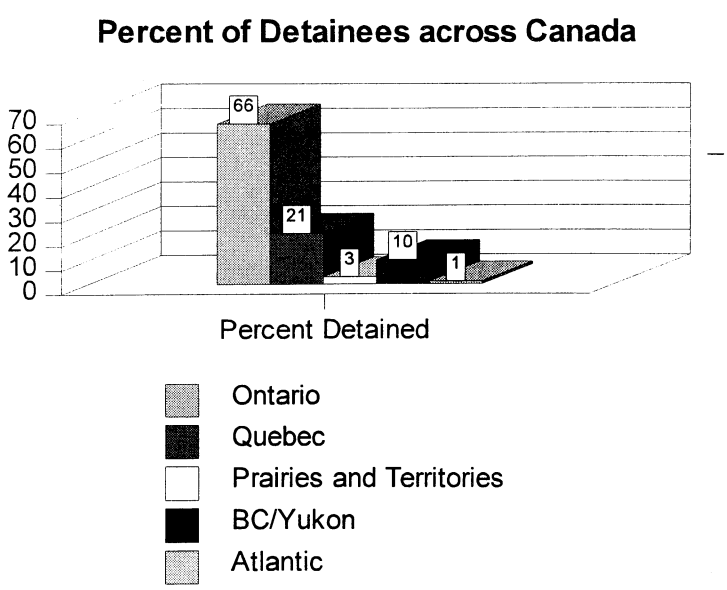
- High numbers of detainees in provincial jails (particularly in Ontario)
- Detention for identity issues
- Bail and bond requirement for refugee claimants once cleared of identity issue
- Difficulties for refugee claimants detained to do their paperwork (fill out their PIF).

These issues have been brought to both IRB and CIC officials in various meetings in the past few months. We have been assured that they will look into the bail issue, but as we go to press, this has yet to be resolved.

CIC produces a weekly "detention snapshot," which shows how many people were in immigration detention on a particular day. The 2003 detention statistics page on the CCR website has been updated and now includes information up to March 6th:

http://www.web.net/~ccr/detentionstatscurrent.html

From these statistics, we can see that on any one day, over the period covered:



Despite having an immigration detention centre, Ontario specializes in detention in provincial jails, with an average of 238 in jail, compared to 107 in the immigration centre.
By contrast, in Québec, there is an average of 20 in jails, compared to 88 in the immigration centre.

CCR SPRING CONSULTATION
29 - 31 MAY 2003
OTTAWA

"*Access to Rights: Right to Access*"

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