REFUGEE UPDATE

ISSUE NO. 60 A JOINT PROJECT OF THE FCJ REFUGEE CENTRE AND THE CANADIAN COUNCIL FOR REFUGEES WINTER 2007

INSIDE:

SAFE THIRD COUNTRY DECISION WELCOMED BY RIGHTS ORGANIZATIONS AND JOHN DOE

The Canadian Council for Refugees, the Canadian Council of Churches, Amnesty International and John Doe welcome the November 29 Federal Court ruling concluding that the December 2004 Safe Third Country Agreement between Canada and the USA violates refugee rights.

The Safe Third Country Agreement effectively closed the border to the majority of refugee claimants who came through the United States on their way to making refugee claims in Canada. Turned away by Canada, these individuals were instead forced to turn to the US asylum system for protection. In launching this court challenge, the applicants had argued that this approach would be acceptable if the US asylum system met recognized international standards for the protection of human rights, including refugee rights, but it did not.

The Court judgment finds that it was unreasonable to conclude that the USA complies with the United Nations Convention against Torture and the UN Refugee Convention and points to serious shortcomings in the US asylum system including:

- deportations of individuals from the United States to countries where they are at risk of torture,
- concerns that women who are fearful of gender-based violations such as domestic violence are often denied protection,
- broad categories that exclude individuals from refugee status, and
- a harsh one year time bar that makes it impossible for many individuals to make refugee claims if they have already been in the United States for more than one year.

"In Canada, in the United States and around the world, refugees and refugee claimants are among the most vulnerable members of any society and regularly experience harsh treatment and systematic disregard for their most basic human rights," said Alex Neve, Secretary General of Amnesty International Canada. "This decision is an eloquent reaffirmation of how important it is that governments scrupulously ensure the safety of refugees and uphold the full range of their human rights. This is a message that will and must be heard around the world."

"We are pleased that the Court condemned the failure of the federal Cabinet to review the status of the US as a safe third country," said Janet Dench, Executive Director of the Canadian Council for Refugees. "When human lives are at stake, as they are in the safe third country agreement, Cabinet has a serious obligation to monitor changes, an obligation that they have neglected for the last three years."

"We will also urge the Canadian government to respond to this judgment in a principled manner, not by moving immediately to appeal it, but instead recognizing that this provides a valuable opportunity for Canada to reassert its traditional role of being a staunch defender of the safety and well-being of refugees," said Karen Hamilton, General Secretary of the Canadian Council of Churches.

The three organizations that initiated this application now call on the government to immediately suspend the operation of the safe third country agreement. The Agreement has led to three years of violations of the rights of countless numbers of refugees and refugee claimants. That must come to an end.

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IMPRESSIONS MADE ON A REFUGEE

BY GIOVANNI RICO

In the last couple of months I have had the glorious opportunity of working with refugees. I have been hired as the Legal Case worker at the FCJ Refugee Centre. This has produced great enthusiasm in me as it created the opportunity to help people who need it, to give them the sense of acceptance that I received when I first arrived in Canada. In my first couple of months in Canada, we where treated like kings.

Now that I am older, I realize that in this country, where we pride ourselves in being defenders of human rights and equality for all, our refugee process is a two tier system. Working through this supposed "crisis", an "influx" of Mexicans that have crossed into our beloved country, I get the impression that some claims for refugee status are more acceptable than others. Mexicans are being perceived as liars and abusers of the system before they even submit any type of statement to the IRB.

Why is the IRB taking advantage of the fact that Legal Aid Ontario is not giving certificates to most applicants from Mexico by expediting hearings for them without a lawyer at a faster rate in order to have them removed more quickly.

It is very discouraging that the IRB would prey on these claimants who do not have counsel, and can not afford counsel. They are the very ones that need more time to present their cases, which used to be common procedure for clients without counsel. Mexicans are now getting hearings three months after having handed in their PIFs, while others are having to wait longer for theirs to be heard.

These people are vulnerable when it comes to the refugee system and the IRB is taking advantage of it. Instead of taking into consideration the reasons why so many Mexicans have decided to come to Canada, they are devising ways to send them back. They are being denied their right to a fair and unbiased hearing. At the point of entry, some Mexicans are being interrogated and pressured to withdraw their claim and get sent back to Mexico on the next outgoing flight. These people have rights and are not breaking any laws; they are exempt from the Safe Third Country Agreement and are following all the rules set out by IRPA.

I have now seen that I was extremely lucky to have had such great treatment as a refugee in this country. Canada can no longer hide on its reputation on treatment of refugees because they as a country are discriminating and creating prejudices towards Mexicans. Canada claims to have a great refugee process that determines who is truly at risk. If this is true then why are we not relying on the system that is in place to determine this? Why does it change when a large group of people come from a determined country? Obviously these questions will not be answered by the people who can answer them. Making my decision to work in this field has been justified and warranted.

Giovanni Rico works at the FCJ Refugee Centre in Toronto as the Legal Case Worker.

ARE WE ALL SMUGGLERS NOW?

BY MITCHELL GOLDBERG

On 26 September 2007 Janet Hinshaw-Thomas, the 65 year old, director & founder of a US church based refugee-serving organization, in existence since 1983, was arrested at the Lacolle border point in Quebec. She drove to the border to accompany 12 Haitians who wanted to make a refugee claim in Canada. She was detained overnight and charged the next day in court under section 117 of the *Immigration and Refugee Protection Act*.

S. 117 states that "No person shall knowingly organize, induce, aid or abet the coming into Canada of one or more persons who are not in possession of a visa, passport or other document required by this Act."

People smugglers are a mixed bunch, but many of them are truly among the lowest of the criminal low – pimps, abusers, exploiters who prey on the most vulnerable members of some of the most downtrodden societies on earth. One might therefore have expected advocates to cheer at the arrest. Instead, human rights, church, and lawyers' organizations are crying foul. Why?

Photo:www.nytimes.com

Janet Hinshaw-Thomas, director of Pennsylvania based PRIME - Ecumenical Commitment to Refugees, photo file.

The answer is pretty straightforward: they went after the wrong person. Ms. Hinshaw-Thomas is a human rights advocate who has devoted the past 24 years of her life to providing humanitarian assistance to refugees. When she was arrested, she was in the process of handing over to Canadian border officials a group of 12 Haitian asylum-seekers who were at risk of deportation from the US to Haiti, where they feared they would be persecuted or killed. They wanted to ask Canada to protect them – a request they are entitled to make under international law as well as the Immigration and Refugee Protection Act.

All Ms. Hinshaw-Thomas did was advise them of their right to make a claim under Canadian law, and drive them up to (not across!) the US-Canada border, where they could be interviewed by Canadian officials to determine whether they qualified for consideration (they did).
Back when the current legislation was being debated by the legislators, human rights advocates and even the United Nations expressed concern that not just criminals but also people who helped refugees for purely humanitarian reasons could be vulnerable to conviction. MP John McCallum memorably demanded that "saints and reverends" be exempted from any potential charges of people smuggling. The all-party Commons committee reviewing the bill raised their concerns and received assurances on the record, from the then Minister of Immigration Eleanor Kaplan, and high level Immigration officials. They kept their word- until now. Ms. Hinshaw-Thomas is the first humanitarian aid worker to be charged under the provision since the law was implemented in 2002.

Given that the charges are a clear violation of the intention of the legislators, we should expect that Attorney General Nicholson will move quickly to drop the charges against Ms. Hinshaw-Thomas. It is a misuse of the legislation. Even if he has little chance of getting a conviction, he has already intimidated and alienated thousands of humanitarian aid workers, their supporters, religious groups, lawyers and even MPs. Everyone who assists refugees could be subject to prosecution for "aiding and abetting" under the interpretation being applied to Ms. Hinshaw-Thomas. Advocates and lawyers are insisting that the government amend the law to ensure that this kind of charge never happens again. In a strongly worded letter to government ministers, the President of the Canadian Bar Association wrote:

"Canada played a significant role in the creation of the *Declaration on Human Rights Defenders*, adopted by the United Nations General Assembly in 1998.The Declaration states that everyone has the right to provide relevant assistance in defending human rights and fundamental freedoms.

Charging a person with an offence when the activity forming the basis of the charge is assisting refugees to make asylum claims flouts this principle. It is a deterrent for those who selflessly wish to provide humanitarian assistance to those fleeing persecution, no matter what the outcome of the charge. Prosecuting a human rights worker for this humanitarian work is indefensible. It cannot be justified on the basis that the accused will eventually be acquitted."

Pedro Palafox Marin packed his car Thursday while moving out of a motel in Windsor, Ontario. Photo File www.nytimes.com

Professor James Hathaway points out in his recent book: "Importantly, however, Canada's reluctance to impose those penalties [found in s.117 IRPA] in practice against
persons transporting refugee claimants in other than egregious cases is very much in line with expectations of the Convention's drafters." Hathaway continues: "The drafters assumed [...] that governments would not exercise their authority to penalize those assisting refugees to enter an asylum country absent evidence that they had acted in an exploitative way, or otherwise in bad faith" *(Hathaway , James (2005) 'The Rights of Refugees under International Law' Cambridge, Cambridge University Press, at 404-405)*.

The Canada Border Services Agency, reporting to the Minister of Public Safety, is responsible for enforcing the law, but also for upholding the humanitarian objectives of IRPA, including to ensure refugees are protected. Yet CBSA has been acting without regard to these latter responsibilities. Its spokesperson said: "There are no exceptions in the law for church-based or other human rights personnel" (Montreal Gazette, 27 Sept. 2007).

The sooner the charges are dropped, the better, of course. However, the fact that the charges were even laid raises a disturbing question: has our government turned its back on refugees?

The arrest is part of a larger pattern of government action undermining the asylum programme. In recent years, Canada has closed the door on thousands of refugees through the "Safe Third Country Agreement" with the United States, the interdiction of refugees overseas and restrictive visa policies that target refugee producing countries. Even refugees who overcome those obstacles, find the determination system weakened by the failure to implement the Refugee Appeal Division, and to appoint sufficient IRB members to hear claims in a timely way. The charge against Ms. Hinshaw-Thomas creates another brick in the wall by targeting the very people who assist refugees.

During the Holocaust, Swedish diplomat Raoul Wallenberg saved the lives of thousands of Jews by providing them with false documents. By a unanimous act of Parliament, in 1985, he was made an honorary Canadian citizen for his heroism. The Canadian people followed in his foot steps when we took thousands of Vietnamese boat people into our homes in the 1970s. Canadians were awarded the Nansen Medal by the United Nations for our generosity in "aiding and abetting" refugees. Are we all smugglers now?

Mitchell Goldberg is a refugee lawyer in Montreal, a member of the legal affairs committee of the Canadian Counsel for Refugees, and is co-counsel for Ms. Hinshaw-Thomas. Acknowledgment is also due to Andrew Brouwer and Janet Dench, his collaborators in the op-ed piece which appeared in the Globe and Mail on October 9th.

BOUNTIFUL - MANY UNANSWERED QUESTIONS HUMAN TRAFFICKING, ABUSE OF MINORS, AND OTHER CONTRAVENTIONS OF CANADIAN LAW

BY NORRIE DE VALENCIA

Background:

Bountiful, located in South-Eastern British Columbia, is a closed community where visitors are not welcome and questions about lifestyle are not answered. Members are taught to distrust non-members.

It is a patriarchal society that empowers a few men to wield absolute control over all members and over every aspect of community and personal life. The structure undermines the social, political, economic and sexual rights of its members who are dependant on the community for social and economic sustenance. Members do not enjoy the rights and freedoms available to most Canadians. This results in victims being particularly vulnerable when an abuse occurs.

Residents practice the religion of the Fundamentalist Church of the Latter Day Saints (FCLDS). Polygamy (an indictable offence under section 293 of the Criminal Code of Canada) is a fundamental tenet of this sect. It should be noted that the main Mormon Church (LDS) prohibited plural marriages after 1904.

There are no spousal support provisions or inheritance rights. Women and children are completely submissive. Any behaviour contravening the "norms" of the community would result in dispossession and excommunication which is deeply feared. There is therefore a complete reluctance to testify or speak out. But some have.

Cross Border Trafficking

It has been reported that young girls are brought across the Canada/US border illegally for the purpose of coerced "marriages" to much older men in Bountiful. Some men have as many as 30 wives. Bringing girls into Canada illegally is a continuing admitted practice. Yet, no "husband" has ever been prosecuted.

Eye witness accounts tell of young girls from outside B.C., in the presence of the "prophet" simply being "waved through" the Canada/US border. Members of "Altering Destiny Through Education" have the names of minor girls trafficked into B.C. against their will to become plural wives.

Sexual Exploitation of Minors

The patriarchal structure of the community combined with the secretiveness of the community creates a climate in which the reporting of sexual abuse is very unlikely to occur. It is known that young women (12 to 16 years old) are married to much older men. The "prophet" assigns women to their husbands and removes them from husbands at will. "Wives" and children do not have access to external social services without the permission of the husband or father.

B.C. has strict reporting laws concerning suspected child abuse. Professionals such as nurses, social workers, doctors, teachers and dentists are required to report suspected cases. It is known that such abuses occur and are not reported.

Statistics are hard to come by, but material obtained under the Freedom of Information Act by the *Vancouver Sun* indicates that births by teenage mothers in Bountiful are up to seven times the B.C. average. The simple step of obtaining the birth certificates of all babies born would provide statistics but this has not been done.

There is strong public interest in how the government may respond to the sexual exploitation of girls occurring in Bountiful. Yet the repeated response of government is to refuse to acknowledge the issues, or whether the relevant authorities are engaged in the communities or what programs, policies or practices they may be employing to tackle these serious social challenges. This means that there is, in effect, no

accountability to the wider community, to the local community and, just as importantly, no accountability to the real or potential victims of Bountiful or to those who may be trying to protect these children.

Child Labour and resulting lack of access to education

Independent schools in B.C., funded under the Independent Schools Act, are required to teach mandatory programs according to provincial standards and not to teach any program that promotes or fosters doctrines of racial or ethnic superiority, or religious intolerance. The provincial government provides about $400,000 per year to each of the two independent schools in Bountiful.

It has been alleged that children in Bountiful are being unduly influenced to follow the beliefs of their particular cult. Part of the cult's expectation appears to be that children will leave school by Grade 8 or 9, in order to work for the community or to care for younger children, or to have babies. It is a fact that there is an unusually high drop-out rate amongst Bountiful teenagers, with very few completing high school.

In addition, there is documented evidence that many boys have been forced out of the community before completing school to make their own way in life thereby allowing a higher ratio of girls for the older men. There have also been reports of incidents where these boys have been abused sexually.

Child labour is one of the main sources of income for the FCLDS.

In an article published in the Vancouver Sun on October 13, 2006, page B1, journalist Daphne Bramham wrote of an FLDS company having "about 20 kids – some as young as six and none older than 13– barefoot" working at a roofing site in Creston, a town near Bountiful. This was reported to the authorities but nothing was done. The finding was that "it was a family operation and they can do pretty much what they want".

The same article reported that "it's not just children that are known to have been underpaid. Young men who have left Bountiful say they worked 60-hour weeks and were paid as little as $100 and $200 a month by FCLDS companies. Then they were forced to tithe back a portion to the church."

The provincial government has stated that school inspectors have been sent into the Bountiful schools on a regular basis, both announced beforehand and unannounced. Yet even though questions have been raised as to whether inspections have been sufficiently thorough, whether the course material meets the provincial standards, and concerning the qualifications of the teachers, the schools remain open. It is known that the religious component is taught through a religion course in each class, and with course binders of material for each grade.

Conclusion:

Bountiful is a closed community. Its members do not enjoy the rights and freedoms available to most Canadians which results in victims being particularly vulnerable when abuse occurs.

We are urging the appropriate authorities to examine closely the practices of this community and ensure that appropriate resources are in place to:

(a) Prosecute cases of abuse;

(b) Provide victims of abuse with counseling, medical support, and other social services;

(c) Establish systems to effectively assist those who choose to leave Bountiful, or who have been forced to leave, in making a successful transition from the community;

(d) Provide exiting rights and protections for wives leaving plural marriages,

(e) Ensure each student has access to education, taught by certified teachers, that follows the B.C. curriculum and allows students to attain their full potential. If the schools of Bountiful are not fulfilling this mandate, funding should cease.

(f) Stop cross-border trafficking of women and girls;

(g) Investigate the practice of young girls being given in marriage to much older men and prosecute any violations of Sec. 153(1) of the Criminal Code of Canada;

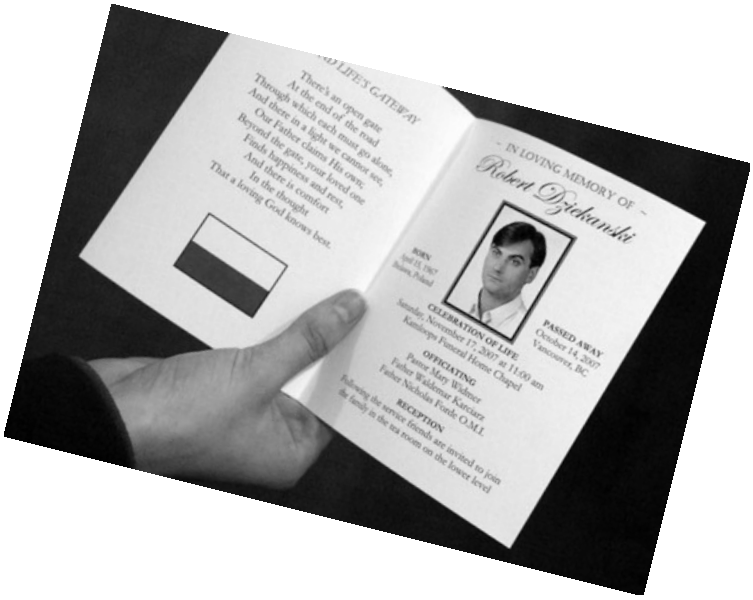
(h) Ensure that members of the community have ongoing access to external community resources that could benefit their health and well-being.

Norrie de Valencia lives in Vancouver and is a member of the CCR Trafficking Committee and the Bountiful Round Table.

POLICE VIOLENCE AGAINST A HELPLESS NON-CITIZEN

BY EZAT MOSSALLANEJAD

On October 14, 2007, Robert Dziekanski, a Polish immigrant in Canada died at Vancouver International Airport after being hit by an RCMP Taser. A video shot by a bystander of events led to the protest around the world on the Internet and on TV broadcasts after it was released Wednesday November 14, 2007. In Poland, an official with the foreign ministry called the attack on Dziekanski "excessively brutal and unjustified." The Polish ambassador to Canada, Piotr Ogrodzinski, has asked Canada's Department of Foreign Affairs for answers into how the situation escalated, resulting in Dziekanski's death.



A number of reviews are ongoing into how Mr. Dziekanski died, including a coroner's inquest and a review ordered by Public Safety Minister Stockwell Day on the use of Tasers. Reviews conducted so far are too limited in scope. A public inquiry has recently been promised by authorities. Officers involved in the death of Mr. Dziekanski have continued working with RCMP, but are assigned to different duties.

Canada's police force has belatedly started looking into a review and further research on the use of Tasers. According to a report from Amnesty International, at least 17 people have died in Canada because of the use of Tasers, According to the media, the Polish-speaking Dziekanski, who was left stranded without help at the Vancouver International Airport after his mother could not find him, was hit at least twice by Taser guns held by RCMP officers.

The Vancouver incident is the microcosm of bigger problems. Mr. Dziekanski was a non-citizen who spoke Polish and was not fluent in English. This is not the first time enforcement officers have used excessive measures against refugees and other categories of uprooted and disadvantaged people. It is unfortunate that only due to a video taken by a passer-by the problem of police violence attracted national attention. Police violence is not something new in Canada. There are complaints about people being beaten by police while in custody. What are at stake here are people's civil and political rights. There is no system in place to monitor police and enforcement officials' conduct. They are not adequately trained or educated on national and international human rights instruments. Lacking in Canada is also an effective complaint mechanism against excessive police measures and violence. An internal committee investigates complaints against individual police officers. While it is important to have an effective and powerful police force in Canada, that power must be subject to independent civilian supervision.

The tragic death of Mr. Dziekanski has reiterated the urgent need for a civilian control of the unbridled use of power by police. We strongly call for the following measures:

1. An independent public inquiry into the tragic death of Mr. Dziekanski with the final report released to the public;
2. Immediate prosecution of the officers responsible for the death of Mr. Dziekanski;
3. Reparation, restitution and compensation for the family of victim;
4. Systemic and ongoing education and training for police and other enforcement officers on human rights, non-discrimination and against torture and other inhuman, degrading treatment or punishment;
5.Establishment of a permanent independent civilian committee with the mandate of mentoring police and other enforcement officers actions and acting on complaints;
6. Immediate halt to the use of Taser guns by police. As an electronic control device taser uses propelled wires or direct contact to conduct energy to affect the sensory and motor functions of the nervous system. It resembles an instrument of torture.

Ezat Mossallanejad is a policy analyst at the Canadian Centre for the Victims of Torture (CCVT) in Toronto and a member of the Editorial Board of Refugee Update.

LAW AS A SWORD, LAW AS A SHIELD

BY LOWELL EWERT

Law as a sword-the challenge of law

It is difficult for a peace activist to be a passionate defender of law. Although we rely on law to shield citizens from abusive governments, law has often been a great source of violence, injustice, and oppression. It fails by either not curbing injustice, or worse, by justifying or encouraging violations of human rights. For example:

• The genocide committed by Nazi Germany was mostly lawful under German law, and according to most *written* international law in effect at the time;
• Apartheid in South Africa was established by law;
• Saddam Hussein claimed at his trial in Baghdad in 2006 that his order mandating the execution of 148 persons in response to the attempted assassination on his life was lawful;
• The Israeli military justified their heavy use of cluster bombs during 2006 by stating that "[a]ll the weapons and munitions used by the IDF [Israeli Defense Forces] are legal under international law and their use conforms with international standards" (Shadid 2006, A01);
• The 2003 US invasion and occupation of Iraq was lawful according to American Interpretation of law.

Law as a shield-the case of law

Although law has often been used as a sword to harm and oppress, the positive hope in law lies in considering its other attributes and accomplishments

1.*Despite all the obstacles that impede law, it is a good foundation for human rights.* The Universal Declaration of Human Rights begins by stating clearly and unapologetically in its Preamble that "recognition of the inherent dignity and of equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." To advance this vision, the United Nation was created to "save succeeding generations from the scourge of war, which twice in our lifetime has bought untold sorrow to mankind." While law has often failed, the foundational principles have been articulated. A starting point has been identified.

2.*It is impossib*le *to have peace without law.* The alternative to law is the chaos we have seen in Baghdad. We need law that functions as an operating system to manage non-violent interactions and interrelations between differing individuals, groups, and nations. While some may argue that we can have peace through informal community, this proposition does not create a means by which different or competing individuals, groups or nations can peacefully coexist. We need good law for peace.

3. *Law is important even when violated or ignored.*. Just as we don't say that the law prohibiting murder is irrelevant because some people continue to murder, so too we should not denigrate law just because it is abused. Law reinforces a standard even when ignored and can inspire and motivate individuals to try to change society even when deliberately violated by the powerful.

4. *Just because someone claims an act is lawful does not mean that it is.* Law does not logically or inexorably evolve in positive directions. Its evolution is far more complex and chaotic. It is an ongoing experiment that is tried and tested, amended when problems arise, and discarded when not redeemable. At trial, Saddam Hussein and the court that convicted him reached opposite conclusions about the lawfulness of his actions. President Bush reached a different conclusion to that drawn by many other world leaders about the legality of the Iraq war. We should not be disheartened by these contradictions but rather position law in the big picture and understand how it is evolving and changing.

5. *Peacemakers need to study and better understand law*. Law is a handbook for peace. It should therefore occupy a prominent place in peace research. While law is imperfect, it needs to be studied, examined, promoted, empowered, and challenged to better fulfill its mandate to promoting a more peaceable and just world. Without law violence is inevitable.

6. We should study not just actual laws and statutes but the policies that support them. A tree is not only composed of what is visible above ground; half of every tree, the roots, is not seen. A skyscraper without a foundation could not remain standing. Like trees and buildings, laws and other legislation do not simply state what is lawful and what is penalties are for violations, but illustrate the underlying social policy that is being advanced and reflect particular values.
7. Law sets a minimum, not a maximum, standard. What law mandates is not all that should be done. Law alone has never, can never, and will never create a perfect society in which all human needs are met and all human conflicts are happily resolved.
8. Law complements, and does not supplant or override, our moral and religious values. Law will not create the Kingdom of God on earth but it also does not inhibit mediation, restorative justice, and peace building. Instead, by providing some very rough guidelines, law creates structure that enables us to interact with each other through transformative mechanisms or negotiations, mediation, and restorative justice,
9. Law can make our analysis of conflict situations more honest. At times, distorted understandings of law have led peace groups to undermine peace and justify killing and destruction. When NATO bombed Serbia, some peace activists issued statements that implied or asserted that the NATO bombing was the cause of the humanitarian crisis that followed. Before NATO began the bombing, these persons argued, there were no refugees. The commencement of bombing, this argument continued, was followed by the murders, rapes, and expulsions of almost a million Kosovar civilians by Serbian Forces. However, under international law, there is never a justification for deliberately attacking a civilian population. No actual or alleged violation of international law by NATO can be used to justify these Serbian actions. A similar argument was made when four members of the Christian Peacemaker Teams (CPT) delegation were kidnapped in Iraq in 2005. A CPT (2005) press release stated, "We are angry because what has happened to our teammates is the result of the actions of the U.S and U.K. Governments due to the illegal attack on Iraq and the continuing occupation and oppression of its people." However, the kidnappers, and those who directed them, made a moral choice to kidnap. A claim that kidnapping is the result of the illegal war or that rape is the result of illegal bombing uses the same rationale that President Bush used to justify war when he claimed that the illegal September 11 attacks required US action in Iraq and elsewhere. Peace is not served by these arguments.
10. *Even horrific human rights abusers are aware of the power of law.* In the 1999 Kosovo crisis, those who committed the massacres of civilians tried to hide their work by destroying corpses, moving or hiding graves, and destroying written evidence. These criminals were aware of the power of law and were trying to hide from it. Top commanders of the Lord's Resistance Army (LRA) in Uganda, who are responsible for untold human rights abuses, have demanded that their indictments for war crimes be lifted as precondition to their coming to the negotiating table. "The ICC [International Criminal Court] is the first condition, without that I cannot go home because it might be a trap," LRA Deputy Vincent Otti said (BBC News 2006). As these examples show, even those who most blatantly flout international human rights law understand what it is and recognize its potential impact.
11. International law offers a comparative basis on which to evaluate claims of right and wrong. We too often get it wrong when we assume that our own national or parochial views are best. Aboriginals in the US and Canada were decimated by Eurocentric interests, often because the dominant culture thought it knew best. The Middle East is bearing the brunt of the US belief that it is best knows how the Middle East should be structured. International law reflects a broader consensus among nations and thereby acts as a corrective to, or limit on, the nationalistic tendencies of any one nation.

Conclusion

Law can be a sword or a shield. It becomes a sword when people of conscience ignore it and denigrate it. It becomes a shield when we work, in the words of Supreme Court Justice Louis Brandis, to "make the law respectable." In this labour we will get our hands dirty because law is seldom free from moral ambiguity. We will also become enmeshed in tremendously difficult and controversial choices. But law remains the best hope of an incredibly diverse and fragmented world for peaceful coexistence.

Lowell Ewert is the Director of the Peace and Conflict studies program at Conrad Grebel University College, University of Waterloo. This article is extracted from the Benjamin Eby lecture, which was presented at Conrad Grebel University College in November 2006. The complete lecture will be published in an upcoming issue of The Conrad Grebel Review; for more information go to http://grebel.uwaterloo.ca/academic/cgreview/index.shtml

Notes

1. An estimated four million cluster bomblets were dropped on 770 sites in South Lebanon, 90 percent of which wee dropped during the last three days of the conflict. Bomblets have an estimated 30-40 per cent failure rate. The leftover explosives continue to harm mainly civilians. See http://www.hrw.org/campaigns/israel_lebanon/clusters/index.htm.

The Universal Declaration of Human Rights can be found at http://www.un.org/Overview/rights.html

The charter of the United Nations can be found at http://www.un.org/aboutun/charter/.

LETTER FROM A JAIL CELL: LESSONS LEARNED FROM THE CASE OF KEVIN YOURDKHANI AND HIS PARENTS

BY ANDREW BROUWER

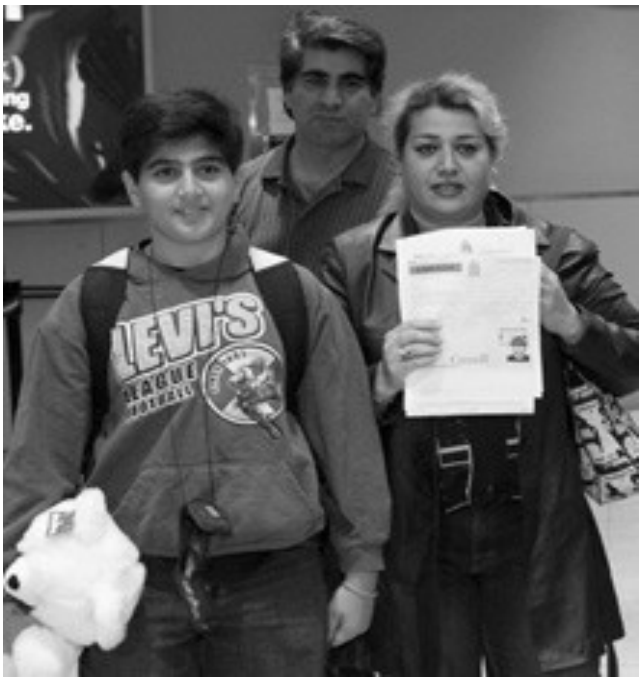
> *Dear Prime Minister Harper, I don't like to stay in this jail. I'm only nine years old. …. This place is not good for me. I want to get out of the cell. Just please give visa for my family. …. Thank you so much."*

-Kevin Yourdkhani, 9-year old Canadian citizen, writing from his cell at the T. Don Hutto jail in Texas, USA, in February 2007. His letter was reproduced on the front page of the Globe and Mail on March 2, 2007

These words, carefully written in a child's hand in variously coloured markers, started the process that led to the return to Canada of 9-year old Canadian Kevin Yourdkhani, and his parents Majid Yourdkhani and Masomeh Alibegi.

Majid and Masomeh first came to Canada to seek refugee protection in 1994, after Majid learned he was about to be arrested by Iranian authorities for involvement in reproducing a Farsi translation of Salman Rushdie's *The Satanic Verses*. A few years after arriving here they had a son, Kevin, who is a Canadian citizen. The family established itself well here, but they were less fortunate with respect to their immigration proceedings. Their refugee claim was refused, and a few years later their application for permanent residence on humanitarian and compassionate grounds was also rejected. Finally in 2005 the family was ordered to leave Canada. On the advice of - and under pressure from - the CBSA enforcement officer in charge of their removal, they waived their statutory right to a Pre-Removal Risk Assessment prior to leaving, they waived the PRRA. The family departed from Canada on December 6, 2005, bound for Tehran via Rome. Masomeh was three-months pregnant at the time.

On arrival in Tehran, the family was immediately taken into custody by the security police. Young Kevin was released to the custody of his grandmother (whom he had never met) and Majid and Masomeh were taken away to separate detention centres where they were brutally interrogated, abused and tortured. Masomeh was released after a month, and lost her baby. Majid remained in jail under ongoing interrogation and torture for a further five months.



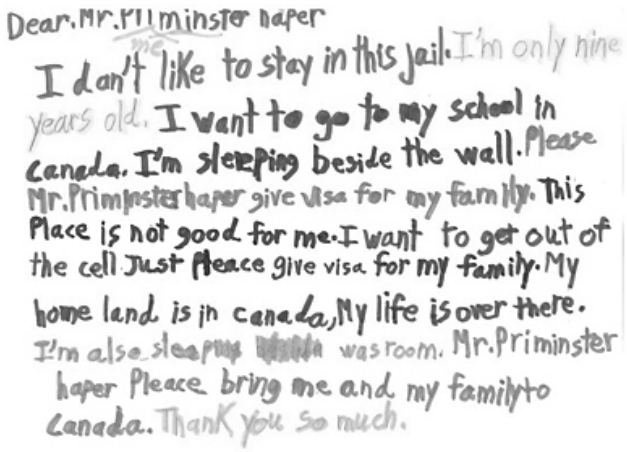
Masomeh Alibegi holds up immigration papers as she walks with nine-year-old son Kevin Yourdkhani and his father Majid after arriving at a Toronto Airport (Canadian Press).

Upon learning, shortly after his release, that Majid was to be charged by the security police, the family decided to flee again. With the assistance of a smuggler, they purchased false documents and arranged to return to Toronto, where they hoped to make another refugee claim based on what had happened to them when they were deported to Iran in December 2005.

Unfortunately, due to a mid-flight medical emergency the family's Toronto-bound flight was diverted to Puerto Rico on February 4, 2007, where the family was interdicted by US immigration officials who discovered the family was traveling on false documents. They were immediately detained and a few days later transferred to the controversial T. Don Hutto immigration detention facility in Texas, a "converted" medium security prison.

There they remained, in appalling conditions, until, following the publication of Kevin's letter on the front page of the Globe and Mail and loud public outcry, the Minister of Citizenship and Immigration intervened and granted Masomeh and Majid temporary resident permits to allow them to come back Canada with Kevin, deeming this to be in the best interests of young Kevin. The family returned to Canada on March 21, 2007.

The story looks like it will have a happy ending, as Majid and Masomeh have been approved in principle for permanent residence on humanitarian and compassionate grounds. This case is thus an important victory for the many, many Canadians who lobbied hard for the family's return to Canada. It shows that when we raise our voices together for human right we can achieve important goals (another recent example is the dropping of charges against Janet Hinshaw-Thomas – see p. XX). But the case also raises some disturbing questions about Canada's refugee protection and immigration system – questions that require reflection and action by advocates.


Dear. Mr. Priminster Haper
I don't like to stay in this jail. I'm only nine years old. I want to go to my school in Canada. I'm sleeping beside the wall. Please Mr. Priminster haper give visa for my family. This Place is not good for me. I want to get out of the cell Just Pleace give visa for my family. My home land is in canada, My life is over there. I'm also sleaping [redacted] was room. Mr. Priminster haper Pleace bring me and my family to canada. Thank you so much.

Hutto and the Safe Third Country Agreement

One issue to be considered is what this case says about the US as a "safe third country." Kevin was not the only child behind bars at Hutto – just the only one to have had the good fortune to be born in Canada. There were about 200 other kids there with him, kids who didn't have the luck to be born in Canada. They are joined by an unknown number of other non-citizen children in custody across the US, most awaiting deportation, often without adequate access to asylum proceedings or to counsel.

While minors are occasionally detained in Canada too, the detention of minors here is an exception. It is, however, a much bigger problem in the US. And because of the Safe Third Country Agreement, US problems are now also Canadian problems. That's because Canada's STCA regulations refusing entry to refugee claimants seeking to make a claim at the US-Canada border is based on the premise that the US is safe for refugees and refugee claimants. Kevin's case clearly demonstrates that this is not so – the detention of a nine year old refugee claimant in a former medium security jail surrounded by razor wire is contrary to international law and can in no sense be considered "safe." If our government recognized that it was contrary to the best interest of a Canadian child to allow him to linger in a jail cell, what of all the other child asylum-seekers who under the STCA are no longer permitted to seek protection in Canada and as a result find themselves in jails and detention centres across the US?

Best interests of the child and family separation

The alternative to bringing the whole family to Canada was, of course, for Canada to help the Canadian citizen in the case – i.e. Kevin— by facilitating his return to Canada (his legal right), while leaving his non-Canadian parents behind. However, Minister Findley clearly must have recognized that it was contrary to Kevin's best interests to separate him from his family in this way. How is it, then, that Canadian enforcement officers regularly do just that, destroying families by deporting non-Canadian parents from their Canadian citizen children. How, in good faith, can they maintain the argument that they are not acting contrary to children's best interests when they deport the parents of Canadian children without giving more than a passing thought to how this might hurt the children left behind? And how can it be that Federal Court judges regularly approve of such practices?

It is certainly gratifying that, under constant pressure from an outraged public and under the revealing glare of the news cameras, our immigration minister recognized that separating a child from his parents was not an acceptable option. When will this recognition be translated to a policy directive to enforcement officers?

How many others?

Majid's and Masomeh's story of torture after being deported to Iran only came to light because they made it back out of Iran and into the US, where their case was taken up by a group of brilliant and committed law students and their amazing supervising attorney, Barbara Hines. How many others have been deported by Canada to persecution and torture, in Iran or elsewhere, but never make it back to the west? How many similar stories of detention, abuse and torture upon return will we never hear? This is, surely, one the darkest lessons of this case, and one that should be carefully pondered by every PRRA officer, RPD member and Federal Court judge before refusing a case.

Andrew Brouwer is a lawyer with Jackman and Associates in Toronto and is counsel for the Yourdkhanis.

GLOBAL MIGRATION AT THE EXCOM MEETING IN GENEVA

BY EZAT MOSSELLANAJAD

Prior to the annual meeting in October each year of its Executive Committee (The Excom), the United Nations High Commissioner for Refugees holds a three day consultation meeting with NGOS in Geneva. I attended the Pre-Excom meeting (September 26-28, 2007) on behalf of the Canadian Centre for Victim of Torture (CCVT). My main intention was to raise the voices of millions of victims and survivors of torture around the globe who have lost their roots due to or as a result of torture. Some of them are in jail or a detention centre, some others live in refugee camps while the majority of them are living underground or semi-underground in their own countries. We serve a few of them at CCVT as our clients and they are sources of inspiration for all of us to continue with our difficult job.

Policy Analyst Dr. Ezat Mossallaneiad from Canadian Center For Victims Of Torture (CCVT)

The main theme of discussion this year was partnership. The High Commissioner, Mr. Antonio Goterres, raised hopes of a strategic partnership among UNHCR, the Red Cross, the Red Crescent, and NGOs. In his speech of September 28th he reiterated the UNHCR's 5 principles of partnership:

1. Transparency
2. Equality
3. Goal oriented approach
4. Complementarily

Accountability and responsibility

Civil society representatives raised serious concerns about their unequal partnership with the UNHCR. While NGOs are wonderful sources of compassion and creativity at the frontline levels, they are considered as junior partners; they are judged by their size and power. The UNHCR considers them as sub-contractors. Another concern was Ex-Com meetings themselves that according to NGO partners seemed pre-determined with their little impact on agenda and the Conclusions. The UNHCR has recently designated a special staff member as EXCOM *rapporteur* to receive NGO feedback, but her role is limited and she lacks resources to reach individual NGOs.

Similar to the previous year, NGOs were debriefed about the broader mandate of the UNHCR in the context of the global asylum-migration. According to the High Commissioner, the 21st century should be considered as the century of people on the move. While some people move for better opportunities, others move against their will for reasons such as war, generalized violence, persecution, environmental degradation, etc. They mostly move for reasons beyond the 1951 refugee Convention. All UNHCR officials including, Mr. Goterres, reiterated their organization's commitment to protect those who need protection in this mixed flow. They mentioned that the existing level of protection should be maintained. They mentioned that it would be up to the international community to find a solution for this complicated problem of our epoch.

The broader mandate of the UNHCR has prompted this UN body to pay special attention to the Internally Displaced People (IDPs) and stateless persons. In the lack of any binding international legal instrument for the protection of IDPs, the UN system has provided the UNHCR with the mandate to provide humanitarian relief to IDPs in special circumstances. Given the fact that IDPs are at the mercy of their national governments, the UNHCR is unable to play a major role towards their protection. It relies on the local and international partners for fundraising, IDP Protection and their relief. The plight of IDPs in many areas including Sudan, Iraq, and Colombia has been exacerbated in recent years with the outbreak of new wars and generalized violence. This was a prevalent theme at this year's meeting and according to the High Commissioner we might have this problem for years to come.

Similar to the previous year, UNHCR officials raised their utmost concerns about stateless people. It is estimated that there are between 7 to 12 million stateless persons around the globe. There are still many countries, including Canada, that have not acceded to the 1954 UN Convention on the Protection of Stateless Persons. The High Commissioner congratulated Nepal for the naturalization of 2.6 million stateless people. He mentioned that the government of Bangladesh would soon grant citizenship to Bihar stateless people. It is promising that the governments of Tanzania and Zambia have started looking at the local integration of protracted refugees.

Despite the fact that one of the major EXCOM conclusions this year was about children at risk, this important issue was not given due attention at the pre-EXCOM meeting. There was a side meeting about ensuring protection and durable solutions for unaccompanied and separated children during the lunch time on September 26th that should have been part of the main agenda. However, NGOs raised concerns in the course of discussions at other meetings about children's lack of protection in border areas, non-availability of legal counsel for them and their frequent detention. They also raised concerns about non-availability of secondary education for refugee children due to lack of funding. Despite the High Commissioner's reiteration of education as a UNHCR top priority, officials mentioned their failure to get information about border areas. On the positive side, the UNHCR has improved its communication with UNICEF to narrow the gap.

Discussions were held about the challenges of the cluster approach to refugee protection and relief. For quite some time the UNHCR has used a cluster of other intergovernmental and NGOs in the field to help uprooted people. The lack of staff, resources and coordination among different players were posed as great barriers responsible for the inadequate balance between the cluster and non-

On mid-day of September 27th, there was a well attended meeting about the plight of Iraqi refugees in the Middle East. Dr Abul Rahman Al-Atter, Director of the Syrian Red Crescent, spoke about the ever-increasing

number of Iraqi refugees in Syria. At present Syria hosts more than 1.5 million refugees from Iraq. They live with people rather than in refugee camps. They have put an excessive burden on the Syrian health and education system. In an attempt to restrict refugee movement, the government of Syria has recently imposed visa requirement for Iraqis. So far, there has not been any deportation, but refugees have to comply with residency regulations. A major concern is the waiting time for registration that is now 5 months in Syria (compared with 15 days in Jordan). Registration is being done only in Damascus and there are few registration centers in this city.

Discussions were also held about the plight of Iraqi refugees in other parts of the Middle East. Around half a million refugees live in an awkward condition in Jordan. Concerned about its stability, the Jordanian government has restricted refugee movement and has frequently detained them. There are also 487 Iraqis in Lebanese detention centers. Forcible return is also reported from Lebanon. There are around 20,000 Iraqi refugees in Turkey, with 7,000 as registered refugees. They are not welcome there and there have been cases of detention and deportation. There were 52,000 Iraqi refugees in Iran before, and after the war 1,500 Iraqis escaped to Iran. In a nutshell, Syria, Jordan, Lebanon, and Egypt are facing serious problems regarding hosting Iraqi refugees. There is an utmost need for international assistance.

Ezat Mossellanajad works at the Canadian Centre for the Victims of Torture (CCVT) in Toronto and is a member of the Editorial Board of Refugee Update.

APPEAL ON BEHALF OF A TERMINALLY ILL WOMAN

BY MULUGETA ABAI

We urgently appeal for your intervention to assist a terminally ill woman and her nine year old daughter, who are both citizens of Canada. This woman and her daughter are clients of the Canadian Centre for Victims of Torture (CCVT). This widowed and single mother is counting her last days as a result of the devastating HIV/AIDS disease that was inflicted upon her due to no fault of her own. She is a victim of war from Africa, who after fleeing to a neighbouring country, was repeatedly raped by police.

Woman and her family rest in her last days. (Photo File)

According to a report from an AIDS specialist from St. Michael Hospital in Toronto, her "health s such that it is important that she be in close proximity to her friends who can care for her daughter… Her "life expectancy is less than two years and consequently it is important that her stress level be reduced as much as possible." The client told us that she had lost 80% of her liver function due to the HIV/AIDS infection.

With no husband or relative in Canada, she is fearful of what the future will hold for her child with ever-worsening effects of her illness. Her daughter does not know about her mother's illness and impending death. With no familial support, she is too vulnerable to be told about her mother's true condition at this time.

Our client's sister, the child's aunt, has agreed to relocate to Canada to care for her niece. Compared to institutional child care and Children's Aid, this is the least expensive option for the Canadian government. More importantly this is clearly the most humanitarian option and serves the best interests of the child.

Unfortunately, the sister's application for a visa was denied by the Canadian High Commission in Nairobi, Kenya. Our client is not able to pursue family sponsorship due to economic hardship in addition to the lengthy wait time in light of her deteriorating health. Also, our client is concerned about the psychological impact of her death and leaving her daughter with no other surviving family in Canada. As a result she is psychologically fragile and distraught.

I appeal to you to write to the Minister of Citizenship and Immigration and ask her to use services of her office to help this terminally ill Canadian woman and her daughter. The most practical option is to use her prerogative and issue the sister with a temporary resident's permit on humanitarian and compassionate grounds so that she can come to Canada as a temporary resident.

For more information contact me at the Canadian Centre for Victims of Torture (CCVT): Tel: 416 363-1066; Fax: (416) 363-2122 or email: mabai@ccvt.org

Mulugeta Abai
Executive Director

REFUGEE CLAIM STATISTICS, JANUARY-AUGUST 2007

TOTAL NUMBER OF CLAIMS:

16,068

(if the same rate continues for the rest of 2007, we can expect 24,102 at year end)

A higher percentage of claims are being made at the land border or airport :

Where made	% in 2007	% in 2006
Inland	54	62
US-Can border	25	20
Airport	22	18

There is a continuing shift in regions where claims are made (away from Ontario, towards Québec):

57% in Ontario (63% in 2006, 69% in 2005)
35% in Québec (30% in 2006, 24% in 2005)
5% in BC
2% in Prairies (353 claims)

Top offices where claims made:

Etobicoke: 27% of all claims Fort Erie Peace Bridge: 13% Toronto airports: 7% Windsor Ambassador Bridge: 3%	Montreal inland: 14% Trudeau Airport: 13% Lacolle: 5%
Vancouver inland: 3%	

Ineligible Claims

382 claims were found ineligible (a little over 2% of all claims). Of these, two-thirds were ineligible based on safe third and 21% were ineligible because of a previous claim.

In July and August the number ineligible based on safe third went up to 57 and 51 respectively, compared with an average 26 per month for the first half of the year. However, the number of border claims also went up in those months. Overall, from January to August, 7% of land border claims (representing 262 people) were found ineligible based on safe third.

For those exempted from safe third country, **59%** were exempt based on moratorium countries. In 2006, **48%** of safe third exemptions were moratorium countries.

The top country of origin of claimants

Country	% in 2007
Mexico	27 (21 in 2006)
Haiti	9
Colombia	7
China	6

Individual IRB Member refugee claim grant rates for 2006

Statistics on individual IRB Member refugee claim grant rates for 2006 are now available on the CCR website: http://www.ccrweb.ca/documents/rehaagdata.htm The data, which was compiled using Access to Information procedures, may be of use to refugee advocates in several contexts. For example, the data reveals vast variations in IRB Member grant rates, which may provide further arguments in favour of implementing the Refugee Appeal Division.

A POEM

Like the squirrel and the robin
we built a cosy home in stages.
What took us 20 years to build,
was burnt down in 24 hours.

We walked, we ran
and began to live out of suitcases.
within assigned 6'x 10' rooms
we paced, yearning for 'home'.

Like the monkey or the kangaroo
I hopped from place to place,
with my infants clutching at me -
Putting up and taking down our tents.
Addressless, adrift,
Our colour became a burden.
In borrowed life-boats we floated.
Then at last we saw land - our new home.

Land of Native Indians, Inuits
and immigrants.
Now I am one of you.
O Canada! the North Star, let's together be
the Sanctuary for the homeless
and rootless.

Sadha Coomarasamy,
October, 1986
Montreal

THANK YOU

REFUGE UPDATE **thanks**

Ontario Public Service Employees Union (OPSEU)

REFUGEE UPDATE

FOUNDED BY JESUIT REFUGEE SERVICE - CANADA
CURRENTLY PUBLISHED 3 TIMES PER YEAR BY THE FCJ REFUGEE CENTRE AND THE CANADIAN COUNCIL FOR REFUGEES

BOARD: Lois Anne Bordowitz FCJ, Tom Clark, Marty Dolin, Catherine Gauvreau, Ken Luckhardt, Ezat Mossallanejad, Helene Moussa, Elsa Musa, Francisco Rico-Martinez, Norrie De Valencia

PRODUCTION: Gilberto Rogel

ISSN 1916-1530

SUBSCRIPTIONS:
3 issues per year: Individuals $15, Institutions $25; Bulk (20 or more) $3.50 per copy.

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