REFUGEE UPDATE

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INSIDE:

THE CRY & LIFE OF A REFUGEE WOMAN:

BY LUCY NG'ANG'A

"*Sometimes, I wonder if all women are like me, have they gone through what I have, is it a curse? From an ordeal of gang rape, abduction by militiamen, watching as my children are killed or die of hunger, separation from my husband and kin during war… the list is endless! I thought I had seen a ray of hope by seeking refuge, but it was never to be, there is still more that I go through everyday as a woman" laments one refugee woman amidst tears from Kakuma Refugee camp.*

Women distributing food

These are some of the tear-moving stories repeatedly narrated to me on a daily basis during my interaction with women as a Reproductive Health Field officer working with the National Council of Churches of Kenya (NCCK) for the last 9 years. NCCK is mandated by the United Nations High Commission for Refugees (UNHCR) to provide Reproductive Health Advocacy & HIV/AIDs mitigation initiatives. NCCK also has a program for vulnerable women (most of whom were brewers and or commercial sex workers) on alternative livelihoods through income generating activities (IGAs).

Kakuma Refugee camp is currently hosting more than 78,272 refugees from different nationali-

ties following political instabilities in their countries, with the Sudanese being the majority. Over 40% of the total population are women. The camp is located in a non-agricultural part of Kenya, approximately 1,000 km north-west of the capital city Nairobi. The temperatures in Kakuma are relatively high, often characterised by hot and dusty weather. During the rainy season, the floods from the mountains in Uganda, on the east border, sweep across the camp causing massive damage to the refugee semi-permanent shelters. Disease breaks out and renders some parts of the camp inaccessible. Relief services are offered to the refugees by the 13 different humanitarian organisations namely, UNHCR, World Food Program, Lutheran World Federation, National Council of Churches of Kenya, Jesuit Refugee Services, German Technical operation (GTZ), Windle Trust Kenya, Don Bosco, Handicap International, International Rescue Committee, Film Aid International, Red Cross, and the International Organisation for Migration in collaboration with the local Government of Kenya forces, who offer security services.

The life of a refugee woman is burdensome since she has to take the responsibility of raising her family amidst challenges. Food, one of the basic needs, is inadequate as it is supplied bi-monthly and most of the time the family has to adopt skipping meals to make ends meet. When health implications strike as a result, the woman has to take charge to correct this phenomenon.

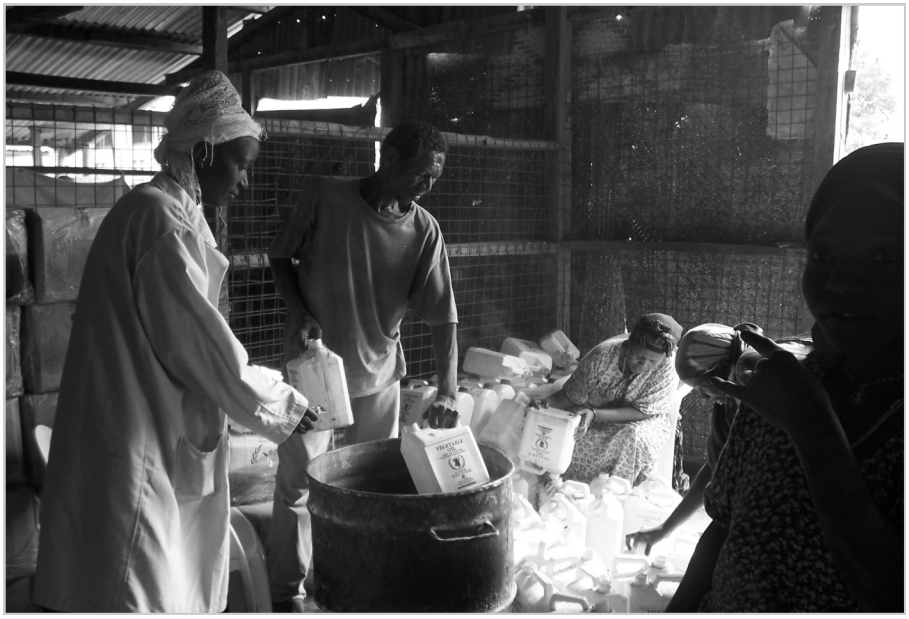
Most of these women are widows, single parents/ divorced or separated during the war as each sought safety. While gang rape and abduction remains a painful ordeal to a refugee woman, most of the traditional norms pave the way for injustices, inequalities and violation of their human rights. Some of the norms have preference of a boy child over a girl child, a situation that is seen during food distribution days where only girls are out of school to collect their rations from the centres. Among the centre staff, 100% of the scoopers are women. This is because issues of food among the majority Sudanese is taken to be a woman's responsibility and is seen as fulfilment, a requirement and an obligation for a traditional woman. This contributes to the vulnerability of the women who engage in high risky behaviours, e.g. illicit brewing and commercial sex to earn a living. It is not a vice that was openly discussed until recent years, after a study was conducted by NCCK. Today close to 300 women have been engaged in alternative livelihoods through income generating activities (IGAs). This has reduced their vulnerability in contracting fatal infections e.g. STDs, HIV/AIDs, and has enabled them to provide for their families in a socially and morally acceptable way, among other positive results realised. Through follow-up and counselling they have realised that engaging in the dangerous vices may have more trauma and in view of the success stories, more women are crying out for the same initiative which is limited due to inadequate funding.

"After going through so much turmoil dating back to my country Sudan, where decision making is entirely done by men, I was forcefully married off to a man against my will. I managed to escape and sought refuge here. I am a mother of four children all from different fathers. I had to engage in commercial sex work to earn a living, for as little as 50/- or less, depending on the generosity of my customers. Thank God that somebody, somewhere, was touched by the plight of the refugee women and through NCCK, I was empowered not only with knowledge on reducing risk of vulnerability to HIV/AIDs and STDs, but was also given some grants to start some income generating activities. The woman you see today is totally different from what she was a few years ago. I am a proud woman; I have been able to start a video show business that is run by my son. Through the empowerment I was engaged as a peer educator to my fellow women who are in the same dilemma. I can feed, clothe and take care of my children in a socially, dignified and morally acceptable way" adds another woman.

Gender inequality among the communities still remains a topic of concern for most of the refugee programmes as it negatively impacts on the life of a woman. This, in collaboration with the community authority structures, e.g. community leaders, focuses on addressing, reviewing and revising harmful cultural norms. It calls for women working together and supporting each other, not opposing men but working together to realise changes and equal opportunities for women based on qualifications and not on gender. This is a move that will yield peaceful problem solving and perhaps reduce the refugee influx seeking asylum as countries struggle for freedom and liberty. In the Sudanese community, for example, women are seen as an asset due to the huge amount of the bride price involved, in the form of animals. This leaves a woman 'zero-grazed', as most of the decisions and benefits are accessed by the men. It even leaves her having no power over her own body, let alone her reproductive health rights.

"How I wish that our men could realise that we are also human beings! Give us time to express our feelings and be helpers and not servants. I am scared of saying this in my community as I do not know how they will react to this. If all women could be enlightened through open forums for discussions with our men, maybe situations would change. It would probably ease the agony of a woman with refugee status and women as a whole" comments one woman during a workshop conducted by NCCK on Gender based violence.

Through realisation of the importance of a woman, change is feasible, though challenging, in breaking through the rigid traditions. The dream of the woman would be to see her status in the community appreciated and valued, through inviting her participation in decision -making bodies. Therefore more programmes targeting empowerment of women are a vital tool for this achievement. It is worth noting that giving a woman a platform to raise her voice would give her an opportunity to utilise her rich talent and make life easier her, bringing an end to the cry of a refugee woman.



Preparation for distribution of food

Empowering Refugee Communities Through Advocacy:

The work of the National Council of Churches of Kenya (NCCK) on Reproductive Health & HIV/AIDs mitigation initiatives dates back to 1993 in Kakuma Refugee camp, a home of over 78,272 refugees from different nationalities dominated by deep rooted harmful cultural practices e.g Female Genital mutilation, Early/forced marriages, wife inheritance, among others. Obviously most of these practices adversely and negatively affect the lives of women/girls and children.

NCCK adopts strategies that are quite acceptable for the different ethnicities in its advocacy work, e.g. focus group discussions, video sessions, home visits, workshops, classroom lessons in the learning institutions through the trained reproductive health motivators engaged as incentive workers, among others. A group of youth (participatory Education Theatre) is a unique initiative in Kakuma by NCCK which is adored by many. This group passes very focused messages to the communities through theatre-oriented artistic work in the form of poems, songs, skits, dramas, choral verses, etc., composed in different dialects to suit the refugee communities characterised by low literacy levels. This information targets different groups in the community e.g youth, community leaders, religious leaders, women, girls, through a collaborative effort with the other humanitarian agencies offering different services in Kakuma. Most of the strategies adopted in reaching the communities have also reduced idleness and consumption of illicit brew, very common in the camps. They also richly equip the groups with life skills that will help them reduce vulnerability and avoid behaviours that puts them at risk.

NCCK is the only local organisation in the refugee setup in Kakuma and therefore its services are extended to the host community, the Turkanas, who are nomadic pastoralists. Life both in the refugee camp and for the host population is worsened by the harsh weather that does not allow farming. This therefore leaves both communities entirely dependent on relief services for water, food and other basic needs. Most of the targeted communities have strong, rigid and harmful cultural norms which surround gender issues and oppress the women and girls. NCCK focuses on realising meaningful and reproductive lives of men, women and girls during their reproductive ages through advocacy on the intake and maintenance of healthy life choices through initiatives acting as a link between the communities and the health providers. Through one to one open forums with different groups during the routine field activities by the few staff on the ground as a result of limited funding, the communities have developed a lot of confidence in and appreciation of the services offered and easily accessed by them. NCCK also works with vulnerable women towards addressing self dependency and healthy moral values through alternative forms of livelihoods.

The realisation of success stories among the target groups has been facilitated through collaborative efforts of the office and the field staff. *"I feel so proud to be associated with NCCK. Though a very small organisation, a lot of good and positive things are said*

by the communities in the camp, everywhere you go, especially among the women. NCCK is the talk of the day. I really don't care how much I earn at the end of the month as an incentive, but the impact of my services to my fellow communities members will make a lot of changes in our countries of origin". These comments were made by Everline Aol, one of the incentive staff (peer educator) working with NCCK in the camp. UNHCR and other organisations also appreciate the efforts by NCCK and continue to support its initiative. UNHCR Community Services, in whose docket NCCK's services fall, consults the office in assessing, follow up and monitoring some of its field activities follow up and monitoring some of its field activities.

Enhanced collaborative links with the community structures, e.g. community leaders, churches, has received positive comments. NCCK is the sole organisation that helps in facilitating, organising and receiving ecumenical missions to Kakuma that creates a closer relation to the communities in view of change in behavioural attitudes. We thank God for our supporters, both locally and internationally, who have enabled us to achieve tremendous impacts by letting the disadvantaged in life realise their dreams amidst challenging and threatening experiences. We are devoted to our mission of empowering communities through advocacy!

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KAKUMA REFUGEE CAMP RE-VISITED

BY ELSA TESFAY

The Kakuma refugee camp is one of the oldest and largest refugee camps in the world. It was established 15 years ago in the desert of northern Kenya about 840 kilometres from Nairobi. It is one of the most arid and hottest parts of Kenya with temperatures rising to 40 degrees in the day time and 30 in the evening. It covers approximately 25 square kilometres of land. The refugee population comes from several countries: Ethiopia, Somalia, Sudan, Eritrea, Uganda, Rwanda and the Democratic Republic of Congo.

Helene Moussa for *Refugee Update* interviewed Elsa Musa who recently returned from Kenya where she visited the National Council of Kenya (NCCK) Integrated Reproductive Health Care Program for refugees in Kakuma refugee camp and the Kenyan Turkana host community who live in the area.

HM: The last time you were in Kamuma refugee camp was three years ago. What stands out for you from this visit?

ELSA: What really stands out is that despite the tents in a huge sprawling camp, it is a microcosm of the "outside" world. Life in the camp is actually very similar to a small town…it has socio-economic structures, a diverse population with vulnerabilities and problems including exploitation. You don't have to look very deeply to realize that refugees in a camp are not a homogenous population. This is not only true because they come from different national and ethnic groups, but a class system is quite visible. Take for instance the Ethiopian section of the camp has a street called "Addis Ababa" which is lined with coffee houses, restaurants, and other commercial activities, even stores where you can make telephone calls and check e-mail.

HM: What is their source of financing?

ELSA: These are mainly refugees who have been in the camps since the *Derge* (Marxist Revolution of 1974-91). Some fled with cash, others receive money from their families abroad and with time they have been able to build up their finances. But what struck me the most is when I went past the cemetery, which is a huge plot of land. Not only did it make me realize that refugees die in the camps but the class differences are even clearer in burial grounds. You see a relatively elaborate tombstone next to a grave that may just have a few stones or pebbles over it.

HM: You mentioned that there was exploitation in the camp?

ELSA: You have to realize that the camp has no fences even though refugees are not allowed to go beyond the camp and need permission to move outside the surrounding Kakuma camp**.** The camp is located close to a nomadic settlement of the Turkana people who can enter and leave the camp freely. They sell and buy goods in the camp "markets" and the Turkana women sometimes work for camp residents as maids or in camp commercial

activities. Refugees who are often better off than the Turkana will exploit their services. The camp also provides better educational, social and health services compared to those in the Turkana settlement. The Turkana for instance don't have always have access to clean water. The camp does.

HM: Who are the vulnerable people in the camp?

ELSA: It was not until the National Council of Churches of Kenya (NCCK) carried out a study which clearly showed the extent of commercial sex trade practices that a response was found necessary. Now they are trying to identify the women to provide them with reproductive health and HIV/AIDS education, as well as skills training in other trades such as hair-dressing. They are also provided with funds to start alternative businesses. There is a lot of solidarity among the camp women. They were able to create a coop to buy and sell goods.

HM: What about children?

ELSA: Many have better access to schooling than they would should they return to their home countries where entire villages have been destroyed. It is certainly better than the Turkana settlement. It is interesting to see how mothers help each other through a mutual support system so that children will be cared for or go to school while they work. But you can't help but wonder what is going on in the minds of these children when they see their parents every day collect the rations. Has it become a "norm" in their minds that adults daily collect their food rations? Do they even think that the NGOs also have to line up for rations?

HM: How many paid staff does the NCCK have in the camp?

ELSA: Three! The only way they have been able to reach the refugee population is to train refugee volunteers who are called "incentive workers". They are selected from among the community members.

HM: I know that refugees organize themselves just as any other human group does. How is the community leadership structure organized and are women in such structures?

ELSA: Yes, I heard that women are often involved in leadership. The community groups are usually organized by "tribal" and "ethnic" groups rather than nationality groups. In fact, they live in such clusters anyway. Conflicting groups will also be separated from each other. I actually spoke to a woman who is the co-chair of the Darfur community.

HM: What is the possibility of local integration for these refugees in Kenya?

ELSA: For the rural refugee population that is really not a realistic option because it would involve land rights which is already a huge issue among the Kenyan rural populations. Grazing rights have for a long time been laden with conflicts. Refugees are only allowed to raise chickens because the Tukana believe animals in the area belong to the Turkana community. Besides it is too large a refugee population for Kenya to absorb. Integration in urban areas is a possibility for a very limited number but they would have to compete for employment opportunities and housing, both of which are sorely lacking for Kenyans.

HM: Looking back on what you have observed, what do you think is the biggest challenge for the refugee regime.

ELSA: I would say protection, defining protection in its broadest terms – from access to a fair and timely refugee determination process, to security of refugees, to freedom of movement and right to secure employment.

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CANADIAN PRIVATE SPONSORSHIP OF REFUGEES PROGRAM 4TH IN THE WORLD

BY LIZ MCWEENY

The Private Sponsorship of Refugees Program (PSRP) brings 30% - 35% of all the refugees that Canada resettles from abroad. To put this in perspective, this voluntary program is the 4th largest entity in the world resettling refugees, behind the USA, Australia and the Canadian Government and ahead of 13 other resettlement countries.[1] Now, after 27 years, the PSRP is in trouble. Processing times at some Missions are now more than three years, making it difficult to call it a protection program. Global acceptance rates hover around the 50% mark, and the program appears inefficient and wasteful. Much of this is the result of evolving changes to the program and different priorities between Canadians and their government.

Context

Two of the reasons for the program's success are now the root causes of its troubles, the principle of additionality and the tradition of sponsor referral, often called 'named' refugees. Additionality means that Canadian residents may sponsor refugees in addition to the number approved by Parliament for the Canadian Government Program i.e. private citizens increase the overall numbers resettled annually by donating their resources and voluntarism in addition to the resources of the federal government. The second issue is the tradition of naming refugees whom sponsors refer for resettlement. These 'named' refugees may be persons that the sponsoring organization learns about through other organizations abroad, through the refugees' connections in Canada or they may be self-referrals from the refugees overseas.

The second wave, the echo effect

The tradition of sponsoring named refugees emerged from the need to respond to refugees left behind in camps and refugee situations, many of whom have family, relatives and friends who have resettled to Canada. Canada's narrow definition of family does not take into account the many other ways in which cultures define family; consequently, refugees who are in Canada are separated from those they love and have close relationships with. Often, when they arrive here their first action is look for ways to rescue their loved ones and reunite with them.

The income requirements for Family Class sponsorships are usually well beyond the abilities of newly arrived refugees and the cancellation of the Assisted Relative Class only compounded the need for sponsor referrals. Moreover, sponsors share a close connection with those they have sponsored and they feel the responsibility and obligation to try to reunite families by sponsoring the refugees abroad who have linkages in Canada.

Community-based Sponsorship Capacity Building

In the late nineties CIC put a lot of effort into building capacity amongst some of the refugee newcomer communities to become Sponsorship Agreement Holders (SAHs) or to become actively involved in sponsorship. In 2002 this included a new definition of sponsors to include the new category of co-sponsors, who in most situations are the friends and families of the refugees abroad. Those communities who did become Sponsorship Agreement Holders (SAHs) or partners with existing SAHs e.g. the Sierra Leone, Ethiopian, Oromo, Eritrean and Assyrian communities, saw it as a way to expand the private sponsorship of refugees with family and community links in Canada. The common thread was and continues to be that almost without exception these are sponsor-referred cases.

Disconnects in Priorities and Resources

While interest and the sponsoring community base have been building in Canada, government resources allocated to Missions overseas have been reduced and more narrowly focused on particular regions where the government, in response to UNHCR and international planning, is conducting its own resettlement program. Meanwhile, the second waves are often specific caseloads or are in regions from which Canada and the international community have moved on.

The numbers of sponsorship submissions has become greater in number and scope than the government's commitment and often requires resources that have now been designated elsewhere. Both situations have created the disconnect between the federal program and the private sponsorship program, creating unacceptable delays and a refusal rate that demonstrates the reluctance of government to acknowledge that persons living in similar protracted situations to those previously resettled and who have connections in Canada may be sponsored through the PSRP.

Additionality also plays into this mix because, in principle, sponsors may submit as many sponsorships annually as they have capacity to support. This leaves the government with the task of addressing the high in-flow of new undertakings and the failure to process successful cases in the same numbers, hence creating a backlog inventory of refugees somewhere around the 12,000 mark. This difference between inflow and output has created the long processing times. Recently a CIC official told SAHs that it takes an average of 14 hours of actual work time to process a private sponsorship file. Most of the three year wait time is in getting to the top of the pile to actually start processing.[2]

Low Acceptance rates

Acceptance rates in some missions are quite high but globally only about 50% which means that the government processes two persons for every one person who actually lands in Canada. The reasons for so many refusals are complex: changes in country conditions, changes in the personal circumstances of the refugees, international priorities such as camp closures and the beginnings of repatriation may all be factors in refusing applications.

The sponsors in Canada must assess the eligibility of the persons they are sponsoring and all have received training in how to do these assessments. Nevertheless, CIC has always said that the decision is ultimately up to the visa officer and in situations where the information is incomplete or there is marginal evidence of eligibility many sponsors will submit the case in the hopes that the Visa Officer will have more information to make the final decision.

There is little doubt that fraud is a factor in the PSRP and this often translates into refusals where the Visa Officer is of the opinion that fraud is being committed or, where a particular caseload has a high prevalence of fraud the officer may be more inclined to refuse. Canada's laws on immigration fraud are firm; however, fraud can occur in many forms and quite often the refugee is the victim of the fraud and not the perpetrator.

4th in the World

Despite the obvious challenges, the Canadian Council for Refugees (CCR) and the Sponsorship Agreement Holders continue to try to work with government to find solutions. The federal government and sponsors have competing priorities driven by international/ national commitments and community/family relationships. Both priorities offer protection to refugees and in a world where resettlement places are less than 1% of the actual numbers of refugees, tough decisions have to be made.

Nevertheless, the PSRP is a magnificent opportunity to rescue refugees and enrich our country. Short term, the backlog inventory can be dealt with but in the long term, the sponsors and the government must reach agreement on how Canada sets its priorities in protecting refugees through resettlement that addresses the protection needs of refugees and the interests and priorities of Canadians as well as that of the international community.

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[1] UNHCR Resettlement by Country 2005 unhcr.org
[2] Derek Kunsken, CIC official at SAH Forum Nov 2006.

Liz McWeeny is President of the Canadian Council for Refugees and has been involved in refugee sponsorship since 1980

THE SAFE THIRD COUNTRY AGREEMENT: A DISASTER FOR THE ACCESS OF REFUGEES TO CANADA

BY FRANCISCO RICO-MARTINEZ

As front-line service providers, we are privy to exhaustive and distressing evidence – both statistical and anecdotal – that the Safe Third Country Agreement between the United States and Canada is a disaster for the access of refugees to Canada. Examples: in 2006, 20% of the claims made were made at the US-Canada border against 35% in 2004, pre-safe third. In 2006, 71% of the ineligible claims were because of the safe third, which is a reason that we did not have previous to 2004.

At our office, every week, we receive several phone calls from people who are living in desperate situations in the US due to their lack of status. Some of them left their countries due to persecution and there is no option to go back and there is no option for them to regularize their status in the United States either. In this desperate situation, to come to Canada becomes the only feasible option. That's when some of them make a phone call to our office in the tone of voice denoting desperation and the questions are always the same: How can I get to Canada? How can we get to Canada?

Our first role is to make them to calm down, to trust us. We try to explain to them this illogical concept of "the safe third country agreement". We need to hear from them some personal details, some situations, in order that we can say something useful to them. But what can you say to someone who does not meet the exceptions of the agreement. The sarcasm of the ineligible claimants is very appealing:

Are you telling me that, if I do not meet any of the exceptions and I go to the border, I will be refused because the United States is a safe country but, if I manage to fly from the United States to any city in Canada or if I manage to arrive at any Canadian port, even though I have been living in the United States, I, the same person, I will be eligible to make a claim and that the United States is not a safe third country any longer? What does that have to do with what happened to me back home? What does that have to do with my seeking protection? Do you know that the exception based on family in Canada is the second highest exception (31%) used at the border?

Are you telling me that, if a member of my family manages to cross the border undetected and makes an inland refugee claim, the rest of my family can go to the border and, even though they have been living in the United States, they, the same persons, they will be eligible to make a claim and that the United States is not a safe third country any longer? We have at least one case like that in our office. They were accepted by the IRB even though they were already refused by the asylum system in the US. Now, the whole family is waiting for their permanent resident status.

Are you telling me that, if I already was determined not eligible by the Canadian Authorities at the border, I wait for six months and cross the border undetected, and, even though I have been living in the United States, I, the same person, I will be able to make a claim for PRRA and that the United States is not a safe third country any longer for me? How come?

Whereas if I enter Canada undetected without waiting for six months to pass, I will be found ineligible to make a claim in Canada because I made a previous claim, I will be ineligible for a PRRA because I didn't wait 6 months and I will be deported back to the country where I fear persecution, without any evaluation by the US or by Canada of whether I have a well-founded of persecution. We have at least four cases like this in Canada; one in Montreal, one in Winnipeg and two in Toronto.

The Safe Third Country Agreement breaks with Canada's historical international reputation for hospitality in the most illogical way possible. It contravenes even the Canadian common sense of our moral and legal duties under international law. Yes, the common sense of not sending people back to persecution; the common sense of not protecting people from torture.

The Safe Third Country Agreement particularly breaks with our Canadian commitment of increasing the protection of women against abuse and violence. Please ask Canada Immigration how the Safe Third Country Agreement protects women? How this agreement increases access for refugee women to our protection? It does not. In fact, the statistics of refugee claims for 2005 at the land border showed how male claims (54%) outnumbered female claims (46%).

We are asking Immigration not to return a person to a country that may return them to persecution, without hearing what that person has to say. If the United States returns that ineligible person to persecution, that, in any way that you put it, amounts to returning them ourselves to persecution. Mahar Arar's case set a clear precedent in this regard.

The Arar report is saying loud and clear that this is wrong. Do not allow this just because the claimants are not Canadian citizens.

Francisco Rico-Martinez is Co-Director of the FCJ Refugee Centre and member of the Editorial Board of Refugee Update

GUIDELINE ON PROCEDURES WITH RESPECT TO VULNERABLE PERSONS APPEARING BEFORE THE IRB

BY JOHN DOHERTY

After many years of being encouraged to adopt a set of guidelines for the treatment of survivors of torture and other forms of organized violence, the Immigration and Refugee Board (IRB) issued, on December 15, 2006, its "Guideline on Procedures with Respect to Vulnerable Persons Appearing Before the IRB". This document is meant to assist Immigration and Refugee Board (IRB) members, and others involved in processes before the IRB, in their handling of cases where there is reason to believe that special care ought to be taken. In some respects the guideline simply formalizes in a different manner procedural practices that were already possible under existing ways of functioning. On the other hand, it *does* provide a level of protection that was previously unavailable or difficult to access.

The guideline is a welcome step in the direction of ensuring that vulnerable persons enjoy the safeguards necessary to allowing them to be able to adequately present the salient elements of their case in a manner that is coherent and credible. The document specifically identifies in its introduction "... the IRB's commitment to making procedural accommodations for such persons so that they are not disadvantaged in presenting the cases" (1.4). All divisions of the IRB (Immigration Division, Immigration Appeal Division, Refugee Protection Division) are subject to the guideline.

Defining who is to be considered vulnerable (and thus subject to the direction given in the document) is one of the first tasks of the guideline. Various kinds of vulnerabilities are cited as examples (having experienced or witnessed torture or genocide or other forms of severe mistreatment; innate or acquired personal characteristics such as a physical or mental illness, age; history of gender-related persecution), but the baseline for identification is that "...vulnerable persons are individuals whose ability to present their cases before the IRB is severely impaired" (2.1). Close family members of the vulnerable person may also be considered vulnerable in certain cases. Section 12 of the guideline provides for the possibility that a Designated Representative be named in cases where the individual is under 18 years of age or unable "to appreciate the nature of the proceedings" (12.1).

The guideline recognizes the importance of an early identification of the specific vulnerability of an individual and promotes the idea that anyone familiar with the case should have the power to bring the vulnerability to the IRB's attention. It should be noted that the onus largely rests with counsel for the individual to ensure that the vulnerability is identified, though it provides for the possibility that "... [t]he IRB may also act on its own initiative" (7.4).

Once counsel has applied for a determination of vulnerability (including a description of the kinds of procedural accommodations being sought), a decision will be made regarding the request, and discussions should ensue regarding appropriate accommodations. In the eventuality that a determination of vulnerability is refused, we have been assured in Montreal that written reasons will be provided to justify the refusal.

In a clause that was absent from the draft that was circulated for consultation but included in the final version of the guideline, it also allows for the possibility that the Minister's representative challenge an identification of vulnerability in the interests of natural justice (6.1). This is somewhat troubling given the usually adversarial nature of proceedings where the Minister is represented, and given that elsewhere in the guideline it is clearly stated that "... the identification of a person as vulnerable does not predispose a member to make a particular determination of the case on its merits" (5.2). It is also difficult to understand how a determination of vulnerability could somehow "… have the effect of denying any party a fair opportunity to present their case" (6.1), the argument used to provide for the Minister's potential objection to a determination of vulnerability.

The guideline is clear that this determination of vulnerability does not imply that the IRB will ultimately accept the person's claim and states in its objectives that it specifically intends "... [to] the extent possible, to prevent vulnerable persons from becoming traumatized or re-traumatized by the hearing process or other IRB process."(3.3) It is difficult to see how an earlier finding of vulnerability by competent parties compromises the member's independence. It is not difficult to imagine how a legitimately vulnerable person could risk being traumatized or re-traumatized by the refusal of a Board member to recognize this vulnerability and the subsequent refusal to accord certain procedural accommodations in view of such.

The guideline envisages a process in which "... [a] Coordinating Member, Assistant Deputy Chairperson or Immigration Division Director may identify an individual as a vulnerable person and may take appropriate measures to accommodate the person at an early stage and before a member has been assigned to conduct a proceeding. The assigned member is not bound by the IRB's early identification. The assigned member will consider this Guideline and whether the identification and any procedural accommodations made will be maintained, amended or discontinued" (7.5). While it is true that the member is an independent decision-maker, it is also troubling that s/he is not required to respect an earlier determination that the person is to be treated as vulnerable.

On balance, the new guideline offers appropriate mechanisms for ensuring that vulnerable persons are treated with the care they require, though it has elements that may still leave legitimately vulnerable persons faced with obstacles to having their particular vulnerability adequately taken into consideration. The safeguards envisioned in the guideline are also only useful to the extent that counsel is aware of them and prepared to seek their application.

The Canadian Council for Refugees is concerned enough about the efficacy of the guideline that it recently decided to form an ad-hoc committee to monitor its implementation. We encourage anyone with feedback regarding the guideline to pass this along to the CCR (ccr@web.ca).

John Docherty works at RIVO, an NGO caring for victims of torture, in Montreal

THE ONTARIO IMMIGRANT SETTLEMENT AND ADAPTATION PROGRAM CONFERENCE

BY EZAT MOSSALLANEJAD

The Ontario Immigrant Settlement and Adaptation Program (OISAP) held a three-day conference on two separate occasions at Niagara Falls from January17-19 and January 24-26, 2007. Some 400 agencies and delegates in the settlement field participated in the Conference. The agenda of the Conference was diverse and included a number of topics such as cross-cultural communication, overview of the Resettlement Assistance Program (RAP), re-empowering torture survivors in the settlement process and working with newly arrived youth.

One of the most important goals of OISAP was the training of settlement workers throughout the province of Ontario by the Citizenship and Immigration Canada (CIC) with the intent of expanding skills and increasing knowledge. In addition to the workshops, this objective was also accomplished through the informal atmosphere of the Conference, which enabled frontline workers to participate in an informal communication of information and experiences that extended beyond the halls of the Conference to the outside. As a result, the participants not only renewed acquaintances and established new ones, but were given an opportunity to collectively address some of the common problems that affect the current settlement work process and explore more effective means of assisting clients.

Of the common problems that were discussed, four stand out as most poignant. Firstly, since settlement services are essential in helping newcomers to re-build their lives in a new culture and a new country, they should be made available to all newcomers, most especially including refugee claimants. Such an extension would ease and reduce the many hurdles faced by newcomers. It would also provide refugees protection, especially considering the greater complexity of their situation. Secondly, for settlement workers to be able to perform their job effectively, they must receive a salary that allows them to comfortably provide for their families rather than living in anxiety over their own financial situation. Moreover, the current salary is not reflective of the amount of time and energy that the workers spend on their clients. Therefore, an increase in their salaries is necessary. Lastly, considering the importance of settlement services, workers need to spend as much time as possible with their clients. However, the current complex reporting requirements are taking away valuable time and as a result, they should be simplified and made non-bureaucratic. The combination of these reforms will ensure that all newcomers will receive meaningful assistance that would help them become active participants in Canadian society.

Overall, the OISAP Conference was valuable and successful in bringing together frontline workers, allowing them to explore their field in a friendly, informal and welcoming atmosphere.

Ezat Mossallanejad is a policy analyst at the Canadian Centre for the Victims of Torture (CCVT)

LA DÉTENTION DES DEMANDEURS D'ASILE : UNE PERSPECTIVE DU QUÉBEC

BY JENNY JEANES

English summary:

The majority of people detained for immigration reasons in Quebec are held at the Immigration Detention Centre in Laval, just outside of Montreal. Action Réfugiés Montréal visits this centre on a weekly basis in order to provide information and assistance to detainees, especially refugee claimants. A major preoccupation for ARM is the detention of refugee claimants on the basis of identity, the primary reason for which asylum seekers are detained in Quebec. Since the most recent immigration law, we now see claimants detained for identity at their inland eligibility interview, even some who have provided identity documents. Another problem is the lack of an independent decision-maker who can review the decision to detain on the basis of identity. Enormous stress is created by the inherent uncertainty as to the length of detention. This stress is heightened by the lack of clarity as to the number and nature of documents that must be provided and the length of time needed to verify documents. Detention of vulnerable refugee claimants is of particular concern, as are the obstacles for refugee claimants who must prepare their refugee claim document (Personal Information Form) while in detention.

La plupart des personnes détenues au Québec pour des raisons d'immigration se retrouvent au Centre de prévention de l'immigration (CPI) à Laval, juste à l'extérieur de Montréal. Action Réfugiés Montréal (ARM) visite ce centre chaque semaine afin de venir en aide aux personnes détenues, surtout aux demandeurs d'asile.

Ces visites nous permettent de donner aux personnes détenues de l'information importante sur les lois et procédures, de les aider pendant le processus de détention, notamment en les accompagnant à leurs audiences de révision de détention devant la Commission de l'immigration et du statut de réfugié (CISR) et de leur offrir plusieurs autres formes de support et d'assistance. Les visites et l'accompagnement nous permettent aussi d'observer des tendances dans les pratiques et procédures et de soulever des inquiétudes par rapport à celles-ci.

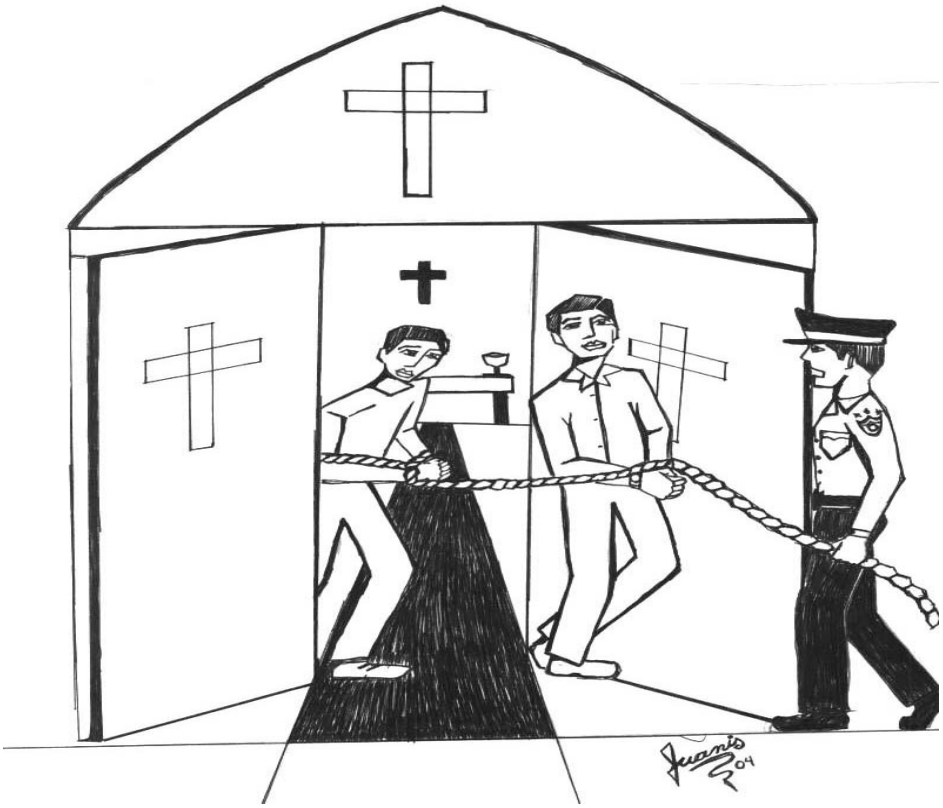
Plusieurs enjeux importants sont présents, notamment les conditions, la durée et le nombre de détention, la mise en application des lois et la législation en soit. Une des grandes préoccupations d'ARM, compte tenu de notre focus sur les demandeurs d'asile, est la détention sur la base de l'identité. La grande majorité des demandeurs d'asile détenus au Québec le sont pour des raisons d'identité.

La détention des demandeurs d'asile pour des raisons d'identité demeure une grande préoccupation pour ARM, particulièrement dans les cas où les personnes sont davantage vulnérables (femmes enceintes, familles avec des jeunes enfants, personnes ayant des problèmes de santé mentale). Nous observons des pratiques inquiétantes dans le traitement de ces dossiers, par exemple en ce qui a trait aux délais.

Depuis l'entrée en vigueur, en juin 2002, de la *Loi sur l'immigration et la protection des réfugiés* (*Loi sur l'immigration*), il est devenu beaucoup plus facile de détenir un individu sur la base de l'identité que ce l'était auparavant. Il n'y a aucun décideur indépendent pour contrôler la décision de détenir sur la base de l'identité, même dans un cas où une personne est détenue en dépit de la présentation de pièces d'identité. En particulier, la présente *Loi sur l'immigration* permet la détention d'une personne étrangère pour des raisons d'identité à tout moment, contrairement à auparavant où l'arrestation et la détention des étrangers pouvaient seulement s'effectuer aux points d'entrées. Un des effets causé par cette modification est qu'un nombre important de revendicateurs du statut de réfugié est détenu lors de l'entrevue de recevabilité qui a lieu lorsque l'étranger a déjà passé quelques semaines au Canada. Il est important de souligner que ces personnes se sont présentées de plein gré aux bureaux de l'immigration pour demander l'asile.
Tel que mentionné, un demandeur d'asile peut être détenu même quand il fournit des pièces d'identité. Parfois, les autorités justifient la détention en alléguant la néces-

sité de vérifier ces pièces. Dans d'autres cas, des pièces supplémentaires sont exigées. Il n'y a pas de directives sur le nombre ou le type de document requis. Ainsi, une personne ne peut pas savoir si elle sera détenue ou non avec les pièces en sa possession. La décision de détenir pour des raisons d'identité est à la discretion d'un agent de l'Agence des services frontaliers du Canada (ASFC) et tel que déjà mentionné, il n'existe pas de contrôle indépendent de cette décision.

La vérification des documents prend un temps indéterminé. Parfois, il y a des délais sans que la personne ne sache pourquoi. Il se peut que les documents soient jugés «non-concluants», parce qu'il manque des données biométriques ou si l'ASFC n'a pas de documents de comparaison. Dans certains cas, des vérifications supplémentaires sont exigées même quand des documents adéquats sont fournis.



Dans certaines situations, la personne ressent une obligation de contacter son ambassade pour confirmer son identité, malgré sa peur de rentrer en contact avec les autorités de son pays d'origine. Finalement, une personne qui ne peut simplement pas fournir des documents satisfaisants peut demeurer en détention pendant une période plus longue, avant de finalement être libérée à un moment donné, lorsque les autorités jugent qu'aucune autre démarche ne peut être effectuée. Il n'est jamais clair pour personne ce qui doit être fait exactement pour être libéré.

La détention pour des raisons d'immigration provoque un stress important compte tenu de 'incertitude quant à la durée. Ce stress augmente quand la personne ne sait pas ce qu'elle doit faire pour être libérée.

Un demandeur d'asile qui arrive dans un pays où il cherche la protection et qui par la suite est détenu sans savoir pour combien de temps, vit une grande angoisse et une peur continue. Malgré cela, la personne est obligée, alors qu'elle se retrouve en détention, de préparer des documents essentiels à sa demande d'asile. Cette étape cruciale dans le processus de revendication du statut de réfugié est rendue plus difficile pour ceux qui sont en détention, notamment à cause du stress, de la peur, des barrières linguistiques et de la difficulté de rencontrer son avocat.

Pour alléger certaines des difficultés mentionnées, nous avons mis sur pied un projet en partenariat avec la Chaire en droit international de migration à l'Université de Montréal. Nous donnons des séances d'information aux revendicateurs du statut de réfugié qui sont détenus, afin de les aider à comprendre et à préparer leur Formulaire de renseignements personnels (le « PIF »).

Finalement, nous soulignons (1) l'importance que la détention des demandeurs d'asile doit être exceptionnelle et non une pratique régulière, (2) que les alternatives à la détention doivent être trouvées, surtout quand il s'agit de personnes vulnérables, (3) que l'absence d'un décideur indépendant pour contrôler la détention sur la base de l'identité est une lacune sérieuse et (4) que les pratiques de vérification de l'identité devraient toujours être justes et raisonnables et faites dans le respect des obligations internationales du Canada à l'égard des demandeurs d'asile.

Jenny Jeanes est la Coordonnatrice du Programme de détention, Action Réfugiés Montréal

NEW DEVELOPMENTS REGARDING HUMANITARIAN AND COMPASSIONATE APPLICATIONS

BY MICHAEL BOSSIN

People applying to remain in Canada on humanitarian and compassionate (H&C) grounds, or their counsel, may have noticed that in December 2006, Citizenship and Immigration Canada (CIC) introduced a new application form. Although most of the questions on the new application are the same as on the previous form, there is one significant difference about which applicants should be aware.

The revised H & C application form reflects a policy change instituted by CIC in June 2006. As of June 22nd of last year, officers considering H & C applications have been specifically told that they can exempt an applicant who is inadmissible to Canada from that inadmissibility, *if* the applicant has specifically requested such an exemption and if it is justified on H & C grounds. In plain English, this means that a foreign national who is inadmissible to Canada may now be granted permanent resident status in spite of that inadmissibility.

For example, let us assume that the person applying to stay in Canada on H & C grounds is dependent on welfare. Given the applicant's age and health, it is unlikely that she will ever get off social assistance. Yet there are strong humanitarian reasons for her to remain in Canada. The applicant is likely inadmissible to Canada under section 39 of the *Immigration and Refugee Protection Act*, because of her dependence on social assistance. If the applicant asks, however, the CIC officer can exempt her from the s. 39 inadmissibility.

This means that if the officer believes that there are sufficient H & C grounds to warrant it, the woman in our example can be granted permanent resident status, even though she is technically, inadmissible to Canada. In the past, typically, CIC would not land an applicant in such circumstances until she ceased being inadmissible (in our example, stopped receiving welfare).

Alternatively, the inadmissible applicant would be issued a Temporary Resident Permit. In fact, immigration officers *always* have had the power to exempt an H & C applicant from the requirement that he/she not be inadmissible, well before June 22, 2006. Section 25 (1) of the Act is clear that the Minister (or his/her delegate), upon request of a foreign national, may grant an applicant who is inadmissible permanent resident status.

Why, then, was last year's policy change necessary? Simply, it is because CIC interprets the words "upon request of a foreign national" in s. 25 (1) to mean that an exemption from the requirement that one not be inadmissible to Canada can occur only if the applicant specifically asks for such an exemption. The problem prior to December 2006 was that nowhere on the old application could such a request be made.

The respective titles of the old and new forms tell the story. The old form was entitled "Request for Exemption from Immigrant Visa Requirement". If sufficient H & C reasons were found to exist, the applicant was granted precisely what she requested -an exemption from the requirement that she apply for permanent resident status from outside of Canada, and no more. In the inland processing for permanent residence that followed, H & C applicants were still required not to be inadmissible. In fact, pursuant to sections 68 and 72 of the *IRP Regulations*, landing of an H & C applicant is not possible *unless* the applicant is not inadmissible.

The title of the new form is "Application for Permanent Residence from Within Canada – Humanitarian and Compassionate Considerations". The application now contains a section where the applicant is asked specifically if he or she is seeking an exemption to overcome an inadmissibility".

Although this is a substantive improvement over the old form, the new version is still problematic. For example, the pertinent question - "Are you seeking an exemption to overcome an inadmissibility? - does not have a number of its own, and unless one reads the form carefully, is not readily apparent. It is found in the small print of an explanatory note following question 22. Moreover, the question itself is misleading. It makes reference only to certain types of inadmissible classes – based on criminality, health, human rights violations and non-compliance with visa requirements – and suggests that it is only those types of inadmissibility from which one can be exempted. Notably missing from the list is inadmissibility on financial grounds.

In spite of these deficiencies in the form, the changes contained therein are more than cosmetic. Section 25 of the *IRPA* is specifically designed to assist foreign nationals who are inadmissible, and, in my experience,

almost without exception, those who apply to remain in Canada on H & C grounds, *are* inadmissible. Being exempted from the visa requirement (the requirement to apply for permanent resident status from *outside* Canada) does not get the vast majority of those applicants very far, since, as mentioned above, a pre-requisite for such persons to be granted permanent status in Canada is that they are *not* inadmissible.

As one can imagine, the previous regime led to some unfortunate results. A person for whom there were found to be strong humanitarian reasons for her to stay in Canada, was denied landing because of an inadmissibility. Often the basis for the H & C application was the very condition that made the person inadmissible – for example, a serious health condition that could not be treated in the applicant's country of origin. To deny permanent status to such a person until she stopped having that health condition is absurd, and hardly humanitarian. Moreover, the alternative of granting inadmissible applicants a Temporary Resident Permit is not a satisfactory solution, as it makes them wait an additional 3 years, at least, before they can apply for permanent residence.

One hopes that the new policy and new form will allow applicants to avoid such situations. Although improvements to the form are still called for, its introduction is a positive development, in my view, long overdue.

Michael Bossin is a refugee lawyer working at the Community Legal Services in Ottawa.

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PROTECTING THE RIGHTS OF NON-CITIZENS: BEYOND TERRITORIALITY

BY EDWARD HYLAND

Review of Singh to Suresh: Non-Citizens, The Canadian Courts and Human Rights Obligations by Tom Clark, Trafford Publishing, 2006 244 pages.

Until the middle of the 20th century it was unheard of for a state to undertake obligations towards other states for the treatment of its own citizens. One can marvel at the proliferation of treaties that guarantee rights to individuals in the decades since the proclamation of the *Universal Declaration of Human Rights* in 1948.

International human rights law represents a break from the traditional idea that international law is about defining the mutual rights and obligations of states. Progressively, international human rights law has come to focus on the protection of individual (and not state) interests.

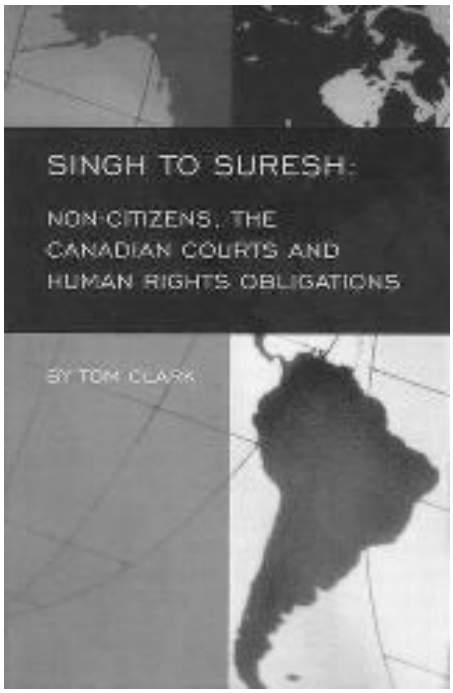
In his 1956 report to the International Law Commission on state responsibility, F.V. Garcia-Amador charted a radical re-thinking of the idea of state responsibility for the protection of individual rights in international law. As he put it: "The object of the 'internationalization' (to coin a term) of these rights and freedoms is to ensure the protection of the legitimate interests of the human person, irrespective of his nationality. Whether the person concerned is a citizen or an alien is then immaterial: human beings as such are under the direct protection of international law."[1]

In *Singh to Suresh*, Tom Clark offers a compelling argument in support of Garcia-Amador's vision, and a sharp rebuke of Canadian courts for failing to apply the accepted principle of international law that "human beings as such are under the direct protection of international law." Of course, anyone familiar with Clark's efforts on behalf of refugees will find familiar themes in this book: the international and regional human rights treaties, and their enforcement mechanisms, provide a critical source for understanding that refugees, refugee claimants and other non-citizens have legally enforceable rights to the protection of Canada, and that Canada has an obligation to these persons to respect those rights, to give effect to them and to ensure an effective legal remedy for their violation.

How is Canada to comply with its obligation? There are a variety of ways, but in *Singh to Suresh* Clark trains his regard on the courts, in particular the Supreme Court of Canada (**SCC**) and the intersection between international human rights law and Canada's constitutional

protection of human rights in the *Charter of Rights and Freedoms*. In reviewing a series of SCC and Ontario Court of Appeal decisions, Clark makes the case that international and regional human rights treaties and their enforcement mechanisms are an indispensable source for interpreting and applying Charter rights to non-citizens seeking Canada's protection.

Clark's argument that international human rights law is an important source for interpreting the Charter is not new, and he would be the first to admit it. What will engage the reader is his use of international human rights law to shine a light on the gaps between the normative content of international human rights law and Canadian courts' jurisprudence in applying to the circumstances of non-citizens in detention and facing extradition and deportation the Charter rights to life, liberty and security of the person, to be free from cruel and unusual treatment or punishment, to freedom of movement, to *habeas corpus* and to be treated equally.



For Clark, the courts don't get it. Their job is to give individuals, including non-citizens, effective protection of international human rights that are theirs simply because they are human beings. Those rights have substance and are a normative expression of the dignity of each person, and they should find their way into Canadian courts' interpretation of the scope and content of Charter rights, particularly as applied to non-citizens.

But the courts don't do this, according to Clark. Here readers will find themselves dissatisfied, unjustifiably so perhaps. Clark does not help us understand *why* the courts have failed to draw on international human rights law in a more rigorous and systematic fashion in applying the Charter to the cases involving non-citizens. One would be hard-pressed to point to a body of coherent Canadian jurisprudence on the applicability of international law and, in particular, international human rights law to domestic legal issues. Why is that so?

Maybe such a question is beyond the scope of the book. Clark likely would respond, "I never set out to ask that question. My question is how is it possible to understand, interpret and apply in a judicial context Charter rights to the cases of non-citizens in the light, and according to the norms, of international human rights treaties to which Canada is a party." That is Clark's project in this book, and has been through much of his career in working on refugee policy issues.

A final point: in my view, Clark misses the mark in criticizing judges for talking about "factors," "values," and "conscience" in their Charter decisions. Judges judge, and I see no other way of judging without at least looking at factors, taking into account values, and being attentive to conscience, whether the judges' own consciences or the "conscience" of the community. Doing so is not subjectivism or relativism or whatever other "ism" one may wish to characterize it as; there is no conscience without norms, there are no norms without values, and there are no values without human inquiry into the social, political, economic and cultural factors that make up a society.

Nevertheless, one can appreciate Clark's concern, expressed well by a former president of the South African Constitutional Court. In responding to the Attorney General's argument that public opinion favours capital punishment, President Arthur Chaskalson wrote, "Public opinion may have some relevance to the enquiry, but in itself, it is no substitute for the duty vested in the Courts to interpret the Constitution and to uphold its provisions without fear or favour...The very reason for establishing the new legal order, and for vesting the power of judicial review of all legislation in the courts, was to protect the rights of minorities and others who cannot protect their rights adequately through the democratic process. Those who are entitled to claim this protection include the social outcasts and marginalised people of our society. It is only if there is willingness to protect the worst and the weakest amongst us, that all of us can be secure that our own rights will be protected."

Tom Clark has provided a welcome and timely reminder that there is an international normative legal order that Canada's courts must use more effectively in applying the Charter to protect the rights of those persons who cannot rely on their own state to protect them and who find themselves in Canada.

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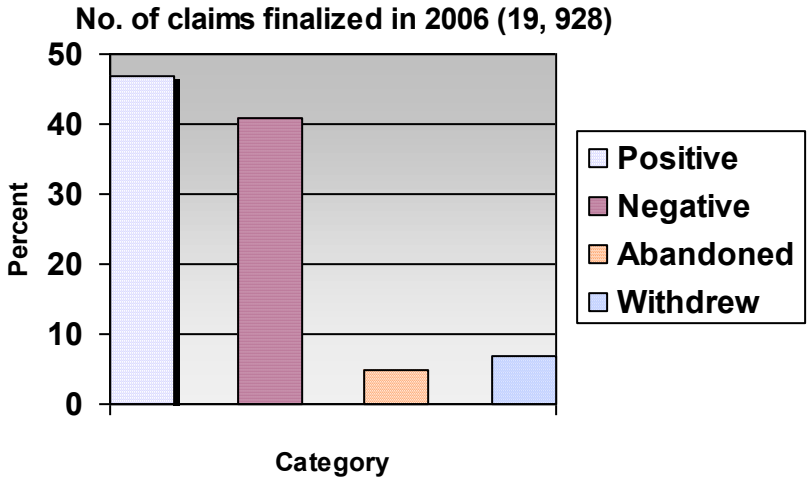
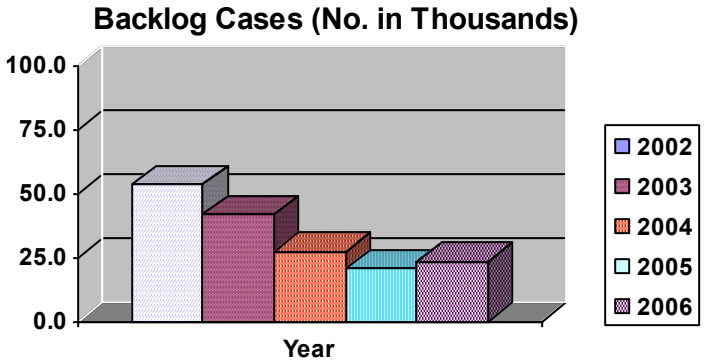
[1]"State Responsibility: International Responsibility" (1956) 2 *YBILC* 173 at 203.

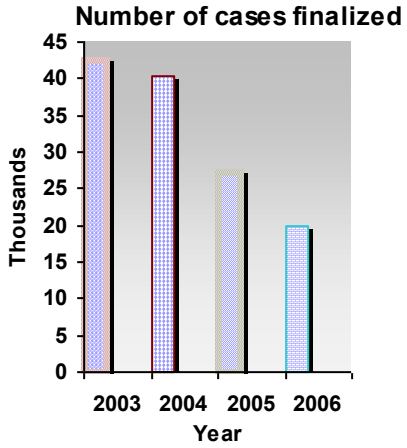
Ted Hyland had the benefit of working with Tom Clark for a number of years while he was a member of the board of the Inter-Church Committee for Refugees, and he currently practices law in Toronto.

Immigration and Refugee Board Statistics for 2006

Decisions of Refugee Protection Division







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