REFUGEE UPDATE

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ATTACK OF THE MIGRATION INTEGRITY SPECIALISTS! INTERDICTION AND THE THREAT TO ASYLUM

BY ANDREW BROWER

On May 29, 2003, refugee advocates from across Canada and several other countries gather in Ottawa to discuss the issue of interdiction and to strategize about how to bridge the gap between interdiction and human rights. This article provides some context for this discussion.

In a recent speech to the Canadian Bar Association, Immigration Minister Denis Coderre observed proudly: "In the past six years, our *migration integrity specialists* have stopped more than 40,000 people with improper documents before they boarded planes for North America."[1]

For readers who, like the author, were unfamiliar with Ottawa's latest euphemism, this statement might be a little confusing. Dictionaries define integrity as "moral uprightness" and "steadfast adherence to a strict moral or whose specialty it is to ensure that Canada's migration program has integrity would be responsible for ensuring ethical code."[2] One might therefore expect that officials that, for example, refugees are protected, asylum-seekers have access to status determination procedures, and children and families are reunited as quickly as possible. You would expect their job description to include reforming visa policies to make them fair and non-discriminatory, and making certain that no one is *ever* returned to persecution or torture.

[1] Hon. Denis Coderre, "Notes for an Address by the Honourable Denis Coderre, Minister of Citizenship and Immigration," at the Meeting of the Canadian Bar Association, Montreal, PQ, May 3, 2003. Emphasis added.

[2] Canadian Oxford Dictionary and American Heritage Dictionary (3rd ed.), respectively.

Unfortunately, you would be wrong. In fact, the job of Canada's *migration integrity specialists* is almost exactly the opposite of what the words mean: their job is to intercept (or "interdict") travellers, enforce visa policies and generally bar from Canada anyone who hasn't been invited. It makes no difference that they may be refugees desperately trying to reach asylum or children seeking to be reunited with their parents in Canada; if they don't have a valid visa and a passport, they will be turned away.

Take Mr. K., for example.[3] A pro-reform journalist in Iran, he feared persecution by the Iranian authorities because of his writings and fled Iran using false documents. He travelled by air, via Moscow and Havana, hoping to reach Canada, where his brother is a citizen. However, at the airport in Havana, while transferring to the final leg of his journey, one of Canada's "migration integrity specialists" discovered his fraudulent documents and prevented him from boarding his flight to Canada. Since Cuba is not a party to the 1951 Convention relating to the Status of Refugees, Mr. K could not claim asylum there. Before being deported to Moscow, Mr. K. was able to telephone his brother in Canada, who in turn called the Ottawa office of the United Nations High Commissioner for Refugees (UNHCR) to explain his brother's plight. UNHCR contacted their colleagues in Moscow, to make sure that Mr. K. was not sent back to Tehran where they feared he would be persecuted, and was given a chance to seek asylum in Russia, which is officially a party to the 1951 Convention (albeit with significant shortcomings). Despite numerous requests, however, UNHCR staff in Moscow were denied access to Mr. K. He was briefly detained at Moscow's International Airport and then was deported back to Tehran. He was arrested on arrival in Iran.

A widespread phenomenon

Mr. K's story is hardly unique. Canada, the UK and other European states have been interdicting "improperly documented" travellers at airports abroad for years. This type of interdiction is part of a package of measures including visa policies and carrier sanctions which are used by western states to keep out "undesirables": asylum-seekers, uninvited migrant workers, anyone who doesn't fit the country's image of the "ideal" educated, wealthy immigrant or tourist with money to spend.

Migration control really begins with visa policies. To get on an aircraft or boat you have to have an official visa document issued by the government of the country to which you are travelling. The dramatic impact of visa policies on access to asylum is not always recognised, but one need only think back to Canada's decision to require a visa for Guatemalans in 1984 or Czechs in the late 1990s for potent examples. Before the imposition of the visa requirements, the majority of asylum-seekers from those countries who arrived in Canada were recognised as refugees. With the visa requirement, asylum-seekers practically stopped arriving from the countries.

Since desperate situations call for desperate measures, many asylum-seekers to whom Canada will not issue a visa, or who cannot get a passport from their own government, resort to false documents. In order to make sure that they still cannot reach Canada, Canada and other states impose large fines and fees ("carrier sanctions") on transport companies such as airlines that bring "improperly documented persons" (some of them bound to be asylum-seekers) into their countries. To avoid these costs, transport companies screen passengers' documents and refuse boarding to those who don't have satisfactory documents. Canada's "migration integrity specialists" (usually called Immigration Control Officers) are posted in international airports to interdict improperly documented persons seeking to board a flight to Canada, and assist airlines to do the same.

Interdiction is not restricted to airports; indeed, much more common is interdiction at sea, or "maritime interdiction." Among the best-known examples is the USA's notorious policy of interdicting Haitian and Cuban migrants and asylum-seekers on the high seas and either delivering them back to their countries of origin or detaining them at Guantanamo Bay. Another is Australia's infamous "Pacific Solution" of using their navy to block ships carrying asylum-seekers attempting to reach Australia, and forcing them to land elsewhere. Interdiction also occurs in border zones and even in France's fictional "international zone"

[3] Mr. K's story is adapted from J. Kumin, "Speaking notes for a panel presentation on interdiction" delivered at a consultation of the Canadian Council for Refugees, Calgary, AB, 21 November 2002.

Charles De Gaulle airport in Paris.[4]

While interdiction may sometimes be presented by governments explicitly as an attempt to restrict access to their country by undocumented refugees and asylum-seekers, it is more often portrayed in humanitarian terms, as either rescue-at-sea or as part of a broader strategy to fight smuggling and trafficking in persons. Generally, when discussing the various forms of unauthorized or irregular migration, governments admit that they are actually talking about "mixed flows" of refugees and non-refugees. *Nevertheless, interdiction programs seldom differentiate between those who need protection and those who do not.* No attempt is made to assess the individual circumstance of the interdicted person; instead she or he is painted with the same broad brush of "irregular migrant" and is sent back.

(Even where a country does provide people who are interdicted with an opportunity to claim asylum, as with US maritime interdiction, these opportunities are not provided to all interdicted persons on an equal basis. Rather, access to asylum procedures for interdicted travellers depends on their country of origin, and even where provided the procedures generally fall far short of the "fair and effective" standard required by the international community.)

The results can be tragic. As the example of Mr. K demonstrates, stopping and turning back refugees without giving them an opportunity to seek asylum may mean condemning them to continued persecution, including detention, torture and even death. As a result of interdiction, lives are ruined, futures destroyed, families torn apart.

Violations of international law

Interdiction violates basic principles of international law. By preventing asylum-seekers from seeking and obtaining protection from persecution, interdiction flies in the face of the fundamental human right "to seek and enjoy in other countries asylum from persecution" enshrined in the 1948 Universal Declaration of Human Rights. Sending asylum-seekers back to their country of origin without examining their claim is also contrary to the bedrock international refugee law principle of *non-refoulement* (the principle that a country may not return a person to a place where they would face persecution or torture), guaranteed by Canada and other parties to the 1951 Convention relating to the status of refugees, the 1984 Convention Against Torture and the 1966 International Covenant on Civil and Political Rights, in addition to regional human rights treaties.

This principle of *non-refoulement* is not limited to those who have been formally recognized as refugees. Instead, the principle applies to both recognized refugees *and* asylum-seekers who have not yet been formally recognized as refugees. Consequently, if a state elects to deport a person claiming to be a refugee, it must first satisfy itself that the person will not face persecution upon their return. Failure to do so leads to "presumptive *refoulement*."

The principle also applies to a situation like that which was faced by Mr. K, where although not being sent directly to his country of persecution, he was being sent to a third country which proceeded to send him to his place of feared persecution. This indirect form of *refoulement* is sometimes called "chain *refoulement*" and is likewise contrary to international law. [5]

The US government has argued that the prohibition on *refoulement* only applies to expulsion from within a state's territory, thus exempting interdiction measures which take place outside of the country in international waters or foreign territory. However, while the US Supreme Court accepted the government's argument[6], the Inter-American Commission on Human Rights subsequently rejected it, finding that the prohibition applied equally on the high seas

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[4] In order to avoid its international legal obligation to consider asylum claims from persons arriving at their frontier, France came up with the novel idea that the area in the airport where passengers disembark, and before they are cleared by customs, is not really part of France but is an "international zone", and that therefore France has no obligation under refugee or human rights law to grant asylum to such persons.

[5] UNHCR, *Interception of Asylum-seekers and Refugees: The International Framework and Recommendations for a Comprehensive Approach.* (EC/50/SC/CRP.17), 9 June 2000, at 22. See also Lauterpacht, E. and D. Bethlehem, *The Scope and Content of the Principle of Non-Refoulement,* Geneva: UNHCR, 20 June 2001.

[6] *Sale v. Haitian Centres Council, Inc.*, Supreme Court of the US, No. 92-344, 21 June 1993

and in state territory.[7] International legal scholars largely agree.

Interdiction has been found by the UN Human Rights Committee to violate the universal right to leave one's country, guaranteed in Article 12(2) of the International covenant on Civil and Political Rights[8], as well as Article 13(2) of the Universal Declaration of Human Rights. And when interdiction is conducted without due regard to the best interests of children affected, or results in family separation, it violates provisions of the Universal Declaration, the two International Covenants and the Convention on the Rights of the Child.[9]

In spite of this flagrant disregard for international laws and norms, interdiction remains a favoured and increasingly popular tool for migrant- and refugee-receiving states like Canada. The Canadian government is actively promoting regional and international harmonization and co-operation on interdiction and other migration control schemes, including via a G-8 working group and the Intergovernmental Consultations on Asylum, Refugees and Migration Policies in Europe, North America and Australia (IGC). (The latter is, interestingly, co-ordinated by a former Director General of the Refugee Branch at Citizenship and Immigration Canada.) Co-operative strategies for interdiction have likewise been under intense discussion at several regional fora, namely the Regional Conference on Migration (known as the "Puebla Process"), which involves Canada and the US, as well as Mexico and several Central and South American states; the Budapest Process of European states; and the wider Bali Conference of 33 states, which is focused specifically on enforcing migration control, and in which Canada participated.[10] These fora are state-driven and the meetings take place largely behind closed doors. Representatives of civil society are generally excluded from the meetings, and the intergovernmental organizations mandated to oversee the protection of refugees and human rights are only occasionally allowed in the door, and then often only as observers. There appears to be very little discussion in these fora of refugee protection concerns, despite the fact that most of the movements being discussed are so-called "mixed flows" of asylum-seekers and other migrants.

Time for action

Interdiction should be recognized as a direct attack on the institution of asylum. Unless interdiction programs are reformed to include safeguards that accord with basic principles of international human rights and refugee law, as well as an equitable understanding of responsibility-sharing by wealthy western states, we will see increasing numbers of persecuted people effectively locked into their states, deprived of the right to asylum as well as the right to leave their country, sentenced to further persecution and human rights violations with no hope for relief.

While refugee advocates and human rights workers in Canada and elsewhere have opposed interdiction for many years, the time has come for more carefully co-ordinated transnational advocacy. As states increasingly harmonize their interdiction and other migration control measures, and migration policy decisions shift from national legislatures to intergovernmental negotiating fora, it is becoming less and less useful for advocates to focus their efforts solely on domestic policies.

We need to make our voice – and the voices of asylum-seekers – heard where the decisions are being made. If advocates are unlikely to make the guest list for the next meeting of the G-8 or the Inter-Governmental Consultation in Geneva, we will simply have to use other methods of getting refugee protection onto the agenda of western states. Strategic litigation, launched simultaneously in several interdicting countries, might have an impact. So

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[7] *The Haitian Centre for Human Rights et al. v. United States*, Case 10.675, Report No. 51/96, Inter-Am. C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 550 (1997).

[8] See Concluding Observations of the Human Rights Committee: Austria (19/11/98). UN Doc. CCPR/C/79/Add.103; Concluding Observations of the Human Rights Committee : France (04/08/97). UN Doc. CCPR/C/79/Add.80.

[9] See Arts. 12 and 16(3) of the 1948 Universal Declaration of Human Rights; Art. 10(1) of the 1966 International Covenant on Economic, Social and Cultural Rights; Arts. 17 and 23(1) of the 1966 International Covenant on Civil and Political Rights; and Arts. 3(1), 3(2) and 10 of the 1989 Convention on the Rights of the Child.

[10] IOM, "Managing Migration at the Regional Level: Strategies for Regional Consultation" 27 May 2002, and notes from IOM Roundtable on Managing Migration at the Regional Level, 5 June 2002, Palais des Nations, Geneva.

might joint or concurrent international complaints against states that interdict asylum-seekers without safeguards. Media advocacy, academic debate, even direct co-operation with national policy-makers and intergovernmental organizations such as UNHCR and IOM – all may help to put refugee protection on the agendas of states, so that interdiction programs are reformed to include adequate and effective safeguards for those who need protection.

Andrew Brouwer is a member of the Executive Committee of the Canadian Council for Refugees and the Sanctuary Network.

SRI LANKA

BY CAROLYN VANDERLIP

(Background: In April 2003, I traveled with a delegation of Canadian women, all members of the Primates World Relief and Development Fund network, to India and Sri Lanka to meet with and learn from those who have been affected by the war through disruption, displacement, violence, and poverty.)

The roof is temporary. It shelters the offices of OfERR (the Organization for Eelam Refugees Rehabilitation) in Chennai, India. "There is no need for a permanent roof," we're told. "We are going home."

Such is the determination of the approximately 65,000 Tamil refugees from the island of Sri Lanka, currently living in 116 refugee camps in Tamil Nadu, India. Another 75,000 live outside of the camps.

Since 1983, civil war has raged in Sri Lanka between the government and the Liberation Tigers of Tamil Eelam. Atrocities on both sides claimed over 60,000 lives, but it was primarily the minority Tamil people who were forced to leave their homeland. Most fled by sea, and those who survived the harrowing journey arrived in southern India and sought refuge.

Some of the refugees have been in India for almost two decades. Young people have been born and raised there. The Tamils are scattered over a wide area and separated by refugee camp boundaries. Some have returned to Sri Lanka, only to be forced to flee again. And yet, they have maintained a strong sense of community and kept their vision alive – to return, once and for all, to their homeland. The signing of a Memorandum of Understanding in February 2002 and the ensuing peace talks have made the possibility of return seem all the more real.

Fuelled by their dream, the refugees have made remarkable strides in India. OfERR was formed in 1984 by some of the first refugees to arrive, with a focus on empowerment – to help the refugees sustain themselves while in India, and prepare them to help rebuild their homeland on return.

"Here in India we are one in a billion; at home we are agents of change who will make a difference," says Mr. Chandrahassen, the President of OfERR. His organization has worked with the Indian government to ensure that every refugee child can attend school. In addition, a number of university spaces are reserved for Sri Lankan students.

Refugee volunteers have been recruited in the camps and trained as health care workers and counselors. Income generation programs teach trades such as tailoring and masonry. Nutritional training has improved the health of pregnant women, lactating mothers, and children. A model farm provides agricultural training and takes "reduce, reuse, recycle" to new heights. Chicken droppings are purified and used as manure for the grass, which is used to feed the cows, which produce bio-gas for cooking. Realizing that the land available to them in Sri Lanka will be limited, these methods realistically prepare the refugees to fend for themselves after they return.

But what awaits the refugees? An island paradise, wracked by twenty years of war and destruction. The numbers of displaced people within Sri Lanka – estimated at around 800,000 – make the number of refugees in India seem small in comparison. Many of the displaced live in "Welfare Centers" – a misleading term if the center we visited is typical. Families, regardless of size, are housed in rows of 10 x 10 rooms with asbestos sheet roofing and metal walls that don't reach all the way to the ceiling. There are no facilities, and daily lineups for water and dry rations. The

children, clad in little more than rags, appear dirty and unhealthy, and the smell of open sewers permeates the air. "Many people come," said one woman who had been there for twelve years, "but no one offers solutions". In sharp contrast to the refugees in India diligently preparing to return and rebuild their homeland, the people in this camp appeared to have lost all hope for a future different from their current bleak reality.

In the midst of such misery, there are rays of hope. SEED (Social Environmental Economic Development) has recently moved 270 families, many headed by women, or with special needs, into a Resettlement Village. By involving the families directly in every aspect of planning the village, a strong sense of community and belonging has been created. Already, there is a school with a focus on hearing and speech impairment, mobile health clinics every two weeks, common fencing (one of the first priorities identified), and most importantly, a sense of control over one's own destiny. "People are the solution, not the problem," says Singham, the SEED Director.

There is much more to be done before the refugees and displaced can realistically return or be resettled in large numbers. A government resettlement village we visited seemed to be less successful than the SEED project, where problems of poverty, suicide (especially in young women ages 16-22), sexual abuse, alcoholism, and school dropout remain common.

Much of the north and east of the island has been destroyed. Complete villages have been razed, landmines have not been cleared, roads are all but impassable in some sections, and some former villages are still inaccessible military zones. One unforgettable excursion took us to a former village—where schools, hospitals and temples had once been, only jungle and ruins remain. 15 days earlier, some of the families had returned to rebuild their homes and lives. "The government says they've cleared the landmines, " one of the returnees told us, "but I don't believe them." He went on to describe the day all of the children in the village were lined up and shot, and their bodies taken away.

At this moment, it is unclear what will become of the refugees waiting in India to return to their beloved homeland, the displaced people throughout Sri Lanka eking out a meager existence, and the millions on both sides who have been scarred by memories of violence and war. A week after our group returned from Sri Lanka, the Tamil Tigers pulled out of the peace talks. We can only pray that this represents a temporary setback, and will not result in a return to violent conflict in a land that had only just begun the long process of healing.

Carolyn Vanderlip is refugee co-ordinator for the Anglican Diocese of Niagara.

MR. CODERRE - THE REFUGEE APPEAL IS NEEDED!

The Immigration and Refugee Protection Act that was passed last June finally provided an appeal on the merits of a negative refugee decision. However, Denis Coderre, the Minister of Citizenship and Immigration, announced two months earlier that he was postponing the appeal, albeit with a promise to implement it within the year. Later he changed this promise to "I made a commitment to monitor and assess the impact of delaying the RAD [Refugee Appeal Division] for a year" (from Minister's letters to the Canadian Council for Refugees and Amnesty International).

An appeal is needed because a refugee may mistakenly be denied protection for any of the following reasons: (1) poor legal representation (2) poor decision-makers (who are directly appointed by Cabinet, sometimes for little more than their party loyalty) and (3) difficulties a refugee may have testifying due to trauma, mental state, or fear of authority.

It appears the Minister is now trying to avoid implementing this important part of the new Act. This would be a grave injustice to those refugees who are wrongly denied refugee status, since the consequences of such a mistake can be so grave. We must make the Minister see that people's lives are at stake in this process. Please use the letter below as a model to write to Mr. Coderre.

(The following letter is adapted from one by the Refugees & Migration Program of KAIROS, who recently had a campaign of collecting letters to deliver to the Minister.
For more information about KAIROS visit their website at www.kairoscanada.org)

Date:_____

Hon. Denis Coderre, PC, MP
Minister of Citizenship and Immigration
Ottawa, ON K1A 1L1

Dear Mr. Coderre:

Re: A Meaningful Appeal for Refugees

I am writing regarding your decision to delay implementation of the much-overdue right of appeal for refugees provided for in the new Immigration and Refugee Protection Act. I strongly urge you to implement the right of appeal as soon as possible, for the following reasons.

The lack of an appeal in Canada's refugee determination system has been consistently identified by Canadian refugee rights groups as a serious flaw in the system that puts refugees at risk. Both the United Nations High Commissioner for Refugees (UNHCR) and the Inter-American Commission on Human Rights have criticized Canada for its failure to fulfill its international legal obligations to provide refused refugee claimants with a merits-based review.

Your decision to delay implementation of the appeal is even more disturbing in light of the reduction in the new Ac of the number of decision-makers at a refugee hearing from two to one. In addition, the fact that a refugee claimant can now make only one claim in his/her lifetime makes it almost impossible for mistakes to be corrected. The only other remedies available are too narrow and restrictive to serve as real remedies for wrong decisions. The Federal Court is allowed to intervene only in extreme circumstances that involve a serious breach of law, whereas a refused refugee can only submit new evidence as part of the Pre-removal Risk Assessment. Taken together, these measures create an unfair situation for people seeking protection in Canada.

I fear for those refugees who are denied protection in Canada by a single decision-maker without the right of appeal. Decision-making in the area of refugee determination is difficult and errors are inevitable. The right to appeal a negative decision is essential for individuals who, if denied protection, would face human rights abuses such as torture, or even death, in their homelands.

I understand that in May 2002 you publicly stated that you will have an appeal system in place in one year's time and you reiterated that promise in response to a question in the House of Commons on June 6, 2002. I ask that you follow through on your commitment and inform me when the appeal will be implemented.

Sincerely,

NAME

M. CODERRE – LA SECTION D'APPEL DES RÉFUGIÉS EST REQUISE!

La Loi sur l'immigration et la protection des réfugiés est entrée en vigueur en juin dernier et allait finalement doter les demandeurs du statut de réfugié au Canada de ce qui leur avait été refusé depuis longtemps : une procédure d'appel

portant sur la valeur-même d'une décision négative d'une demande du statut de réfugié. L'annonce faite par Denis Coderre, le Ministre de la Citoyenneté et de l'Immigration, de retarder la mise en place de cette mesure d'appel et sa promesse d'aller de l'avant au cours de la prochaine année ont donc été reçues avec stupeur. Plus récemment, le Ministre a modifié son discours, en affirmant qu'il avait pris l'engagement de surveiller de près et d'évaluer les impacts de retarder pour un an la SAR (selon une lettre que le Ministre a adressée au Conseil Canadien pour les Réfugiés et Amnesty International).

Il semble que le Ministre essaie d'éviter d'avoir à mettre en oeuvre cet important droit pour les réfugiés qui fait partie de la nouvelle Loi. Il s'agit d'une grave injustice pour les réfugiés à qui le statut de réfugié est indûment refusé et qui devraient avoir accès à cette mesure d'appel. Nous devons expliquer au Ministre qu'au cours de ces procédures des vies sont en jeu. Prière d'utiliser la lettre qui suit comme un modèle pour envoyer votre opinion à ce sujet à M. Coderre.

(Cette lettre est basée sur celle du Programme sur les Réfugiés & Migration de KAIROS qui a récemment lancé une campagne afin de collecter des lettres qui seront envoyées au Ministre. Pour plus d'information au sujet de KAIROS, visitez leur site Internet à www.kairoscanada.org)

L'honorable Denis Coderre, CP, député
Ministre de la Citoyenneté et de l'Immigration
Ottawa, ON K1A 1L1

Monsieur le Ministre :

Objet : Un processus d'appel juste et équitable pour les réfugiés

Ce qui m'amène à m'adresser à vous, c'est votre décision de retarder la mise en œuvre, depuis longtemps attendue, du droit d'appel pour les réfugiés prévu dans la nouvelle Loi sur l'immigration et la protection des réfugiés. Je vous demande instamment de mettre en œuvre ce droit, pour les raisons suivantes.

Les groupes pour les droits des réfugiés du Canada perçoivent, dans l'absence d'une procédure d'appel dans le système de détermination du statut de réfugié au Canada, une faille importante qui met les réfugiés en péril. Des organisations telles que le Haut Commissariat des Nations Unies pour les Réfugiés (UNHCR) et la Commission Inter-américaine des Droits de la personne critiquent le Canada pour ne pas s'être acquitté de son obligation légale internationale d'offrir aux demandeurs du statut de réfugié une révision de leur cause basée sur son bien-fondé.

À ce retard troublant dans la mise en œuvre de l'appel s'ajoute la décision de ramener de deux à un seul le nombre des commissaires à l'audience d'un réfugié. En outre, le fait que le demandeur du statut de réfugié ne puisse désormais faire qu'une seule demande dans sa vie rend quasi impossible la correction d'erreurs. La Cour fédérale n'a le droit d'intervenir que dans des circonstances extrêmes, soit, la plupart du temps, en cas d'erreurs de procédure. Enfin, les agents d'examen des risques avant renvoi n'ont le droit d'examiner que la preuve nouvelle. Prises dans leur ensemble, ces mesures créent une situation injuste pour les personnes qui cherchent protection au Canada.

Je m'inquiète du sort de ces réfugiés à qui la décision d'une seule personne dénie la protection au Canada, sans droit d'appel. La prise de décision en matière de détermination du statut de réfugié est difficile et les erreurs y sont inévitables. Une erreur à l'endroit d'un demandeur peut avoir de graves conséquences. Le droit d'en appeler d'une décision défavorable est essentiel pour la personne qui, privée de protection, s'expose, de retour dans son pays, à des violations de ses droits telles que la torture ou même la mort.

En mai 2002, vous promettiez publiquement de mettre un système en place dans un an, promesse que vous avez réitérée en réponse à une question posée à la Chambre des communes le 6 juin 2002. Je vous demande de donner suite à votre engagement et de me dire quand la procédure d'appel sera mise en œuvre.

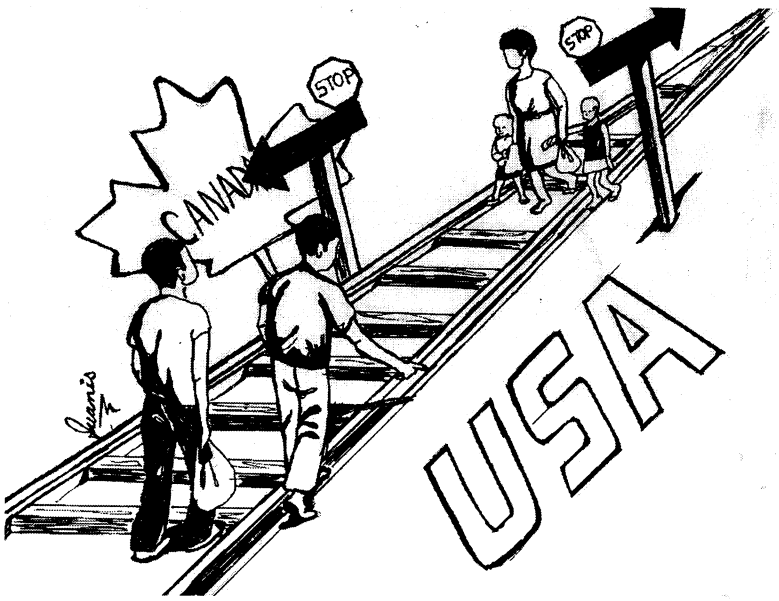
Recevez, Monsieur le Ministre, mes meilleures salutations,

TRAPPED BY THE LEGACY OF SEPT. 11

OTTAWA CITIZEN
MARCH 19, 2003

BY BILL FRELICK AND PATRICK GIANTONIO

Canada should suspend its new refugee agreement with the U.S. until it's sure people won't face persecution if deported.



Recently, Jalil, a Pakistani man with a wife and seven children in tow, tried to seek asylum in Canada, but Citizenship and Immigration turned him away at the Lacolle, Que./Champlain, New York border crossing. After being "directed back," the U.S. Immigration and Naturalization Service (INS) detained Jalil and his two eldest sons. "They can throw me into the sea before sending me back to Pakistan," he told us. A trade union activist, Jalil had been detained several times in his native Pakistan before fleeing to the United States. He fears that he would be jailed, or worse, upon return. Jalil arrived in the United States four years ago with a valid tourist visa, and has been seeking an employment-based visa. His mistake, in retrospect, was not to apply for asylum during his first year in the United States. "I thought," he said, "that we would only have to stay a short time and the situation at home would calm down." It never did. A harsh U.S. immigration law passed in 1996 renders those who did not file their asylum applications within the first year of arrival in the United States ineligible to apply for asylum.

Jalil might have remained in an INS backlog, except that he feared being swept up in a recent U.S. dragnet that requires visiting men from predominantly Muslim countries (and North Korea) to report to the INS for "special registration." He felt that his only way to avoid deportation to Pakistan would be to seek asylum in Canada. But, for the first time, Canada is closing its doors.

In December, Canada signed a "safe third country" agreement with the United States that, with a few exceptions, requires asylum-seekers to apply for asylum in the country of first-entry. No doubt Canadians saw this as a fair arrangement, and assumed that those not allowed to apply for asylum in Canada would be permitted to seek asylum in the United States. What the Canadians did not consider, however, was that genuine refugees might be precluded from seeking asylum in the U.S. because they didn't file their claims in the first year after arrival. Refugees often do not apply for asylum right away. Having fled the trauma of war or persecution, they are often frightened and disoriented and need time to settle into their new surroundings before gathering the strength, language ability and courage to present themselves to the authorities. For fear of implicating family or associates still in the home country, they may also be reluctant to identify themselves openly as refugees, preferring other routes to regularizing their immigration status. Also, unlike Canada, the United States denies work authorization to asylum-seekers for the first six months while their claims are pending, and does not provide government funding for legal representation. Consequently, it is often not possible to prepare an asylum case in the first year.

Because the INS is not yet ready to implement the agreement, foreigners crossing from the United States are still, theoretically, eligible to apply for asylum in Canada. In practice, however, Citizenship and Immigration has been giving them an appointment date and has directed them

back to the U.S. to await the interview. At Lacolle, the INS is detaining almost all Pakistani men, and has given no assurances that it will not deport them. Thankfully, Jalil was able to post a bond and return to Canada for his asylum interview. Those not able to post bond, however, remain in detention on the U.S. side, and are more likely to be deported.

Among the people faced with deportation, there appear to be many like Jalil who fear persecution in their home countries the list for special registration being a who's-who of refugee-producing states. Although people who already have asylum applications pending are exempted from the special registration requirements (because they have already been fingerprinted and thoroughly scrutinized by INS officials), others have waited for years in INS backlogs to legalize their immigration status, and now it is too late for them to apply for asylum. They are now being punished for belonging to predominantly Muslim groups and for the INS's own backlogs and bureaucratic obstacles. As a result of three blunt instruments: special registration, the one-year asylum filing deadline and the U.S.-Canada safe third-country agreement, large numbers of Muslims, many of whom might have a well-founded fear of persecution if returned to their home countries, will be blocked from seeking asylum in Canada and deported by the United States. The safe-third-country agreement purportedly was intended to prevent foreigners from applying for asylum in both countries. In fact, the agreement is now preventing many would-be asylum-seekers from applying for asylum in either. Did Canada bargain for this when it signed the asylum agreement? Canada should cancel or suspend the agreement until it is certain that no one will be returned to persecution because of it.

Bill Frelick is director of Amnesty International USA's refugee program. Patrick Giantonio is director of Vermont Refugee Assistance

SAYING "I" IS FULL OF CONSEQUENCES: REFUGEE WOMEN RECLAIM THEIR IDENTITY.

INTERNATIONAL CONFERENCE AT MCMASTER UNIVERSITY (MARCH 19-21 2003)

BY MAROUSSIA AHMED

Conference website: www.humanities.mcmaster.ca/~wsconf/

The conference was organized by the Programme of Women's Studies at McMaster and the Settlement and Integration Service Organisation on the occasion of its 10th anniversary, and the 10th anniversary of Canada's Gender Guidelines for claiming refugee status. The purpose of the conference was to celebrate the knowledge, initiatives and creativity of refugee women. While organisations are making progress in that regard, the identity of refugee women is still defined mostly by others rather than themselves, such as male administrators of refugee camps or refugee boards, therapists, etc,. It is thus important for refugee women to correct misconceptions about themselves, regain control (or agency) of their self-identification, and explore how more accurate knowledge can serve research, education, policy making, service provision, therapy, creativity. Refugee women and professionals sought ways of including refugee women in decision-making processes at all levels, locally and globally, with the purpose of improving the well-being of refugee women and that of their families.

Who attended?

Over the three days, the conference brought together

about ninety participants who grapple with the same issues, yet all too often in isolation from each other. They were academics, settlement workers, refugee women, activists, policy makers, students. They came from Britain, the United States and Canada. Sharing the same space over the three days, having all meals and nutrition breaks together facilitated interaction.

Madeleine Gagnon, Quebec poet and writer, was the keynote speaker on the first day. She spoke in a very thought provoking manner about the genesis of her highly acclaimed book *Les femmes et la guerre*, the gendered aspect of violence and the ethical and aesthetic challenges a writer is faced with on a sensitive subject such as refugee women.

What did we learn?

To paraphrase French feminist Simone de Beauvoir we recognized that "One is not born a Refugee Woman, one becomes a refugee woman." A refugee woman is a "normal" everyday person who finds herself in abnormal circumstances for which she is not responsible, but which deeply affect her and her human surroundings. Her identity is constructed through various processes and agencies. It is formed and transformed through a relational process, and it is influenced by the historical and political context and the location in which she finds herself. Her identity is not only fluid, but complex: it is multilayered and multifaceted, it shifts with life experience. As one participant identified herself, a refugee woman can be at once a refugee, a mother, a citizen, a single woman, the daughter of a genitally-mutilated mother, a counsellor, a former citizen from a former colony, each facet being part of her identity and affecting her life.

The refugee situation can also create new opportunities for reclaiming identity and agency: women can challenge the patriarchal constructions of themselves, (re)create agency when they organize themselves in refugee camps or in the diaspora, and even become role models. Women have to peel off the layers of protective defences imposed by social norms and survival needs, uncover the narratives that need to be told, and rediscover their own strength and resourcefulness.

Refugee Women need to reconstruct their history, reclaim their personal and collective memory. They have to be informed, and included at all levels of decision-making. They are resilient, coping social agents, but they are also individuals who experience unusually stressful situations

Recommendations and actions

Many suggestions were offered to recreate agency in research and in service providing organisations. These included research which is interdisciplinary, collaborative and involves listening to the many voices and narratives by Refugee Women; it involves listening to their silences heavy with meaning, and exploring different interpretations which emphasize differences.

Student papers on how to enhance education and include/create scholarship with and on refugee women suggested that education be transformed to include courses on Refugee Women, and new knowledge should be disseminated through new courses, degrees and activities; it should be sought through community research and co-op placements with refugee organisations.

International agencies and service providing agencies should continue to advocate for gender-sensitive application of refugee law and procedures. Domestic violence should be considered as a form of gender persecution. Refugee and returnee women not only must be ensured safety and have equal access to humanitarian assistance, but must be involved in the development of aid programs and policies affecting them. Refugee women should be able to choose whether they wish to return and when. They should be registered in their own right, as adequate registration is a prerequisite for the legal and physical protection of refugees. Refugee Women

should be included in conflict resolution and peace-building efforts. Governments which create refugees must be challenged. We need to achieve gender-equity within our own organizations.

In response to the declaration of war on Iraq by the US-led coalition, participants drafted a resolution against this war. A second resolution was passed against the new stringent measures which the Canadian government has taken with respected to the impending third safe country agreement which will affect refugee women in particular. Resolutions were forwarded to the appropriate members of Parliament.

Celebrating Refugee Women

On the last evening refugee women's creative talents were celebrated. A group of Latin-American Refugee Women, the *Hot Chocolate Theatre Group*, performed an popular theatre play which they had written for the Conference and appropriately titled ***"I was, I am, I will be***" - on being a Refugee Woman from a war-torn Latin American country, who comes to Canada as a refugee claimant. This was followed by a most informative and moving session independently organized for the Conference by the Ontario Worker's Art and Heritage Centre with a grant from Status of Women Canada. Twelve refugee women from different parts of the world read excerpts from their diaries, poems, short stories, as well as discussed their individual paintings and a large collaboratively painted panel which depicted their experience of being a refugee woman.

Last but not least, the two conference organizers presented nine refugee women activists from the Hamilton community with an award, a framed poster reproducing the painting "The Refugee Woman" by Yar Taraki, a refugee artist from Afghanistan, to honour their many years of dedication to the cause of refugee women.

Maroussia Ahmed, Associate Professor, French and Women's Studies, McMaster University, Hamilton, Ontario

NATIONAL CCR DETENTION NETWORK: AN UPDATE

BY KATHERINE PETTIT AND CATHERINE BALFOUR

In the last issue of Refugee Update Lois Anne Bordowitz, FCJ, introduced the readers of Refugee Update to the newly-formed national Detention Network of the Canadian Council for Refugees (CCR). This initiative was spawned by concerns expressed by CCR members and the UNHCR about people held in detention by Citizenship and Immigration Canada (CIC). Here is an update on the activity of the Detention Network, and an invitation to interested people to join.

TERMS OF REFERENCE
Available on the CCR website at either the documents page:
http://www.web.net/~ccr/doceng.htm
Or directly:
http://www.web.net/~ccr/detentionterms.htm

MEMBERS
There are currently 70 members from all over Canada.

LISTSERVE
The members are connected via a listserve - a "yahoo" group. Any Network member can post or reply to this group, and its messages are archived. (Post messages to the listserve by sending an email to the following address: CCR_Detention_Network@yahoogroups.ca)

If you are interested in subscribing, send a message to: CCR_Detention_Network-subscribe@yahoogroups.ca or a request directly to the moderator at ccrdetention@yahoo.ca. Only limited use has been made of it to now, so you will find you receive few messages.

Katherine Pettit, who has been on a placement with the

CCR office, has prepared monthly newsletters on detention which she has posted to the listserve.

ISSUES

Issues of concern tend to vary according to region, but they include long term detention; lack of due process; high barriers to satisfy CIC re identity; detention of children, pregnant women, and/or those with mental and physical health problems; conditions in provincial jails; and lack of an independent complaint mechanism.

The CCR is currently collecting input from members on the scope of complaints expressed by detainees and their advocates, and what a meaningful complaint process would look like.

STATISTICS

Citizenship and Immigration Canada agreed to provide the CCR with statistics of how many people they are holding in detention and where. These are posted to the CCR website at: http://www.web.net/~ccr/detentionstatscurrent.html. The latest available at the time of publication were for March 27 and are included in a pie chart below. (Note that CIC recently informed the CCR that the current format in which they have been providing statistics on detention will no longer be available, but they are developing a new method of sharing statistics that should be ready by the end of May.)

WORKSHOP

The Detention Network will be hosting a workshop on detention at the CCR Consultation on Friday, May 30 in Ottawa, Ontario. The aim is to provide participants with knowledge of international and domestic law relating to detention, and to have a discussion to decide which issues we want to work on over the coming period, and to generate ideas as to possible solutions. Everyone is invited.

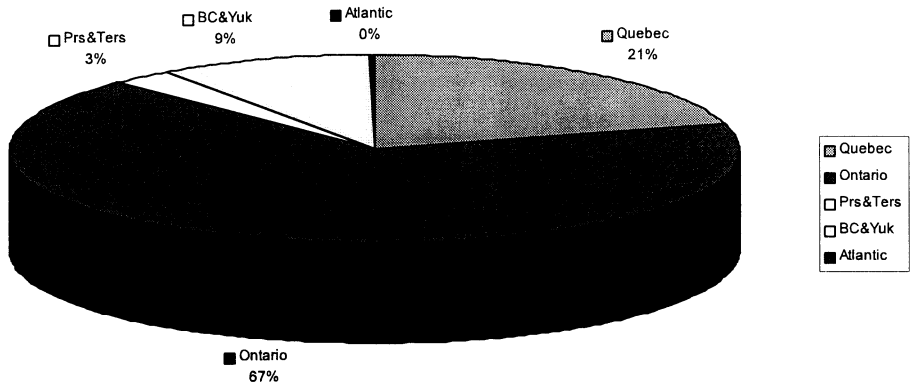
REGIONAL MEETINGS

The Network recognizes that detention occurs at the local level, and therefore issues of concern are often dependent on the local context (i.e. the CIC office, whether in a detention centre vs. a jail, the rate of incarceration etc.) So we encourage members at the local, or regional, level to work together, and identify any issues that need national coordination and advocacy (calling for a national detention policy, for example.)

Further to this strategy, NGOs in southern Ontario and the UNHCR have begun to meet bi-monthly on detention. A first meeting in Toronto on 15 April, 2003, was well attended, and information and ideas were shared as to how to address the problems of immigration detainees in provincial jails, among other issues. Recommendations that came out of that meeting are to be posted to the Detention Network listserve. The next meeting is scheduled for 17 June at 10 a.m.

519 is the average # of people detained by Citizenship and Immigration Canada from January thruough March 2003 - for distribution see pie graph below.

Distribution of Detainees in the Provinces - Average Percentages from Jan through Mar 2003



the licensing/certification of professional immigration consultants who are already in practice.

RECOMMENDATION 36. The Committee recommends that Citizenship and Immigration Canada and the Immigration and Refugee Board ensure widespread availability of accurate information about the regulation of immigration consultants by means of reviewing all information materials currently in use, developing new materials as required, and educating appropriate personnel. The Committee also recommends that accessibility be ensured by providing information through a series of meetings and the location of information/orientation officers both in Canada and overseas.

RECOMMENDATION 37. The Committee recommends that the regulatory body develop an ongoing program of outreach, information and orientation; and that it develop a mechanism for regular communication and interaction with lawyers' associations, Citizenship and Immigration Canada, the Immigration and Refugee Board, the RCMP and other appropriate agencies, in particular those in the education and justice sectors.

B. Membership

The Committee comprises 14 members from a variety of professional backgrounds in the immigration field. They are listed below.

Co-chairs:

Ms. Rivka Augenfeld, President of the Table de concertation des organismes au service des personnes réfugiées et immigrantes

Mr. Benjamin J. Trister, Chair of the Coalition for a Secure and Trade-Efficient Border's Security and Immigration Committee and a Past Chair of the Canadian Bar Association's National Citizenship and Immigration Law Section

Members:

Ms. Sharryn J. Aiken, Assistant Professor, Faculty of Law, Queen's University, and a past president of the Canadian Council for Refugees

Mr. Patrice M. Brunet, Lawyer and Associate of Brunet Lawyers, Montréal, Quebec

Mr. Ramesh Kumar Dheer, Immigration Practitioner and National President, International Association of Immigration Practitioners

Mr. Stephen Green, past Chair, Citizenship and Immigration Section of the Canadian Bar Association Ontario

Mr. Frank Marrocco, co-author of the *Annotated Immigration Act and Citizenship Act*

Ms. Christiane Ouimet, Executive Director, Immigration and Refugee Board

Mr. Charles Pley, Immigration Lawyer; former Visa Officer; Chair, College of Immigration Practitioners; and past President of the Organization of Professional Immigration Consultants

Ms. Nadja Pollaert, Coordinator, Committee to Aid Refugees

Mr. John Ryan, Immigration Practitioner, former Senior Immigration Officer, and immediate past President, Association of Immigration Counsel of Canada

Ms. Jill Sparling, Immigration Practitioner and former Immigration Officer, President of the Organization of Professional Immigration Consultants

Mr. Lawrence Woo, Chairman, United Chinese Community Enrichment Services Society

[Mr. Francisco Rico-Martinez, Co-Director, FCJ Hamilton House Refugee Project, resigned from the Committee on March 24, 2003.]

Please note: If you received an outdated Refugee Update in February, 2003, please let me know at: fcjhamilton@on.aibn.com Attn: Lois Anne Bordowitz.

REFUGEE UPDATE

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ADDRESS: 83 Hamilton St.,
Toronto ON M4M 2C7 Canada
Tel: (416) 469-9754;
Fax: (416) 469-2670
e-mail: fcjhamilton@on.aibn.com

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