

REFUGEE UPDATE

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Summer

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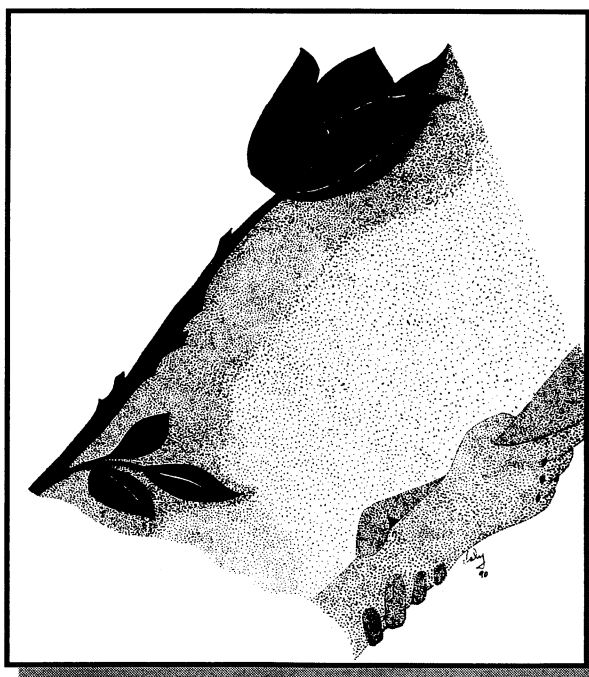
By Deborah Smith

Tired of reading about the so-called links between terrorism and Canada's refugee policies? Heard enough about all those people in Canada "illegally", taking advantage of our generous system?

As refugees and refugee advocates, we face the effects of myths and misconceptions every day, in our lives and in our work. There's little understanding in our society of refugee issues, and the media often seems like a powerful voice that's "got it all wrong".

News coverage about refugees is often negative, and reinforces the damaging myths.

CCR's Media Network links refugee advocates in communities across Canada. We challenge negative portrayals of refugees in the news, and we promote good news stories. We are settlement workers, NGO leaders, lawyers, volunteers, activists. Some of us have a refugee background, many of us do not. Together we are grappling with the challenge of the media. Refugee advocates face serious barriers in communicating our positions. News coverage tends to look at issues in a simplified way, but the issues we deal with are complex. Ever tried to explain in a minute or less Canada's refugee system, or the intricate situation in a



refugee-producing country? As advocates, it seems we have to counter the same misconceptions every time we work with the media.

organized a workshop for media where a dynamic local lawyer explained the law – great turnout and a good relationship-builder, too!

Build partnerships with the corporate sector academics and influential people in your community who are affected by or knowledgeable about refugee issues. Have your influential allies write op-ed pieces or letters to the editor supporting pro-refugee views. This shows that you are not just an “interest group” and that these issues impact everyone in the community.

Look for the positive in negative stories. If refugee issues are getting bad press in your community, try to convince reporters to look at success stories (think of all those feel-good stories about Canadian communities welcoming refugees from Kosovo). Be proactive in encouraging positive stories instead of only responding to negative stories.

With the safe third country agreement under discussion, and more negative stories about refugees every day, now is the time to raise your voice and present a better picture.

If you would like to take action, or learn more about the CCR Media Network, contact Deborah Smith at ccrmedia@rogers.com, or call 613-233-0730.

Build relationships with members of the media. If you already have a relationship, reporters will see you as a credible source when the big story breaks.

Correct them when they're wrong, and invest some time in helping them understand immigration and refugee issues. When local media provided poor coverage of the migrant ships, BC refugee advocates

At the CCR's last consultation in St. John's, Media Network members and others discussed some key strategies for improving media coverage of refugee issues:

- Among your local media, find out who is open-minded towards refugee issues, and who is set against? Focus attention on moving open-minded reporters further along towards understanding.

In covering refugee issues, journalists face challenges, too. Immigration is not a regular beat for reporters, so it's difficult to develop expertise in this area. Add resource restrictions, difficult editorial direction and media convergence, and it's no surprise that stories are so often inaccurate.

How to write great L2Es

Letters to the Editor are the most-read pages of the newspaper. You can reach decision-makers, the general public and other members of the media all at once:

- Keep it short and simple – less than 300 words is best.
- Select one topic per letter.
- Highlight the most important piece of information or commentary.
- Write a catchy lead (first sentence). Try humour, put the most noteworthy thought

first—use facts, colour, quotes.

- Be polite, but don't forget the passion.
- Check your facts. Twice.
- Always sign your name and provide a daytime number where you can be reached.
- Act quickly! Don't let your L2E sit on your desk for a week – the news value may be gone. With email, you can respond immediately.
- Don't fail to give credit – write congratulations on

positive stories as well as complaints about negative ones.

What if your letter gets printed? Send copies to politicians and government agencies.

What if it doesn't get printed? Don't despair and don't give up! Newspapers receive many letters and can't possibly print them all. Try again!



Safe Third Country Agreement - Update from U.S.

By Patrick Giantonio

In case you haven't heard, the Safe Third Country Agreement between Canada and the U.S. is in the last stages of negotiations and could be signed very soon.

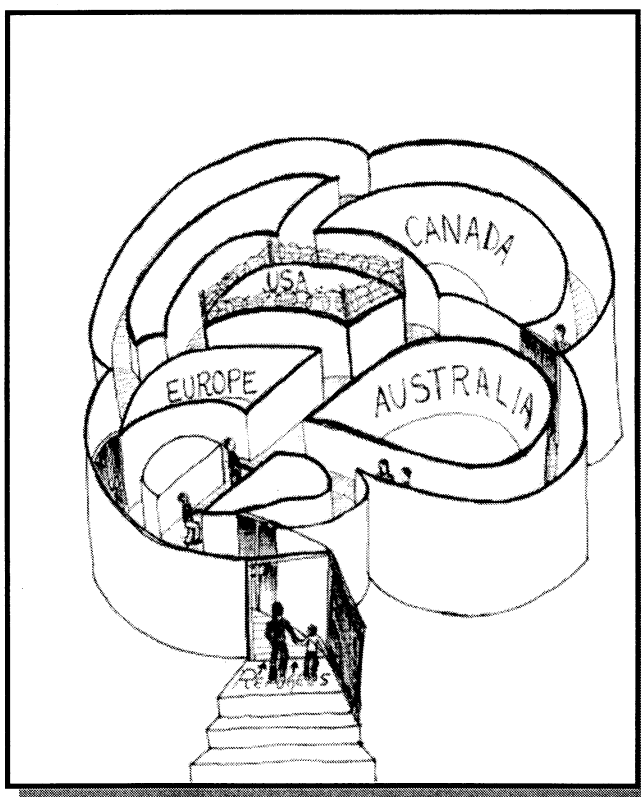
The proposed agreement will have an enormous impact on asylum seeker's access to Canada and how the border functions regarding refugee claims. The agreement will force thousands of asylum seekers to make their claims in the U.S. rather than Canada. This presents less promising options for many as the U.S. system is more punitive, relying heavily on detention. Certain cases, such as gender-based claims, will have less certain prospects in the U.S.

Vermont Refugee Assistance (VRA), along with most U.S. and Canadian refugee advocates oppose the agreement. VRA views the agreement as a precarious change in the level of protection that both countries provide to asylum seekers. The proposed agreement also sends a dangerous

message to the rest of the world – that the U.S. and Canada are following Europe's misguided lead in slamming the door on women, children and men who are fleeing for their lives. The Dublin Convention (which includes Europe's version of Safe Third Country Agreement) has also proved to be terribly problematic to enforce and inhumane for asylum seekers as the responsibility of providing protection is, along with the refugees themselves, passed from country to country. Refugee

advocates do not think that the U.S. and Canada should follow Europe's example. This is all

especially perplexing as the present system (asylum seekers making their claims in an orderly fashion at the ports of entry) works quite well. Since July 5th – when the draft text of the U.S./Canadian agreement was released – NGOs on both sides of the border have collaborated closely to oppose in principle the proposed agreement. However, they have also recommended changes to the draft text in the event that the agreement does move forward. NGOs in the U.S. have been working feverishly, through Congressional and other means, to stop the signing of the agreement. The NGO comments and recommendations to the draft text of the agreement have been specific in stating the reasons why the agreement should be scrapped and articulate in recommending alterations to the proposed agreement to insure some level of protection for refugees fleeing persecution.



At the U.S. public meeting regarding the Safe Third Country Agreement (Washington, D.C. – August 1, 2002), it was very clear that most individuals in the room (NGOs, INS, U.S. State Department) felt that the agreement will have no positive benefit for the U.S. – and will most likely have many negative ones, such as further burdening the already over-taxed U.S. asylum system. Astoundingly, at the same public meeting Joseph Langlois from the INS asylum division freely admitted that one result of the agreement will be that thousands of desperate asylum seekers “will enter Canada illegally.”

To refugee advocates, there is no question that the overall effects of the agreement on asylum seekers will be dire. It has

become increasingly clear that the agreement is, from the U.S. perspective, a bargaining chip to gain the total package of the thirty-point "Smart Border" Agreement. U.S. NGOs and refugee advocates are outraged that the U.S. would trade away its responsibility to provide adequate protection to asylum seekers for a bilateral agreement that will actually make the border less safe and more chaotic. One must ask: how smart is that?

For many years it has primarily been the faith communities who have privately sponsored refugees. Now the Canadian labour movement has begun to respond to the plight of trade union refugees who regularly risk their lives in challenging the neo-liberal agenda...and right-wing death squads.

For obvious reasons, the Canadian labour sponsorship program starts with Colombia, where over 200 trade unionists were murdered and/or disappeared last year alone and where over 3500 unionists have been killed since the mid-1980s.

The first two Colombian trade union families arrived in June and are now in the process of settling into their new environments in Woodstock and Toronto respectively.

In theory, the program works like this: the central labour body in Colombia (the CUT) recommends to the Canadian Labour Congress (CLC) the names of brothers and sisters most at risk in Colombia. Those names are then approved by Canadian immigration authorities in Bogota, with a promise to expedite the

Canadian Labour Sponsors Colombian Trade Union Refugees

by Ken Luckhardt



Patrick Giamontio is Director of Vermont Refugee Assistance

be even more chaotic than the crisis in Buffalo and at the Lacolle port of entry in June of this year. Winter conditions will complicate the situation — making it life-threatening for applicants.

Most importantly, VRA sees it as imperative that asylum seekers maintain the right to make their claim and build their future in the country of their choice - not the country of first arrival. This is the least that can be afforded to individuals who have fled their homeland in search of safe haven.

process to get the trade union family to safety in Canada as soon as possible. In practice, however, far too many bureaucratic delays still exist.

The ultimate success of this sponsorship program revolves not around central labour organizations but rather with the comradeship established between Colombian and Canadian unionists at the local, community level. Without the determination and sacrifice of individual Canadian activists, the Colombians—who most commonly arrive without any English language facility—would face a very isolating and alienating existence in a strange land. In Woodstock, Brother Rangel Ramos Zapata, his partner and three children are sponsored by the Oxford Social Justice Coalition. The Coalition is headed up by CAW and OSSTF (Ontario Secondary School Teachers Federation) activists and others from the social justice community in the region. Rangel, the President of his union in the Department (State) of Antioquia, was increasingly the target of death threats from paramilitary forces in recent years. Body guards and cell phones offered little protection in the final analysis when he learned that he was next on the hit

list of the death squads. As well, each of his teenage daughters was the target of kidnappers on the same day in April 2000.

In Toronto, Sandra Cordero and Fermin Perez and their five children are being jointly sponsored by the CEP (Communications, Energy and Paperworkers) and the OSSTF. Both Sandra and Fermin come from the telecommunications sector in Colombia, a sector in which unions have struggled against massive neo-liberal privatization schemes in recent years. For union leaders like Sandra and activists like her partner Fermin, defending the right of Colombians to own their own public resources has also meant a life of harassment and death threats from right-wing paramilitary forces. Both families are fortunate to be sponsored by local groups that have spared no effort to provide accommodation, language training, school enrollment, furniture and the human warmth of solidarity to their new Colombian friends.

While these twelve Colombians obviously benefit from the security of finding refuge in Ontario, the long-term benefit rests with the Canadian labour movement. Our

members and community activists can now hear directly from Colombian union leaders who risk their lives to represent the majority of Colombians who are excluded from the political and economic process in their own country. This sponsorship program opens a small door of relative freedom for a limited number of Colombian workers. If the Canadian union leadership lives up to its internationalist responsibilities, the number of Colombian unionists to escape with their lives to Canada will increase in the months ahead and they will take up residence with Canadian workers throughout the country. For further information re: this unique sponsorship program, contact David Onyalo, Director, Human Rights Department, CLC, (donyalo@clc-ctc.ca) or Francisco Rico, past-President of the Canadian Council of Refugees and Refugee Sponsorship Program Coordinator for the CLC at [<fcjhamilton@on.aibn.com>](mailto:fcjhamilton@on.aibn.com).

Ken Luckhardt is a National Representative with the Canadian Auto Workers (CAW-Canada) International Department. He is currently on a sabbatical leave from the CAW

British TUC Endorses Respite Program

In early September, delegates to the Trade Union Congress (TUC) convention in the UK unanimously endorsed a "respite program" to save the lives of Colombian trade unionists facing persecution. The program would see Colombian unionists spend "months at a time" in Great Britain. Additionally, fourteen TUC affiliates have affiliated to Justice for Colombia to step up solidarity campaigns. Speakers emphasized the need for pressure on the Blair government to establish a humane refugee policy that would see more Colombians granted refugee status. They also urged more trade union delegations to Colombia and more concerted criticism of Plan Colombia and the corporations like British Petroleum (BP) that have supported the US government war plan.

Ken Luckhardt
National Representative - International Department Canadian Auto Workers (CAW-Canada)
Phone: 416-718-8459 Fax: 416-495-6554

Life in Celebrity Inn

By Lois Anne Bordowitz FCJ

The immigration holding center near Pearson International Airport in Toronto is at the back of a hotel called Celebrity Inn. The people who frequent Celebrity Inn have no idea that at the back of the motel

there are between 60-100 people being held in detention. I have been going to visit Celebrity Inn once a week since April, 2002. When I first went there, the population was 101. Since August, the numbers have

dropped to about 65. What do I do at Celebrity Inn? I go to the women and men's dining room, introduce myself, and ask if anyone would like to talk to me about their case. I make it clear that I really only dispense free information. However, that can be very valuable to someone who has no idea what is going on, or what their options are.

The people who arrive in Celebrity Inn fall under several categories:

- 1) Overstays. These are people who came to Canada as a visitor and stayed beyond 6 months. Their option is to get bailed out for 30 days, or pay their own ticket home, so that they can return to Canada after one year, if they wish.

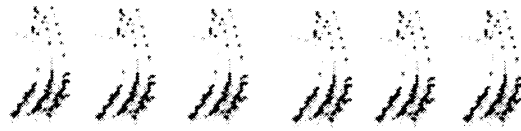
- 2) Visitor credibility. These are people who tell immigration officer that they are coming as a visitor, but for some reason the officer believes they really are coming to stay.

- 3) Refugee claimants. These are people who make a refugee claim, but have no identification. They will usually be held until they can get some identification. In the meantime, they can proceed with their refugee claim.

- 4) Removals. These are people who have been arrested because they have received a departure order and did not report to immigration to arrange to leave the country, or people who have committed a crime and are being deported.

Everyone who is about to be removed automatically gets the opportunity to submit a Pre-Removal Risk Assessment (PRRA). They have 15 days to fill out the form, which must include new information, plus 15 more days to send in submissions supporting the claim. Unfortunately there is no provision to help people who have no English to fill out the forms.

How does one get out of the Celebrity Inn? To get out of the Celebrity Inn, one must either be bailed out by friends or relatives, or by the bail program. The bail program is for those who have



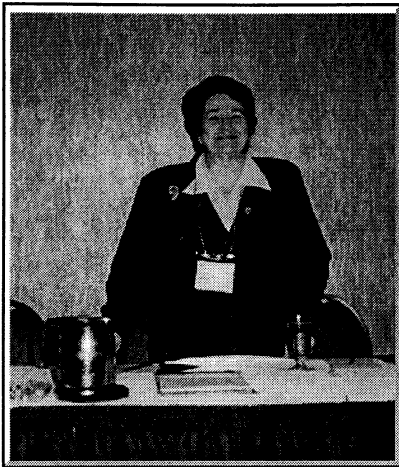
The story of Mariama

no one to bail them out, and they may have a future in Canada, e.g. a refugee claimant. Unfortunately this program has limited resources, and the wait is long.

Mariama came from Nigeria to make a refugee claim. She had a contact in Toronto, a woman connected in some way to her family. This woman at first befriended her, and asked her to babysit her child. She also said she would help Mariama get some more money from welfare, and applied for welfare for her using another name. After that, the woman accused her of many things, and eventually Mariama sought help and moved into a shelter. However, the welfare fraud caught up with her and she landed at the Celebrity Inn. When I first saw her there, she had been there for a week, and she had not washed or got a clean change of clothes. The guards asked me to help her. One of the difficulties the guards had was language. Mariama speaks a pidgin English common to West Africa. I was able to communicate with her, and discovered she had been picked up with no opportunity to get her clothes or toiletries. She was so upset she refused any clothes the guards tried to give her. I was able to get her clothes from the shelter and she then started to look after herself. When I discovered that the problem was her identity, I got in touch with her family in Holland, who got family in Nigeria to send her her passport. Once the identity problem was solved, we worked on getting Mariama out of there. The adjudicator agreed to release Mariama to the supervision of FCJ Hamilton House Refugee Project. Mariama has now moved to her own place, has a good lawyer, is going to English classes and waits for her refugee hearing.

Lois Anne is on staff at FCJ Hamilton House Refugee Project, and visits the Detention Centre one day a week on behalf of the Toronto Refugee Affairs Council (TRAC).

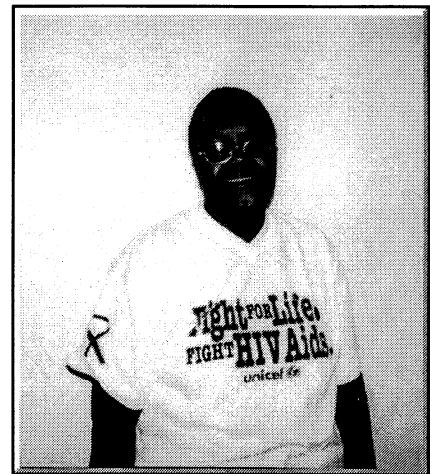
In May of this year three women engaged in refugee and migrant issues in Africa, Asia and the Middle East visited Canada at the invitation of the Primate's World Relief and Development Fund (PWRDF), Anglican Church of Canada.



Aline Papazian



Sinnathamby Sooriyakumary



Joyce Riungu

Aline Papazian is Lebanese-Armenian fluent in French, English, Arabic and Armenian. She heads the Middle East Council of Churches program on refugees, displaced and migrants.

Joyce Riungu is a Kenyan trained as a nurse, midwife and social worker. She heads the National Council of Churches of Kenya Reproductive Health Care Program for refugees living in two refugee camps in Kenya-Dadaab and Kakuma.

Sinnathamby Sooriyakumary (Soori) is a Sri Lankan Tamil refugee living in India. She is a founder and Secretary of OfERR (Organization for Eelam Refugees Rehabilitation), a refugee - run NGO.

The three women participated in a PWRDF Refugee Network Gathering in St. John's Newfoundland and met with United and Anglican church volunteer refugee advocates in B.C, Alberta and Ontario. They also led a number of workshops at the Spring Canadian Council for Refugees (CCR) meeting in St. John's.

Central to Soori, Joyce and Aline's messages on the struggle of uprooted people in India, Kenya and several countries of the Middle East, was their call to refugee advocates in Canada to promote advocacy for peace so as to address the root causes of forced displacement.

In an interview with *Refugee Update*, Soori expressed surprise at the emphasis on refugee resettlement at both the PWRDF network and CCR meetings. While she

acknowledged the importance of resettlement, Soori said that given the relative small number of refugees resettled compared to the millions who remain in refugee camps, more emphasis needs to be placed on advocacy to address the root causes that force people to become refugees in the first place.

Aline too agreed with the need to address root causes of displacement. However, she pointed out that for many refugees in the Middle East resettlement is the only option as local integration is not possible and the protracted nature of conflicts in the region make voluntary repatriation impossible. Still, very few refugees are actually resettled from the region and those who remain in a sort of limbo by far outnumber those who are eventually resettled to a third country. On the

effects of the Sept 11 tragedy on refugees in the Middle East, Aline said that 400 refugees who were ready to leave for the US saw their hopes crashed when the US suspended resettlement. The challenge since then has been to re-activate their case.

She added that the economic situation in the Middle East has been greatly affected since 9/11; budgets have been cut and unemployment has increased. All this affects refugees and migrants, as well as services rendered to them.

For Joyce too working for peace is an important part of the integrated reproductive health care program she runs for refugees, mainly from Sudan and Somalia, who have lived for more than ten years in the sprawling Kenyan refugee camps bordering their home countries. Joyce believes that it is important to promote a culture of peace at all levels (family, community) not only to address the violence that led to the refugees' uprooting in the first place but also to address the violence so prevalent in the refugee camps.

The peace program in the refugee camps concentrates on helping children at school and the larger community to help solve conflict non-violently. School children are given books and games to help them reflect together on concrete conflict situations that occur among them. On a rotation schedule, two children are chosen from each class as arbiters for a two-week period, thus giving all the children the opportunity to learn this skill. The goal



From Refugee to Migrant to Displaced! By Sinathamby Sooriyakumari (Soori) Secretary, Organisation for Eelam Refugees Rehabilitation (OFERR), Tamil Nadu, India

is to accept and see each other as coming from one country even though they are from different clans. Teachers also go on home visits to see how the children are able to apply what they have learned at school. The children have tended to fight over "petty" things such as pencils. Their peers then challenge them and after they apologize to each other they shake hands and discuss how else they could have resolved the situation.

At the adult community level the focus is on mixing clan/ethnic groups and helping them learn to relate to each other and work together. Peace building with women is from a different angle and is related to all forms of violence they experience because they are women. Refugee women in the camps have been working in support groups for several years now. In these groups they discuss their anger and fear of rape. Their shared experience and support contributes to the healing process. The refugee camps have anti-rape committees that protect women and maintain the security of the camps. These committees include both men and women. Because of the support group experience women are now prepared and able to ask for their rights in the refugee community.

All those who heard Aline, Joyce and Soori challenge to pose different questions to the work we do in Canada. Our perspectives were certainly stretched!

There are about 65,000 Ceylon Tamil refugees living in Tamil Nadu, India since 1990. They have been housed in 107 refugee camps which are managed by the Government of India through the Tamil Nadu State Government. OFERR is an NGO whose main objective is to provide relief services to refugees from Sri Lanka.

It regards itself as a self-help organization of refugees for refugees from Sri Lanka. OFERR was established in 1984 by a group of Ceylon Tamil refugees and Indian professionals and currently provides nutrition, medical assistance, amongst other services in these refugee camps.

About 43% of the refugee population in the refugee camps are women and children and they are the most vulnerable groups in the camps. They face many challenges due to the breakdown of social structures, poor economic conditions, poor or no legal protection etc. Since the welfare assistance they receive is not sufficient to make both ends meet, both husband and wife go out to work. They mostly get sessional jobs such as in the agriculture sector, or labour jobs in building sites, or sometimes in factories. But the jobs are not regular or easily maintained as refugees usually have to return to the camps at specified hours.

India is one of the countries where men and women seek migrant labour jobs in the Middle East. Women generally work as housemaids. There are many local agents engaged in the recruitment for such workers. During the 1991 period, when refugees' movement was restricted and refugees could not get regular jobs, these agents found ways to establish contacts within camps and succeeded sending a few women to the Middle East. The news of this "opportunity" spread to other camps like wild fire! Women who had the financial resources to pay the agents and who were physically able, left the camps and went to work in the Middle East. This also stirred the interest of those who had no financial resources and who still had the responsibilities of caring for their young children. In most cases, either the fathers or husbands would pressure the women to accept such contracts. As a result, women and families started borrowing money from local moneylenders at a very high rate of interest so as to pay the local agent, who would secure their travel documents, exit permits, and air tickets. The women first have to go to Colombo, Sri Lanka. The agents secure the necessary travel documents from the Sri Lankan Embassy in India. Once the women arrive in Colombo, the agent's local counterpart secures a passport and air ticket for the women to proceed to a Middle Eastern country. Usually, the passport that is issued in Colombo is under a Muslim name. Once the travel documents are secured, the agent starts the procedures on the labour contract. When this step is completed, the women depart to a Middle Eastern country. In most cases, when they reach their destination, they will not get to the employer named in the original contract. In addition, they will not receive the promised salaries. Furthermore, in the work situation, they often have to face harassment, humiliation and adjust to very different cultural

expectations. But most of the refugee women accept and suffer out these difficulties because of the responsibility they feel towards their family, as well as, to repay the money they borrowed.

What happens to the money when these women send the money to their families in India? Usually, they send the money to their husbands or fathers. In most cases, husbands spend the money for their personal benefit such as "drinking and having another woman" rather than for the needs of the children or family, let alone to pay off the debt. If she survives the contract and returns to her family (in the camp) she will often return to a "broken" family.

The following case illustrates the dilemmas of refugee women who are forced into overseas migrant jobs:

A young woman who had successfully completed her pre-university examination and was waiting for the college admission was forced to go to a Middle Eastern country so as to assist the family financially. When she arrived in this country, she found that her employer was not the person in mentioned in the contract. She could not cope with the conditions of the job and wanted to return to her family in the camp in India. But at this time, a person who is holding Sri Lankan passport could not be issued an Indian visa from an Indian Embassy in the Middle East. So, she, as with many others have to go back to Sri Lanka. The further irony of this situation is that she could not even apply for an Indian visa from Indian Embassy in Colombo to come to India to join her family as her name was changed to Muslim name! She therefore had to once again apply for new passport with her original name. This process took several weeks. At this time, there was a requirement in Colombo that all those who are living in Colombo had to register with the police station and had to produce their national identity card. Since she did not have such a card, her friends who hosted her in Colombo could not register her in any police station. Finally, she decided to return to her village. Once in her village, she could not find her relatives because they were all in an IDP camp. She could not even get into the camp. In desperation, she committed suicide at the gate of the camp.

There are many more such tragic stories. OfERR is working on several strategies to curtail the work of agents both in the camps and the agents who secure

travel documents to take them back to Sri Lanka.

LAKSETHA

by Sister Angela Fernandez, Lebanon

Laksetha, which means "for the well-being of Sri Lankans", was inaugurated on October 1, 1993, specifically as a Center for Sri Lankans. However, from the very beginning, Laksetha welcomed and accommodated the needs anyone from Africa or Asia who sought refuge, shelter or assistance. Women migrant workers seeking assistance from Laksetha come from several countries: India, Bangladesh, Philippines, Malaysia, Ghana, Ethiopia, Nigeria, Eritrea, Madagascar. The large majority of beneficiaries have however been Sri Lankans and the next largest group have been Ethiopians.

When Laksetha was first started in 1993, Dora district, Beirut, where Laksetha is located, was not highly populated by Asians and Africans. But today, on a Sunday, shops, restaurants, cargo services, etc. are full of African and Asian men and women. In fact, Dora is referred to as "small" Colombo, Manila, Addis Ababa, Bombay, etc.

Stranded and lost, migrant women workers found in Laksetha Centre a temporary shelter, a home, a place for relaxation, or place where they would be listened to without being considered a nuisance, a place where they could feel free to speak out their problems and seek possible solutions, assistance, guidance. The Laksetha team makes itself available to them by offering a listening ear and to respond to their needs. However small or complex and whatever the their needs - physical, psychological, mental, social, medical, spiritual, or legal, women battered and broken, lost and lonely, stranded and forsaken by society these women



have been the beneficiaries of Laksetha. Some of the activities and services made available to the migrant women workers are as follows:

- .. Listening to them and enabling them to find a possible solution to their problems;
- .. Offering a place of rest and relaxation to those who need, especially on a Sunday which is normally their day of rest;
- .. Offering temporary shelter to those in need especially to the sick who are stranded;
- .. Facilitating the repatriation of the sick;
- .. Making available a common pastoral service;
- .. Directing them to free legal aid services of CARITAS;
- .. Providing the possibility for group meetings, such as Women's meetings;
- .. Offering Sunday liturgy in Sri Lankan and Tamil for those who feel the need for it;
- .. Disseminating of information regarding legal matters;
- .. Providing opportunities for social, cultural celebrations;
- .. Providing and organizing group outings from time to time at their request and with their participation.

Nearly 50,00 women have been the beneficiaries of Laksetha during the past 9 years.

Laksetha Center networks with other partner organizations, such as the Middle East Council of Churches (MECC) on matters pertaining to women migrant workers. For example, MECC/Service to Refugees, Displaced and Migrants supports a repatriation program of stranded migrant women who have no other alternative but to go back home.

LA DÉTENTION DES DEMANDEURS D'ASILE POUR MOTIF D'IDENTITÉ : bilan, enjeux et perspectives

By Delphine Nakache (1)

En matière d'immigration, le législateur énonce les trois principaux motifs justifiant la détention d'une personne : elle constitue vraisemblablement une menace pour la sécurité publique, elle se dérobera vraisemblablement à l'interrogatoire, à l'enquête ou au renvoi (risque de fuite), ou enfin, il existe des doutes sur son identité.

On constate depuis quelques temps une détention accrue des demandeurs d'asile non ou mal documentés. La raison invoquée par CIC s'inspire de l'« épisode Chinois » : alors que les premiers Chinois arrivés dans le courant de l'été 99 par le premier bateau n'ont pas –ou peu– été détenus, la majorité d'entre eux ont fui les procédures d'immigration et abandonné leur demande d'asile. Tout cela s'est déroulé dans le contexte d'un trafic bien organisé de personnes, et qui a conduit CIC à adopter une politique de détention soutenue par la fuite afin de prévenir la fuite.

Cette augmentation de la détention pour défaut d'identité soulève deux types de préoccupations.

Préoccupations d'ordre général

À une époque de grand resserrement des flux migratoires, au moment où beaucoup de demandeurs d'asile détruisent de faux documents d'identité (parce qu'on les a conduits à croire qu'ils devraient le faire pour leur protection personnelle); vont même parfois jusqu'à détruire leurs propres documents (parce qu'ils croient que cela serait peut-être la meilleure façon de ne pas être renvoyés à la persécution de leur pays), le gouvernement canadien doit faire la part des choses. Un équilibre doit en effet être trouvé entre le devoir d'assurer la sécurité intérieure des citoyens canadiens (connaître qui rentre sur son territoire) et le devoir de protection des demandeurs d'asile.

Cela appelle à deux mises en garde :

- La détention pour motif d'identité ne doit pas servir un but politique plus général (choisir la

détention pour gérer de façon plus commode les demandes d'asile, ou dissuader de potentiels demandeurs d'asile de venir au pays)

- Le Canada doit respecter avec continuité ses obligations internationales humanitaires: même si au niveau du droit international une détention pour défaut d'identité peut s'appliquer, elle demeure l'exception (non la règle), et doit être aussi courte que possible.

Préoccupations d'ordre plus spécifique

Puisque le gouvernement canadien ne pouvait recourir *automatiquement* à la détention dans tous les cas où l'identité d'une personne n'est pas établie, une des solutions choisies dans la nouvelle *Loi sur l'immigration et la protection des réfugiés* a été la détention pour « non-collaboration à l'établissement de l'identité ». Cette mesure suscite des préoccupations majeures.

- Caractère irréaliste de la mesure
Croire qu'on peut obtenir une meilleure collaboration dès l'arrivée au Canada est une erreur, les circonstances dans lesquelles se trouvent les demandeurs d'asile étant plus que stressantes.
Quel sort sera réservé aux personnes qui viennent de pays où le gouvernement est non existant, ou encore, comment considérer les personnes apatrides?
- Caractère inéquitable de la mesure
Pour une personne qui a besoin de protection, il est anormal de lui imposer de faire une demande de documents (identité ou voyage) aux autorités appropriées du pays fui contre lequel elle fait une demande de protection. Il est d'ailleurs contraire au principe de la protection des réfugiés de demander au demandeur d'asile

On June 28, 2002, as part of the new Immigration and Refugee Protection Act (IRPA), a formal pre-removal risk assessment mechanism known as Pre-Removal Risk Assessment (PRRA) was introduced. This formalized procedure, which replaces Post-Determination Refugee Claimants in Canada (PDRCC) class applications under the former Act, is the jurisprudence which, based on Canada's commitment to the principle of non-refoulement, requires that risk be properly gauged before removal. (1)

Protection under PRRA is extended on the basis of IRPA's consolidated protection grounds, the same grounds applied by the new Refugee Protection Division (RPD), the replacement to the Convention Refugee Determination Division (CRDD). The consolidated grounds are based on the United Nations Convention Relating to the Status of Refugees and the

According to section 13 of the IRPA, an applicant who has had a claim to refugee protection rejected may only present new evidence that either arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of rejection. (4)

This new evidence requirement applies only to applicants who have had claims to refugee protection

Failed CRDD Claimants and The 'New Evidence' Requirement for Pre-Removal Risk Assessments under IRPA

by Warren Pudicombe, Barrister and Solicitor,
Larson Boulton Sohn Stockholder and Secretary of the Refugee Committee of the
Provincial Bar



1.) L'auteur, qui a rédigé son mémoire de maîtrise portant sur la détention des demandeurs d'asile au Canada, est doctorante en droit international des droits de la personne à l'Université McGill, et travaille en tant que professionnelle de recherche auprès du professeur François Crépeau en droit des réfugiés.

d'entrer en contact avec son persécuté. Il existe, en outre, des risques de persécution pour les proches restés dans le pays d'origine. En outre, un tel procédé risque de mener à des résultats contraires à ceux escomptés : le demandeur d'asile le plus vulnérable, le moins informé, le plus fatigué par le voyage, présentant ainsi les craintes les plus fondées, risquera de continuer à cacher son identité et son itinéraire à l'arrivée (et conséquemment être détenu ou continuer à l'être) afin de ne pas mettre en danger sa famille et ses proches. Il y aura en revanche d'autres personnes qui se serviront de cette voie pour entrer au

Canada, plus articulés et mieux informés qu'auparavant sur la méthode, et qui feront preuve d'une collaboration «exemplaire» pour éviter la détention. En droit interne, enfin, il est urgent de préciser les motifs légitimes et illégitimes de la non-collaboration, afin d'éviter un potentiel recours pour imprécision (comment évaluer le manque de collaboration d'une personne qui se tait parce qu'elle a peur? Comment évaluer le manque de coopération d'une personne qui ment pour protéger sa famille ou des amis demeurés dans le pays persécuté?)

rejected. The jurisdiction of the RPD is much broader than that of its predecessor, the CRDD, encompassing as it does the aforementioned consolidated grounds. Nonetheless, according to section 339 of the Immigration and Refugee Protection Regulations, a determination by the CRDD that a person was not a Convention refugee is deemed to be a claim for refugee protection rejected by the RPD. The end result is a transitional provision that is manifestly unfair to those who receive negative refugee determinations from the CRDD as it prevents access for these people to protection which would have otherwise been available under the former Act. (5)

For example, under the former Act, if a risk to life or wellbeing existed, but no nexus to a Convention ground was established, a claim to be a Convention refugee would most likely have failed. A PDRCC application, however, requiring no nexus but rather a risk to life or of inhumane or cruel treatment or punishment, would have provided the refused CRDD claimant with protection.

With the onset of the IRPA the opportunity to apply for that protection no longer exists. With the new evidence requirement of section 113, the failed claimant is precluded from offering into evidence as part of PRRA submissions materials related to the harm they fear previously filed in support of the claim before the CRDD and, absent that evidence, a PRRA application is likely to fail.

What can be done? At a recent presentation in Vancouver by Citizenship and Immigration Canada, it was disclosed that there has been an internal direction within CIC that has considered these issues, but a final policy decision appears not yet to have been made. (6) At present, however, the Protected Persons Manual only emphasizes the applicability of the new evidence rule

to failed claimants, and does not raise any issues particular to failed CRDD claimants. (7) According to

the IRPA, its accompanying regulations and the relevant Manual therefore, failed refugee claimants under the old system, because of the new evidence requirement of the IRPA do not have access to the new Act's broader jurisdiction. Absent a policy initiative by CIC to correct these concerns, the only recourse would be Federal Court, initiating challenges based on sections 7 or 12 of the Charter to the decisions of individual PRRA officers to exclude evidence, or to the legislation itself, specifically section 113(a) of the IRPA, or to section 339 of the Immigration and Refugee Protection Regulations, the transitional provision that equates negative findings of the CRDD to failed claims for refugee protection. If CIC cannot, or will not, correct the oversights of IRPA by way of policy, it may find that the initiatives to codify existing judicial concerns have fallen far short of the courts', and the Charter's, requirements.

1) For example, see *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] S.C.J. No. 3, *Farhadi v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 646 (F.C.A.) and *Man v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 771 (F.C.T.D.).

2) See sections 95 to 97 of the *Immigration and Refugee Protection Act*.

3) See *IRPA*, sections 77 and 112.

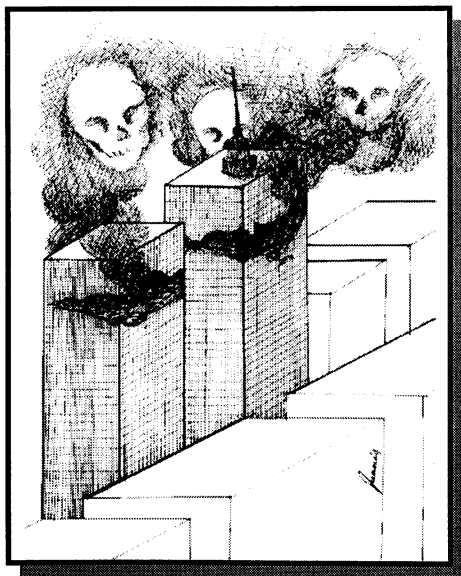
4) It is also important to note that section 161(2) of the *Immigration and Refugee Protection Regulations* requires the

applicant to identify the new evidence and indicate how it meets the criteria set by section 113 of the *IRPA*.

5) Pursuant to section 191 of the *IRPA*, claims to Convention refugee status wherein "substantive evidence has been adduced but no decision has been made" prior to the coming into force of the *IRPA* are continued under the former Act and therefore decisions with respect to these claims, even though made after June 28, are not made on the basis of the new expanded grounds of protection.

6) Presentation by Himmat Shinhat, Refugee Branch, CIC Ottawa to the Vancouver Refugee Council, July 17, 2001.

7) *Protected Persons Manual*, Chapter PP-3, section 5.3.



Connections

Anna Muschius, Projects Assistant

The Association for New Canadians St. John's, Newfoundland and Labrador

vegetables (both at home and here in Newfoundland), and methods of cooking (roasting, grilling, baking, etc.). At another meeting, while planting flowers and taking cuttings to make new house plants, members of the group reminisced about gardens they had in their home country. The women helped each other communicate, supplying missing words or explaining to someone else (in English) what had just been said if something was not immediately understood.

Some evenings, a speaker from the community will visit the group (such as a representative from Planned Parenthood, for example) or we will attend community events such as fundraising teas, festivals, or the public library. While the weather has been good over the summer months, we have taken advantage of it and explored the walking trails throughout St. John's and have gone to Cape Spear (the most easterly point in North America and about a 20 minute drive outside of the city). On one of the warmest, steamiest days this summer, we purchased some firewood and had a bonfire on Middle Cove Beach (about 10 minutes outside of St. John's). Once the sun started to set, and after enjoying a wade in the waters of the ocean, the women gathered around the fire, roasting marshmallows and chicken wieners, and then dancing and spontaneously playing games (many that everyone seemed to know from childhood -- such as tug-of-war and variants of 'London Bridge').

While the broad objectives of the group are successfully being met, the most positive aspect of having the privilege of facilitating Connections is to see the interactions between the members -- there is no hostility or displays of racism. Given the chance to contribute, everyone is seen as an expert at something, with the women freely sharing their knowledge and experience with each other. Sometimes it is all too easy to get caught up in the generalities, politics, and paperwork associated with the larger world. We forget how much pleasure there is in the simplicity of living and enjoying each other company, despite the circumstances life hands us.

So, how about a little good news for a change? In many quiet ways, people across the country are experiencing the positive aspects of living in the midst of ethnic diversity within Canada. The Association for New Canadians in St. John's, Newfoundland & Labrador is soon to begin the third year of its Connections program. Connections, which is funded by Citizenship and Immigration Canada, is a women's social group which meets once a week for two hours in the evening. A variety of activities seek to empower the participants by increasing self-awareness and self-reliance while combating racism through exposure to the host community. Mentoring amongst the group is encouraged in order to share experiences, to make linkages with community partners and resources, and to gain knowledge and insight into cultural influences as it pertains to the roles and responsibilities of women.

The group was initially formed in order to help immigrant women overcome the barriers to successful integration. The group meets and participates in various activities; everything from crocheting to bonfires on the beach. The activities are not only fun, allowing the bonds of friendship to form and increasing a woman's social network in the process, the activities have also helped to increase the self-esteem of many of the women. For example, the English language skills of these women improve in this supportive environment through the acquisition of more vocabulary and by allowing members a chance to speak, especially for some women who are at home during the day (perhaps with young children to look after) and with little chance to use what English they have. With a growing competency of the language comes the realization that a person is capable of successful learning at any age.

Conversations at Connections revolve around the evening's activity or reflect upon past meetings. One evening, while baking a cake, members of the group talked about the ingredients and methods of cooking that they use in their cultures. We talked about cooking oil, types of flour, types of fruit and

The UNHCR and World Politics: A perilous Path, by Gil Loescher

Book Review by Tom Clark, Visiting Scholar, Centre for Refugee Studies

Most of us hear the mantras repeated that UNHCR is entirely non-political and totally humanitarian. Loescher's title gives his view. UNHCR is fully an international political animal and a significant actor on the world stage. Political problems are endemic to the mandate. The agency must walk a political tightrope. That can be a risky thing for refugee protection.

Released in 2001, the book's context is the 50th anniversary of UNHCR. It serves as a timely stock-taking of the organization at the beginning of a new century. It is readable and can be taken home. It is thorough and well documented so it should find a place as a reference on the bookcase of every agency involved in international refugee work. It can jog memories, point to sources and establish facts.

Whatever is written about UNHCR is either buried in an academic article or is written by some apologist for UNHCR – either UNHCR itself or a former employee. So it is refreshing to have a book about UNHCR written by someone who is outside UNHCR. Gil Loescher spent much of his academic life studying refugee or international affairs at University of Notre Dame, Indiana U.S.A. Gil has served UNHCR along the way – for example on an advisory committee. He is also open to NGO insights and concerns. I know this because I was privileged to work with him briefly at the regional preparatory conference in Caracas for the Partners in Action (PARINAC) project of UNHCR.

Gil's book looks at UNHCR's evolution from the perspective of each High Commissioner – rather as a British history might examine the impact of each King or a US history, the achievements of each President. The book shows how High Commissioners have adapted to the times and political opportunities to allow the agency to gain or preserve government confidence, to protect or assist refugees and to help governments with their refugee problems. The agency extended its activity into Eastern Europe under Lindt in 1956, into Africa under Snyder in the 1960s, into

Asia and Latin America under Sadruddin Aga Khan in the 70s and 80s. Finally UNHCR expanded into conflict displacement situations in the former Soviet Empire under Ogata in the 90s. There are some surprises. Did you know that the first High Commissioner, Goerdhart, had a hard time getting US permission for an emergency fund and got very little US funding? Did you know “Despite opposition of Western governments, the UNHCR began to exercise power autonomously in ways unintended by states at its creation”?

The seven chapters dealing with the life and times of each High Commissioner are sandwiched between two introductory chapters and a reflective future-oriented concluding chapter. The very first chapter acknowledges that UNHCR is both an individual High Commissioner and a bureaucracy. But it is a very special bureaucracy: “There exists no other UN agency where values and principled ideas are so central ... or where some committed staff members are willing to place their lives in danger to defend the proposition that persecuted individuals need protection.”

If there is one gentle criticism, it might be that Loescher has tended to understate the impact that NGOs have played in influencing the directions UNHCR has taken. My own experience is that NGOs have enabled some UNHCR initiatives despite State opposition. They have disabled or softened some UNHCR activities which States were promoting. NGOs are part of the global political world of UNHCR which Loescher otherwise captures well.

As one reads Loescher's concluding concerns about the crisis in refugee protection, problems with agency coordination, the needs of internally displaced persons and the lack of real accountability, one is forced to recall his first chapter and the special strengths of UNHCR which all rights-reinforcing agencies and individuals must support. The UNHCR remains a special UN agency and a principled agency, and UNHCR cannot protect refugees alone. Loescher's

final remark is particularly relevant after the excessive security concerns and related limits on civil rights following the terrorist destruction of the World Trade Center 11 September 2001. Loescher notes that the treatment of refugees is linked to societies which are rights-reinforcing. UNHCR helps to preserve

"open societies" and UNHCR and refugees benefit from them. In other words, UNHCR helps everyone in a society when it reminds the government to treat refugees fairly.

PEACE CELEBRATION IN KAKUMA CAMP, KENYA

Refugees and agency workers in Kakuma Refugee Camp, Northern Kenya, held a day of celebrations to mark International Day of Peace, on 10 September. JRS took part in a tree-planting ceremony, which was the opening event in a day filled with song, dance and sport. A large crowd was treated to a number of fine performances from various groups of refugee children as well as a traditional celebration from the local Turkana tribe, who are acknowledged as the host community. The songs and poems staged by the refugees had a clear message to the world, that they wanted peace and that they were tired of living in exile. A poem recited by the refugee children read, "we are the future and if the future is being destroyed then there is no future".

Kakuma camp is host to approximately 75,000 refugees, the majority of whom hail from Sudan, Somalia, Burundi, Ethiopia, and Rwanda, some of whom have been living in the camp for as long as ten years. JRS is one of a number of international organizations which are present in the camp, working side by side with the refugees in counselling projects, distance learning programmes, income generating activities and providing special services to refugees who are particularly vulnerable or suffering from trauma and stress. The Camp is located in the desert lands of Northern Kenya, an area known for its harsh climate of intense heat and frequent dust storms. *Souceer: JRS Dispatches, September 18, 2002*

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BOARD: Catherine Balfour, Natalie Blais, Lois Anne Bordowitz FCJ, Alistair Boulton, Tom Clark, Marty Dolin, Ken Luckhardt, Ezat Mossallanejad, Helene Moussa, Elsa Musa, Francisco Rico-Martinez, Norrie De Valencia, and Ricardo Dentone

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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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