REFUGEE UPDATE

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INSIDE:

REFUGEE FAMILY SEPARATION: A STATE OF CRISIS

BY ZOSIA MAE WHITTAKER AND KARINE ALI

We often hear the question: 'Who pays the costs of family separation?' These costs are more than financial**: they are human**. They reach into all aspects of life and the most vulnerable among us, separated refugee families, are the ones who pay the ultimate price.

Families are basic building blocks; all relationships in society start from this base. Refugees need family support to shelter them after trauma, to heal social bonds damaged through violence and persecution, and to rebuild the ability to trust others.

"I COULDN'T SAY GOODBYE"

Refugees who have experienced trauma in their countries of origin face the additional trauma of being separated from family members. It is impossible for them to find peace and comfort when haunted by guilt and constant worry for family members overseas. Many refugees experience mental health problems due to separation from family.

Photo: www. toronto.nooneisillegal.org

Refugees who are separated from family members are denied this basic right and often have a difficult time forging other, healthy relationships in their new community. As a result, many refugees lose hope, their sense of justice, a sense of community - what Canada is meant to stand for. Tension builds between refugees in Canada and their family members overseas with prolonged separation.

Family members often perceive Canada as a country of justice and blame their loved one in Canada for delays in the process of reunification. When this happens, interpersonal relationships are strained, and trust among family members is broken. On the contrary, refugee families have identified the presence of family members as a major factor in their own adaptation to life in Canada.

In adapting to separation, family members take on new roles to compensate for the absence of one another. Families who are reunited after long periods of separation face the additional stress of rebuilding and adapting to family life in Canada. Families often have impossibly high expectations for joyful reunions.

ONE SURE THING…

In coping with separation, many families find comfort and faith in religious communities. Religious beliefs serve as a source of strength during difficult times. Some say that in times of transition, religious beliefs are their source of consistency. Faith-based communities often provide a safe haven for refugees struggling with loneliness and family separation.

CRII FOR CANADA

Lengthy family reunification processes also affect the Canadian economy. Displacement places serious financial demands on convention refugees in Canada and their families abroad. In most cases, the survival of an entire family depends heavily, even exclusively, on the earnings of the family member in Canada through remittances.

To make matters worse, professional certifications of newly-arrived refugees are often not recognized by Canadian employers. Attaining Canadian certification for professional qualifications is a lengthy and costly process. Burdened by the urgent need to secure financial support for family at home and application fees for sponsorship, travel costs for family members and possibly DNA tests, refugees are often forced to work in low-paying, unstable jobs. Reunification efforts often take priority over professional accreditation and advancement.

Further still, family sponsorship is based on financial stability. As a result, refugees with family members overseas rarely have this option.

In addition to blocking professional opportunities, prolonged separation times increase the likelihood that children will arrive with learning disadvantages.

These children will encounter more difficulties when integrating into the Canadian school system and into the job market later on.

IS THE GOVERNMENT REALLY PUTTING FAMILIES FIRST?

As a signatory to the *Convention on the rights of the Child*, Canada has international responsibility to reunite refugee families "in a positive, human and expeditious manner" (article 9, paragraph 1). This responsibility is also defined in national law under Canada's *Immigration and Refugee Protection Act*. However, even six years after observing this obligation, the Canadian government has taken no significant steps to speed up the reunification of refugee families. Application backlogs, especially at overseas visa offices, mean many years of waiting for refugee families. This makes the nightmare of separation even more painful. Many organizations call on the Canadian government to bring refugee families to Canada while their applications are processed. So far, the government has been silent.

The main obstacle is the lack of true will from the Canadian government to prioritize the reunification of refugee families, making it Canada's hidden crisis. Years of inattention by government leaders and years for application processing translates into eternities for separated refugee families.

Meanwhile the Canadian public is largely uninformed about the grave consequences of refugee family separation. The longer this crisis continues, the graver the human costs for us all. When will Canada finally fulfill its promise to put families first? Each of us can start today by taking action!

Zosia Mae Whittaker is a social work student completing an internship at Montreal City Mission, a multi-faith, multiethnic organization in Montreal that has worked with refugees who are separated from their families.

Karine Ali is a master's student in political science at the Université de Montréal. She is currently doing research on the costs of refugee family separation to Canadian society.

MULU'S DREAM

Mulu arrived on our doorstep from Ethiopia one cold December day in 1997. She had lost her husband, been in jail and tortured, and now she had fled to Canada, leaving six children behind. We helped Mulu to get settled into Canada, and she received her Convention Refugee status in May, 1998. As a Convention Refugee, she was able to apply for permanent residence for her children on her own application, which she did in October, 1998. She included the landing fees ($1,900) and the birth certificates of her children.

In Feb. 2000 she was asked for the children's father's death certificate. She informed in May 2000 that birth certificates and death certificate of the father was not sufficient to prove they were her children, so she was required to do DNA tests (almost $2,000). Then she had to get police checks for herself in US and Canada, fingerprints, and medicals for herself and all the children. The medicals ran out before the visas were issued, so they had to repeat the medicals. One child had a spot on the lung, so had to go to a specialist. By the time the specialist sent in negative results, the medicals had expired again, so they had to repeat the cycle.

You can imagine the rejoicing when the children arrived on **Feb. 24, 2004**.

It is easy to write the dates of each step. What one can't see is the anguish in the mother's eyes each time there is a letter from the embassy in Nairobi,

asking for something else. Even if it is a simple thing, it means another delay. Usually it also means more money. Then there is the strain on the relationship between children and mother. How does a mother parent her children from another continent—over the phone. There are so many situations that come up that require a mother's guidance. How does she explain the delay in bringing them to join her? She is in the great country of Canada. As the children grow into young adults, they get into relationships. How can they put their lives on hold for so many years?

The mother also has to put her life on hold, as it is impossible for her to get a good job, while her mind and thoughts are always on her children. After Mulu's children finally arrived and got settled, Mulu fulfilled her other dream of opening a business. She is now the proud owner of a restaurant serving Ethiopian food.

What can we do?

Encourage the federal government make the speedy reunification of refugee families a priority. Here's how:

- ***Raise public awareness of the unnecessary and painful costs of family separation. Make use of the Family Reunification campaign resources from the Canadian Council for Refugees, available at: www.reunification.ca. Feel free to adapt them or create your own!***
- ***Reach out to organizations in your community and have them endorse the Family Reunification Manifesto***
- ***Meet with your Member of Parliament to discuss the difficulties faced by refugees in your community who are separated from family members abroad and the effects on their families.***
- ***Have your organization support both separated family members and reunited families: everyone needs support!***

There is little to no documented research on the real costs of refugee family separation in Canada. If you are researcher, taking on this challenge could have significant impacts!

THE PROTECTION OF TRAFFICKED PERSONS

BY NORRIE DE VALENCIA

The Canadian Council for Refugees has advocated for protection of victims of human trafficking since the early 1990s through resolutions, local and national workshops, and preparation of relevant documents and reports. Recently, the CCR trafficking subcommittee developed a Proposal for Legislative Amendment to Ensure Protection of Trafficked Persons. This document is available at www.web.ca/ccr/traffickingproposal.html We urge you and your organization to endorse this proposal.

Some time ago Anti-Slavery published a report, "Human Traffic, Human Rights: Redefining Victim Protection" in which they concluded that the countries that had a higher prosecution rate of traffickers were those that had the most comprehensive measures for assisting trafficked persons. (Anti-Slavery International, 2002, page 2, Executive Summary).

When discussing trafficked persons, everyone wants to know about statistics. "How many people are trafficked into Canada each year?" they ask. But what do numbers matter when one person bought and sold into slavery is too many? Figures in the tens of thousands are not necessary to show the gravity of the problem.

Instead of seeking statistics we should be asking, "Why is this happening?" "Why is human trafficking increasing if so much work has been done to curb it.?". "What efforts are being made to understand the persons who are trafficked, - bought and sold as slaves - their dignity taken away?"

In their testimonies, trafficked persons have warned us about what is going on. They have told us about the system that spawns these abuses. They do not use the vocabulary of academia but they have been passionate and clear. They are showing us the way. Unfortunately, to date, Canada has not put in place needed mechanisms that will ensure their protection.

Enforcement agencies focus on raids and deportation. The results of these raids, reported widely in the media, make it "look like" trafficking is only happening because of weak immigration laws. The conclusion seems to be: increase border control, stiffen immigration laws, and the problem will go away.

But the problem is not going away. And victims are being further criminalized and traumatized.

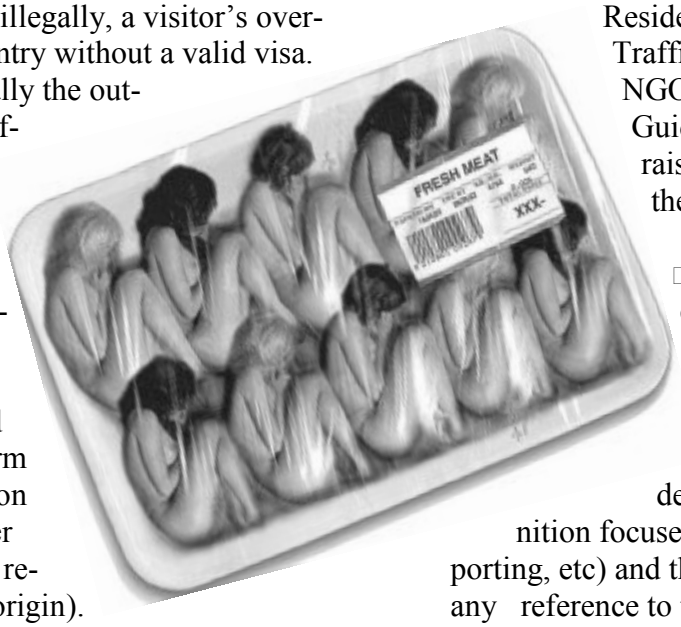
In a VPD raid in Vancouver in February of this year, known as the "Pinky Raid", there was no collaboration with community groups which may have provided support for the trafficked persons. There was no access at all to the trafficked persons who, it was reported in the local press, were all issued exclusion orders for working without a work permit. In fact there appears to have been no inter-agency collaboration (most notably no collaboration with the RCMP Human Trafficking Team).

For those who advocate for protection of trafficked persons, this was very discouraging.

During the CCR Trafficking Project (outlined at **www.trafficking.ca**), input was gathered at the grass roots level across Canada. The Anti-

Trafficking Coalition of Vancouver grew out of the CCR Project. This Coalition issued a statement in August 2005 which clearly addressed initiatives like the Pinky Raid and observed that in the circumstances, most trafficking victims would never consider coming forward for help and/or to assist with the prosecution of offences. At that time, the Coalition stated:

"What happens in practice is that trafficked persons are picked up on immigration-related offences such as working illegally, a visitor's overstay or entering the country without a valid visa. These offences are usually the outcome of coercion by traffickers and not the fault of the victims. For these types of offences, immigration officers have the authority to issue a removal order to the victim with the effect that trafficked persons go from one form of victimization (coercion by traffickers) to another (detention, removal and return to their country of origin).



Measures to remove trafficked persons from Canada usually happen so swiftly that they are not given an opportunity to access legal counsel needed to help them make informed decisions about what they should do, and thus potentially begin recovery. Access to justice is denied and the possibility of criminal prosecution against traffickers is lost.

Even when legal counsel is accessible, there are no formal legal tools in place for counsel to rely on to object to removal, as enforcement officers operate within the parameters of laws that allow them to issue removal orders under those circumstances. Moreover, no measures are taken to ensure protection of the victims once they are removed from Canada, rendering them even more vulnerable to traffickers or other negative circumstances on return to their home countries.

It is, therefore, not surprising that most trafficking victims never consider coming forward for help and/or to assist with the prosecution of offences. The fact that, since the coming into force of IRPA there have been almost no human trafficking charges laid, while anecdotal evidence by frontline community workers confirms that the problem persists in Canada, is testament to the fact that a penal-based approach does not work."

TRP Guidelines:

On May 11, 2006 the Guidelines to the Temporary Residence Permit (TRP) for Victims of Trafficking were introduced by CIC. NGOs expressed concern about the Guidelines. In particular, the CCR raised the following issues related to the definitions in the Guidelines:

- There is significant confusion caused by the different definitions offered. 16.2 offers the UN Protocol definition, whereas Appendix F quotes the Criminal Code, which offers a different definition. The Criminal Code definition focuses on the actions (recruiting, transporting, etc) and the purpose (exploitation) without any reference to the means used (the UN definition in contrast includes a component relating to the means used: "threat or use of force", etc). This raises the possibility that a person could be convicted under the Criminal Code for trafficking, but the victims of this trafficker might be viewed as not being Victims of trafficking in persons according to these guidelines. This represents a troubling inconsistency in Canadian policy.

- Furthermore, the UN definition is followed in these guidelines by a commentary that appears to narrow the definition further by referring to the methods used by traffickers "to control their victims". Later, under the section on *Smuggling vs. trafficking*, there is also a narrowing of the definition when the guidelines state that trafficking "involves the use of threats, force, fraud or other forms of coercion." This is only part of the list offered in the UN definition, which also contemplates that traffickers may exploit people by means of "the abuse of power or of a position of vulnerability." The Guidelines thus imply not only that the trafficking must be "by means of" the things listed in the UN definition (absent in the Canadian Criminal

Code), but also that part of the "by means of" UN list has priority over the rest of the list.

Further NGO concerns were effectively summed up by Naomi Minwalla, a Vancouver immigration lawyer, in the following points:

- The Guidelines should not have been the Government's "first step" towards resolving the problem. The Government's first step should have been to consult with NGOs.

- Most disturbing is that there is a clear, direct link with law enforcement (i.e. the RCMP and CBSA). Specifically, (a) The Guidelines state that "a mutual and automatic consultation" between CIC and partner law enforcement agencies will occur when a person self-identifies as a VTIP. If referred by an NGO, and if the CBSA or RCMP have not already been consulted "an automatic consultation should occur". (b) In the preliminary assessment for a short-term TRP, it states that "if the individual is a self-identified victim of trafficking and has not yet been to the police, it may be difficult for the officer to verify all of the facts." Further, even with the longer-term TRP, "a more complete verification of the facts" are to be done "in consultation with law enforcement".

Clearly, all of this foresees law enforcement agencies playing a role in the verification of facts for a preliminary assessment. Essentially, what I foresee happening is that the RCMP and CBSA are essentially going to be calling the shots and having the final word on all of this.

The scenario will be this: (1) Person reports to CIC officer, (2) CIC officer contacts RCMP and CBSA and discusses case with them, (3) If RCMP and/or CBSA believe that the person is trafficked, she will get the TRP. But, (4) if the RCMP and/or CBSA don't believe that the person is trafficked, she'll be hooped. This will all, I imagine, be done by informal chatting between the RCMP, CBSA

I think it's clear that the RCMP will be responsible for influencing the mind of the officer. Moreover, not only will the victim not receive the TRP unless law enforcement supports the case, she will then be on the CBSA radar screen for arrest, detention, and removal. What woman is going to risk all of that? What happens to all of those cases that we are already aware of where the RCMP have chosen, for whatever reason, not to pursue criminal charges, but we all know that the person is trafficked and needs protection nonetheless. The parallel is a transition house shutting the door in the face of an abused woman who is clearly abused and needs protection, even though there may be good reasons not to pursue criminal charges. Studies show that victims are more reluctant to come forward if tied to law enforcement.

- The 48-hour limitation for a decision is not there to benefit the trafficked person; this is only when CBSA refers the person and it disturbingly foresees that CBSA has detained the person, as she would be subject to a statutory detention hearing within 48-hours of being detained. In fact, there is no time restriction for making a decision on the short-term TRP. Given the urgency of these cases and the prospect of removal, there should be a strict timeframe in which an officer must make a decision for the Short-Term TRP.

- There is no legal aid, interpreting, food, safe shelter or counseling provision. The only provision is for very limited medical services and "social counseling (whatever that is) under the IFH.

- What happens with port of entry victims?

- What training program is in place?

- Lastly, by creating a very specific category to deal with trafficked victims, the Government will effectively exclude women from exercising other legal options (however weak that they are) because they face the risk of being told that the proper route is to apply for the special TRP.

Only two TRPs have been issued in the year since the TRP Guidelines were announced on May 11, of 2006 (one is now expired and has not been renewed, and there is almost no information available about the second). Clearly, to date, the TRP has not been effective as a mechanism to protect trafficked persons.

Revisiting Palermo

The definition inconsistencies in the Guidelines outlined above and the resulting Canadian policy are troubling.

The definition of human trafficking was also an issue at the Third Session of the Conference of the Parties to the U.N. Convention Against Transnational Organized Crime, which was held in Vienna, October 9-18, 2006 (the "Vienna Conference"). NGOs and governments, after a contentious debate over the definition contained in the Palermo Protocol, insisted on the inclusion of the following provisions in the definition as a key matter of protection for victims so that they would not have to assume the burden of proof that they had been forced. (http://action.web.ca/home/catw/readingroom).

In order to protect all victims of trafficking, including those who may initially "consent" to their exploitation and who have been abused because of their position of vulnerability, it is crucial to respect the entire UN definition of trafficking, in particular:

▪ ***Include the provision that trafficking not only requires conditions of "force" or "coercion" but is also defined by conditions in which the trafficker can abuse a potential victim's "position of vulnerability."***

▪ ***Include UN Protocol Article 3b which states "the consent of a person" shall be "irrelevant" where any of the means in Article 3a have been used.***

Victims of trafficking are not always kidnapped, nor are they forced in the reductionistic sense of having a gun held to their heads. Many are deceived, and many are vulnerable to the scams of traffickers. In addition, while it is stated that "traffickers take advantage of desperate people looking for work", traffickers also often take advantage of people's need to escape persecution blocked by government policies of interdiction.

Further, and buttressed by the Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, September 2006 (E/CN. 4/2006.62), the participants at the Vienna Conference issued the following statements:

▪ The interpretative note on prostitution should not be used to legalize pimping or to criminalize women in prostitution.

▪ Countries are exhorted to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

▪ Countries are exhorted to implement the provisions of articles 6, 7, and 8 of the Palermo Protocol concerning protection of trafficked persons. Many countries do not implement these provisions. The human rights of trafficked persons are not respected and those without permit of residence or with expired visas may be deported irrespective of the obligation of the state parties to implement a "safe return".

The CCR has now posted to its website a **Proposal for Legislative Amendment to Ensure Protection for Trafficked Persons**. This document was mapped out by the CCR Trafficking Subcommittee. Once a draft had been agreed on, an Ad Hoc Advisory Committee was formed in January 2007 to provide input. The Ad Hoc Committee consisted of Clara Ho, Catherine Gavreau, Peter Showler, Michael Bossin, Deborah Isaacs and Janet Dench.

The CCR Trafficking Subcommittee then considered the recommendations of the Ad Hoc Committee and added only two further elements which were: (1) to introduce the possibility of extending the temporary permit if the person is not ready within six months to decide whether or not to apply for permanent protection, and (2) to promote participation of NGOs in any interview with enforcement officials.

Currently the CCR Trafficking Subcommittee is seeking endorsement of the legislative proposal, looking for opportunities to raise awareness of the proposal, and advocating for the adoption of the proposal through letter writing campaigns.

We encourage all CCR members and other interested groups to do the same.

Norrie de Valencia , CCR Trafficking Subcommittee, Anglican/PWRDF Refugee Network, Vancouver, May 2007

THE PLIGHT OF NORTHERN IRAQI REFUGEES IN TURKEY

BY BEHZAD PILEHVAR

As a government assisted refugee who has spent eighteen months of hard life in Turkey, I would like to share my concerns about the life and protection of Kurdish asylum seekers in Turkey.

There are thousands of asylum seekers living in a very difficult situation in Turkey. They have escaped to Turkey from many countries like Iraq, Iran, and Syria. Some are living in Turkey legally and others have to live an underground life. The focus of this article is on the plight of those refugees who live in Turkey legally and have been accepted by the UNHCR branch office there.

In early 2001, a group of Kurdish political activists (mainly Iranians) entered Turkey from Northern Iraq. They could not continue staying in Iraq due to lack of status and the fear of religious and political persecution by the ruling parties there. The kidnapping and assassination of Iranian opponents in Northern Iraq added to their well-founded fears. Despite the acceptance of a majority of these people as *bona fide* refugees by UHNCR, they have not yet been resettled in a safe third country.

In March 2003, before the outbreak of the war in Iraq, the UNHCR designated this group of refugees under the category of "People in Irregular Movement" (See Agreement 1989, number 58 XL). The UNHCR branch in Turkey initially refused to accept them as *bona fide* refugees. It was a *carte blanche* for the police and the Ministry of Home Affairs to send these people to Iran, Iraq and Syria. There was great reluctance to provide these refugees with medical and psychiatric care, which many of them greatly needed. After years of international lobbying and pressure from human and refugee rights groups, the UNHCR and the government of Turkey agreed in 2003 to let these people stay as foreigners in Turkey. This was with the condition that they pay 'staying' fees to the Ministry of Home Affairs. The fee was $250 per person for a period of 6 months.

On July the 2nd of 2003, Turkish security forces attacked a peaceful sit-in strike of a group of Iranian refugees and Turkish students in front of the office of the UNHCR.

I was arrested along with two other asylum seekers and we faced the risk of deportation. It was not without effective pressure from human rights supporters and the Turkish media that we were released by the police. On August 20th 2003, the Turkish police arrested 20 asylum seekers, among them were 8 children. They were taken by the police to the border and abandoned in bad weather conditions. After fighting for their lives for three days, they were rescued by local people and they returned to the border city of Van. In November of that same year, 53 refugees were arrested by the police in front of the UNHCR office. The police decided to deport them

from Turkey. However, they were released due to the intervention of human rights agencies.

In December 2003, the UNHCR branch office in Turkey accepted these people as *bona fide* refugees from Northern Iraq. This came after they had been living in limbo for two years. In April 2004, Turkish police transferred these refugees to different cities. They were advised by the police to procure residence permits from the cities of their destination. The refugees faced lots of problems from local authorities in their bid to get the residence permits. The local authorities asked them for considerably high fees, in return for the permits. In June of 2004, the Turkish police gave the refugees a deadline to pay the fees by the end of the month. However, many

refugees could not afford it. Therefore, on July 8th, 54 refugees were arrested and forced to sign letters of removal from Turkey. They were given 15 days to leave Turkey voluntarily, to avoid being removed forcefully. In October 2005, Amnesty International asked the UNHCR to resettle these refugees in a safe third country.

The number of these refugees, according to UNHCR statistics of July 2005, is as follows: 1181 refugees (516 cases); This includes 62% men, 38% women, 277 children under the age of 18, 100 children under the age of 5 and two hundred single people. The average number of each family is estimated at 3.

There was a meeting between refugees and UNHCR officials in Turkey in September 2006. Unfortunately, the meeting did nothing to improve the safety of refugees in Turkey. In early December 2006, the Ministry of Home Affairs sent a communiqué to the refugees informing them that those with close relatives abroad and those who suffer from serious diseases (diseases such as cancer and diabetes), who were approximately 96 in number, can be resettled in a third country. Unfortunately, on the 15th of December following a meeting between the UNHCR and the Ministry of Home Affairs, this decision was cancelled.

It has been more than five years since the arrival of these refugees in Turkey. So far, there has been no attempt to resettle them in another country. These refugees suffer in silence as they are not permitted to work in Turkey. This is because, according to Turkish law, those employers who hire them will be fined and criminally prosecuted. Also, their children are practically deprived of studying in Turkey due to the language barrier as well as the heavy cost of education there. At present, 277 children under 18 who have come from Northern Iraq do not have access to education. According to one of the Iranian interpreters, in a two year period from the time of the arrival of refugees from

Northern Iraq till the end of 2003 there has been more than 50 beatings and wounding of asylum seekers by the agents of the Turkish government. I have witnessed two of these events.

Who is responsible for not resettling these refugees? The UNHCR authorities in Turkey have always rejected any kind of negligence with respect to their involvement with refugees from Northern Iraq. They have blamed the government of Turkey for not providing exit visas to these people. On the other hand, the Ministry of Home Affairs in Turkey blames the UNHCR for not finding a safe third country for the resettlement of these vulnerable refugees. Following a deep analysis of the cases of these refugees, one can easily conclude that both sides are responsible. From the practice of both sides one might infer that the UNHCR and the Turkish government use refugees as scapegoats.

Finally, I request all individuals and human rights agencies as well as those who cherish the hope of a better future for humanity, to take action and help these highly vulnerable refugees in Turkey.

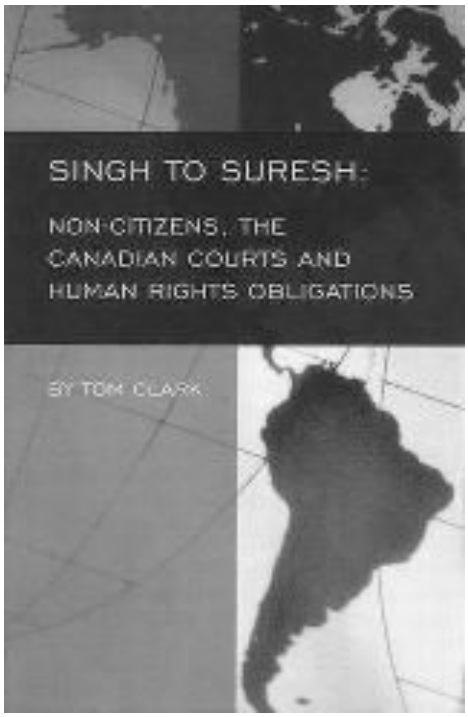
Behzad Pilehvar entered Turkey in April 2003. He resettled in Canada in December 2004.

SINGH TO SURESH: NON-CITIZENS, THE CANADIAN COURTS AND HUMAN RIGHTS OBLIGATIONS

A BOOK *BY TOM CLARK,*

BY JACK COSTELLO SJ

This book is not an easy "romp," and no reader who knows Tom Clark or what he has written previously will be surprised to know that. Clark's first book, *The Global Refugee Regime* (2004), distilled years of research on legislation since WW II designed to protect refugees within what he called a "rights-enhancing" regime. That book was Clark's challenge to states to live by a more just world order for refugee claimants as reflected in the international law we say we have accepted.



In *Singh to Suresh* his microscope and scalpel are turned with similar intent on the access of non-citizens to fundamental justice in our Canadian courts. His basic question is: Do Canada's courts, in applying our Charter of Rights and Freedoms, dispense justice to non-citizens living in this country according to commitments we made in signing key UN Covenants and the Inter-American Declaration of the Rights of Man? Clark's answer: In the late 80s we did that rather well. Through the 90s, less so. In the early 2000s, distinctly less so.

The focus and form of the book are tight and clear. Clark describes his project simply: "My book makes the detailed comparison of international obligations with the rulings of Canadian courts on the selected cases. My contribution adds a reflection on rights which recur in international case law about non-citizens, such as the right to freedom of movement, the right to seek and obtain asylum, and a right to a court remedy."(p.9)

What is not revealed in this modest summary is the meticulous analysis offered by the author with regard to a contested question: "Is there a presumption of conformity with international law" in a Canadian court's use of the Charter applied to civil and political rights (CCPR), torture, etc. or may the courts "cherry-pick" international law simply as context for their own preferred judgment? Clark concludes that "there is a gap between Canadian court positions and international human rights case law positions." And this gap reflects an inadequacy, both in substance and in procedure, in recent Supreme Court decisions on human rights.

An aside: The February 23, 2007 Supreme Court decision on *Charkaoui v. Canada* came out the day *Singh to Suresh* was being launched in Toronto. In a follow-up statement (Feb.26/07) Clark observed that "in calling for reforms of the security certificate regime the Court moved Canada towards meeting some of its human rights treaty obligations." A muted accolade with a clear "let's wait and see" attitude to it.

I read this book as a layman. The specifics of international covenants and the several court decisions cited in detail by the author were new turf for me. I found it tough-going at times–feeling somewhat like a cricket asked to join a spider at his night's work in the vain hope of learning before dawn the intricacies of how it weaves its web. However, as I ploughed on, the patterns in the Supreme Court's changing perceptions became more evident. I discovered the Court's willingness to avoid the language of 'rights" in referring to international law while settling for seeing these 'rights'

'values' or merely 'factors' to be considered in their own 'rights' judgments. I was also astounded to see our Supreme Court appealing to "what shocks the conscience of Canadians" as a significant factor, even a criterion, in shaping a legal decision on fundamental rights, knowing how fickle and self-reversing that category can be depending on the social influences imposed on us by events, governments and media.

This book is a jewel. I expect it will find its best setting in discussion among lawyers and, I hope, law students. For the interested "layman," it teaches us some of our legal history. It also points the way towards greater substance for some of our deepest hopes for this country.

Jack Costello SJ, is Director of the Canadian Jesuit Refugee and Migrant Service

AN APPEAL FOR JUSTICE

BY ELANA SUMMERS AND NIR GEPNER

Governments around the world are obligated under international law to protect refugee claimants who face persecution or torture in their home countries. In Canada, refugee claimants who fail to demonstrate to the Immigration and Refugee Board (IRB) a well-founded fear of persecution are subject to removal. The severe implications of possible erroneous IRB decisions to the lives of refugee claimants and their families necessitate that adequate procedures, checks and balances be in place. The Refugee Appeal Division (RAD) is a crucial mechanism for the protection of refugees' rights in Canada. Today, the battle for its institution is being fought on Parliament Hill.

The impact of IRB decisions on the lives of refugee claimants and their families is profound. When a claim is accepted, it offers new beginnings to individuals and their families. However, the decision-making process of the Board is not flawless, and the Canadian refugee determination system does not offer refugee claimants a remedy through which they can effectively challenge erroneous IRB decisions.

Judicial Reviews at the Federal Court are permitted only in case significant legal errors have been made during IRB hearings. Statistics show, that approximately 90% of those applying for a Judicial Review are denied "leave" by the courts and their cases are not considered [1]. Canadian law allows claimants who were refused refugee status by the IRB to apply for a Pre-Removal Risk Assessment, yet in these hearings only new evidence that could not have been available at the time of the refugee hearing may be presented. Likewise, applications to remain in Canada on humanitarian and compassionate grounds, ensuing a decision process that can take more than two years, do not reexamine findings made at IRB hearings, do not provide an appeal on the merits of IRB decisions, and do not prevent the removal of a refugee claimant while the application is being assessed. The result is that a single IRB Board Member can make a decision on which the lives of refugee claimants may depend. With no recourse to a fair appeal, a significant safeguard against the deportation of people to countries where their basic human rights are violated is lost.

Amnesty International and other advocacy groups within Canada have long recognized this flaw. The Office of the United Nations High Commissioner for Refugees has expressed concerns over this issue on several occasions, referring to Canada as one of just a few industrialized countries that have not amended their refugee determination system to meet international requirements [2]. In 2002, Canadian legislators attempted to address these concerns.

The Canadian Immigration and Refugee Protection Act (IRPA) introduced the Refugee Appeal Division to which appeals on the merits of IRB

decisions could be submitted. However, two months before the law came into force, the Canadian government declared that it would delay the implementation of the Refugee Appeal Division (RAD).

The consequences of this decision are all the more serious because under the IRPA only one IRB member presides over refugee determination hearings – an alteration that was to be balanced by the creation of the Refugee Appeal Division. Successive Canadian governments have justified their refusal to institute the Refugee Appeal Division by claiming that its alleged high costs would impose a burden on an already strained refugee determination system. [3] These claims can be easily disputed. For example, the costs of implementing the Refugee Appeal Division would be mitigated by the subsequent reduction of appeals to the Federal Court as a result of successful appeals to the RAD.[4] It is also likely that successful appeals to the RAD would contribute to the standardization of IRB decisions, and over time would reduce both the mistakes made by the IRB and, as a consequence, the number of appeals submitted to the RAD.

Today Parliament is debating Bill C-280, a private member's bill, calling for the immediate implementation of the RAD. Amnesty International supports this legislative effort believing that the failure to implement the RAD is a severe setback obstructing the fairness of the Canadian refugee determination system.

Recently, our efforts with other advocacy groups, have been successful. On March 21st Bill C-280 passed a second reading by a vote of 172 to 126, and it now awaits a third reading in the House. While important progress has been made, action is as important today as ever. The current Canadian government, as all governments since 2002, opposes the institution of the RAD for minor budgetary considerations. Amnesty International believes that this opposition impairs the rights of one of Canada's most vulnerable populations.

The battle for refugees' rights, in this instance, is fought not in foreign countries but at home.

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1 Statistics extracted from the Canadian Council for Refugees and the Inter-American Commission on Human Rights.

2 UNHCR Briefing Notes. "Canada: new law comes into effect today." June 28th 2002

3 Citizenship and Immigration Canada estimates these costs at an annual sum of eight million dollar

4 Information taken from MP Bill Siksay's speech on RAD to Parliament, Jan 29th 2007.

Elana Summers and Nir Gepner are members of Amnesty International's Refugee Network in Toronto.

"CONCLUDING OBSERVATIONS" ON RACIAL DISCRIMINATION IN CANADA: REASONS FOR HOPE IN THE ABSENCE OF POLITICAL WILL?

BY ALIKA HENDRICKS

Immigrants and refugees often confront intersecting racial and xenophobic biases. With the release of the most recent "Concluding Observations" report from the UN Committee on the Elimination of Racial Discrimination (CERD) the Canadian government is faced with some tough choices. If it takes its international obligations seriously, (and if it is to be taken seriously) Canada must act on the recommendations set out by the Committee to amend existing legislation with discriminatory impacts on racialized communities.

The Committee specifically raised concerns about legislative measures implemented in the context of enhanced national security. In particular, CERD denounced the security certificate scheme under the *Immigration and Refugee Protection Act* (IRPA) as well as the detention of asylum seekers and stateless persons due to their inability to pro-

duce identity documents. It was recommended that the *Anti-Terrorism Act* be amended to include an explicit clause on anti-discrimination, and that the detention of non-citizens upon arrival in Canada be imposed only in very limited circumstances. All of the Committee's suggestions are clearly of merit. But as is so often the case, meaningful change is a matter of political will.

Recognizing there is a problem

Article 2 (a) of the Convention speaks of the responsibility of state parties such as Canada to condemn racial discrimination and then pursue appropriate means of eliminating it. However, as revealed in many of the shadow reports submitted by Canadian NGOs for consideration by the Committee, Canada is in the habit of denying that discrimination exists.

The Centre for Research-Action on Race Relations (CRARR) noted that Canada's report to CERD offered no acknowledgement of racial profiling in Canada. This is bolstered by the further observation that the Canadian Human Rights Commission, a body created to provide recourse for victims of discrimination, has no clear guidelines on racial profiling in Canada.

Acting on advice

In its last set of "Concluding Observations" in 2002, CERD requested that Canada ensure that the *Anti-Terrorism Act* would not have "negative consequences for ethnic and religious groups, migrants, asylum-seekers and refugees". It is evident that this problem has persisted, with the result that CERD has made a similar appeal in its most recent report. If Canada's track record to date is any indication, the chances of real change flowing from CERD's advice appear uncertain.

Louder than words

Under article 2 (1) (c) of the Convention, Canada committed to taking steps to review and amend or nullify any laws that have the effect of perpetuating racial discrimination. What Canada has done to date is a far cry from the target set by subsection (c).

The Committee challenges the Government of Canada to review its national security measures to ensure that individuals are not targeted on the basis of race and ethnicity. Currently, the IRPA permits the use of security certificates to detain non-citizens without any charges being laid and without a trial. The demonstrated effects of this legislation have been increased surveillance and undue scrutiny of Arab, South Asian and Muslim communities on account of their race and religious affiliations.

The IRPA's stance on detention of non-citizens without valid identity documents also has a disproportionate effect on stateless persons and on asylum-seekers from countries where obtaining identity documents is difficult. CERD calls for Canada to use detention only in very exceptional circumstances, and in accordance with international law. The Committee adds that statelessness should be included as a factor for humanitarian and compassionate consideration under the IRPA.

Time alone will tell

Despite the government's dismal follow-through to date, NGOs remain largely positive about CERD's potential. The Committee's work is useful in providing a clear, authoritative statement of when Canada is off the mark, and pushes for improvement by setting specific, public goals. Canada now has one year in which to report back to CERD on select aspects of the Concluding Observations. As regards immigration, the Committee has specifically requested a prompt report on the issue of racial profiling. It is anyone's best guess what steps the government is willing to take, but it is certain that any concrete action will be an act of will.

Alika Hendricks is a law student at McGill University.

A MONTH IN THE LIFE... MAY 2007

BY CHANTAL BOMBARDIER

My journey at FCJ Refugee Centre began in early May. I was searching for the perfect placement to match my research interests regarding access to legal services for women with varying degrees of immigration status for my Masters research paper. It was with great delight that I discovered FCJ Refugee Centre and learned that they provide many different services to women who are at different stages in the immigration and refugee process. I was also very pleased and appreciative that, Francisco Rico-Martinez, co-director, was willing to take me on as a placement student with such short notice. My time here at FCJ Refugee Centre has been wonderful and it has allowed me to conceptualize, on a more practical level, the complex and seemingly arbitrary process which Canada's immigration system has established.

Over the month that I have been here I have done and experienced many tasks and I have met wonderful people all of which has enriched my placement experience.

My first day at Refugee Centre I hit the ground running. I arrived at the office and moments later it seemed I was in a van with Francisco and Erika (community outreach worker) dropping off food from Second Harvest to the 4 different houses that the Centre has for women and their children. On the way I chatted with Erika about her position at the Centre. She told me that she coordinates activities for the women living in the 4 houses. Just recently she organized a dance class for the women every Monday night and soon there would be a gardening project starting up at some of the houses! After loading and unloading boxes and various supplies at the houses we were back at FCJ Centre and I was onto something new.

Everyday here in the office is different and I have not yet had to worry about the downside of doing one task day in and day out. The disadvantage of not having a consistent role here in the office meant that I was shuffled from one computer to the next and asked to take on more then I knew what to do with. However, my feelings of being overwhelmed were only temporary and with the completion of various tasks I grew to feel more competent.

During my time here I have had the pleasure of working closely with clients to fill out sponsorship applications, Personal Information Forms (PIFs). As well, I have had the enjoyment of accompanying clients to legal aid and translating in Spanish for them. Seeing as it has been a while since I have used my Spanish on a daily basis (1 year or more), I found it difficult to interpret questions for clients. However, on a basic level I was able to do so and I successfully guided clients through the tedious legal aid process.

On one occasion I spent the entire day outside of the office with one client and her newborn baby at the doctor's office and unfortunately in the emergency room. I quickly realized when I began my placement that there is never a dull moment here at FCJ Centre both in and outside of the office!

What I have found difficult about working in the Centre is interacting with clients with very precarious status and witnessing through their stories how unfair the immigration and refugee system is. What this situation brought to bear is that the refugee determination process is very complicated and there are many points of frustration along the way and it is important to help clients work through these frustrations the best way that you can. The difficult part is determining what the best way to proceed is when clients are frustrated because each person has different needs and at times I have felt inadequate in dealing with the needs of certain clients, especially when such clients have experienced severe trauma and abuse. So, while it is not all sunshine and roses here at the office (because we are dealing with people who are often in very precarious situations), the important thing is that there is a support system in place here to help people navigate the system and to receive the services they need.

Apart from my time spent with clients, I have also worked closely with staff and volunteers here in the office. I have had the pleasure of working on a

project proposal for a community based group. I have also assisted Francisco in preparing various presentations. I am currently assisting Loly with an ongoing project she has regarding ensuring the protection of women and children who have been trafficked in Canada. The work that Loly and other's continue to do in this area is focused on the ways in which to ensure the protection of women and children who have been trafficked through the provision of safe and appropriate services by informed service providers.

From my observations over the last month, I have notices that there is a constant buzz of excitement and chaos which makes up the atmosphere here at the FCJ Centre. The FCJ team works together to serve clients and to meet their needs. From my experience, the environment here in the office is friendly and is a positive example of a community which works together to serve others. The atmosphere here at the Centre is one which fosters growth and facilitates learning.

Thank you FCJ Refugee Centre, I have thoroughly enjoyed my time here!

Chantal Bombardier was a volunteer at the FCJ Refugee Centre in Toronto.

IRB BOARD MEMBER REFUGEE GRANT RATES IN 2006

BY SEAN REHAAG

Recent data obtained through *Access to Information Act* procedures[1], reveals concerning variations in the refugee grant rates of individual IRB Members. As Table 1 (see page 16) indicates, in refugee decisions involving principle claimants in 2006, some IRB Members granted refugee status in all the cases they heard, whereas others denied refugee status in all but a handful of cases.

Some would argue that these variations are simply the result of the way cases are assigned to IRB Members[2]. Some Board Members receive a high volume of expedited cases. Expedited cases frequently result in positive decisions because cases are only expedited where they appear to be manifestly well-founded. Similarly, some IRB Members specialize geographically, meaning that they may hear cases from countries with especially high or low grant rates.

However, such explanations cannot account for the full variations. For example, Table 2 (see page 16) shows the wide fluctuations between the grant rates of selected IRB Members in cases involving claimants from a single country, China. These rates exclude expedited cases.

It would appear, then, that who one happens to get as a refugee adjudicator remains a primary determinant of whether one obtains refugee status in Canada.

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[1] Correspondence from Eric Villemaire (IRB Director of Access to Information and Privacy) (21 June 2007), IRB File #: A-2007-00023/de (on file with author).

[2] In fact, the IRB makes such an argument in a letter appended to the data they provided in response to my Access to Information request. *Ibid.*

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IRB BOARD MEMBER REFUGEE GRANT RATES IN 2006 (CONT'D)

TABLE 1: Lowest and highest grant rates in principle claimant refugee decisions in 2006 for IRB Members deciding 50 cases or more

Name of Board Member	# of Cases	Grant Rate %
HOUDE, ROGER	90	6,67
GHOSH, SUPARNA	119	9,24
WONG, BING	68	11,76
FREILICH, MIRIAM	123	13,01
WEIR, MARGARET	128	16,41
WILSON, WILBERT	72	16,67
MCKENZIE, GORDON	56	17,86
RANDHAWA, SARWANJIT	84	19,05
LEVESQUE, SYLVIE	85	20,00
PREVOST, JEAN	101	20,79
Subtotal (Lowest 10)	**926**	**14,90**
MONTGOMERY, JOAN	71	81,69
MOSS, JOEL	108	82,41
PELLETIER, JEAN-PAUL	81	82,72
SMITH-GORDON, MAUREE	67	85,07
QUIRION, RICHARD	145	91,03
LECLERCQ, DOMINIQUE	80	91,25
KITCHENER, SUSAN	107	92,52
GINSHERMAN, MARTIN	202	94,55
ETHIER, GILLES	138	95,65
BEAUQUIER, JEAN-PIER	50	100,00
Subtotal (Highest 10)	**1,049**	**90,37**
All IRB Members	**9,984**	**54,08**

TABLE 2: Grant rates of selected IRB Members in refugee decisions involving claimants from China in 2006 (excluding expedited claims)

Name of Board Member	# of Cases	Grant Rate %
THOMAS, STEPHANIE	25	16,00
MORTAZAVI, FAHIMEH	51	17,65
ELLIS, STEVE	90	31,11
TINKER, DIANE	108	43,52
PRABHAKARA, PUTTAVEE	97	51,55
ISRAEL, MILTON	82	68,29
CUNNINGHAM, JOAN	50	80,00
PINKNEY, THOMAS	113	82,30
OWEN, ROBERT	26	100,00
All IRB Members (China)	**1,128**	**55,14**

THANK YOU

REFUGE UPDATE thanks the Ontario Public Service Employees Union (OPSEU)

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