

# REFUGEE UPDATE

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## "ONE IS TOO MANY?"

LIZ MCWEENY, PRESIDENT, CANADIAN COUN-  
CIL FOR REFUGEES, SEPT 1, 2009

The Harper government is slamming the doors shut on refugees with complete disregard for the loss of life, painful costs to vulnerable persons and the human rights regime foundational to Canada's legal framework for refugee protection. Our politicians seem to have lost their collective conscience and would have Canadians do the same. While far from perfect, the Canadian system has some good features compared to other countries, including a closer interpretation of the international Conventions committed to by Canada. Furthermore, the mean-spirited changes proposed by the Prime Minister and his Minister of Immigration Jason Kenney are completely unnecessary because there are better ways to achieve the same goals of an effective, fair and efficient system for refugee protection.

Mr. Harper and his spin doctors have been carefully crafting the words and phrases that vilify asylum seekers, promote xenophobia against refugees and are set to convince Canadians that we have been naïve, far too generous and are now being taken advantage of by waves of 'bogus refugees'. Even worse, he touts the British system as the model to which Canada should aspire; a highly inefficient process that has a poor rate of success at the first level decision, fast-tracks the wrong cases, doesn't meet its own targets for removals and routinely *refoules* refugees back to persecution and torture.

### Shrinking asylum space

The 'made in Europe' solution became the 'made in Canada' version when the Liberals signed the Safe Third Country Agreement with the United States, and is symptomatic of the global "shrinkage in asylum space" identified by UNHCR High Commissioner Antonio Gutierrez in 2005. The events of 2001, the Madrid and London bombings, and other terrorist attacks gave a pretext to governments, including Canada, to disregard the inconvenient aspects of human and civil rights and their commitments under international law in the name of national security. The myth that refugees are part of the threat has led to even more stringent controls. Many governments, especially in Europe, have committed to higher barriers to access, bigger detention centres and stricter inter-governmental agreements to protect themselves from people deemed undesirable, including from those who actually need their protection.

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The collateral damage of the global economic recession has only served to reinforce the perimeters and increase public compliance in “fortress” Europe” and North America.

#### Responsibility sharing

The success of the global refugee protection framework rests in part on a commitment to international responsibility sharing. It recognizes that some countries of first asylum bear a heavy burden and that these countries are mostly in the developing world where vast numbers of asylum seekers may cause instability and a huge load of support on the host countries that are struggling to provide for their own citizens. This in turn can lead to further conflict that has consequences for the international community. In pushing back the perimeters and closing off access, governments in the developed world, including Canada, are failing to live up to their international responsibilities to other host countries.

To offset some of this responsibility sharing, Canada has a refugee resettlement program that resettles between 10,000 and 12,000 a year, over one third of whom are supported by private citizens through the Private Sponsorship of Refugees Program. Our government sees these as the ‘real’ refugees, the ‘good refugees’ who languish for years in refugee camps and impoverished, insecure urban centres until about 1% of them are referred, screened, processed and eventually offered resettlement to the USA, Canada, Australia or one of the other countries doing resettlement. However, asylum is a right under international law and always comes as a first priority. Resettlement is a benefit to a chosen few. The two are not interchangeable and the right to seek and receive protection in Canada must not be traded off.

#### Capacity and lost opportunities

Refugees in Canada are a reflection of the millions who are displaced, in exile and limbo. They live beside ordinary people who learn who they are, what they have suffered and what they have to offer our country. People who know refugees know first hand why it is important for Canada to continue to be conscientious in its refugee determination policies.

The enthusiasm of Canadians is demonstrated in Canada’s Private Sponsorship Program, part of the refugee resettlement program, where groups of Canadians sponsor and provide direct support to refugees selected abroad. The enormous backlog of private sponsorships waiting for processing overseas shows the high level of commitment and generous capacity of Canadians to

reach out to refugees in need; something that the Government of Canada has failed to recognize and build on.

Refugee advocates have been encouraging our government for years to foster this tremendous reserve by using positive language about refugees, celebrating our successes and using the media to further strengthen a Canadian response to all refugees including asylum seekers. Sadly, this opportunity is being lost in the current climate of twisted facts, anti-refugee rhetoric and the increasingly restrictive initiatives of Mr. Harper.

This is the real danger and the real loss if Mr. Harper is successful. Whatever, legal reform measures this government brings forward to Parliament this Fall, Canadians will no longer care about fairness and compassion. They will join Mr. Harper in his self-righteous anger against queue-jumpers and illegal aliens and allow him to act with impunity against the most vulnerable. Canadians will be happy to forget that we are barring access to people who need our protection and have a right to it, that we are screening with great efficiency but without justice, and are deporting people back to risk of death, imprisonment and torture.

#### A quick solution or the right solution

There is little doubt that we have problems, mainly created by our own government, with the many persons who claim refugee status at our ports of entry and borders and who are found not to be refugees. However, people migrate for a huge range of reasons that, while not meeting the narrow definition of a Convention Refugee, do have credible reasons beyond simply looking for a way to come to Canada. (See Showler)

The quick (and dirty) Harper solution which is emerging to “solve” the problem arising from the delays which he allowed to develop in the first place is as follows: visa requirements, cancellation and weakening of moratorium country programs, the abandonment of the principle of individual status determination using a two-tier screening with a quick first decision by government employees, a very limited appeal and an even faster turn around for those who fail. No consideration of change of circumstances and no second chance to try again, ever. That should do it. And it will, but at huge cost.

As has happened in the U.K., there will be one person lost for sure, a hundred more than him, a thousand more than her – because someone made a mistake. But even one is too many – especially if we haven’t taken every opportunity to ensure an informed, unhindered decision. A fair refugee determination system uses due diligence, tries to mitigate errors not shrug them off in the game of numbers. Is it okay to disregard the one person in ten from Mexico, or the eight

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in ten Czech Roma who are genuinely in need of protection because it costs too much to process the others? It's absolutely not okay.

A better solution: make it accessible, fair and efficient for refugees, recognize the motivations for migration, use the exit strategy

If you are an economic migrant, the benefits of being a refugee claimant for two or three years in Canada are quite attractive; but a terrible nightmare if you are a genuine refugee in need of protection, a safe place, and the opportunity to reunite with your family members as soon as possible. For you, a three-year wait is an eternity in which to tell your painful story over and over again to different officials, to worry about your loved ones, to wonder what will happen if you are refused.

Canada has been investing in high quality first level decisions, by an independent tribunal (the Immigration and Refugee Board), supported by good documentation. Getting the first decision right is the better way to make refugee determination fair and efficient. The IRB had a wait time of less than a year until the current government stopped making appointments and gutted the staff of its most experienced members. The backlog of cases went from 20,000 in 2005 to 65,000 with a wait time of at least 18 months in 2009. It's no wonder that some believe non-refugees find this government-created situation attractive. But this plausible belief is not true. The overall acceptance/refusal rate has remained virtually the same thereby blasting the myth that we are being inundated by bogus refugees.

The Refugee Appeal Division (RAD) is a key element in the protection framework, which allows a careful second look at the facts of the case to ensure a fair decision has been reached. Mistakes at the first level can be lethal. The Liberal Government in 2002 refused to implement the Refugee Appeal Division as passed by the Parliament of the day and, despite criticism from the UNHCR, the Liberals did not provide enough support to see it implemented in 2008 or 2009. An

appeal is essential, but it must not replace the first level full, fair and impartial hearing for every individual refugee status determination.

The government doesn't tell Canadians that they are not removing failed claimants for years after they receive a negative decision. Provisions exist under the current law for this to happen but the government doesn't seem committed to improving the end-zone of the process. It is inhumane to uproot and deport families who have been in Canada for years, established themselves and built their lives here. Refused refugee claimants who have also failed at the RAD should have to move on as soon as possible. The whole process from start to finish should take less than a year, not so attractive to migrants and with a fair, balanced decision-making process that concludes with quick removal or quick residency.

The mean-spirited approach of the current government is completely unnecessary and will create a public backlash against refugees lasting for years. Canada is relatively isolated. Our world region produces few of the world's refugees and even fewer migrate here by any means. We don't need

European solutions to problems we don't have.

Refugee reform must not become a partisan political tool in the weeks leading up to an election. It's far too important. Any new refugee legislation must be thoughtfully crafted through consultation with experts who have been concerned about this for years and have the benefit of experience and longevity to understand the consequences, long and short-term. A positive approach that builds on the strengths of the existing system, respects the human rights of all refugees, draws on the capacity and the generosity of Canadians is entirely possible. Why would Canadians want it any other way – because one person lost is one too many.

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Mixed Motivations for Seeking Asylum, The Maytree Newsletter, Peter Showler, 14 August 2009

No quick fix for refugees, Peter Showler, The Ottawa Citizen May 15, 2009

# THE LIGHTHOUSE COMMUNITY CENTRE WHAT COURAGE, LOVE AND SUPPORT CAN DO

BY SAMIA SAAD

Many people come through our doors everyday. Some looking for services or information and yet others come as volunteers not knowing the effects of a long-term relationship with The Lighthouse. Irma, who came to our organization to do volunteer work in the food bank, her husband Ricardo and their son Christian are witnesses to this type of relationship.

They came to Canada 13 years ago from Chile, where Ricardo had been threatened because political reasons. Looking for safety the family migrated to Montreal where they made a refugee claim. Upon their arrival, they became very involved in their church community. Their pastor, which they admired and respected, took an interest in their case and advised them to talk to a consultant he new very closely. Without any hesitation they went, along with the pastor, to see this consultant, who recommended them to abandon the refugee claim. Instead he wanted them to make a skilled worker application and promised they would get their permanent residency since, as he told them, the Prime Minister of Canada had given him space for a few families to get their status (this is a lie told to deceive people). It will cost them \$10,000 within a year. He also advised the family to move to Toronto as it had a more flexible immigration office.

Irma and Ricardo trusting their pastor, who strongly supported the consultant, did not hesitate and for the next year worked 3 jobs each in order to pay the consultant. They moved to Toronto where they found another supportive church. After paying the consultant they asked several times for an update of their case to which the consultant answered saying that everything was working well and the papers could come any time. Several years later, this man completely disappeared; meanwhile the pastor left the church, and was charged for stealing money. Irma and Ricardo were shocked, completely deceived, abandoned, and did not know what their status was. They found out soon after that they were totally without status (undocumented) the consultant had not submitted their application to the immigration office. Things could not get any worse.

During this critical and most stressful period, Irma and Ricardo found The Lighthouse, a place not only of service to others in need, but a place where they found good advice, comfort, and support and friendship. When they needed medical help, they called us to help them find a clinic where they could get medical atten-



tion. This is particularly important since people who have no immigration status have no access to medical care and live constantly in fear of being deported. In 2006, the immigration authorities detained Ricardo. At the Lighthouse, we immediately found the right lawyer who could help them make an application for Humanitarian and Compassionate Review and we made a petition asking the government to allow this compassionate and hard working family to stay. Less than two years later they got their permanent immigration status, an occasion that brought much joy and happiness to them and to all of us who watched them suffer all those years. After years of not being able to see their family, to be with their sick parents, and to bury her father, they finally visited their native country.

Since 1968, The Lighthouse as a Christian Reformed Inner city ministry has served many people in need in Toronto. Originally a neighbourhood outreach program, it developed into an agency that also facilitates refugee immigration and settlement services. In the process, it has become a "home" for many of those who have been sponsored. It is a multi-ethnic community centre, providing much needed support, community building, friendship, programs and resources in the areas of counselling, refugee settlement, skills training, family, children and seniors' programs, among other community services.

The Lighthouse  
1008 Bathurst Street  
Toronto, ON M5R 3G7  
Phone: 416-535-6262  
Fax: 416-535-3293  
Email: [rob@lighthousecentre.ca](mailto:rob@lighthousecentre.ca)

# SEXUAL ORIENTATION, TORTURE AND UPROOTEDNESS

HOWARD ADELMAN, CENTRE FOR REFUGEE STUDIES

Gay men and women have suffered most under tyrannical regimes. Slave owners not only made forceful sex (indeed rape) with their slave girls, but also with their boy-slaves. They could sell them as objects of sex or give them as gifts to the members of aristocratic class.

For hundreds of years, up to today, homosexuals were stoned to death in fanatical Islamic countries for no reason except their sexual orientation. Treatment of homosexual has not been better in the West. The Holy Inquisition was not only against heretics and witches, but also against people with different sexual orientations. This outright condemnation continued up to 18<sup>th</sup> century AD.

The world today is unfortunately not free from homophobia. According to Madam Louise Arbour, the former UN High Commissioner for Human Rights, homosexuality is criminalized in more than 80 countries of the world (From Ms. Arbour's speech at the International Conference on LGBT Human Rights held in Montreal in July 2006). It is punishable by death in nine countries – Iran, Mauritania, Pakistan, Saudi Arabia, United Arab Emirates, Yemen, Sudan, Nigeria and Somalia.

What is disturbing is the silence and denial surround acts of torture and degradation against homosexuals. Despite the enshrinement of the respect for minority rights in various international human rights instruments, tyrannical regimes use religious and cultural differences as excuses to justify violation of the fundamental human rights of people with different sexual orientations. They use various infamous methods of torture against people with different sexual orientations: hanging, suspension in painful positions, burning with cigarettes or submerging victims in ice-cold water, and subjection to electroshock on their limbs and genitals.

Struggle against anti-homosexual laws began with the development of the civil society. It started with French Revolution in late 18<sup>th</sup> century. The revolution initiated discussions about fundamental rights of humankind – including women and homosexual rights. Most of the rest of Europe followed the French path in the 20<sup>th</sup> century. In 1974, the American Psychiatric Association (APA) disproved the existence of any physical, mental, or psychiatric disorder linked to people's homosexual orientation. Therefore, homosexuality was removed from the list of APA's illnesses. It is unfortunate that despite all achievements in promotion of civil and political rights, there is no direct reference to

the right for freedom of sexual orientation in binding international human rights instruments. This is mainly due to the power of homophobic governments within the UN system. The UN system has a long way to go to cover this gap.

Despite all her shortcomings, Canada is in the forefront of movement for the recognition of the freedom of sexual orientation. Distinguished Canadian figures no longer hide their sexual orientations. On July 20, 2005, by passing the Civil Marriage Act, Canada became the fourth country of the world legalizing same-sex marriage.

Canada's Immigration and Refugee Protection Act has extended the definition of spouse to include same-sex partners. It is now possible for Canadian citizens or permanent residents to sponsor their same-sex and common-law spouses form overseas. The Immigration and Refugee Board (IRB) have given protected status to those who made refugee claims based of persecution due to their sexual orientations. The non-governmental human rights and service agencies have always advocated for the rights of LGBTI people. The Canadian Council for Refugees (CCR) has developed an anti-homophobia and anti-heterosexim policy, as an integrated part of its existing anti-racist policy. The movement on this vital issue is getting more and more momentum.

We, at the Canadian Centre for Victims of Torture (CCVT), have continued and will continue to provide our holistic services to LGBTI people who have experienced torture in Africa, Latin America, Middle East, and Europe. Under religious fanaticism and tyranny, they have experienced torture both at the hands of government officials and at the community level. Following is the testimony of another client:

“When prayers left the shrine, they saw me. I tried to avoid them, but it was too late. They surrounded me. Some started beating me violently on the head with a stick repeating the name of Allah with every blow. They continuously punched me and put me to the ground. Then, they took me to the police station where I was detained and went through a torturous interrogation. Police called me a pervert, an infidel, a dirty beast and an abnormal rascal.”

Gay women and men cannot effectively participate in economic, social and cultural life of their community due to their constant stigmatization. We have served homosexual survivors of torture who were suffering from inadequate self-esteem, lack of trust to anyone, unwarranted pessimism, hypersensitivity, feeling of rejection, tendency to

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wards self-isolation and even internalized homophobia. There have been cases of addictions and suicides among our LGBTI clients due to their past intolerable

oppression from the community. We have tried our best to empower them and refer them to sister agencies or provide them with our professional services.

## **THE NEWWOMEN'S RIGHTS SHAKE-UP ON THE WAY? EMOTIONS SIZZLE AS UN DEBATES IMPENDING DECISION TO CREATE A NEW WOMEN'S POSITION**

**NORRIE HODGE DE VALENCIA, SEPTEMBER 2009**

NORRIE HODGE DE VALENCIA, SEPTEMBER 2009

Fourteen years after the huge international conference produced the 1995 Beijing Platform for Action for Women a proposal is before the UN that could affect half the people on the planet. The proposal is buttressed by broad support among NGOs including 340 groups around the world that are part of the Gender Equality Architecture Reform (GEAR) campaign. Amnesty International which is part of the coalition recently stated that it strongly supports "the creation of the new UN women's organization which we believe could better protect women's human rights".

The proposal would unify the diverse agencies within the UN which currently seek to protect women from widespread abuse and ensure their full participation in all processes. Existing agencies such as UNIFEM (the development fund for women), DAW (the division for advancement of women) and others, would be brought under a single office headed by a high-profile Under-Secretary General who would participate in all senior policy-making bodies and serve as a watchdog for the interest of half the world's population – a sort of UNICEF for women. The proposal was expected to be approved by the 192-member General Assembly before it concludes its current session. However, the drive to set up a new gender entity may stall once again!

Charlotte Bunch, executive director of the Centre for Women's Global Leadership at Rutgers University reported to IPS on September 5, 2009 that "we were assured that virtually all governments were ready to move on it – and that the resolution would, as usual, come at the very end of the current [UN] General Assembly session September 14 [2009] . . . but it's gotten bogged down as part of the System-Wide Coherence Process (which is part of a wider reform of the UN system)".

Stephen Lewis, co-director of AIDS-Free World and one of the strongest advocates of the gender proposal told IPS "under no circumstances can this resolution be postponed . . . it would be a terrible slap in the face to the women of the world, a dreadful rejection of the

views of the secretary-general, and a deep blow to the credibility of the United Nations".

Key commitments now being sought for the GEAR initiative are:

1) Women in civil society around the world - and especially from conflict-related countries - must have a genuine voice in the new entity, not just on an ad hoc consultative basis, but through a formal decision-making role. The principle must be, "**Nothing About Us Without Us.**"

2) There must be time-bound goals for achieving reductions in violence against women, participation of women in peace processes, allocation of reconstruction resources to projects of interest to women and other steps. Progress must be measurable, and governments, U.N. offices, and individuals must be held accountable for achieving them, with stiff penalties for failing to do so.

3) As much as \$1 billion more dollars a year - or about 30 cents per woman - must be dedicated to these issues. This will allow a presence for the new entity in all war-impacted countries, supported by projects that can make a difference. And if the money must come primarily from voluntary contributions, as now seems likely, pledges should be taken now and the Secretary-General must go from capital to capital to collect them.

4) The new Under-Secretary-General must be a world-class figure, able to generate not only public attention and mobilize political will among governments, but with substantial knowledge of the U.N. system. The Secretary-General must give this leader the respect and resources needed to do her job, and the access to the U.N. General Assembly and Security Council to achieve progress.

Is the world prepared to keep faith with half its population? Or is the promise of protection and participation just one more dream deferred?

Stay tuned . . .



## Take Action! CCR Campaign Updates and Activities:

Join the Canadian Council for Refugees in raising public awareness of challenges to refugee rights and successful integration in Canada. Here are some areas where your actions can make a difference:

*Take Action -*

**Now is the Time to Stand Up for Refugees and Immigrants!kk**



In the summer of 2009, we have seen dramatic attacks on refugees, and on the notion that Canada should have strong refugee protection policies. A number of restrictive measures have already been implemented, and more are promised. Government discourse seems designed to provoke a public backlash against refugees and the refugee protection system.

The government has been turning its back on refugees by: Introducing measures that deny access to 40% of claimants (visa requirements on Mexico and Czech Republic, and new broadening of the application of the Safe Third Country Agreement to nationals of moratoria countries).

- Proposing a refugee reform that would make the refugee determination system significantly less fair and more restrictive, compromising Canada's obligations to protect refugees.
- Talking about refugees in a way that fosters hostility towards refugee claimants and undermines public confidence in the refugee protection system.

The Canadian refugee system does need improvements, but its core elements, considered a model internationally, need to be safeguarded. Among those core elements is a commitment to treating claimants with dignity and to providing a fair process to determine whether they need protection.

Key components in a fair refugee determination system include:

- Fully independent and qualified decision-makers, working within a quasi-judicial tribunal.
- The examination of each claim on its individual merits, with no compromise of procedural guarantees based on group characteristics such as country of origin.

An appeal on the merits.

Canadians who care about refugees need to protest this closing of the door on refugees. You can help this effort by:

**- Encouraging allies to speak out against these anti-refugee measures.**

We need to hear from all sectors of Canadian society. Urge everyone to take a public stand in favour of refugee protection, by sending open letters or publishing comments in mainstream or community media, for example.

**- Speaking with Members of Parliament (MPs)**

Contact your MP to protest the closing of the door on refugees. Share this one-page information document with him or her: <http://ccrweb.ca/files/standupforrefugees.pdf>

**For more information** on the need for fair refugee determination in Canada, see:

<http://www.ccrweb.ca/livesinthebalance.htm>

<http://www.ccrweb.ca/fairdetermination.htm>

**Join the campaign to end transportation loans for refugees**

Refugees resettled to Canada must pay for their medical exam and their travel to Canada. Since most refugees of course can't afford these expenses, Canada offers them a loan. As a result, refugee families start their new life in Canada with a debt of up to \$10,000. They must repay this loan with interest.

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The burden of transportation loans is having a painful impact on thousands of refugees and on Canadian society. It undermines refugees' ability to integrate and to contribute to their full potential in their new home. Refugee youth are forced work long hours while going to school, or even postpone further education, because of the need to pay back the debt.

The cost to the federal government of absorbing the medical and transportation expenses would be insignificant in terms of the overall budget. It would also be a good investment as it would enable refugees to integrate much more quickly and contribute to the economy.

Ask that the government eliminate the burden on refugees of loans by absorbing the costs of transportation and overseas medical ex-  
penses for refugees.

### Send Postcards



Help refugees succeed!  
End the burden of transportation loans.

Write to the Minister of Finance, the Minister of Citizenship or your Member of Parliament. This will make a great action activity for your next community event!

Order copies of the campaign postcards using the form at: <http://www.ccrweb.ca/documents/publicationsorderform.pdf>

You'll find suggestions of what to say on the postcards at: <http://www.ccrweb.ca/documents/transpoloanspostcards.htm>

For other ideas to support the campaign to end the burden of transportation loans, see: [www.ccrweb.ca/transportationloans.htm](http://www.ccrweb.ca/transportationloans.htm)

And join the transportation loan campaign Facebook group at: <http://tinyurl.com/msq8dt>

### Campaign Update and Important Information – Lives on Hold: Nationals of moratorium countries living in limbo

On 23 July 2009, the Canadian government lifted the moratoria on removals to Burundi, Rwanda and Liberia.

Despite concerns that applying for permanent residence on humanitarian and compassionate grounds (H&C) is not an adequate solution for everyone affected by this change, the Canadian government is inviting people affected by these changes to submit H&C applications **before 23 January 2010**.



To clarify questions about the changes and what to do, a new factsheet is available for Burundians, Rwandans and Liberians who do not have permanent status in Canada. See: <http://www.ccrweb.ca/documents/infosheetmoratoria2009.pdf>

The CCR has also revised its factsheet for the remaining moratoria countries: Afghanistan, Democratic Republic of Congo, Haiti, Iraq and Zimbabwe at: <http://www.ccrweb.ca/documents/infosheetmoratoria.pdf>

To learn about the reality of people in limbo and why H&C applications are not an adequate solution, see:

Lives on Hold - the Limits of H&C, <http://www.ccrweb.ca/LivesonholdH&C.pdf>

Profiles: The faces behind humanitarian and compassionate applications, <http://www.ccrweb.ca/profiles.pdf>

The Canadian Council for Refugees and allies have been urging the government for many years to create a regulatory class that provides permanent residence to all persons from countries to which Canada does not remove who have been in Canada for three or more years.

For more information on the *Lives on Hold* campaign, see: <http://www.ccrweb.ca/livesonhold.htm>

### Follow the CCR on Facebook and Twitter!



Stay informed about refugee and immigration issues in Canada and share ideas and actions with others online.



If you already use these social networking applications, simply:

Become a fan of the CCR on Facebook and receive regular updates: <http://tinyurl.com/n4r8rz>

Sign up to follow the CCR on Twitter at: <http://twitter.com/ccrweb>



# ONLY OPEN FOR BUSINESS - SHUTTING THE DOOR ON ASYLUM SEEKERS

SAHAR SIMA ZEREHI , SEPTEMBER 2009

You can say a great deal about the Conservatives, but cannot call them unorganized. In fact, at times I admire the way the Harper Conservatives can set a plan and slowly chip away at it until it is achieved. For example, take the radical changes to Canada's immigration and refugee determination system. If the Conservatives had stood on a mantle and said, we are no longer interested in being a refugee receiving country, there would have certainly been a backlash, protests, questioning, and need for reckoning. Instead, in a series of strategic political moves, the Conservatives have closed the doors on asylum seekers, curtailed immigration, and transitioned the Ministry of Immigration to the Ministry of Foreign Labour.

The high number of vacancies within the Immigration Refugee Board for adjudicators has been a longstanding issue; even under the Liberal's the IRB suffered from an insufficient number of board members to reside over refugee claims. When coming to power, instead of remedying the situation by appointing more members to fill the vacancies the Conservatives used it as a means of fabricating an artificial backlog within the refugee system. After four years of Conservative government, we are now facing a refugee-backlog that will soon exceed more than 60,000.

Interestingly, the Ministry failed to remedy the problem earlier, even with repeated warnings by advocacy groups as well as from the Chair of the Board, Brian Goodman. In June 2008, Goodman publicly warned that the board was heading towards a crisis point because of the high level of unfilled vacancies. According to Goodman's 2009-2010 report to the Parliament the significant decrease in decision-makers is a key factors contributing to a backlog. He states, "as of April 2009, it is expected there will be approximately 65,000 refugee protection claims and 10,600 immigration appeals pending. If intake levels and resource levels remain constant, it is expected that the inventory will continue to grow, even with a full complement of decision-makers."

Even after Minister Kenney's flurry of appointments this past August, there are still 18 vacancies

on the 164-member board. Despite these new appointments, the backlog will increase, as approximately six months of instruction and experience needed for a new decision-maker to become a fully trained member capable of processing a refugee claim. As such, by simply avoiding the task of filling the vacancies in the IRB, the Conservatives successfully manufactured a crisis in Canada's refugee system.

With a manufactured crisis of unprecedented refugee backlogs Minister Kenney was now in position to offer a radically Conservative solution to this very avoidable problem. In July 2009, with the refugee backlog ballooning out of control, Kenney announced new visa requirements on Mexico and the Czech Republic. Closing of Canadian borders to refugee producing countries is not a new tactic by the Canadian government, in fact in 2001 similar visa requirements were imposed on Zimbabwe, during a period when the human rights abuses in the region were on the rise and people were in most need of avenues to seek asylum.

It is well documented that violence linked to organize crime in a serious human rights issue in Mexico, and that women victimized by domestic violence have little to no access to state protection to ensure their safety. The Czech Republic is notorious for rights abuses, racism, discrimination and attacks against the Roma community resulting in the large number of Roma fleeing in search of protection. Regardless of these documented cases of rights violations, and violence, Minister Kenney chose to not only deny asylum seekers from Mexico and the Czech Republic as avenue of escape to Canada, but he also interfered in the integrity of Canada's refugee determination system by making unfounded and biased comments which undermined the integrity of refugee claims from these regions. This kind of approach can be called nothing short but political interference in a system that claims to be non-partisan.

Visa restrictions were not the only way that Harper's government attacked asylum seekers. In July 2009, the Conservative government also lifted the moratoria on removals to Burundi, Rwanda and Liberia. As a result, many people including entire families who had

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been living in Canada for many years were facing removals from the place where they had planted roots and build communities, homes, and families. The plight of these communities served as yet another reminder of the desperate need for the creation and implementation of a regularization program to protect all persons from countries that Canada has deemed too dangerous to remove people to.

Currently, Canada also has issued moratoriums on removals to Haiti, Afghanistan, the Democratic Republic of Congo, Iraq and Zimbabwe. All these people are living in a state of limbo in fear of one day when they wake up to discover that they too must once again abandon their homes and uproot themselves and their families. The failure of the Canadian government to implement a regularization program to meet the needs of these communities is part of their strategy to shut the door on asylum seekers and refugees.

In July, the government delivered another damning blow to Canada's refugee system by preventing asylum seekers from some of the world's most dangerous countries to enter Canada if they had first landed in the United States. By eliminating a clause within the Safe Third Country Agreement between the US and Canada, asylum seekers from Afghanistan, Iraq, Haiti, and the Democratic Republic of Congo, all countries subjected to a moratorium on removals in Canada due to their dangerous political conditions, would now be barred from entering Canada in order to make a refugee claim.

In August, the Conservative government announced yet another drastic measure to our refugee system; a set of reforms that will allow for the fast tracking of refugee claimants from countries deemed to be generally safe. The proposal would mean that senior immigration officers would hold expedited hearings on refugee claims from so-called safe countries, in order to presumably ease the load on the Immigration Refugee Board. These changes would undermine the very principles of a fair refugee system and Canada's International role as a country that offers asylum for those persecuted. Refugee claimants from countries such as the Philippines, Thailand and South Korea would be denied the opportunity to gather evidence and file strong cases documenting their claims for asylum. Groups such as US war resist-

ers refusing to participate in the ongoing military campaigns in Iraq would also be denied an opportunity to mount a case and seek a full hearing before the IRB.

Through a series of calculated actions or inactions, amendments to already existing legislation and implementation of new measures, the Conservative government has in four years eroded the term refugee and diminished Canada's capacity to provide asylum to hundreds of thousands of claimants in desperate need of refuge. By doing so we have not only denied our country the opportunity to exercise our international humanitarian obligation but also to benefit from the talents, experiences, knowledge and potentials of some of the world's most sought after minds.

While the Harper government has actively worked to limit the avenues through which refugees and asylum seekers enter Canada, they have expanded the various migrant worker programs. Migrant workers have been a reality in Canada for years, with the oldest surviving programs being the Seasonal Agricultural Workers Program and various incarnations of the Live-in-Caregivers Program.

However, in the past few years a disturbing trend has emerged within the Canadian immigration policy, which will fundamentally change the makeup of our population, we have seen a drastic increase in the use of temporary migrant workers. Under the Conservative government the Temporary Foreign Worker Program has expanded exponentially with over 250,000 TFW's entering the Canadian workforce each year as Live-in-Caregivers, agricultural workers, manufacturing workers, construction workers, and service and hospitality workers.

In fact, at this rate, the numbers of Temporary Foreign Workers entering Canada each year has surpassed the numbers of immigrants entering Canada as permanent residents. The shift from immigrants as permanent residents, with access to equal legal rights and a path to citizenship, to migrant workers who have precarious immigration status and limited access to legal rights, means creating a perpetually vulnerable workforce.

Unlike their professional counterparts, these so called low skilled temporary workers are subjected to numerous rights violations; they are tied to a single employer and in many cases required to either live-with the employer or rely on the employer for

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housing and transportation provisions. In addition, low skilled Temporary Foreign workers are not permitted to bring their families to Canada and must endure the duration of their work contract living apart from their spouses and children.

These vulnerable migrant workers, affectively denied access to labour laws, subjected to dangerous and hazardous jobs, and low wages are the only class of immigrants being

funnelled in to Canada. As the Temporary Foreign Workers Program remains one of the only means for people from countries like the Philippines, Mexico, and the Czech Republic to come to Canada, many immigrants are left little choice but to turn to them in desperation. As such in four years Harper's Conservative government has not only managed to curtail the flow of refugees to Canada but also, to fundamentally, transition the Ministry of Immigration in to the Ministry of Foreign Labour.

## **CANADA EXAMINED BY THE UN HUMAN RIGHTS COUNCIL**

TOM CLARK, AUG 2009

Early this year, Canada was examined by other governments who are members of the UN Human Rights Council under Universal Period Review, a new procedure now only in its third year of operation. Some agencies like Amnesty sent in information and there is a UN summary of what information was provided. A former report with recommendations issued in March. It is surprising that there was almost no media coverage in Canada because this examination of Canada seems to have been important for many countries. International Service for Human Rights, ISHR, the Geneva NGO watchdog for human rights matters said 65 countries were interested. Key points noted by ISHR were: Canada's failure to endorse the *Declaration on the Rights of Indigenous Peoples*; racism and racial profiling; domestic violence against aboriginal women; requesting Canada to ratify various human rights treaties or protocols; calling for an effective and inclusive civil society process for follow up on international examinations like UPR.

Concerns relating to refugees and migrants in Canada went beyond racial profiling. Near the top of the UN list of recommendations were references to the Convention against Torture which Canada has ratified and the Optional Protocol which Canada has not yet ratified. The recommendation shows that countries were aware that Canada and its courts do not accept the UN view that the prohibition of torture is absolute. The prohibition applies when there is a serious probability of torture consequential to deportation. The recommendation is that

Canada should "... establish an effective National Preventive Mechanism ... as required under the Protocol ... and further adopt additional measures to ensure its full implementation without any exceptions of the principle of non-refoulement."

The recommendations reveal unhappiness with Canada's lack of domestic implementation of human rights treaty obligations. They recommend Canada should "Create or reinforce a transparent, effective and accountable system that includes all levels of the government and representative of the civil society, including indigenous people, to monitor and publicly and regularly report on the implementation of Canada's human rights obligations ...; establish a mechanism that will meet regularly with the effective participation of civil society organizations and indigenous peoples, and have national reach to implement all Canada's international obligations and facilitate the acceptance of pending commitments, ...; consider measures to make the Continuing Committee of Officials on Human Rights more operational, ensure its better accessibility for the civil society enabling thus a permanent dialogue process on international human rights obligations including those from the Universal Periodic Review ...;"

Then, as we advocated in earlier years, the UN recommends Canada should "Effectively implement United Nations treaty bodies' recommendations ... ;

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implement in national norms, the commitments made when ratifying the ICESCR and the CERD through the implementation of the recommendations which have come out of their respective Committees ... ; analyze United Nations treaty bodies recommendations in consultation with representatives of the civil society, including indigenous people, and implement them or publicly report on the reasons why it considers no implementation is more appropriate ... ; include participation of civil society (in mechanisms and procedures that are in place for national follow up to recommendations of treaty bodies) and publication of the concluding recommendations of treaty bodies;”

There were calls for Canada to ratify the regional American Convention on Human Rights and to at least sign the Migrant Worker Convention – as many of us advocated in past years. There were other specific suggestions to Canada from the UN UPR Report relating to migrants and refugees which agencies working with them need to be aware of:

“Increase efforts to enhance the protection of the human rights of migrants and

hold open consultations with civil society on the ICRMW [Migrant worker Convention] ...

Continue efforts to bring its system of security certificates concerning immigration into compliance with international human rights standards ...”

It is remarkable to note how in this forum of representatives of countries not normally known for human rights can make helpful recommendations. We can draw on them for advocacy in Canada with parliamentary bodies. We can acknowledge the helpfulness of these reports in international forums. Of course the various country suggestions can also be usefully kept in mind when that country is examined under UPR.

I worry about producing so many recommendations. A government can pick and choose to do a little of this or that for years and claim it is doing what it was asked to do. But the suggestions are on target and promoting them can only be helpful for migrants and refugees – and others in Canada. One wonders how Canadians and Canadian parliamentarians are to be made aware of the examination and these helpful recommendations. In theory the Senate Standing Committee on Human Rights should do that. But is suspect it falls on NGOs to make sure things happen.

## REFUGEE UPDATE

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### **ADDRESS:**

208 Oakwood Ave.  
Toronto ON M6E 2V4 Canada  
Tel: (416) 469-9754  
Fax: (416) 469-2670  
e-mail: [fcjrefugeecentre@on.aibn.com](mailto:fcjrefugeecentre@on.aibn.com)