

REFUGEE UPDATE

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PATHWAYS TO GENDER JUSTICE

BY BIBIGE HAILE

With a title like “Pathways to gender justice”, the witty way to begin this article would have been something along the lines of “all roads lead to...” The sad truth, it seems, is that all roads do not in fact lead to gender justice.

Gender, the different roles taken on and expected of men and women, has been an area of focus by the government in immigration and refugee policies for a while now. Unfortunately there was little reflection of this focus in the settlement and integration sectors. While the differential in experiences by men and woman during migration has direct implication on their settlement experience, there are few tools available for services providers and settlement workers to add GBA (Gender Based Analysis) to an already overwhelming workload.

The salient need for practical and theoretical tools was confirmed in 2004 during a workshop held by the CCR (Canadian Council for Refugees). Entitled “Gendered Approach to Settlement Services”, the workshop made it possible to hear directly from the various stakeholders in

the sector. These consultations also identified areas for further investigations that were to become the basis for a year long, multilayered project of the CCR.

“The gendered base approach to settlement project” began in the fall of 2005. The first meeting of the project’s steering committee had the members pulling out their hair from the sheer scope of the project. With the enthusiasm and ambition of new beginnings the list of desired outcomes for the project went on and on: a toolkit for settlement workers, a list of recommendation to funders and government, a repository document of available research in the field, recommendations for additional research, etc. All this of course while keeping an intersectional analysis in mind: gender could not be thought outside of race, class, sexuality, ability etc.

Though well intentioned, this Christmas list was obviously unrealistic. Yet all the participants agreed it was important that the reflection process begin.

A word on the steering committee members before we proceed. Such a diverse group of people you will rarely meet: from all walks of life, spread out across the country, from diverse ethnic groups, sexualities and genders, the steering committee for this project was anything if not representative of the complexity of the issue at hand. Armed with good will and a patient, smiling and oh so patient coordinator, the steering committee began the daunting task of making sense of diverging points view, sifting through untold quantities of information, structuring needs, questions and answers while making sure to keep an inclusive, intersectional approach in mind.

The CCR's initiative was one of advocacy and it was evident from the onset that the projects objectives could not be met without involving those that were directly affected by the lack of a GBA in the settlement sector, namely service providers and their clients. With this in mind, the CCR turned to service providing organizations across the country to hold local workshops and report on their findings.

The call was widely answered and meetings were held from Winnipeg to Montreal and from Saskatoon to Halifax. 257 participants representing a wide array of social groups spend a day working with case studies, role playing and discussing their concerns and experiences in regards to the treatment and understanding of gender within their work or experience with settlement.

The results of these meetings made it clear that the areas of improvement were numerous and the need for resources, advocacy and tools was great. The hosts of these local meetings returned a series of recommendations that spawned across areas such as healthcare, employment, education,

social services and child care. They were aimed at government agencies, the CCR, municipalities and border agents amongst others. They addressed services, policies, training and funding.

While these consultations qua workshops were being held, one lone member of the steering committee worked hard to produce a comprehensive annotated bibliography of existing research and literature on Gender Based Analysis. More formal than the other components of the project, this bibliography was intended to identify gaps and areas needing more research and would be annexed to the final document.

June rolled around and the CCR's attention turned toward its international conference on refugee rights that was to be held in Toronto. It seemed like the ideal occasion to present the work that all the participants had been doing for the last 9 months and to get some feedback from those that were directly involved in the provision of services to refugees and immigrants.

In order to make the most of this opportunity, the presentation of the project at the conference was structured as a workshop. The objective was to test the different insights gained from the consultations and research, and to obtain feedback on what might be lacking in terms of content and format.

Alternating between role playing and more formal presentations, the workshop addressed gender, intersectionality and power dynamics: the trinity around which the project was centered.

This workshop marked the last stretch of the project and all that remained was to structure a user-friendly, easy to use tool that would not be a cumbersome addition to workloads and would take



into account the different recommendations garnered along the way.

In July, the steering committee met in Toronto for one last but intense session over two days. Although the to-do list that came out of that meeting was surely a project in its own right there was agreement on the necessary components and a formal table of content for the intended final result.

As I write this, the gendered approach to settlement project has allowed the CCR to produce a draft tool kit comprising background information on the project, key definitions, case studies, roles plays and important questions to keep in mind when applying a gender based analysis to various

It remains clear that the settlement sector is a dynamic one and changes with the needs of the client population, the laws in effect, the available support from government agencies and the capacity and structure of service providing organizations. For this very reason, this project was never meant as a definitive answer or solutions to all the issues, concerns and difficulties arising from the impact of gender on the settlement process. Hopefully, it is the start of a discussion between different stakeholders and the acknowledgement that gender must always remain a central analytical framework.

Bibige Haile is a Steering Committee Member, Gender Based Analysis Project

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SECURITY CERTIFICATES: SETTING THE STAGE FOR REVIEW

BY ANIZ ALANI

The use of security certificates issued under the *Immigration and Refugee Protection Act* is increasingly under the microscope in Canada. The Supreme Court of Canada will soon hear arguments in a constitutional challenge to the security certificate regime brought by Adil Charkaoui. Before Parliament dissolved November 2005, Senate and House of Commons committees were engaged in a review of anti-terrorism legislation including the use of security certificates. Internationally, the United Nations Human Rights Committee has expressed concern regarding the procedural rights afforded to security certificate detainees.

The upcoming appeal in *Charkaoui* represents a significant opportunity for the Supreme Court of Canada to consider the constitutional implications of the security certificate regime. The Court has certified twelve constitutional questions addressing the impact of the regime on judicial independence, the rule of law, and sections 7 (the right to life, liberty and security of the person), 9

(arbitrary detention and imprisonment), 10 (rights upon arrest or detention), 12 (cruel and unusual punishment) and 15 (equality rights) of the *Canadian Charter of Rights and Freedoms*.

In December 2004, The Federal Court of Appeal rejected arguments attacking the constitutionality of the security certificate review procedure, which involves a designated judge of the Federal Court determining the “reasonableness” of a security certificate in proceedings which may exclude the individual named in the certificate and his counsel. Notably, the Federal Court of Appeal also rejected arguments relying on Canada’s international obligations under the *International Covenant on Civil and Political Rights*. The Court cited comments of the United Nations Human Rights Committee issued in the case of Mansour Ahani, who unsuccessfully challenged the procedure in the Federal Court, which found no unfairness to Ahani in light of the national security issues involved.

Since the Federal Court of Appeal’s judgment in *Charkaoui*, however, the United Nations Human Rights Committee has expressed concern regarding the security certificate regime, noting that “some people have been detained for several years without criminal charges, without being adequately informed about the reasons for their detention, and with limited judicial review.” The Committee also expressed concern regarding the mandatory detention procedure, which applies to foreign nationals named in a security certificate.

The mandatory detention issue was recently revisited in a potentially significant ruling. On February 1, 2006, Mr. Justice McKay of the Federal Court held that the long continuing detention of Mahmoud Jaballah, a foreign national, without an opportunity for review of that detention pending a determination on the reasonableness of his security certificate, violated Mr. Jaballah’s equality rights under section 15 of the Charter. Interestingly, Mr. Justice McKay held that the relevant comparator group for considering discriminatory effect was not Canadian citizens -

to whom security certificates do not apply—but permanent residents named in a security certificate, who are entitled to periodic detention reviews to determine whether they continue to represent a security threat or flight risk. Rather than striking down the mandatory detention provisions, Mr. Justice McKay granted Mr. Jaballah a “constitutional exemption” entitling him to a detention review. Upon review, Mr. Justice McKay was satisfied that Mr. Jaballah continued to represent a danger to the national security of Canada and ordered his continued detention.

When Parliament resumes in 2006, it remains to be seen what the parliamentary committees will recommend regarding the use of security certificates. Several parliamentarians expressed concern about the lack of procedural protections afforded to detainees while some raised the possibility of engaging suspected terrorists through the criminal law process. With security certificate issues now being considered both by Parliament and the Courts, the opportunity for meaningful dialogue appears promising.

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Aniz Alani is a law student at The University of Toronto.



PATHWAYS TO GENDER JUSTICE TOOLKIT

The Canadian Council for Refugees has completed the development of a toolkit called *Pathways to Gender Justice*. It is being launched at the CCR Consultation this November. The toolkit is designed to help settlement workers, and gives them tools to implement their work with a gender analysis perspective.

An electronic copy of the toolkit will be available on the CCR website. The hard copy will also be available by order. Please phone the CCR at (514)-277-7223, or through the web www.ccr3@web.ca for availability and cost.

WAITING FOR THE JUDGES TO SPEAK ON SECURITY CERTIFICATES

BY TOM CLARKE

In February, when Aniz Alani wrote for this magazine about security certificates, parliament was expected to make decisions after hearings it had held and the Supreme Court was expected to hear cases before it. In fact, the change of government from Martin liberal to Harper conservative has stalled the anticipated parliamentary activity. However, the Supreme Court hearing took place in June 2006. As November arrives, the suspense is on to learn what the Supreme Court will do with arguments presented at its three day hearing beginning June 13th against the prolonged mandatory detention required when a person is put under the security certificate provisions of the Immigration and Refugee Protection Act 2002.

The Supreme Court justices took the position: what alternative did the lawyers propose, short of simply releasing their clients into the community? "What does the world do with someone who is truly dangerous wherever they go?" Chief Justice Beverley McLachlin is reported as saying. "Is freedom really an option?" Federal government lawyers argued that secrecy is necessary to protect intelligence sources and that the cost of putting a person under constant surveillance is exorbitant.

Predictably, in its June 14 2006 editorial about the security certificates and non citizens, the Globe lightly brushed aside indefinite detention and took the line that justice can be compromised

The security certificate regime applies when a Minister has reasonable grounds to believe a person may be a threat to national security. The provisions allow the authorities to detain foreign-born nationals indefinitely without charge and without making public any evidence against them. A court can only examine whether the Minister acted correctly on points of law and that his decision was reasonable. Security related evidence can be withheld from the person under certificate.

Early in the year, the Supreme Court granted permission to the coalition of which the Canadian Council for Refugees is part to make oral arguments in the security certificate cases. Mohamed Harkat, Adil Charkaoui and Hassan Almrei have all been held for years in jail because the Canadian Security Intelligence Service alleges they have ties to al-Qaeda. The other members of the coalition, which has intervenor status in the three cases, are the African Canadian Legal Clinic, the International Civil Liberties Monitoring Group and the National Anti-Racism Council of Canada.

On June 13, the Supreme Court hearing began. CBC reports say lawyers for Charkaoui and the two detainees argued that locking people up, often for years, without charge violates Canadian and international law. "It's reached a point where it's cruel. You can't just put someone in jail, throw away the key and not give them any hope of ever getting out," Barbara Jackman, the lawyer representing Almrei, is reported to have told the court.

in the name of national security. ("The law is, like most compromises, imperfect ..."). In contrast, for most of us little people, security lies in knowing that justice will not be compromised for short term political needs.

Despite its support for security certificates, the Globe raised some of the real concerns about them. Do you detain people indefinitely when the only alternative is returning them to a home country where there is a substantial probability of death or torture?

Contrary to the Globe's bold affirmation, the law is not chock a block full of safeguards. The Globe argues that the evidence is mostly around and seems willing to accept al-Queda members "public evidence" at face value. Sorry – evidence must be tested. Knowing the evidence against one and being able to effectively challenge it is a fundamental principle of justice. The Globe itself hints that improvements in this direction are

needed when it concedes that the law might be “tweaked.” Testing the evidence is what courts are for. Suppose suspect number one is detained on false testimony from suspect number two. Or suppose someone who left behind radical thoughts long ago once attended a meeting as a student? Both could qualify for jail and expulsion on “reasonable grounds to suspect.” Such people must have a way of reclaiming their lives if mistakes are made by authorities – authorities under pressure to be able to tell the public that some terrorists have been found.

Judicial review can determine only that the law was followed correctly - not whether the outcome for the individual was correct or appropriate. The judge can only determine whether it was “reasonable to suspect.” This makes no sense as a basis for indefinite incarceration that has in some individual cases in Canada amounted to 8-10 years - within the range of a life sentence for murder used by some countries.

In addition to the concerns of the Human Rights Committee noted in the article by Aniz Alani, the Inter-American Commission on Human Rights also expressed concern in its report on Canada issued in 2000. This report was based on Canada's obligations under the American Declaration of Rights and Duties of Man, applicable to all OAS members.

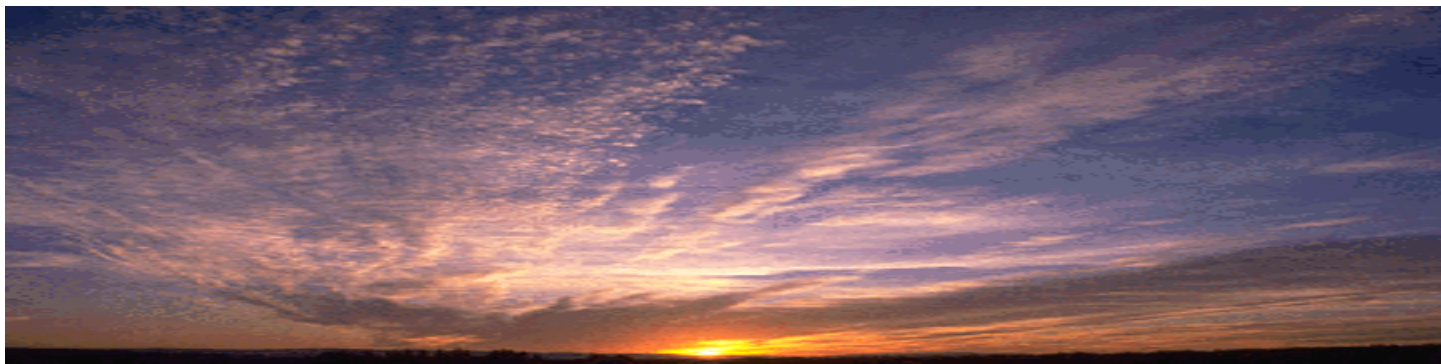
“It is a fundamental principle of due process that the parties engaged in the judicial determination of rights and duties must enjoy equality of arms. A person named in a certificate who is the subject of secret evidence will not enjoy a full opportunity to be heard with minimum guarantees, the essence of the right to due process.” Report, para. 156, 157.

Permanent residents put under a security certificate cannot use the normal body which would adjudicate a substantial probability of violation of family rights or risk of torture upon expulsion: “No appeal may be made to the Immigration Appeal Division by a foreign national or permanent resident if the foreign national or permanent resident has been found to be inadmissible on grounds of security...”

To sum up, the present law gives only an impression of safeguards. What is really needed is a simple effective court remedy which can protect the rights and freedoms of the individual when these are threatened by the suspicions of the authorities – yes protect all those rights listed in the article by Aniz Alani as issues for the Supreme Court. It must be possible to know and test evidence which threatens rights by expulsion. It must be possible to avoid long term imprisonment based on suspicion alone – however reasonable the suspicion appears to the public eye. The Supreme Court is unlikely to affirm any such simple court protection. Rather, it is likely to concede that release from jail with serious restrictions on freedom of movement may be required by the *Canadian Charter* and international law in most cases. It will allow the government to retain discretion for exceptions rather like the *Jaballah* case described by Alani. But why am I so cynical – let’s wait and see.

Tom Clark is a member of the Editorial Board of Refugee Update.

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GENDER AND MIGRATION

BY HEATHER LASH WITH FRANCISCO RICO-MARTINEZ

Eighty percent of the world's refugees are women and children. The journeys made by them are the most fraught with risks, liabilities, obstacles and burdens that all hinge on gender, as they leave behind situations that are informed by gender to begin with. After the journey, their survival here remains a gendered experience, sometimes as a result of the way they made their journey (as in the case of people who were trafficked), and sometimes as a result of how Canada arranges labour – domestic, industrial, sexual – to accommodate so much abuse and injustice. But always with devastating consequences.

Of course, many more uprooted people are not categorized as refugees at all. Everyone from mail-order brides and seasonal workers, to millions more who cannot choose to immigrate on the privileged points system, are players in what is variously called globalization, imperialism, and the free market. Economic and environmental devastation in people's home countries will keep generating these massive planetary movements that our nation states and cultures cannot keep up with, cannot allow. And of all those on the move, the most vulnerable groups are going to be who they always are: the poor, the racialized, and the gendered. That's the shape of migration; these are the faces one is usually talking about, when one says "migration", and that's why to engage with migration issues and to care about justice involves talking about gender explicitly.

In light of all this, FCJ Refugee Centre is intensifying its focus on gender, and stepping up its efforts to create a space where migration issues can be dealt with from a gendered perspective. As a part of the yearlong celebrations of our 15th anniversary, we hosted a Conference on Gender and Migration, on September 28th, at the Church of the Holy Trinity in Toronto. The conference was meant as a starting point for all who are interested in the ways the two themes intersect, who see the bigger picture of how injustice is gendered, and who want to help.

But what does that mean, "to help"?

Women and girls in Afghanistan are ostensibly being helped right now – they're being saved – by military interventions packaged as liberation. People are killing other people in their name, at least rhetorically. Well, they're not killing rhetorically. But this international paternalism reverberates here, in the service sec-

tors, in the minds of too many well-intentioned people. It's clearly wrong to use women as a justification for your racist, greedy venture, to kill in the name of women, while women are dying *here*, *Stephen Harper*, for lack of funding for shelters.

But what is less clear is when it is right to offer your hand, and how. What does "help" look like?

Maybe your feminism has a more Marxist flavour, and you are devoted to a solidarity that emphasizes respect for the autonomy and the agency of the people you encounter. You honour their adulthood. You are wary of the word "victim". Or maybe you're more animated by a religious tradition that understands that sometimes people do show up at your door naked and hungry and in need of charity – *now* – before "empowerment" or any other idea can stop sounding like gibberish.

That word agency sure is a tricky one, the way it indicates exercising control over one's own life. Of course human beings have the capacity and the right to make choices. But what is a "choice" made from among options that range from unsavoury to obliterating? Unfortunately, migrants making survival-based moves are forced to say "yes" to actions in the absence of any chance to say a meaningful "no", and that's not the same as making choices.

Restoring, to uprooted people, the human right to choose, to make decisions on their own terms: that is our project. In a sense, your own philosophy does not matter. It does not matter what you believe, you have to begin and end by asking people *what they want*. Women in Afghanistan should be defining the mechanism of their liberation for themselves (*maybe* it would include far fewer guns).

Justice asks us to return to the actual, complicated, contradictory *experience* of uprooted people, and take all our cues from them. In doing so, we also need to see and act on the fact that all sorts of migration is a result of global power dynamics that implicate us as consumers, as citizens, and as the actual, complicated, contradictory experience of being the people we are. Everything we do is gender-related, because we are *people*. Race and class, too, come to bear in every moment. We are not "the individual", "the claimant", or "the service provider" that the boxes we fill out on forms would imply. We are men struggling to give

service without paternalism in a patriarchal context, we are gay Colombian lawyers, we are Jewish mystics. But the system that dehumanizes and objectifies all people, regardless of their particularities, is deeply dependant on those boxes, and deeply invested in categorizing all of us.

Even this word, “gender”, though, cannot be boxed in. Certainly we are not just talking about “women’s issues” (or we would have convened over “Women & Migration”). And what we aim to do is deeper than just tacking on sexual orientation claimants, same sex sponsors, AIDS activists and trans people under the heading “gender”. Instead we want to suggest that gender is not a binary; it is simply not about women and men, because there are people who are both, and people who are neither, and people who flicker freely (who bring to this table a wealth of capacities to teach and counsel us about gender and its powers and its meanings and its futures).

Gender refuses to stay put in any neat little boxes, to lend itself to easy labels. And at the same time as we outgrow those labels, calling all the actors and their actions by name paradoxically increases in importance. Because “dead” is a category, one that doesn’t leave any room for interpretation. A sense of urgency, then, also permeated the conference proceedings.

The ultimate goal of the conference was the creation of a safe space – a space nurtured and protected by and for all of us – where we can develop these themes. The space may be a network or a publication; electronic or, ideally we think, a physical place. But it will be a way to share resources, and be a resource in itself, a space to refer others, and go for guidance and direction, and all of it devoted to thinking “gender” and “migration” with the same thought.

So, did we get closer to manifesting that space? Yes and No.

Yes: Overall, the conference was a success, with more than 100 people in attendance. The participants reflected a truly deep and wide diversity: of sectors, of priorities, of demographics, of approaches.

Some of the most meaningful and gratifying feedback we received had to do with the conference as an environment that was a good balance of “head and heart”; there was analysis and policy alongside people’s lived realities and emotional reactions to the topics.

And yes: After a welcoming by Sister Patricia Binchy FCJ, the morning was divided into two talking and listening “circles”. The promotional material for the conference promised that our commitment to challenging dominant models of “conferencing” would be

most clearly visible in its format – and these circles did indeed disrupt the default structure of top-down information dissemination. These discussions, facilitated by Francisco Rico-Martinez and Kemi Jacobs, featured contributions from Avvy Go, Loly Rico, Sister Lois Anne Bordowitz, Brena Parnes, Sean Rehaag, Alejandra Priego, Maureen Silcoff, and Shannon Collins. They dealt with the themes of interdiction/enforcement, detention from a gendered perspective, trafficking, undocumented workers, the Live-In Caregiver Programme, family reunification, gaps and shortfalls in the system, the Humanitarian and Compassionate

Grounds application, and what makes these scenarios gender issues in the first place. The circles drew on film footage of autobiographical testimony and real-life situations, and we were blessed to have Olga Rohas, featured in a video about her detention, and struggle for status, present with us.

The circles ended by putting to participants the following question: Is the journey different for gendered migrants by design or by accident? In other words, introducing the theme of economic globalization, we wondered, **Are these scenarios of insecurity (e.g. trafficked people) faced by gendered migrants an unintended consequence of economic structures, or purposeful policy? Who benefits from the situations we have been discussing?**

Finally, yes: We were honoured to present three performances as part of the programme: a performative art installation by Julie Lasonde about responding to the face, a stunning syncretic arts performance called *Shellshock* by Leading Tone Arts Productions, and in the evening, *Tiempos Nuevos Teatro* from El



Salvador presented their award-winning play, *Once upon a Time a King*.

But then again, not really. The afternoon featured two breakout sessions, “dreaming” and “strategizing”. We wished to go beyond simply describing and attacking what Canada now has in terms of a refugee protection and status regularization, and to imagine what kind of world we’d like to create: what would be ideal refugee determination/status regularization systems?

The breakout groups had many dreams to share which identify directions in which to move, including a world that has addressed the causes of forced migration (global political economic justice, the healing of North/South inequities, etc) so that people who do not want to leave their homes never need to... toward this, we must interrogate the “development” policies of Canada and the international bodies, and take real action on Human Rights abuses elsewhere.

Another major theme that arose for all groups is that of training. In particular, IRB Board Members need better training around trauma and a greater understanding of oppression(s) that goes beyond mere “sensitivity” training to actual analysis. Likewise, Immigration Officers need deeper education and involvement with Human Rights. The diversity of these groups themselves also must be enhanced. Other dreams had to do with changes to policy (cancel the

Safe Third Country Agreement, implement the RAD (Refugee Appeal Division of the IRB), ensure universal access to services, and cease deportations if any type of application or decision is pending).

The strategizing session aimed to bring our “dreams” closer to reality, and though some interesting discussion was had (in particular around public education and media campaigns, political lobbying, and networking with the business community), the list of proposed actions was not very concrete, and no one definitively offered to take the lead on manifesting them.

The conference familiarized us with new allies in various sectors, and we have begun to build a community together. And there are good ideas here: talking to representatives as we go into elections, and finding a way to influence and impact the training regimes of the IRB, CIC and CBSA... Is there anyone reading this who wants to work with the FCJ Refugee Centre to articulate some action plans? Or who has a proposal for how all interested parties could continue this discussion?

Heather Lash is a staff member at the FCJ Refugee Centre.

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



AN UPDATE FROM THE REFUGEES AND MIGRATION PROGRAM AT KAIROS

BY JENNIFER DE VRIES

The Refugee and Migration program at KAIROS, which promotes the human rights of both refugees and migrants, has been working hard over the past months to coordinate the emergence of a national migrants justice network. The need for this national network emerged out of an increasing recognition that the boundaries imagined, through government policies and the media, between various groups of migrants are only artificial. In exploring the root causes of migration, advocates and migrants are finding that many common threads exist between migrant workers.

National Migrant Justice Gathering and the Resulting Statement of Unity

In a move to go beyond sector-based advocacy and to create a stronger, more united voice between migrants and migrant justice advocates, KAIROS, along with the National Alliance of Philippine Women in Canada, the STATUS Campaign and UFCW Canada, organized a two-day National Migrant Justice Gathering at

York University in June 2006. This gathering brought together over one hundred migrants and migrant justice advocates from academia, faith groups, the labour movement and the wider justice-seeking community to lay the foundations of a national migrant justice network in Canada.

One of the immediate results of the gathering was a statement of unity, expressing the collective concerns of participants in the gathering. The statement highlighted their view that migration today is increasingly no longer about choice but survival. Many people today are being obliged to move by forces beyond their control - conflict and human rights abuses, environmental disasters, free trade policies that destroy the livelihoods of small-scale farmers and a mine or dam that has forced many from their land.

The statement of unity calls for Canada to take responsibility for the role it plays, both as a receiving country and a perpetrator of underdevelopment around the world. Gathering participants recognize the pressing need to examine the root causes of migration in policy making. In doing so, the statement calls for fair immigration policies that truly reflect Canada's real societal and labour needs.

In affirming the dignity and human rights of all migrant workers and their families, the statement demands that Canada ensure that such rights are fully protected, in accordance with the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. This Convention entered into force in July 2003 but Canada, as well as other 'developed' countries have yet to ratify it.

In driving home a point that is at the heart of KAIROS' work on migrant justice, the statement reads, "[i]t is unacceptable to deny migrants legal entry, deny them access to permanent status, disenfranchise and marginalize them so as to deny them any meaningful political voice, and then to exploit those same people to fulfill a structural need for cheap and compliant labour."

In closing, the statement emphasizes the inherent human dignity that all human beings, including migrants, possess; one that must be honoured and respected.

As such, "[a]ll migrants, regardless of their legal status, deserve just wages fair treatment from their employers, and full and equitable entitlement and access to the health, social, educational and legal services and supports that are available to all Canadians."

*The statement of unity can be viewed at <http://www.kairoscanada.org/e/refugees/migrants/unityStatement.asp>

Presentations to Government Standing Committees

Drawing on many of the findings that came out of the gathering, members of the Migrant Justice Steering Committee, a committee which is currently coordinating and consolidating the national migrant justice network, made two presentations to government standing committees in October 2006. On October 19th, the Migrant Justice Steering Committee presented to the Standing Committee on Citizenship and Immigration and on October 26th, members of the Steering Committee presented to the Standing Committee on Human Resources, Social Development and the Status of Persons with Disabilities (HUMA).

Both presentations highlighted the common experiences that migrant and undocumented workers share, even though they may work in different sectors of the Canadian economy. Migrants and non-status persons often find themselves in precarious living and working conditions in Canada due to their restrictions on labour mobility and their limited or complete lack of access to citizenship. Our presentations focused specifically on migrant farm workers, live-in caregivers and undocumented workers, groups that face common problems of exploitation at work, poor accommodation, limited access to social services, sub-standard wages, long hours without adequate rest or overtime pay, and verbal or physical abuse. It was our hope to show that the abuse and exploitation of these workers is not sector-specific and must be addressed systemically.

*To receive a copy of our HUMA submission, please contact Jennifer at the information listed below.

And last but not least, December 18th is International Migrants Rights Day. Please help plan a public event and engage in media work around this date to highlight the challenges faced by migrant workers as well as their contributions to the host society. For more information, please contact Jennifer.

KAIROS: Canadian Ecumenical Justice Initiatives, is a coalition of eleven churches and church-based organizations. For more information, please visit www.kairoscanada.org.

To reach the Refugee and Migration program at KAIROS, please call Jennifer de Vries at 1-877-403-8933 EXT 252 or email Jennifer at jdevries@kairoscanada.org

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NEW TREND AT UNHCR: PARTICIPATION AT THE PRE-EXCOM AND EXCOM MEETINGS

BY EZAT MOSSALLANEJED

The Executive Committee of the UN High Commissioner for Refugee's program (EXCOM) is currently made up of 70 member States (Jordan and Portugal joined this year). EXCOM meets in Geneva every year to review and approve UNHCR's programs and budget, and to advise on international protection. As a representative of the Canadian Centre for Victims of Torture, I attended both the prior meetings of UNHCR with non-governmental organizations (pre-EXCOM) and the public governmental EXCOM meetings (Sep. 27 – Oct. 6, 2006). In my report, below, I will share some of my reflections.

I. UNHCR's new challenges

The new global forces that create emergency situations and prevent refugees from crossing international borders have drastically changed the UNHCR's policies and practices. Following are some of the main challenges:

1. Internally Displaced People (IDPs) vs. Refugees

Over the past few years the world has witnessed drastic changes in refugee population. There are only 8.5 million asylum seekers across the world in need of protection and this low number is unprecedented over the past 25 years. The number of IDPs has increased to 24.5 million people around the world. The UNHCR authorities, including the High Commissioner Mr. Antonio Gutierrez, as well as governments focused on successful repatriation of refugees as the main reason for the new trend. In my assessment, however, the

reason for decreased number of refugees and the rising number of IDPs should be found in the concerted efforts of all governments to push refugees back to their countries of origin. There is an inter-governmental collaboration by Western governments in stopping refugees from reaching their own borders. In the course of the EXCOM meeting, almost all states emphasized their commitment to safeguard the right to asylum. None of them, however, went beyond lip service to come up with a practical suggestion for implementation of this right. Many countries asked the UNHCR to work towards repatriation of refugees. There was an obvious lack of debate, both by the UNHCR and the governments, about local integration and naturalization as a durable solution for refugee problems.

The 57th EXCOM meeting officially endorsed the UNHCR extended mandate to protect IDPs. However, this protection cannot go beyond providing humanitarian assistance to an IDP population because the UNHCR cannot has limited power for intervening in the internal affairs of a State. The High Commissioner publicly announced the "reassessment of our mission" to include IDPs.

While international attention to the plight of IDPs is a matter of appreciation, it is doubtful that UNHCR would be equipped to protect IDPs on a consistent basis. The IDP issue has been before the UN General Assembly for many years. More international collaboration and an independent organization are needed for IDPs' effective protection and relief.

2. Internal reforms

Over the past few years, UNHCR has gone through a financial crisis. The reluctance of donor states to provide more resources to the UNHCR and the high administrative costs of the agency have prompted the UNHCR to come up with a program of reform. This reform is a part and parcel of the broader UN reform. The UNHCR has committed itself to reduce its administration costs and increase its operational expenditures.

3. Cluster approach

A “cluster approach” is a part of the UN collective response to humanitarian crises. UNHCR is going to assume leading responsibility for the “protection, emergency shelter and camp coordination” of IDPs by mobilizing various UN bodies and others in a cluster to manage the emergency situation. All intergovernmental and NGO humanitarian actors, including the Red Cross and Red Crescent, will be involved in clusters. It was alleged that all parties would be involved as “full strategic partners that think together, plan together, and act together.” Some NGOs raised concerns about the consistency of cluster approach and UNHCR’s lack of resources for accepting the role of coordinator

II. Two Resolutions

1. Resolution on statelessness

It is estimated that there are at least 11 million stateless persons across the globe in need of protection. There are two UN conventions about statelessness, each with inadequate global ratifications. UNHCR has been mandated to accept responsibility for stateless persons.

The EXCOM resolution on statelessness is intended to prevent and reduce statelessness on the one hand and protect stateless people on the other. The focus is on operational support through inter-agency collaboration. The UNHCR is mandated to work on birth registration campaigns with other UN bodies such as UNICEF, UNFPA, the UN Department of Political Affairs and UNDP. It would also collaborate with the states and NGO movement for a public awareness campaign. The goal is naturalization of these forgotten people at best, and their fundamental protection at the least.

2. Women at risk resolution

According to a UNHCR report entitled *Measuring Protection*, the UNHCR has intervened to resettle 3,338 women-at-risk worldwide. These women faced threat to life and security of person. This resolution is intended to increase protection for women at risk on the one hand and to prevent sexual and gender related per-

secution on the other. Special attention will be paid to the specific needs of vulnerable women.

III. Repatriation of Refugees

Repatriation has taken a new momentum in the recent past. With the change of governments in different countries, hundred of thousands of refugees have repatriated to Afghanistan, Sierra Leone, Liberia, Burundi, Southern Sudan, etc. In Afghanistan alone, 4.7 million people returned home from Iran and Pakistan. Repatriation has not been an easy process. At the EXCOM meeting, almost all host governments urged UNHCR to facilitate immediate repatriation of refugees in their countries. The High Commissioner and other UNHCR authorities reiterated their commitment to repatriation, but reminded the states that repatriation must be on a voluntary basis with strict supervision by the UNHCR, NGOs and others concerned bodies.

Repatriation will be a main challenge in future. It would be meaningless without being sustainable. If repatriated refugees do not find community support at home – job, shelter, education, health care, etc. - they may join IDPs or return to the country of asylum as “illegal irregular migrants.”

IV. Resettlement

The UNHCR reiterated its commitment to work with resettlement countries “to remove obstacles and increase their annual quotas.” United States of America, Australia and Canada were praised by the High Commissioner as the largest resettlement countries. There is a need that states and UNHCR accept more commitment towards resettlement. The prospect for resettlement, however, does not look bright in near future.

Concluding Remarks

Protecting the institution of asylum is the main challenge before the UNHCR and the international community. There were lots of remarks at the EXCOM meeting by states about curbing irregular migration and the mixed flow of illegal migrants. In the present atmosphere of security obsession and rising xenophobia, it is of utmost significance to maintain human rights component of refugee protection and remind UNHCR not to give up its main mandate.

Ezat Mossallanejed is a Counselor and Policy Analyst at the Centre for Victims of Torture and member of the Editorial Board of refugee Update.

UNHCR UNDERGOES RE-STRUCTURING

Following a UNHCR re-structuring process, the Gender Equality Unit is now housed within the Community Development, Gender Equality and Children Section (CDGECS) in the Department of International Protection Services (DIPS). Karuna Anbarasan is the Senior Advisor (Refugee Women). Her e-mail contact is ANBARASA@UNHCR.ORG.

NASTY QUESTIONS, SNAPPY ANSWERS ON AIDS CONFERENCE REFUGEES

BY TIM MCCASKELL

Perhaps you have been encountering, in your personal or professional environments, some false mythologies and stereotypes around the recent AIDS conference and those who made claims for refugee protection in its wake. In trying to answer people's questions, and especially before you do any interview with the media, take some time to formulate the key messages you want to get across. One is best, but no more than three. Be prepared to work these messages into your answers, even if the reporters don't ask for them.

The following questions are culled from the assumptions in many of the stories about refugees from the conference that have already appeared in the press. These assumptions will no doubt frame media assumptions in the future. Consider this a user-friendly FAQ tool:

1. Was the conference used as a cover by many people who just wanted to sneak into Canada?

No. The vast majority of delegates returned home with strategies and information they needed to help fight the epidemic. But under national and international law, any person in Canada, visitor or otherwise, has the right to make a claim for protection as a refugee if they are afraid to return home due to discrimination or persecution. The Immigration Refugee Board (IRB) will make a decision as to whether their fears are well founded, as they do with everyone else.

2. Aren't these people jumping the immigration queue?

No, because **there is not just one queue** for all who wish to migrate to Canada. Refugees aren't in the immigration queue. Immigrants are people who decide of their free will to come to Canada to live. Refugees are people who can't return home because they face discrimination or persecution. An immigrant is assessed on the family ties, skills and qualifications she or he brings to Canada. A refugee is assessed on whether his or her fear of returning home is well founded.

3. If we accept these people as refugees because they are sick, where can we draw the line?

No one is accepted as a refugee because they are sick. One is only accepted as a refugee if she or he faces discrimination or persecution. Canada has a responsibility under international law to shelter people fleeing from such discrimination and persecution. In any event, there is no reason to assume that all the claimants from the conference are HIV positive.

4. Won't the ones that are HIV positive overwhelm our already overburdened health care system?

No. If treated properly, HIV infection can be a chronic manageable infection which does not place an extraordinary burden on our health care system. People with AIDS can live long and productive lives and contribute to Canadian society like anyone else.

5. *So how much does it cost to treat them?*

I've heard it can be a million dollars a person a year. Nowhere near that. A full course of anti-viral medicine would cost something like \$14,000 per year. And until they are accepted, refugees are eligible for basic and emergency health care only. Most will also find jobs and pay taxes, contributing to the health care system like everybody else.

6. *Many of these people are nurses from South Africa. If we let them stay, aren't we depriving a poor country of much needed medical resources?*

The story that most of the refugees are South African nurses is false. The claimants come from a wide variety of backgrounds and from many different countries. If they have been forced to flee their country because they are facing persecution, they are obviously not being allowed to contribute their valuable skills there. In any event, only Citizenship and Immigration Canada knows for certain who all the refugees are; it's confidential information.

7. *Was there an orchestrated campaign at the Conference by AIDS Service Organizations to encourage people to stay here because you want more clients?*

No. AIDS Service Organizations are generally already under funded and struggling to serve the clients they already have. Information on Canadian immigration regulations is public and freely provided by legal clinics such as HIV and AIDS Legal Clinic Ontario (HALCO) to anyone who makes inquiries. No one was encouraged to make a refugee claim. Making such a claim is a difficult and stressful process since people's lives are put on hold until the IRB decides their fate. No one takes that decision lightly. **What would make you trade in everything you know and love and own, for an uncertain future in an unknown country?** Probably a good deal more than a stranger's "encouragement".

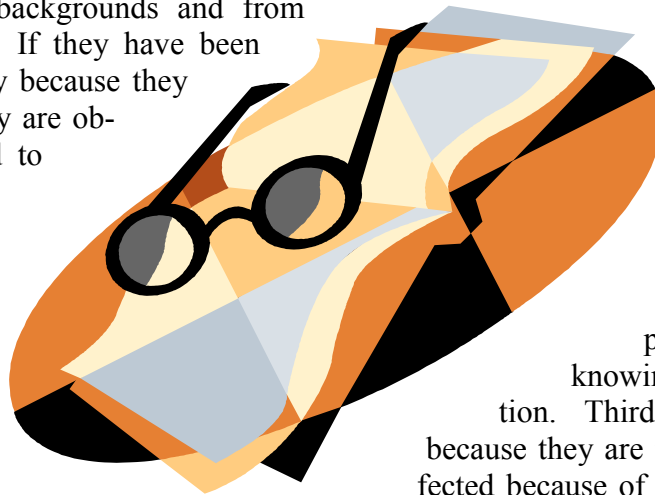
8. *Are immigration lawyers making a fortune off these cases?*

No. Refugees are generally not rich people. Immigration lawyers are being paid basic fees to represent these cases. One of the goals of Canadian NGOs is to ensure that all claimants get adequate representation from experienced lawyers - as the right to counsel is both a fundamental and a Charter right - and are not exploited by unscrupulous immigration consultants.

9. *Aren't these people a danger to the Canadian public? If they were irresponsible enough to catch AIDS in the first place, won't they be likely to spread it to others here?*

No. First we don't know how many of the claimants are HIV positive. Second, as conference delegates and people who have been involved in the struggle against AIDS, these people are perhaps some of the best educated people on the planet in terms of knowing how to prevent HIV infection. Third, people don't become infected because they are irresponsible. They become infected because of lack of information, lack of access to protection or the risky situations they find themselves in because of poverty or isolation. In fact, rather than looking at our immigration and refugee policies, perhaps it is time to deal with a nastier problem - one that is actually based in concrete reality: **if any Canadian action is contributing to the spread of AIDS, it is Canada's failure to live up to its commitments to make cheap, generic anti-viral medicine available to people with HIV in the majority world.**

Tim McCaskell is



IMMIGRATION AND REFUGEE BOARD STATISTICS FOR 2005

DECISIONS OF THE REFUGEE PROTECTION DIVISION

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