# REFUGEE UPDATE

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## INTER-AMERICAN COMMISSION ON HUMAN RIGHTS AND BILL C4

BY TOM CLARK

*Arising from the best of the great religious traditions, the human rights codes of the mid-twentieth century establish how, in our better moments, we want to treat each other. The human rights treaties are for everyone – Including all non-citizens and including all refugee claimants however they arrive. Inevitably, the human rights treaties set limits on what we can legislate by measures such as Bill C4.*

**Introduction**

**1. Inter-American Commission Report Sets out Treaty Obligations**

When Canada is dealing with non-citizens it is dealing with persons in an international situation. They are under Canada's legal jurisdiction, yet they are citizens of other States. In this context international standards and the bodies which Canada has freely entrusted with interpreting them, have a special role.

A mere few months ago the Inter-American Commission on Human Rights issued a Report which advised the United States on its Immigration procedures in the light of international human rights standards freely adopted. (Inter-American Commission on Human Rights, Report on Immigration in the United States: Detention and Due Process, OAS Doc., OEA/Ser.L/V/II.Doc. 78/10, 30 December 2010.) The Commission sets out the international standards for the United States and other OAS countries:

> The United States has an obligation to ensure the human rights of all immigrants, documented and undocumented alike; this includes the rights to personal liberty, to humane treatment, to the minimum guarantees of due process, to equality and non-discrimination and to protection of private and family life. In its Advisory Opinion on the Juridical Condition and Rights of the Undocumented Migrants, the Inter-American Court of Human Rights [] described the basic principles of human rights that must inform the immigration policies of the OAS member states. Specifically, the Court wrote that States may establish mechanisms to control undocumented migrants' entry into and departure from their territory, which must always be applied with strict regard for the guarantees of due process and respect for human dignity. It also held that the States have the obligation to respect and to ensure respect for the human rights of all persons under their respective jurisdictions, in the light of the principle of equality and non-discrimination, irrespective of whether such persons are nationals or foreigners. (para. 32)

Canada shares the same treaty obligations and the same standards apply to Canada. The major concerns are with guarantees of due process. For Bill C4, the concerns of the report about liberty are the most relevant parts. These follow.


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**2. The "presumption of liberty" and non-imprisonment**

With respect to the right to personal liberty, or the right not to be imprisoned or detained, the Inter-American Commission on Human Rights advises the United States first about detention prior to a criminal trial: "In general, the paramount principle where the right to personal liberty is concerned is that pre-trial detention is an exceptional measure." (para. 34) The Commission then notes: "In the case of immigration detention, the standard for the exceptionality of pre-trial detention must be even higher because immigration violations ought not to be construed as criminal offenses. The United Nations Special Rapporteur on the Human Rights of Migrant Workers wrote, "Irregular migrants are not criminals per se and should not be treated as such." (para. 38) The Commission concludes:

"… to be in compliance with the guarantees protected in Articles I and XXV of the American Declaration, member States must enact immigration laws and establish immigration policies that are premised on a presumption of liberty --the right of the immigrant to remain at liberty while his or her immigration proceedings are pending-- and not on a presumption of detention. Detention is only permissible when a case-specific evaluation concludes that the measure is essential in order to serve a legitimate interest of the State and to ensure that the subject reports for the proceeding to determine his or her immigration status and possible removal. The argument that the person in question poses a threat to public safety is only acceptable in exceptional circumstances in which there are certain indicia of the risk that the person represents…" (para. 39)

"The IACHR also underscores the fact that the detention review procedures must respect the guarantees of due process, including the defendant's right to an impartial hearing in decisions that affect his or her fate, his or her right to present evidence and refute the State's arguments, and the opportunity to be represented by counsel." (para. 40)

These statements of the international obligations surrounding imprisonment or detention are equally relevant for any member of the OAS and, as the Commission makes clear, they apply to everyone. Moreover, the Commission sets out special measures which are applicable to what it describes as "vulnerable groups." (para. 43).

Asylum seekers, under the 1951 Convention relating to the status of refugees are one such vulnerable group. As a general principle asylum seekers should not be detained (para. 45), detention should only occur after a full consideration of all possible alternatives (para. 46), such detention should not be an obstacle to pursuing an asylum application and should have a series of minimum guarantees (para. 47) and the longer preventive detention occurs the greater the burden on the rights of the person deprived of liberty. (para. 48)

Migrant families and unaccompanied children are the second vulnerable group considered. The Commission observes:

"Under Article V of the American Declaration, '[e]very person has the right to the protection of the law against abusive attacks upon his…private and family life.' Under Article VII, '[a]ll women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.' The need to guarantee these rights has a direct bearing on the appropriateness of detaining migrant families and children. Given the provisions of Articles V and VII, mandatory detention of a child's mother or father must be considered on a case-by-case basis, analyzing whether the measure

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Bill C4:
The proposed legislation does not adopt the international presumption of liberty. Rather, it requires incarceration for a period of a year if a person is a member of a group designated by the Minister. Bill C4 "authorises the Minister, in certain circumstances, to designate as an irregular arrival the arrival in Canada of a group of persons, the result of which is that some of the foreign nationals in the group become designated foreign nationals." The legislation does not provide any special safeguards to protect the liberty of especially vulnerable groups, families with children, children, and asylum seekers.

is proportional to the end the State seeks to achieve and taking the best interests of the child into account." (para. 49)

The Commission finds it possible to conclude that families and pregnant women who seek asylum ought not to be detained (para. 50) and finds that "the principle of exceptionality governing deprivation of liberty in general and deprivation of liberty for immigration violations, carries even more weight when children are involved. Only in the most extreme cases could such a measure be justified." (para. 51)

**3. The Obligation to Have Fair and Objective Procedures**

Under Article XXVI of the American Declaration, '[e]very person accused of an offense has the right to be given an impartial and public hearing….'

The IACHR has pointed out that Article XXVI applies to immigration proceedings: "to deny an alleged victim the protection afforded by Article XXVI simply by virtue of the nature of immigration proceedings would contradict the very object of this provision and its purpose to scrutinize the proceedings under which the rights, freedoms and well-being of the persons under the State's jurisdiction are established." (para. 56)

The Commission has found that Article 8 of the American Convention on Human Rights reaffirms the rights recognized in Article XXVI of the American Declaration. (para 57) Moreover, the due process rights set forth in Article 8 of the American Convention 'establish a baseline of due process to which all immigrants, whatever their situation, have a right.'


**C-4 - Anti-smuggling or anti-refugee?**

Both the Commission and the Inter-American Court of Human Rights find that immigrants are at a real disadvantage that can adversely affect due process unless special countervailing measures are taken to reduce or eliminate the procedural handicaps with which immigrants are encumbered. (paras. 58, 59)

Thus procedures which decide whether some non-citizens are incarcerated or not need to have special safeguards. Similarly, procedures for release from de-

*Bill C4:*

*Procedures by which non-citizens are incarcerated are discretionary decisions of administrative officials. Without objective criteria in law, which criteria are necessary and reasonable or proportionate to the goal of responding to smugglers, the incarceration will be arbitrary and illegal by international norms.*

*Habeas Corpus requires that a person be brought before a judge who will decide the lawfulness of the incarceration. The Immigration and Refugee Protection Act, IRPA, does not use judges, but uses a cohort of special officials – adjudicators. These confirm or not an administrative decision and they are subject to judicial review. This general procedure by which asylum seekers may be released from incarceration under IRPA 2002 was deemed equivalent to Habeas Corpus in the Reza v Canada decision of the Supreme Court.*

*However, even if equivalent to Habeas Corpus, the procedures in IRPA are not reinforced by special measures, referred to by the Inter-American Commission, so as to ensure that they function at least as well as Habeas Corpus for a vulnerable group of non-citizens. And there is no easy access to judicial review itself, which the Commission regards as required.*

*Bill C4 appears to move in another direction – attempting to limit opportunities for court intervention and Habeas Corpus which ought to ensure the presumption of liberty.*

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tention require special safeguards compared with others. Moreover, there must be effective judicial oversight: "… In the case of Rafael Ferrer-Mazorra and in light of the rights protected under the American Declaration, the Inter-American Commission emphasizes the fact that access must be provided to a judicial review of the detention, 'as it provides effective assurances that the detainee is not exclusively at the mercy of the detaining authority'." (para. 62)

The Commission report goes on to set out the various international safeguards which aim to ensure appropriate conditions of incarceration. These go beyond the scope of this article, but they appear to require changes to current Canadian practice and call for further general study. Bill C4 does not attempt to respond to any needed changes relating to conditions of incarceration which have caused international reporters to comment in the past, for example access to timely medical attention. The Commission report is concerned about the right to asylum and access to it. Thus restrictions on the appeal of a negative refugee status claim in Bill C4 are problematic, but go beyond the scope of this article.

**Conclusion**

The Inter-American Commission Report on Immigration Law in the United States sets out international standards for liberty and for due process involving non-citizens and asylum seekers which are equally relevant for Canada, also a member of the OAS falling under the obligations of the American Declaration of Rights and Duties of Man. Bill C4 is entirely at odds with the international standards: the presumption of liberty, the need for special measure to ensure due process in procedures such as *Habeas Corpus* and in particular, the need for access to judicial review of decisions to incarcerate. Bill C4 should be re-written to address the current human rights obligations surrounding the presumption of liberty, the special needs of families and children in the incarceration of non-citizens, as clearly set forth in the OAS document.

## REFUGEE DILEMMA IN SOUTH AFRICA

BY TOM DENTON


Refugees don't have an easy time of it in South Africa. Many come from the Horn of Africa, and they look different, inviting overt discrimination. Refugees have been beaten and even killed by rougher elements amongst the local population. Xenophobia is rampant, and for refugees jobs are hard to come by. Some in desperation start their own small businesses - street side peddlers or little shops - but thereby become an easy mark.

On the other hand, the government of the RSA is a signatory to the Geneva Convention on Refugees and tries to play a fair game, registering refugees, allowing them to work or go to school, and after many years giving some access to permanent residency. Some of their petty officials have been accused of expecting bribes to register refugees, but on the whole the government appears to be trying.

Enter Canada and its Private Sponsorship of Refugees program, with friends or relatives here trying to sponsor to Canada their refugee relations out of South Africa into a life that clearly has better options. It doesn't always work. In fact, about two-thirds of refugees thus sponsored are turned down by Canada's visa officers in Pretoria, usually because they have a "durable solution" already. Despite the questionable nature of that solution in RSA, it becomes a bar to the better Canadian option, and families are frequently thereby kept apart.

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But some do make it here through the private sponsorship program, and one is left to wonder why some do and some don't when the situations and stories are basically the same. One such refugee who has apparently made the cut (and should be here soon) has written about his experiences in RSA. I am withholding his name as a precaution until he finally sets foot on Canadian soil.

Here is some of what he has written. It provides an interesting window on refugee life in South Africa.

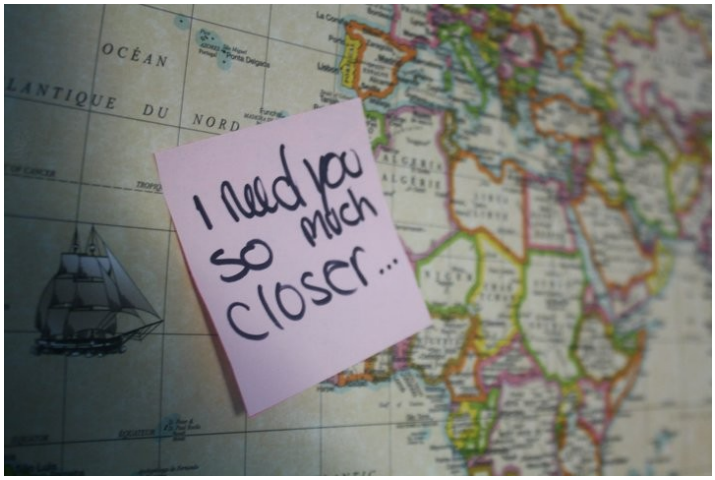
"It is true life in South Africa is better when compared with countries where we refugees are from. And the process to grant an asylum seeker papers is not that complicated, except for the backlogs, the delays in their system and the reduced number of offices which receive refugees, making if difficult for applicants. It happens from time to time that we have to sleep outside in front of these offices for days before we get in to receive our asylum seeker paper.

"And this paper, called affectionately A4 by refugees, is not welcomed at the banks or at shops. They don't know it at all, even after an explanation. Some banks accept these refugee papers after you raise your voice and threaten to call the manager (if you know English of course). Then an account may be opened for you. But many don't know a word of English, so are left in the cold.

"Some big banks like ABSA, Standard Bank or Nedbank, will just ask for your passport. 'No passport, no account', they say. They should know that refugees don't have passports.
"School and university being not free to all South Africans, refugees need to find a small job that can help them to pay their fees and those of their children. Refugees have no state subventions, no loans and no bursaries.

"Even though the A4 says clearly that the bearer has the right to work, no company will accept it. Refugees who have skills have gone extra miles by contacting human rights lawyers to intervene, only to find that the doors of these companies are still closed to us. They say "the position is already taken", or "we no longer have the vacancy".

"When we try to organize ourselves to create informal job opportunities such as security work, car guards, small shops, selling sweets or chips, this creates tensions among locals who accuse refugees of stealing their jobs. This was exactly the reason for xenophobic attacks some years ago.




"Without proper work, with no programs or plans to help refugees get skills, with no support for our well-being, what can we do? How tough can the life of a refugee in South Africa be? Imagine now if you have a family of one, two or more. Can we honestly say that refugees here have a durable solution? We have to create ways to make a living, no matter what happens to us.

"It's tough. One example: the national regulating authority for security companies has stopped giving licenses and certificates to refugees. Refugees can no longer qualify as security officers. Yet 70 % of this industry's employees are refugees. How will they live?

"If, as it seems clear, the South African government has failed to explain to financial institutions, to companies and to South Africans as a whole who these refugees are, do we really have the right to work and study as stipulated in our A4 document? In other words, is this government protecting us and giving us the basics for our needs as signed in the Geneva Convention?

"A friend of mine said, 'In my country I could die from hunger or gunshot due to the war, but here you and your family can be burned alive.' He had sought refuge here but his place of protection has not offered the security he wanted."

It seems tragic that when a Canadian solution has been offered by friends or family here it can be denied by Canada's officers on the grounds that the refugee already has a "durable solution" over there, and is hence disentitled to come here. The evidence is largely to the contrary. And hopes are dashed, lives destroyed.

*Tom Denton is Executive Director, Administration & Sponsorship, of Hospitality House Refugee Ministry in Winnipeg.*

# CANADA AND THE PROTECTION OF STATELESS PEOPLE

BY EZAT MOSSALLANEJAD

**What is statelessness?**

**To be stateless is to be without citizenship. There is no legal bond between the state and the individual.**

**Stateless people face numerous difficulties in their daily lives: they can lack access to health care, education, property rights and the ability to move freely. They are also vulnerable to arbitrary treatment and crimes like trafficking. Their marginalization can create tensions in society and lead to instability at an international level, including, in extreme cases, conflict and displacement.**

**Statelessness affects some 15 million people around the world, from the Kenyan Nubians in Africa to the Thailand Hill Tribes in Asia to Dominicans of Haitian descent in the Caribbean. Many stateless people have never crossed a border or left their country of birth. Yet while the problems related to statelessness may manifest themselves differently, at the root is a group of people who have been denied a legal identity.**

Citizenship is described as simply "the right to have rights". Stateless people are incapable of enjoying these rights. In this century, however, the occurrence of statelessness was elevated to a grander scale in the aftermath of the two world wars.

Statelessness can occur due to a variety of factors, including:

- Geopolitical changes (e.g. state independence or disintegration)
- Marriage (e.g. to a person who has a different nationality)
- Administrative flaws (e.g. gaps in registration of births)
- Voluntary renunciation of one's nationality and failure to acquire a new citizenship
- Amendments in a state's citizenship laws (e.g. due to a change in territory or government)
- Gender-limited application of *jus sanguinis* (e.g. based on the nationality of the father only)
- Mass displacement and expulsion of peoples (e.g. due to armed conflict)
- Repatriation of refugees with prolonged stay abroad

It is also worth noting that there is a close interconnection between genocide and creating statelessness through the denial of citizenship. Genocide is defined as any act "committed with the intent to destroy in whole or in part, a national, ethnical, racial or religious group" (Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, 1948). Such systematic attempts by the dominant groups have often resulted in the physical extermination and dislocation of people who may be considered refugees, displaced or stateless.

On an international level, there are two legal instruments relating specifically to statelessness: the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The 1954 Convention addresses the regulation and improvement of the status of stateless persons. It spells out fundamental rights and freedoms and protection against discrimination that help to ensure a stable existence for those who are stateless. Although this Convention attempts to guarantee minimum rights for stateless people, it does not go as far as to demand that states grant them citizenship. The 1961 Convention deals with the prevention of statelessness by imploring states to grant citizenship to stateless persons who have a genuine and effective link to that country. It has its focus on the reduction of statelessness and seeks ways in which stateless persons can acquire and retain nationality. This instrument may be used as a model for subsequent national laws about statelessness.

Canada enjoys one of world's most progressive laws of citizenship. It has liberally combined both principles of *jus sanguinis* and *jus soli*. All babies born on Canadian soil as well as those born to Canadian parents abroad are regarded as Canadian citizens.

This liberal approach diminishes when it comes to the protection of stateless people at the global level. Canada has only ratified the 1961 Convention on the Reduction of Statelessness.

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There is a suspicion that Canada has refused to sign the 1954 Convention in an attempt to not accept further obligations towards protection of non-citizens and stateless persons in Canada. It is a fact that the 1961 provisions are already in place in Canadian legislation in a more liberal and progressive way. Therefore, ratification of this instrument does not bring much change in the lives of stateless people in Canada. Concrete protection for this vulnerable group could come with the accession to the 1954 Convention.

Children born to stateless parents become stateless too. (Picture published by BBC News)

Despite its defects, Canada has a well-established refugee determination system. However, the system is lacking when it comes to the protection of stateless people. There is no system and no institution in place.

There are many stateless people who live in limbo in Canadian society. Four categories are easily identifiable:

1. *Stateless people who come to our borders and apply for asylum.* If all goes well, these people have access to the Canadian refugee determination system and the Immigration and Refugee Board is mandated to deal with their claims. It should not be forgotten that statelessness per se does not provide grounds for getting accepted as a Convention refugee. The claim should be based on the five grounds of the 1951 Geneva Convention relating to the Status of Refugees. Under such circumstances, stateless people, like other asylum seekers, must come up with a well-founded personal story of persecution in order for their case to have merit.

2. *Removable refugee claimants whose countries of origin refuse to accept them.* The only alternative open to this category of stateless persons is prolonged and sometimes indefinite detention.

3. *People who have come to Canada as visitors and have become stateless in the course of their stay*. This category of stateless persons has to live under a removal order. As there is no country to accept them, they have to remain in detention centres or under surveillance.

There is neither any regulation nor any institution to deal with last two subgroups of stateless persons mentioned above. It seems that there is neither recognition nor adequate expertise within the Ministry of Citizenship and Immigration to deal with this crucial issue.

The only recourse available to these persons is to apply for Humanitarian and Compassionate review of their cases. But they have hardly any chance to get a positive answer to their H & C application due to the lack of specific guidelines for H & C officers to deal with stateless people. Another problem is stateless persons' inability to produce the required identification document or passport.

With the end of the Cold War and the subsequent rise of ethnic conflicts, the problem of statelessness will continue to increase and has the potential of turning into a critical global problem. International legal instruments and institutions to handle this issue are inadequate and ineffective, since the implementation of such laws depends on the voluntary cooperation of nation-states. There is an urgent need for preventive initiatives (e.g. more flexible citizenship requirements, protecting children from statelessness) on both national and international levels.

It is expected, in the long and spiral path of resolving this worsening problem, that Canada plays a pioneering role by signing and implementing the 1954 international Convention on statelessness. This will give Canada an effective voice in accepting leadership in international bodies and in building the cornerstone for the protection of stateless people in this country.

There is a definitely a need for an independent and efficient Canadian institution to deal with this specific issue. The IRB could continue with its mandate of hearing refugee claims on the basis of statelessness, but it needs clear guidelines in order to be able to give cases of stateless person fair consideration.

# 40 ANS AU SERVICE DES RÉFUGIÉS ET MIGRANTS DU MONDE ENTIER / 40 YEARS WORKING WITH REFUGEES AND MIGRANTS FROM THE WHOLE WORLD.

BY AUDE LECOUTURIER, MONTREAL

***Working with refugees since its inception, the French organization France terre d'asile is celebrating its 40 years of service this year. Created in 1971 to defend and promote asylym in France, France terre d'asile is a unique organization which has about 500 employees today. After 40 years, the goals are still revelant: refugees are facing more restrictive immigration policies than ever.***

Depuis le début de l'année 2011, l'association France terre d'asile fête ses 40 ans en organisant, partout en France, des manifestations, conférences et concerts autour des droits des réfugiés et des migrants.
Fondée par des intellectuels et des membres d'association chrétiennes et laiques, France terre d'asile voit le jour en 1971 et a pour objet la promotion du droit d'asile, une question encore marginale dans le paysage associatif de l'époque.

En 1973, lors du coups d'état au Chili, France terre d'asile se mobilise et fédèrent plusieurs association pour organiser l'accueil de ces milliers de réfugiés arrivant en France. En parrallèle, l'association travaille en partenariat avec l'Etat français pour mettre une place un "dispositif national d'accueil" ayant vocation d'accueillir, de prendre en charge et d'héberger les demandeurs d'asile arrivant sur le territoire français. Plus de 30 centres d'hébergements temporaires seront créés pour répondre à l'afflux de réfugiés en provenance d'Amérique du Sud mais aussi d'Europe de l'Est, d'Afrique et du Moyen-Orient.
Forte de cette expérience, France terre d'asile expérimente la décentralisation des centres d'hébergement hors de la capitale et développe les centres dit "éclatés" où les demandeurs d'asile sont hébergés dans des appartements individuels et non plus dans des habitations collectives, ce qui permet plus facilement aux familles de reconstruire leur vie en France.

En 1980 l'association se voit confier la gestion du dispositif national d'accueil et devient ainsi un acteur central de la défense des droits des réfugiés. Elle coordonne alors la soixantaine de centres d'accueil pour demandeurs d'asile répartis sur le territoire français et gérés par différentes associations.
En parrallèle, dans les années 90, France terre d'asile s'attaque à la question des mineurs isolés étranges arrivant en France sans aucun représentant légal et ouvre, en 1999, un centre d'accueil réservé à ce public, où les éducateurs spécialisés cotoient les travailleurs sociaux pour réussir l'intégration de ces jeunes sans aucune famille en France. De plus l'association continue son action politique en intervenant régulièrement auprès du gouvernement français pour faire valoir les droits des réfugiés et pour demander l'amélioration des dispositifs d'accueil existant.

A la fin des années 90, le dispositif national d'accueil est saturé et de nombreux réfugiés sont à la rue faute de place d'hébergement (rappelons qu'en principe les demandeurs d'asile n'ont pas le droit de travailler pendant l'examen de leur demande). Sous la pression des associations, le gouvernement français valide la création de nouveaux centres d'hébergement. France terre d'asile développe alors son activité et en plus de coordonner les centres existant, ouvre en six ans, une trentaine de centres dont elle est gestionnaire (cela représente environ 15% des capacités totales d'hébergement du dispositif national d'accueil français).

En 2003, la mission de coordination du dispositif qu'assumait France terre d'asile depuis 30 ans est transférée à un service de l'État français qui en retour, confie à l'association de nouvelles missions relatives à l'intégration des réfugiés statutaires.
France terre d'asile développe alors plusieurs projet d'intégration par le travail et le logement et met en place, sur tout le territoire français, des dispositifs permettant aux réfugiés statutaires de bénéficier de logements relais (logements temporaire à loyer modéré avec accompagnement social renforcé) et de diverses ressources pour trouver un emploi.

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En 2010, suite à l'élargissement de son objet social, France terre d'asile ouvre un service dédié à l'aide aux étrangers détenus avant éloignement. Elle intervient, avec quatre autres associations, dans des centres de détention pour apporter une expertise juridique aux migrants enfermés.

Depuis 40 ans France terre d'asile, au coté d'autres associations, participe activement à l'accueil inconditionnel des réfugiés du monde entier et à l'aide aux migrants. Association importante au sein du paysage associatif français elle compte aujourd'hui presque 500 salariés qui oeuvrent au quotidien, au coté des étrangers, pour continuer à faire de la France un pays d'accueil.
En décembre 2010, elle a reçu le prix « mention d'honneur » Unesco/Bilbao pour la promotion d'une culture des droits de l'homme.

Aujourd'hui et peut-être plus que jamais, le travail des associations françaises est crucial. En effet, depuis quelques années, elles sont de plus en plus nombreuses à signaler la dégradation des conditions d'accueil des migrants en France et les réductions budgétaires qui rendent de plus en plus difficile leur travail.

Avec 26.100 demandes au premier semestre 2011, la France reste la deuxième destination des demandeurs d'asile dans le monde, après les Etats-Unis (36.400) et la première en Europe, devant l'Allemagne (20.100), la Suède (12.600) et le Royaume-Uni (12.200)[1]. A l'heure actuelle le nombre de places disponibles en centre d'hébergement est largement en dessous du nombre de demandeurs d'asile et les listes d'attente s'accroissent de jour en jour. Les conditions d'accueil se dégradent et les associations manquent de moyens pour offrir un service minimum aux nouveaux arrivants. Ces derniers attendent parfois plusieurs mois pour réussir à faire enregistrer leur demande d'asile et sont obligés, dans certaines grandes villes, d'attendre plusieurs jours devant la porte des administrations pour obtenir un simple rendez vous.

En parallèle, le discours politique sur l'immigration se durcit et de plus en plus de réformes législatives tendent à limiter les droits des migrants et à renforcer les conditions d'accès au territoire français. La dernière loi sur l'immigration, entrée en vigueur cet été, a par exemple rallongé le délai légal de détention des étrangers sans papier. De plus elle a instauré des interdictions de retour sur le territoire français qui empêchent les étrangers déportés de revenir en France avant plusieurs années, quelque soit leur situation familiale ou personnelle dans ce pays.

Face à un nombre de demande d'asile qui ne faiblit pas et à des politiques publiques de plus en plus sécuritaires, France terre d'asile comme ses partenaires restent donc plus que jamais mobilisés. Ils ont ainsi organisé en octobre 2011 « Les assises de l'asile » qui ont regroupés plus de 200 professionnels du secteur qui, ensembles, ont souhaité réfléchir à l'avenir de la demande d'asile en France et qui ont voulu rappeler au gouvernement « que nous ne sommes pas simplement des prestataires de service, que nous défendons des valeurs, que nous défendons un droit qui est celui d'une tradition républicaine, qui est celui de la réparation sociale et celui de la solidarité et que nous y sommes très attachés »[2]
http://www.france-terre-asile.org

1 Source : france-terre-asile.org
2 Pierre Henry, Directeur général de France terre d'asile lors des assises de l'asile, octobre 2011.

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# 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:***

**Bill C-4: Anti-smuggling or anti-refugee?**


The government has reintroduced the Preventing Human Smugglers from Abusing Canada's Immigration System Act as Bill C-4 (formerly Bill C-49). Despite the title, most of the provisions in the bill punish refugees, not smugglers. The people who will suffer if this bill is passed are people fleeing persecution, including children.

The CCR is gravely concerned that many of the measures in Bill C-4 fail to honour our obligations towards refugees. Passing the bill will result in refugees being treated unfairly in Canada.

Join the CCR and other allies in raising public awareness and speaking out about the impacts that Bill C-4 could have on refugees in Canada. Urge the government to withdraw Bill C-4 and to address the problem of smuggling in ways that do not punish refugees. Check out the CCR's webpage on Bill C-4, the anti-smuggling, anti-refugee bill, for more information and updates: www.ccrweb.ca/en/c4

For ideas on how you can continue to make a difference, see the CCR's Take Action request: www.ccrweb.ca/en/c4-action. It has helpful tips on how to contact your Member of Parliament and on reaching out about the impacts Bill C-4 will have on refugee claimants in Canada.

**Support our Youth! Urge that Canada respect non-citizen children and youth rights**

In June 2012, the United Nations will examine Canada on its respect for children's rights under the Convention on the Rights of the Child. Canada still has work to do on refugee and immigrant children's rights if it wants to pass the exam.

This fall, the CCR Youth Network is organizing flashmobs across Canada to raise awareness about the fact that Canada is not respecting the rights of non-citizen children and youth. The time to act is now: the United Nations is getting ready to examine Canada on its respect of children's rights. **We want to:**

Raise the volume on Canada's lack of respect of non-citizen children and youth rights
Encourage people to sign a petition demanding concrete changes.
Meet with Canadian MPs to give them petition signatures and demand that they speak up in Parliament for change.

Flashmobs are taking place in Vancouver, Edmonton, Lethbridge, Kitchener, Toronto, Montreal, Fredericton and St John's. In the upcoming weeks, we'll be launching a series of YouTube videos that show the flashmobs and explain our demands. Stay tuned and subscribe to: youtube.com/ccrwebvideos

In the meantime, here are some ways that you can take action to support our youth:
Petition: Get people in your community to sign the Petition regarding Canada's treatment of non-citizen children.
Meet with your Member of Parliament to give her/him the petition signatures you've collected and urge them to take action for non-citizen children and youth rights.

***Resources and ideas are available online at: ccrweb.ca/en/youthrights/act-now***

# OBSERVATIONS OF A ROOKIE MANAGER: FAMILIES AND CIC IMMIGRATION POLICY

BY QUANHAI TONTHAT

The following points are my observations after being chosen as a refugee sponsorship manager in September, 2010. By nature, I was a conservative with a small "c" who took the government's words at their face value and tended not to be critical of its policy. However, after only a few months in the new position as a manager, my views took a new direction and I am not sure the people in charge of setting Canadian Immigration Policy really mean what they said to the public.

I used to believe that the Immigrant and Refugee Protection Act was created with the best interest of these people in mind. In addition, I often hear that the Government of Canada regards family as the most fundamental unit of society and that they will do whatever they can to make sure that it functions successfully and properly. However, shortly after I assumed the new role, I was not sure that the Act really protects these people at all and that the government really wants to help new Canadians' families function successfully. The case in point is the Immigration Regulation 117(9) d which requires the permanent resident applicant to declare his/ her non-accompanying family member and these dependents must be examined before he/she becomes a permanent resident. Failure to do so results in the non-accompanying dependents not being considered a member of the family class. As a new Canadian citizen who was a refugee from Eritrea told me, this regulation is in fact a "family terminator". Many refugee families broke up because the refugees, after becoming a permanent resident in Canada, could not sponsor their family members for failure to declare them before landing. The people who suffer most are children. In many cases, they are abandoned by their other parent. Usually, their grandparents become their primary care givers in these cases. In other cases, the children must live on the streets because they have no other relatives who can take care of them.

The current solution to this legal problem is to apply for the undeclared family members under humanitarian and compassionate grounds. Although the humanitarian category is, more often than not, the only hope for these people to be reunited with their loved ones in Canada, it has major disadvantages. First of all, it seems to have very low priority. It may take more than two years (many cases take up to 3 years) for the Visa posts to process the humanitarian applications. This in turn may create severe problems for children. As a result of their parents becoming refugees, they have already been separated from their parents for several years. Children who are sponsored under the humanitarian category will have to wait 2 to 3 more years. Years of separation have deprived them of important benefits that would have been provided by their parents such as love, care, guidance, all of which play an important role in the building of their confidence and personality. Secondly, to apply for undeclared family members under the humanitarian and compassionate ground, the newcomers usually need access to immigration law services due to the "live-or-die" situation necessitated by this particular category -- the existing regulation does not allow for appeal as a right if the immigration officer rejects the application. Given the reality of limited free immigration legal services, many newcomers have to hire a lawyer to help them with the application. Everyone knows that legal costs in Canada are not cheap. The newcomers who do not have a good social network resort to credit cards to pay for their lawyer's bill as their employment income is too small to be used for this purpose. (Many refugee newcomers, due to lack of education and training, hold minimum wage jobs). Thirdly, the overseas determination process is usually done by a single immigration officer with the assistance of an interpreter in a room with the undeclared family member(s). This determination process is applied not only to the H&C category but also to other groups. There aren't any advocates, or witnesses, or recording to make sure that the process is fair. Moreover, under the existing legislation, one cannot easily apply for a review or appeal the negative decision on the humanitarian and compassionate cases by the immigration officer. The negative decision means that the undeclared dependent's chance for being reunited with his/her relative in Canada will all but vanish. In other words, the system gives too much power to the officer and there is no monitoring mechanism to ensure fair process for all applicants.

My last observation focuses on sponsorship for overseas spouses. I often hear that multiculturalism plays an important role in the Canadian government's policies. However, after working in the new position as a manager, due to the nature of the work, I spent more time analyzing the CIC policy and found that the overseas determination process for spousal sponsorship applications showed a critical lack of cross cultural awareness. As a part of the determination process, the applicants are required to submit the following documents to prove that their relationships with the sponsor are genuine: personal letters, e-mails, telephone bills, photographs of their engagement, wedding ceremonies and other occasions such as dates, trips together, honeymoon, and money transfer receipts. To which extent the

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overseas immigration officers use these documents to make their decisions in the determination process, I don't know. However, from my direct experience of working with new Canadians whose origins were from Africa and Asia, the applicants who did not adopt mainstream Canadian ways of communication and expressing love tend to be rejected. The CIC training manual which provides the instructions and guidelines on how to process the spousal sponsorship application for the immigration officers did not provide any instructions regarding the fact that people in other cultures may not use these means of communication to express their love to their spouses at all and that they have unique ways of communication; nor does it provide the officers with the effective tools to help them work successfully in a cross-cultural environment. In another words, "proof of genuine relationship" as requested by the immigration officer is completely based on the culture of mainstream Canadians and shows a complete lack of sensitivity towards and understanding of other cultures' way of expressing love and intimacy.

As a conclusion, I hope that there will be changes in the Immigration policy to show that Canada cares and supports new Canadians' family and that the overseas determination process is transparent and fair to all. I would like to end the article with the words of Lilo, a main character in a Walt Disney cartoon movie entitled "Lilo and Stich" which is one of my children's favorites: "Family means no one is left behind – or forgotten".

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# IMMIGRATION, SETTLEMENT AND LEGAL SECTORS BRACE FOR NEW CANADIAN REFUGEE LAW: EXPERTS SHARE CONCERNS REGARDING LOOMING BALANCED REFUGEE REFORM ACT

BY SHAUN PEAREN

More than 200 members of Ontario's immigration and settlement community gathered for an anxiously-awaited briefing on looming changes to Canadian refugee law at a recent Refugee Forum conference, co-hosted by the FCJ Refugee Centre and The Salvation Army Immigrant and Refugee Services. These changes are in addition to changes from Bill C4, referred to elsewhere in this magazine.

Attendees of the October 25th event – including settlement and social workers, representatives from government and non-governmental agencies, legal practitioners and individual refugee claimants – packed the Toronto Harbour Light Ministries conference centre in downtown Toronto for an information-packed overview of The Balanced Refugee Reform Act (Bill C-11), to be enacted in June 2012.

During the conference, participants heard panel


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discussions that outlined key stages of the revamped refugee program, including the new refugee eligibility interview, the hearing and the new limited appeal process, as well as an assisted voluntary return program to be overseen by Canada Border Services Agency (CBSA).

Among the panelists were: Janet Dench, Executive Director of the Canadian Council for Refugees; Leah Johnston, Project Manager at Canada Border Services Agency CBSA; immigration lawyers Pamila Bhardwaj, Adela Crossley, and Maureen Silcoff; Soheila Pashang, Professor at Seneca College; Sean Rehaag, Assistant Professor at Osgood Hall Law School; Peter Showler, Director of the Refugee Forum at University of Ottawa Law School; and Francisco Rico-Martinez and Loly Rico, FCJ Refugee Centre Co-Directors.

**Panelists express concerns over dramatic refugee law changes**

"In short, the new process involves major changes," noted Professor Sean Rehaag, summing up a detailed overview of the Balanced Refugee Reform Act. "First, it restricts the ability of claimants to clearly present their stories: coherent written narratives that claimants currently prepare with the assistance of their lawyers will be replaced by a written summary of an interview conducted by IRB employees. Second, the whole process will happen very quickly - raising concerns about people's ability to access counsel. Third, it creates new barriers for accessing the Federal Court to review IRB decisions."

Janet Dench shared the position of the Canadian Council for Refugees (CCR) stating that, "We have very deep concerns about the impacts of the new interview process, particularly for vulnerable claimants, such as those who are traumatized, women who have suffered gender violence and survivors of torture. They and others risk being penalized by the interview process." Dench also raised questions about the independence of civil servants, who will preside over the refugee hearing in the new process, as well as about the fairness and practicality of the appeal process.

Dench added that there remain many unknowns

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for the immigration and refugee community, since important Immigration and Refugee Board rules and the regulations that determine the application of Bill C-11 have not yet been finalized.

Sharing his views on the new process, Professor Peter Showler, a former head of the Immigration and Refugee Board, stated that, "It's simply too fast, with tremendous emphasis on speed of process, not efficiency of process. And this speed of process disadvantages virtually every refugee, since they don't have enough time to prepare their claim or translate their personal experience into the judicial process." Showler added that, "The new process will create greater need for legal representation, just as funding for legal aid is falling drastically. It will be outrageously inadequate under this new system."

**Refugee advocate proposes mechanism to clear refugee case backlog**

In response to the new refugee law, FCJ Refugee Centre Co-Director Francisco Rico-Martinez summarized his own proposal for the Federal Government to create a mechanism to regularize precarious migrants in Canada – a step he described as necessary, due to the current backlog of 40,000 pending refugee claims and 40,000 Humanitarian and Compassionate grounds (H&C) cases now before immigration authorities.

Judy Broadbent (at the centre) Francisco Rico and Loly Rico, Co-directors of FCJ Refugee Centre.

Defining 'precarious migrants' as persons who are vulnerable to abuse since they have precarious, temporary immigration status or who live without status in Canada for many reasons, Rico-Martinez suggested that his proposed mechanism for regularization would help remove the unfinished inventory of cases under the current system, and prevent another backlog under the new system.

"We propose the relaxation of the Humanitarian and Compassionate grounds so that all H&C applications will be assessed in a manner consistent with Canada's obligations under international laws and the Charter of Rights and Freedoms, such that the economic, social, cultural, civil and political rights of all applicants will be protected and respected," said Rico -Martinez, who explained his proposed process, by which persons may be granted permanent residency upon satisfying a number of criteria.

**Judy Broadbent recognized as a champion of immigrants and refugees**

To mark the 20th anniversary of the FCJ Refugee Centre, the Refugee Forum also recognized Judy Broadbent, Vice Chair of the Maytree Foundation, with an award to acknowledge her dedication to supporting uprooted persons. In 1982, Judy and her husband Alan established The Maytree Foundation, a private charitable foundation dedicated to the relief of poverty and the pursuit of social justice. Maytree soon became focused on refugees and immigrants, recognizing both the need and the powerful opportunity to invest in the potential of Canada's future citizens.

"We are happy to recognize Judy, a person who has been so tireless in supporting women and youth as they struggle to rebuild their lives," explained Rico-Martinez, crediting Broadbent and her foundation for assisting countless newcomers to Canada, including more than 200 refugee students who have benefited from the Maytree Scholarship Program.

*Shaun Pearen is a regular volunteer at the FCJ Refugee Centre*

# REFUGEE FAMILY REUNIFICATION STATISTICS FOR 2010

BY JANET DENCH

The statistics are for processing of family members of refugees in 2010 (i.e. dependants overseas included in the permanent residence applications of refugees in Canada – coded DR2).

**Processing times**

Overall, there has been a reduction in the 50% processing time: down from 16 months in 2009, to 12 months in 2010. This includes a reduction in Nairobi: down from 27 months in 2009 to 23 months in 2010.

However, the 80% processing times has gone up, meaning that the slower cases are taking even longer. In 2010, 80% of cases were completed in 29 months, up from 28 months in 2009. This increase includes Nairobi: up to 47 months in 2010, from 39 months in 2009.

The slowest post in 2010 was Islamabad: 34 months for 50% and 52 months for 80% (and they only managed to finalize 35 cases).

[Processing times refer to number of months taken for 50% or 80% of the cases to be completed. Therefore 12 months for 50% of cases means that half the cases took 12 months or less to be completed, the other half took more than 12 months.]

**Inventory**

The number of refugee family members waiting for processing went up. At the end of 2010, there were 5,430 persons (not cases) waiting, up from 5,202 at the end of 2009.

Nairobi 1,384 persons were waiting (up from 1,213 at the end of 2009).

Islamabad 465 persons were waiting.

**Approval rate**

There has been a disturbing decrease in the approval rate for refugee family members. There are few reasons to reject a family member (such as security inadmissibility, or not a family member), so we expect the vast majority of applications to be accepted. In 2010, only 76% of cases were approved, down from 83% in 2009 (and 87% in 2008, 90% in 2007).

**Approval rates for some specific posts:**

Accra: 60%
Nairobi: 63%
Islamabad: 43%
Bogota: 63%

# REFUGEE UPDATE

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