Refuge

SPECIAL ISSUE

Global Movements for Refugee and Migrant Rights

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Introduction

Global Movements for Refugee and Migrant Rights

Michelle Lowry and Peter Nyers[1]

Refugees and other forcibly displaced migrants are encountering a vast and expanding array of restrictive laws and policies designed to control and exclude their entry. The countries of the North, in particular, have dramatically enhanced the powers of border authorities to interdict and interrogate, to detain and deport. Powers of surveillance have similarly been increased, to the point where we are witnessing the implementation of technologies that selectively determine who shall be excluded based on their (national, racial, gender) profile. While these measures have been under development for some time, the trend to "securitize" migration has only intensified in the wake of the violent attacks on New York and Washington.[2]

The authors in this special issue of *Refuge* are deeply troubled by these measures and their implications for national cultures of asylum and the international freedom of movement. But these moves to restrict movement, to limit asylum, and to sharply distinguish insiders from outsiders are not inevitable or irreversible trends. To the contrary, campaigns for the rights of refugees and migrants have emerged as some of the most energetic and important social and political movements today. Each of the contributors to this special issue takes inspiration from the ways in which these restrictive immigration and refugee policies are being actively contested, challenged, and, in some cases, overturned.

Migrant and refugee rights movements appear in various forms and take on a diverse set of tactics to suit their particular contexts and circumstances. For example, Australia's notorious policy of detaining asylum-seekers has been met by a vigorous campaign by citizen groups to advocate for the rights of refugees. Here, the traditional tactics of lobbying government officials and organizing letter-writing campaigns exist alongside more radical measures, such as the creation of sanctuary zones and the dis-

mantling of fences around detention centres to facilitate escapes. Similarly, a well-developed movement under the slogan "No One Is Illegal" has emerged in Europe. Caravans for refugee and migrant rights make an annual trek across Germany. Border squats have been organized along the perimeter of "Fortress Europe." A well-developed campaign targets European airlines that profit from carrying out deportations. Finally, anti-detention campaigns have been successful in closing detention centres such as the Via Corelli in Milan and Campsfield House in England.[3]

The articles in this issue consider the struggles of refugees and migrants taking place in Afghanistan, Canada, the European Union, Australia, and Japan. Together, they demonstrate that both the crackdown on refugees and migrants – and the resistances to these assaults – are a global phenomenon.

A key theme runs through each of the contributions to this volume: the question of political agency. Each piece confronts this fundamental question: When it comes to advocating for refugee and migrant rights, who is an effective political actor? Is it the UN and its agencies? Governments? NGOs? Citizen groups? What of the refugees and migrants themselves? Must they be "spoken for"? Or can they speak, advocate, and organize for themselves?

In the opening article for this collection, Cynthia Wright tackles these questions with a savvy analysis of those social movements organizing around a "no border"/"no one is illegal" politics. Paying particular attention to the prospects for such campaigns in Canada, Wright looks at the effects that the September 11, 2001 attacks has had on migrant and refugee rights organizing. As the so-called Homeland Security agenda in the US looks toward tightening and coordinating its border policies with Canada, Wright argues that activists on both sides of the border need to internationalize

"locally and nationally bound immigration struggles." Further, Wright argues that it is necessary to examine "current border panics and nationalisms from the standpoint of immigrants, refugees, and the undocumented." She calls upon activists in various arenas – including anti-racist, labour, aboriginal, anti-globalization and anti-war organizations – to make the links between their struggles and those of migrants and refugees. This, Wright concludes, will set the stage for organizing a "clear and direct challenge to surveillance, detention, racialized citizenship and national security logics."

The following three contributions all address the complicated situation facing Afghans who have been forcibly displaced due to the (on-going) conflict and violence in their country. While Michael Leach and Mai Kaneko consider the plight of Afghan refugees in Australia and Japan, respectively, photographer Babak Salari and curator Gita Hashemi pose the provocative question: "What happens to the millions who do not make it to the 'safety' of the detention camps in Western countries?" Have they been "rescued" or "liberated" by allied forces? With an eye for the divergent possibilities facing the forcibly displaced in the region – for example, the despairing faces found in the IDP camps stand in stark contrast to the energy and hope portrayed in the residents of a camp established by the Revolutionary Association of Women of Afghanistan – Salari and Hashemi tackle these difficult questions through their stunning documentation of the pervasive violence of the border and the struggles of daily existence in tent cities.

For those refugees that manage to escape Afghanistan and other zones of conflict, they often face criminalization and detention in so-called countries of asylum. Perhaps the most well-known and notorious example of the criminalization of asylum-seekers can be found in Australia. Michael Leach provides a thorough account of the disturbing anti-refugee practices and discourses at work in that country. Focusing on the asylum-seeker "crisis" of 2001–02, Leach demonstrates how the Howard government actively deployed racist characterizations of Iraqi and Afghan asylum-seekers as an election campaign strategy. The now infamous "children overboard" incident, in which refugees were falsely accused of throwing their children into the ocean, was used to construct a certain unsavoury identity for the refugees. Leach details how the asylum-seekers were represented as dishonest and dangerous migrants, as immoral and irresponsible parents, and as possessing a value system alien to Australians. The asylum-seekers were, in short, cast as everything that "good Australian citizens" were not. In his conclusion, Leach outlines the connection between these negative portrayals of Afghan asylum-seekers to fur-

ther restrictive measures in Australia's already strict and exclusionary refugee policy.

While the treatment of Afghan refugees in Australia has been well-documented, their plight within Japan is less well-known. Japan, like many Northern states, initiated a crackdown on asylum-seekers in the immediate post-September 11, 2001 context, enhancing the powers of authorities to detain and deport asylum-seekers. In an inspiring account, Mai Kaneko considers the Free Afghan Refugees movement, which was successful in mobilizing large number of Japanese citizens against these oppressive measures. This campaign brought together many segments of Japanese society, including large numbers of people who had never before been politically active. Kaneko argues that this movement was not only successful in securing the release of many of the detained Afghan asylum-seekers, but was also able to force the Japanese government to introduce significant and progressive changes to Japan's asylum system.

In her study, Helena Schwenken compares various political campaigns waged in the name of international domestic workers in the European Union. She argues that a "trafficking" frame and a "rights" frame result in very different political outcomes and consequences for these migrant workers. In their call for tightened border controls, return programs, and the regulation of domestic work, anti-trafficking campaigns situate domestic workers in a discourse of illegal immigration and trafficking. The rights approach by contrast, recognizes domestic labour as work, and therefore calls for employment legislation that ensures the rights of migrant workers as well as the regularization of all non-status workers. In advocating for the latter approach, Schwenken refuses to see domestic workers as "the problem," and instead poses an important challenge to frameworks which reinforce restrictive state policies on migration.

Nandita Sharma also provides a critique of anti-trafficking campaigns. She too challenges the idea that the movement of people across borders is somehow a "problem" that needs to be managed and controlled. Rejecting the distinctions between "illegal' and "legal" migrant, "genuine" and "bogus" refugee, and "smuggled" vs. "trafficked" persons, Sharma argues that when anti-trafficking campaigns utilize these tropes they reinforce the power of the state to control borders and deport those deemed undesirable. Ironically, anti-trafficking campaigns that claim to serve the interests of migrants can in fact be anti-migrant in nature. They reinforce the idea that migrant women are agentless and voiceless victims, rather than self-determining agents. Employing an anti-racist critique, Sharma suggests that "anti-trafficking campaigns need to be replaced with a political

practice that actually listens to and privileges the standpoint of undocumented migrants."

The articles by Wright, Schwenken, and Sharma all illustrate the thorny political problems that arise when activists organize *for* rather than in solidarity *with* migrant and refugee communities. From the rioting refugees in Woomera to the *sans papiers* in France, refugees around the world are acting as political agents in their own right. How then can "citizen groups" and activists work effectively and in solidarity with refugee and migrant communities? Which strategies and tactics have proven successful in creating political change? Within refugee rights social movements and campaigns, how are gender inequalities and the experiences of refugee women being addressed? We raised these questions, and others, in our roundtable discussion with a group of activists working on refugee and migrant rights campaigns in Canada. Members of Montreal's *Action Committee for Non-Status Algerians* shared their experiences of living as "non-status" in Canada, and the challenges of organizing against their deportations. Members of Montreal's *No One is Illegal* and Toronto's *Ontario Coalition Against Poverty* also joined the discussion with their thoughts about how to effectively engage as allies in refugee and migrant rights campaigns.

An additional article, outside the theme of this special issue on the global movements for refugee and migrant rights, concludes this volume. Ekuru Aukot's case study of Turkana refugees in Kenya makes a powerful case for considering the impact of refugee camps and assistance policies on the local populations of host countries. Aukot argues that refugees will not be able to enjoy the rights accorded to them in national legislation and international conventions if significant attention is not paid to refugee-host relations.

In conclusion, we agree with Étienne Balibar's assessment of what "we" owe the global *sans-papiers*: "The *sans-papiers*, the excluded among the excluded (though certainly not the only ones), have ceased to simply play the victims in order to become the actors of democratic politics. Through their resistance and their imagination, they powerfully help us give [politics] new life. We owe them this recognition, and to say it, and to commit ourselves ever more numerously at their side, until right and justice are repaid them."[4]

Notes
1. This is a jointly authored essay and the order of the authors' names is alphabetical.
2. R. Whitaker, "Refugee Policy after September 11: Not Much New," *Refuge: Canada's Periodical on Refugees* 20:4 (2002), pp. 29–33.
3. T. Hayter, *Open Borders: The Case against Immigration Controls* (London: Pluto, 2000).
4. É. Balibar, "What We Owe to the *Sans-Papiers*," in L. Guenther and C. Heesters, eds., *Social Insecurity: Alphabet City No. 7* (Toronto: Anansi, 2000), pp. 42–43.

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Moments of Emergence:
Organizing by and with Undocumented and Non-Citizen People in Canada after September 11

Cynthia Wright

Abstract

Striking new campaigns across Europe, the United States, and Australia led by refugees, im/migrants, undocumented people, and allies challenge controls over the right to move freely across borders. Situating similar formations within Canada in transnational context, this article anatomizes the impact of September 11 on North American organizing. Drawing on the argument that the construction of September 11 as a national event was ideologically necessary for war abroad and criminalization of immigrants domestically, the article evaluates strategies for confronting state criminalization, detention, racialized citizenship, and "illegality." It concludes that, far from utopian, "no-border" and "undocumented" movements are fundamentally politically necessary in the current dangerous conjuncture.

Résumé

Menées par des réfugiés, des immigrants, des sans-papiers et leurs alliés, de nouvelles campagnes saisissantes ont eu lieu, à travers l'Europe, les États Unis et en Australie, pour remettre en question les contrôles sur le droit de libre circulation à travers les frontières. Cet article situe des mouvements similaires qui se sont formés au Canada dans un contexte transnational et examine de près l'impact des attentats du 11 septembre sur l'organisation des mouvements de protestation en Amérique du Nord. S'appuyant sur la thèse qu'il était idéologiquement nécessaire de présenter les attentats du 11 septembre comme un événement national afin de justifier la guerre à l'étranger et la criminalisation des réfugiés à l'intérieur du pays, cet article évalue les stratégies pour combattre la criminalisation par l'État, la détention, la citoyenneté à caractère raciste et l'« illégalité ». Il conclut que, loin d'être utopiques, les mouvements en faveur de l'ouverture des frontières, ainsi que ceux formés par des « sans-papiers » ou par des gens les supportent, sont fondamentalement et politiquement nécessaires dans les circonstances dangereuses actuelles.

In his essay/manifesto, "What We Owe to the *Sans-Papiers*," French philosopher Etienne Balibar passionately argues that political contestation by undocumented immigrant people in France has made a fundamental challenge to notions of democracy, politics, civil rights, and citizenship.[1,2] Indeed, in France, as elsewhere in Europe, the United States, and Australia, organizing by and with undocumented and non-citizen people has in recent years become a pressing priority; it has also begun to unsettle long-standing assumptions within political theory and practice about borders, nations, sovereignty, and the regulation of immigration. But as we look back since September 11, 2001, and observe the systematic tearing up of immigrant, refugee, and indeed civil rights in North America, Australia, the UK, Europe and elsewhere – not to speak of detentions, deportations, racist killings, physical and verbal harassment, burnings of mosques and Hindu temples, draconian anti-terrorist and domestic security bills, and much else

– Balibar's manifesto appears wildly utopian, even as it remains politically more necessary than ever.[3] For, as Muneer Ahmad has argued in a recent article on racial violence in the aftermath of September 11, "it is exactly in moments of nationalist, nativist, and militarist excess that we might develop greater acuity not only in our critique of prevailing politics, but in the imagined alternatives."[4]

It is in this context that this paper asks: what now for movements and organizations of and with undocumented and non-citizen people? I raise this question fully aware that, well before September 11, the federal government's immigration policy was moving in increasingly regressive directions. To take just one example, Canada's new Immigration Act, which originated before September 11 and which came into effect on June 30, 2002, expands powers of detention and deportation, to specify only two of its provisions.[5] Moreover, the post-September 11 context has meant that policy proposals that immigrant and refugee rights groups in Canada have been opposed to for years – among them the "safe third country" agreement – have been quickly brought in with comparatively little resistance. This paper offers only a very preliminary analysis of how, post-September 11, "race" and citizenship in Canada are being reconstructed in the context of calls for a security perimeter; "illegal immigrant" squads; and limitations on the mobility and other rights of immigrants, refugees, and indeed *citizens* of colour in the name of national security. As Sunera Thobani has recently pointed out, what we are looking at is the *institutionalization* of racial and national profiling.[6] I can also only gesture at the forms of anti-immigration and anti-immigrant discourse that are circulating – as evidenced, to take only one example, by Daniel Stoffman's latest book, *Who Gets In*, which makes some very familiar anti-immigration arguments but within a post-September 11 context – and the ways in which they do or do not differ from what we have seen in the past.[7] Indeed, the whole question of what is new and not new about the forms of racialization and criminalization we are seeing now is an extremely important one with some clear implications for strategy and alliance-building.[8]

I offer this paper as a think piece about strategy and organizing, one that I hope contributes in some small way to bringing our interlocking movements – including anti-racist, labour, aboriginal, immigrant rights, anti-globalization, and anti-war among others – into closer alliance. It attempts to map some moments of emergence – to describe, and begin to account for, some of the new directions in the immigrant and refugee rights scene in Canada: groups and actions that are a clear departure, ideologically and in social base, from many – not all – of the earlier formations and which are also linked to some of the *international* campaigns and political arguments around the demand for open borders. It is vital that activists and activist academics begin to piece together some historical and contemporary accounts of grassroots and non-institutionally-located anti-racist practice and to begin to situate them within a transnational framework. While we now have some fine scholarly accounts of the operations of racism in education, in paid work and, perhaps above all, in the arena of immigration and refugee legislation and policy, there is relatively little work on all the campaigns and actions carried out by activists committed to anti-racist struggle in Canada – or indeed elsewhere. As the contributors to the new collection, *Rethinking Anti-Racisms*, comment on the British case: "[M]edia and political anxieties around immigration have coexisted alongside a largely unwritten history of the struggle against immigration and asylum laws."[9]

Across Europe people are mobilizing under the banner of "No Border" and in other campaigns to contest the terms of Fortress Europe with its regime of greater movement within Europe while simultaneously subordinating people from the South. The October 2002 issue of *New Internationalist* magazine is devoted to the theme "The Case for Open Borders," and features an excerpt from the best-known English-language manifesto for an end to immigration controls, Teresa Hayter's *Open Borders*.[10] The choice of theme for this issue is testimony to the new confidence and growth of such international campaigns and perspectives. In England, for example, the country with "the worst record on immigration detention in Europe," and with a very low rate of refugee acceptance, much radical immigrant rights work has focused on stopping detentions and deportations.[11] In France, the activism of the *sans-papiers* and *sans-papières* – autonomous formations of undocumented people who insist on speaking for themselves – has provided an important model for undocumented people and their allies everywhere.[12] It has also influenced internationally known intellectuals such as Etienne Balibar, as well as Michael Hardt and Antonio Negri, the authors of one the most important theoretical books to come out of the Western left in a generation, the hotly debated *Empire*. Hardt and Negri place an open borders demand at the top of a new left agenda: "A specter haunts the world," they write, "and it is the specter of migration."[13]

Outside Europe, in Australia, we have recently seen dramatic instances of refugees breaking out of detention and of direct-action campaigns to free, and give sanctuary to, refugees warehoused outside the country's main cities and on Aboriginal territories.[14] And while most discussions focus on the so-called "migrant-receiving" nations in the North, people in the global South, for example indigenous people and African-descended people in Columbia, have continued to draw attention to the ways in which they have

been displaced by war, paramilitaries, capitalist "development," and their own states.

In the North American context, massive setbacks in immigrant rights in the U.S. since the 1990s have produced a new generation of tough and creative activists, many of whom are younger first-and second-generation immigrants of colour. Clustered in groups like the National Network for Immigrant and Refugee Rights (NNIRR), Desis Rising Up and Moving (DRUM), and around the publication *Colorlines* – to name a few – they represent a total break with the politics of the U.S. melting pot and the myth of "immigrant America."[15] Key alliances between U.S. labour and immigrant groups, and renewed labour organizing among working-class immigrants, meant that U.S. immigrant rights and labour activists had achieved a significant victory on the eve of September 11: they moved what had been a central – if not *the* central – demand of the immigrant rights movement, legalization for that country's estimated six to nine million undocumented, onto the national political agenda.[16] Unlike many Republicans, Bush seemed prepared to back a limited legalization plan, no doubt with a view to capturing the sizable number of Latino/a voters and shifting their loyalties from the Democratic to the Republican Party.[17]

September 11 has been a catastrophe for all such legalization and workers' rights campaigns, and indeed for anti-racist and economic justice projects generally.[18] In the celebration of the heroic white masculinity of firefighters, police, and (then) New York City mayor Rudolph Giuliani, the tremendous struggles waged largely by the city's African-American community for accountability from those same police and Guiliani were buried.[19] The number of undocumented people who died in the twin towers once again revealed the extent to which glittering world cities rely on a service sector with large numbers of both documented and undocumented immigrants.[20] In an article on September 11 and New York City's Latino/a community, Arturo Ignacio Sánchez notes that some activists tried to effect a "symbolic shift" by talking about the undocumented people who died in the attack as "working heroes"; one goal of this move was to further the "struggle to secure immigrant amnesty in the United States and other nations."[21] But such a strategic move was no match for what Neil Smith calls the "manufacturing of nationalism" in the aftermath of September 11: while the victims of the World Trade Center (WTC) attack came from some eighty-three countries, that story was quickly rewritten in the interests of a United States bent on a permanent "war on terrorism"; for this reason, the victims had to be "nationalized."[22]

The U.S. amnesty movement had planned to establish its strength and visibility in a September 25, 2001, demonstration in Washington, D.C.; it was called off. Attendance dropped off in organizations for the undocumented and public events became very difficult. Many undocumented and non-citizen people feared they were about to be rounded up. And, of course, many were. Indeed, much expanded powers of detention, and the requirement for male visitors over the age of sixteen from some twenty-five countries to register themselves by March 21, 2003, have dramatically underlined the insecurity and precariousness of undocumented, non-citizen, and refugee lives.[23] Meanwhile, the ongoing militarization of the Mexico/U.S. border, not to speak of the presence of vigilante white ranchers who murder suspected "illegals," mean that migrants continue to risk their freedom and their lives crossing the border from Mexico into the United States.[24] While immigrant rights activists continue to organize around it, the demand for legalization was almost forced off the *public* agenda in the United States, and may yet be sacrificed altogether because Mexico has refused enthusiastically to back the United States' war on Iraq.[25] Instead, "illegal immigrants" and non-U.S. citizens are being offered a visa if they provide tips about "terrorists" – even if no criminal conviction results from that information.[26] Recently, however, Democratic representative Luis Gutierrez has reintroduced a bill that would provide for a rolling amnesty for undocumented people.[27]

Here in Canada, where organizations by and for the undocumented and their allies have been weak or non-existent until relatively recently, such legalization or amnesty campaigns have few precise parallels and radical immigrant rights work has relatively little public or media profile.[28] At one level, this is a question of scale; there are millions of undocumented people in the U.S., while the figures for Canada in journalistic accounts range widely from 20,000 to 200,000.[29] But it is also, crucially, a question of political context and contest: a series of highly charged cases surrounding "illegals," as well as the mass campaign to stop Proposition 187, have contributed to a fierce public and media debate in the U.S. about immigration and opened up space for advocating the rights of undocumented people. Most importantly, undocumented people have also begun to come forward and speak on their own behalf – crucial in the North American media context where literally putting a "face" to a political issue is key to how it gets framed.[30]

An overview of groups, campaigns, and activities directed at the rights of undocumented and non-citizen people living in Canada reveals that, unsurprisingly, most appear to be clustered in Vancouver, Toronto, and Montreal – the cities with the largest immigrant populations and with important and ongoing histories of anti-racist/immigrant rights organizing. In Vancouver, the Open the Borders!

group recently organized an international activist/academic conference on displacement, borders, and immigration with a view to building a movement for no borders.[31] Not long after, and in a striking illustration of what is at stake for non-citizen people, an Iranian woman scheduled for deportation broke free at the Vancouver airport and made a dramatic bid for escape – only to be apprehended and deported not long after.[32] Meanwhile, hundreds of other non-status people in that city's Chinese and Iranian communities have begun to organize.

In Toronto, STATUS Coalition formed in May 2001, when a group of undocumented Latino men in the construction sector approached a Toronto lawyer about their situation; the lawyer in turn put out a call to agencies serving immigrants to see who might be interested in initiating a campaign for legalization as part of the lead-up to the new immigration bill. The Ontario Coalition Against Poverty, also based in Toronto, has expanded its powerful and galvanizing direct action approach to housing and poverty issues to include immigration casework, including undocumented people and refugees.[33] Other groups are leading a host of related campaigns including exposing immigration detentions at Toronto's Celebrity Inn; working with migrant agricultural workers on temporary work permits; and developing among Church-affiliated people a sanctuary movement for refugees now that the "safe third country agreement" is effectively a reality. Still others, in both Toronto and Ottawa, are contesting the terms of the national security state by challenging the use of secret trials and security certificates, while activists in smaller Ontario cities such as Guelph have resisted plans to build detention centres in their communities.

Montreal is home to the country's most visible and well-known campaign for legalization, one that provides important testimony to what may be accomplished even in unfavourable conditions when non-status people self-organize, mobilize both women and men, insist on speaking for themselves, and build a campaign with committed allies.[34] In the spring of 2002, the federal government removed Algeria from the short list of countries to which Canada does not deport; for Quebec's failed Algerian refugee claimants, more than one thousand in number, it was deeply disturbing news. They were to be deported to a country locked in a decade-long and deadly violent conflict – an Algeria so dangerous that the Canadian government to this day warns its citizens to avoid tourist visits there. In response, the Comité d'action des sans-statut algériens (CASSA) advanced three basic demands: (1) stop the deportations; (2) return Algeria to the moratorium list; and (3) regularize non-status Algerians. By the fall of 2002, the last demand had expanded to include a call for the legaliza-

tion of all non-status people living in Canada, a move that recognized the slow but growing support for such a demand in other parts of the country, particularly Toronto.

Working with the allied group, No One Is Illegal, and with the support of numerous individuals and labour, faith, and women's organizations, the Comité has put together a well-organized campaign of activities, one which has included holding press conferences and rallies, making unscheduled visits to immigration offices, seeking sanctuary in a church, and giving public talks in Montreal and Toronto – all of which have garnered a significant amount of press coverage in both French and English. Much of the coverage is sympathetic to the claims of the non-status Algerians – particularly striking given that the campaign began not long after the events of September 11 and Montreal's Algerian community had been targeted as home to terrorist plots. CASSA members and their allies have repeatedly drawn attention both to dangerous political conditions within Algeria and also to Canada's complicity in constructing that country as "safe" for North American business interests – and for sending people back "home." Indeed, as more than one analyst has argued, the two go together in the current neo-liberal order: within the EU, for example, "repatriation agreements" are becoming "an explicit condition of new trade deals: We'll take your products, the Euros say to South America and Africa, as long as we can send your people back."[35]

Certainly, the French-language ability of many Algerians has been a major asset in enabling the community to speak directly to Quebec's francophone media and immigration officials at all levels; in this regard, they have an advantage not enjoyed by those non-status people who are not fluent in English or French, and who may also lack effective allies who can act as interpreters. Secondly, CASSA members have insisted on their claims *as refugees*, and indeed such a strategy is important in a context in which claims for the right to stay of non-status *immigrants* can often, by comparison, be more difficult to argue successfully. Bob Sutcliffe put it succinctly in a recent article: "Political migrants are in principle characterised as helpless victims who deserve help. Economic migrants are increasingly portrayed as selfish, grasping people, only out to get more money. The distinction has therefore been made into a moral one between good and bad migrants."[36] Yet it must also be acknowledged that the category of "political migrant" or "refugee" is itself increasingly under attack in neo-liberal context[37] and the figure of the "bogus refugee" is ubiquitous in popular immigration debates; indeed, the resignification of all the terms we have been used to working with in immigrant and refugee rights campaigns suggests that the strategic implications of working within and against state

categories such as "immigrant" and "refugee," among others, will need to become the focus of greater scrutiny and reflection by activists.

These diverse formations and campaigns in Vancouver, Toronto, and Montreal are exciting and many are breaking new ground; it would be a big mistake, however, to assume that they necessarily share the same origins, base, or political outlook and strategy. However, some preliminary observations may be made about some of the actors involved in such campaigns. It is clear that a "no borders/no one is illegal" politic is capturing the political imagination of many anti-globalization and anti-war activists, many of whom are younger people of colour with immigrant or refugee backgrounds and who want a much stronger anti-racist analysis integrated throughout these movements. Clearly, this is reflective of some of the international conversations in the anti-globalization movement. Radical anti-deportation, anti-detention, and no-border campaigns in Europe and, more recently, Australia are one obvious major influence, but conditions in Canada are also radicalizing many. These conditions include increasing detentions, deportations, racial and national profiling, surveillance, and the inhumane treatment afforded to failed refugee claimants or to those, such as the Asian migrants of a few years ago, who arrive at the country's borders and shores.

Tired of the racism, and not inclined to take up old defensive arguments about "the contributions of immigrants to Canada," or indeed about the basic fairness and soundness of the immigration system in the face of attacks on it from the right, younger activists are elaborating a different political language. Rejecting the binaries of "good immigrant"/"bad immigrant," "legal"/"illegal," and "political refugee"/"economic migrant," it is a politics that speaks both to the causes of displacement globally, and to the right of people to move across borders freely with full labour, social, and citizenship rights. It is a politics that, for some, may also be explicitly linked to an anti-national and anti-colonial perspective, and one which attends to the need to bring together Aboriginal rights and im/migrant rights through a common critique of displacement, dispossession, and the power of nation-states to construct regimes of racialized citizenship.[38]

It is important not to overestimate the strength of these autonomous groups; many are relatively new and somewhat fragile, and all are under-resourced. Whether led by those most directly affected (CASSA, for example) or by their allies, such organizations typically have very low or no budget and, consequently, no staff. Typical of grassroots organizations, the work is often highly labour-intensive and unpaid, and involves a willingness to confront bureaucra-

cies and officials head-on. Such an approach differs distinctly from that of more long-standing refugee rights groups or agencies serving immigrants – many of which have long emphasized strategies based on lobbying and changes to the law, and many of which may be reluctant to publicly defend those whom the State constructs as "illegals," much less advocate an "open-the-borders" position. Unlike in the United States, where legalization for that country's millions of undocumented remains (even after September 11) the central demand of the immigrant rights movement, some more established immigrant/refugee rights groups in Canada have sometimes viewed the call for legalization (never mind opening the borders) with what could be described as a lack of enthusiasm. Service agencies facing funding cuts, restructuring, and a conservative political climate may be unwilling – or too burdened by existing demands – to implicate themselves in high-profile campaigns.

At their best, allied organizations may embody what is best about a grassroots organizing approach: working directly with those most affected – whether they be detained, undocumented, migrant workers, refugees, deportees – in order to make concrete change in everyday lives and, in the process, democratizing knowledge and analysis about the law and much else. The emphasis is on collective decision-making, democratic involvement of affected and allied people, and building solidarity. At other moments, the immense amount of work involved – especially in defending individual cases – may mean that little energy is left over for broader community organizing, much less sustaining long-term campaigns around immigration and borders. Yet, as activists acknowledge, in the absence of national co-ordination – and, ultimately, transnational alliances of all kinds – gains will be limited. Hard-won interim or partial successes in individual immigration cases or, more rarely, an affected community (such as the Algerians) are simply not translated into long-term transformations.

National co-ordination of work in Canada is still, for the most part, in formation, although there was an important "No One Is Illegal" demonstration in Ottawa in June 2002 as part of the G8 protests. More recently, a February 2003 conference in Montreal brought together activists from that city, Vancouver, Toronto, Ottawa, Guelph, and other communities with a view to developing a co-ordinated, long-term campaign with a core set of demands, a basis of unity, a plan of action, and an organizational structure flexible enough to accommodate existing local formations/campaigns while still able to sustain effective, ongoing work in a variety of centres.

So, what now? On both sides of the Canada/U.S. border, immigrant rights movements and organizations have been regrouping, rebuilding and rethinking strategy since September 11. In the Canadian case, as we have seen, significant

new organizing has in fact emerged *since* September 11 in spite of – and indeed because of – conditions that by the day become more deeply unfavourable. In what follows, I want to comment on some of the broad strategic dilemmas currently facing activists; such an analysis ultimately needs to consider how to bring together political questions that were alive well *prior* to September 11 (for example, struggles around Aboriginal self-determination or the deportation of Afro-Caribbean people[39]) with the newer challenges and racialization processes/targets we currently face. My focus here will be on Canada and the United States. While many activists have been most influenced by European and Australian no border/no detention organizing, the fact is that Canada's geographical and political/economic relationship to the American empire needs to be the focus of some serious analysis, reflection, and cross-border action. It is in this context that the lack of ongoing co-ordinated work between activists on either side of the Canada/U.S. border emerges as a very serious weakness. My analysis will necessarily remain partial and preliminary given the sheer number of changes that have occurred since September 11, as well as their far-reaching implications, not all of which are clear. Moreover, the so-called "war on terrorism" – which many have argued is in essence "a war for U.S. globalism" – has created a very volatile political context which continues to shift quite rapidly.[40]

What *is* abundantly clear is that, as one U.S.-based activist commented, "The 'homeland defense' agenda and the war are two parts of the same thing."[41] In his provocative essay on the "manufacturing of nationalism," Neil Smith suggests a way to elucidate this relationship by asking, "A global event and yet utterly local: how did September 11 become a *national* tragedy?"[42] His essay details some of those national practices in the immediate aftermath of September 11, all of which were reinforced – and yet simultaneously revealed for analysis – by anxious media silences, gaps, and outright censorship. One move, as we have seen, was to "nationalize the victims" as Americans ("Why do they hate us so much?"); but others included immediately shutting down the borders and airports; defining terrorism to exclude "Americans"; and closing the stock exchange for several days, thus "revealing in stark outline the very real fusion (and confusion) of an ideological Americanism with the interests of global capitalism."[43] If national victims had to be identified, so too did national enemies – both abroad (Afghanistan, then Iraq) and, crucially, at home. Racial and national profiling – and much else – has been the result. The ideological and practical work of constructing the WTC attack for American nationalism was necessary in order to lay the groundwork for the violence and war that followed since "nationalism *is* the discourse of war under

modern capitalism, in which the national state has cornered a monopoly on violence. In this case it is a national monopoly over violence asserted at the global scale."[44]

One clear dilemma is that, despite the emergence of an international anti-war movement unprecedented in human history, its North American wing simply does not (yet) have the strength to turn back the discourses/practices of homeland and national security. But without a highly organized and broad anti-war movement which clearly addresses both the war and domestic racism, the rights of immigrants of whatever status, as well as of citizen people of colour, will continue to erode dramatically, for "national security" is an extremely powerful and mobile discourse. As Kinsman, Buse, and Steedman state, "Under its regime, those who are defined as 'security threats' can be excluded from regular human and citizenship rights."[45] The detentions, semi-secret trials, and abuses of all sorts currently taking place on both sides of the border (and beyond, as in Guantanamo) provide ample evidence. General calls at anti-war rallies and forums to defend civil liberties, including those of immigrants, refugees, and racialized communities (particularly Muslims, South Asians, and Arabs) are certainly important at one level; they are also wholly inadequate given the dimensions of the racist nationalism that we are dealing with here.[46]

A broad key strategic point, then, is that we must understand immigration and anti-racist politics as deeply bound up with anti-war politics, and vice versa. In Canada, we are seeing some renewed public debate about U.S. imperial power as we are pulled ever deeper into the American empire. Deeply important as this opening has been, the force of such critiques has often been blunted by perspectives that centre the "loss of Canadian sovereignty" as the key issue; one challenge, then, is to develop a very different kind of analysis, one that asks the questions from the standpoint of immigrants, refugees, undocumented people, and racialized communities.[47] This means, among many things, challenging directly the discourses of nationalism and "national security." We have to continually ask: whose security? whose nation? In Canada, this poses a number of particular difficulties. For a start, the national security apparatus in Canada has, historically, been *more* secretive in fact than the American one. Second, despite important books such as the accessible academic collection *Whose National Security?* (on the history of state surveillance and its targets) and journalist Zuhair Kashmeri's *The Gulf Within*[48] (on the harassment of Arabs and Muslims in Canada during the Gulf War), it is striking how few people seem to have a working knowledge of even the recent history of the security apparatus in Canada; one consequence of this has been that the iconic memory that was frequently invoked

in debates and forums about civil liberties and "national security" in the months after September 11 was that of McCarthyism and Cold War United States.[49] Yet, without that historical memory and analysis, we will not be able to identify some of the continuities (as well as discontinuities) with past national security practices; for example, in the wake of September 11, agencies and services for immigrants were to obtain security clearances for their employees as an "anti-terrorism" measure, a move that clearly recalls security and surveillance campaigns directed against immigrant communities in Canada during the post-World War II period.[50]

Challenging the terms of "national security" also means resisting any move to re-frame existing immigration campaigns within that discursive framework. In the United States, for example, some have sought to present the demand for legalization of undocumented people as a security measure. As an activist with the Border Network for Human Rights commented, "I have fears that some people, including our *companeros* in unions, believe the only way to get legalization is to define it as an issue of national security, as a process for identifying everyone."[51] The undocumented movement in the U.S. gained significant ground by forming a key alliance with the labour movement; therefore, the AFL-CIO's reaffirmation in December 2001 of support for legalizing undocumented workers was very important. But the AFL-CIO's official position in support of the war on Afghanistan, and its acceptance of limitations on the rights of non-citizen workers, was a major, though not surprising, setback.[52] (U.S. trade union opposition to the more recent war on Iraq, it should be noted here, is a welcome development.)[53] On this side of the border, and to its credit, the official labour movement in Canada has been far less enthusiastic about American-led wars, and a post-September 11 statement by the Canadian Labour Congress (CLC) warns of the abuses of "national security" arguments for trade unionists. Moreover, CLC vice-president Hassan Yusef spoke publicly in favour of legalization of the undocumented at a forum organized by STATUS in Toronto in December 2001.[54] But new challenges are constantly appearing. The recent finding by Canada's Auditor-General, Sheila Fraser, that some thirty-six thousand "illegals" have not been deported or accounted for is being framed as a security issue by the media.[55] The various groups calling for legalization on this side of the border have for the most part resisted the move to pose status for undocumented people as a national security question. At the same time, the campaign for legalization – as in the United States – has been nowhere near strong enough to form a counterweight to border panics about "illegals" and security.

While campaigns for legalization of undocumented people in both Canada and the United States continue to be deeply necessary, we also have to confront the fact that, as Jane Bai and Eric Tang have argued for the U.S. case, "The 'war at home' has shifted the dividing line from documented vs. undocumented to citizen vs. non-citizen."[56] The post-September 11 context makes much starker what has always been a reality: merely being "legal" is never enough in the absence of full social, labour, and political rights. Being "legal" is little use if you can be easily detained and/or deported. Recent changes in U.S. legislation mean that the rights of non-citizens have once again been dramatically reduced, and Canada's new Immigration Act makes the deportation of non-citizens easier. Canadian Prime Minister Jean Chretien further underlined these realities by his stunning refusal to defend the rights of permanent residents in Canada facing racial and national profiling in the United States: "If they do not have a Canadian passport, it's no longer my problem…Let them become Canadian citizens, and we will protect them."[57] But the fact is, as Bai and Tang also acknowledge, *citizen* rights of people of colour are always precarious; the aftermath of September 11 has dramatically served to highlight this once again. The Canadian state appears unwilling to vigorously protect the rights of Canadian citizens apprehended, detained, or kidnapped by U.S. authorities; figures such as Shakir Boloch (detained in the U.S. for months)[58] or Maher Arar (still detained in Syria) come to mind. Challenging the terms of racialized citizenship must, therefore, be added to the long list of political priorities for the current context; one immediate implication is that we need to challenge any attempt to further widen distinctions between citizen and non-citizen, and also distinctions *within* those categories.

A key part of the U.S. "homeland defense" agenda – with its racial and national profiling, arbitrary detentions, destruction of civil rights, and much else – is bringing Canada and Mexico into it through the creation of a so-called "security perimeter." Naomi Klein has commented recently that the U.S. is constrained both to lock down its northern and southern borders *and* to demonstrate to business interests that delays at the border will not cost them money – currently a serious problem. The way around this apparent conflict in imperatives is to harmonize borders and make Fortress NAFTA: "How do you have air-tight borders and still maintain access to cheap labor? How do you expand for trade, and still pander to the anti-immigrant vote? How do you stay open to business, and stay closed to people? Easy: first, you expand the perimeter. Then you lock down."[59] The U.S. has exerted serious pressure on both "Canada and Mexico to harmonize their refugee, immigration and visa laws with US policies."[60] The ongoing and

active ideological construction since September 11 of Canada's border as porous and as a conduit for "terrorists" to cross into the United States must be understood in this light.[61]

One of many ways that the terms of the security perimeter might be challenged is from the standpoint of policing, prisons, and detention. Ontario's current Minister of Public Safety and Security is highly committed to a detention system along the lines of the now-notorious Australian one.[62] It is also clear that one key component of the practical implementation of the security perimeter is the greater integration of policing *across* borders, as well as *within* each country, as Toronto's recent Great Lakes Security Summit makes clear. U.S.-based activists Bai and Tang, in an analysis of "The War at Home," argue that what can potentially provide a unifying focus for U.S. anti-racist and immigration rights activists post-September 11 is renewed organizing directed at policing and "the prison industrial complex" because they are now being dramatically reorganized and expanded to target a whole new range of non-citizen and undocumented people in addition to the African-Americans and aboriginal people who have been in the past, and who continue to be, among those most likely to be racially profiled and incarcerated.[63] Their analysis is aimed at linking contemporary immigrant rights agendas with the historic struggles led by African-American and Aboriginal people – struggles that are often articulated separately in the U.S. context. While policing, prison, and detention struggles in Canada have differed in some important ways from their U.S. counterparts, as have the respective social movements, such a political focus could be potentially unifying of aboriginal, anti-racist, and immigrant/refugee rights groups in Canada as well. In short, as Bai and Tang bluntly put it: "The immigrant rights movement can ill-afford to view state violence as peripheral to its long-term core issue, legalization of the undocumented."[64]

In recent years, we have seen the development of striking new campaigns across Europe, the United States, and Australia as refugees, immigrants, migrant workers, undocumented people, and their allies have sought to challenge controls over the right of people to move freely within and across borders. France and the United States offer particularly striking examples of undocumented people as *political agents*, and in both of these settings the struggles of non-status people have captured the imagination of numerous allies, artists, and political theorists. Campaigns emerging in Canada – among them renewed calls for the legalization of undocumented people; self-organizing by non-status people themselves; anti-deportation/anti-detention work, defense and sanctuary – have clearly been influenced by local developments, but also by transnational conversations within the no-border and anti-globalization move-

ments and by the campaigns for legalization south of the border.

In the United States, where millions of undocumented people live without status and full labour rights, immigrant rights campaigns have focused on the call for amnesty and have clearly demonstrated what American political theorist Bonnie Honig describes as "the potential power of the undocumented as political actors, labor organizers, and community activists."[65] Her work reminds us that, while anti-immigrant legislation, policy, and practice may appear to be about keeping (some) people out, the dependence of the U.S. economy on their labour suggests that the goal has been not so much stopping cross-border migration but criminalization – and making the costs of political agency and visibility too high to be sustained by immigrant communities.[66] But mass organizing by immigrant communities and their allies continued in spite of this ongoing criminalization and, after years of setbacks, it was finally looking like it might pay off as legalization began to seem like a realistic political possibility.

However, the events of September 11 – immediately appropriated for a U.S. nationalism bent on war – have led to a "homeland security" agenda that has exacted a terrible toll on all projects for racial, economic, and gender justice in the United States and will have lasting effects on the political mobilization of immigrant and racialized communities within the United States and also Canada for many years to come.[67] The so-called "security perimeter" is the extension of many aspects of the "homeland security" agenda to Canada and to Mexico; on the northern border front, this has been accompanied by numerous border panics about "terrorists" and "illegals," as well as calls for new powers of detention and much else. It has also dramatically underlined the need to internationalize our often locally and nationally bound immigration struggles.

Yet, there are some signs of hope: namely, an unprecedented anti-war movement, building in part on prior anti-globalization activism as well as on mobilization by people with origins in the regions most affected by war in the Middle East and Central Asia. Yet, on both sides of the Canada/U.S. border, there has been a failure to fully connect the anti-war movement with a clear and direct challenge to surveillance, detention, racialized citizenship, and national security logics. One way to do that, I have suggested, is to begin to examine current border panics and nationalisms from the standpoint of immigrants, refugees, and the undocumented. Legalization and other immigrant rights campaigns, for their part, now face more starkly than ever the problem of state violence and criminalization, and will need to reshape alliances and strategies accordingly. The stakes are now vastly higher than when Balibar wrote

his well-known manifesto in support of the French *sans-papiers*. But that fact changes nothing about his analysis. Of the undocumented, Balibar writes that they "have shown that their illegality has not been reformed by the state but rather created by it. They have shown that such a production of illegality, destined for political manipulation, could not be accomplished without constant attacks on civil rights…nor without constant compromises with neo-fascism and the men who promote it."[68] It is in this context that renewed challenges to borders, nationalisms, and state categories must be understood – not as unrealizable and utopian – but as democratic political projects directed at dismantling "global apartheid."[69]

Notes

1. I would like to thank Michelle Lowry and especially Peter Nyers for encouraging me to contribute to this special issue. I also want very much to thank Nandita Sharma who has shared her work and passionate engagement with these issues with me in many late-night conversations. Without the political commitment of many immigrant rights activists and groups with whom I have been deeply fortunate to work in solidarity, this article could not have been written – although it should not be assumed that they necessarily share the opinions expressed here. This article is a longer and much more developed version of talks I presented at two conferences: Open the Borders; and Sociology for Changing the World: Political Activist Ethnography. I thank the organizers of these conferences, as well as my audiences, for their support and discussion. Finally, thanks to Mary-Jo Nadeau for practical assistance of all varieties.

2. Etienne Balibar, "What We Owe to the *Sans-Papiers*," in *Social Insecurity*, ed. Len Guenther and Cornelius Heesters (Toronto: Anansi, 2000).

3. For an account of the impact of the "war on terrorism" on civil liberties in the U.S., see Michael Ratner, "Making Us Less Free: War on Terrorism or War on Liberty?" in *Implicating Empire: Globalization and Resistance in the 21st Century World Order*, eds. Stanley Aronowitz and Heather Gautney (New York: Basic Books, 2003) and the dossier on "Arabs, Muslims and Race in America" in *Middle East Report* 224 (2002). For Canada, see Ronald J. Daniels, Patrick Macklem, and Kent Roach, eds., *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill* (Toronto: University of Toronto Press, 2001).

4. Muneer Ahmad, "Homeland Insecurities: Racial Violence the Day after September 11," *Social Text* 72 (2002): 101.

5. Kirk Makin, "Automatic Deportation Law Hinders Justice, Experts Say," *Globe and Mail* (Toronto), 30 September 2002.

6. Sunera Thobani developed this analysis in a presentation at the conference on Racism and National Consciousness held at New College, University of Toronto, on 26 October 2002. See also her "Saving the West: Reflections on Gender, Race and the War on Terrorism," *Fireweed* 80 (2003): 9–34.

7. Daniel Stoffman, *Who Gets In: What's Wrong with Canada's Immigration Program and How to Fix It* (Toronto: Macfarlane

Walter and Ross, 2002). For a critique of earlier work on immigration by Stoffman, see Cynthia Wright, "Nowhere at Home: Gender, Race and the Making of Anti-Immigrant Discourse in Canada," *Atlantis* 24 (2000): 38–48.

8. For some beginning reflections on this, see Ahmad.

9. Floya Anthias and Cathie Lloyd, eds., *Rethinking Anti-Racisms: From Theory to Practice* (London: Routledge, 2002), 11; Ali Rattansi and Sallie Westwood, eds., *Racism, Modernity and Identity on the Western Front* (Cambridge, UK: Polity Press, 1994).

10. "The Case for Open Borders," special issue of *New Internationalist* 350 (2002); Teresa Hayter, *Open Borders* (London: Pluto Press, 2000). For a review of Hayter's book and others on the same theme, see Jacob Stevens, "Barring the Doors," *New Left Review* 12 (2001): 152–59.

11. Bill MacKeith, "Contribution to Vancouver Open Borders Conference, March 2002," (unpublished paper in the author's possession), 3. MacKeith is a member of Barbed Wire Britain Network to End Detention of Refugees and Migrants (UK). For more on Britain, see Hayter and also Anthias and Lloyd.

12. There are now a number of accounts of the *sans-papiers*. See, for example, Joanna Simeant, *La Cause des sans-papiers* (Paris: Presse de Sciences po, 1998). The website <www.gisti.org> offers current information on campaigns within France, including that of the *sans-papiers*.

13. Michael Hardt and Antonio Negri, *Empire* (Cambridge, Mass.: Harvard University Press, 2000), 213.

14. For a sense of the campaigns around refugees and detention currently being waged, consult Desert Storm online: <www.antimedia.net/desertstorm>. On the politics of race and nation in Australia, see Ghassan Hage, *White Nation: Fantasies of White Supremacy in a Multicultural Nation* (New York: Routledge, 2000).

15. On the myth of "immigrant America," see Bonnie Honig, *Democracy and the Foreigner* (Princeton: Princeton University Press, 2001). On immigrant rights activism, see Grace Chang, *Disposable Domestics: Immigrant Women Workers in the Global Economy* (Cambridge, Mass.: South End Press, 2000); Sasha Khokha, "Paper Chase," *Colorlines* 4 (2001): 26–29; Lisa Sun-Hee Park, "Navigating the Anti-Immigrant Wave: The Korean Women's Hotline and the Politics of Community," in *Community Acitivism and Feminist Politics: Organizing across Race, Class, and Gender*, ed. Nancy Naples (New York: Routledge, 1998); Amitava Kumar, *Passport Photos* (Berkeley: University of California Press, 2000); Lisa Lowe, *Immigrant Acts: On Asian American Cultural Politics* (Durham: Duke University Press, 1996); Elizabeth Martinez, *De Colores Means All of Us: Latina Views for a Multi-Colored Century* (Cambridge: South End, 1998); "The Immigration Backlash" special issue of *NACLA Reports* 29 (1995).

16. David Bacon, "Which Side Are You On?" *Colorlines* 4 (2001): 30–32.

17. Michele Waslin, "Immigration Policy in Flux," *NACLA Reports* 35 (2001): 34–38.

18. Chisun Lee, "The Other Disaster: Tough Times Ahead Bode Worst for City's Poorest," *Village Voice*, 16 October 2001.

19. Manning Marable, "9/11: Racism in a Time of Terror," in Aronowitz and Gautney, 7. I am also grateful to New York activist Humberto Brown for his analysis on these themes (personal communication).

20. Saskia Sassen, "Analytic Borderlands: Race, Gender and Representation in the New City," in *Race, Identity, and Citizenship*, ed. Rodolfo Torres, Louis F. Mirón, and Jonathan Xavier Inda (Oxford, UK: Blackwell, 1999).

21. Arturo Ignacio Sánchez, "From Jackson Heights to *Nuestra America*: 9/11 and Latino New York," in *After the World Trade Center: Rethinking New York City*, ed. Michael Sorkin and Sharon Zukin (New York: Routledge, 2002), 149.

22. Neil Smith, "Scales of Terror: The Manufacturing of Nationalism and the War for U.S. Globalism," in Sorkin and Zukin, 98.

23. Prithi Yelaja, "Seeking Shelter from the U.S. storm," *Toronto Star*, 9 March 2003. For a timeline of some of the policies and changes affecting immigrants, see "Under Homeland Security," *Colorlines* 6 (2003): 18–19. For accounts of organizing in response, see Liza Featherstone, "Fighting the War at Home," *The Nation*, 1 April 2002; Chisun Lee, "Defending America's Least Wanted," *Village Voice*, 15–21 January 2003; Ahmad, 111–12.

24. Mike Davis, "Magical Urbanism: Latinos Reinvent the Big City," *New Left Review* 234 [old series] (1999): 3–43. See also the documentary *New World Border*, directed by Casey Peck and Jose Palofox (1999) and available from the National Network for Immigrant and Refugee Rights, online: <www.nnirr.org>.

25. Paul Knox, "Bin Laden Blues with a Latin Beat," *Globe and Mail* (Toronto), 28 November 2001.

26. "Trading Citizenship for a Terrorism Tip [editorial]," *Globe and Mail* (Toronto), 3 December 2001.

27. For discussion, see the online newsletter of the National Network for Immigrant and Refugee Rights at <www.nnirr. org>. Thanks to Nandita Sharma for drawing my attention to recent legislative developments in the U.S.

28. Veteran immigrant rights activists will know the prior work on non-status people. See, for example, the conference kit from "Living Without Status: Human Rights Underground," held in Toronto, 2–3 March 1998 (in author's possession). On the history of prior legalization schemes in Canada, see Freda Hawkins, *Critical Years in Immigration: Canada and Australia Compared*, 2nd ed. (Montreal: McGill-Queens, 1991). For a rare account by a non-status person from the Caribbean, see Haile Telatra Edoney, *Cry of the Illegal Immigrant* (n.d. but c.1970s; photocopy in author's possession). The story of the "paper sons" within the Chinese-Canadian community can also be set within the context of a long history of challenges to the State production of illegality. For the story of one "paper son" who died without citizenship after almost fifty years in Canada, see Nicholas Keung, "Final dignity for a homeless man," *Toronto Star*, 11 March 2002.

29. Valerie Lawton and Allan Thompson, "Still in Canada? No One Knows,"
   Toronto Star, 7 October 2001.

30. Lauren Berlant, "The Face of America and the State of Emergency," in *Disciplinarity and Dissent in Cultural Studies*, ed. Cary Nelson and Dilip Parameshwar Gaonkar (New York: Routledge, 1996).

31. The conference "Unsettling Imagi(nations): Towards Re-configuring B/orders" was held in Vancouver, 22–24 March 2002. For discussion, see Cynthia Wright, "Open the Borders! Interview with Nandita Sharma," *New Socialist* 37 (2002): 5–9. For more on Open the Borders, see their website at <www.open-theborders.org>.

32. Rod Mickleburgh, "Woman's Escape an Embarrassment for Immigration," *Globe and Mail* (Toronto), 23 January 2003.

33. Michele Landsberg, "Officials Hound Woman Fighting Deportation," *Toronto Star*, 13 April 2002.

34. For an excellent account of the campaign of the non-status Algerians in Montreal, see the discussion in Peter Nyers, "Abject Cosmopolitanism: The Politics of Protection in the Anti-Deportation Movement" (unpublished paper, 2003, in the author's possession). I thank Peter for generously sharing his work with me. For more on the campaign, see the bilingual kit, "Press Clippings September–December 2002," available from the Comité d'action des sans-statut algériens. See also their website at <www.tao.ca/~sans-statut>.

35. Naomi Klein, "The Rise of the Fortress Continent," *The Nation*, 3 February 2003; available online: <www.thenation.com> (date accessed: 16 January 2003); Nyers, 33.

36. Bob Sutcliffe, "Migration Citizenship: Why Can Birds, Whales, Butterflies and Ants Cross International Frontiers More Easily than Cows, Dogs and Human Beings?" in *Migration and Mobility: The European Context*, ed. Subrata Ghatak and Anne Showstack Sassoon (New York: Palgrave, 2001), 76.

37. William Pittz, "No Safe Haven," *Colorlines* 5 (2002): 21–23; Thomas Wagner, "Blair Feels Heat over Get-Tough Plan for Refugees," *Toronto Star*, 28 January 2003. For some historical considerations on "refugee," see Saskia Sassen, *Guests and Aliens* (New York: New Press, 1999).

38. For more on these themes, see Wright, "Open the Borders! Interview with Nandita Sharma." For more on the intersection (and divergences) between aboriginal rights and immigrant rights, see Leslie Marmon Silko, "The Border Patrol State," *The Nation*, 17 October 1994, and the reflections on aboriginal sovereignty and diaspora peoples in James Clifford, *Routes: Travel and Translation in the Late Twentieth Century* (Cambridge, Mass.: Harvard University Press, 1997).

39. Simone Browne, "'Of Passport Babies' and 'Border Control': The Case of *Mavis Baker* v. *Minister of Citizenship and Immigration*," *Atlantis* 26 (2002): 97–108.

40. There is, of course, a large and growing literature in this area. See, for example, Tariq Ali, *The Clash of Fundamentalisms: Crusades, Jihads and Modernity* (London: Verso, 2003) and the author's interview with him, Cynthia Wright, "The Wars: Tariq Ali on Building Anti-war Movements, Debating the

'Civilization Mongers' and Narrating the History of Islam," *FUSE* 25 (2002): 28–40; Sunera Thobani, "War Frenzy," *Atlantis* 27 (2002): 5–11; Sedef Arat-Koc, "Imperial Wars or Benevolent Interventions? Reflections on 'Global Feminism' Post September 11th," *Atlantis* 26 (2002): 53–65; Aronowitz and Gautney; Sorkin and Zukin; Susan Hawthorne and Bronwyn Winter, eds., *September 11, 2001: Feminist Perspectives* (North Melbourne, Australia: Spinifex, 2002); "911 – A Public Emergency?" special issue of *Social Text* 72 (2002). For a fascinating historical account, see Melani McAlister, *Epic Encounters: Culture, Media, and U.S. Interests in the Middle East, 1945–2000* (Berkeley: University of California Press, 2001).

41. Julie Quiroz-Martinez, "For War and Workers?" *Colorlines* 5 (2002): 32.

42. Smith, 98. Emphasis in the original.

43. *Ibid.*, 101. For an excellent anatomy of the move to "nationalize" debate within Canadian context, see Mary-Jo Nadeau, "Who Is Canadian Now? Feminism and the Politics of Nation after September 11," *Atlantis* 27 (2002): 14–24; and Nadeau, "Towards 'A Peaceful Solution': NAC and the Politics of Engagement," *Canadian Woman Studies* 22 (2003): 48–55.

44. Smith, 104. Emphasis in the original.

45. Gary Kinsman, Dieter K. Buse, and Mercedes Steedman, eds., *Whose National Security? Canadian State Surveillance and the Creation of Enemies* (Toronto: Between the Lines, 2000), 281.

46. For a discussion of the limits of civil liberties responses, see Nadeau, "Who Is Canadian Now?" 16–18.

47. For a critique of Canadian sovereigntist perspectives, see the article by Nandita Sharma forthcoming in *Canadian Dimension*. Prior contributions to this debate may be viewed online: <www.canadiandimension.mb.ca>.

48. Kinsman, Buse, and Steedman; Zuhair Kashmeri, *The Gulf Within: Canadian Arabs, Racism, and the Gulf War* (Toronto: J. Lorimer, 1991).

49. For an exception, see historian Allan Levine, "Return of the Red Scare," *Globe and Mail* (Toronto), 2 January 2003. There has also been limited public discussion of the internment of Japanese-Canadians during World War II. For a superb discussion of memory in relation to this historical event, see Mona Oikawa, "Cartographies of Violence: Women, Memory and the Subject(s) of 'Internment,'" in *Race, Space, and the Law: Unmapping a White Settler Society,* ed. Sherene H. Razack (Toronto: Between the Lines, 2002).

50. Franca Iacovetta, "Making Model Citizens: Gender, Corrupted Democracy, and Immigrant and Refugee Reception Work in Cold War Canada," in Kinsman, Buse and Steedman; Allan Thompson, "Security Memo Angers Groups," *Toronto Star*, 19 November 2001.

51. Quiroz-Martinez, 32.

52. *Ibid.*, 31. On non-citizen barriers to work in Canada, see Kirk Makin, "Ruling Favours Citizens' Rights," *Globe and Mail* (Toronto), 9 March 2002.

53. Steve Early, "Why US Unions Turning against the War," *Boston Globe*, 1 March 2003.

54. Oral presentation by Hassan Yusef at Toronto forum organized by STATUS campaign, December 2001.

55. Campbell Clark, "Alarm Sounded over Border Control," *Globe and Mail* (Toronto), 9 April 2003.

56. Jane Bai and Eric Tang, "The War at Home," *Colorlines* 5 (2002): 29.

57. Campbell Clark, "PM Shrugs off Immigrants' Travel Trouble," *Globe and Mail* (Toronto), 6 November 2001. In protest, several organization, including the Canadian Arab Federation, Canadian Council for Refugees, and the Ontario Council of Agencies Serving Immigrants, wrote an open letter to Jean Chretien, 7 November 2002.

58. Estanislao Oziewicz, "Man Held 7 Months, Sent Home with No ID," *Globe and Mail* (Toronto), 17 April 2002; Chisun Lee, "INS Detainee Hits, US Strikes Back: Canadian Attempts Freedom on Habeas Suit but Gets Charged," *Village Voice*, 5 February 2002.

59. Klein, 10.

60. *Ibid.* See also Naomi Klein, "The Legacy of Austerity? A Really 'Great' Border," *Globe and Mail* (Toronto), 12 December 2001.

61. Lawrence Martin, "We Didn't Mess up, They Did," *Globe and Mail* (Toronto), 18 December 2001.

62. "Ontario Promises 'Humane' Detention Space," *Globe and Mail* (Toronto), 4 January 2002; Carolyn Zwarenstein, "Our Human Chicken Coop," *Eye*, 13 December 2001.

63. Bai and Tang, 29. Of course, detention of immigrants was a serious issue well prior to September 11. For one account, see Michael Welch, *Detained: Immigration Laws and the Expanding I.N.S. Jail Complex,* (Philadelphia: Temple University Press, 2002). For discussion of the "prison industrial complex," see Angela Y. Davis and Cassandra Shaylor, "Race, Gender and the Prison Industrial Complex: California and Beyond," *Meridians: Feminism, Race, Transnationalism* 2 (2001): 1–15.

64. Bai and Tang.

65. Honig, 82.

66. *Ibid.*

67. For an account of the impact of the Gulf War on Arab-American community formation, see Mervat F. Hatem, "The Invisible Half: Arab American Hybridity and Feminist Discourses in the 1990s," in *Talking Visions: Multicultural Feminism in a Transnational Age*, ed. Ella Shohat (New York: MIT Press, 1998).

68. Balibar, 42.

69. Anthony Richmond, *Global Apartheid: Refugees, Racism, and the New World Order* (Toronto: Oxford, 1994).

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Refugees from an "IDP" camp standing in line at Médecins du Monde's clinic. Refugees trapped inside the borders of their country are labeled "Internally Displaced Persons" by the United Nations. Zaranj. March, 2002.

AFGHANISTAN, 2002: NO REFUGE

PHOTOGRAPHY: Babak Salari
CURATION AND TEXT: Gita Hashemi

In the break between "evil regimes" and their former ally, the United States; in the rift between post-Soviet civil wars and post-September wars on civilians; in the breach between profit politics and people's well-being; in between the holes in the mountains where the Buddhas stood and those on the grounds where the bombs fall – what happens to the millions who do not make it to the "safety" of detention centres in the West? *Where is the refuge?* For the massive numbers of humans displaced and struggling for survival amidst the ongoing global strife – played out in their land, at their cost and ours – this question is an incessant preoccupation; indeed, it is life itself.

The tragic inadequacy of emergency aid services – such as we have seen in Kosovo, Afghanistan and Iraq – renders visible the fundamental flaws in our conceptualization of "aid" and, thus, its inherently structural failure: 1) The need for such "aid" services is created by the "emergency" political, economic and military wars that disenfranchise, displace and (literally) "disarm" civilians. 2) Therefore, the flow of "aid" – presumably from the global north to the global south – is a continuation of colonial power dynamics that mask enforced dispossession with missionary practices and rhetoric. 3) No wonder, then, that the majority of Western "aid" agencies are hugely inefficient bureaucracies that consume most of the resources for their own continuance.

The new forms of "aid" displayed in the state-corporation in-camera deal-makings – towards the "reconstruction" of the "liberated" countries on the one hand, and towards the incarceration of refugees arriving in the West on the other – rapidly renders current models of "aid" marginal and then useless. In this global "theatre" of "aid," indigenous grass-roots organizations – such as Revolutionary Association of Women of Afghanistan (RAWA) – provide the only viable alternatives that can aid (as opposed to applying Band-Aid™). Armed with their intimate knowledge of the local and refusing to divorce aid from the politics of the global, these organizations achieve such manifest success in attending to emergency *and* long-term needs of their communities that should help us re-conceptualize aid as sustained solidarity. Although much remains to be addressed and articulated about the ethics, politics, and forms of trans-border solidarity, one thing *is* clear: Solidarity acknowledges the inter-connectedness of our lives and destinies and, thus, our inherent equality. It is only within this conceptual space that we may begin to establish viable relationships and practical networks to change the political and economic conditions that produce massive displacement and trauma.

This essay is a partial account of the lives of Afghani refugees, on the move en-masse, within the borders of wars and lies about wars, between state violence and embedded reportage. Remember: Beyond a mere case study, Afghanistan is a land inhabited by real people: For the records: Afghanistan, 2002.

*A billboard
advertisement.
Khandehar.
April, 2002.*

The Liberation

*U.S. soldiers.
Khandehar Airport.
April, 2002.*

One of the bodies of a group of refugees who were killed, apparently, while attempting to cross the border to Iran. Corpses were found with their hands oddly and "inexplicably" stiffened mid-air. Zaranj. March 17, 2002.

Border Crossing

Burial of the group of refugees found "mysteriously" dead near the border to Iran. Zaranj Cemetery. March 17, 2002.

Living conditions in an "IDP" camp. Near Zaranj. March 13, 2002.

Tent City

Water delivery by Médecins sans Frontières in an "IDP" camp. Near Zaranj. March 13, 2002..

Refugees waiting outside
the Médecins du
Monde's clinic.
Zaranj.
March 13, 2002.

Aid

Headquarters of
Komite-ye Emdad-e
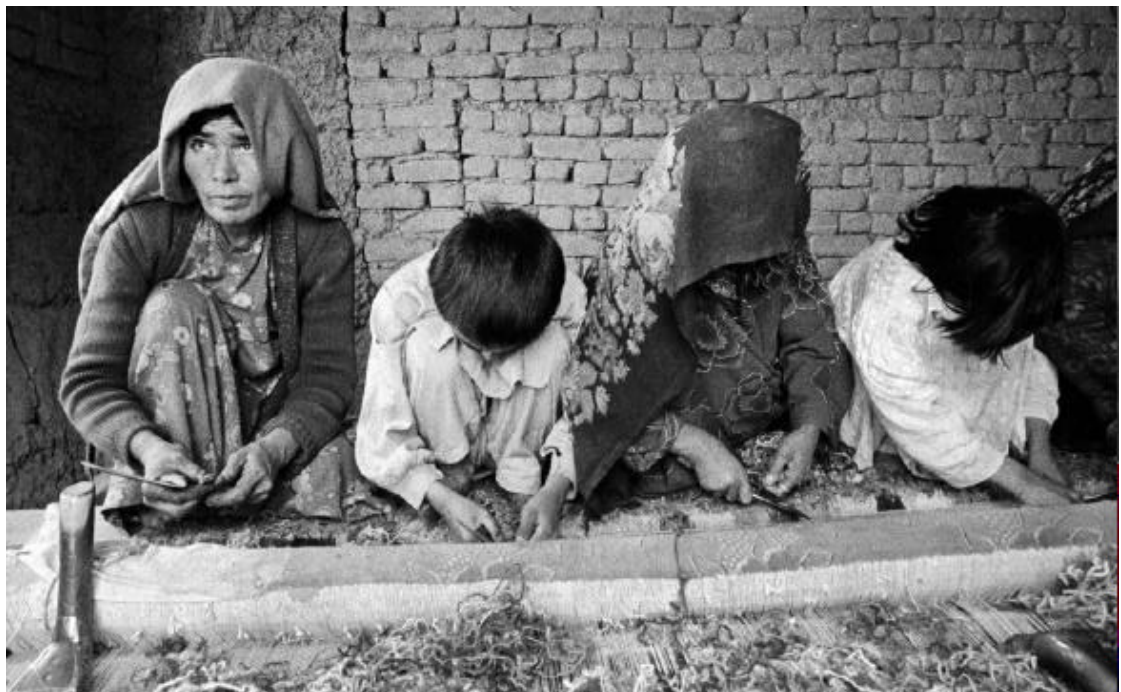Imam Khomeini (Imam
Khomeini's Aid
Committee, funded by
Iranian government).
Zaranj.
March, 2002.

Afghani refugees working at a brick factory (the figure in the foreground is a former high-ranking army officer). Charat Camp. Peshawar, Pakistan. February, 2002.

The Other Side

Afghani refugee women and children working at a carpet "factory." Charat Camp. Peshawar, Pakistan. February, 2002.
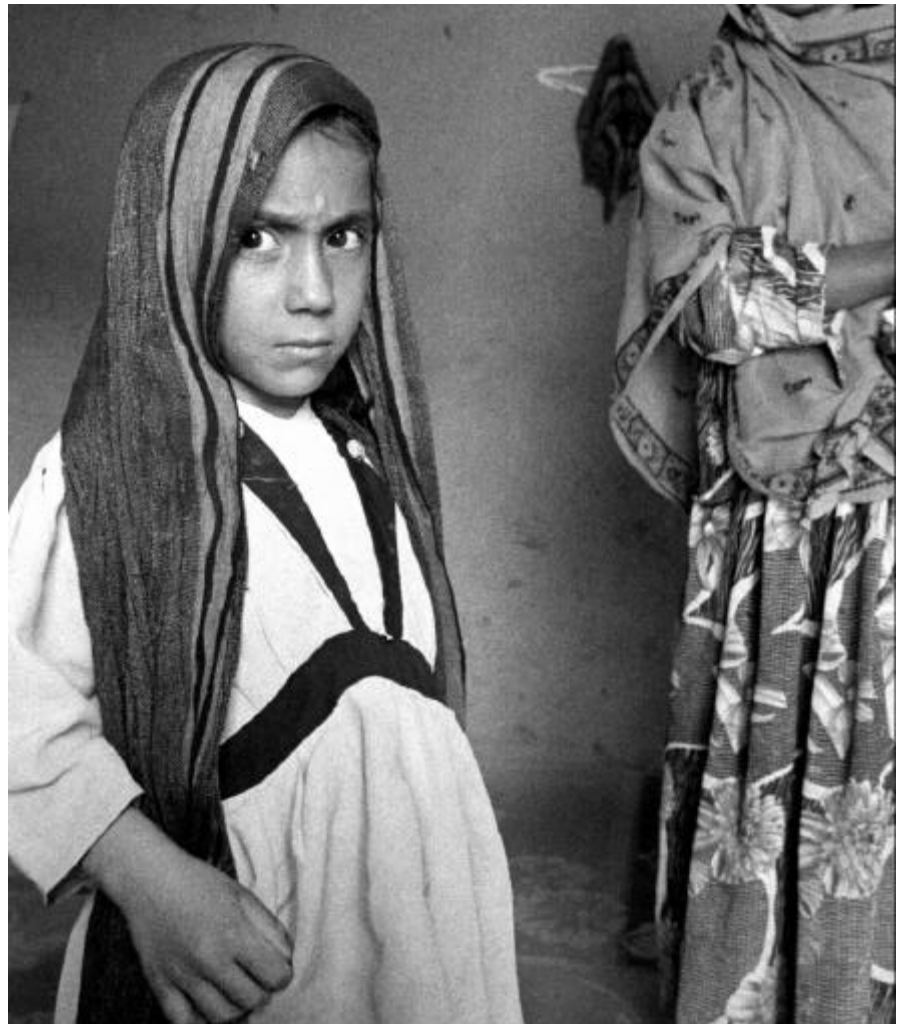
Girls at a school set up for orphaned children by Revolutionary Association of Women of Afghanistan (RAWA). Peshawar, Pakistan. February, 2002.

RAWA School

Boy's Dormitory at the school run by RAWA. Peshawar, Pakistan. February, 2002.

7-year-old refugee child suffering from severe trauma caused by witnessing her father's death in the war. Zaranj. March, 2002.

Babak Salari has been living and practicing in Canada since 1983. For the past two decades, he has presented his work to the public in a number of group and solo exhibitions. As a cultural and political activist, his photo-documentaries reflect his deep concern with people who live at the margins of society. Salari's work includes the following: People In Between*, reflected his own personal experience of marginality, and confronted the lived experience of rupture highlighting the reality of exile;* Time in Hjuchitan*, explored a small Mexican town's daily strife and anguish against the odds of global expansion;* I Am Naked, I Am Human*, addressed the practice of Islamic veiling (hijab) under fundamentalist rule;* Queer at the Margins of Society *and* Triangle of Desire *served as an account of the marginalized public practice of queer eroticism in Cuba, and candidly reflected the unique marginal experience of queer artists and intellectuals in that society;* Let Me Live, I Will Unveil Myself *captured the cry of Afghan war.*
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"Disturbing Practices": Dehumanizing Asylum Seekers in the Refugee "Crisis" in Australia, 2001–2002

Michael Leach

Abstract

Throughout late 2001 and 2002, the Australian Government, seeking re-election, campaigned on a tough line against so-called "illegal" immigrants. Represented as "queue jumpers," "boat people," and "illegals," most of these asylum seekers came from Middle Eastern countries, and, in the main, from Afghanistan and Iraq. This paper explores the way particular representations of cultural difference were entwined in media and government attacks upon asylum seekers. In particular, it analyzes the way key government figures articulated a negative understanding of asylum seekers' family units – representing these as "foreign" or "other" to contemporary Australian standards of decency and parental responsibility. This representational regime also drew upon post-September 11 representations of Middle Eastern people, and was employed to call into question the validity of asylum-seekers' claims for refugee status. Manufactured primarily through the now notorious "children overboard" incident, these images became a central motif of the 2001 election campaign. This paper concludes by examining the way these representations of refugees as "undeserving" were paralleled by new Temporary Protection Visa regulations in Australia.

Résumé

Tout au long de la période de la fin 2001 et de l'année 2002, le gouvernement australien, en quête d'un second mandat, mena sa campagne électorale en adoptant une ligne dure contre ce qu'il appelait les immigrants
« illégaux ». Représentés comme des « resquilleurs », « boat people » et « illégaux », la plupart de ces demandeurs d'asile provenaient de pays du Moyen-Orient, principalement de l'Afghanistan et de l'Irak. Cet article examine la façon dont une certaine image des différences culturelles a été tissée dans les attaques des médias et du gouvernement contre les demandeurs d'asile. Tout spécialement, il examine comment des personnages clés du gouvernement ont projeté une interprétation négative de la cellule familiale des demandeurs d'asile – les représentant comme étant « différentes » ou « étrangères » aux normes de la société australienne contemporaine en matière de décence et de responsabilité parentale. Cet ensemble de représentations mit aussi à contribution des images des gens du Moyen-Orient dans la période de l'après 11 septembre, et fut exploité pour remettre en question la validité des demandes des demandeurs d'asile pour le statut de réfugié. Fabriquées avant tout à partir de l'incident notoire « les enfants à la mer », ces images devinrent un leitmotiv de la campagne électorale de 2001. L'article conclut en examinant la façon dont ces représentations des réfugiés, comme étant « non méritants », furent accompagnées de nouveaux règlements introduisant un Visa de protection temporaire (« Temporary Protection Visa ») en Australie.

While there are many aspects of the Australian Government's approach to asylum seekers that are worthy of comment and critique, this paper focuses on the representation of refugees by the Government

and media throughout the so-called asylum-seeker "crisis" of 2001-02. I hesitate to use the term "discourse analysis" in this article, as the term often has an "agentless" sense to it – wherein social knowledges are constituted by the exclusion of other perspectives, but the actors involved are often vaguely defined.[1] In this case, I think the more appropriate term is *propaganda*[2] — in that the representational regime clearly emanated from the governing party and was publicized through official media sources (primarily ministerial press releases and interviews), with the apparent objective of stigmatizing a marginal group as part of a strategy for maintaining political power.

On 7 October 2001, at the commencement of the first week of the federal election campaign, the Government notified the media that a vessel of asylum seekers had been intercepted off the west Australian coast. A particular announcement was made at the press conference: Immigration Minister Philip Ruddock informed the media of reports that asylum seekers were "in the water," and, more disturbingly, that asylum seekers had "thrown their children overboard." Thus was born one of the most controversial and contentious incidents to have taken place inside an Australian federal election campaign for many years. To cut a long story short, nothing of the sort had happened at all. There was no evidence that children had been thrown overboard, and photos used to reinforce the story were known, a day after their release, to be from a separate rescue incident. Though the Defence Minister and the Prime Minister's office were separately informed that the story was false, the Government did not publicly correct it. Evidently, too much electoral mileage was being made. Eventually, a Senate inquiry into the incident would reveal a disturbing collection of untruths, failures to communicate, incidents of political advisors manipulating the flow of information to protect their minister, and unanswered question about who knew.[3]

This paper examines the Government and media representations of asylum seekers throughout the pre- and post-election period of 2001-02. In particular I examine the way the representations of refugees as "undeserving" were paralleled by new Temporary Protection Visa regulations in Australia. In a favourable climate of uncertainty that followed September 11, the federal Government focused their re-election campaign strongly on the issue of "border protection". Appealing to a wide cross-section of Australian society (and particularly to supporters of the right-wing populist One Nation Party), the Coalition Government promised that "we will decide who comes to country, and the circumstances under which they come."[4] Central to this message was the vilification of the asylum seekers on Suspected Illegal Entry Vessel (SIEV) 4. Through this, and other related campaigns, the Government sought to portray asylum seekers as unworthy of protection, and manufactured a rhetorical "crisis" of national sovereignty, borders, and national identity that would require a new "solution."

"Border Protection"

On 27 August 2001, two and a half months before the election, Australia refused entry to the Norwegian freighter *Tampa*, a vessel carrying 433 asylum seekers rescued from a sinking Indonesian ferry. Though the *Tampa* was only one of a number of arrivals in 2001, Prime Minister John Howard chose this vessel to flag a major change in Australian policy, vowing that the asylum seekers on the *Tampa* "would never set foot on Australian soil." On August 29 the *Tampa* entered Australian waters, and was prevented from reaching land by Navy vessels. After a six-day standoff, New Zealand, and, under some pressure, Nauru, and eventually Papua New Guinea agreed to accept the asylum seekers for processing. Thus was born the "Pacific solution" to Australia's so-called refugee "crisis."[5] In September, the Government excised certain island territories from the migration zone. Justifying their actions, the Government warned of five thousand more asylum seekers in Indonesia. Ruddock spoke of "whole villages in Iran" en route to Australia.[6]

Within weeks of this event, long-standing uses of terms such as "floods" or "waves" of refugees to represent unauthorized arrivals as a threat to the integrity of the nation-state[7] would be heightened by post-September 11 fears of Arabic and Muslim peoples. In what can only be considered a calculated manipulation of public opinion, the Government's selective and distorted release of information throughout this period promoted attitudes of fear and resentment towards asylum seekers.[8] This agenda came to a head two days into the federal election campaign.

"Children Overboard"

On 7 October 2001, a communiqué was phoned in from HMAS *Adelaide*, reporting that SIEV 4 had entered Australian waters. Onboard the vessel were 219 asylum seekers, the vast majority of them from Iraq. At 7:30 a.m. the HMAS *Adelaide* fired warning shots ahead of the boat, and at 7:35 the vessel was boarded. At this point, a few people jumped into the water, later reboarding the boat. Commander Banks of the *Adelaide* reported an asylum seeker "preparing to throw a child overboard." At some point in the chain of reportage, the word child became "children," and the word "preparing" was dropped altogether. At 9:50 a.m. Minister Ruddock was informed. Without any supporting documentary evidence, a press conference was called at 11:30 a.m.[9]

"With the intention of putting us under duress," Ruddock announced, asylum seekers had "thrown their chil-

dren in the water." He went on to say that he regarded these as "some of the most disturbing practices I have come across in public life…clearly planned and premeditated." Following suit, the Prime Minister quickly went public. A theme that would shortly become a prominent motif of the election campaign emerged forcefully. Asylum seekers were publicly declared to be undeserving, with value systems deeply foreign to those of Australian society. In particular, the asylum seekers were represented as hostile or foreign to Western attitudes towards family and children.

What sort of parents would throw their children overboard? Not a genuine refugee, suggested the Prime Minister:

> I don't want in Australia anyone who would throw their own children into the sea. There's something to me incompatible between somebody who claims to be a refugee, and somebody who would throw their own children into the sea. It offends the natural instinct of protection, and delivering security and safety to your children.[10]

For Prime Minister Howard and his front bench, this episode would be represented as an affront, an inexplicable and repellent form of cultural difference which must be neither recognized nor given legitimacy by soft Government action. The asylum seekers would be deported to Nauru or Papua New Guinea; they would not be given permission to land. Asked how old the children were, Ruddock replied:

> I don't have that detail, but I imagine the sort of children who would be thrown would be those who could be readily lifted and tossed without objection from them, but I don't have that level of detail.[11]

So, the Government speculated, they must have been young children – young enough not to be able to voice objections. Naturally, by 9 October, media demands for more information had the Prime Minister under pressure. Howard asked the Defence Minister, Peter Reith, for evidence. Shortly afterwards, the Defence Minister's media advisor, Ross Hampton, demanded documentation from the Department of Defence. Defence reported at this point that there was "no evidence we could find" that children had been thrown overboard. Nonetheless, on 10 October, Hampton released photos of a woman and a child in the sea, purportedly taken on 7 October.

Later on the 10th, in a radio interview, the Defence Minister referred to the newly released photos, claiming it was an "absolute fact that children were thrown overboard." A Senate inquiry would later discover no evidence that children had been thrown in the water and, further,

that the Government had been informed of this as early as 9 October. Misleading photos had been produced on the 10th.[12]

As the Senate inquiry later revealed, the photos were in fact taken on 8 October, when the boat in question, SIEV 4, started to take on water. People had jumped overboard because the vessel was sinking,[13] and indeed, much later, evidence was given which suggested the Navy had ordered everyone to jump off so they could be picked up.[14] The released photos were part of a series documenting the Navy's rescue operation.

On the day the photo was released, public affairs chief Brigadier Gary Bornholt of Defence informed Ross Hampton that the photos were not from the 7th, but from the 8th, when the boat sank. Hampton later claimed that he "never received" the call. The next day (11 October), the Prime Minister's department directly approached Defence for further information. Defence confirmed their advice that there was "no indication that children had been thrown overboard."

By 8 November, just two days before the election, leaked reports from sailors on Christmas Island had started to cast serious doubts on the Government's version of events.[15] In an effort to deflect increasing scepticism from journalists, Defence Minister Reith released a Navy video of the incident, warning that it was "grainy" and possibly inconclusive. The video showed a man standing at the railing on the boat holding a child. It did not show children thrown overboard.

It was later revealed that Reith told the Prime Minister of departmental doubts over the photos on 7 November. Nonetheless, at a press conference on 8 November, the Prime Minister did not mention these official misgivings when questioned about the now famous photos. Indeed, the pattern of stigmatization continued. Quoting from an Office of National Assessments (ONA) report, the Prime Minister repeated the slightly modified assertion that "asylum seekers wearing life jackets jumped into the sea and children were thrown in with them." The ONA report was in fact a summary of earlier ministerial statements, rather than an independent Government report.

As the official interpretation of events started to falter, the Prime Minister tried a new tack. Even if the asylum seekers had not thrown their children overboard, he suggested, they were the sort of people who would. He announced, "[S]uch tactics have previously been used elsewhere, for example by people smugglers and Iraqi asylum seekers on boats intercepted by the Italian Navy."[16]

This episode illustrates a pattern of dehumanization, with a specific discourse concerning asylum seekers' family values — representing these as "foreign" or "other" to

contemporary Australian standards of decency, parental responsibility, and gender identity. This representational regime also drew upon post-September 11 representations of Middle Eastern people, and was employed to call into question the validity of asylum-seekers' claims for refugee status, painting these as "undeserving."

Family Values

Further examples of this particular pattern of dehumanization were evident in other Government press statements. In 2000, the Western Australian Liberal Senator Ross Lightfoot described unauthorized arrivals as "queue jumpers," "criminals," and "lawbreakers." The release went on to say, "several of our callers have questioned the morality of the male refugees for abandoning their wives and children in their poverty stricken war-torn countries, and for using their families' life savings to escape to a life of comparative comfort." Moreover, Lightfoot argued, asylum seekers threaten our democratic principles with "their prejudices and intolerances."[17] This additional theme of cultural difference as "threatening" to the body politic connected with existing populist resentment over multiculturalism, recently stirred up by the right-wing populist One Nation Party.

Back in the election campaign of October 2001, the slurs continued. Foreign Minister Alexander Downer remarked, "[A]ny civilised people would never dream of treating their own children that way."[18] Through Liberal Senator George Brandis, the Government also made claims that "a potential illegal immigrant [had] attempted to strangle a child." The following February, a Senate inquiry found that Navy witness statements reportedly relating to this alleged episode did not exist.[19] Similarly, in November, while under pressure concerning the illegal detention of fifty-three solo children, Immigration Minister Ruddock claimed "that children of asylum seekers were often sent solo into Australian waters so the Government would be forced to accept their families."[20]

For its part, the Australian Labor Party (ALP) maintained a complicit silence, fearing a populist electoral backlash. It was a position difficult for many members, and one which alienated many progressives from their support base. Indeed, the nadir of political point scoring on this issue possibly occurred shortly after 353 asylum seekers drowned en route to Australia. In this instance, it was the opposition leader who took the opportunity, immediately after news of the tragedy had broken. Referring to the incident solely as a "failure of policy," he argued that "we have not got the agreement we need with Indonesia in order to be able to ensure that those who put themselves in such danger are not encouraged ... to come to this country."21 Inside the election campaign, it appeared that the populist imperative of exclusion would override all considerations of human sympathy.

Later, the Government reflected upon this tragic episode in terms of the personal responsibility of the asylum seekers. While expressing deep regret for the tragedy, Ruddock maintained that he was not "going to be made to feel guilty about people who put themselves in the hands of smugglers and who pay large amounts of money knowing that they're going to break our law."[22] He also claimed that 90 per cent of those on the boat were seeking "family reunion outcomes" rather than refugee status, and should have stayed in Indonesia where they were "safe and secure."[23] These comments resonated with Ruddock's earlier views on parental and familial responsibility, made after a group of asylum seekers had drowned near Ashmore Reef in December 2000. Ruddock noted in a press release that he found it "very difficult to comprehend" that any refugees in Australia would "willingly break the law to help their relatives – often young children – embark on such a dangerous and ill-advised journey."[24]

Clearly, asylum seekers could not win. They were "immoral" if they left their wives and children behind in third countries to undertake perilous voyages to find asylum, and then sought family reunion. When denied the possibility of family reunion by Government policy, they were "irresponsible" if they brought their wives and children on these dangerous voyages.

After the election, a new opposition leader chimed in with a distinctive take on the issue, again using conceptions of the family as the key means of representing and explaining the issues at stake. Women and children, he argued, should be released from detention centres. The ALP did not oppose mandatory detention *per se*, but rather the detention of "vulnerable" family members considered deserving of protection. By contrast, male asylum seekers were implicitly cast as potential threats to the Australian body politic.

Lip Sewing

Meanwhile, the Government continued to portray related issues in terms of "cultural differences" that were hostile and foreign to Australian standards of decency. In January, following a post-Taliban "freeze" on Afghan asylum claims in Australia, reports emerged that over two hundred asylum seekers in the Woomera detention centre were engaged in a hunger strike, and that more than forty of the hunger strikers – mainly Afghans – had stitched their lips together.[25] Despite evidence from Woomera doctors that self-harming behaviour among traumatized detainees had been "almost a daily occurrence" for over six months,[26] Immigration Minister Ruddock framed this issue as one of cultural difference, condemning the episode as something which would offend Australians. "Lip sewing is a practice unknown in our culture," he declared. The Minister went on to state Australian's

revulsion at this so-called "cultural practice," which, to his mind, offended national standards of decency and rational, self-regarding behaviour: "It's something that offends the sensitivities of Australians. The protesters believe it might influence the way we might respond. It can't and it won't."[27]

Once again, in this case, Government responses to the actions of asylum seekers involved accusations of child abuse.[28] It was alleged that adult detainees had forcibly sewed the lips of children. Separate investigations by the South Australian Government and the Human Rights and Equal Opportunity Commission, with the cooperation of Australian Correctional Management, found no evidence of parents encouraging children to engage in acts of self-harm.[29] This too was found to be an unsubstantiated allegation, but a pattern or regime of representation was now apparent. Under pressure, or to gain electoral mileage out of their tough stance, the Government appeared quite willing to portray asylum seekers as irresponsible and selfish people, with little regard for their children's well-being or safety.

Meanwhile, Australia continued to be the only regime in the world with a mandatory detention policy applied to children, and continued to lock up young children in defiance of international treaty commitments on the rights of the child. Government rhetoric implicitly shifted the blame to the parents for putting their children in this situation. Despite a letter from Afghani detainees expressing their great offence at the baseless accusations of child abuse, and urging the Prime Minister to set the record straight,[30] the Government refused to apologize.[31]

"Intimidation"

The lip-sewing protests were represented as an attempt to intimidate or "blackmail" the country. Thus, Australians were urged not to examine the morality of mandatory detention, but rather the morality of the detainees. Minister Ruddock insisted that the Government would not give in to the threats. "If those demands are being put to obtain the release of people that would not otherwise be released, we can't accede to them,"[32] he said. Reflecting the "blackmail" theme, the Prime Minister referred to the protests as forms of "moral intimidation,"[33] declaring, "[W]e will not be held hostage to our own decency."[34]

In this and other attempts to stigmatize asylum seekers seeking protection, the Government attempted an interesting role reversal: it was Australia, and its borders, that needed protection from asylum seekers.[35] Even more ironically, asylum seekers were portrayed as clever manipulators, and accused of using a "range of behaviours designed to intimidate…designed to appeal to our cultural and moral values."[36] Asylum seekers' protests at their arbitrary and often prolonged confinement were met with denunciations of "inappropriate behaviours," cleverly orchestrated to intimidate us. This type of official rhetoric constantly depicted detainees as an aberrant, non-compliant population undeserving of rights, and incarcerated for our protection. Time and again, the Government promised not to yield to such forms of blackmail, which sought to take advantage of "our decency."

Terrorism

Finally, in the charged post-September 11 environment, Howard argued that he could not be certain that individual asylum seekers were not linked to terrorist groups.[37] Towards the end of the election campaign, he warned, "There is a possibility some people having links with organizations that we don't want in this country might use the path of an asylum seeker in order to get here." The Prime Minister stressed he had no evidence that the recent boats turned away from Australia contained any terrorists or undesirables but, by the same token, he could not "guarantee" otherwise.[38]

Associating asylum seekers with the threat of terrorism appeared to be the sole point of these comments. Once again, the Government demonstrated a willingness to make baseless accusations against asylum seekers, even acknowledging in this case that there was no evidence. Indeed, as far as Australian security and intelligence organizations could say, this was a wholly unsubstantiated and illogical claim.

Government Control of Information

For any propaganda campaign to be effective, of course, information flows must be strictly controlled. As the Government debated its various critics,[39] one set of voices was never heard. Despite their pleas occasionally smuggled through the detention centres, an effective ban operated on communication with asylum seekers held in detention. As the former Australian Human Rights Commissioner Chris Sidoti noted, "[N]o other western country permits incommunicado detention of asylum-seekers."[40]

Indeed, the federal Government went to unprecedented lengths to ensure that the campaign of vilifying asylum seekers would not be undermined by uncontrolled press access to detainees. In a positively Orwellian twist, the level of government agency and intent was revealed in the Senate inquiry. Under cross examination, the director of defence communication strategies, Brian Humphreys, told the hearing that Ross Hampton had directly instructed defence photographers not take pictures of asylum seekers. The Navy was apparently given explicit guidelines to ensure "no personalising or humanising images" were to be taken. Defence officials said Mr. Reith's staff did not want to allow

photographs to create sympathy for asylum seekers. Subsequently, defence media liaison director Tim Bloomfield described Government restrictions preventing any military comment on asylum seekers operations as "a form of censorship."[41]

Similarly, Department of Immigration, Multiculturalism and Indigenous Affairs (DIMIA) restrictions on journalists prevent them from interviewing any person detained under Australian immigration law. This effective gag on the press requires that "[a]n Immigration Officer will accompany journalists at all times," and further that "[r]epresentatives of the Department will view the photographs/film for use with the resulting report/s." Ostensibly, these provisions are meant to ensure that staff or people detained are not identifiable. Effectively, they also ensure that the Australian press cannot respond to pleas to be heard.[42]

Later, when the "children overboard" story was revealed as a fabrication, the Government defended its behaviour by accusing its critics of being "un-Australian."[43] The stigma of being "foreign" or "other" to Australian values and identity was quickly shifted to any and all domestic critics of Government policy. In January 2002, one of Ruddock's senior advisors resigned, apparently no longer able to tolerate the cynical media strategy routinely employed whenever Government immigration policy was criticized. According to Neville Roach, "[E]very time a humanitarian issue is raised in relation to the asylum seekers, their deviousness and even criminal intent is proclaimed." Roach believed that the Government had provided "comfort to the prejudiced side of human nature," and that the wider community would be victimized by it.[44]

"Queue Jumpers," "Illegals," and "Rejectees"

Throughout the period under discussion, senior Government figures and elements of the mainstream press sought to portray the arrivals of onshore asylum seekers as a national "crisis." The representation of the issue as one of "border protection" – and of the Government bravely standing up to various forms of international pressure – enhanced the view among sections of the Right that the issue was no less than one of national sovereignty. The Prime Minister's election message that "We will decide who comes to this country, and the circumstances under which they come" played directly upon this fear. Today, Australians no longer pass through customs on their return home, they go through "border control."

For several years now, the primary public labels employed to describe onshore asylum seekers have been those of "queue jumpers" and "illegals."[45] The term "queue jumper," particularly prominent in public discourse, is a term designed to suggest that onshore arrivals are undeserv-

ing – having taken a resettlement position from a more worthy (and certainly more grateful and compliant) "offshore" refugee. Playing upon notions of fairness and orderliness, Ruddock has even likened onshore asylum seekers to "thieves" who "steal" places from genuine refugees. Despite the absence of any "queue" in receiving countries such as Pakistan, Iran, and Indonesia,[46] this language has been effective in depicting asylum seekers as unworthy of protection.

The evolving use of language to portray asylum seekers as undeserving took a new twist in May 2002, when Ruddock started to use a new term – "rejectee" – to describe those in detention whose claims were on appeal after an initial refusal. After the Refugee Council of Australia publicly described the label as "part of a systematic use of language to dehumanise people who have come here to seek protection," Ruddock defended the term, maintaining that it was "an accurate description" for "a cohort of people…whose claims are prima facie not for approval."[47]

The Role of Government Policy

The irony of many of these stigmatizing labels is that most of the so-called "inappropriate behaviours" are the direct or indirect products of Government policy. In the case of "queue jumping," it was the present Government that first linked the onshore and offshore refugee categories into one program, thus ensuring that onshore arrivals did in fact deny places to offshore refugees.[48] Even so, the humanitarian immigration quota has not been filled in recent years, belying the rhetoric that "deserving" refugees are missing out. And now that "Pacific solution" asylum seekers held on Nauru and PNG are to be considered "offshore" applicants, the distinction is becoming increasingly thin.[49] Similarly, according to immigration lawyers, there is a well-grounded belief among detainees at Woomera that authorities only respond to serious incidents of self-harm.[50] As Joseph Pugliese argues, lip sewing – a symbolic protest against silencing – should in fact be seen as a product of *Australian* culture: "we produce it legislatively, juridically, and penally."[51] Finally, the restrictions on family reunion imposed by the Temporary Protection Visa effectively force many families to accompany their husbands and fathers on the perilous boat journeys from Indonesia, with tragic consequences in the case of SIEV X, in which 353 lives were lost.

Temporary Protection Visas

As Sharon Pickering argues, these representational regimes portraying asylum seekers as a threat to the nation seek to validate a host of increasingly repressive state responses.[52] This paper concludes by examining the way these representations of refugees as "undeserving" have been paralleled by new Temporary Protection Visa regulations in Australia.

In October 1999, the federal Government introduced Visa Subclass 785, the Temporary Protection Visa (TPV). In so doing, it overturned an erstwhile principle of refugee protection: that genuine refugees should not be penalized for their method of entry.[53] The TPV became the centre-piece of a new policy of deterrence, offering temporary protection to unauthorized "onshore" arrivals found to be genuine refugees.[54] Initially, TPV holders were able to apply for Permanent Protection Visas (PPVs) after thirty months. However, subsequent amendments in September 2001 – which prohibit the ultimate issue of a PPV to any person found to have resided for seven days in a country of first asylum (*e.g.*, Indonesia) en route to Australia –effectively mean that most TPVs will never meet the criteria for a PPV. These amendments also excised certain territories from the "migration zone." In doing so, they provided the basis for the so-called "Pacific solution" by deeming arrivals at these designated places to be ineligible for a visa of any kind.

The year before the introduction of the TPV, Ruddock had pilloried the concept of temporary protection when it was proposed by the One Nation Party, rejecting it as "highly unconscionable," "totally unacceptable," and "quite extreme."[55] In practice, the TPV has fostered exactly the type of uncertainty and insecurity among traumatized refugees that Ruddock had predicted when criticizing One Nation's immigration agenda.[56]

The attempt to portray unauthorized arrivals as "unde-serving" was directly paralleled by the provisions of Temporary Protection. The TPV policy has created two classes of refugees, in terms both of security of tenure and of rights. Of particular concern, TPVs have no right to family reunion programs and no right of return if they leave the country. As such, many TPVs are permanently isolated from their spouses and children. TPVs are also denied access to Commonwealth Government settlement services offered to PPVs, including English language classes, housing assistance, and migrant resource centre support schemes. The Government has created a situation of open discrimination against TPV holders, who are specifically excluded from these settlement services and from some mainstream services including access to subsidized tertiary education. As Fethi Mansouri and Melek Bagdas argue, this policy has resulted in considerable levels of anguish and hardship for already traumatized asylum seekers and has placed severe strain on community sector agencies and services.[57] The TPV policy has promoted insecurity, isolation, confusion, and a range of health problems among the holders of these visas.

The harsh and unusual character of the TPV regime is most evident in the light of international comparisons. Internationally, the concept of temporary protection has been seen as valid in cases of mass refugee movements, where individual status determinations are impractical in the short term, or, as in the case of the United Kingdom's Exceptional Leave to Remain, where an application for refugee status has been rejected but the person has been found to be at risk of human rights abuse. At a policy level, therefore, direct comparisons with Australia's TPV regime are not easy to make. Australia remains the only country to provide "temporary" sanctuary to those who have been recognized as convention refugees. Under the TPV policy, some of the most vulnerable people in the Australian community live with the ongoing fear of being refused a visa extension after three years, and are deemed ineligible for family reunion, English classes, and a range of settlement assistance measures.

Conclusion

The federal election campaign of 2001 saw the definition of asylum seekers as a political problem, or "crisis," and witnessed the rise of a new set of asylum policies, ominously entitled the "Pacific solution."[58] The human impacts of these policies are profound, and there has been no genuine "solution" aside from an expensive and unsustainable policy of exporting onshore arrivals to Australia's Pacific neighbours. In the meantime, the rhetoric aimed at so-called "illegals" and "queue jumpers" is starting to impact on all refugees and migrants in Australia. For Temporary Protection Visa holders in particular, the Government's rhetorical depiction of asylum seekers as "undeserving" was directly paralleled by policy changes, which deny a range of rights and services to "onshore" arrivals found to be refugees. Most disturbingly, Government attacks portraying asylum seekers as serial child abusers were also paralleled – those on TPVs remain ineligible, presumed "undeserving," for the family reunion program. Far from offering protection, the TPV policy prolongs and compounds the trauma of many asylum seekers in Australia today.

Notes

1. My use of this distinction is not intended to convey major theoretical concerns with the project of "discourse analysis." However, it does reflect a particular theoretical reservation about the treatment of agency in some modes of discourse analysis, especially when a stigmatizing intent is transparently evident in political rhetoric. As Steinberg puts it, some post-structuralist accounts often understand discourse as something which acts *upon* people, leaving little scope for appreciating the way political actors act *through* discourse. See M. Steinberg, "Talkin' Class: Discourse, Ideology and Their Roles in Class Conflict," in *Bringing Class Back In,* ed. S. McNall *et al.* (San Francisco: Westview, 1991), 264.

2. For Jowett and O'Donnell, propaganda may be seen as a particular mode or subset of political discourse, distinguished by the "deliberate, systematic attempt to shape perceptions, manipulate cognitions, and direct behavior to achieve a response that furthers the desired intent of the propagandist." Garth S. Jowett and Victoria O'Donnell, *Propaganda and Persuasion*, 3rd ed. (Thousand Oaks, CA: Sage, 1999), 6.

3. For the report of the "Senate Select Committee on a Certain Maritime Incident," see online: <http://www.aph.gov.au/Senate/committee/maritime_incident_ctte/maritime/report/contents.htm>.

4. John Howard, Liberal Party Campaign Launch, 28 October 2001. Footage of the Prime Minister using this phrase was then featured in Liberal Party television advertisements throughout the final weeks of the election campaign.

5. Legislative amendments in October 2001 excised certain Australian island territories (most notably,Christmas Island and Ashmore Reef) from the migration zone. Effectively, this means that asylum seekers arriving at these "excised" territories are deemed ineligible for a visa of any type without the exercise of ministerial discretion. These asylum seekers are instead transported and processed "offshore" in the neighbouring Pacific states of Nauru and Papua New Guinea. The latter policy gave these legislative measures the (rather ominous) collective title of the "Pacific solution."

6. U.S. Committee for Refugees, *Sea-Change: Australia's New Approach to Asylum Seekers* (Immigration and Refugee Services of America, 2002), 7.

7. Sharon Pickering. "Common Sense and Original Deviancy: News Discourses and Asylum Seekers in Australia," *Journal of Refugee Studies*, 14(2) (2001): 169–86.

8. See online: <www.justrefugeeprgrams.com.au/issues/concerns>.

9. "Too Good to Be False," *Four Corners*, Australian Broadcasting Corporation (4 March 2002).

10. *Ibid.* Belying the Prime Minister's populist rhetoric, significant numbers of the Iraqis from SIEV 4 were subsequently found to be refugees, and 104 of these had been resettled in Australia on Temporary Protection Visas as of March 2003. See Megan Saunders, "Children Overboard Refugees Accepted," *Australian*, 7 March 2003.

11. *Ibid.*

12. "New evidence also revealed that the Prime Minister's department was told that claims that photographs purportedly showing children being thrown overboard were false the day after the pictures were released. Prime Minister John Howard has claimed he only heard of "some doubts" about the photographs a month later." See Mark Forbes and Kerry Taylor, "Refugees Denied Human Face," *The Age*, 18 April 2002.

13. "Navy Retreats from Children Overboard Denial," *ABC Online News* (8 November 2001), online: <http://www.abc.net.au news/newsitems/s412071.htm>.

14. *ABC News* (26 August 2002).

15. See *Australian*, 8 November 2001, 1.

16. *Supra* note 9.

17. Press release dated 10 January 2000; cited in Margaret Piper, "Australia's Refugee Policy," *The Sydney Papers*, Autumn (2000): 79–88.

18. *The Age*, 8 October 2001.

19. Matt Price, "Strangling Claims Unsupported," *Australian*, 6 April 2002.

20. Linda Doherty, "Children 'Used to Get Refugees In'," *Sydney Morning Herald*, 29 November 2001.

21. Steve Lewis and Brendan Pearson, "Howard, Beazley Head to Head," *Financial Review*, 24 October 2001.

22. "Ruddock Not Guilty about Boat People Deaths," *Sydney Morning Herald,* 26 October 2001.

23. Andrew Clennell and Michelle Grattan, "Ruddock Lays Down the Law to Survivors," *Sydney Morning Herald,* 25 October 2001.

24. Philip Ruddock, press release, 22 December 2000.

25. See, *e.g.,* Patrick Barkham, "Afghan Children in Australia Threaten Suicide," *Guardian* (London), 29 January 2002.

26. Andrew Clennell, Cynthia Banham, and Margo Kingston, "Self-Harm in Detention Centres 'Daily Occurrence'," *Sydney Morning Herald*, 25 January 2002.

27. Andrew West, "Asylum-Seekers Sew Lips Together: Protest," *Herald Sun* (Melbourne), 20 January 2002.

28. See, *e.g.,* "Woomera Hunger Strike Continues as Talks Fail," *ABC Online News,* 25 January 2002 online: <http://www.abc.net.au/news/2002/01/item20020125080108_1.ht m>.

29. "The official statistics provided to HREOC officers by ACM indicated the following incidents of self-harm occurred over a two week period: Lip sewing: 5 children (one 14 year old sewed his lips twice); Slashing: 3 children (the above child also slashed "freedom" into his forearm); Ingestion of shampoo: 2 children; Attempted hanging: 1 child; Threats of self hurt: 13 children." See "Media Statement by President Professor Alice Tay and Dr. Sev Ozdowski, Human Rights Commissioner," *Human Rights and Equal Opportunity Commission*, 6 February 2002, online: <http://www.hreoc.gov.au/media_releases/2002/05_02.html>.

30. "Might we take this opportunity to assure you that no adult person in this Centre sewed the lips of any child. We hope you will have the opportunity to set right the record on this matter which has offended our dignity very greatly." Afghani Delegates' Letter to Prime Minister, 20 February 2002.

31. Andrew West, "This Isn't a Camp, It's an Oven and We Are Burning," *Herald Sun* (Melbourne), 17 February 2002. The United Nations Association of Australia argued that the Government should apologize to asylum seekers wrongly accused of child neglect. See United Nations Association of Australia, *Unity*, 288 (February 22, 2002), online: <www.unaa.org.au/news288>.

32. *Supra* note 25.

33. *Supra* note 28.

34. Cited in Joseph Pugliese, "Penal Asylum: Refugees, Ethics, and Hospitality," *Borderlands E-Journal*, 1:1 (2002).

35. Michael Clyne, "The Discourse Excluding Asylum Seekers: Have We Been Brainwashed?" *Australian Language Matters* 10 (2002): 3–10.

36. *Supra* note 15.

37. *Supra* note 9.

38. Tom Allard and Andrew Clennell, "Howard Links Terrorism to Boat People," *Sydney Morning Herald*, 7 November 2001. Similarly, Defence Minister Reith claimed that illegal immigration "can be a pipeline for terrorists to come in and use your country as a staging post for terrorist activities." See *Migration News* 8(11) November 2001.

39. A range of community and advocacy groups have maintained a ceaseless campaign against Government vilification of asylum seekers. From the Refugee Council of Australia, to the grassroots Refugee Action Collective and No One Is Illegal campaigns, many Australians actively and publicly protested the punitive and exclusionist polices of the Howard Government. In the context of an election campaign, however, the ALP's acceptance of the basic premises of "border protection" made it difficult for these groups to mobilize an effective public counter-discourse in the mainstream media. Despite the seemingly bleak national environment in Australia, there are encouraging signs that refugee advocacy campaigns are starting to have an impact. While effectively promising to maintain the so-called "Pacific solution" in a reduced form on the Australian territory of Christmas Island, the Australian Labor Party's recent pledge to review the 1999 and 2001 legislation so that "Temporary Protection Visas will not continue indefinitely" is a step in the right direction. See Australian Labor Party, *News Statements*, (5 December 2002) online: <http://www.alp.org.au/media/1202/20003071.html>. For its part, the federal Government has recently modified one minor aspect of its asylum deterrence regime – extending the Woomera housing trial to allow more women and children to reside in supervised accommodation outside detention centres while their applications are processed.

40. Chris Sidoti, *For Those Who Come Across the Seas: The Detention of Unauthorised Arrivals in Australia,* (Canberra: HREOC), 224.

41. *Supra* note 9.

42. "Woomera or North Korea?" *ABC Media Watch*, 8 July 2002, online: <http://www.abc.net.au/mediawatch/transcripts/080702_s4.htm >.

43. "I am sure many Australians will view the current negative outpouring against the Howard Government as essentially un-Australian." Shane Stone, "Media's Responsibility in History," *Sydney Morning Herald*, 15 April 2002.

44. Julie Anne Davies, "Ruddock Adviser Quits in Disgust," *Sydney Morning Herald*, 31 January 2002.

45. See, *e.g.*, Pickering, 2002.

46. For example, Australia has not accepted any UNHCR-processed asylum seekers directly from Indonesia in recent years.

47. Megan Saunders, "Rejectee Tossed into Ruddock's Vocabulary," *Australian*, 8 May 2002, 2.

48. Peter Mares, *Borderline: Australia's Treatment of Refugees and Asylum Seekers* (Sydney: UNSW Press, 2001), 24–26.

49. Megan Saunders and Duncan McFarlane, "Migration Lift to Young and Skilled," *Australian*, 8 May 2002, 1.

50. "It is only in that situation that you are likely to get some sympathy or respect or some processing from the government." "Graves Dug at Woomera," *The Age*, 8 March 2002.

51. Pugliese, 40.

52. Pickering, 173.

53. *Convention Relating to the Status of Refugees*, 1951, s. 31.

54. From October 1999, asylum seekers entering Australia without a valid visa were declared ineligible for the immediate award of a Permanent Protection Visa, and have been granted three-year Temporary Protection visas upon successful refugee status determinations. Permanent Protection Visas are immediately available only to "offshore" (humanitarian resettlement) applicants, or to those "onshore" applicants who initially enter Australia with a valid visa of some sort (such as a tourist or student visa). The key legislative test is therefore whether the asylum seeker's arrival was "authorized" or not.

55. Philip Ruddock,. "Comments on One Nation Call for Temporary Protection," *Southern Cross Online* (1998), online: <http://www.anglicanmediasydney.asn.au/September/features 1. html>.

56. See Fethi Mansouri and Melek Bagdas, *Politics of Social Exclusion: Refugees on Temporary Protection Visas* (Geelong: Deakin University, 2002).

57. *Ibid*, 6–7.

58. See Clyne, 3.

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Beyond "Seclusionist" Japan: Evaluating the Free Afghans/Refugee Law Reform Campaign after September 11

Mai Kaneko

Abstract

Following the events of September 11, Japan renewed its stance against terrorism and aggressively stepped up regulations against aliens including asylum seekers. Responding to the post-September 11 detention of Afghan asylum seekers, citizens of all walks of life joined forces. The Free Afghan Refugees movement not only succeeded in releasing detainees, but also broke new ground by pushing for reform of the Japanese asylum system for the first time in the twenty-one years since the Refugee Recognition Act was enacted. The success and propagation of their activism is a reflection of the maturity attained by the refugee rights movement in Japan, and the increased awareness among citizens about world issues. On an unprecedented scale, citizens are questioning the government's efforts to maintain a homogeneous social order.

Résumé

À la suite des attentats du 11 septembre, le Japon a réitéré sa position contre le terrorisme et a vigoureusement renforcé ses règlements contre les étrangers, y compris les demandeurs d'asile. Cependant, lorsque des demandeurs d'asile afghans ont été détenus après le 11 septembre, des citoyens provenant de toutes les couches sociales ont fait cause commune. Le mouvement « Libérez les réfugiés afghans » (« Free Afghan Refugees ») réussit non seulement à obtenir la libération des détenus, mais innova aussi en réclamant la réforme du système d'asile japonais pour la première fois depuis les 21 années d'existence de la Loi sur la reconnaissance des réfugiés (« Refugee Recognition Act »). Le succès et la propagation du militantisme attestent du degré de maturité atteint par le mouvement pour les droits des réfugiés au Japon et de la sensibilisation accrue des citoyens envers les grandes questions mondiales. Comme jamais auparavant, les citoyens remettent en question les efforts du gouvernement pour préserver un ordre social homogène.

> Ever since I was a kid, I'd always imagined that Japan was the most peaceful country in the world … I was taught that after the Hiroshima bombing, Japanese people came to love peace. Ever since I was born I've seen nothing but war. I grew up seeing people being killed right in front of me.…[1]

> I thought if I came to Japan, I would be safe and would be able to make a future for myself. But instead, as soon as I arrived here I was detained and treated like a criminal.… All we think about is our family. We don't know where they are, how they are …whether they are alive or dead… All we can do while in detention is to keep watching the horrible news on TV about the US bombing our hometown … We just hope and pray nothing has happened to them. (Afghan detainee, Hazara, male, in his twenties).[2]

Right after September 11th, I found out that one of my acquaintances was killed in the World Trade Center. I thought something was wrong with this world and started to become involved in social activism for the first time in my life. That is how I came to know about detained Afghan asylum seekers. Until then, I was just an "ordinary citizen." When I heard the term "refugees," I just imagined these people starving in the refugee camps in Asia and Africa. They are part of something happening far away from me. I would never have thought that there are people

who come to Japan seeking "asylum." … But look at me now, I'm in the middle of the Free Afghan refugee movement … Why? Because I came to realize that my life, which I take for granted, exists at the expense of these people … A society not livable for refugees is not livable for us Japanese, either. (Japanese businessman, in his thirties).[3]

The first comment was made by an Afghan asylum seeker who was detained by the Japanese immigration bureau for seven months, and the second comment was made by a young Japanese activist who became involved in the movement to free them after September 11. While the plight of detainees languishing in places like Woomera, Australia, has made international headlines since 2001, neither the trauma that these Afghan asylum seekers faced in Japan nor the support they garnered from citizens has been widely recognized. In the early morning hours of October 3, 2001, soon after September 11 and the Bush administration's declaration on war against terrorism, some forty Japanese police and Immigration Bureau officials armed with bullet-proof vests raided the residences of nine Afghan asylum seekers in Chiba, and transported them to the immigration detention facility in Jujo, Tokyo. The police and immigration officials allegedly confiscated computers and cell phones from the residents, and even examined their personal diaries. These asylum seekers, most of them minority Hazaras,[4] were allegedly arrested under suspicion of terrorism, and were detained under poor medical conditions with no prospect of release, and many of them attempted to commit suicide. This provoked widespread criticism among Japanese citizens, and many lawyers, Christian activists, journalists, and young activists became mobilized to found the Network to Free Afghan Refugees (AFNET).[5]

What is most remarkable about this movement is that a considerable number[6] of young and mainstream citizens were involved, many participating in such activism for the first time in their lives. At the same time, their movement, which started out as a campaign against the detention of Afghan asylum seekers, has not only succeeded in securing the release of a number of detainees, but has also evolved into a whole new effort to push for the reformation of the Japanese asylum system itself. The revised Immigration Control and Refugee Recognition Bill,[7] – though with many problems – ostensibly advocating the prevention of detention and deportation of asylum seekers is now about to be submitted by the Cabinet to the Diet, the Japanese parliament. Japan, a country that has long practised exclusionary immigration and asylum policy in maintaining its self-proclaimed status as a "homogeneous society," is finally facing major pressure for change by its citizens

claiming that only "a society livable for foreigners is livable for all."

In this paper, I will first discuss the pre-September 11 policy on detention of asylum seekers, and how regulations against aliens including asylum seekers were gradually tightened in recent years, followed by the impact of September 11 given the new agenda of countering terrorism, the success of Free Afghans and asylum system reform movement, and finally analyze what factors contributed to the dramatic propagation of the movement after September 11.

Japanese Seclusionist Policy

Japan ratified the Convention Relating to the Status of Refugees (hereinafter Refugee Convention)[8] and its Protocol[9] in 1981, and enacted the Immigration Control and Refugee Recognition Act (hereinafter Immigration Act)[10] shortly afterward. Japan, home country to former United Nations High Commissioner for Refugees (UNHCR) Sadako Ogata, is the second-largest donor to the UNHCR following the U.S., with many of its nationals all over the world devoted to international cooperation on such issues as refugee assistance. However, asylum seekers in Japan have faced severe circumstances. Between 1981 and the end of 2002, twenty-one years since ratification of the Refugee Convention, Japan has only recognized 305 out of a total of 2,782 applicants. In 2001, the year the nine Afghans mentioned above were detained, 353 people applied for refugee status – the highest in nineteen years – with only twenty-six recognized. Most applicants for refugee status were Afghans – almost one hundred – yet only three were recognized.[11] The number of refugees Japan admits every year has been the lowest among all G7 countries. Further, in comparing the numbers of refugees hosted to a number of other variables, Japan is ranked 136th internationally in relation to GDP, 125th in relation to population size, and 90th in relation to geographic size, at the end of 2000.[12] At the same time, even before September 11, refugee advocates have long claimed that the Japanese asylum system itself contains considerable flaws with potentials of serious human rights violations such as detentions of asylum seekers without a time limit and deportations to home countries where there is fear of persecution.

Pre-September 11: Detention of Asylum Seekers

Under Japan's Immigration Act, any alien who arrives without proper documentation, including those who subsequently seek asylum, must be detained. Amnesty International reported in 2002 that a daily average of seven persons are detained at the Landing Prevention Facilities (LPFs) (or "Airport Rest House") in Narita Airport alone.[13] On the other hand, since the Japanese government does not provide any particular visa to refugee applicants, in-country

applicants without valid documents at the time of application also face detention and deportation. (Those who do have visas at the time of application for refugee status may have their visas extended during this initial application, but not during appeal. These individuals therefore face detention and deportation). In contrast, in the years before September 11, those without visas at the time of application normally had deportation procedures suspended and were therefore not detained until their initial application was denied.[14]

Once in the immigration detention facilities, detainees may request provisional release to the immigration bureau in exchange for bail provided that there is "no possibility of the detainees' running away," and in light of such factors as detainees' health. However, before September 11, provisional release was usually granted only when the applicant had been detained for several months or close to a year.

These practices have garnered criticisms by the UNHCR, refugee advocates, and lawyers as contradictory to international law and standards, including the Refugee Convention Article 33 (*non-refoulement);* Article 31, which exempts refugees from punishment due to illegal entry or presence; UNHCR Detention Guidelines,[15] which stipulate that detention of refugees be neither automatic nor unduly prolonged; and UNHCR Executive Committee Conclusion 44,[16] which states that detention of asylum seekers "should normally be avoided." Reflecting these criticisms, the detention of asylum seekers had been decreasing from 1999 to 2000 until the wake of September 11 when the Japanese authority joined the international campaign against terrorism advocated by the Bush administration – in which immigration and national security became inextricably linked. According to the UNHCR, in 2001, the year nine Afghans were detained, the percentage of asylum seekers detained in Japan reached levels considerably higher than those of other industrialized nations, with the exception of Australia.[17] Tokyo Lawyers League for Afghan Refugees, a Japanese lawyers group established after September 11, reported that in February 2002, at least fifty asylum seekers were detained in immigration bureau facilities in Tokyo, Ibaraki, Osaka, and other areas.[18]

Pre-September 11: Aliens as Security Issues

Actually, even before September 11 Japanese authorities, specifically the Immigration Bureau and the police, had been tightening regulations against aliens in an effort to prevent "international organized crimes" that threaten domestic security. Especially since the late 1990s, the police have played a significant role in Japan's immigration control policy by arresting aliens for violations of immigration law. Refugee and migrant advocates claim that reason for this is the deep-rooted idea that Japanese social order is based on the homogeneity of Japanese society. For example, in 1997, when Chinese smuggling was a big issue, many government officials expressed concern about the "threats posed by illegal migrants and smugglers to the social order." The Chief of the Investigation Bureau of the National Police Association, on the increasing number of aliens, asserted that "Japanese society … is completely unprepared for these people."[19] While the police had been claiming that undocumented aliens "were responsible for the increasing number of felonious crimes committed by foreigners," there is no valid ground for this claim. The events of September 11 in this sense did not suddenly change Japanese immigration policy. Rather, they strengthened the already close relationship between the police and immigration authorities via the new common agenda of countering terrorism.[20] At the same time, in November 2001, the immigration control act was revised, which enabled the government to deny entry to those who "may disturb international conferences or sports tournaments (such as soccer hooligans)" at the port of the entry, and to deport those who committed certain crimes once considered minor. Behind this reform lies an ongoing attempt by the Japanese government to share information about terrorists with other governments.

Post September 11: Detention of Afghan Asylum Seekers

It was then in this context that on October 3, 2001, the Japanese police and Immigration Bureau officials in cooperation raided the nine Afghan asylum seekers and detained them in Jujo, Tokyo. Those who were arrested had not even had their initial application denied, in contradiction to the detention practices in previous years. While they were primarily arrested for violation of immigration laws, it is clear that they were suspected of being connected with the Taliban, the fundamentalist Islamic army led by Mohammad Omar, or al Qaeda, the international Islamic army led by Osama bin Laden. In fact, on September 17, prior to the detention of the nine Afghans, the Immigration Bureau requested that Afghan refugee applicants, including several of the nine individuals, appear at the Tokyo Immigration Bureau. Bureau staff interrogated the refugee applicants, asking them whether they were related to Taliban members or knew anything about Osama bin Laden.[21] Shortly after the arrest of the nine Afghans, a ministerial meeting on anti-terrorism measures[22] was held. It was decided that it was vital to arrest "illegal aliens who may be related to terrorist organizations." However, the Justice Ministry failed to provide any evidence of the aliens' relationship with any terrorist organizations, and instead began claiming that the nine Afghans were actually economic refugees or migrant work-

ers pretending to be refugees.[23] Ironically, not only were the arrested Afghans uninvolved with any terrorist organizations, but they were actually from the main group of people persecuted by the Taliban regime. This incident itself shows a lack of awareness on the part of the Immigration Bureau concerning the situation in Afghanistan. The Immigration Bureau, in interviews with the ethnically Haraza Afghan asylum seekers, allegedly employed Pashtun and Tadzhik interpreters. In Afghanistan, these ethnic groups have historically been antagonistic against Hazaras, putting the asylum seekers at a tremendous disadvantage.

Hearing the extraordinary news of the arbitrary detention of asylum seekers still in the process of initial application, a group of refugees and migrants rights lawyers founded the Tokyo Lawyers League for Afghan Refugees (hereinafter Lawyers League), and claimed the illegality, according to international law and standards, of the Afghans' detention. However, by the end of November, all nine were denied refugee status, and were eventually sent to the immigration detention center in Ushiku, Ibaraki.[24]

Birth of AFNET and Release of Detainees

After the five asylum seekers were detained in Ushiku, the Lawyers League discovered a total of twenty-three Afghan asylum seekers detained in the same facility, most of them minority Hazaras in their late teens and twenties. Many had arrived in the summer and fall of 2001, and were detained at the airport while filing their application for refugee status. They were subsequently sent to Ushiku and detained for months. Until discovered by the Lawyers League, most were without contact with the outside world, and had not been notified of their right to legal representation. The Lawyers League immediately filed suits to nullify or cancel the deportation order that had been issued to them, as well as made requests for provisional release to the Immigration Bureau. However, the Immigration Bureau responded that given the instability of Afghanistan, deportation was not possible, and declared that the detainees remain in detention until it became possible to deport them.

On the other hand, almost all the detained Afghan asylum seekers suffered from post-traumatic stress disorder (PTSD), because of the persecution they experienced in Afghanistan. PTSD patients, when put in situations similar to those in which the initial traumas occurred, suffer from symptoms such as flashbacks and headaches. Detention in a small cell, which many of the detainees have experienced while being persecuted by the Taliban, reawakened their traumatic experiences. Due to uncertainty about their futures because of indefinite detention and worries about their families, by March 2002, a total of fourteen asylum seekers had attempted to commit suicide by overdosing on sleeping drugs, attempted hanging, and burning themselves.[25]

> Everyday, we are losing our minds. … The Taliban kill us in one moment, but here, we are being killed day by day, little by little. We do not know when we can get out. Back in Afghanistan I never thought of killing myself – I thought it was such a stupid idea … you know why? Because you're going be killed anyway. But after I experienced the Japanese detention center, I understand now so well why someone would want to end his life.[26]
> (Afghan asylum seeker, Hazara, male, in his twenties).

Detainees were only allowed to bathe and exercise three times a week (less than one hour each time) in the detention center;[27] as a result, detainees suffered from scabies and different deceases. Doctors stationed at the detention center were often inaccessible,[28] and the medical care provided was problematic;[29] when the detainees asked for medicine, the doctor allegedly did not limit the quantity, with the result that detainees took excessive amount of sleeping pills. Detainees needed advance permission to see outside doctors, and some detainees later said that they were handcuffed on the way to the doctor. Some detainees claimed that they were verbally abused by detention officers, who allegedly demanded that the detainees address them as "sensei" (in Japanese, "teacher") and made such statements as, "Why did you come to Japan? Go back to your own country."[30] Many demonstrated their dissatisfaction by hunger strikes and self-mutilation.

In response to this situation, on December 25, the Network to Support Afghan Refugees (AFNET), a network of citizens consisting of organizations such as the Lawyers League, Solidarity Network with Migrants Japan (SMJ), Christian Coalition for Refugees and Migrant Workers (CCRMW), the newly founded youth group Chance!, and individuals such as journalists, was established.

Members of AFNET lobbied Diet members, held forums and press conferences, visited detainees periodically, conducted a letter-writing campaign to detainees as well as the Justice Minister, and conducted rallies. A petition to free the detainees was circulated; more than 5,400 signatures were gathered from all over Japan. The network, in collaboration with Christian and lawyers' groups in Osaka which had been supporting many Afghan asylum seekers, was strengthened and enabled AFNET to conduct its national campaign.

In response to AFNET lobbying, groups of Diet members visited and investigated the Ushiku detention center, as well as criticized the immigration authority in the Diet. On February 21, 2002, UNHCR published a press release condemning the detention, stating "…it is UNHCR's view that

the detainees should be released under alternative arrangement until their return becomes possible in safety. UNHCR believes that their prolonged detention only adds to the suffering of these people."[31] In addition, major newspapers in Japan reported on the plight of Afghans languishing in detention.[32]

On March 1, 2002, the Tokyo district court made the historical decision to suspend the deportation order, as a result releasing seven Afghan detainees and recognizing them as refugees.[33] The court decision stated that the detainees were recognized as "refugees … with well-founded fear of persecution, and should be provided appropriate protection." Detention, the court continued, would "only further give them immeasurable pains." By April 26, less than two months after the decision, all twenty-three Afghan detainees gained provisional release from the Ushiku detention center. According to the Lawyers League, in 2000 the Immigration Bureau detained 2,214 aliens, and only nine detainees gained provisional release, which is only 0.4 per cent. This figure demonstrates how extraordinary the release was.

On the other hand, AFNET and other supporters faced a new challenge. The Japanese government did not provide residency status, accommodations, or medical care to the former detainees. Christian organizations such as the Catholic Commission of Japan for Migrants, Refugees and People on the Move (J-CARM), and CCRMW therefore collected donations from churches and citizens, and through the Japan Association for Refugees (JAR) provided the released Afghans with shelter (most of it owned by churches) and funds to cover living expenses. JAR in cooperation with such organization as International Social Services Japan (ISSJ) provided everyday assistance. It is important to note that though very small and not politically organized,[34] there is a community of Afghans settled in the Chiba area, which has eased the former detainees' adaptation to Japanese society. Some of the Afghans who themselves had gained residency as refugees put tremendous effort into acting as liaisons between the detainees and lawyers and NGO workers before and after the refugees' release.

At the same time AFNET, despite concerns about the possible negative effects of the media presence,[35] on the whole encouraged former detainees to express themselves through television, newspapers, and magazines. In terms of public advocacy this led to fairly positive outcome. For example, a series of television Asahi programs in which a nineteen-year-old Afghan attending a local Japanese junior high school expressed his desire to stay in Japan in order to keep studying attracted much sympathy from mainstream citizens, who had a limited and sometimes biased image about the people of Afghanistan. Also, it can be said that this heightened public attention worked to prevent the re-detention of seven Afghans in July 2002.[36]

Shengyang Incident and the Development of the Law Reform Movement

In May 2002, the government of Japan was at the center of an international controversy. Chinese police officers forcefully prevented a North Korean family (which included a two-year-old child) from seeking asylum at the compound of the Japanese consulate in Shengyang, China. The Japanese government desperately argued that China violated the 1963 Vienna Convention on Consular Relations.[37] However, it was later revealed that the Japanese consulate officials themselves did not resist the police, and even went as far to indirectly assist them. It is clear that, by assisting the police, these officials were being complicit in China's violation of the *non-refoulement* principle. Before the incident, the then-Japanese ambassador to China allegedly told the consulate officials to kick out any "suspicious persons" coming into the compound, an act representative of Japan's extreme resistance toward asylum.[38]

The incident sparked widespread criticism against Japan's policy on asylum, and the AFNET-led "free Afghan detainees movement" therefore evolved into a movement to review Japan's asylum law. In June 2002, the Network for Refugee Law Reform-Japan (REFNET)[39] was established by the citizens involved in AFNET with a broader goal of revising asylum law and policies in Japan. REFNET held a series of forums on refugee law reform for both citizens and Diet members, as well as conducted lobbying efforts. REFNET published a booklet titled "Beyond Seclusionist Japan" targeted to a wide range of people which comprehensively addressed the problems and suggested alternatives to the current refugee policy.[40]

In response to the public criticism, on June 11, 2002, the Ministry of Justice established a Special Working Group on Refugee Issues[41] under the Justice Minister's Private Council on Immigration Control Policy. Justice Minister Moriyama, in her opening address at the Council on June 11, stated that "given the drastic change in world order, globalization, and rising public awareness on refugee issues, it is crucial for our Ministry to review … and improve our refugee recognition system." On November 1, the working group published a progress report on their review of the refugee recognition system,[42] which stated that the various amendments proposed in the report are "messages to indicate to the international society that Japan will be more positive in accepting refugees from now on."[43] The progress report made a remarkable proposal on the issue of detention and deportation of asylum seekers. The report pro-

posed to provide a provisional legal status to refugee applicants, until their appeal is turned down so that those without valid documents will not be deported and detained for their illegal stay. As of February 2003, the bill is about to be approved in the Cabinet and submitted to the Diet. Though there is certainly some room for criticism of the bill, such as the strict conditions it requires for obtaining provisional legal status, discussion of such criticisms is outside the scope of my paper (see note 43). What is important here is that the Ministry of Justice seems to be finally changing its attitude, if only slowly.

Historical Analysis of the Post-September 11 Movement

I have so far provided an overview of citizens' activism in Japan for refugee rights in the aftermath of September 11. I would now like to explore why this movement has been so successful and what contributed to the propagation of movement beyond generation. In order to do this, I would like to briefly trace the evolution of the refugee rights movement in the past twenty years. First of all, it should be noted that though there are many Japanese humanitarian and development NGOs engaged in aiding and assisting refugees abroad, organizations concerned with refugees within Japan are comparatively few.

With the end of the Vietnam War in 1975, so-called "boat people" started to arrive in Japan, and the Japanese government, responding to pressure from foreign governments, decided to admit the Indo-Chinese refugees for resettlement exceptionally on an annual quota basis through a cabinet understanding (about 10,600 were admitted from 1979 to 2000). In Japan these Indo-Chinese refugees are clearly distinguished from those who go through the official refugee recognition procedure based on the Refugee Convention which Japan ratified in 1981. Their resettlement procedure, though difficult, is considered to be fairly successful. The extensive media coverage of the Vietnam War led to a heightened awareness of the condition of these refugees, as did a strong anti-war movement in Japan. It is possible that since many Japanese citizens still had a direct memory of World War II, this too contributed to a generally sympathetic attitude toward the refugees.

These Indo-Chinese refugees were provided full social services by the government such as accommodation, education, health, and job training by government, and many citizens' groups and non-governmental organizations supported them. Specifically, the role played by Catholic churches and organizations was remarkable.[44] As early as 1975, in response to a UN request, Caritas Japan, a relief agency of the Catholic Church, started to provide temporary shelters for Vietnamese refugees rescued from the sea,

and since 1979, in cooperation with governmental organizations, has provided land for resettlement assistance centres for the refugees. In 1982, the Catholic Bishops' Conference of Japan set up the Special National Committee for the Settlement of Refugees (renamed the Committee for the Settlement of Refugees), and each diocese began to provide help for the refugees within its territory. This Committee was later absorbed into the Japan Catholic Commission for International Cooperation (renamed the Commission of Japan for Migrants, Refugees and People on the Move), which played an important role in assisting Afghan refugees after September 11. In addition, it has been noted that many Catholics were involved in refugee assistance on an individual basis, such as language education and mental care.[45]

After the surge of Indo-Chinese refugees was settled, the Committee for International Cooperation Archdiocese of Osaka established a Refugee Help Desk in 1993. The organization originally assisted convention refugees such as those from Sudan and Ethiopia, and started to support Afghan refugees in 1999;[46] their experience contributed to the birth of AFNET. This involvement of Catholic churches and Catholics in the protection of refugees can be understood in the context of Christian egalitarianism, as well as their worldwide endeavour to assist refugees and migrants since the Pope declared solidarity with these individuals. At the same time, it is important to note that there were quite a few Catholics among the refugees (30 to 35 per cent in the case of the Vietnamese refugees) coming into Japan.[47] Meanwhile, Protestant churches have been less organized in terms of commitments to refugee issues. Even the Christian Coalition for Refugees and Migrant Workers (CCRMW), established in 1989 as Japan's national interdenominational network of Christians including Protestants and Catholics concerned with refugees and migrant rights, only began its focus on refugees after September 11, when they became involved in the activities of AFNET and REFNET.

Turning to non-Christian groups, Amnesty International's Japanese Section founded the "Refugee Team" as early as 1992, which not only acted in concert with AI's global campaign in support of refugees, but also engaged in advocacy activities directed at Japanese refugee policy. The team also assisted asylum seekers in the representation of their cases by providing reports on the human rights situation in each country; however, their "no-work-on-own-country" principle has prevented the organization as a whole from taking action on individual cases. It should be noted that although the Refugee Recognition Act was enacted in 1982, the number of people applying for refugee status as well as those recognized remained very small until 1995. It was 1996 when the number of refugee applicants

went up dramatically; it doubled from 52 in 1995 to 147 in 1996.[48] This led to an increased number of asylum seekers who pursued lawsuits after their appeals were rejected, and the lawyers who became involved in defending asylum seekers' rights, many of them working *pro bono*, established the Japan Lawyers Network for Refugees (JLNR) in 1997. In 1999, given the fact that unlike the Indo-Chinese refugees there were hardly any social services available for those who went through refugee recognition procedure whether recognized or denied, the Japan Association for Refugees (JAR) was established; JAR is the first NGO which specializes in assisting individual asylum seekers and refugees in Japan by providing legal and social services. By 2000, the Working Group on Refugee Assistance in Japan (RAJA), which includes JLNR and JAR, was established within PAR in AC Japan, a partnership network between UNHCR and Japanese NGOs working on refugees.

In response to the spread of support, some remarkable changes started to appear on the administration side: the Justice Ministry has been granting an increasing number of asylum seekers since 1998 (it jumped from one person in the previous four years to fifteen in 1998). In addition, in recent years, there have been revolutionary court cases in which asylum seekers as plaintiffs have won the cases. The pre-September 11 movement to support refugees had been coming to a rapid maturation, and represents an important context in which the birth of AFNET and REFNET after September 11 must be seen. The post-September 11 detention of Afghan asylum seekers provided an emotionally charged and publicly visible issue which critically stimulated the refugee rights movement on a national level. The mobilization after September 11 has cut across professional, denominational, and generational lines. It is important to note that REFNET was established as Japan's first NGO led by ordinary citizens, whose primary goal is the reform of Japan's asylum policies and system.

In addition to the mission of refugee law reform, another important REFNET goal has been, through a number of unique projects, to raise public awareness on refugee issues, particularly focusing on those who identify themselves as "ordinary citizens." In addition to distributing colourful and catchy flyers on refugee issues, REFNET has been engaged in such activities as dispatching asylum seekers and lawyers or activists to local schools to educate students about refugee issues within Japan. With donations collected by REFNET, the first Afghan restaurant in Kanda, Tokyo, which is run by refugees themselves, was opened in February 2003. REFNET is planning several events in which Japanese citizens and asylum seekers and refugees, not only from Afghanistan but also from all over the world, can meet and become acquainted with each other (as one can easily imagine, for many of the Japanese participants, it may be their first time to see people from certain countries). What is remarkable about these projects is that they are being spearheaded by young activists, many of whom are participating in social activism for the first time in their lives.

Below, I would like to closely look at why these relatively young activists, who until recently have been rarely seen in the ranks of migrants and refugee rights activists, have become involved in the Free Afghans and Refugee Law Reform Campaign after September 11.

AFNET, REFNET and Young Activists

> (Before I came here) I felt impatient about the fact that I was not doing anything to help people seeking help right here (in Japan). I'm tired of living as if I'm not seeing anything, dragged by a huge power, being sad …. Usually, I don't talk about serious stuff (i.e., politics and human rights etc.), but here, I feel comfortable talking about them. To be honest, I didn't know anything about what's going on, but nobody made fun of me or anything for that. I feel relieved because there's so many young people like me! (Female, in her twenties, after participating in a refugee rights meeting).[49]

Since the beginning of the Free Afghans Movement, the young members of such groups as Chance![50] and Peace Boat,[51] many of them in their teen and twenties, have deeply involved themselves in collective AFNET and REFNET activities, as well as engaging in their own unique activism as a separate group. Chance!, a citizens' group made up of "ordinary citizens," became mobilized immediately after September 11, largely via mass e-mailing, and conducted a series of peace walks (a total of five thousand participated in the seventeen walks they conducted). The first peace walks bore anti-war themes but some of the later ones focused on the effort to free Afghan asylum seekers. Chance! had a peak of two thousand members on their mailing list, where messages on a range of activist issues were exchanged. Many students and young artists, such as singers, painters, designers, and comedians, became involved in the Free Afghans movement, and some conducted street performances on behalf of Afghan detainees. They put their various talents to use in an effort to raise public awareness on the issue. As a comment on the plight of detainees, some built and entered a plastic cage talking to passersby. Some composed songs on detainees. Many of these young activists state their belief that Japanese youth today tend to be apolitical and indifferent to social problems happening around them. To address this concern, Chance!'s slogan, prominently displayed on their website, is "Change our Indifference into Awareness!."

The media played a critical role in these young people becoming mobilized in support of refugee rights after September 11. Following the attacks, television and radio stations, newspapers and magazines began publishing and broadcasting the World Trade Center tragedy on a daily basis, as well as the U.S. attack on Afghanistan and its devastation. Attorney Ohashi, one of the leading lawyers devoting himself to *pro bono* work at the Lawyers League on behalf of Afghan refugees, states:

> One of the reasons why today's Japanese society is not 'refugee-friendly' is because most Japanese citizens have such limited knowledge about what is going on in the world … about the poverty, ethnic conflict, war, internally displaced persons and refugees, and the unfair world structure that produces these issues. This time, because of the huge media coverage presenting the tragedy of Afghanistan over and over, a situation that is pretty extraordinary for Japanese society emerged … Boom! suddenly, everybody knew of the perilous situation in Afghanistan, and where this group of asylum seekers were coming from.[52]

This can further be explained by the comments of some of the young members of a newly founded group called "RAFIQ" (in Dari, Afghan Persian, "friends"), which works on behalf of refugees in the Osaka area. In October 2002, the founders of RAFIQ conducted a hunger strike demanding that the Immigration Bureau release detained asylum seekers. Twenty people participated. One of the leading members, a twenty-one-year-old, wrote to other refugee supporters about his changing awareness of social issues through his involvement in the refugee rights movement:

> It has only been two days since I started the strike, but it's already getting tough. Today I went into a supermarket to get some water, and was surprised: There is so much food here! I just didn't realize how wealthy Japan was … I imagined children starving in Afghanistan, thinking how hard it must be to be starving to death … (Japanese, male, twenty-one).[53]

Although the comment may appear naïve, it remains important to the extent that it reflects a change, though small, that is occurring in Japan. It may be argued that the events of September 11 brought many "indifferent" citizens in Japan to realize the unfairness of much of the global political structure, as well as the fact that they are indirectly responsible for what is happening in the world. Many have come to realize that the luxuries they enjoy, which they take for granted, has come at the expense of those in the South and even refugees within their own country and at the expense of those excluded under the governmental efforts to maintain a homogeneous social order.

Conclusion

Following the events of September 11, the government of Japan stepped up regulations against aliens, including asylum seekers, with a renewed agenda to counter terrorism. The change became most visible in the form of collaboration between the police and the immigration authorities. The post-September 11 detention of Afghan asylum seekers was an emotionally charged and publicly visible issue that provided an impetus for the refugee rights movement to take shape on a national level, mobilizing a wide range of people, the young and the old, who identify themselves as "mainstream citizens." Their protest against detention of Afghan asylum seekers has not only succeeded in releasing detainees, but also promoted reform of the asylum system. The Shengyang incident further fuelled this activism, culminating in the revised refugee recognition bill that would potentially prevent unfair detention and deportation of asylum seekers. The bill is expected be submitted to the Diet during the current session. The post-September 11 propagation of the refugee rights movement has as its backdrop the rapid maturation of the movement preceding the terrorist attacks in New York. The events of September 11 and extensive media coverage on the plight of Afghanistan stirred many citizens in Japan to realize the inequities in the global political structure and the contradictions found in a society where aliens, including asylum seekers, are marginalized under the government's efforts to maintain a homogeneous social order.

At the same time, there is concern that, while Afghan detainees have attracted much public and media attention, other groups such as Burmese and Kurdish from Turkey, who make up of the largest percentage of total refugee applicants in Japan, have not received as much public attention as the Afghans. In that light, it is REFNET's job to encompass the issues of rights of asylum seekers of all nationalities, and shed light on their conditions. Also, throughout AFNET's and REFNET's activities, there has been little attempt[54] to share experiences with refugee rights groups and campaigns in other countries. In my view, given the industrialized governments' increasing security concerns and attempts to link "counterterrorism measures" with immigration on a global level, it is crucial for REFNET to cooperate with movements abroad.

Lastly, I would like to quote a message from Sadako Ogata, the former UNHCR, published in one of the forums on refugee law reform in November 2002, which harshly criticized the current Japanese asylum policy:

> … (The small number of refugees accepted every year) leads to the question if Japan has really understood and tried to practice the spirit and the values embodied in the Refugee Convention. One of the reasons for Japan's asylum policy being like this

(exclusionary) may be because of our prejudice and discrimination (against foreigners) based on the pure-ethnic group myth. However, there is no way that we can hold on to the illusion in today's globalized era. We need to overcome our insular spirit and xenophobia, and become able to relate to various problems in the world as our problems, not somebody else's.[55]

Notes

1. Follow-up interview with the former detainee, Tokyo, December 31, 2002.

2. Letter by an Afghan detainee, addressed to the Christian Coalition for Refugees and Migrant Workers, February 2002.

3. Telephone interview with Bunjiro Hara, February 24, 2003.

4. Since 1996, when the Taliban took control of Mazar-e-Sharif and more than the half of the northwest part of Afghanistan, the Hazara people, who are Shi'ite Muslims, were made targets of planned massacre. It is said that during the massacre in August 1998 by the Taliban in Mazar-e-Sharif, some five thousand to eight thousand Hazaras were killed. Massive numbers of Hazaras have escaped from their homelands and turned into refugees. Even today, the situation in Afghanistan is far from stable, and there still remains the possibility of these asylum seekers being persecuted. Sayed Askar Mousavi, *The Hazaras of Afghanistan: A Historical, Cultural, Economic and Political Study* (New York: St. Martin's Press, 1997).

5. Network to Free Afghan Refugees (hereinafter AFNET); in Japanese, *Zainichi Afghanistan Nanmin Shien Network* (established in 2001).

6. Since both AFNET and REFNET are made up of several organizations that themselves have their members (and their membership is sometimes fluid), it is difficult to estimate exactly how many young people belong to AFNET or REFNET.

7. See "Application Time Limit for Asylum May Be Scrapped," *The Japan Times,* 27 February 2003; online: <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20030227b6.htm> (date accessed: February 25, 2003).

8. *United Nations Convention Relating to the Status of Refugees* (hereinafter Refugee Convention), 28 July 1951, 189 U.N.T.S. 150 (entered into force 22 April 1954).

9. *Protocol Relating to the Status of Refugees*, 606 U.N.T.S. 267 (entered into force 4 October 1967).

10. *Immigration Control and Refugee Recognition Act*, Cabinet Order No. 319 of 1951. Latest Amendment: Law No. 135 of 2001; online: Ministry of Justice Homepage <http://www.moj.go.jp/ ENGLISH/IB/ib-19.html> (English; date accessed: February 25, 2003).

11. "Asylum Cases Filed with the Ministry of Justice Japan" (translation based on the Ministry of Justice, "Heisei 14 nen ni okeru nanminninteishasu to nitsuite," 7 February 2003), online: <http://www.ref-net.org/statistics.html> (date accessed: February 25, 2003). During 2001, Japan allowed sixty-seven rejected asylum applicants to remain in the country with *zairyu-tokubetsu kyoka* (special permission for residence), based on humanitarian concerns, including civil war in their home countries. However, this permission does not firmly guarantee the extension, and there may be a gap between the treatment of those who hold special permission for residence and those who are formally recognized as refugees under the Refugee Recognition Act.

12. United Nations High Commissioner for Refugees (hereinafter UNHCR), "Selected Indicators Measuring Capacity and Contributions of Host Countries" (April 2002), online: <http://www.unhcr.ch> (date accessed: February 25, 2003).

13. Amnesty International, "Welcome to Japan?," May 17, 2002, online: <http://web.amnesty.org/ai.nsf/Index/asa220022002?open&0f=C OUNTR IES%C2%A5JAPAN> (date accessed: February 25, 2003).

14. U.S. Committee for Refugees, "World Refugee Survey 2002 Country Report: Japan," online: <http://www.refugees.org/world/countryrpt/easia_pacific/jap an.ht m/> (date accessed: February 25, 2003); Lawyers Committee for Human Rights, "Country by Country Review of Detention Procedures and Practices: Japan," September 18, 2002, online: <http://www.lchr.org/refugees/reports/cntry_rev_02/Japan.pdf> (date accessed: February 25, 2003).

15. UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, February 1999, online: fs2 http://www.unhcr.ch (date accessed: February 25, 2003).

16. UNHCR Executive Committee Conclusion on Detention of Refugees and Asylum Seekers, No. 44 (1986). *Report* of the 37th Session: UN doc./A/AC.96.688.

17. UNHCR Japan, "Asylum in Japan," (May 2002), online: <http://www.unhcr.or.jp/protect/hogo_japan.html> (Japanese; (date accessed: February 25, 2003).

18. Kensuke Onuki and Kanae Doi, "Nanmin no Kyoseishuyo to Kyoseisokan," in *Nanmin Sakoku Nihon o Kaeyo!* (Beyond the Seclusionist Japan), ed. Preparation Committee, Network for Refugee Law Reform-Japan (REFNET), (Gendaijinbun-sha, 2002). See also "Number of Asylum Seekers Detained in Japan" (the figure is as of May 2002), online: <http://www.ref-net.org/numbers_detained.html> (date accessed: February 25, 2003)).

19. Richard H. Friman, "Immigrants, Smuggling, and Threats to Social Order In Japan," ed. David Kyle and Rey Koslowski (Baltimore: Johns Hopkins University Press, 2001), 304. Japan, which claims itself as homogeneous, has long had minority Koreans and Chinese due to colonial history. In addition migrants (many of them undocumented) from all over the world started to flow into the country since the 1980s, due to rapid economic growth. At the end of 2001, the number of registered foreigners was 1,778,462, which made up 1.4 per cent of the total population; by nationality, Koreans made up 632,405, and Chinese 38,1225. An estimate of the number of undocumented migrants was 224,067. Ministry of Justice, *"Gaikokujin torokusha tokei ni tsuite,"* June 11, 2002, *"Honpo ni okeru huho zanryusha su ni tsuite,"* January 1, 2002, online:

<http://www.moj.go.jp/> (Japanese; date accessed: February 25, 2003).

20. Furuya Mamoru, "*Nyukokukanri, Chian, Yujitaisei*" (Immigration Control, Social Order and Emergency Countermeasure), *Migrants' Net*, October 2002, 3.

21. *Asahi Shinbun*, October 10, 2001.

22. "Ministerial meeting on anti-terrorism measures" is the author's translation of *Kokunai terror Taisaku to ni Kansuru Kankeishocho Kaigi* based on the Cabinet.

23. At the same time, in order to secure protection for refugees under the Refugee Convention, it is sometime inevitable even for NGOs to emphasize the difference between "political refugees" and "economic refugees (migrants)." However, some members of REFNET, especially those long involved in undocumented migrants' rights, have been concerned that the excessive use of the term "economic refugees" (and the negative connotation associated with it) might discourage even the newcomers to the refugee rights movement from working for migrants' rights. Although these two movements should be conducted in separate frameworks, the distinction between a "migrant" and a "refugee" is sometimes a slippery slope as one can be pushed out of her country for both political and economic reasons.

24. The Lawyers League filed lawsuits to suspend the detention of nine Afghans, and on November 6, Tokyo District Court released five of the nine Afghans (the other four belonged to another section of the court), and harshly criticized the Japanese government's asylum policy. However, by the end of November, all nine were denied refugee status. On December 19, the Tokyo High Court overturned the District Court's decision, and finally the temporarily released five were re-detained at the immigration detention center in Ushiku, Ibaraki. Case Number: Tokyo District Court, H13 (2001) (gyo-ku) No.114, No.115, No.116, No.121, No.123. See "Five Free Afghans Detained Again," *The Japan Times,* 22 December 2001.

25. Although no Afghan has lost his life in the detention centres, to date two Afghan asylum seekers have committed suicide outside the centres. One took his life in Aichi Prefecture in May 2002 from fear of having his application rejected and therefore being re-detained. The other, who had been waiting for five years to be recognized as a refugee, killed himself in August 2002, several months after having found out that his family had been killed by American bombs. Television programs and newspapers reported the deaths of these young Afghan men. See Takuya Asakura, "Reluctance to Accept Refugees Draws Fire," *The Japan Times,* 29 November 2002, online: <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn200 21129c3.htm> (date accessed: February 25, 2003).

26. Conversation with an Afghan detainee, Ushiku Immigration Detention Center, Ibaraki, February 22, 2002.

27. Inquiry to the Ushiku Detention Center by Attorney Kanae Doi, February 25, 2003.

28. Councillor Mizuho Fukushima, Inquiry to the Chief of the Immigration Bureau at the Committee on Judicial Affairs, the House of Councillors, March 19, 2002.

29. Representative Munenori Ueda, Inquiry to the Chief of the Immigration Bureau at the Committee on Judicial Affairs, the House of Representatives, February 27, 2002.

30. *Nankiren Newsletter*, May 15, 2002, 5.

31. UNHCR Press Release, February 21, 2002, online: <http://www.unhcr.or.jp/news/press/pr020221_2.html> (date accessed: February 25, 2003).

32. Takuya Asakura, "Detained Afghans Languishing," *The Japan Times,* 22 February 2002, online: <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20020222b1.htm> (date accessed: February 25, 2003).

33. Tokyo District Court, H13 (2001) (gyo-ku)No.1-4, No.166, No.170, No.187.

34. Because of the small population and their shaky residency status, it is hard for refugee / migrant communities in Japan to politically organize themselves. On the other hand, there are about two hundred Japanese-initiated NGOs concerned with migrants and refugees in Japan; this contrasts with many industrialized countries where immigrant groups take the initiative in forming such organizations. See Apichai Shipper, "Foreign Workers, NGOs, and Local Governments in Japan" (paper prepared for the Annual Meeting of the Association of Asian Studies, March 11, 2000).

35. There is always a risk that accompanies disclosure of one's face and name as an asylum seeker; the information may reach as far as her/his home country, thus escalating the risk of persecution upon deportation. The government where asylum is being sought might also conclude that s/he does not fear such persecution and reject his/her asylum application.

36. On June 11, 2002, the Tokyo High Court overturned the district court decision of March 1, and as a result the previously released seven faced re-detention. But in the end, the Immigration Bureau granted provisional release to the seven on July 1, a few hours after they appeared at the Tokyo Immigration Bureau No. 2 Office.

37. *Vienna Convention on Consular Relations* (1963) 21 U.S.T. 77, T.I.A.S. No.6820, 596 U.N.T.S. 261 (signed at Vienna on April 24, 1963; entered into force on March 19, 1967).

38. The family was later granted asylum in South Korea. Since it is impossible to go to South Korea directly from North Korea, there are many persons who flee to China in order to seek asylum at foreign consulates and embassies stationed there. While there are an estimated 50,000 to 250,000 North Koreans entering China every year, the Chinese government, because of its concern about risking its friendship with North Korea, does not recognize them as refugees; instead the Chinese government often sends them back as illegal economic migrants. See Jonathan Watts, "China and US at Odds over Embassy's Korean Refugees," *The Guardian,* 15 May 2002, online: <http://www.guardian.co.uk/international/story/0,3604,71552 6,00. html> (date accessed: February 25, 2003).

39. Network for Refugee Law Reform-Japan (*Nanmin ukeireno arikata o kangaeru nettowaaku*), online: <www.refnet.org/english.html>.

40. Network for Refugee Law Reform-Japan (REFNET) Preparation Committee, *Nanmin Sakoku Nihon o Kaeyo!* (Beyond the Seclusionist Japan), (gendaijinbun-sha, 2002).

41. Special Working Group on Refugee Issues, Justice Minister's Private Council on Immigration Control Policy (this is the author's translation of *Nanmin mondai ni kansuru senmon bukai* and *Shutsunyukoku kanri seisaku kondankai*).

42. Special Working Group on Refugee Issues, "*Nanmin nintei seido ni kansuru kento kekka (chukan-hokoku)*" (progress report on their review of the refugee recognition system), November 1, 2002.

43. At the same time, the progress report repeatedly claimed the necessity of countermeasures against "camouflaged refugees" abusing the asylum system, with the intent of reaping economic benefits. In fact, the conditions of obtaining provisional legal status are problematic; they exclude, for example, those who arrived in Japan via a "safe third country" and those who apply for refugee status more than six months after their arrival in Japan. Another amendment in the new bill is abolition of (or extension of) the "sixty-day-rule." The current "sixty-day-rule" stipulates that requests for asylum must be filed within sixty days after arriving Japan (or sixty days after the need for protection arose), unless there have been "unavoidable circumstances" preventing timely application. The rule has been criticized by refugee advocates for "preventing refugees who might be unfamiliar with the Japanese system from obtaining refugee status, solely for the reason of not meeting the deadline." On the other hand, the bill does not address the need to create a new agency or agencies independent from the Immigration Bureau with the authority of examining initial refugee applications and/or appeals (on behalf of refugees, independently from the Immigration Bureau). Such a proposal, actively promoted by REFNET and other refugee rights organizations, was deemed untimely. (Currently the initial application as well as the appeal process for refugee status is administered entirely by the Immigration Bureau, which prevents impartial and objective recognition process.)

44. Christians and churches have been a leading force in the human rights movement, especially on behalf of migrants and refugees in Japan. According to the research conducted by Solidarity Network with Migrants Japan (hereinafter SMJ, previously called NNSMW) in 2000, among fifty-seven organizations on behalf of refugees and migrant workers, nineteen (33 per cent) were church-based organizations (which is quite large considering that in 2000 only 1 per cent of the total population in Japan was Christian, according to the Agency for Cultural Affairs). Nanako Inaba, *et al.*, "NGOs and Empowerment of Migrant Workers in Japan," Studies in Communication Bulletin of the Faculty of Humanities, Ibaraki University, No.10 (September 2001), 96. See also "Social Action of the Catholic Church," Catholic Bishop's Conference of Japan Website, online: <http://www.cbcj.catholic.jp/eng/ehistory/jphis.htm#5> (date accessed: February 25, 2003).

45. Makoto Endo, *Nanmin no Ie* ("Refugee Resettlement Assistant Center") (Tokyo: Kodan-sha, 1990), 98–107; Japan Catholic Commission for International Cooperation (Section of Resettlement of Refugees)*, Nanmin to Tomoni* (Together with Refugees), 2001.

46. Atsuko De Viscardo, "Afuganisutan nanmin no jitsujo to shien" ("Supporting Afghan Refugees"), *Nankiren Newsletter,* September 2001, 5.

47. Hong Kim Linh, *"Zainichi Vietnam Catholic Shinto ni Tsuite"* (on Catholic Vietnamese in Japan), in *Nanmin to Tomoni,* ed. Japan Catholic Commission for International Cooperation (Section of Resettlement of Refugees), (2001), 55.

48. "Asylum Cases Filed with the Ministry of Justice Japan" (translation based on the Ministry of Justice, "*Heisei 14 nen ni okeru nanminninteishasu to nitsuite,*" February 7, 2003), REFNET Website, online: fs2 ttp://www.ref-net.org/statistics.html> (date accessed: February 25, 2003).

49. Anonymous, Japanese Female (translation by the author), RAFIQ Website, online: <http://www.itrek.jp/~rafiq/> (Japanese/ Last Updated: February 27, 2003).

50. The group name "Chance !" is based on John Lennon's song "All we are saying is give peace a chance …."

51. Peace Boat is an international NGO which organizes educational peace voyages on a large passenger ship every year. Young members of Peace Boat visited and organized a rally for Afghan detainees and recently founded their own working group on refugees in Japan.

52. E-Mail interview with Attorney Takeshi Ohashi, February 20, 2003.

53. Takatsugu Aoki, "*Hansuto-nikki* (TAKA's Hunger-Strike Diary. Translation by the author)," October 13, 2002.

54. Still, REFNET member SMJ, which has been pioneering the effort to encourage NGOs to seek solidarity with migrants rights' movement overseas, has moved to establish global collaborative ties by attending international conferences such as the Regional Workshop on Democracy and Security for the Peoples of the Asian Region and making presentations on the tightening of regulation on migrants and refugees in post-September 11 Japan.

55. Sadako Ogata, "*Hirakareta shiya ga motomerareru higo seisaku kaikaku*" (Asylum Policy Reform: What Is Needed Is More Liberal Perspective; translation by the author), (Message for Japan Federation of Bar Associations (JFBA), November 16, 2002).

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RESPECT for All:
The Political Self-Organization of Female Migrant Domestic Workers in the European Union

Helen Schwenken

Abstract

This contribution focuses on the empowering political practices of RESPECT, the European network for migrant domestic workers. The paper contrasts RESPECT*'s empowering approach with that of other actors in which migrant domestic workers are presented as victims and in which the struggle is situated within the discourse of combatting illegal immigration and trafficking in women. The central hypothesis of this paper is that this distinction between female migrant domestic workers constructed as victims of trafficking or as migrant women with subjectivity, voice, and agency is crucial in determining the type of advocacy strategy and (self-)representation of the women.*

Résumé

Cette contribution se penche sur les pratiques d'autonomisation de RESPECT, le réseau européen pour la défense des travailleurs domestiques migrants. L'article contraste l'approche d'autonomisation de RESPECT avec celle d'autres acteurs qui présentent les travailleurs domestiques migrants comme des victimes et qui situent le débat dans le contexte d'un combat contre l'immigration clandestine et la traite des femmes. L'hypothèse centrale de cet article est qu'il existe deux façons de présenter les choses : soit les travailleuses domestiques migrantes sont des victimes de la traite des femmes ou bien, ce sont des femmes migrantes ayant une subjectivité et leur propre voix. Cette distinction est cruciale pour pouvoir déter-miner le type de stratégie de défense et de/d'(auto)-représentation de ces femmes.

> A room full of sixty black women from all over the world. When people from the European Parliament and the Commission see that, they understand the strength of that network. Very unique, migrant women organizing themselves, and especially migrant domestic workers. When people ask … 'femmes de ménage', they just laugh.[1]

It is not easy for migrant domestic workers to organize themselves. Several factors make this task especially difficult. The private household as a working place is usually isolated, and most workers do not have legal entitlements to work and stay in the country. Additionally, working long hours hardly leaves any time for collective action. Nonetheless, a European network for the rights of migrant domestic workers has in recent years been able to act quite successfully to improve the situation for female domestic workers. The network, called RESPECT, is a European network of migrant domestic workers' organizations and supporters that campaigns for the rights of women and men working in private households in European Union (EU) countries.[2] The RESPECT network originated in the very agile work of the Filipino self-help group Waling-Waling in London and the supporting NGO, Kalayaan. Comparative research, mostly carried out by Bridget Anderson in five European countries on the living and working conditions of migrant domestic workers, was the first step for the enlarged activities in the EU.[3] At present, the network com-

prises members from, *e.g.*, Greece, Spain, the Netherlands, the United Kingdom, Germany, France, Italy, and Belgium. RESPECT supports its members' campaigns and facilitates the sharing of experience and expertise in campaigning, organizing, and lobbying.

In this contribution I will focus on a specific political practice of the network in which migrant domestic workers are encouraged to raise their voices and fight for their rights. This strategy forms the basis of the work of the RESPECT network. I contrast this approach with that of other actors, including the European Council and NGOs such as Anti-Slavery International, which tend to victimize migrant domestic workers and situate themselves in the discourse of combatting illegal immigration and trafficking in women.

Thus the central hypothesis of this paper is that the differences in constructing female migrant domestic workers as victims of trafficking *or* as migrant women with subjectivity, voice, and agency are crucial for the type of advocacy strategy and (self-)representation. This is true for NGO activists and EU institutions as well as for the migrants themselves. As I show in the latter part of this paper, this distinction also has an impact on policy outcomes.

Speaking Up

In social movement research, underlying assumptions about political subjects tend to be problematic when dealing with migrant and refugee movements. Several features characterize the successful activist: s/he is able to assemble in groups; s/he invests some time in meeting, writing petitions, going to demonstrations, and simply discussing and socializing; s/he mobilizes a group of activists and supporters, is eloquent, and raises funds. Moreover, successful social movements have to be able to build up the illusion that politicians are accountable and that social movements represent relevant numbers of voters.

These underlying assumptions about successful social movements mostly fit well-settled, middle-class activists or students. It is a challenge for social movement theory to analyze how migrants, and especially undocumented migrants with reduced citizenship status, are able to mobilize politically.

The constraints for social and political self-organization vary for different groups of migrants. There are, however, at least three common problems which most migrants face. For example, in Germany, some of the difficulties asylum seekers and undocumented migrants might face include:

1) Restrictions to mobility and living in remote areas hinder their ability to assemble with other migrants and to participate in demonstrations. Official restrictions of mobility do not exist for undocumented migrants in the same way as they do for asylum seekers. However, these migrants face self-imposed restrictions on their mobility. One of the most important patterns of behaviour involves learning to be invisible and inconspicuous, especially towards state authorities, in order not to arouse suspicion. Migrant domestic workers face yet another problem of mobility. These workers are frequently isolated in the household and it is consequently difficult for them to build up contacts.

2) Difficulties in resource mobilization, a crucial factor in the success of social movements, according to the resource mobilization approach,[4] arise as another problem for migrants. Due to often exploitative jobs, undocumented migrants have little time to invest in political activities. Furthermore, institutional factors such as the existence of special laws regulating associations of "foreigners" as well as fewer contacts to official institutions limit the migrants' access to official funding.

3) The lower social status of asylum seekers and undocumented migrants forms a third common problem. In particular, gendered forms of discrimination and violence must be taken into consideration when discussing female migrants and refugees.

These are all very difficult conditions under which asylum seekers and undocumented migrants attempt to engage in political activities. At the same time, the general political opportunity structures are not encouraging. The political opportunity structure approach[5] is an important analytical concept in social movement research. According to Sydney Tarrow, political opportunity structures consist of "consistent – but not necessarily formal or permanent – dimensions of the political environment that provide incentives for people to undertake collective action by affecting their expectations for success or failure."[6] Several dimensions of the political opportunity structure in the European Union exist in the field of asylum and irregular migration. On the one hand, public discourse and political measures in the EU range from a more integrationist and anti-discriminatory approach, to a focus on the call for stricter border controls and measures to combat irregular migration. On the other hand, it is acknowledged that economically beneficial and regulated labour migration must serve national interests.

One could argue that migrants protest because they are severely deprived and suppressed. These "deprivational approaches"[7] were popular in the social movement literature until the 1970s as a means to explain uprisings by workers and groups of lower economic standing. The deprivation theory postulates that the more one suffers, the more one protests. However, this approach is much too simplistic. No proven direct connection between deprivation and conten-

tion exists. Thus, I argue from a different perspective, drawing on Foucault and his conceptionalization of power. For Foucault, power does does not oppose victims and powerful actors. Foucault emphasizes that power relations can only exist between parties which *both* are equipped with different kinds of power: "The term 'power' designates relationships between partners (and by that I am not thinking of a zero-sum game, but simply … of an ensemble of actions which induce others and follow from one another)."[8] Therefore, Foucault uses the term "power relations" and emphasizes that "power is exercised only over free subjects."[9]

What different kind of power, abilities, and strengths might migrants have which help them to organize effectively in the European Union? I refer to those mentioned by the Commission for Filipino Migrant Workers[10] (CFMW) and the United Workers Association, an organization of five thousand migrant domestic workers in the UK.[11] The Filipino community has been quite important for the self-organization of migrants in Europe since the 1960s. As CFMW states, empowered migrants know their rights, document their own situation, and develop a political agenda and strategies to improve their living and working conditions.[12] Furthermore, Natasha Pearce mentions that migrant organizations as multi-national groups which overcome the particularity of only one ethnic group must also be regarded as a particular strength. Moreover, CFMW refers to specific individual qualities such as the "sense of their own actual presence and numbers in a country or region."[13] These individuals are aware of the fact that they, as migrants, play a vital role for the host country as well as for their country of origin. Thus, they can demand better conditions. One member of the RESPECT network refers specifically to the situation of migrant women: "More Filipinas [are organized] because they speak English and … this generation of women migrated alone, no husband, not following or bringing their children. And they have more this need of community, this approach of independence …. They also seem to be more open to the issue of empowerment."[14]

The characteristics which a migrant must show in order to successfully mobilize are quite ambitious and demanding. Hence, one must question the extent to which migrant workers can achieve them. The judgment differs dramatically if we ask different political actors, as has already been mentioned in the introduction: some refer to migrant domestic workers as victims of slavery-like practices or trafficking in women and do not even mention questions of empowerment; others call them migrant workers and encourage them to organize. This far-reaching difference has major consequences for the political agenda as well as for the policy outcomes. In the following paragraph I will elaborate on another problematic dimension of the dichotomy between victim and agent.

Voluntary versus Forced Migration?

In determining an individual's right to refugee status, one often makes use of the dichotomy between voluntary and forced migration. However, this dichotomy is problematic. It is more advantageous to consider forced versus voluntary as a continuum which depicts the varying degree of choice or freedom available to the migrants. Voluntary and forced migration are highly socially constructed terms which form the two ends of the continuum. Trafficking in human beings falls at the end of the continuum and represents one form of forced migration. Since the 1980s this problem has increasingly gained scholarly and political recognition. One milestone in the analysis of policy in the field of migrant domestic workers was the substantial widening of the definition of trafficking. For a long time only trafficking in combination with sexual exploitation and abuse was considered trafficking. But in November 2000, after strong transnational lobbying efforts of women's NGOs, the UN adopted a definition which also includes other abusive and exploitive situations, such as those of mail-order brides and domestic workers.[15]

Jo Doezema suggests using the idea of "forced to choose" to overcome the voluntary/forced dichotomy which only reproduces stereotypes and divisions among sex workers: "Potentially the most frightening division, however, created by the voluntary/forced dichotomy is that of sex workers into guilty/'voluntary' and innocent/'forced' prostitutes".[16] Regarding the issue of migration, the same problematic dichotomy between innocent/"refugee" or "forced migrant" and guilty/"illegal migrant" would be true. Most migrants *decided* to leave their country and were not "sold," kidnapped, or otherwise forced. In most cases, the decision was negotiated with their family as a result of needing to earn more money or the women being in search of a better economic or more liberal life prospects. This leads us to the distinction between trafficking and smuggling which has only been recently developed but which is of great importance. While the term "trafficking" tends to describe movements of individuals against their will, "smuggling" refers to more voluntary movements on the part of the migrant.[17]

After having discussed some of the terms and concepts relating to the dichotomies voluntary/forced, smuggling/trafficking, and victim/agent, the following section will analyze the ways in which social actors including NGOs, groups of self-organized women, and institutions make use of these terms.

Strategic Framing of Social Movements

How do undocumented migrant domestic workers in the European Union and their supporters frame their concerns? The concept of "framing" in social movement theory deals with reality construction and the interaction between move-

ments and opportunities.[18] The theory assumes that one has to choose the correct words and strategy in order to successfully bring one's interests into the public sphere.

In this section, empirical evidence including two policy-outcomes and one example of articulation by migrant workers themselves and support groups will be provided in order to support the hypothesis generated earlier. The first example is the "Report on Regulating Domestic Help in the Informal Sector," adopted by the European Parliament (EP) on the initiative of the Committee on Women's Rights and Equal Opportunities in October 2000.[19] The second example is the report on domestic slavery of the Committee on Equal Opportunities for Women and Men of the Council of Europe.[20] Finally, the "Charter of Rights for Migrant Domestic Workers" of the European network for migrant domestic workers, RESPECT, will be discussed.[21]

These documents have been chosen as representing two different ways of dealing with the issue of migrant domestic workers. Both institutions have been addressed for lobbying purposes by NGOs and other stakeholders, including the RESPECT network. The European Parliament regularly adopts reports which have been worked out in the respective committees. Lobbying efforts seek to influence the content and wording of the reports. Although the EP is, in comparison to the European Commission or the member states, not very powerful in the field of migration, declarations of the EP can influence the public opinion.

Two competing frames are evident in the case of migrant domestic workers. In the Council of Europe's report the central frame is "slavery" and "trafficking in women." In contrast, the European Parliament's and the RESPECT network's frame is "rights." These frames correspond with the differentiation between forced and voluntary migration and between victims and agents.

First the terms and contexts in which migrant domestic workers are written about in the documents will be analyzed, and afterwards attention will be drawn to the strategies used to improve their situation.

Naming Migrant Domestic Workers and the Emergence of the Problem

The topic of the report of the European Parliament is undeclared paid domestic work. The rising number of domestic workers is situated within the context of demographic developments, the increasing number of single-parent families or full-time employment of both parents, undeclared work, and the black-market economy in general. The report briefly describes in its explanatory statement the situation of female domestic workers and subsequently analyzes the situation in different countries. The tasks domestic workers have to carry out are compared with the ILO *Convention C177 on Home*

Work[22] and the ILO *International Standard Classifications of Occupations*, both of which offer only narrow definitions.[23] Abuses and the lack of social security are criticized.

In contrast, the report of the Council of Europe talks about "victims of a new form of slavery." A "domestic slave" is a "vulnerable individual forced, by physical and/or moral coercion, to work without any real financial reward, deprived of liberty and in a situation contrary to human dignity."[24] Four million women are said to be sold each year.

Finally, the "Charter of Rights for Migrant Domestic Workers" is very brief and refers to "people and workers"[25] in different social situations (documented/undocumented, live-in/live-out,[26] first/second generation, born in Africa/Asia/South America/Europe). Domestic work is described as "demanding work which requires a variety of skills"[27] but which is not adequately acknowledged. The rest of the Charter deals with demands for increased rights.

Both official documents as well as the Charter implicitly refer to the experiences and research made by the RESPECT network or affiliated researchers.[28] Interestingly, the same sources are interpreted differently or adopted selectively. For example, the Council of Europe's report states that the London-based NGO Kalayaan has counseled more than four thousand domestic workers, of whom 84 per cent had suffered psychological duress and 54 per cent had been locked up.[29] This is valued as proof that domestic slavery exists. In the research of Bridget Anderson and Annie Phizacklea the same problems and figures are described as "worker's problems."[30]

Lobbying for Undocumented Migrant Domestic Workers

As mentioned above, analyzing the documents reveals (at least) two different frames. Distinctive policy measures are proposed in each of the documents. Because these documents are not primarily argumentative, one must deduce the argumentative scheme from the recommendations and demands presented. This is demonstrated below.

1. *The Frame "Combating Domestic Slavery and Trafficking in Women"*

In the Report of the Council of Europe, the frame "slavery" is made clear from the beginning and is mirrored in the recommendations to combat domestic slavery.

Among the recommendations are measures to prevent trafficking in human beings, including providing information and combating poverty, implementing repressive measures like stricter border controls and police cooperation, increasing protection and assistance of victims, and returning programs and regulations of domestic work.

Several actors are mentioned, including recruiting agencies/ traffickers, employers, diplomats, and international civil servants as abusers; states and the international level as regulating forces, police, and legal prosecutors; NGOs as providers of protection and of social and legal assistance; and the victims. Only once in the document of the Council of Europe are the victims given subjectivity. This is in the mention that they may not wish to return to their country of origin but take advantage of the educational and vocational training opportunities available in the host country.[31] But the consequence to provide long-term residence permits is not taken.

2. The Frame "More Rights for Migrant Domestic Workers"

We can identify three sub-frames within the frame of "rights" which can be deduced from the demands articulated in the Report of the European Parliament and the Charter. These are formulated as workers' rights, human rights, and women's rights.

The EP Report and the Charter also mention a number of different actors. These are employers, employees, and social partners as the institutionalized representation of workers and employers; NGOs as advocates; and states as well as the EU as potentially regulating forces.

The frame of rights is not a homogenous one, but depends on political priorities and cycles. The European Commission appears to be more open to women's rights than to migrants' rights as demonstrated by this excerpt: "The European Commission is relatively progressive on the rights of women, more progressive than they are on the rights of migrant workers, and we should try and use that."[32] Consequently, organizations of migrant domestic workers must adjust their policy as one principle of lobbying is to assert a congruence of general opinion between those who lobby and those who are lobbied.

Opposing the Frame of "Trafficking"

Several expert interviews conducted with members of the RESPECT network support the finding that migrant domestic workers themselves argue within the framework of extended rights and criticize the discourse of trafficking[33] which some NGOs follow. A founding member of Kalayaan argues not on a strategic level but with the different needs of trafficked women and migrant domestic workers: "The issue of domestic workers in the private household is about workers rights.… There are other organizations who work with trafficked women.… You need a different approach. We shared with the domestic workers …, even they said they were in a different situation."[34]

In addition to an awareness of the different needs, one co-ordinating member of the RESPECTnetwork describes the consequences of the difference between these two frames.

> The Committee against Modern Slavery, and somehow also Anti-Slavery International which are not groups of self organized women, … decided to follow a completely different track – the one of trafficking. … They emphasize the worst cases of torture, rape and so – which is a strategy. … Then to bring it to court, then to show that that's modern slavery, trade in human beings and then to ask for these women for temporary residence permit on humanitarian ground. … This approach doesn't take into account the migrants, because you systematically see them as victims.[35]

In reference to the self-understanding of the RESPECT network, Bridget Anderson, a researcher and activist in Kalayaan and RESPECT, adds that by Kalayaan "migrant domestic workers were not cast as victims, to be rescued by campaigners; rather the groups worked together, using their different skills and social positions."[36]

One important differentiation between these positions is the question of regularization of undocumented migrants. While the RESPECT network argues in favour of this, those organizations which favour the frame of trafficking demand a temporary residence permit on humanitarian grounds which do not include work permits. "For example the *Comité contre l'esclavage moderne* are not in the position of regularization of illegals for example, they don't want to touch that issue at all, they find it much too controversial".[37]

This insight into the different approaches and demands of NGOs and groups of self-organized migrant women reveals that those two frames are difficult to combine. Struggles occur with definitions (such as, "Is it trafficking or not?") and related strategies and political allies. Clearly, migrant domestic workers know about the two frames and choose the rights discourse. What are the advantages of this? In the following section I show that the rights frame can be, but is not necessarily, successful. In the concluding paragraph, two reasons why the self-organization of migrant domestic workers must make use of this frame in order to maintain their existence are discussed.

Acting Successfully?

Having identified the two competing frames we are led to ask which frame is successful for mobilization at which time and under which circumstances. The frame of "rights" was successful in the British case in 1998. In the UK, migrant domestic workers opposed the legislation stipulating that they could not legally change employers. If the domestic workers were forced to run away because of abusive living

and working conditions, they were not permitted to work for anyone else, or, if they worked on an irregular basis, they were even more vulnerable to exploitation. In the daily work and the political campaign, Waling-Waling, a group of self-organized migrant domestic workers, and the support group Kalayaan worked closely together with the Transport and General Workers Union (TGWU). This cooperation with a strong ally was crucial for their success. Bridget Anderson mentions several campaign strategies such as intensive media and publicity work in order to create sympathy for the situation of the women in public. They did lobbying and parliamentary work at both the national and European level.[38] The European level was used in the sense of the "boomerang effect,"[39] which means putting the UK under international pressure to change their discriminative legislation. As the election campaign was underway, the campaigners received the promise from the Labour Party that in case of a change in the government, the Labour Party would also change the respective laws. After a long struggle, Waling-Waling, Kalayaan, and their supporters succeeded. The Home Office announced in July 1998 that migrant domestic workers could change their employer and started a regularization procedure for undocumented migrant domestic workers. This example makes clear that the campaigners made use of divided elites and the electoral circumstances. Migrant domestic workers were perceived by the public not only as victims, but also as agents with a voice articulating their demands. The discourse of "rights" led to emancipatory and empowering processes. The combination of relatively open political opportunity structures and the clever and substantive framing strategy contributed to the success.

But the case of the European Union appears to be less promising, even though the European Parliament closely followed the positions of the RESPECT network in most points. The reason for this pessimism lies in the hegemonic discourse which at the moment does not favour extending rights for migrants and liberalizing unskilled labour immigration policy. Furthermore, the EU itself is not exclusively responsible for this field. The member states retain their competences in this area. It is hard to foresee the future, but it is clear that regulations have been passed which lead in that direction. For example, some important regulations have been published by the European Commission in which combatting smuggling and trafficking and primarily repressive politics are placed high on the agenda.[40] Questions of regularization procedures or campaigns for undocumented migrants or extended workers' rights are not evident in these documents. The political opportunity structure is, in this case, quite closed to the broader demands of the migrant domestic workers. Thus the frame of

"combatting trafficking and slavery-like practices" is more likely to be successful than the rights-based frame.

Similar developments can be seen on a global scale. Global regulations to guarantee extended rights for (undocumented) migrants are thus far only ratified by so-called sending countries,[41] while global regulations which intend to combat organized crime, human smuggling, and trafficking have been ratified by a much greater number of states.

It is important that the migrant domestic workers maintain the frame of rights in the future for at least two central reasons. First, it is important for reasons of internal mobilization and identity. The migrant workers have to address subjects and constitute agency among the women because the RESPECT network follows the approach of empowerment and dismisses the victimization of migrant women. Furthermore, the rights frame is important for political reasons. The network can only be successful if the political opportunity structure widens. It is therefore important not to strengthen the security policy approach but to find ways to extend human and women's rights.

In conclusion, let us look at one final example to illustrate the importance of the development of a subject position from invisible women to self-conscious subject. The self-help group Waling Waling underwent a name-change into the United Workers Association. The background behind this name change is quite interesting. Waling-Waling is the Filipino name for a very resistant flower which grows in the mountains and hides, much as undocumented migrant women must be brave and strong and yet hide themselves. After the above-mentioned success a member of Kalayaan explained the renaming as being related to the new self-esteem gained as "workers" who unite and fight for their rights. "It was in 1998. … They said 'oh we gonna be legal all'…, and they said we're not a Waling-Waling any more, we will not be undocumented. And what they did is to change the name to United Worker's Association."[42] Clearly, empowerment, subjectivity, and a rights-based framework are central to the success of domestic migrant workers.

Notes

1. Interview with one co-ordinator of the RESPECT network.
2. For further information and activities of the RESPECT network, see the Solidar Homepage, online: <www.solidar. org> (date accessed: 4 March 2003).
3. Bridget Anderson, *Doing the Dirty Work. The Global Politics of Domestic Labour* (London and New York: Zed Books, 2000); Bridget Anderson and Annie Phizacklea, *Migrant Domestic Workers: A European Perspective. Report to DG V of the European Commission* (Brussels: 1997).

4. For the resource mobilization approach in social movement theory see: Mayer N. Zald, "Looking Backward to Look Forward: Reflections on the Past and Future of the Resource Mobilization Research Program," in *Frontiers in Social Movement Theory*, ed. A.D. Morris and C. McClurg Mueller (New Haven and London: Yale University Press, 1992), 326–48; John D. McCarthy and Mayer N. Zald, "Resource Mobilization and Social Movements: A Partial Theory," in *Social Movements in an Organizational Society. Collected Essays,* ed. M.N. Zald and J.D. McCarthy (New Brunswick (USA) and London: Transaction Publ., 1994), 15–42. A critique provides, *e.g.*, Myra Marx Ferree, "The Political Context of Rationality: Rational Choice Theory and Resource Mobilization," in *Frontiers in Social Movement Theory*, 29–52.

5. See, *e.g.*, Doug McAdam, "Political Opportunities: Conceptional Origins, Current Problems, Future Directions," in *Comparative Perspectives on Social Movements: Political Opportunities, Mobilizing Structures, and Cultural Framings*, ed. D. McAdam, J.D. McCarthy, and M.N. Zald (Cambridge: Cambridge University Press, 1996), 23–40; Hanspeter Kriesi, "The Political Opportunity Structure of New Social Movements: Its Impact on Their Mobilization," in *The Politics of Social Protest: Comparative Perspectives on States adn Social Movement:. Social Movements, Protest, and Contention,* vol. 3, ed. C.J. Jenkins and B. Klandermans (Minneapolis: University of Minnesota Press, 1995), 167–98.

6. Sidney Tarrow, *Power in Movement: Social Movements, Collective Action and Politics* (Cambridge, UK: Cambridge University Press, 1994), 85.

7. See, *e.g.,* James C. Davies, "Eine Theorie der Revolution," in *Empirische Revolutionsforschung*, ed. Klaus von Beyme (Opladen: Westdeutscher Verlag, 1973), 185–204; Detlef Baum, *Relative Deprivation und Politische Partizipation* (Frankfurt a.M.: Peter Lang, 1978).

8. Michel Foucault, "Afterword 'The Subject and Power'," in H.L. Dreyfus and P. Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics* (Chicago: University of Chicago Press, 1982), 217; see also, *e.g.*, Michel Foucault, *Dits et Écrits 1980–1988*, vol. 4 (Paris: Ed. Gallimard, 1994).

9. Foucault, *Afterword,* 221.

10. The Commission for Filipino Migrant Workers (CFMW) in Europe started working in 1979 in London and Rome; since then they have been regularly organizing European conferences and run an office in Amsterdam. CFMW works "in partnership with the Filipino migrant community and aims to develop migrant empowerment and capacity building through self-organization, education and campaigns for migrant rights and welfare and for solidarity with migrants of other nationalities against racism." CFMW Homepage, online: <www.cfmw.org/cfweb2003a_bestanden/page0006. htm> (date accessed: 4 March 2003).

11. Natasha Pearce, "How Can Migrants Organise Themselves?" unpublished paper presented at the Rosa Luxemburg Conference, "Future Conditions of Work. Trade Unions – Migrants – Women," Hamburg, 25–26 November 2000).

12. CFMW, "Perspective on Migrant Empowerment: Filipino Migrant Community in Europe" (paper prepared by CFMW for the 6th Regional Conference on Migration in Asia, 28–30 March 2000, Chiang Mai, Thailand), (Amsterdam: 2000).

13. *Ibid.*, 2.

14. Interview with a member of RESPECT/Solidar.

15. The exact definition is as follows:

    Trafficking in persons' shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of other or other forms of sexual exploitation, forces labour or services, slavery of practices similar to slavery, servitude or the removal of organs.

    Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, adopted on 15 November 2000, Doc. A/55/383 (not yet in force); online: <http://untreaty.un. org/English/TreatyEvent2002/Texts/English/CTOC_Prot2_10.pdf> (date accessed: 4 March 2003) [hereinafter *Protocol against Smuggling*].

16. Jo Doezema, "Forced to Choose: Beyond the Voluntary. V. Forced Prostitution Dichotomy," in *Global Sex Workers: Rights, Resistance, and Redefinition*, ed. J. Doezema and K. Kempadoo (New York and London: Routledge, 1998), 42.

17. European Council on Refugees and Exiles (ECRE), "An Overview of Proposals Addressing Migrant Smuggling and Trafficking in Persons" (Brussels and London: ECRE, July 2001); online: <www.ecre.org/research/smuggle.shtml> (date accessed: 4 March 2003); *Protocol against Smuggling*.

18. William A. Gamson and David S. Meyer, "Framing Political Opportunity," in *Comparative Perspectives on Social Movements: Political Opportunities, Mobilizing Structures, and Cultural Framings*, ed. D. McAdam, J.D. McCarthy, and M.N. Zald (Cambridge: Cambridge University Press, 1996), 276.

19. European Parliament (EP), *Report on Regulating Domestic Help in the Informal Sector (2000/2021(Ini)). Committee on Women's Rights and Equal Opportunities. Rapporteur: Miet Smet. Final A5-0301/2000. En.* (Brussels, 2000).

20. Council of Europe, Committee on Equal Opportunities for Women and Men, *Domestic Slavery. Rapporteur: Mr Connor, Ireland, Epp/Cd. Draft Report. As/Ega (2001) 2. 3 January 2001* (Strasbourg, 2001) [hereinafter *Domestic Slavery*].

21. RESPECT, *Charter of Rights for Migrant Domestic Workers.* (London and Brussels, 2000); online <http://www.solidar.org/Document.asp?DocID=162&tod=63616> (date accessed: 4 March 2003) [hereinafter *Charter*].

22. *C177 Home Work Convention*, 20 June 1996 (entered into force 22 April 2000); online: <http://ilolex.ilo.ch:1567/cgi-lex/convde.pl?C177> (date accessed: 4 March 2003). Only four coun-

tries (Albania, Finland, Ireland, the Netherlands) have yet ratified this Convention.

23. The ILO uses the following job description: "Domestic Helpers and Cleaners sweep, vacuum clean, wash and polish, take care of the household linen, purchase household supplies, prepare food, serve meals and perform various other duties." *International Standard Classification of Occupations. Sub-Group 9131, Isco-88* (Geneva: International Labour Organisation, 1990).

24. Council of Europe, *Domestic Slavery,* 1.

25. RESPECT, *Charter.*

26. Domestic work cannot be classified well by the type of work done but by distinguishing between live-in and live-out. "Live-in" means to live in the house of the employer and work only for his/her family. Working "live-out" usually means working for several employers. As live-outs feel more independent and usually earn more, most live-ins try to move out after some time. See Anderson, *Doing the Dirty Work,* 39–47.

27. RESPECT, *Charter.*

28. See Anderson, *Doing the Dirty Work*; Anderson and Phizacklea, *Migrant Domestic Workers.*

29. Council of Europe, *Domestic Slavery,* 2.

30. Anderson, *Doing the Dirty Work*, 2f.

31. Council of Europe, *Domestic Slavery*, paragraph 46.

32. Bridget Anderson, quoted from: SOLIDAR and Kalayaan, *Overseas Domestic Workers: Report after the Round Table in Brussels on 5th–6th June 1996* (Brussels and London, 1996), 14.

33. The RESPECT network decided in February 2001 to disassociate from the concept "domestic slavery" and from campaigns against trafficking in women. See Susanne Schultz, "Domestic Slavery oder Green Card? Feministische Strategien zu bezahlter Hausarbeit." *blätter des iz3w*, 257 (2001), 23–26.

34. Interview with one of the founding members of Kalayaan.

35. Interview with one co-ordinating member of RESPECT. Anti-Slavery International is an international human rights organization, founded in 1839 to eliminate the system of slavery around the world by urging governments of countries with slavery to develop and implement measures to end it, lobbying governments and intergovernmental agencies, conducting research to assess the scale of slavery, educating the public about the realities of slavery and campaigning for its end. See Anti-Slavery International Homepage, online: <www.antislavery.org> (date accessed: 4 March 2003).

36. Anderson, *Doing the Dirty Work*, 95. Anderson refers to the campaigning NGO Kalayaan and a group of self-organized migrant workers, Waling-Waling.

37. Interview with a member of RESPECT.

38. Anderson, *Doing the Dirty Work,* 96–107.

39. See Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, New York: Cornell University, 1998).

40. See Commission of the European Communities, Communication from the Commission to the Council and the European Parliament Combating Trafficking in Human Beings and Combating the Sexual Exploitation of Children and Child Pornography, 21.12.2000, Com(2000) 854 Final (Brussels, 2000); European Commission, Illegal Immigration: Commission Proposes a Balanced Approach. Ip/01/1602. Brussels, 16 November 2001 (Brussels, 2001); Kommission der Europäischen Gemeinschaften, Mitteilung der Kommission an den Rat und das Europäische Parlament über eine gemeinsame Politik auf dem Gebiet der Illegalen Einwanderung. Brüssel, 15.11.2001, Kom(2001) 672 Endgültig (Brüssel, 2001).

41. See Ilse Lenz and Helen Schwenken, "Feminist and Migrant Networking in a Globalising World: Migration, Gender and Globalisation," in *Crossing Borders and Shifting Boundaries,* Vol. 2*: Gender, Networks and Identities*, ed. I. Lenz, H. Lutz, M. Morokvasic, C. Schöning-Kalender, and H. Schwenken (Opladen: Leske&Budrich, 2002), 147–78.

42. Interview with a member of Kalayaan.

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Travel Agency: A Critique of Anti-Trafficking Campaigns

Nandita Sharma

Abstract

This paper offers a critical evaluation of anti-trafficking campaigns spearheaded by some in the feminist movement in an attempt to deal with the issues of unsafe migrations and labour exploitation. I discuss how calls to "end trafficking, especially in women and children" are influenced by – and go on to legitimate – governmental practices to criminalize the self-willed migration of people moving without official permission. I discuss how the ideological frame of anti-trafficking works to reinforce restrictive immigration practices, shore up a nationalized consciousness of space and home, and criminalize those rendered illegal within national territories. Anti-trafficking campaigns also fail to take into account migrants' limited agency in the migration process. I provide alternative routes to anti-trafficking campaigns by arguing for an analytical framework in which the related worldwide crises of displacement and migration are foregrounded. I argue that by centering the standpoint of undocumented migrants a more transformative politics emerges, one that demands that people be able to "stay" and to "move" in a self-determined manner.

Résumé

Cet article propose une évaluation critique des campagnes contre la traite des femmes menées par certaines personnes appartenant au mouvement féministe, et cela dans une tentative pour résoudre les problèmes de migrations dangereuses et d'exploitation des travailleurs. J'examine comment les appels pour « arrêter la traite, spécialement des femmes et des enfants » sont influencés – et servent à légitimer – aux pratiques gouvernementales visant à criminaliser la migration volontaire des gens qui voyagent sans permission officielle. Je démontre comment le cadre idéologique anti-traite sert éventuellement à renforcer des pratiques plus restrictives en matière d'immigration, à la nationalisation des notions d'espace et de domicile et à criminaliser ceux qui sont rendus clandestins à l'intérieur des territoires nationaux. De plus, les campagnes contre la traite ne prennent pas en considération le peu d'influence des migrants dans le mécanisme de la migration. Je propose des voies alternatives aux campagnes contre la traite, en demandant la mise sur pied d'un cadre analytique qui donnerait une place de première importance aux crises mondiales jumelées aux déplacements et à la migration. Je soutiens, qu'en ramenant le point de vue des migrants sans-papiers au centre de la discussion, on arrive à une politique qui acquiert un pouvoir de transformation et qui requiert que les gens aient le droit de « rester » et de « circuler » à leur gré.

Introduction

There is no doubt that the issues addressed by anti-trafficking campaigns are in urgent need of attention: unprecedented levels of migration, unsafe migration practices; the exploitation of migrants; and the growing use of migrants as unfree, indentured, or even enslaved labour. However, anti-trafficking campaigns are unable to remedy these concerns. This is in part because the framing of these grave problems as one of "trafficking" or criminal "smuggling" assumes that the affected migrants are moved against their will and that the "trafficker" is the main culprit in their exploitation.[1]

Such a framing of the problem leaves many crucial questions unasked, questions such as: What are the conditions from which migrants are moving? How are most people

able to migrate if not with the assistance of smuggling operations? What are the labour market options currently available for migrants, particularly undocumented ones? What are the factors that expose undocumented migrants to heightened vulnerability within nationalized labour markets? How are the (im)migration regimes of national states implicated in this?

I will try to show that far from helping migrants, especially women and children who are the main focus of many anti-trafficking efforts, anti-trafficking and/or anti-smuggling campaigns exacerbate the conditions that cause harm to migrants. They do so because one of the key underlying motives of these campaigns is to *restrict* the mobility of migrants, particularly undocumented movements of people. Indeed, deeply embedded within the anti-trafficking and anti-smuggling discourse and practice are anti-immigrant sentiments expressed best in the idea that migrants are almost (if not) always better off at "home." This is evident in both official and feminist definitions of trafficking.

Since feminist organizations are at the forefront worldwide in initiating and sustaining public campaigns against trafficking it is important to examine their assumptions. The most widely used definition of trafficking within such campaigns was jointly arrived at in 1999 by the Global Alliance Against Traffic in Women (GAATW), the Foundation Against Trafficking in Women, and the International Human Rights Law Group (IHRLG) based in the U.S. A significant aspect of it states that to be considered trafficked a person would have to be exploited, abused and deceived "…in a community other than the one in which such person lived at the time of the original deception, coercion or debt bondage."[2] There are two main problems with such a definition.

First, it makes the fact of *migration* the overriding concern and problem. Exploitation "away from home" is conceptualized as a separate problem from exploitative and/or untenable economic relations "at home." This structures knowledge of "home" in particular ways. Exploitation comes to be identified with people's movements abroad and loses its moorings from the organization and expansion of capitalist social relationships wherein people's labour is alienated. In the process "home" is left naturalized and therefore depoliticized as a site where harm is also done to persons. As a result, the fact that capital is accrued and accumulated through employers' appropriation of a portion of workers' labour power is concealed. Moreover, the fact that people often move because they have been dislocated from their homes is left unaddressed by the romanticization of being "at home."

By making migration *the* problem, it is assumed that migration is something that is inherently damaging. As Bob

Sutcliffe has pointed out, "migration tends to be regarded as something which is both exceptional and undesirable" by both academic researchers and, I would add, by many migrant-rights activists.[3] By problematizing migration itself, we are led away from a discussion of the socially organized *conditions* of both people's displacement and subsequent migration and the structuring of a contemporary Global Apartheid through national (im)migration regimes. The problematization of the migration of undocumented people also fails to address why certain people's mobilities are celebrated (those of tourists, intellectuals and members of non-governmental organizations (NGOs), for example) while those of Others is seen as detrimental.

Secondly, this influential definition of what constitutes trafficking fails to account for the reality of the current worldwide crisis of displacement, the proliferation of ever-increasing restrictive immigration policies that prevent the majority of migrants from ever realizing full status in the countries and labour markets they migrate to, and the intensified expansion of global capitalist markets over the last quarter-century.

To address these important issues, I argue that we need to jettison the anti-trafficking and the anti-smuggling discourse and the national and international governmental practices that such discourses organize. Anti-trafficking campaigns need to be replaced with a political practice that actually listens to and privileges the standpoint of undocumented migrants. Undocumented migrants the world over have some fairly uniform and well-articulated demands: an end to practices of displacement, the opening of national border regimes and the labour markets organized through them, and an end to discrimination based on one's nationality. These are precisely the politics that have been taken up by the growing group of No Borders activists in the Global North and South.

An approach that is grounded in the material lived realities of migrants makes for a far more transformative practice, I believe, than an emphasis on the abusive practices within criminalized networks of smuggling in persons. Rather than calling for an end to trafficking or smuggling, taking the standpoint of migrants compels us to deal with the reality that such illicit movements are the only ones available to the majority of the world's displaced people.

As a preliminary attempt to begin our discussion of clandestine movements of people from the standpoint of migrants rendered "illegal," this paper is grounded in the accounts of women who arrived on four separate boats from China and landed on the west coast of Canada in the summer of 1999. All 599 migrants on these boats arrived without legal documentation and with the assistance of

smugglers whom they pre-paid and/or became indebted to for their journeys. Officials of the Canadian state captured all 599 migrants. All those arriving on the last three boats, including children, were automatically detained in Canadian jails, some for well over a year.

I worked with some of these women migrants in my capacity as a member of a feminist organization committed to advocating for them.[4] I was able to speak to a number of these women through the aid of a Mandarin feminist interpreter who worked closely with those women from the first boat who were living outside of jails in the Vancouver, BC, area as well as those detained at the Burnaby Correctional Centre for Women. By drawing on their accounts of migration, the Canadian "justice" and immigration systems, and their thoughts on various strategies used by feminists to help them, I critically assess the conceptualization of trafficking in the fields of both governmental and feminist discourses. This, it is hoped, reveals some of the processes that make these women amongst the most vulnerable of people within Canadian society, particularly in its nationalized labour market. It may also help us to formulate better strategies to work in solidarity with undocumented migrants.

By looking at issues of power between advocates and migrants within feminist discourses of trafficking, my analysis examines some of the often-overlooked aspects of the question of trafficking in women. In particular, I critically examine both the official and feminist representations of "trafficked" "victims" and how anti-trafficking campaigns collude with national state as well as international political agendas that frame trafficking solely in terms of illegal migration. I further examine how the representation of undocumented women migrants solely as victims helps to legitimate the criminalization of their (and others') migrations. By discussing the ways in which migrant women's narratives challenge accepted notions of victimhood, I hope to bring to the fore the ways in which the international regime of nationalized borders creates the conditions for the proliferation of dangerous migrations.

My findings will suggest that when moral panics of illegal migration, border control, and heightened criminality of migrants are deconstructed, a serious disjuncture emerges between women's accounts of migration and the dominant rhetoric of trafficking. Indeed, by critically evaluating the fissure between certain anti-trafficking campaigns and the experiences of undocumented women we find that women within the two groups are often not fighting for the same thing. This paper, therefore, asks whether it is possible that the actual intended utility of anti-trafficking campaigns is not to serve the interests of migrants but to function as an arm of border control? If so, the issue is really how it has chosen to represent its objectives as humanitarian, thereby

sustaining support for an inherently oppressive project from many progressive people.

Global Processes of Displacement and Cross-Border Migration

Today, accelerating processes of globalization are leading to an unprecedented level of displacement. Practices that dislocate people include those that destroy and/or immiserate rural economies; mega-"development" projects, such as hydroelectric dams; resource extraction projects of mining, drilling, and excavating; adoption of market-centred economies; trade liberalization; privatization; the structural adjustment programs of international lending institutions; and war and militarization. Practices such as these have been shown to destroy both livelihoods and ecological integrity and have led to a dramatic rise in both the absolute and relative rise of poverty and homelessness the world over.[5]

The displacement of people is organized through the *co-ordinated* interplay of actions taken by capitalist investors, national state leaders, and members of international bodies. Investors continuously "prowl the globe," to use Cynthia Enloe's term, and use past and new rules of international investment for opportunities to accrue profits and cheapen labour forces.[6] Currently, more people than ever before have been "embraced" by capitalism through the destruction of what was left of their non-market self-sufficiency. This is, perhaps, the core of the meaning of processes of globalization: the planetary hegemony of capitalist social relations.

National states fund both private and public projects that displace people. For example, the Canadian state is a major funder of the largest dam project in the world: the almost completed Three Gorges Dam Project on the Yangtze River in China.[7] Private capitalist interests based in Canada are also heavily involved. Many of the engineering designs, computer systems, and turbine generators for the dam are being provided by firms operating in Canada.[8] It is estimated that this dam has already displaced and will continue to displace upwards of two million small-scale farmers and other residents.[9]

International bodies, such as the International Monetary Fund (IMF) and the World Bank (WB), not only fund these mega-development projects but with other bodies, like the World Trade Organization (WTO), enforce the spread of capitalist social relations, require austerity programs (often to be implemented by all-too-willing national governments), and impose trade sanctions. Together, capital investors, national states, and international governing regimes bring to life Margaret Thatcher's old campaign slogan that "there is no alternative" to capitalist market development.

The result? The displacement of hundreds of millions of people both outside of and within nationalized spaces. Within China alone, those displaced by the Three Gorges Dam are joined by an estimated 200 to 300 million people migrating within the country in the search for new livelihoods because of the turn towards the capitalist marketplace in both the countryside and the city. The dual process of proletarianization and urbanization is taking place throughout Asia, Eastern Europe, Africa, and South and Central America.

Studies by urban geographers document how by the year 2005 at least half of the world's population will be living in urban centres.[10] This will be a first in human history. Yet, urban centres have proven incapable of providing a livelihood to the majority of people displaced from rural communities. A recent ILO study, "Global Employment Trends," estimates that about 180 million people throughout the world are completely jobless.[11] According to the same report, this is a growth of over 20 million unemployed persons since 2000. Hundreds of millions more are underemployed or employed in informal economies.

One major consequence of the crisis of displacement is the exponential increase in levels of cross-border movements of people. In the year 2000, over 150 million people were engaged in international migration.[12] This is a doubling of the figures from the mid-1980s and this number is expected to double again by the end of this decade. Significantly, those countries which have experienced the highest rate of direct capitalist investment in the manufacturing and service sectors are among those that also sustain the highest rates of emigration.[13]

To put this into perspective, about 1.5 billion people have crossed nationalized borders over the last decade alone. In absolute numbers, which are arguably important, this rate of migration is more than that which occurred in the nineteenth and early twentieth centuries: the great "age of mass migration."[14] Significantly, in contrast to the migrations of a century ago when most migration was out of Europe, most cross-border migrants today are from the Global South.[15]

Contemporary migrations from Global South to North reflect the very real concentration of wealth in the North. One indicator of this is the United Nations Development Plan's estimate that at least $500 billion in wealth is transferred from the South to the North every year.[16] Indeed, spatial disparities in prosperity and peace are the driving force of contemporary migrations. It is well documented that one of the main reasons migrants move towards the Global North is for the economic advantages that employment and remittances of wages in highly valued currencies may provide for them and their communities.[17]

The response to such spatial disparities by national states within the Global North (where 70 per cent of all transnational corporate headquarters and the United Nations (UN), the IMF, WB, and WTO are headquartered) has been the imposition of draconian immigration restrictions. A plethora of these have been put into place. The Schengen Treaty, signed by European Union (EU) members in 1985, neutralized internal borders between member states, thereby enabling the free circulation of goods, capital, services, and people classified as citizens. Alongside these border liberalizations, attempts to reinforce the external borders of the EU have been made through greater policing and surveillance levels on the outer rim of the EU and through the harmonization of the migration policies of member states. By presenting the migration of non-EU citizens as a major "problem," the Schengen treaty has created a consciousness, if not actual practice, of a fortified Europe buttressing itself against its non-European Others.

The harmonization of restrictive national (im)migration regimes extends beyond Europe and covers the whole of the Global North.[18] In Canada since the early 1970s, the period widely regarded as the start of the latest phase of globalization, it has become increasingly difficult to *immigrate* to Canada, that is, to move to Canada *and* receive permanent residency status. Each successive change to Canada's Immigration and Refugee Act, culminating in a dramatic overhaul in June of 2002, has had the result of limiting the numbers of people who are eligible to be admitted as permanent residents – the first step to gaining formal citizenship status.

Despite these changes, however, people keep coming. And of course they will. In every period of known human history, people have migrated from where life-sustaining resources are not available to where they are. People have crossed oceans, deserts, and mountains and will continue to do so. So if ever more restrictive immigration policies in the North have not actually restricted people's migrations, then what exactly are they intended to accomplish? The answer that emerges must be: a *decline* in the number and proportion of people coming as immigrants (with permanent residency status) and an *increase* in the numbers and proportion of migrants categorized by national states as either indentured temporary (or "migrant") workers or as so-called "illegals."[19]

I argue that this is not a coincidence but a highly predictable and intended outcome of the current accelerating processes of growing displacement and migration.[20] Border controls – and the moral panics that drive them – have very little to do with stopping movements of people.[21] Instead, they work to make those who *do* cross the line incredibly vulnerable *within* the spaces defined as "belonging" to members of the "nation" and protected by "their state." In

other words, ever-increasing restrictive immigration policies do not work to restrict people's movements but to create a group of people completely vulnerable to exploitation in the workplace; a population of workers that benefits employers by providing them a cheapened and weakened alternative to "legal" workers.[22]

Such restrictions are particularly significant for women migrants. Women, especially those from the Global South, have always had the most legal barriers placed against their ability to access and gain full, legal status within the Global North. This is often due to the fact that official entrance criteria rely upon and replicate the unequal access that women have had to formal education, skills training, and capital.[23] Women generally come to the North classified either as "dependents" of their husbands or fathers, as "temporary" indentured migrant workers *or* as "illegals." Most come in the latter two categories and as a result are rendered highly vulnerable in the labour market and in all other parts of their lives.[24]

The retooling of immigration policies therefore needs to be analyzed as part of *how* labour markets within the Global North have been restructured in an attempt to once again be "attractive" to capitalist investors.[25] This is, of course, unsurprising, given that women of colour currently embody a "competitive advantage" of capitalists seeking the highest return of profit from their investments. (Im)migration policies that reproduce women's labour market inequality reflect the gendered international division of labour that makes use of Third World and negatively racialized immigrant women as the most "flexible" workforce in the restructuring of capitalism both globally and within nationalized labour markets. Further restricting women's access to permanent status, particularly within the context where more women have become international migrants than ever before, is therefore a strategy for re-attracting capital to the country.[26]

The use of illegalized workers and indentured, migrant workers, including sex workers, has historically been – and remains now – an integral part of how capitalism is done in Canada and cannot rightly be perceived to be an aberration from the establishment of liberal democracy for "citizens."[27] Instead, the re-emergence of these forms of labour exploitation and the fact that they are both organized and legitimated through Canadian (im)migration policies are a reflection of a growing Global Apartheid based on nationality.[28]

It is the internationally recognized and legitimated "right" of national states to place people within differential categories of membership in the "nation" that allows them to legally deny permanent or citizenship status to the vast majority of migrants.[29] In fact, the creation of disparities between citizens and non-citizens is how concepts of "citizenship" work within the global system of national states. In reality, throughout the history of national states there have never existed "citizens" *without* the concomitant existence of those who have been Othered as "non-citizens."[30] They exist as mutually constitutive state categories.

Employers benefit enormously from using people as "migrant" or "illegal" workers. Many employers deliberately employ those with a non-permanent and non-citizen status to maximize control and profits.[31] That is, it is not just a case of their being the only labour force available – though that can be a factor. Instead, there are specific advantages to the employer if the worker is a migrant. Employers therefore work with the state to ensure a steady supply not just of any bodies but of bodies branded as "temporary" or as "illegal."[32] Citizenship politics, then, by denying a large number of people any rights and entitlements through their categorization as non-citizens, operate as tools of labour market restructuring.[33]

It is within this context that we need to discuss the issue of trafficking or smuggling in women. Indeed, as Anderson and O'Connell Davidson point out, "the factors behind demand for migrant labour pose problems for notions of coercion and consent that those engaged in debates around trafficking must engage with."[34] Realizing the crucial importance of the creation and maintenance of juridico-legal national borders enables us to analyze immigration regimes that foster the legal, economic, social, and physical vulnerability of women who come to be labeled as "trafficked."

It is important, in this regard, to note that anti-trafficking measures target only those moving without state permission, *sans papiérs*, assuming that those moving with legal documentation are not deceived, coerced, or abused, either in their own journeys or within the countries they come to immigrate to. Anti-trafficking campaigns, however, do not address the denial of nationality status as the *main factor in creating conditions of vulnerability of undocumented migrants*. Stopping such movements or "reintegrating trafficked victims" to their "home society" is the overriding goal.

Criminalizing Undocumented Border Crossers

National states in the Global North and international bodies, such as the EU or the UN, have discursively and legally associated trafficking with illegality and with organized crime. Borders have been presented as a site through which criminality is able to seep into the national state. In this respect, the implementation of border protection schemes has been endorsed as a pivotal measure to regain "control" over Our space. As the President of the EU stated recently, "[b]etter management of the Union's external border con-

trols will help in the fight against terrorism, illegal immigration networks and the trafficking in human beings."[35]

This is similar to the approach adopted by the UN. It its 2000 *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* and the 2000 Palermo *Protocol Against the Smuggling of Migrants*, the issues facing undocumented migrants have been situated not within the apparatus dealing with issues of human rights but within the *Convention Against Transnational Organized Crime.* This has led some to argue that the last concern of such measures is the migrant her/himself.

Indeed, as Francois Crépeau states: "[t]he *Protocol Against the Smuggling of Migrants* is aimed at combating what all countries qualify as a 'plague': the uncontrolled immigration that is not selected according to the needs and interests of the receiving State…"[36] Indeed the two *Protocols* against trafficking and against smuggling need to be understood as part of the next step in the establishment of *barriers* preventing large numbers of migrants from moving with any semblance of entitlements and rights.

The UN Protocols extend the border control projects of the Northern national states that have imposed visas for most, if not all, countries in the Global South and Eastern Europe, carrier sanctions, "short stop operations," training of airport or border police personnel, lists of "safe third countries," lists of "safe countries of origin," readmission agreements with neighbouring countries that form a "buffer zone," immigration intelligence sharing, reinforced border controls, armed interventions at sea and military interventions.[37]

The return "without undue or unreasonable delay" of the so-called trafficked or smuggled migrant remains the ultimate objective of the *Palermo Protocol* (article 18). Its main objective is not the protection of individual migrants but both the containment of their movement and their exposure to heightened vulnerability once residing within a particular national state. Cynthia Meillon has pointed out that this objective also appears to dominate the UN's *Beijing Plus Five* document (a follow-up to examine whether governments have fulfilled the commitments they made when signing the 1995 Beijing Declaration and Platform for Action).[38] Far from trying to protect people harmed during their illicit migrations, the UN's two *Protocols* and its *Beijing Plus Five* document provide measures for national states to combat undocumented migrations. Hence, assistance to national governments to "reintegrate" (*i.e.*, deport) supposed victims of trafficking to the countries they have left (paragraphs 70b and 96c) is their overarching concern.

Importantly, unlike many UN declarations and agreements, the ones addressing trafficking and smuggling have been integrated into many national states policies. Canada has included Article 6 of the *criminalization of smuggling activities* of the *Palermo Protocol* in its new, and erroneously named, *Immigration and Refugee Protection Act.* This new Act provides for a possibility of imprisonment for a maximum of two years on a summary conviction or fourteen years on indictment for smuggling less than ten persons and life imprisonment for smuggling a group of ten persons or more or for disembarking illegal migrants at sea.[39]

Significantly, the Canadian state does not have to prove that harm to persons or damage to property took place in order to secure a life sentence: the simple act of moving ten or more people across borders without state permission is sufficient. Indeed, immigration lawyers and other advocates for migrants have informally reported to me that the Canadian government is attempting to prosecute people for acts of smuggling (which includes the securing and passing of forged identity documents) engaged in by family members or NGOs. The state has made it clear that it can and will prosecute cases in which people were smuggled for humanitarian reasons under its new law.

Crépeau argues that such a law-and-order approach to dealing with undocumented migrations is particularly hypocritical.[40] The drafters portray the smuggled migrants as potential victims, not to actually assist them in their survival strategies but to garner legitimacy for the state's criminalization of migrants who use smugglers and the scapegoating of the latter as the *cause* of people's migrations. If certain migrants can be labeled as "trafficked," it seems, then specific policy measures to initiate deportation measures can be mobilized with little outcry from the general population and even some (im)migrant advocates.

Such legitimation strategies are perhaps most evident in regard to women who are identified as "victims of trafficking." This is especially the case for women working in the sex industry. Deborah Brock argues that, "[b]y clamping down on prostitution involving migrant women, the police and the Canadian legal system are presented as actually working in the best interests of the women involved, by protecting them from traffickers."[41] Kara Gillies adds that, "[It is therefore of] …great concern that… [recent]changes to immigration and refugee law make specific references to the trafficking of women and children for sexual purposes as part of the platform for why we need to tighten our borders. It seems to me a very deliberate ruse to garner support from otherwise liberal thinking people for an extremely [racialized] and regressive immigration policy."[42]

The priority of establishing law and order at the border evident within national and international practices further exacerbates the conditions that cause harm to undocumented migrants. Making it increasingly costly for smugglers to move people, by militarizing and patrolling routes

of clandestine migrations or by making the legal penalties of smuggling greater, has not proven effective in stopping people's migrations. Instead, such measures only lead to higher fees being charged and to even more unsafe routes of migration. By criminalizing any support offered to assist a person's undocumented movement across nationalized borders, the possibility of not-for-profit groups becoming involved in moving people also becomes highly fraught with danger.

By ignoring the reasons – and responsibility – for why people begin their clandestine journeys and by making the stopping of smuggling its top priority, the "get tough on traffickers and/or smugglers" approach further serves the ideological purpose of wholly eclipsing the fact that people's displacement is caused by economic, political, or social forces controlled by the complex interactions of transnational corporations, national states, and international bodies. Moreover, the reality that, aside from profit-making smuggling rings, there is very little ability for people to migrate, is ignored.

As a result of the failure to address these systemic causes and effects, the actual lives of migrants are made unimportant. Indeed, it can be argued that anti-trafficking campaigns, by relying upon and further mobilizing nationalist ideas of "homelands," actually work to strengthen the state, strengthen nationalist ideas of entitlement for "citizens" and punishment for "non-citizens" and strengthen the profit-making capacities of capital investors. Through these efforts, legitimacy is gained for securing a growing group of people who through their classification as "illegals" can be exploited precisely *because* of their lack of nationality status.

In this there is collusion between anti-trafficking NGOs who wish to define women migrants moving *sans papiérs* as "trafficked" and the state and regional and international bodies who also want to do so. Determining that a particular woman has been trafficked enables the state to deport the woman while appearing to be helping her. Of course it does not hurt the funding opportunities for the NGOs embarking on anti-trafficking campaigns either since continued funding often rests on producing a good record on how many women have been "rescued" by the group.

The Trope of Violence within Anti-Trafficking Campaigns

The discourse that associates trafficking with violence is perhaps key to its legitimacy as the dominant analytic frame for comprehending certain people's migrations, especially those of women and children. As Rutvica Andrijasevic states,

…the topic of violence points to the complexity of the production of the victimhood narrative: its plot lends itself for manipulation because it is already available within the mainstream discursive scenario on trafficking but, simultaneously, its appropriation feeds into and further sustains the dominant rendering of trafficking in terms of crime and violence.[43]

The appropriation of the experiences of violence had by migrants works to feed into and sustain the dominant rendering of trafficking in terms of crime and violence.[44] The use of previously "trafficked" women relies on covering over the reasons why women may foreground the violence of the smugglers and not the violence of the practices leading to their displacement or the violence of state immigration regimes that force them into criminalized routes of migration. For instance, in many countries, including Canada, the state demands of women that they prove their victim status, and often testify in court against the smuggler and secure a conviction against him/her, in order to apply for and receive a special residence permit for trafficked persons.[45]

It is important to stress that presenting one's self as a victim is indispensable for a woman attempting to obtain the right to remain in the country. Many women's stories of ill-treatment at the hands of traffickers need to be understood within the context of the state having criminalized the very activities that both she and the smugglers are engaged in together. For example, given that prostitution is either illegal or not fully decriminalized, a woman can not say that she knew full well that she was coming to the U.S. or Canada to work as a sex worker without admitting her guilt at committing a criminal offense. Only by claiming to have been kidnapped, lured, or misled into working as a sex worker can she expect any help from most women's organizations or the state.

Now, no doubt, certain movements of people, particularly undocumented movements, are inculcated with violence. For those migrants who do experience various levels of violence in the migration process, we need to be very clear in identifying the factors leading to this. This is not generally what anti-trafficking campaigners do. Two things are often overlooked. First, many recent studies show that in the majority of cases smuggling is a service handled without violence. Indeed, a recent report by the Solicitor General of Canada has acknowledged that migrant smuggling does not have a significant violence generation impact.[46]

The smuggler's role characteristically ends with the delivery of the individual safely to the particular stage of the journey the smugglers are handling.[47] Indeed, a report by the ILO (2002) discusses how many smuggling operations are "…sometimes difficult to distinguish from legitimate

work of travel agencies or labour recruitment agencies and may include assisting migrants with obtaining a passport, visa, [and] funds for traveling (travel loans)…" In this regard, the Canadian Council for Refugees has stated that:

> [p]eople smuggling, despite its evils, has also been life-giving. It has made it possible for significant numbers of people to flee persecution and reach a place of asylum when no government was willing or able to offer an escape route. It has allowed them to exercise their human right to seek and to enjoy in other countries asylum from persecution (Article 14, Universal Declaration of Human Rights). For others, smugglers have offered a way out of a situation of misery and an opportunity for a new life of dignity. Even some of the people who are trafficked, knowing the wrongs of their situation of bondage, may still prefer it to what they left behind, either for themselves or for what it enables them to do for family members. This of course does not in any way justify the abuses perpetrated by the traffickers. But it is relevant to any discussion about solutions to the problem of trafficking. [48]

Yet, all these forms of smuggling have been rendered illegal by the Canadian state. This is in part because the word "smuggling," when used to equate symbolically the smuggling of persons with the traditional smuggling of goods, has become devoid of its intricate human element.[49] This works to conceal precisely those situations where we should insist on knowing why there is a lack of safe alternatives available to those needing to escape a number of (politically, economically, and/or socially) violent situations. The narratives of victimization and criminality within the ideological framework of trafficking, then, organize a contemporary moral panic that discloses the dissymmetry of power relations within a system of Global Apartheid where membership in the North remains elusive for all but a few and are especially restrictive for the majority of people from the South.

Yet, instead of acting on how the clandestine movement of people has its roots in the global capitalist system with its nationalized border control regimes, anti-trafficking campaigns actively look *to state authorities* to combat and suppress trafficking. The assumption of the illegal and criminal nature of trafficking or smuggling enables anti-trafficking campaigns to put forward an agenda calling for measures to combat it through heightened border patrols or more punitive measures for traffickers and/or smugglers. Thus, tighter control over the borders, stricter immigration laws, and more punitive criminal laws are called upon as indispensable measures to rescue migrants.

The Standpoint of Undocumented Migrants

My interviews with twenty-four women from China who were smuggled to the west coast of Canada in the summer of 1999 counter such calls, however. The lived experiences of these women suggest that rather than traffickers and smugglers, the greatest barriers to their equality within the borders of the Canadian national state are national borders, visa regimes, and restrictive immigration regulations whose goal is to criminalize their movements and make them increasingly vulnerable within Canada by classifying them as "illegal." None of the women I interviewed would have qualified for immigration as permanent residents to Canada through the points system, family reunification program, or refugee determination system. These avenues were made completely inaccessible to them.

For all of the women I was able to interview, entering Canada via smuggling systems was the *only* means of travel and migration. This reflects other studies that show that the majority of "illegal" entrants to countries in the Global North make use of criminalized groups to facilitate their travel.[50] Unsurprisingly, then, not one of the women I interviewed articulated the demand to "end trafficking." Instead, without exception, the ability to stay in Canada (or the U.S.) *legally*, to work, make and save wages paid in Canadian (or U.S.) dollars and to be reunited with their family members, either in China or in North America, were the most consistent demands they expressed.

Yet, many (but not all) migrants' rights activists or feminists active as their closest advocates were unable to fully understand this and incorporate this into their practice. Calls for punitive measures to further criminalize the smugglers who helped these women realize their survival strategy were often articulated. Any serious questioning of an (im)migration regime that created the conditions for their unsafe journey or their vulnerability once inside Canada was rarely articulated (and when done so, was usually articulated by those critical of the "anti-trafficking" framework). Such responses by activists allows us to see just how anti-trafficking campaigns offer support for more restrictive immigration policies in the name of exposing the criminal "trafficker" and/or "smuggler."

However, contrary to the idea that women are always forced or coerced by traffickers into illegal migration, many of these women saw the smugglers as the people who most helped them.[51] Their biggest fear was not of the smuggler but of the Canadian immigration officials who would return them to their point of departure, forcing them to start anew their journey for new livelihoods. Being labeled a "trafficked" woman and "reintegrated" back "home" to China was amongst the last things these women wanted.

Indeed, it appears that the greater coercion faced by these women in their migration journey was being *returned*.[52]

Significantly, once the women interviewed had been captured by the Canadian state, it was imperative for them to claim refugee status rather than claim to know that they were coming to Canada to work as undocumented workers, especially if they came to work within the sex industry. Once in jail, revealing the reasons for embarking on these journeys to state officials (and by extension to those feminists who could see the sex industry only as a place of violence) would only serve to jeopardize their claim. After all, having a so-called '*bona fide*' refugee claim requires that the applicant prove that she has been *politically* persecuted. Of course, this is more of an indictment of the refugee determination system than of the women forced to fit themselves into its narrow confines. After all, proving that one is impoverished and in desperate need of a new livelihood does not get a person refugee status in Canada. The majority of the women whom I interviewed were well aware of the severe limitations of the current refugee determination system.

For the minority of women in this group (five out of twenty-four) who either had been sex workers in China and planned to be doing so in North America or for those women who did not work in the sex industry in China but planned to do so in Canada, it was clear that entering this industry was part of their survival strategy. As for the other women who sought other forms of work within capitalist economies, seeking work as a sex worker was a means to an end. For these women, migration to Canada (or the U.S.) for work in prostitution was part of a project designed to lead them out of poverty and a general sense of malaise over their futures.[53] In my experience as an activist working within a feminist group trying to "help" these women, many of the advocates were unable to accept sex work as part of the women's planned migratory project. Instead, like many anti-trafficking groups, it was insisted that all engagement with the sex trade was violent and coerced and the only reason any of the women migrants would engage in such activities was out of fear of the traffickers/smugglers.[54]

In the end, all of the twenty-four women I had an opportunity to interview were deported from Canada. Because of the highly criminalized character of any subsequent journeys they may embark on, I have not been able to maintain contact with them. Suffice it to say that none of them was happy to be "reintegrated back into their home society" as one would expect of "trafficked" women who had "…by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the pur-

pose of exploitation" as the UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* would lead us to expect.

Conclusion

I have shown how, fundamentally, anti-trafficking campaigns serve to enforce nationalized border-regimes and tighten immigration regulations by legitimating the interception and deportation of undocumented migrants. Yet, it is also important to recognize how the "help trafficked victims" approach intersects with the state project of "getting tough on migrants" to shore up the legitimacy of the national state as it continues to aid the operation of global capitalism.

It is, in part, through state categories of illegality that the both the social *and* legal meaning of "foreigner" is materiaized within Canada. People named as "illegals" become the very embodiment of the foreigner in that the state is seen to be legitimate in denying them all the protections and entitlements (labour market and so on) supposedly offered to the citizenry. The deep lack of solidarity across and through national borders manifests itself in such actions, since the state is able to garner great legitimacy in cracking down on "illegal" migrants.

Thus, not only do illegalized workers reap greater profits for employers, they also enable the national state to perform its role as the protector of the citizenry. I argue that these are not contradictory phenomena but how the global system of capitalism has been reproduced through the equally global system of national states. Indeed, constructing migrants as "illegal" in the Canadian labour market is part of the rationality of ruling during this period of globalization.

Categories of legal and illegal workers reproduce the rationality of nationalizing labour markets. It helps to make common sense of the notion that the labour market in Canada *belongs* to Canadians alone. The notion that We ought to have more benefits than Others do is therefore presented as positive, even progressive, and most certainly natural. I argue that this is one of the underlying, yet always implicit, principles of anti-trafficking campaigns and their deep concern that people stay at "home."

Yet, at the same time, anti-trafficking campaigns ostensibly aim to prevent undocumented migrations or "reintegrate" undocumented migrants to their "home" countries. This is not a contradictory phenomenon, however. Instead, the establishment of anti-trafficking campaigns amidst the largest crisis of displacement in documented human history enables the national state to secure a highly vulnerable workforce of "illegals" for employers while allowing the state to present itself as acting for the citizenry. In the process, the state is re-invented as the natural, even demo-

cratic, body that empowers the nation to act. The security of the national state is assured.

Categories of legality and illegality are, therefore, deeply ideological. They help to conceal the fact that *both* those represented as foreigners and those seen as Canadian work within the *same* labour market and live within the *same* society. Ironically, then, the rendering of certain people as illegalized Others within Canada creates the "cheap" labour force that government and state officials argue they are protecting Us from.

The policy arena of immigration, then, is one of the key avenues for "nation"-building and state formation. Organizing differences between groups of people *within* the nation-state is a cornerstone of the ongoing importance of state power. In this regard, I argue that growing international movements of capital and people do not create the conditions for the *erosion* of the state but for its *persistence.* The recognized right for national states to enforce universally established mechanisms to regulate people's mobility across nationalized borders helps to legitimize state power used against those rendered as Other *within* the confines of nation-states and weaken those with inferior membership status.

Concepts of citizenship, then, rather than working to progressively expand the rights and entitlements of people living in nationalized spaces, are the ideological cement that holds the repressive power of state practices in place. In regard to the construction of "trafficked victims," citizenship "quietly borrows" from the fictive community of the nation in order to restructure the labour market in Canada.

It is therefore a matter of utmost urgency that we jettison the use of anti-trafficking discourses and reject the practices that such discourses promote. Instead of calling for greater state intervention in regard to undocumented movements of people embarking on journeys of survival, it is crucial that we see how anti-trafficking measures not only contribute to the criminalization of undocumented migrants but that they also provide a much-needed rationale for "getting tough on illegal migrants."

As it stands, illegalized migrants already constitute some of the most vulnerable and exploited people within nationalized labour markets. This reality will not change by assuming that criminalizing migration is tantamount to ending practices of displacement or ensuring safer routes of migration. If we truly wish to end practices of dislocation, make migration safer and end the conditions that make migrants vulnerable in all areas of their lives, we need to shift the focus back to the everyday lived realities of the migrants, especially women and children, that are purportedly being helped by them.

First and foremost, we need to recognize that the label of "trafficked person" "erases many women's active participation in the daily survival of their families and themselves. It renders their labour invisible."[55] We need to begin from the standpoint that women migrants, including migrant sex workers, have some agency, even within constrained options. It is precisely by looking at the choices that are taken away and those that are left to undocumented migrants that we can understand the systems of ruling that organize their everyday lived reality. Thus, we need to challenge not only smugglers who move people for personal profits but also capitalist social relations that displace people and render them vulnerable within nationalized spaces.

Moreover, we need to critically examine state practices that are able to legally, and with great legitimacy amongst the citizenry, discriminate against people on the basis of nationality. A nationalist consciousness of "home" is the ideological foundation for organizing contemporary forms of Global Apartheid. Thus, we need to challenge the assumption that "home" is profoundly linked to nationalized territories; that "society" is coterminous with national states. It is the nationalizing of "home" and "belonging" that leads to the acceptance of differential rights and entitlements for people on the basis of whether they are categorized as members or non-members.

As an alternative to anti-trafficking campaigns and as a profound challenge to various apartheids, it is crucial we recognize that borders have *never* worked to contain capital, only people. For example, countries, like Canada, that believed, at least rhetorically, in national control over capital investments *within* its confines, also supported capitalists engaged in imperialist practices *outside* of its borders. We thus need to reject the notion that border control practices are necessary for the protection of the "nation." Instead, it is necessary that we recognize that they are necessary for the protection and profitability of capital.

The (im)migration regimes of national states are one of the key vehicles through which such competition is organized. Thus, one very concrete way to strengthen the position of migrants is to reject the power of the state to differentiate amongst "citizens" and "foreigners" and to determine who can move with rights and who cannot. In other words, we need to extend the field in which we fight for social justice beyond the boundaries of the "nation" and the territorial state. We need to ensure that all persons in the world are equally entitled to the benefits currently enjoyed by an (ever-shrinking) few.

Such demands are the cornerstone of the growing movements of No Borders activists and their networks located throughout and across the Global South *and* North. In general, such movements have developed an integrated

politics which accounts for the need to end people's displacement worldwide, to ensure that people are freely able to move and that pro-migrants politics are deeply connected to indigenous peoples' struggles for traditional land and self-determination for all.

Our hope in achieving these goals lies in the power of our imaginations. After all, the most dangerous kind of colonialism is one that colonizes minds as well as bodies. Therefore, the strongest, most effective movements against colonialisms are those that are able to clearly imagine a world without the structures, institutions, and consciousness imposed through such practices.

An important example of how a decolonized imagination is mobilized is that of Harriet Tubman, "conductor" of the Underground Railway. This network of smugglers helped thousands of Black slaves move away from slave-holding regions in the U.S. to the northern U.S. or into Canada. Such a movement of people foregrounded the lived realities and demands of enslaved Blacks and rejected both the laws that enslaved them and that restricted others' ability to act in meaningful solidarity with them. Today, Tubman would be classified as a smuggler and, if successfully prosecuted under the 2002 Canadian Immigration and Refugee Protection Act, be imprisoned for life.

I argue that in the struggle to ensure safe passage for migrants the lesson of the Underground Railroad is this: we must support and create our own routes of migration for people needing to move. By lending support to networks for moving people and ensuring their safety, we take the impetus from those who only move people for personal profit. In this we must challenge laws that tell us that smuggling will be punished by life sentences and in some places, such as the U.S., death sentences,[56] corporal punishment, and huge fines.

Notes

1. I use "scare quotes" around the terms "trafficking" and "smuggling" to signify that I wish to reader to interrogate, rather than accept, their taken-for-granted character. For the remainder of the paper, however, I will forgo this practice but wish to continue to alert the reader about the problematic assumptions embedded within these terms.

2. "Human Rights Standards for the Treatment of Trafficked Persons," online: International Human Rights Law Group (IHRLG) <http://www.hrlawgroup.org/resources/content/IHRLGTraffickin_tsStandards.pdf> (date accessed: 13 February 2003).

3. Bob Sutcliffe, "Migration and Citizenship: Why Can Birds, Whales, Butterflies and Ants Cross International Frontiers More Easily than Cows, Dogs and Human Beings?" in *Migration and Mobility: The European Context*, ed. S. Ghatak and A. Showstack Sassoon (New York: Palgrave, 2001), 67.

4. As I am more interested in discussing how some of the practices of this group were organized through the discourse of "anti-trafficking," the focus of my paper is on this discourse and practice rather than on the specific actions of this one group. I leave this group unnamed because I do not see it as exceptional but rather as typical of those feminist groups that unproblematically accept the ideological frame of trafficking.

5. International Labour Office (ILO), "Getting at the Roots: Stopping Exploitation of Migrant Workers by Organized Crime" (International Symposium, The UN Convention Against Transnational Organized Crime: Requirements for Effective Implementation, Turin, Italy 22–23 February 2002), 3.

6. Cynthia Enloe, *Bananas, Bases and Beaches: Making Feminist Sense of International Politics* (London: Pandora, 1990).

7. In just one example since 1994, the Canadian government's Export Development Corporation has lent the Chinese government approximately $200 million to build the Three Gorges Dam. "Who's Behind China's Three Gorges Dam," online: Probe International Homepage <http://www.nextcity/com/probeinternational'ThreeGorges/who .html > (date accessed: 19 April 2001).

8. Rod Mickleburgh, "China Diverts Mighty Yangtze to Cheers," *The Globe and Mail*, 10 November 1997; "Who's Behind China's Three Gorges Dam," online: Probe International Homepage <http://www.nextcity/com/probeinternational'ThreeGorges/who .html > (date accessed: 19 April 2001).

9. "Major Problems Found in Three Gorges Dam Resettlement Program," online: International Rivers Network <http://www.igc.apc.org/hric/reports/3gorges.html> (date accessed: April 12, 2001).

10. "Urban Population Continues to Grow," online: College of Earth and Mineral Sciences (EMS), Pennsylvania State University. <http://www.ems.psu.edu/info/explore/UrbanPop.html> (date accessed: 15 February 2003).

11. International Labour Office, "Global Employment Trends," Geneva, 2003, ISBN 92-2-113360-5. 2003.

12. United Nations Population Fund, *The State of World Population* (New York: UN Population Fund, 2001).

13. Saskia Sassen, *The Mobility of Labor and Capital: A Study in International Investment and Labor Flow* (New York: Cambridge University Press, 1988), 15.

14. T. Hatton and Jeffrey G. Williamson, *The Age of Mass Migration: Causes and Economic Impact* (Oxford: Clarendon Press, 1998).

15. Bob Sutcliffe, "Migration and Citizenship." To put this into broader historical perspective, it needs to be noted that self-directed emigration from European colonies was banned by colonial powers throughout the nineteenth and much of the twentieth centuries. Of course European colonial powers *forcibly* moved people from Africa as slaves prior to this period and facilitated the movement of people as "coolie" or indentured labourers from Asia (mostly China and India) throughout the nineteenth century to colonies controlled mostly by the British.

16. Vandana Shiva, *Biopiracy: The Plunder of Nature and Knowledge* (Toronto: Between the Lines 1997), 11.

17. International Labour Office (ILO), "Getting at the Roots: Stopping Exploitation of Migrant Workers by Organized Crime" (International Symposium, The UN Convention Against Transnational Organized Crime: Requirements for Effective Implementation, Turin, Italy 22–23 February 2002).

18. *Ibid.*

19. Nandita Sharma, "'Race', Class and Gender and the Making of 'Difference': The Social Organization of 'Migrant Workers' in Canada," *Atlantis: A Women's Studies Journal* (Special Issue: "Whose Canada Is It? Immigrant Women, Women of Colour, Citizenship and Multiculturalism") 24:2 (Winter 2000b): 5–15.

20. *Ibid.*

21. Stuart Hall defines a "moral panic" as existing: [w]hen the official reaction to a person, groups of persons or series of events is out of all proportion to the actual threat offered; when "experts," in the form of police chiefs, the judiciary, politicians, and editors, perceive the threat in all but identical terms, and appear to talk "with one voice" of rates, diagnoses, prognoses, and solution; when the media representations universally stress "sudden and dramatic" increases (in numbers involved or events) and "novelty" above and beyond that which a sober, realistic appraisal could sustain; then we believe it is appropriate to speak of the beginnings of a moral panic. See Paul Gilroy, *"There Ain't No Black in the Union Jack": The Cultural Politics of Race and Nation* (Chicago: University of Chicago Press, 1987).

22. Nandita Sharma, "Is Citizenship a Useful Concept in Social Policy Work? Non-Citizens: The Case of Migrant Workers in Canada," *Studies in Political Economy* 69 (Autumn 2002).

23. Yasmeen Abu-Laban, "Keeping 'em Out: Gender, Race, and Class Biases in Canadian Immigration Policy," in *Painting the Maple: Essays on Race, Gender, and the Construction of Canada*, ed. V. Strong-Boag, S. Grace, A. Eisenberg, and J. Anderson (Vancouver: UBC Press, 1998).

24. Nandita Sharma, "'Race', Class and Gender and the Making of 'Difference': The Social Organization of 'Migrant Workers' in Canada."

25. Saskia Sassen, *The Mobility of Labor and Capital.*

26. Nandita Sharma, "'Race', Class and Gender and the Making of 'Difference'."

27. Nandita Sharma, "The Making of Citizen Self and Non-Citizen Other: Canada's Non-Immigrant Employment Authorization Programme," in *Globalization and Its Discontents*, ed. S. McBride and J. Wiseman (London: Macmillan, 2000a), 129–42.

28. Anthony Richmond, *Global Apartheid: Refugees, Racism, and the New World Order* (New York: Oxford University Press, 1994).

29. Nandita Sharma, "On Being Not Canadian: The Social Organization of 'Migrant Workers' in Canada," *Canadian Review of Sociology and Anthropology* 38:4 (November 2001): 415–39.

30. Nandita Sharma, "Is Citizenship a Useful Concept in Social Policy Work?"

31. Bridget Anderson and Julia O'Connell Davidson, "Trafficking: A Demand-Led Problem?" 2003 Report published by Save the Children Sweden, Sida and the Ministry for Foreign Affairs Sweden, online: <www.rse/bookshop> (date accessed: January 15, 2003).

32. Nandita Sharma, "The Social Organization of 'Difference' and Capitalist Restructuring in Canada: The Making of 'Migrant Workers' through the 1973 Non-Immigrant Employment Authorization Program (NIEAP)," Ph.D. dissertation, Ontario Institute for Studies in Education at the University of Toronto, 2000).

33. Nandita Sharma, "The Making of Citizen Self and Non-Citizen Other."

34. Bridget Anderson and Julia O'Connell Davidson, "Trafficking: A Demand-Led Problem?"

35. "Presidency Conclusions Leaken European Council," No. 42 as cited in Rutvica Andrijasevic, "The Difference Borders Make: (Il)legality, Migration and Trafficking in Italy among Eastern European Women in Prostitution" in *Uprootings/Regroundings: Questions of Home and Migration*, ed. S. Ahmed, C. Castaneda, A. Fortier, and M. Sheller (forthcoming: Berg, 2003).

36. Francois Crépeau, "The Fight against Migrant Smuggling: Migration Containment over Refugee Protection," in *The Refugee Convention at Fifty: A View from Forced Migration Studies*, ed. J. van Selm *et al.* (Boston: Lexington Books, 2003).

37. *Ibid.* Also see International Labour Office, "Getting at the Roots."

38. Cynthia Meillon, "References to Trafficking in the Beijing + 5 Document," in *Holding on to the Promise: Women's Human Rights and the Beijing + 5 Review*. ed. C. Meillon (New Brunswick: Center for Women's Global Leadership, 2001).

39. Bill C-11, Article 117:3; Crépeau, "The Fight against Migrant Smuggling."

40. *Ibid.*

41. Deborah Brock, Kara Gillies, Chanelle Oliver, and Mook Sutdhibhasilp, " Migrant Sex Work: A Roundtable Analysis," *Canadian Woman Studies* 20:2 (2000), 87.

42. *Ibid.*

43. Andrijasevic, "The Difference Borders Make."

44. Scenes for instance where a person identified as previously "trafficked" is asked to relive her experiences, to denounce trafficking in order to convince audience members of the need to support a particular organization's anti-trafficking (and usually anti-prostitution) campaign or even when she is not asked to speak to her experiences of being "trafficked" but to talk about how she became active in "anti-trafficking" measures.

45. *Ibid.*

46. As cited in Crépeau, "The Fight against Migrant Smuggling."

47. *Ibid.*

48. "Migrant Smuggling and Trafficking in Persons," online: Canadian Council for Refugees Homepage <http://www.web.net/~ccr/traffick.html> (date accessed: 20 February 2000).

49. Crépeau, "The Fight against Migrant Smuggling."
50. International Labour Office, "Getting at the Roots," 2.
51. This was also found by Ko-Lin Chin, *Smuggled Chinese: Clandestine Immigration to the United States* (Philadelphia: Temple University Press, 1999).
52. See *Ibid.* for a discussion on how many "returned trafficking victims" almost immediately renew their attempts to secure jobs in the Global North soon after being returned.
53. Andrijasevic, in "The Difference Borders Make," came to a similar conclusion in the context of sex workers migrating to certain European countries.
54. Tellingly, an "employment committee" established by some feminist advocates working with these women tried to place some of the women living outside of the prisons in jobs within the garment industry. One of the least paid occupations within Vancouver, this was seen by these advocates as a viable alternative to the sex industry for these women migrants.
55. Brock *et al*, " Migrant Sex Work."
56. Ko-Lin Chin, *Smuggled Chinese.*

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Roundtable Report

"No One Is Illegal": The Fight for Refugee and Migrant Rights in Canada

Michelle Lowry and Peter Nyers

Abstract

On 8 December 2002, a roundtable discussion was held with members of the Action Committee for Non-Status Algerians (Montreal), the Ontario Coalition Against Poverty (Toronto), and No One Is Illegal (Montreal). In this transcription of the discussion, the non-status Algerian refugees share their experiences of living in Canada without formal status, a situation which they characterize as being degrading, unlivable, and absurd. The participants discuss the possibilities for organizing opposition to increasingly restrictive and repressive refugee and immigration policies. They examine the viability of anti-deportation campaigns, direct action casework, and the prospects for a broad-based movement in defence of refugee and migrant rights.

Résumé

Le 8 décembre 2002 a eu lieu une table ronde réunissant des membres du Comité d'action des sans-statut Algériens (Montréal), la Coalition ontarienne contre la pauvreté (Toronto) et No One is Illegal (« Personne n'est illégal ») (Montréal). Ce qui suit est une transcription des discussions qui ont eu lieu, au cours desquelles les Algériens sans statut partagent leur expérience de la vie au Canada sans un statut reconnu, une situation qu'ils qualifient de dégradante, invivable et absurde. Les participants examinent les possibilités d'organiser une opposition aux politiques en matière d'immigration et du traitement des réfugiés qui deviennent de plus en plus répressives et restrictives. Ils explorent la viabilité des campagnes anti-déportation, l'action directe et les possibilités d'organiser un mouvement rassembleur pour la défense des droits des réfugiés et des migrants.

On 20 October 2002, an Algerian family facing imminent deportation from Canada – Mourad Bourouisa, Yakout Seddiki (who was fifteen weeks into a high-risk pregnancy), and their two-year-old Canadian-born son, Ahmed – made international headlines by taking sanctuary in a downtown Montreal church. Like thousands of other Algerians, the family had fled violence and conflict to seek refuge in Canada. But while their individual claims for refugee status were rejected, they had remained in Canada. They stayed because the situation in Algeria was so dangerous that Immigration Canada prohibited all removals there – that is, until April 2002, when the moratorium on deportations was lifted. This move came on the same day that the Canadian government issued an advisory warning its citizens not to travel to Algeria. With an end to the moratorium, approximately 1,069 Algerians whose refugee claims had been denied were to be returned to a country deemed too dangerous for Canadians. The timing of the lifting of the moratorium also coincided with the Canadian Prime Minister's trade mission to Algeria that drummed up millions of dollars in trade between the two countries.[1]

The case of the Bourouisa/Seddiki family became a rallying point for campaigns opposing deportations to Algeria. The Action Committee for Non-Status Algerians (a self-organized group of Algerian refugees in Montreal) stepped up their campaign to raise public awareness about their situation and to organize a political and legal response. Eleven days into the Bourouisa/Seddiki family's flight into sanctuary, the Canadian and Quebec governments responded to this so-called "extraordinary situation" by granting a ninety-day stay on deportations and an opportunity for all

non-status Algerians to make in-land applications for permanent residence. This concession fell far short of a general amnesty as it excluded those who: lived outside of Quebec; had a criminal record, however minor; had already received deportation orders or had been deported; and could not afford to pay the expensive application fees. Undeterred, the non-status Algerians, together with allies, have continued to fight for their right to stay in Canada. Their demands to the Canadian and Quebec governments are threefold: (1) an immediate end to all deportations; (2) a return to the moratorium on removals to Algeria; (3) the regularization of non-status residents in Canada.

The situation facing the non-status Algerians is not an isolated one. The Canadian government is no stranger to the global trend of tightening borders, restricting mobility, and criminalizing asylum seekers.[1] However, these anti-refugee and anti-immigrant measures are being actively challenged and resisted by refugees, immigrants, and their allies. On 8 December 2002, Michelle Lowry and Peter Nyers, the co-editors of this special issue of *Refuge*, held a roundtable discussion with a number of such activists in Canada. Soumya Boussouf, Mohamed Cherfi, and Nacera Kellou from the Action Committee for Non-Status Algerians were joined by Jaggi Singh from No One Is Illegal (Montreal) and Stefanie Gude from the Ontario Coalition Against Poverty (Toronto).[3] We asked them to talk about living without status, organizing resistance, and the possibilities for a broad-based refugee and migrant rights campaign.

Before we discuss the topic of activism, could you explain what it is like to live as a "non-status" person in Canada.

Mohamed: For me it is really difficult. I am someone who at the beginning didn't speak a lot. I was really depressed. I didn't take it really well. For example, when I was at my home I kept the lights on because I have nightmares. It is not something that is easily explainable. I've thought of suicide, I've thought of very extreme things. I was before a machine that was going to roll over me, and there was nothing I could do about it.

Nacera: For me, it was also very difficult. When we made our refugee claim we thought we had good chances. People told us, "You have children. It shouldn't be a problem." We thought things would resolve themselves. But after two years they weren't resolved. We were living in stress. It wasn't livable. As a family, as a couple with children, everything was destroyed, everything was disrupted. We come from a culture where family and children are important and our day-to-day life was disturbed – it was disrupted. Our sense of living, our sense of life, our sense of reflecting on

things – that was all lost. When our kids ask us about things, we think, "Are we saying the right thing to them? What are we saying? Does it make sense?" We are lost, and it is really difficult to live like that. When everything in your life is in doubt, is up for question – that's difficult. To have a normal life as a parent, it's not possible. We will never get back what we had before, that lost time when our kids were growing up.

Soumya: I think it is important to note that most of us didn't know what "non-status" meant before we came here to Canada. I personally didn't know what it was. I had never heard of it before. When it happens to you, even then it takes you a lot of time to realize what it really means in your everyday life. For example, I came here with my husband, it has been over three years now. We claimed refugee status and we got denied. But there is a moratorium on deportations to Algeria so they allow you to ask for a work permit that you have to pay for every year. We asked for our work permit and started to have a normal life. It's biding time: you start to work, you start to have friends. After a year, two years, you are involved in many things. When you really realize that you don't have status is when you decide, for example, to take action and say let's study. For example, you go to university, I personally did. I was very proud of myself and I said, "OK, I am going to get a certificate in accounting because I like it." I went to McGill University and the person there said to me, "I am really sorry but it says on your work permit that you have no rights at all to study here. If you want to study then you have to apply for a study permit at Immigration Canada." If they give it to you, then you have to pay foreign fees, which is much more.

I say this just to explain that even though you are a non-status person you do not even realize it. You are working; you have friends; you go out; you try to have a life despite all the barriers, despite everything – which is just normal, just human. You are not going to stop living your life. You are not going to commit suicide. What I am saying here is that it really does affect your everyday life in *every* possible way. For example, I am twenty-eight and I have been married to my husband – it has been four years now. Sometimes we raise the option of having children. Of course, when you are non-status you have to ask yourself, because it is a responsibility to have a child, "Can I have a child, really? Should I take this responsibility and have a child? What is going to happen tomorrow? Let's say I get deported." You never know.

Nacera: To me a refugee arriving in Canada didn't come easily. It's not easy to get here. In fact, they came with risks: falsifying papers, going through borders, etc. I went through that; I know what it means to go through that. We come because we want to save our lives, to have lives. It's

not easy to tear yourself away from your home, where you're from, the people you know, etc. We don't do it because it's fun or because it's easy. It's hard.

Soumya: When the moratorium was lifted in April last year, everybody started to worry very seriously. We all started to receive documents from Immigration Canada – the Pre-Removal Risk Assessment (PRRA).[4] When you receive such documents your whole world crashes. Personally, I gave up my work. I couldn't speak to anybody anymore. I couldn't eat. I started to take pills to sleep. In the beginning it was one, then two, and then it is just a nightmare, because you just don't know what is going to happen to you. You are like, "Oh my God, what am I going to do?" And, nobody can help me: that is the worst. You feel like you have to fight against a whole system. It is very hard psychologically. Of course it affects you, your family, children – it affects everybody around you. It is very difficult.

How are the non-status treated by Canadian officials?

Mohamed: To show how we are treated, I will give you one example. Now, I left Algeria in 1996. I found out that my father died and I couldn't go back because it was too dangerous. When I was before the Immigration Board, I was asked, "Why did you lie about when your father died?" I was mistaken about the date because I wasn't there. I was so upset at this question, and this line of questioning, I cried. The lawyer should have intervened, but he couldn't because this is the process. But this is a question of dignity. It was an undignified thing to ask me and to say that I would lie about my father's death. But you can't denounce it. This is a crazy system.

Nacera: We don't speak the French of Quebec. We speak "French French" or "Algerian French." Generally, when we arrive here and need to get on welfare, the Canadian officials do everything they can to show you that they can do whatever the hell they want with us. The welfare agents – they talk to you like they are paying out of their pocket to you. They're arrogant. They treat you like you have no values. They explain points, but when you say to them, "Look, I don't understand," their response is: "Listen. I told you, I already told you," in a very arrogant way. If you insist that you didn't really understand, the response is: "Listen. Now speak softly. Don't get upset. Don't scream." I had my welfare stopped because of this for a month. This is when I had no work and I had small children. This is absurd. They really do everything they can to devalue you.

They once sent me a letter that my welfare agent made a complaint against me. I needed to respond to this. If you don't respond it could be put in your file and it could have bad consequences for your eventual immigration status. So they obliged me to see a social worker to work this out.

Jaggi: Nacera said that welfare workers wanted her to speak softly and not scream. Now obviously any given tactic is useful or not useful, and sometimes it's cool to speak softly and not scream. But the fact is that we've made a fetish out of speaking soft and not screaming. And we need to scream. We need to speak loudly. And again, even sometimes when you're not even doing it – like, asking a critical question to an Immigration Minister. A critical question. Or being a little bit loud with your voice to assert yourself. These are things that are looked down upon. That relates to a phrase or an expression that's really crucial to a No One Is Illegal analysis of immigration and refugee issues – and that's self-determination. We look at self-determination in a classic sense of communities defining their identity, whether it's indigenous communities, or the Palestinian people, etc. But self-determination happens on individual levels all the time. The immigrant experience and refugee experience are profound acts of self-determination. The important point is that any campaign has to be based on the lived reality of immigrants, refugees, non-status, of illegals, of people on the front lines. Their lived reality. And that lived reality, again, is about fake passports, the indignities, all the things to do with the system. But also that lived reality is that these are acts of self-determination.

The moratorium on deportations to Algeria was lifted in April 2002. How did the non-status Algerian community in Montreal respond?

Mohamed: We are here and we weren't accepted as refugees. But at the same time we couldn't be deported because of the moratorium. We are in a difficult situation all the same because, for example, we have limited medical services and it is difficult finding work because the Social Insurance Number starts with a special number (the number 9). Plus, there is all the uncertainty of not knowing whether you are going to stay, or whether you are going to go. It is a very ambiguous, uncertain, precarious kind of situation. The Action Committee for Non-Status Algerians was created at the beginning to regularize this situation. And now we are at risk of actually being deported. So the committee got more activated and more engaged because of this and we added demands. Those demands include not just regularizing our status but also returning the moratorium and stopping deportations.

There are various levels on which we've been mobilizing. The first level is to mobilize people who are concerned themselves, the non-status. Secondly, we raise awareness amongst the public. For example, we organize weekly pick-

ets in front of the offices of Immigration Canada. Since the lifting of the moratorium, we've been there every week. Flyers, tables, and conferences; we have been invited to universities and community radio. To give one example, we went to the St. Jean Baptiste celebration where we passed out three thousand flyers in one evening. It might not be that people know the details, but at least they know that non-status people exist as a result of this activity. We have also done a lot of media work: the organization of three or four press conferences, press briefings, etc.

In October 2002 things sped up quite a bit. Immigration Canada said that about thirty-two people had already been deported. But we didn't know who these people were. There was, very specifically, the Bourouisa family that was to be deported on October 20. That activated us; that got us moving. That date – October 20 – became a very important date for us. About the people who have been deported, Immigration Canada says you know there is no danger to go back to Algeria because nothing happened to those people. But there's no way of knowing what happened to them. There's nothing in place to monitor what happened.

To return back to the story of the Bourouisa family. This family learned that they were going to be deported on 11 September 2002. They learned then that they would be deported on the 20th of October. This family is a husband and wife and their two-year old son. The woman is pregnant. The son who was born here in Canada has a Canadian passport and Immigration Canada told the family that they should get the proper papers for the son to be returned to Algeria. Otherwise, he would be kept in Canada separated from his mother and father. This is terrible. This woman was pregnant. As we all know psychologically there's already all kind of things someone has to deal with when they are pregnant. And, what this family did was they lived with one month of torture between knowing whether they were going to deported and their deportation date. They lived with these threats. People shouldn't have to live through that. That should not have happened. It was terrible.

What role have women played in the Action Committee?

Soumya: The Women's Committee was created September 2002 and it's actually the result of our experience in the Action Committee. We noted that there were more men than women. Nacera – she speaks to a lot of women on the phone – and they were telling her, "Tell me what's going on because my husband went to the last meeting, but all he's telling me is 'don't worry,' 'everything is going to work out,' and 'it is all right.' But I want to know. I really want to know what happened and what's going on." So we decided to create the Women's Committee.

Nacera: The first thing we did as women was we had a meeting. There was panic at that first meeting. Everybody was crying because we asked people to speak about all the things they felt about what was happening. That is how it was expressed: panic and crying. Many of these were women who don't go out of the home a lot, either because they have kids and are limited, or others because they have husbands who maintain a certain tradition from the country, which is that the husband goes out and does all the things that need to be done and the woman stays at home. For example, we organized a Women's March and when we were planning the route for the Women's March we would get reactions like, "Oh no, we can't go there because my husband hangs out in that café." Or "No, we can't go there because my husband works in that area." So those are some of the challenges that we face.

What kind of actions did you organize to fight the deportations?

Nacera: The first action that the Women's Committee did was to visit the riding office of Denis Coderre in Montreal. We did the delegation in support of the pregnant woman, Yakout Seddiki, who was facing deportation. We were saying to ourselves, "Here is a woman, pregnant, she's lived here for several years. And if this family is deported we don't stand a chance." So we wanted to put some pressure on through this visit to the office. We didn't succeed in getting to talk to Denis Coderre; we had to deal with one of his assistants. They were hard-headed. They were telling us, "Give us your letter and we will get back to you." They didn't want to speak to us all at once. They were saying, "This is not the way things are done in Canada. We don't do it this way." We stayed all day, and we wanted to stay. We all ended up expressing to the people in the office how we felt. And many women who told their stories were overcome by tears. And even the office secretaries had tears in their eyes as they listened to the stories as told by the women.

The second action was the Women's March that happened on the 12th of October, with the help of lots of support people. It was a demonstration of about five hundred people that was led by women and children. And then, we did another delegation which was one week after that first delegation visit to Denis Coderre's office. But this time it was to the Immigration Canada headquarters in Montreal. We visited on Friday, October 18th, organized by the Women's Committee, but also made up of men – about thirty people. Because the deportation of the family was going to happen on October 20 – on Sunday – we said to ourselves, "We must do something." So we decided to organize this visit.

The Immigration officials – they wanted us to provide the good respectful image: that we'd come in, and we'd go upstairs, and we'd sit down, and we'd wait, and we'd talk to them like things are normal. But things aren't normal! This was panic, and we acted in such a way. We occupied all the rooms to show that this was a serious situation. They didn't want the other people [*i.e.*, other refugees] in the waiting room to see us because this would dirty up their image. This would take away from their image of their administrative life, of things being done normally. This would ruin that. So that's how we approached it.

Jaggi: The ability of immigrants and refugees and illegals and *sans statues* to fight back is really important. It is a process of empowerment. This is why they didn't want people in the Immigration Office to *see* other immigrants fighting back. When people hear those stories they are empowered, they don't have to be passive, they can do something. And this is something that we've all observed working as allies with the Action Committee for Non-Status Algerians. First of all, members of the Women's Committee were saying before the first visit to Coderre's office, "I wonder: Can we do this? What's going to happen?" Afterwards, when I went to the Women's March, and I had a newspaper article on the action, all these women who I had never seen were surrounding me and were looking at the article and saying, "Yeah we did something." It made a difference; it was empowering.

These tactics – delegation visits and office occupations – have also been successfully employed by the Ontario Coalition Against Poverty (OCAP) in its direct action casework. Stef, can you talk about this strategy, both in terms of its effectiveness and limitations?

Stef: OCAP initially worked to cut through the isolation and the confusion of the bureaucracy – what everyone's been talking about, in very personal detail. Many people who call us haven't found any resources or anyone who will say: "This is something that happens all the time. These are situations that we have been fighting with people against for years. You should know it is not your individual responsibility or fault. This is the system."

After the initial connection we refer people, if possible, to a legal clinic system. But that legal system is already *very* strapped. There are immigration lawyers in Toronto and there are legal clinics that take on immigration cases. But many legal clinics aren't at this point. They have moratoriums on accepting cases. There are obviously limitations to getting legal aid depending on what your situation is, like how far gone you are in terms of being persecuted by Immigration. We also have worked with a lot of people that have had extremely bad counsel, often by immigration

consultants. Lots of them used to work for Citizenship and Immigration and have quit that job and gone private and now do immigration consultation for people.

I worked with a woman who was stripped of a good $8000. The consultant filed a humanitarian and compassionate claim, but didn't include all her children on the claim. He did extremely shoddy paperwork and filing, and got as much money out of her as possible. He was contacted by Enforcement and was told that this woman had an appointment at the Enforcement Centre. He called her and said, "I know people on the inside, just come to the appointment and I'll smooth it over." But what he actually did was turn her over to Immigration to get a tip-off fee: you get a small amount of money for turning people in who are wanted by Immigration. He was well aware that this was the situation. She was in detention and he then charged her for the cost of her plane ticket. He managed to strip her of $5000 to $8000. Luckily she was released, and we are now working with her. But that happens to people over and over again. In those situations, we start by filing good, thorough claims. Claims that people can help work on themselves as well.

Depending on the situation, our advocacy or political action begins at the level of phone calls and letters. But oftentimes we have to go to the delegation level. We have a long-standing reputation for filling the offices, the back rooms, getting the security doors of offices open so that the office can no longer function. Bureaucracy relies on the fact that things will always go in a particular way. If you fill a room with 150 angry people, including the back offices, business as usual is no longer possible. Bureaucrats that sit with those files that have ID numbers only know people as an ID number, not as human beings. We operate on the principal that people have to meet face to face. If, for example, an Immigration Officer has to explain to a mother of five facing deportation to Somalia where her two eldest children are going to have to undergo genital mutilation *why* the deportation is happening – it does in some instances get results.

Private corporations are making profits off deportations and detentions. Have your campaigns targeted these private interests as well?

Stef: In terms of corporations and exposing who benefits off the business of removals, we have had some success with airport actions. We had an action where there were three deportations pending and people went to the airline – Air Canada, which facilitates and makes money off of deportation – and did a mass leafleting to make people aware of the fact that you could potentially be sitting next to a deportee.

Jaggi: About airport actions. There are things, I think, that are useful to mention about strategy and tactics. We did do a visit to Dorval Airport in Montreal on the day that the Algerian family in question, Mourad Bourouisa and Yakout Seddiki, were to be deported. We handed out a flyer drawing attention to what we call the "deportation business." There is a very well-developed campaign against airlines in Europe – extremely developed because there have been some atrocious cases in Europe of people being killed as they're deported. For example, pillows are placed on their heads to calm them down, and someone suffocated. In other cases, people are forcibly sedated and end up dying. And there are also mass deportations and mass flights out. In our research around the Algerian case, an Immigration Canada spokesperson in Quebec went out of their way to say that "We're civilized. We would never have mass flights. We are not going to be putting all the Algerians on one flight and sending them off. They are on a commercial flight." They said that the only time we ever did a mass deportation in recent Canadian history was with about forty or fifty Chinese migrants after the boatloads came in 1999. So we focused on the deportation industry and handed out a flyer that drew attention to certain airlines that we knew did deportations. But this is something that needs to be more developed.

What is the long-term viability of a direct action casework model?

Jaggi: Strategically speaking we have to say a few things about tactics. We shouldn't be doing direct action casework. In so many cases it's just about having a competent lawyer, it's just about filing the right claim, it's just about gathering the right information. It is about services and resources. And so us direct action caseworkers, like Stef and me and Mohamed and others: we're not lawyers. We just know where to look. Sometimes it's paralegal work, sometimes it's finding money, sometimes it's making sure something gets in on time, sometimes its patting someone on the back. But that's not terribly sustainable if you look at all the cases that need to be dealt with.

Stef: We agree. We are at a point where delegation-wise, immigration offices in Toronto are now rigged with alarm systems. They have signs behind the desk that say, "This is what you should do if a delegation arrives." The police do get called. The offices continuously send out PR hacks to deal with us. We can only send delegations to things so many times.

How feasible is that as a tactic? After all, the new Immigration Act has come into effect this year. The Safe Third Country agreement has also been passed. The fact is that people aren't going to have the opportunity to get in easily,

never mind the hassle and haggle and struggle from within our borders. The fact is that I have no idea how many people never even have the chance to call our office. The way that screening and the way that the laws are being worked now is an attempt to prevent entry. How can we best be allies in something that *has to* expand beyond casework? I'm not saying it's a bad thing that people are using the casework model that we've promoted over the years. But we can't just keep on doing this. We don't have the resources; it doesn't make sense.

Jaggi: As Stef was saying, a casework approach needs to be thought of strategically. Because ultimately that tactic might lose its force. In Montreal, for example, we are always saying to ourselves: we could do a direct action casework visit everyday – literally. I remember one period we almost had it planned that we would be visiting offices three times in the same week. And we were saying to ourselves: Will this lose its effect, its punch? Because part of the effect of it is that there's something specific about this case that demands your attention right now. But the fact is that we could do that every day with so many cases.

What do you think, then, are the prospects for a broad-based movement in support of refugee and migrant rights? What direction should the movement take?

Jaggi: The traditional tactics just aren't working. I mean, they are actually an abject failure. They try to work within a system, to basically humanize a system that is essentially inhumane. To give one example, the Action Committee for Non-Status Algerians were criticized by more of the mainstream groups for being a bit too radical. "How can you call to end to all deportations? How can you say, return the moratorium? You have to 'sugar-coat' your demands so that the government will look good as they respond." Of course, that is a tactic that can exist. But why are you criticizing people for standing up for what they believe? *You* "sugar-coat" it when you do your work. But it is as if we have to all subscribe to one notion. I think we need to talk and adopt various tactics to the broader strategy of making some fundamental policy changes: the regularization of all, amnesties, the treatment of migrant workers.

Mohamed: People who are directly affected need to be the ones fighting and creating this movement with allies. We need to be radical. That is the best way we are going to grow and be effective. When the government gives us just a little bit, a change of policy – for them, that's a big deal. They say: "See what we're doing!" But it's not such a big thing.

We need to prevent laws from being passed. For example, the Immigration and Refugee Law that was passed in June

2002, the response was very soft. There were no real big protests. We need to mobilize. We need to prevent these laws from happening. We need to be there at Parliament when they try to pass these laws. And of course, the context here is that these laws legally make us weaker. We have to get to them before they pass laws that make us weaker, that affect our status.

Stef: If this is going to be a successful mass movement, then the allies that are onside have to be genuinely onside. OCAP Immigration had traditionally been supported by union flying squads and had received funding from a large Canadian union. When OCAP stepped up its militant tactics, then that support was withdrawn. That's not legitimate alliance building. That's not real ally work. If this is going to work then people really have to be standing there. We called a demonstration around the passing of the new Act, and the attendance of that demonstration was thin. The union flying squads weren't there. People purport to be allies; so when the tactics are harder and when people are pushing things, you have to be still willing to stand there. You have to still be willing to say that you think that this is worth fighting for.

The **Comité d'action des sans-statut algériens (Action Committee for Non-Status Algerians)** was formed in Montreal, Quebec, in 2001. Since the Canadian government lifted its moratorium on deportations to Algeria in April 2002, the Committee has mounted a vigorous public campaign to raise awareness about their situation, and to organize an effective political and legal response. <http://www. tao.ca/~sans-statut/>

The **Ontario Coalition Against Poverty** is an anti-poverty organization based in Toronto, Ontario, Canada. OCAP provides direct-action advocacy for individuals facing eviction, termination of welfare benefits, and deportations. Since its founding in 1990, OCAP has also mounted public campaigns against regressive government policies that negatively impact the poor and homeless. <www.ocap.ca>

Montreal's **No One Is Illegal** campaign began in 2002 and takes its name and inspiration from a worldwide movement committed to the rights of refugees and migrants. Activists in the campaign organize as allies in order to support and empower forcibly displaced individuals and communities. The No One Is Illegal campaign works closely with the Action Committee for Non-Status Algerians. <nooneisillegal@tao.ca>

Notes

1. See Sue Montgomery, "Tears Linked to Water Deal? Deportation Seems to Make No Sense. Big Water Contract Was Announced about the Time Canada Decided Algerians Should Leave," *Montreal Gazette*, 19 October 2002, p. A7.
2. For an elaboration on the situation in Canada, see the article by Cynthia Wright in this issue.
3. All participants gave consent to have this roundtable tape-recorded. Several participants spoke in French and had their comments translated by Jaggi Singh and Salma Ahmad. Minor editing for grammar and length has been done by the editors. All participants were provided a copy of this roundtable for their review prior to publication.
4. Persons placed under a removal order can apply for a Pre-Removal Risk Assessment. Those who are eligible to apply for PRRA (*i.e.*, who are not inadmissible to Canada) are sent an application form by Citizenship and Immigration Canada. PRRA officers are supposed to assess the risk of persecution, danger of torture, risk to life, or risk of cruel and unusual treatment that the applicant may face upon return. See online: <www.cic.gc.ca/english/refugees/asylum%2D3.html> and <www.cic.gc.ca/english/irpa/fs%2Dremovals.html>

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"It Is Better to Be a Refugee Than a Turkana in Kakuma": Revisiting the Relationship between Hosts and Refugees in Kenya

Ekuru Aukot

Abstract

The article echoes stories and perceptions of the hosts to the refugees in their day-to-day relations in Kakuma refugee camp with little emphasis on academic abstraction of refugee protection contained in international instruments but rather on the realities on the ground. It is argued that good refugee-host relations enhance refugees' enjoyment of their rights under the international conventions and promote local integration. The article discusses areas of conflict between refugees and their hosts and how these factors endanger refugees' physical protection, and it echoes the hosts' solutions to the conflicts. The failure of local integration is attributed to poor refugee-host relations. Consequently, it is argued that even the enactment of refugee-specific legislation "that would give force" to the international conventions will not necessarily improve refugees' enjoyment of their rights as long as, through a practice of selective compassion by humanitarian agencies and international refugee law, refugees are targeted for assistance without regard to the negative impact on the local economy and its residents.

Résumé

Cet article rapporte des récits et des perceptions émanant des hôtes vis-à-vis des réfugiés dans leurs relations quotidiennes dans le camp de réfugiés de Kakuma. Il fait peu de cas des dispositions théoriques en matière de protection de réfugiés contenues dans les instruments internationaux, mais considère plutôt la réalité sur le terrain.

Il fait valoir que de bonnes relations entre réfugiés et hôtes augmentent la capacité des réfugiés de se prévaloir des droits que leur confèrent les conventions internationales et facilitent l'intégration au niveau local. L'article examine les zones de conflit entre réfugiés et hôtes et aussi comment ces facteurs constituent un danger à la protection physique des réfugiés. Il relate aussi les solutions que les hôtes proposent à ces conflits. L'échec de l'intégration locale est attribué aux mauvaises relations entre réfugiés et hôtes. Par conséquent, l'article soutient que même la promulgation d'une loi rendant exécutoire les conventions internationales sur les réfugiés ne permettra pas nécessairement à ces derniers de mieux jouir de leurs droits. Selon l'article, ce phénomène durera tant que les agences humanitaires et le droit international des réfugiés pratiquent une « compassion sélective », ciblant les réfugiés pour les assister, mais sans tenir compte de l'impact négatif que cela peut avoir sur l'économie locale et ses habitants.

It is better to be a refugee than a Turkana in Kakuma.[1]

Introduction

Between 1991 and 1998, the civil wars in the Horn and the Great Lakes region of Africa brought ten nationalities to live among a people in Turkana District, Kenya, so impoverished that the refugees came to be seen as a threat. The region experienced an unprecedented wave of refugee flows, resulting in large concentrations not only of refugees, but also of hundreds of thousands of displaced

peasants, agro-pastoralists, urban dwellers, and militias. This escalated in the 1999–2001 civil and political unrest in the DRC and Sudan, the recent election violence in the islands of Pemba and Zanzibar,[2] and the continued insurgence in northern Ugandan by the Lord Resistance Army (LRA). The flight of these people poses problems that have far-reaching consequences for the host country, the region, and individuals.

This article focuses on the exiles' reception in Kakuma refugee camp, not by UNHCR or the government, but by the local tribe, the Turkana (hereinafter, the hosts). In the first part, it briefly introduces Kakuma, the hosts, and the refugees. Secondly, the areas of conflict are discussed. Thirdly, and in view of the context, it poses the question whether local integration as a durable solution could be realized. Fourthly, the possible impact of refugee-specific legislation, if any, is analyzed. In conclusion, the future of Kakuma refugee camp in its protracted state is contemplated.

The article relies on fieldwork observations; formal and informal meetings with the hosts, refugees, and NGOs; situational reports and the hosts' correspondence to UNHCR and her Implementing partners (IPs); and their local MP, as well as personal experience. The discourse adopts narratives from the hosts' perspective, through which they raise challenging questions to the international principle of refugee protection, and their views render Kenya as the receiving state unpopular among its people.[3] The time frame for the observation is slightly over two years, including input from two recent three-month field visits, as part of a doctoral thesis.[4]

1.　*The Kakuma Refugee Camp, the Hosts, and the Refugees*

Kakuma refugee camp is located in Turkana district, one of the remotest parts of Kenya. The temperature averages 40ºC. "Nothing" grows agriculturally in Kakuma. The area and its residents are afflicted by famines, droughts, and severe economic setbacks, making it impossible for them to eke out a minimum living.

The camp was established in 1992 owing to the plight of about 30,000 to 40,000 Sudanese "walking boys" or "lost boys" who were forcefully returned to Sudan when the Ethiopian regime of Mengistu was toppled in 1991. The "boys" walked in the wilderness and wandered into Kenya.[5] The camp has urban refugees from Burundi, Rwanda, and Ethiopia as well as pastoralist refugees of Sudanese, Somali, Ugandan, and Ethiopian origin.

The high refugee population forced the Government of Kenya (GoK) to adopt the encampment policy, which brought together approximately 60,000 Sudanese with about 7,000 Ethiopians and Eritreans (with the recent Ethiopia-Eritrea political instability, their numbers have increased). Rwandans and Burundians are about 300 with the majority living in the urban areas of Nairobi. There are 295 Ugandans and 243 Congolese.[6] The Somali, including the Somali-Bantu, are about 10,000 with an increase since the closure of the Mombasa camps, forcing UNHCR to relocate most refugees to Kakuma,[7] and the insecurity in the Dadaab camps.[8] The increase necessitated the creation of Kakuma II and III to accommodate the newcomers and those who passed status determination interviews in Nairobi, as well as new arrivals from Sudan, Ethiopia, and Eritrea. The exact population of refugees in Kenya is unknown. UNHCR gives a figure of those living in the camp only and an estimate of about 100,000 living in the urban centres in Kenya.

The hosts are nomadic pastoralists who depend on cattle for their survival. They are among the 43 per cent of Kenya's population that live in absolute poverty and their basic needs have remained unmet for decades. They, *inter alia,* depend on missionary aid for education and health. In Kakuma, one notices the almost complete absence of the GoK save for the police post, which was constructed by the UNHCR to protect refugees from alleged hostilities of their hosts, and the District Officer (DO) who mainly signs travel documents (TDs) for refugees temporarily leaving the camp.

Turkana district is evidently marginalized in developmental terms. Its inhabitants are an ethnic minority who are under-represented politically with limited economic resources. They are debilitated by diseases, and for a long time have been displaced through conflicts with their neighbours, the Pokot, Karamojong, etc. It is among these people that the GoK has created the oldest refugee camp with UNHCR administering humanitarian assistance among the refugees. The camp provides a locality for growing social conflict, economic decline, and political abuse, which has often frustrated the refugee protection ideal. The impact of refugees in Kakuma cannot therefore be underestimated. It has culminated in the hosts' grievances, which are motivated by unequal treatment by both the national and international regime of refugee protection. Their demands raise fundamental and conceptual issues, which question the tenets of humanitarianism and equality in human rights protection.

In contrast refugees receive free services including shelter, food, firewood, and health care, which have created a social, economic, and psychological imbalance. The population of over 83,000 refugees is pitted against 10,000 local hosts. As beneficiaries of humanitarian assistance, refugees are better off than their hosts. The problems faced by the hosts are similar to those that caused the flight of refugees.

The hosts mirror the problems common between them and refugees. Yet the hosts cannot benefit from refugee aid due to the intricacies of refugee law that someone must be outside his country of origin and without the protection of that state.[9] This has led to the criticism that "international aid can offer nothing better than the bleakness of the settlements and camps while the generosity of the poor in host countries can do no more than share their poverty."[10] It would thus appear self-defeating to "better" refugees' lives in an environment afflicted by the same problems that forced them to leave their countries.

The commonality of problems between refugees and hosts raises doubts whether the refugee in Kakuma is the one described in the conventions[11] with the expanded definition in article 1 (2) of the OAU Convention that applies the term "refugee"

> ...to every person who owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge...

The term "refugee" has therefore become a term of *art* "with a content verifiable according to principles of general international law."[12] The definition becomes problematic due to circumstances that exist in Kakuma. The hosts' history of displacement meets the expanded UNHCR mandate for Internally Displaced Persons (IDPs). It is arguable that the hosts could meet the criteria of refugees under the OAU Convention and any attempt at selective protection defeats the principles of human rights protection.

International refugee law as a concept is limited, which explains why "economic refugees" are not considered.[13] Due to the dilemma presented by economic refugees, States have insisted on restrictive criteria for identifying those who benefit from refugee protection. However, in Kenya most refugees – Somalis, Sudanese, and Congolese – are recognized *prima facie*, which casts doubt on their statuses. In fact 99 per cent of refugees in Kakuma have not undergone refugee status determination procedures (RSD). This situation is engendered by the presence of victims of natural calamities and generalized violence.

Subsequently, refugee influx in Kakuma gives rise to problems of a complex nature. The refugee is concerned with personal survival and exploitation of available opportunities including those offered by the UNHCR. For the world community, the problem, if recognized at all, is perceived as a humanitarian issue to be forgotten as soon as the pressing needs are partially satisfied. For the hosts, on the other hand, it creates a complex series of problems, including severe pressure on social services and infrastructure.

The hosts find themselves in contact with foreigners who fled their countries because of wars, poor economic situations, political persecution, and marginalization. The intervention by UNHCR and GoK on behalf of refugees cannot possibly be comprehended by the hosts because of their own expectations; hence their many accusations, which threaten refugee protection. In the hosts' minds linger the questions, why and how are refugees different from them? Are the GoK and the international community being selectively compassionate in humanitarian assistance? Doesn't that compromise humanitarian principles?

2. The Factors Affecting Refugee-Host Relations

The refugee-host relation remains a stumbling block. These realities challenge the UNHCR's mandate in providing "international protection" and in seeking permanent solutions to refugee problems. Humanitarian aid was exclusively channeled to the refugees without regard to their hosts in spite of the *Daily Nation*'s 1999–2000 wide report on the Turkana famine that killed many. Refugee aid is not seen as humanitarian but rather constructed as an economic gain that guarantees life.

The imbalance is clearly pronounced when refugees receive humanitarian assistance, which enables them to supplement their "incomes." This has resulted in scapegoating, which has often portrayed refugees as sources of political, economic, social, and cultural problems.[14] Refugees are blamed for burdening an almost non-existent economy, *e.g.*, through local shopkeepers who complain that their prices are regulated and taxed. In a letter to UNHCR, they wanted refugees to leave the Kakuma area. However, after they left, the hosts followed them to the camp because of lower food prices, leading to a booming business in the camp.

The hosts' anxiety towards the refugees can be posed in terms of a series of questions: Why do some people flee while others who are in similar situations choose to stay? What makes "aliens" special compared to other nationals who opt not to flee despite facing the same circumstances? This led to complaints attributed to the refugees' presence with specific complaints against UNHCR, IPs including other NGOs, and the GoK. These factors were not complained of before refugees arrived. Whereas there has been a substantial administrative and infrastructural improvement in the area owing to the refugees' presence, the hosts' summarily allege that since 1992 they have . . .

> [e]xperienced problems caused by their habitation of our land and which none of the previous UNHCR sub-office heads have

bothered to address... we have observed that, the Turkana have turned to be more poorer than the refugees.[15]

2.1.   Insecurity, Crimes, and Refugee-to-Refugee Conflict

When the camp was established, the Turkana and the refugees enjoyed good relations, which the Turkana say declined later due to provocation by the Dinka refugees who were "roaming around the villages without serious business," stealing, and causing unprovoked fights with the Turkana.[16] Realizing that their hosts did not want the cutting of trees, the Dinka formed groups that became a security threat, which continued "massive felling of trees by well armed gangs," and are also accused of repeatedly raping Turkana women.[17] The murder of "innocent Turkana" topped the list and on the same note the Turkana alleged that Dinkas threatened to kill them before returning to Sudan.[18] Turkana elders revealed fears of "new" crimes, *e.g.,* robbery with violence, which have resulted in the increase of firearms that was blamed on the Sudanese, Ethiopians, and Ugandans who are close to their borders.

The hosts argued that criminals of Turkana origin now collaborated with those of refugee origin. In distinguishing theft of animals from traditional cattle rustling, the latter, the hosts argue, guaranteed peaceful settlement because whenever the cattle were identified, the "thief" handed them over to the *bona fide* owner. The situation has changed, because the Ethiopian and Somali butchery owners buy animals from the "owner" who is a Turkana, but when another Turkana claims the animal that truly belongs to him, conflict always ensues.

On the other hand, refugees argue that the practice of cattle rustling by the Turkana is criminal, and that the authorities have left it unpunished. The example is given of a refugee who buys a cow from a Turkana, who will then come in the night to "take it away," on the pretext of "cattle-rustling." To solve this problem, refugees are advised not to keep cattle, and asked to buy one only when they want to slaughter it. A security committee chaired by the DO was proposed and it became the Kakuma Elders Consultative Committee, which was to oversee refugee-host relations and to report any offenders to the Kenya police. Alternatively, they proposed that UNHCR should repatriate all the Dinka refugees.

The hosts perceive refugee-to-refugee conflict as painting a bad image. Their violence in the camp goes unpunished,[19] hence impunity is perceived as affecting relationships because constant fights among the refugees sometimes result in deaths. Since refugees disrupt the tranquility of the hosts' environment, they are seen as a security threat. Their political affiliation has characterized refugees' internal social relations with conflicts, which has bearings

on refugees' adjustment and integration in Kakuma. For instance, the Dinka ethnic tribes, the Bor and the Bahrelgazal, always fight. Yet the two gang up against the Nuer tribe. This conflict always reflected the political situation in Sudan that arises from the support of either John Garang or Riak Macher of the Sudanese People's Liberation Army (SPLA). On the other hand the Luo, a minority group, are considered "outsiders" in the Sudanese community because their political stand over the war in the Sudan is not clear.

Clanism among the Somali community is a source of violence because some clans claim superiority over others. The Somali-Bantu are segregated because of the stigma that they were once "slaves" in Somalia. The Hutu and Tutsis, the Oromo and the Ethiopian always suspect each other of espionage, escalating their old hatred. According to Rwandans, the real identity of each member is uncertain, *i.e.* whether Hutu from Burundi or Rwanda and *vice versa*. Generally, the Dinka are accused of claiming the ownership of Kakuma refugee camp, and the chairman of the Sudanese community of claiming to be the overall chairman of all other refugees; and the hosts perceive insubordination from both the refugees and the refugee agencies, which do not see them as having a say in matters affecting their area. The above situation has sparked hostilities, prompting the hosts to brand the refugees "killers." To the hosts and other refugees, some elements, especially the SPLA supporters among the Dinka tribe, say that Kakuma is but a resting and recuperating place, portraying them as people not deserving protection.

2.2.   Water and Food Security

The population of Kakuma was small when water facilities were constructed but shot up drastically when refugees settled. The water lines were then overloaded because the generator pumping water was too small, while the only windmill broke down, resulting in water shortage. This has resulted in strict regulation of the supply, because of which conflicts have ensued at the water collection points. The hosts argue that their women are forced to travel long distances to fetch water resulting in "chest pains and miscarriages." The hosts suggested that the existing windmill be repaired or a new one be installed and a new solar-powered system be erected, and that all boreholes be repaired and the old generator be replaced with a powerful one.

Food insecurity is also blamed on refugees. As nomadic pastoralists, the hosts who, together with their cattle, depend on pasture and water for survival claim that in settled areas like Kakuma, Kalobeyei, Letea, and Lopur the land has already been destroyed by soil erosion caused by the presence of refugees. UNHCR was asked to dig four water dams in Kakuma Division in areas with adequate grass but no

water, so that the livestock can get water. Also, UNHCR was asked to provide materials or technical assistance to curb erosion.

2.3. Employment and Refugee Agencies' Attitudes towards Hosts

The attitude of some NGOs combined with the hosts' outcry over bias in employment is a setback to refugee protection in Kakuma. The hosts argue that their land has lost the natural capacity to sustain their means of livelihood because of occupation and devastation by refugees, causing acrimony and agitation among the youth,[20] resulting in Turkana Environmental Resource Association (TERA) and Kakuma Integrated Development Organization (KIDO), etc.

Employers allegedly favour "outsiders." The hosts argue that it is because all NGOs are headed by non-Turkana who practice nepotism, tribalism, and favouritism, and sideline them because of a stereotype that they are "primitive" and unqualified. This thought seems to have been erroneously borrowed by some commentators who ignore how relevant the issue is in refugee protection, and instead write that:

> Although 85 percent of jobs in the camp are supposedly reserved for the local people, few of the Turkana are sufficiently qualified for the better-paid posts. Those who do have the necessary qualifications also tend to be highly politicized, something, which has contributed to regular disputes over issues such as recruitment, dismissals and promotions.[21]

With due respect to this view it is questionable why some agencies prefer employees from a particular tribe. The hosts perceive it as tribalism, a factor that predominates in almost all aspects of relations among the forty-seven ethnicities in Kenya. In fact the hosts contend that the few Turkana who are employed have always been dismissed without reason even with a contract of employment in force. Whenever the responsible officers are confronted over this issue they shift the blame to authorities in Nairobi. The hosts reveal that even the subordinate staff employed at the camp are relatives of senior officers. They simply ask: does one really need a certificate qualification to sweep a compound or clean a toilet?

The attitude of some IPs as well as that of UNHCR has contributed adversely to the resentment of refugees by the hosts. For example the International Rescue Committee (IRC) was accused of "overtly abusing and offending the local community in ways that left it with no alternative except its exit from Kakuma within the shortest time possible."[22] In defense the NGOs stated that "as international staff they are above local politics," but they were reminded that if it were not for the refugees, they would not be in Kakuma, and that "anybody above local politics on our soil should operate in the air."[23] Whereas it is understandable that NGOs cannot participate in "local politics," this does not warrant disrespect and ignoring complaints that would affect refugee protection.

A list of IRC employees as at March 1998 showed that out of forty-nine employees, only ten were from the host community. Referring to this situation, the hosts say that majority of its staff are "air-lifted from Nairobi in the UNHCR plane." When the Lutheran World Federation (LWF) handed over the management of the Kakuma hospital to IRC, staff from the host community were summarily dismissed. Those who wanted their contracts renewed were, as a precondition, forced to test for HIV/AIDS.

The NGOs were also accused of "racism" and being insensitive to cultural values. The utterances of the heads of IRC were described as being "heavily laden with racial overtones typical of Ku Klux Klan ideology."[24] The hatred of NGOs, in spite of being well documented, has not been addressed, yet on the receiving end is the refugee, who unknowingly mixes with the angry hosts.

The hosts requested that NGOs operating in Kakuma give them priority in positions they are qualified in – listed as co-ordinators, administrators, supervisors, etc. Secondly, jobs must be advertised and recruited in Kakuma because they lack the resources to travel to and stay in Nairobi. Thirdly, the practice of volunteer staff prior to actual employment should be abolished because it arguably contravenes accountability of funds of the organization, as people worked as "volunteers" when they were actually entitled to a salary. Lastly, all subordinate posts – watchmen, cleaners, loaders, etc. – must "automatically be granted to the locals."

2.4. Supply Tenders

The hosts perceive the camp situation as presenting an opportunity for the exploitation of the local economy. In 1992, the hosts supplied available commodities such as firewood, *makuti* (thatch) for building, and meat. This changed later with the introduction of competitive tendering and the emergence of numerous non-existent groups, belonging to non-Turkana and some "senior people." This marked TERA's advocacy in favour of the hosts; the hosts were denied a contract worth 32 million Kenya shillings for the supply of firewood to the refugees.[25]

Therefore the exploitation of readily available local resources became contentious because thatching materials highly needed by the refugees, which are found at Kalobeyei, 27 kilometers from Kakuma were now allegedly "imported." In response the tendering authorities argued that the Turkana cannot deliver according to the terms of

the tender and that is why suppliers were contracted from Kitale, about 600 kilometers from the camp.

The hosts suggested that the criteria for tendering, especially for *makuti* and meat, be clearly defined, and that their local leaders like the chiefs be co-opted into the tendering committee to avoid bias and "ghost groups." Lastly, the Turkana, being pastoralists, should be allowed and encouraged to supply meat and milk products since they have plenty of livestock. It is logical to purchase poultry and bacon products from elsewhere because they are not available in Kakuma.

2.5. Deforestation

Not only has deforestation catalyzed the refugee-host conflict, it has equally demeaned the respected "Nyayo philosophy" of soil conservation, which is popularized in the rural areas with the slogan "cut one, plant two." The refugees cut many and replace none. In Kenya the Chiefs and the DOs at the lower levels and the District Commissioners (DCs) at the higher levels portray that slogan of environmental conservation as a presidential law, which it is an offence to disobey. Government agents have in the past held weekly *barazas* (meetings) on the impact of deforestation, but with the refugees, they have become aloof and the hosts feel discriminated against in favour of the refugees.

The hosts are alarmed at the rate at which refugees cause deforestation, as evidenced in Zone 7 of the camp, inhabited by the Sudanese community. The hosts say that the refugees, when confronted, become violent and continue with massive destruction of local tree species for cooking and construction. Hence there are daily fights between the two communities. Refugees are accused of destroying trees at distances of up to 5 kilometers. The hosts argue that their livestock largely depend on these trees, and deforestation has exposed the topsoil to wind and water erosion. On the other hand the hosts want to control the supply of firewood and building materials as an economic gain, which is disrupted by the refugees.

The hosts asked UNHCR to do two things: firstly, to confine refugees to the camp and to provide them with cooking and building materials; and secondly, to initiate mass planting of trees, especially the local species, and to employ some refugees as forest guards to avoid conflict.

2.6. Education

Since 1992, primary schools in the camp have increased to twenty in number with five secondary schools. Comparing to the period before the refugees' arrival, the hosts construe this increase to mean that the government favours the refugees, with at least 20,000 refugee children attending school. It is difficult for the hosts' children to be admitted to the schools in the camp, yet refugee children are admitted in large numbers to schools run by the hosts, *e.g.*, Lopur Primary School. This has arisen due to the questionable quality of education in the camps and further because refugees, particularly Somali and Sudanese, prefer the Kenyan education system. In effect local schools lack facilities to accommodate the increase. Hence the hosts required UNHCR to fence and provide water to the local schools as well as to renovate classrooms, desks, and where necessary to provide food, including establishing nutritional feeding centres. It was again noted that the schools needed textbooks, chalk, and pressure lamps for study. It was also suggested "preschool activities at village level be initiated."

2.7. Health

Although the hosts appreciate the health facilities extended to them, they contend that poor sanitation in Kakuma is due to lack of toilet facilities and the many refugees, which led to bad sanitary conditions and the trading in commodities whose suitability for human consumption was "highly suspect." The recent arrivals, Somali-Bantu, have been accused of using the local wells on the river Tarach as "bathtubs," which has resulted in water-borne diseases such as typhoid, bilharzia, and dysentery.

The Sudanese minors are accused of using the bed of the river as a football pitch and a venue for "other social adventures" and their prolonged presence in the riverbed results in "pollution." However, part of the blame is attributed to the authorities concerned because they did not conduct impact analysis to determine the extent to which the activities of the refugees would bring menace to their hosts and the environment. The construction of latrines was suggested as a solution.

2.8. Cultural Erosion

In traditional Turkana, the sanctity of marriage was and still is a treasured value. A bride could collect in dowry at least thirty animals. Marriages were planned and celebrated in a tradition that involved the two families. In violation of that tradition there is an increasing untraditional elopement of Turkana girls with refugees. Although elopement is not an "alien" practice in Turkana, the expectation was that, once the family of the girl "reclaimed" her, they would be accorded due respect and negotiations for marriage would begin. This is because often elopements initiated marriage proceedings. Secondly, it demonstrated the groom's intention to marry, which was to spark a process of initiation and responsibility in society. But refugees do not understand the above practice and its importance to the Turkana who traditionally demanded dowry or pregnancy compensation. Refugees often object on the grounds that they do not have the cows de-

manded or they do not relate to the culture, and a dismissive argument often has been that it is the girls who follow of their own volition.

The elders confirmed the existence of another factor causing girls to breach those traditional values: the duty to fend for their impoverished families through those "marriages." Elders also blamed refugees for the growth of brothels and prostitution, resulting in venereal disease, which the community argues is new.[26]

2.9. *Local v. National Politics*

What emerged shortly after refugees settled were boreholes, schools, hospitals, a police station, and free food for refugees. The question then arose as to whether the refugees were taking over their land. This was followed by popular agitation to oust the ruling party's MP, as the hosts had lost faith in the government, and in the 1997 general elections an opposition candidate won. His triumph engendered a call for the immediate departure of refugees from Kakuma.

Forty years after independence, the hosts are, because of refugees, asking the government to give them basic rights, *inter alia,* education, health, and employment.[27] They express hatred of the government for generally sidelining them in development. The political history has contributed to the hosts' problems, but the refugees' presence has exposed the gravity of their political marginalization. In a letter, the hosts were grateful to the new MP for rescuing them from "bondage of intimidation, oppression, depression, abuses, harassment and insubordination."[28] The MP was asked to influence the employment of the hosts in both the government and the NGO sector, to promote education, and to influence the development of infrastructure.

The hosts' resentment of the government was highlighted during the creation of Kakuma II. The negotiation involved the government and UNHCR officials excluding the villagers. This elicited problems from two fronts. From the legal perspective, Turkana District is designated as falling under customary law, and therefore the taking away of that land without consulting the *owners* was unconstitutional.[29] Secondly, the extension of this camp sparked disagreement because the Turkana living in that area were pushed further away from services already delivered in Kakuma. This was seen as an act further marginalizing them. The elders were intimidated and asked to obey the government's order because, it was argued, as a signatory to international refugee law, Kenya was under an obligation to host refugees. The elders further alleged that bribery was used to influence some members of the committee.[30]

A proposal for compensation was suggested where the twenty-six affected families of 477 people be provided donkeys as means of migrating to other areas. Since these families kept goats in the area, movement into more harsh areas required the type of animals that could resist the new environment. Hence they demanded camels and UNHCR was asked to construct livestock watering holes at Lobokat and Pelekech areas. Also they asked that the borehole at Zone 7 of the camp be exclusively used by the hosts.

3. *Is Local Integration Possible?*

The short answer to this question is "no" because the above factors inhibit its realization. The areas of conflict are inherent in the following factors: First, the socio-cultural set-up lacks the capacity to absorb the refugees. It rejects and segregates them because refugees cannot participate in the dominant culture of the hosts including their inability to speak the local language. This is engendered by the hosts' perceptions, the educational and occupational backgrounds of the refugees and hosts, which are variables that determine the speed, the direction, and the level of integration. But these aspects are in conflict in Kakuma.

Secondly, refugees in Kakuma, like their hosts, are vulnerable to marginalization.[31] Economically, they are both inhibited from participating in the productive system, denying individuals the use of "his ideas, his talents, his hopes upon the community that has admitted him."[32] They would only achieve integration when as migrants they

> …become a working part of their adopted Society, take on many of its attitudes and behaviour patterns and participate freely in its activities, but at the same time retain a measure of their original cultural identity and ethnicity.[33]

But employment, which is usually a first step towards meaningful integration, is unavailable. The employment of international and national staff in almost all areas creates an unemployed population that continues to depend on humanitarian aid.

Thirdly, refugees cannot participate in the political life of their hosts.[34] The practice in Kakuma, as you will often hear, is that refugees shall not participate in the politics of the host community, and shall not even question the attitude of government agents towards them. The refugees may not demonstrate even against their own embassies, because that is considered "political" with respect to the host government in spite of evidence that countries of origin interfere with their asylum.[35]

Fourthly, the GoK's encampment policy inhibits integration. Through numerous police roadblocks along the Kitale-Lodwar-Kakuma-Lokichoggio roads, it restricts refugee movement, giving rise to a chronic culture of corruption, with refugees buying their way out of the camp. In Nairobi refugees must carry identification documents all the time,

which the police do not respect, hence the contradiction that:

> While unfailingly generous in giving asylum and relief to rural refugees,…African Governments have been slow in promoting real integration and slower with regard to naturalization. The stringent security regulations in force ... in rural settlements have also served to curtail integration.[36]

Lastly, the psychological state of the refugees also delays integration because of self-denial for years that their exile may be long or even permanent. The refugees "instead …believe that their exile is temporary and that …a radical change…will upset the status quo and enable them to return home."[37] The refugees in Kakuma are very disillusioned that there will be an end to their exile, because just when the situation seemed favourable for repatriation, conflicts always broke out such as the Eritrea-Ethiopia conflict of 1998-999, the DRC-Uganda-Rwanda war, the collapse of the Sudan peace talks, and the Rwandan refugees' belief that genocide is still taking place.

The quest for integration in Kakuma is a process that went through several stages, which are ideally peaceful, exploratory, or even ignorant but later become competitive and conflictual over scarce resources, with the end-game being assimilation, integration, or segregation.38 However, Kakuma mirrors a situation where neither integration nor assimilation seems possible. Furthermore, African societies are multi-ethnic and the recognition of heterogeneity rather than assimilation of one group by another is the *modus vivendi, i.e.,* "live and let live" based on tolerance of differences, solidarity, and positive integration. In Kakuma, integration would mean a situation where hosts and refugees coexist and share the same resources without conflict.[39]

Integration, it has been suggested, must take into account causes of refugees' maladjustment because flight "desocializes" the individual when it uproots him. Social integration is, however, not only determined by host-society factors but also by the socio-cultural backgrounds of the exiles.[40] In Kakuma refugee life is marred by disruption and abandonment of life goals, marriage is delayed; education is discontinued and careers are given up. To that extent integration becomes idealistic and in Kakuma can be summarized as a failed policy. The situation is itself a "push-factor" for repatriation. This difficulty therefore solicits for solutions towards the refugee-hosts peaceful coexistence. One suggestion would be the contribution of law with the hope that the society where refugees live would respect the rule of law and in its presence, it would protect refugees' endeavour to integrate.

4. *Domestic Legislation an Exercise in Futility?*

Kenya acceded to the 1951 Convention relating to the Status of Refugees (the 1951 Convention), its Protocol, and the OAU Convention in 1963, 1982, and 1992 respectively. Kenya also acceded to other human rights treaties including the 1948 Universal Declaration of Human Rights (UDHR), accepting therefore to protect refugees. The legal definition of a refugee in Kenya derives from these treaties. However, pursuant to a dualist approach to international law, the treaties have no direct effect in Kenya because they have not been incorporated into the legal framework through an Act of Parliament, without which refugees are presently at the mercy of *ad hoc* policies.

Incorporation of treaties into Kenyan law would arguably define the eligibility procedure and the authority responsible for granting asylum, check against detention, police "swoops" and forceful repatriation as an existing danger. Some refugees who are disillusioned by international law are more concerned by the absence of Kenyan law for their protection. Without legislation, refugees are vulnerable to abuse, their rights are violated by both the authorities and their hosts, and they are used as scapegoats for the GoK's failures to the hosts.[41] The current 2001 Refugee Draft Bill has considered this view. But it is not clear how this law, if enacted, would reduce the refugees-hosts tension. The earlier bills of 1991, 1994, 1998, and 1999 were never tabled in Parliament although the current Minister promises to table the current one.[42]

To enhance good relations with the hosts, UNHCR it seems has no choice but to redefine the refugee in Kakuma. UNHCR could seriously consider the hosts as other groups of persons who can be or presumed to be without or unable to avail themselves of the protection of their government (often called "displaced persons" or "persons of concern").[43] By including the hosts in its assistance, UNHCR would be complying with her humanitarian character; otherwise Kenya's enactment of a law to protect refugees would be perceived as preference over her own people. After all, as IDPs the hosts have no legal protection apart from mere UN guidelines.[44]

However, refugees left their countries for reasons that include, *inter alia*, the fear of anticipated danger, persecution, political opposition, forced labour, and economic problems. Although the hosts experience some of these problems, the difference is that the refugee has crossed an international border to warrant assistance. Perhaps the reluctance by the Turkana to flee to neighbouring countries is in itself a solution to the root causes of forced migration, and the GoK should today grasp the challenge to address the issue of insecurity and that of IDPs that predominates in northwestern Kenya. These entire issues amount to the

protection of human rights, so that the enactment of refugee legislation will do very little, if anything at all, to better refugee lives in the locality.

5. Conclusion

The importance of rethinking a modality for the implementation of humanitarian assistance where refugees reside is emphasized.[45] The UNHCR and the GoK have ignored the importance of good refugee-host relations. The areas of conflict demonstrate the hosts' desire to be involved in hosting refugees. Kakuma exposes the weaknesses of the present refugee regime, especially the internal problems of the host government *vis-à-vis* its nationals. Due to refugee aid, the hosts resent their government because the refugees offer them a yardstick. The hosts may arguably be wrong but these are the realities that refugees face daily and not the beauty of the Conventions. In fact whatever measures the international community takes, one of them would be to convince the hosts why refugees appear privileged in their midst. It is debatable that the hosts' claims may be unreasonable but these issues challenge our daily protection of refugees especially in Africa. The hosts' perceptions are in fact not any different from xenophobic and racial attitudes in Western countries.

In particular, the following issues are emphasized: Firstly, I have generally questioned the implications of protracted refugee camps and how they result in more problems for refugees. Perhaps the abolition of the camps would ameliorate refugee suffering. Kakuma has proved that camp policy is bad for various reasons. First, it directly violates the fundamental freedoms of movement, among other rights. Second, it discourages local integration, as refugees are caged in the camps, which are inhabitable (in their protracted state), yet the hosts are expected by the government to live in Kakuma harmoniously with the refugees.[46] Third, it encourages corruption, as refugees will always buy their way out of the camp when there is need to travel. Therefore whether refugees in Kakuma are better off than their hosts depends on the perception of the refugee problem as being more than just flight of people across borders, because a solution of their problem involves allocation of scarce resources and services in the host environment. Hence what makes life bearable in Kakuma is interpreted as a common resource.

Secondly, the creation of camps among impoverished and underdeveloped hosts challenges the application of humanitarian aid and is entirely a problem of the government that has discouraged peaceful coexistence as refugees are "advantaged" over the hosts. The latter's grievances rest in the government's failure to develop their region. Demand for compensation should therefore be directed at the government and not the international community. Paradoxically it appears that unless assistance considers the needs of the poor hosts and contributes towards their development, there is always the danger that refugees will be blamed for the hosts' problems. However, the hosts do not care who the aid is for, because they too exist in the same condition as the refugees, and naturally deserve assistance, which if they are denied makes the refugees' status better than that of the host. Kakuma refugee camp therefore presents a dilemma where the hosts do menial jobs for the refugees; they are house helps, "dishwashers," and baby-sitters for refugee children. The hosts therefore depend on the refugees' presence, and this makes them vulnerable to abuse, especially when hunger bites.[47]

Thirdly, it is shown that the hosts "grab" the opportunity to blame refugees and more specifically use the areas of conflict as "scapegoating" tools. Ignorance also plays a major role because the allegation and the hosts' proposed solutions sound rather naïve but the real danger is that the protection ideal is far from realization. Governments have an obligation to popularize the hosting of refugees among their nationals. However, it is right to say that both objective and subjective reasons influence the refugee-host conflicts.

Fourthly, Kakuma is not conducive for the realization of local integration, which is generally very low in Kenya. To promote integration, refugee assistance should be planned on "refugee affected areas" rather than establishing parallel services in camps.[48] The GoK should adopt a policy which uses the available resources for the sustainability of both refugees and their hosts. Assistance policies have encouraged the confinement of refugees in the camps, rendering them dependent on relief.[49] Hence the would-be host governments want the guarantee of refugee aid before admitting refugees.[50] This image has portrayed the refugee as a "problem" rather than as persons with problems, and as such has obscured the reality that refugees are persons ready to put their energies into productive work that could benefit their hosts.

Alternatively, the GoK could adopt the two-tier approach, proposed by the Centre for Development and Enterprise (CDE) in South Africa where free movement of skilled people from anywhere in the world is admitted, and secondly, the probationary entry of unskilled people who, once they have satisfied a series of requirements, may in time qualify for permanent residence and work rights.[51] These approaches would as a matter of necessity expedite the desired East African Co-operation, through its new East African Co-operation Ministry. Lastly, even refugee-specific legislation would not be a definite solution to this protracted situation, but would provide a benchmark within

the national level the absence of which disables international refugee law.

If the authorities are serious in this region, they should realize that refugees could help to expand the Great Lakes economic "cake" because the region seriously needs to tap skilled labour from all angles. The free movement of capital, goods, and labour would ultimately promote the prosperity of the region. This was the concern of the East African Law Society conference on the "East Africa Court of Appeal and Conflict Resolution."[52] This will promote respect for human rights and refugeeism in the region and perhaps prove to governments that: "*it is not only a bundle of belongings that a refugee brings to his new country.*"[53]

Notes

1. Statement of a local Turkana man on a visit to the camp in 1998. The author does not subscribe to this perception of the refugee, but uses the statement as an analytical tool for understanding the issues surrounding the protection of refugees in Kakuma.
2. See "Refugees Must Move, Says State," *Daily Nation,* 7 March 2001.
3. See "Throw out Refugees, Says MPs," *Daily Nation*, 16 July 2002.
4. Fieldwork in Kakuma and Dadaab refugee camp from July 2001 to September 2002 gave new insights that enabled the analysis of the extent to which the efforts to harmonize the refugee-host relation have succeeded.
5. See online: <www.refintl.org/cgi-bin/ri/bulletin?bc=00271> and <http://209.120.133.211/walking_boys.htm> (date accessed: 14 May 2002).
6. EDP-UNHCR SO Kakuma, *Statistics Update Nationality, Gender and Age Group (Present at Headcount),* 29 August 2002.
7. See Guglielmo Verdirame, "Human Rights and Refugee Camps in Kenya," *Journal of Refugee Studies* 12:1 (1999).
8. See Jeff Crisp, "A State of Insecurity: The Political Economy of Violence in Kenya's Refugee Camps," *African Affairs* 99 (2000): 601–32.
9. Art. 1 of the 1951 Convention.
10. S. Pitterman, "Determinants of Policy in a Functional International Agency: A Comparative Study of United Nations High Commissioner for Refuges (UNHCR) Assistance in Africa, 1963–1981" (Ph.D. dissertation, Northwestern University, Evanston, Illinois, 1984), 136.
11. *Supra* note 8.
12. Guy S. Goodwin-Gill, *The Refugee in International Law*, 2nd ed., (Oxford: Oxford University Press, 1996), 1.
13. *Ibid.*, 3–77.
14. Ahmed Karadawi, "Constraints and Assistance to Refugees: Some Observations from the Sudan," *World Development*, 11:6 (1983): 539.
15. Letter to the UNHCR, "Kakuma Turkana proposed assistance from UNHCR branch office through UNHCR sub-office, Kakuma," 15 September 1997.

16. *Ibid.*
17. *Ibid.*
18. *Ibid.*
19. See Crisp for details of refugee violence in Kenyan camps.
20. Letter to MP, "Kakuma Youth Proposals to the Hon. MP," 10 January 1998.
21. Crisp, 619.
22. Letter to the IRC Country Representative, "IRC Program to leave Kakuma urgently," 15 November 1997.
23. Interview of Turkana Elders and Chief, September 2001.
24. *Supra* note 22
25. *See* "VP to Chair Crisis Talks on Refugees," *Daily Nation,* 17 July 2002.
26. *Supra* note 23.
27. *Supra* note 20.
28. *Ibid.*
29. *See* chapter 9, The Constitution of Kenya.
30. *Supra* note 23.
31. See generally Robert Park, "Human Migration and the Marginal Man," *American Journal of Sociology* 33:4 (1928): 881.
32. W.D. Borrie, *Cultural Integration of Immigrants* (Paris: UNESCO, 1959), 93–94.
33. *Ibid.*, 87.
34. G. Germani, *The Sociology of Marginality* (New Brunswick: Transaction books, 1981): 92. See also J. Perlman, *The Myth of Marginality* (Berkeley and Los Angeles: University of California Press, 1976), 132.
35. Interview of Ethiopian and Rwandan communities, Kakuma, September 2002.
36. M. Bulcha, *Flight and Migration: Causes of Mass Exodus from Ethiopia and Problems of Integration in the Sudan* (The Netherlands: Uppsala, 1988), 175.
37. L. Baskauskas, "The Lithuanian Refugee Experience and Grief," *International Migration Review*, 15:1,2 (1981): 276–91.
38. W. S. Bernard, "Indices of integration in the American community", *International Migration: Quarterly review of the intergovernmental Committee of European Migration and the Research Group for European Migration problems* 11-3 (1973).
39. B. Harrell-Bond, *Imposing Aid: Emergency Assistance to Refugees* (Oxford: Oxford University Press, 1986).
40. Bulcha, 175.
41. The advocacy of pro-legislation groups like the *ad hoc* refugee advocacy group in 1997–1999, now the Refugee Consortium of Kenya (RCK).
42. See Jeff Otieno, "230,000 Face Starvation in Refugee Camps, Says UN Body," *Daily Nation,* 23 January 2003.
43. See D. Korn, *Exodus within Borders: An Introduction to the Crisis of Internal Displacement* (Washington, D.C: Brookings Institution, 1999).
44. OCHA, *Guidelines on Internal Displacement,* 1999.
45. See generally A.C. Helton, *The Price of Indifference: Refugees and Humanitarian Action in the New Century* (New York: Oxford University Press, 2002).
46. See ICJ-Kenya Section, *Protecting Refugee Rights in Kenya* (Nairobi: Bookprint Services, 1998).

47. *Supra* note 23.

48. Harrell-Bond, 1986.

49. *Ibid.*

50. P. Kuruk, "Asylum and the Non-Refoulement of Refugees: The Case of the Missing Shipload of Liberian Refugees," Stanford Journal of International Law 35(1999): 313.

51. See Human Rights Watch, *"Prohibited person": Abuse of Undocumented Migrants, Asylum Seekers, and Refugees in South Africa* (New York: Human Rights Watch, 1998).

52. Malindi, Kenya, 8–9 April 1998; pledging *inter alia* that "... the regional co-operation in E.A should seek to promote the right to development, …the protection of fundamental rights and broaden democratic principles among member countries...and that.... the respective governments to enact enabling statute laws to enforce international instruments of human rights protection to which they are party ...."

53. Anonymous.

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