
THE BOUNDARIES OF BELONGING:
Reflections on Migration Policies into the 21st Century

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The Boundaries of Belonging: Reflections on Migration Policies into the 21st Century

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This paper examines the politics of categorization that defines people who move, as well as the migration containment policies that set and maintain the boundaries of these categories. The paper explains why “the problem” is not migration *per se*, but rather the way the powerful seek to control and contain the movement of people. Migration policies are a form of population control; the issue is who is controlled, and how. And because of the who, and the how, migration policy is a justice issue. Indeed, it is one of the most pressing justice issues of our time, and requires the consolidated and coordinated attention of all of us concerned with issues of human rights and social justice. It cannot be ignored.

The Politics of Indifference

In July 2001, a photograph by Javier Bauluz caused controversy in Spain, and around the world.¹ It was even published in the *New York Times*. The photograph, entitled *The Indifference of the West*, was of two beachgoers in Tarifa, Spain, sitting under an umbrella, while to their right there lay a dead body. The photograph generated much debate about camera angles, and whether the beachgoers actually were indifferent. Indifferent to whom? Who was this dead person? The answers to these questions lie in geography, in economy, in sociology, in the politics of movement and the boundaries of belonging, in migration and citizenship policies. And the answers, as well as the questions themselves, implicate us all.

Tarifa sits on the edge of Europe, looking across the Strait of Gibraltar to Morocco and the African continent. Since the implementation of the Schengen Agreement in 1993², and the ensuing Spanish *Ley de Extranjería* (Law on Aliens), passed in 2000, which denied the great majority of people from sub-Saharan Africa and Morocco entry visas to Europe, bodies have been washing up on the beaches of Tarifa. The local human rights ombudsman’s office in Andalucía estimated that over the past fourteen years 2,000 people have died in the Strait of Gibraltar trying to reach Spain in precarious dinghies.

The photograph may have generated controversy about camera angles, but it didn’t stop the bodies. In 2003, a local human rights activist in Tarifa, Nieves García Benito, published an anguished *cri du coeur* about the deadly situation in the Strait of Gibraltar, and the bodies that continued to wash up on the beaches of Tarifa in front of her home.³ She wrote that she could only wish that what she was seeing was fiction, that the accusations of

photo manipulation against Javier Bauluz were true, that it could all be explained away as media bias. But it simply was not the case. Because in Tarifa, “Without setting it up, without a special angle, with a special angle, in the daytime, at night, anyone can take a picture of a drowned person.” García Benito described the Strait of Gibraltar as a “space of indifference,” providing a “separation between the living and the dead.” And, she might have added, between citizens and non-citizens.

She also identified the reasons for this indifference, the motivation of the powerful for keeping the Strait just as it is: the energy companies laying gas pipelines beneath the waters to fuel the workings of multinational corporations; the oil companies transporting crude oil from its place of origin to the refineries in Europe; the entrepreneurs who benefit from cheap labour supplied by those lucky ones who survive the journey.

“Their indifference towards the dead persons is real,” she said. “They don’t even remotely consider the possibility of experiencing any change in the sum of their profits.” She also argued that the Strait is a space of indifference for the citizens of Europe, “who, in spite of being people of good will, have not prevented, not with their words nor with their deeds, the implementation of a *Ley de Extranjería* that carries, inherent within it, the real death of thousands of people.”

The response to the plight of these vulnerable people on the move has been silence, from the powerful economic elites, from the Spanish and European governments, and from the citizenry.

This distressing situation is not unique. In fact, it is all too commonplace, finding echoes in many corners of the world. Every now and again, the British newspapers

publish accounts of the deaths of “illegal migrants” in truck and shipping containers – suffocated as, in desperation, they tried to reach the shores of the United Kingdom by any means possible. In Central America, in a bitter echo of past history, organizations comprised of relatives of the disappeared search for the bodies of their loved ones who, in trying to reach the United States through an increasingly militarized Mexico, often jump to their deaths from moving trains to avoid police and army checks. Women are particular targets for abuse in border regions throughout the world, and in many cases, are murdered when they are no longer “of use.”⁴

And as for the thousands of people who do survive their perilous journey, their stories do not get much better. The countries of the north profit from their illegality, exploiting their labour to do the work that their own citizens are not prepared to do, or at least not for the wages paid.

García Benito laments that we only seem to care when it is already far too late, when we cannot ignore the bodies on the beach. Then there is some hand-wringing by those in authority, and unscrupulous traffickers or smugglers are usually blamed.

Traffickers and smugglers are not the cause of the problem, but rather part of the problem and one of the symptoms. Nor is the problem migration *per se*. Throughout the ages, in all corners of the globe, people have been on the move, seeking safer and better lives. So-called settler nations, including Canada, were created through such movement. Indeed, Canada is known as a “nation of immigrants.”

This myth of nationhood is a very particular one. Canadian immigration policies have always been racialized. The Chinese migrants who helped build the Canadian nation by constructing the Canadian Pacific railway were charged a head tax of \$500 (equivalent in the day to the price of two houses) and denied citizenship, while at the same time, immigrants from European countries were offered land on the prairies and instant recognition as Canadians.⁵ Meanwhile, the “nation” was also being built on the extermination, exclusion and containment of indigenous peoples, who to this day suffer the consequences of this foundational injustice, confined to reservations and confronted with multi-faceted and structural forms of discrimination in all aspects of social life. As Catherine Dauvergne argues, “The silence to which the mythology of migration law and of nationhood confines aboriginal peoples speaks its own powerful truth.”⁶

There is significant data that shows the economic benefits of migration, for countries of origin and destination. With ageing populations, declining birthrates and gaps in the labour supply, countries of the north need people.⁷ The economic impact of remittances by migrants to their families at home is also significant. According to the World Bank, in 2005, “Officially recorded remittances worldwide exceeded \$232 billion... Of this, developing countries received \$167 billion, more than twice the level of development aid from all sources.”⁸ In many countries in the global south,⁹ remittances now also exceed the amount received in tourism or from natural resources.¹⁰

The paradox of migration is the contradiction between its economic benefits, and the political momentum in the countries of the north against it. While so much of the world’s population on the move remains within the poorest countries of the global south, the citizenry in the countries of the north live in fear of the supposed masses clamouring to get in.¹¹ The mainstream view of migration is frequently reinforced through water imagery. Migration is described as a flood, an unstoppable torrent, a force of nature bent on destroying those in its path – in other words, a threat to the privileged in their protected places. And this climate of fear has been heightened in the current global context. Some people who move are now seen as a security threat, “migrants” increasingly equated with “terrorists.” International health regulation frameworks are also being used to prevent particular people from crossing borders – migrants as disease carriers who will infect the body politic.¹² In this milieu, a critical and measured discourse on these issues is difficult to establish.

Migration policies reflect who we are as nations and citizens, because they set the boundaries between “us” and “them.”

Migration policies reflect who we are as nations and citizens, because they set the boundaries between “us” and “them,” who can belong and who cannot. These boundaries of belonging are increasingly becoming

fortress walls separating the privileged and powerful from the vulnerable and marginalized.

The Politics of Categorization

The Universal Declaration of Human Rights asserts the right of people to leave their country. Indeed, the International Organization for Migration (IOM) estimates that over 175 million people (roughly three per cent of

the world's population) currently live outside the countries of their birth. However, as we move further into the 21st century, the right to move is becoming increasingly constrained, in particular for those who have been dislocated from their places of belonging because they are fleeing persecution, violence or war, or the destruction of their local economies or ecologies.

There is a politics to movement, to mobility; some people can move with impunity, most cannot. For the most vulnerable, the world is divided and delineated by rigid borders, boundaries and categorizations that define who a person is, and what possibilities they can have.

The international community has created many categories to contain people who move, depending on what we perceive to be the reason for their movement, and where they may end up: "refugees," "asylum-seekers," "internally displaced persons," "development displacees," "trafficked persons," "economic migrants," "immigrants." These categories contain value-laden fault lines: illegal/legal, documented/undocumented, political/economic. And these categories assume, first, that the people within them are all the same, and second, that the categories themselves are distinct.

The categorization of migration is inherently racialized, classed and gendered, whereas the privileged who move have other, more fluid, categories: "tourists," "travellers," "ex-pats." As Laura Agustín has argued, the category of migrant "is nearly always used about the working class, not about middle-class professionals and not about people from the first-world, even if they also have left home and moved to another country. Instead, the word rings of a subaltern status."¹³

Because of the way we label, define, and categorize people who move, we obscure and make invisible their actual lived experience. In Colombia, for instance, hundreds of people leave their homes every day, fleeing the war that has ravaged their country for almost four decades. Families are torn apart, their members often facing different futures, all uncertain. Some will become part of the very large internally displaced population. One or two family members will cross the border and become recognized as refugees by the United Nations High Commission for Refugees (UNHCR). One person might even make it to Canada. But most will move quietly and covertly in-country and across the border as "migrants" in order to avoid being visible targets in the conflict; under the cloak of invisibility, they are often exploited or murdered, raped, enslaved or "disappeared." Same family, same history of violence, different

categories, different futures. A significant proportion of Colombia's population – or Burma's, or that of any other country devastated by conflict – are dispossessed, dislocated, and made vulnerable by war, ignored because they have been categorized as "migrants" and not "refugees" or "displaced persons."

The reality in the global south is that the majority of people fleeing violence remain trapped within the borders of their own countries. In 2003, it was estimated that there were 25 million internally displaced persons in 52 countries, over half (13 million) located in Africa.¹⁴ In most cases, the mobility of populations affected by violence is severely curtailed. In recent years in Colombia, armed actors have changed their strategy with regards to the civilian population. Instead of forcing people to leave, they are now often forcing them to stay. Sometimes it is because they want people to work on the coca plantations they control. Sometimes it is to maintain the population as a human shield. Frequently, one side feels that villagers are supporting the other side, and by preventing them from leaving their community they prevent them from assisting the enemy. Whatever the reasons, the consequences are the same – people are trapped in what have come to be known as "confined communities."¹⁵

Categorization is a means of control, designed to confine people within rigid boundaries and contain what possibilities they can have. Once a person is a "migrant," their identity is weighted with signifiers – illegal, undocumented, stateless.

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There is also an implicit hierarchy in the categorization of migration. When someone becomes an "immigrant," they have access to membership within the nation-state and the rights of citizenship. A "migrant"

on the other hand has no such rights. The category of "migrant" is integrally identified with the status of "worker." "Migrants" are most often "migrant workers," their labour integral to the economy, but the rest of their selves are not deemed integral to society. As one analyst has argued, migrants are "the eternal throwaway workers."¹⁶ Who become "immigrants" and who become "migrants"? What assumptions and values underlie these categories? And what imperatives?

There is also a hierarchy between the categories of “refugee” and “migrant,” based upon a forced distinction between “political” and “economic” displacement. This differentiation denotes that “refugees” are *forced* (politically) to move, fleeing violence and war, while “migrants” *choose* (economically) to move, in search of a better life.

The forced/voluntary dichotomy needs to be examined. The widespread implementation of neo-liberal economic policies throughout the globe has resulted in a diminished capacity of national governments to develop economic policies in the interests of the majority of their own citizens. The people García Benito described at the beginning of this paper who died in the Strait of Gibraltar trying to reach Spain did choose to risk their lives, but they also had few other options. As John Berger says in his essay, *Ten Dispatches About Place*, people who emigrate “leave because there is nothing there, except their *everything*, which does not offer enough to feed their children. Once it did. This is the poverty of the new capitalism.”¹⁷

In the Mexican state of Chiapas, a “low-intensity” armed conflict was waged for over a decade between the Mexican army and the insurgent Zapatistas, with no peaceful resolution. There is a continued heavy military

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presence, and local groups report ongoing human rights violations. Chiapas is also rich in natural resources, and there is a growing presence of transnational corporations hungry for its water, gas and minerals. Many people are being forced to leave their homes to make way for hydroelectric dams and

mining. And for many others, there is no longer a local economy to support livelihoods. Busloads of people leave Chiapas every week, bound northward. Are they economic migrants or refugees? Does the distinction matter? Their situation of vulnerability remains the same. The violence of poverty and the violence of war are intricately interrelated in ways that these categories cannot begin to address, and therefore we lose the context and any possible solution.

The agency and actual lived experiences of women on the move are obscured or even removed within the paradigm of categorization. The focus within the international arena is most often on the abuse of women’s bodies, through trafficking and sexual slavery. The dilemma for those of us working in the human rights

and social justice sectors is how to highlight and bring an end to the systematic and horrific forms of abuse that women on the move do suffer, without ourselves contributing to their objectification and disempowerment. As Alice Miller argues, we need to avoid “the perpetual retelling of the story of the sexually abused victim who needs only rescue rather than a demanding woman who needs rights and social justice as a citizen.”¹⁸ She also emphasizes the importance of a focus on the conditions of economic exploitation and social marginalization that lead people to situations where they are trafficked:

Attention to trafficking as primarily a crime of male desire and forced sex operates to shut down careful work about the actual objective and subjective interests of the trafficked people and the sectors in which they are exploited, and blocks interventions into the new realities of urban and rural poverty and irregular labour sectors where most people are searching for their livelihoods and are trafficked. In the popular discourse, then, the harms of trafficking become entirely sexual, sometimes racialized but almost always in a way that reinforces gender stereotypes and protects against reflection of Northern economic accountabilities.¹⁹

Miller and others have also expressed the concern that international protection mechanisms that have been drawn up to address the situation of trafficking serve more the interests of states in controlling their borders than to protect women in situations of vulnerability.²⁰ This “crime-control approach” is one that sees “the state as the victim of trafficking, borders penetrated, and contagion let in.”²¹ Sexual harm becomes the reason to restrain women’s movement.²² Women’s own motivations to move, and their diverse experiences of migration, are lost. They become bodies, victims to be saved and contained.

We need to ask ourselves who in particular inhabits the categories created to distinguish between people who move, and who creates the categories? There are clear distinctions made between “immigrants” and “refugees,” between “refugees” and “migrants.” And there are other distinctions within the categories themselves. For example, should there be such a category as an “undocumented” refugee? Whose interests are served by this category? If someone is fleeing persecution, they are in need of refuge and protection. An “illegal” migrant no more deserves to die in the Strait of Gibraltar than a “legal” one. We need to understand and highlight the policies that create and maintain these categories, and that define people’s status, their legality, their personhood.

Containment Policies – Strategies and Trends

In understanding the politics of categorization and its significance, it is important to examine the migration policies that create the categories themselves and the boundaries within and between the categories. We refer to migration policies as “containment” policies, because they define and hold people within particular definitional boundaries.

One significant trend within migration containment policies is the increasing prevalence of “guest worker” programs. In Canada, the Temporary Agricultural Workers program currently brings 18,000 workers to Canada, 10,000 of whom are Mexican. Under the program, workers are tied to a specific employer, and are not allowed to seek other employment (which has led researcher Tanya Basok, amongst others, to refer to the guest workers program as “unfree labour”).²³ Several organizations and researchers have documented the poor and precarious working and living conditions for workers in this program.²⁴ Workers’ paycheques are deducted for benefits they are not entitled to receive. And regardless of how much time they spend in Canada, they are not entitled to apply for citizenship. According to Mexican economist Miguel Pickard:

There are Mexicans who have worked in the Canadian Program for over 20 years, during which time they have lived more in Canada than in Mexico and have contributed more to the Canadian economy than to Mexico’s, helping to maintain entire industries competitive with their labour. Nevertheless, given present legislation, they will never be able to be more than agricultural workers, nor be integrated into Canadian society...²⁵

The growing guest workers programs are indicative of northern states’ desire for legal but “flexible” and temporary labour, contained within categories that would not signify any extended relationship within the host nation. As David Bacon argues with reference to the United States:

U.S. immigration policy doesn’t deter the flow of migrants across the border. Its basic function is defining the status of people once they’re here. Guest-worker programs undermine both workplace and community rights, affecting nonimmigrants as well. They inhibit the development of families and culture, denying everyone what newcomers can offer.²⁶

Referring to the several bills before the US Congress for guest worker programs at the time, Bob Menéndez, a

Democratic congressman for New Jersey, said, “What Bush wants is their sweat and labour [but] he ultimately doesn’t want ‘them.’ The proposal will be a rotation of human capital, to be used and discarded, with no hope of permanently legalizing one’s status.”²⁷

Alongside the guest worker programs, in December 2005 the U.S. House of Representatives approved the Sesenbrennar bill, which included the proposal to build 1,100 kilometres of new hi-tech fences along the 3,200 kilometre border with Mexico.²⁸ The fence would further

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militarize a border policed by thousands of armed border patrol agents with night vision equipment, trained dogs and unmanned aircraft.²⁹ The bill also makes undocumented

migration a federal crime, where previously it was a civil offence, further consolidating and indeed criminalizing the category of “illegal migrant.”

The reality is that people cross borders when there is a demand for their labour. They work in construction, manufacturing and service industries, they pick fruit and vegetables, they take care of other people’s children, and they clean homes that they will never be able to own, with few of the protections and none of the benefits afforded to citizens.

The Right to Asylum

Another important trend within current containment policies in the north is the increasing erosion of the right to asylum for those fleeing war and persecution, a challenge to the category of “refugee” itself.

Beginning in the second half of the 20th century, the category of forced migration has been protected (albeit to a limited degree) by international humanitarian law. The most comprehensive international instrument for the defence of the rights of forced migrants is the 1951 Geneva Convention Relating to the Status of Refugees (hereto referred to as “the Geneva Convention”). One hundred and forty-six states are signatories to the Geneva Convention and/or its accompanying 1967 Protocol, which provides international standards for the treatment of refugees and outlines their rights and obligations, and those of states towards them.³⁰

The definition of a refugee entitled to protection under the Geneva Convention is any person who, “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.” Article 33 of the Geneva Convention asserts the principle of *non-refoulement*, that is, that signatory states must not forcibly return a refugee to a country where “his life or freedom would be threatened.”

The Geneva Convention came into effect in a particular context, post-World War II Europe, when northern countries were dealing with largely European-based refugee flows. Today, most countries of the north are actively seeking to undermine, and in fact erase, the right to asylum. Since the early 1990s with the end of the Cold War, there has been a shift from policies committed to resettlement as a permanent solution to refugee crises, as outlined in the Geneva Convention, to policies aimed at containing refugee populations in the regions where crises occur – essentially, the “not in my backyard” syndrome. These containment policies include strategies of diversion and deflection (for example, safe third country agreements and transit-processing zones), deterrence (detention of asylum applicants, denial of access to employment), and, increasingly, prevention of movement altogether.

In December 2002, Canada and the United States signed the Safe Third Country Agreement as part of the implementation of the “Smart Border” agreement adopted by the two countries after September 2001. Safe third country agreements assert the principle that refugees should claim protection in the first “safe” country they reach. Under the agreement with the United States, Canada can turn refugee claimants away at its borders if they have passed through the United States first, forcing them to claim asylum in the U.S. According to a report released by the Canadian Council for Refugees (CCR) in August 2005 analysing the first six months of the implementation of the Agreement, the number of people who claimed refugee status in Canada in 2005 was lower than at any time since the mid 1980s. There was a particularly dramatic drop in claims being made at the Canada-U.S. border, with only 50 per cent as many claims as the previous year. For some countries, the drop in claims was even more extreme. For example, claims made by Colombians were down 70 per cent as compared to 2004.³² CCR President Nick Summers summed up what is at stake:

It is no exaggeration to describe this Agreement as a silent killer. Out of sight of Canadians, asylum seekers are paying the price of Canada’s “Not in My Backyard Approach” to refugee protection. The fact is that the U.S. is not safe for all refugees and Canada is failing refugees who need our protection. We call on the Canadian government to cancel this Agreement immediately.

The CCR report said that the Canadian government is “turning a blind eye to egregious abuses of human rights by the U.S. government and does not inquire into the fate of those denied access to Canada’s refugee determination system.” The report cites as examples of these human rights concerns “increased demands for documentation of abuse, emphasis on the asylum-seeker’s ‘demeanour’ when making a claim, and barring of those whose families are associated with groups classed as terrorists.” In contravention of the Geneva Convention, thousands of asylum-seekers are also being held for long periods in U.S. jails, where many detainees have reported that they have been abused. In 2005, the CCR, together with Amnesty International and the Canadian Council of Churches, launched a legal challenge in the Canadian Federal Court against the Safe Third Country Agreement, on the basis that the United States should

To which war-torn countries is it safe to return people?

no longer be declared safe for refugees. It should, however, be noted that the detention of asylum-seekers is an issue of concern in Canada too.³³

Because the Geneva Convention prevents signatory countries from returning asylum-seekers to countries where their lives or freedom are in danger, prevention policies adopted by countries of the north are aimed at stopping people from making it to their borders at all. Such prevention policies include visa restrictions, carrier sanctions, and interception. Since 1992, northern states have used the concept of the “safe country,” by which they can send refugees back to their country of origin if that country guarantees their safety. The debate in Europe on the issue of safe country policies has not focused on the concept itself, but rather which countries to put on a common list. To which war-torn countries is it safe to return people? As Alain Morice asks in his examination of these proposals, “What guarantees would a person have if sent back to an unstable or poorly controlled country?”³⁴ And, who is accountable for their safety?

In 2004, the United States Committee for Refugees and Immigrants (USCRI) launched a campaign against the increasing practice of “warehousing” refugees, that is,

confining people to camps or segregated settlements in situations lasting ten years or more. This is not only a “not in my backyard” migration containment policy, but also an “out of sight, out of mind” containment policy, hiding people behind barbed-wire and concrete walls.

The USCRI estimates that more than seven of the nearly 12 million refugees in the world today are warehoused.³⁵ In 2005 for example, as part of the process of “shoring up” its southern borders, the Mexican government was in the process of building the largest migrant detention centre in the Americas in the border town of Tapachula.³⁶ Such “warehousing” also exists across Europe, including in countries such as Holland and Denmark, which are seen by many as among the most progressive and humane societies in the world. As Liz Fekete argues:

The idea that refugees can be ‘warehoused’ – the term is significant – until conflicts are resolved denotes the denigration and reification of asylum seekers. Already set apart from society, they can be more readily expelled; treated as commodities, they can be parcelled up, packaged and sent out of Europe.³⁷

These containment policies – “safe” countries, warehousing – make the vulnerable more vulnerable. On the occasion of his retirement, the out-going head of Switzerland’s Federal Refugee Office described European asylum policy as a “competition of misery,” “with each country trying to offer harsher conditions for asylum seekers than its neighbour, in order to discourage arrivals.”³⁸

In implementing their policies, northern governments have both inflamed and exploited racism and xenophobia in their citizenry, highlighting notions of “illegality” and “undocumented”, preying on the fear of the Other. The president of Spain’s Refugee Aid Commission has said: “It’s painful to say so, but Spain is hostile to refugees because of government policy. The democratic Spain of 2003 has forgotten the Spain of 1939, when hundreds of thousands of its children fled Franco’s repressive regime and settled around the globe.”³⁹

The role UNHCR in supporting northern containment policies deserves to be highlighted and critically examined. In 2002, UNHCR launched the Convention

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Plus initiative, which supported the proposal that, as much as possible, refugees should stay close to their country of origin. This has always been an underlying tenet of containment policies, and is now being made more explicit in immigration policy reform. UNHCR also supported European measures aimed at interring foreigners in special camps.⁴⁰

The Securitization of Migration

The trend toward a politics of containment within migration policies in countries of the north has been reinforced by the “securitization”⁴¹ agenda that has emerged in the wake of September 2001. Draconian “anti-terrorism” legislation has been introduced in many countries, including Canada, which undermines democratic freedoms and the rule of law. These include the Patriot Act in the United States, the Anti-Terrorism and Security Act (ASTA) in the United Kingdom, and the Anti-Terrorism Act (Bill C-36) and related legislation in Canada. A report from an international conference organized by the Canadian International Civil Liberties Monitoring Group (ICLMG) outlined the nature of the new global order:

Anti-terrorism legislation around the world, along with previously adopted immigration legislation and regulations, has contributed to an increase in racial profiling and institutionalized racism. Guilt by association has had a chilling effect on the fundamental rights of freedom of expression, freedom of association and freedom of movement as well as on the basic democratic rights to protest and to simply assert one’s rights.⁴²

The International Civil Liberties Monitoring Group

The International Civil Liberties Monitoring Group (ICLMG) is a coalition of 37 Canadian organizations, including Inter Pares, that monitors government policies and practices which undermine civil liberties, human rights, and refugee and immigrant protection. The ICLMG has challenged Canada’s security legislation, the harmonization of Canadian security and immigration policies with the United States, the practice of covert data-sharing, the suspension of due process, the erosion of privacy, and the lack of transparency and political accountability in the use of security measures. The ICLMG monitors and publicizes practices by state security agencies that contravene the Charter of Rights and Freedoms,

other Canadian laws and international human rights standards, including the use of security certificates and secret trials to deport landed immigrants, refugees, and migrant workers. In addition, the ICLMG intervenes in individual cases where there have been violations of civil liberties and human rights.

In 2004, the ICLMG organized an international meeting to explore the effects of security legislation on rights, freedoms and democracy worldwide, during which participants agreed to work together to raise public awareness on the burgeoning worldwide system of “total surveillance” and control of movement. The result was the **International Campaign Against Mass Surveillance and Registration (ICAMS)**, which is mobilizing citizens’ organizations to alert the public, the media and policy makers to the negative impact of harmonized global surveillance on privacy rights, and freedom of movement and association. The working group for the campaign, led by ICLMG, includes Inter Pares, the Canadian Association of University Teachers, Amnesty International Canada, La Ligue des droits et libertés, Statewatch-U.K., the American Civil Liberties Union, the Friends Committee on National Legislation (Washington), the Asian People’s Security Network, Focus on the Global South, and Suara Rakyat Malaysia (SUARAM).

ICLMG’s reports, *In the Shadow of the Law and Anti-Terrorism and the Security Agenda: Impacts on Rights, Freedoms and Democracy*, are available at www.interpares.ca.

For more information on the international campaign, visit www.waronterrorismwatch.ca.

See also Maureen Webb, *Illusions of Security: Global Surveillance and Democracy in the Post 9/11 World*. San Francisco: City Lights, forthcoming.

The heightened security climate has had particular implications for non-citizens. In Canada, under the new laws, the Minister of Public Safety and Emergency Preparedness Canada (PSEPC) and the Minister of Citizenship and Immigration have the power to issue security certificates to detain non-citizens indefinitely, or deport them (in the prior legislation, this power was held by the Security Intelligence Review Committee). When detained, non-citizens have no right to challenge, or even hear, the evidence against them, or to appeal the decision. In contravention of international law, they

may be deported to a country where there is a strong likelihood they will be tortured. As Sharryn Aiken and Andrew Brouwer argue:

The right to be free from arbitrary detention, the right to a fair hearing, as well as the absolute prohibition of torture, are pillars of democracy and the rule of law. We are gravely concerned that the security-certificate process denies to non-citizens the due-process rights to which they are entitled as equal human beings.⁴³

Aiken and Brouwer also point out that under the former Immigration Act there were procedures within the Security Intelligence Review Committee for ensuring individual rights and freedoms while effectively carrying out the state’s security responsibilities. And there are other options available that make the new laws unnecessary, and unnecessarily excessive:

For example, on apprehending a non-citizen believed to have committed terrorist acts, Canada may be able to prosecute the person under the anti-terrorism provisions of the Criminal Code. Alternatively, where an extradition request has been made, Canada may extradite the person to face charges elsewhere, providing the person’s fundamental human rights will not be violated in that country. Both options meet the important goals of avoiding impunity and protecting the public.⁴⁴

Some (mostly non-white) non-citizens are increasingly subject to arbitrary detention, including asylum seekers.⁴⁵ Article 31 of the Geneva Convention recognizes that refugees may have to use illicit means to enter a safe country, and requires that host countries “shall not impose penalties on that account.” However, in the post September 11 climate, one Canadian border guard has been quoted as saying, “Before, we were expected to release, now we’re encouraged to detain.”⁴⁶

These “securitization” measures have further objectified people on the move, as the Other. They are increasingly being identified as potential terrorists, especially if they come from Islamic countries, despite no public evidence to support such an assertion. Louise Arbour, the current UN High Commissioner for Human Rights, and former head of the International Criminal Court in The Hague, as well as a former justice of the Supreme Court of Canada, sums up what is at stake in this issue of security:

When we are asked to decide how much liberty we are willing to abandon for our security, we are asked, in reality, how much of the liberty of others we are willing to sacrifice for our own security. How

many of my compatriots am I willing to allow to be transferred to countries where they will likely be tortured in order for me to feel secure? How many foreigners am I willing to allow to be detained indefinitely without charges if that is what it takes for me to feel secure? Obviously, we will never hear the question to be: am I willing to subject myself to arbitrary detention or to the risk of torture so that my neighbour feels safer?⁴⁷

We are defined by our treatment of non-citizens, and the extent to which the protection of the rights of some comes at the expense of the rights of others.

Migration policies set the boundaries between “us” and “them,” and tell us much about who we are as a nation. We are defined by our treatment of non-citizens, and the extent to which the protection of the rights of some comes at the expense of the rights of others. As Louise Arbour has argued, “human rights are fundamentally recog-

nition of the rights of others.”⁴⁸ In addressing the injustice of migration containment policies outlined in this paper, we must confront the racialized politics of fear and exclusion that sustain these policies. We must challenge the “space of indifference” between citizens and non-citizens that is resulting in the death or exclusion of so many people on the move.

Challenging the Boundaries of Belonging

Most people who are forced to leave their homes in search of safer and better lives are not protected by the Geneva Convention, and they are extremely vulnerable to human rights violations. To address this serious lack in international protection frameworks, the United Nations Convention on the Protection of the Rights of All Migrant Workers and Their Families (hereafter referred to as the “Migrant Workers Convention”) was adopted by the UN General Assembly in 1990, and finally came into force in July 2003 when the requisite number of ratifications had been obtained. However, as of 2006, no northern country had ratified the Convention, and many, including Canada, actively oppose it.⁴⁹

The Migrant Workers Convention is the only international instrument to specifically address the human rights of migrant workers. It asserts the principle that there are certain basic non-derogable rights that must be held by all human beings – citizens and non-citizens – and covers all parts of the migrant journey, from the time of dislocation to the eventual destination. It guarantees the rights

of all migrant workers – documented or un-documented – and their families. “Equality of treatment” is guaranteed for migrant workers with regards to work-related issues such as remuneration and hours of work, but also includes social security, access to employment, trade union freedoms and cultural rights.⁵⁰

The Migrant Workers Convention

The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted by the United Nations General Assembly on December 18, 1990, and entered into force on July 1, 2003 when the requisite number of ratifications had been obtained. The Convention provides a set of binding international standards to address the treatment, welfare and human rights of documented and undocumented migrants, as well as the obligations and responsibilities on the part of sending and receiving states.

The Convention calls for the protection of the human rights of all who qualify as migrant workers under its provisions, regardless of their legal status. The Convention imposes obligations on states in the interest of promoting “sound, equitable, humane and lawful conditions” for the cross-border migration of workers and members of their families.

December 18, an international non-governmental organization, has worked for almost a decade to promote universal acceptance and adherence to this Convention. An important focus of the work of **December 18** has been organizing and convening the **International NGO Platform on the Migrant Workers’ Convention (IPMWC)**, a global coalition of 16 international non-governmental organizations that advocates on issues concerning implementation of the Convention, as well as bringing a migrants’ rights perspective to the work of the six other UN human rights institutions.

With support from Inter Pares, Novib and UNESCO, the IPMWC recently published a Guide for non-governmental organizations on how to use the UN Migrant Workers’ Convention as a tool for the promotion and protection of the rights of migrant workers and their families. This publication is available on-line in English, Spanish and French. Printed copies can be ordered from the IPMWC Secretariat.

More information about **December 18** and the **International NGO Platform on the Migrant Workers’ Convention** can be found at www.december18.net.

A key issue in the debate on migration policies is the question of open borders – if capital, goods and knowledge flow freely across borders, why not people too? If we are arguing for a common standard of dignity for all, should we not be advocating for open borders? This issue immediately raises the fear of migration “floods” – everyone would want to come in, goes the reasoning. But is this really the case? It is important to emphasize that migration is not indiscriminate. Not everybody moves, despite entrenched situations of violence and impoverishment around the world. Migration flows are structured and intentional. As Saskia Sassen argues:

If it were true... that the flow of immigrants and refugees was simply a matter of individuals in search of better opportunities in a richer country, then the growing population and poverty in much of the world would have created truly massive numbers of poor invading highly developed countries, a great indiscriminate flow of human beings from misery to wealth. This has not been the case. Migrations are highly selective processes; only certain people leave, and they travel on highly structured routes to their destinations, rather than gravitate blindly toward any rich country they can enter.⁵¹

Opposition to a notion of open borders is also rooted in fears concerning the erosion of cultural and national identity, which in turn are rooted in myths of nation. For example, in the American context, theorists such as Samuel Huntington see immigration as a threat to the so-called Anglo-Protestant values which underpin the myth of American nationhood.⁵² However, the reality of the American nation, its social fabric, belies its myths. The American nation is as much “latino” as it is Anglo-Saxon, and of course is much more. Culture and identity are not rigid and static categories, nations are much more than the sum of their parts. The myths of nation create, maintain and sustain inequality in the United States, as well as in Canada and every other country in the world.

The historical processes of inclusion and exclusion that have constructed the “imagined community” of the modern nation-state, particularly in countries of the north, have led to the definition of who is permitted to belong to, and participate within, the national space. And these processes have always been racialized. This can be seen with the campaigns to prevent Jewish immigration to Britain in the 1880s, the Nativist movement in the United States and Canada in the 1920s to restrict immigration to those of British or Western

descent, and the “White Australia Policy” designed to exclude people from Asia, which had widespread support in Australia until as recently as 1980.⁵³

Migration policies are as much about “us” as about “them.” We need to assert the principles by which we want our homes, our nations, our societies to live. Our rights are intertwined with the rights of others.

Migration is about the search to belong and create anew what has been lost.

Migration is about relationships across borders, it is about the search to belong and create anew what has been lost. When people move, they do not do so in isolation.

They follow the paths taken by others before them, and maintain their connections to those they leave behind. As David Bacon states in *Communities Without Borders*, “the drive for community motivates migration.”⁵⁴ Bacon argues for a U.S. immigration policy that “recognizes and values transnational communities”:

A pro-people, anticorporate immigration policy sees the creation and support of communities as a desirable goal. It reinforces indigenous culture and language, protects the rights of everyone and seeks to integrate immigrants into the broader U.S. society.

Acknowledging the transnational communities in migration helps us recognize the fluidity of migration and the category of migrant itself. Becoming and being a migrant should be seen more as “a stage of life” than the definition of everything a person is and can be. As Laura Agustín asks, “At what point does a person stop being a ‘migrant’ and become something else?”⁵⁵ And as Agustín proposes:

I suggest that we re-confirm the idea of agency for migrants, with the emphasis on the process they are going through. Although some migrants may experience a (sad) feeling of being permanently uprooted, many others do not, and the whole theory of social ‘integration’ of migrants depends on their desires and abilities to adapt, assimilate and lose not their own identities but their identification with migrancy.⁵⁶

Boundaries of belonging – “us” and “them,” “citizens” and “non-citizens” – construct the Other, and deny personhood. “They” are illegal, undocumented, stateless, terrorists. But people who move are not just bodies on a beach or faces in a photograph. They cannot be reduced to categories. They are people, they have agency. They

have dreams and aspirations, and contributions to make to home, old and new.

Putting people who move into categories – refugees, displaced persons, economic migrants – assumes and in fact creates a singularity of experience and opportunity that obscures people’s actual lived experience. The reasons people move are varied and multifaceted, and belie the categories we have constructed. Categorization fragments, segregates, and creates hierarchy. We need to step back and see the wider frameworks, interactions and interconnections that create the context for people who move.

Rights are indivisible, intertwined, and non-hierarchical. In challenging migration containment policies that create misery and desperation, and in advocating “pro-people” migration policies, we must not ignore or be indifferent to the rights of some while protecting the rights of others. Our commitment to protecting the rights of those fleeing persecution and who have been recognized as “refugees,” must not be at the expense of those at the mercy of ruthless containment policies as they try to gain access to Fortress North in search of a safer and better life. We must see the bigger picture that has constructed this situation in the first place. “Refugees” and “migrants” are often created by the same dynamics. The erosion of the right to asylum as defined within the Geneva Convention is integrally connected to the refusal of northern governments to sign onto the Migrant Workers Convention.

Because of our tendency to categorize – and this applies as much to those of us within the human rights and social justice communities as to anyone else – the solutions we seek most often do not transcend the problematic,

but reinforce it instead. We therefore cannot take a piecemeal approach to addressing these issues. We need to move away from a triage approach and instead embrace a construct that allows us to make visible and include all those

We have to insist on a common standard of dignity, rights, and security for all who are on the move.

who are affected and made vulnerable by containment policies. The only way to combat the politics of indifference and challenge the boundaries of belonging is to unite as citizens and civil society in universal common cause in the face of injustice.

We have to insist on a common standard of dignity, rights, and security for all who are on the move, regardless of the reason for their dislocation, as well as for all those who live within our borders, regardless of status or categories. The river of migration is part of our human ecosystem. It may ebb and flow, but it remains constant and necessary to who we all are, and who we will become.

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The paper is the fruit of an ongoing process of reflection and action within Inter Pares and with counterparts and colleagues in Canada, Latin America, Africa and Asia on migration and citizenship issues, and was prepared as part of a collaborative editorial process among the Inter Pares staff team working on migration issues (Caroline Boudreau, Alison Crosby, Peter Gillespie, Brian Murphy, and Karen Seabrooke).

The author is Alison Crosby. Alison lived and worked in Latin America during several periods in the 1990s, most recently in Guatemala. She has a doctorate in Sociology, and has written and published on the role of civil society and refugee movements within struggles for peace (see for example, “The Sounds of Silence: Feminist Research Across Time in Guatemala,” co-authored with Cathy Blacklock, in *Sites of Violence: Gender and Conflict Zones*, edited by Wenona Giles and Jennifer Hyndman, University of California Press, 2004).

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This paper is also available in French and Spanish (www.interpares.ca).

Endnotes

- ¹ To view the photograph in question, go to www.paueducation.com/linguapax. See also www.javierbauluz.blogspot.com.
- ² The Convention Implementing the Schengen Agreement was signed in 1990, and came into force in September 1993. It established freedom of movement between most European Union member states, while at the same time tightening shared external borders.
- ³ García Benito, Nieves (2001). *Nothing is true, nor is it a lie?* Published in Statewatch, www.statewatch.org/news/2003/jul/21spain.html.
- ⁴ In the Mexican border town of Ciudad Juárez, hundreds of women working in the maquila sector, many of them migrants, have been killed over the past decade. It took hundreds of cases made public by families and concerned groups for the situation to be finally investigated by the Mexican authorities, and there are still no answers for the families of these disappeared women. See the report by Amnesty International, *Intolerable Killings: Ten years of abductions and murders in Ciudad Juárez and Chihuahua* (AI Index: AMR 41/027/2003). Ciudad Juárez is not an isolated case.
- ⁵ The experience of Chinese migration to Canada, and head tax survivors' search for redress, is movingly documented in *In the Shadow of Gold Mountain*, a documentary written and directed by Karen Cho (NFB 2004), www.nfb.ca.
- ⁶ Catherine Dauvergne, *Humanitarianism, Identity, and Nation: Migration Laws in Canada and Australia*. Vancouver and Toronto: UBC Press, p.47, 2005.
- ⁷ A recent study by the International Organization for Migration (2005 World Migration Report) examining the costs and benefits of global migration, found that prevailing concerns in the north about the negative effects of migration on jobs and social services are largely unfounded. According to Brunson McKinley, head of the IOM, "If managed properly, migration can bring more benefits than costs." The study cites a British report that showed that between 1999 and 2000, migrants in the UK contributed \$4 billion more in taxes than they received in benefits. Similar findings have been made in Canadian studies. See for example *Economic Impact of Recent Immigration*. First Report of the Sub-Committee on Diminishing Returns, Eighth Report of the Standing Committee on Citizenship and Immigration, Nov. 1995; and *New Faces in the Crowd: The Economic and Social Impacts of Immigration* (Ottawa: Supply and Services Canada, 1991). For other examinations of the economic benefits of migration, see Anna María Iregui, *Efficiency Gains from the Elimination of Global Restrictions on Labour Mobility: An Analysis using a Multiregional CGE Model*, paper presented at UNU-WIDER conference on Poverty, International Migration and Asylum, Helsinki, 27-28 September 2002; and Jonathan Moses and Bjorn Letnes, *The Economic Costs of International Labour Restrictions*, a paper also presented at the UNU-WIDER conference, Helsinki, September 2002.
- ⁸ World Bank, *The Economic Implications of Remittances and Migration*. Global Economic Prospects Report, 2006.
- ⁹ This paper refers to the "global south" rather than "developing" nations, or simply "the south." While, for historical reasons, the people experiencing the most profound and intractable structural poverty are concentrated in the southern latitudes, they are not found exclusively in the southern hemisphere; nor are all southern nations, or those within these nations, impoverished and marginalized equally in the sense that this term is usually used. "Global south," a term introduced by Waldon Bello, among others, is used here as a metaphor for the phenomenon of pervasive entrenched deprivation, economic marginalization, and political disempowerment concentrated within an identifiable group of countries.
- ¹⁰ See for example The Global Commission on International Migration, *Migration in an Interconnected World: New Directions for Action*, October 2005. It should be noted that there is significant debate concerning the economic and social value of remittances, with some arguing that they do not provide long-term sustainable economic benefits to countries of origin, but rather absolve states from their responsibilities to their citizenry; there has also not been sufficient cost/benefit analysis of the impact of migration on countries of origin.
- ¹¹ As Stephen Castles states, "Migration as a whole does not present an economic or social crisis for the North." He cites UN statistics from 2002, which counted 175 million international migrants: "Of this 175 million, 32 percent (56 million) live in Europe; 23.4 percent (41 million) in North America; and 28.5 percent (50 million) in Asia. On average one in 10 people who live in developed countries is a migrant. One in 70 people who live in developing countries is a migrant. Such numbers are significant, but far lower than many people think, and certainly do not justify media head-lines on 'mass influxes.'" He also points out the reality of refugee flows: "Even at the height of the so-called 'asylum crisis' in the early 1990s, refugee populations in the North were tiny compared with those in some Southern countries. For instance, the ratio of refugees to host populations in 1992 was 1:10 in Malawi, compared with 1:869 in Germany, and 1:3,860 in the UK. In short, the crisis of caring for refugees falls overwhelmingly on the poorer countries of Asia and Africa." Stephen Castles, *Confronting the Realities of Forced Migration*. Migration Information Source (www.migrationinformation.org), 2004.
- ¹² Satya Sivaraman, "Health, wealth and terror," *Third World Resurgence*, No. 179, July 2005.
- ¹³ Laura M. Agustín, "Forget Victimization: Granting Agency to Migrants," *Development*, 46.3, 30-36, 2003.
- ¹⁴ Stephen Castles, 2004 (see note 11).
- ¹⁵ For a discussion of "confined communities", see the article "Confined Communities: Breaking Out," in Inter Pares February 2005 *Bulletin* (www.interpares.ca). See also Inter Pares Web site (www.interpares.ca) for a photo essay, *People's Right to Move – Voices From Colombia's Confined Communities*. See also the publication by Consejería en Proyectos, *Colombia: Comunidades Confinados*, Bogotá, 2004.
- ¹⁶ Miguel Pickard, *In the Crossfire: Mesoamerican Migrants Journey North*. IRC Americas, March 18, 2005 (www.americaspolicy.org).
- ¹⁷ John Berger, "Ten dispatches about place." *Le Monde diplomatique*, August 2005.
- ¹⁸ Alice M. Miller, "Sexuality, Violence Against Women, and Human Rights: Women Make Demands and Ladies Get Protection." *Health and Human Rights*, Vol. 7, No. 2, 2004.
- ¹⁹ Ibid.
- ²⁰ See for example the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, and the *Protocol Against Smuggling of Migrants by Land, Sea and Air*, which were both drawn up as supplements to the United Nations Convention Against Organized Crime, which came into effect on September 29, 2003.
- ²¹ Audrey Macklin, "At the Border of Rights, Migration, Sex-Work and Trafficking," in N. Gordon (ed), *From the Margins of Globalization: Critical Perspective on Human Rights*. Hanham, Maryland: Lexington Books, forthcoming. As cited in Alice Miller, 2004 (see note 18).
- ²² J. Sanghera and R. Kapur, "Report on Trafficking in Nepal: Policy Analysis – An Assessment of Laws and Policies for the Prevention and Control on Trafficking in Nepal." As cited in R. Kapur, "The Tragedy of Victimization Rhetoric: Resurrecting the 'Native' Subject in International/Post-Colonial Feminist Legal Politics," *Harvard Human Rights Journal* 15, 2003; pp.1-37; and Alice Miller, 2004 (see note 18).
- ²³ Tanya Basok, *Tortillas and Tomatoes: Transmigrant Mexican Harvesters in Canada*. McGill-Queen's University Press, Montreal and Kingston, 2003.
- ²⁴ See for example the United Food and Commercial Workers of Canada (UFCW), *The Status of Migrant Farm Workers in Canada*, 2004 (available at www.ufcw.ca); and documentation by the Canadian NGO, Justice for Migrant Workers (www.justicia4migrantworkers.org). See also a report by the North-South Institute, *Farmworkers from afar: Results of an international study of seasonal farmworkers from Mexico and the Caribbean working on Ontario farms*, 2006 (author, Heather Gibb), which provides an analysis of the program, including good practices and problems, as well as recommendations for improvements to the program.
- ²⁵ Miguel Pickard, 2005 (see note 16).

- ²⁶ David Bacon, "Communities Without Borders." *The Nation*, 24 October 2005 (www.thenation.com/doc/20051024/bacon).
- ²⁷ AFL-CIO "Bush Immigration Plan 'Creates a Permanent Underclass of Workers,' declaration issued January 7, 2004 (www.aflcio.org), cited in Pickard 2005 (see note 16).
- ²⁸ Increased militarization of the U.S. borders is accompanied by increased control of Mexico's borders, with support from the United States. After September 2001, the Mexican government implemented the *Plan Sur* (Southern Plan), which further militarized its southern borders to prevent people from passing through Mexico and subsequently to the United States. Mexico had hoped that by harmonizing its own security policies with those of the United States, the U.S. would agree to regularize the status of Mexicans living "illegally" in the U.S. – ensuring the rights of Mexicans at the expense of other potential migrants. And although *Plan Sur* no longer officially exists, the southern Mexican border regions continue to be heavily militarized.
- ²⁹ In 2005, at least 324 Mexicans were known to have died in the border area between the U.S. and Mexico (Diego Cevallos, *U.S. Builds Up its Fences Against Migration*, IPS-Inter Press Service, December 23, 2005, <http://other-news.info>).
- ³⁰ The Geneva Convention only binds states that have chosen to sign on to it.
- ³¹ Canadian Council for Refugees, *Closing the Front Door on Refugees: Report on Safe Third Country Agreement*. August 2005.
- ³² In examining the much lower acceptance rate for Colombians in the U.S. as compared to Canada, the CCR report calculated that "in the first year alone, 916 Colombians will be left without protection in either country."
- ³³ The United Nations Commission on Human Rights sent its Working Group on Arbitrary Detention to Canada in June 2005 to investigate these concerns. In its report, *Civil and Political Rights, including the Question of Torture and Detention* (December 2005), the Working Group found that "the detention of asylum-seekers remain exceptional." However, the report also proposed the following: "the Working Group recommends that the Government change the provisions in the immigration law and/or their application policies which give rise to cases of unjustified detention of migrants and asylum-seekers, as identified by the Working Group, and strengthen the control of the Immigration Division over the decision-making by immigration officers. The Working Group further recommends that the Government take remedial action with regard to the practical aspects of immigration detention that impede the effectiveness of the right to challenge detention, in particular the co-mingled detention in high security facilities."
- ³⁴ Alain Morice, "Foreigners are seen as a danger and their invasion as out of control: Europe blocks right to asylum." *Le Monde diplomatique*, March 2004.
- ³⁵ For a description of the USCRI anti-warehousing campaign, and to view or sign on to the *Statement Calling for Solutions to End Warehousing of Refugees*, go to www.refugees.org.
- ³⁶ Michael Flynn, *Global Migration Coursing Through Mexico*, International Relations Centre Americas Program, December 21 2005 (www.americaspolicy.org).
- ³⁷ Liz Fekete, *Europe: The deportation machine: Europe, asylum and human rights*. Institute of Race Relations, 9, April 2005 (www.irr.org.uk/2005/april/ha000011.html).
- ³⁸ Quoted in an article by former UNHCR representative to Canada, Judith Kumin, "Can this marriage be saved? National interest and ethics in asylum policy." *In Canadian Issues*, March 2004.
- ³⁹ Ibid.
- ⁴⁰ For analysis of the role of UNHCR, see: Jennifer Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism*. Minneapolis and London: University of Minnesota Press, 2000; Alain Morice, 2004 (see note 34); and Liz Fekete, 2005 (see note 37).
- ⁴¹ Stephen Castles, 2004 (see note 11).
- ⁴² International Civil Liberties Monitoring Group, *Anti-Terrorism and the Security Agenda: Impacts on Rights, Freedoms and Democracy*. Report and Recommendations for Policy Direction of a Public Forum. Ottawa, February 17, 2004.
- ⁴³ Sharryn Aiken and Andrew Brouwer, "The Pen is Too Mighty." *The Globe and Mail*, October 14, 2004. See also the report by the Working Group on Arbitrary Detention of the UN Commission on Human Rights (note 33), which expressed "grave concern at the security certificate process." The report also recommended that "terrorism suspects be detained in the criminal process, with the attached safeguards, and not under immigration law."
- ⁴⁴ Aiken and Brouwer, 2004 (see above note).
- ⁴⁵ The Canadian non-governmental organization *Actión Réfugiés Montréal* (ARM) works to protect the rights of detained refugees and 'non-citizens' held at the Immigration Prevention Centre in Laval, Québec. Concerned with the lack of external monitoring mechanisms that leave these detainees vulnerable to unjust treatment throughout the immigration process, ARM monitors the conditions of their detention, provides information on immigration and refugee law, secures legal aid, raises public awareness, and advocates for people's rights. Increasingly important is assisting detainees to obtain identity documents and prepare for their refugee hearings. While UNHCR states that the detention of refugees and asylum-seekers is to be avoided, data gathered by ARM in 2005 revealed that over half of the people in the Laval Centre were refugees.
- ⁴⁶ *The Globe and Mail*, November 28, 2002, quoted in *In the Shadow of the Law* (International Civil Liberties Monitoring Group, 2003). This was a report prepared by the ICLMG in response to the Department of Justice Canada's first annual report on the application of the *Anti-Terrorism Act* (Bill C-36).
- ⁴⁷ Louise Arbour, *Human Rights and the Politics of Fear*. Presentation to the Canadian Club of Toronto, 13 June 2005, Toronto.
- ⁴⁸ Ibid.
- ⁴⁹ For the Canadian government position on the Migrant Workers Convention, see the Canadian Submission to the Global Commission on International Migration (www.gcim.org).
- ⁵⁰ Joan Fitzpatrick, Jeffrey & Susan Brontman, *The Human Rights of Migrants*. Paper presented at the Conference on International Legal Norms and Migration, Geneva, 23-25 May, 2002.
- ⁵¹ Saskia Sassen, *Guests and Aliens*. New York: The New Press, 1999. Quoted in Laura M. Agustín, 2003 (see note 13).
- ⁵² Samuel Huntington, *Who Are We: The Challenges to America's National Identity*. Simon and Schuster, 2004.
- ⁵³ Stephen Castles, 2004 (see note 11). On the concept of "imagined communities", see Benedict Anderson, *Imagined Communities*, London: Verso, 1991.
- ⁵⁴ David Bacon, 2005 (see note 26).
- ⁵⁵ Laura M. Agustín, 2003 (see note 13).
- ⁵⁶ Ibid.



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