AN UNCERTAIN HOME: REFUGEE PROTECTION, ILLEGAL IMMIGRATION STATUS, AND THEIR EFFECTS ON MIGRANTS' HOUSING STABILITY IN VANCOUVER AND TORONTO

Priya Kissoon (University of British Columbia)

INTRODUCTION

"It's my fault." Ruth[1], the woman who said these words bore the physical injuries of a history of domestic violence: bite marks and cigarette burns across her chest and arms; and a pulverised eye that needed excavation. Ruth was not referring to the abuse that she fled, but rather her life as an undocumented migrant in Canada.

Ruth left behind three young daughters, each in the care of a separate household. In a country where in 2007 per capita incomes were just ten percent of those in Canada, she knew no one who could afford to care for all three girls under one roof, and in a country of no more than 350 square km, separating the sisters kept them better hidden from their mother's abuser.

When Ruth arrived in Canada, she owed a friend more than $2,000 for the plane ticket (almost a year's salary in her country). Preoccupied by the welfare of her children, she worked without a permit to remit money for their care and to repay her debt. Work, not the refugee-claim process, was Ruth's strategy for survival, safety and security. She did not know she was eligible to make a refugee claim, and when she did at last, her protracted "illegality" and lack of understanding of the inland-refugee process compromised her credibility. Economic migrant or person in need of protection? Is this a viable distinction to make, and with what consequences to migrants' lives?

The study on which this paper is based focuses on the lived experiences of undocumented migrants in Vancouver and Toronto. I interviewed thirty-four migrants to explore the effects and decision-making involved in shifting between legal and illegal immigration status.[2] While various legal immigration statuses, including temporary categories, have received much attention over the past few years, the voices of undocumented migrants and those with illegal immigration status have remained largely unheard. In part this is because their lack of status structures, and indeed demands, invisibility for survival.

Although a growing number of studies in Canada have focused on refugee, refugee claimant, and immigrant homelessness generally (Hiebert et al, 2006; Murdie, 2008; Miraftab, 2000; Paradis et al, 2008; Klodawsky et al, 2005; Kilbride and Webber, 2006), little is known about people with illegal immigration status, a migrant sub-group that is arguably the most vulnerable by virtue of being the most hidden. Different pathways to statuslessness have varying degrees of risk associated with them, for instance expired student visas compared with sponsorship breakdown or trafficking (Goldring et al, 2007). Recognizing different pathways to illegality, this study focuses on the refugee determination system to draw attention to the intersection of illegality and vulnerability to persecution. This paper offers a snapshot of the characteristics and homelessness experiences of non-status or undocumented migrant participants in Vancouver and Toronto. The discussion raises key points at the intersection of illegality and asylum and then offers selections from the larger study that highlight the particular vulnerabilities facing migrants, like Ruth, who have experienced statuslessness around the refugee determination process.

SEEKING PROTECTION AND EXPERIENCES OF ILLEGALITY

The Canadian refugee processing and determination system is seen as a model of good practice amongst Western nations and is demonstrative of a commitment to international law and the spirit of international community. However, like any system, as good as it can be, it cannot be perfect. The nature of "mixed flows", and indeed mixed motives, also makes it increasingly difficult to sift applications that deserve protection from those that do

not, particularly when people fleeing poverty and people fleeing state violence or persecution often originate from the same unstable regions (Richmond, 1994).

Before making a refugee claim, people may be out of status if they entered, or were brought to, the country clandestinely; their permits or visas expired and were not renewed; and/or they arrived with false documents. Fear of detention and removal, and a lack of knowledge of the right to seek asylum from persecution, deter some people from making a refugee claim at the "front end" of the system as soon as it is reasonably practicable, and this places them at risk of protracted hidden/invisible homelessness while they are 'underground'. Moreover, after a claim is refused, people may live 'underground' at the "back end" of the system, with palpable fear about detention and removal.

Ruth was without status at the front-end of the system. She did not know that the refugee-determination process was available to her. Ruth entered Canada as a visitor from a country that did not require a visa, and she eventually made, and then failed at obtaining a refugee claim. Claims are assessed by one Immigration and Refugee Board member. Since there is no merit-based appeal for negative refugee decisions, Ruth was undergoing assessment for removal under Canada's Pre-Removal Risk Assessment (PRRA) process[3].

The Humanitarian and Compassionate (H&C) application is another process available to regularise people living in the country who can prove a) establishment and b) unusual and undue hardship if returned. It is this process that eventually leads to permanent residency for many non-status migrants; however, the process dœs not stop deportation; it dœs not include eligibility to work; and if people apply for welfare, they undermine their claim of establishment. It is also a complicated application for a person with little formal education to complete on their own since legal aid in not available for it. In combination, these elements of the H&C process systemically disadvantage the most vulnerable migrants, including single women with children, the elderly, and people with disabilities or illnesses.

As an example of the vulnerability statuslessness can create, Ruth sofa-surfed while paying half the rent for a friend's one bedroom apartment because that friend was arranging informal cleaning work for her, and it was that friend who had loaned her the money for her airplane ticket. Moreover, Ruth experienced repeated sexual harassment from an acquaintance who threatened to report her to immigration if she did not have sexual intercourse. She did not report this because she believed it could alert the authorities to her illegality and initiate her removal back to the violence she had fled. The acquaintance did ultimately report Ruth, and she was detained, but ironically the phone call that was intended to punish her with deportation actually resulted in her learning of her right to claim asylum from persecution. She exited detention to a homeless shelter, and exited the homeless shelter to an overpriced room, unfit for human habitation.

DEFINING AND LOCATING PARTICIPANTS

According to the 2008 Auditor General's Report, Canada Border Services Agency (CBSA) knew the whereabouts of one third of the 63,000 individuals with enforceable removal orders, many of whom were failed refugee claimants with failed PRRAs living 'underground' in Canada. While this is a small proportion of the overall undocumented presence in Canada (200,000-500,000 workers, RCMP, 2006), illegality around the refugee determination process is an important indicator of gaps or weaknesses in a system that is upheld internationally as a best practice in humanitarian migration.

This research relied on in-depth semi-structured interviews with thirty-four migrants, twenty-one in Toronto (fifteen women and six men) and thirteen in Vancouver (three women and ten men), as well as interviews with twenty-seven individual key-informants from the NGO, legal, and health sectors. Each migrant participant had submitted a refugee application at some point, and had also been improperly documented before and/or after submitting their claim. Migrant participants were referred through friends and agencies, and a few others self-selected through posters in laundromats, community centres, and homeless shelters. Migrant interviews were mainly conducted in people's dwellings, lasted an average of two hours, and almost doubled in length with the use of interpreters. Interviews were taped and transcribed in full.

A SNAPSHOT OF STATUSLESSNESS AND HOMELESSNESS

Of the thirty-four migrants we interviewed for this research, a large majority, 79 per cent, had been without status at the 'front end' of the asylum process: entering the country clandestinely; residing with false documents; finding themselves inadmissible, or excluded, from the refugee process; remaining after their visitor visas expired; and continuing to work beyond the expiry of a work permit. Twenty percent were non-status at the 'back end' of the system, having failed their refugee claims and their PRRAs.

Over one-third of all participants were without status for less than one year, while 30 per cent were living without status for over four years. Twenty-four percent of participants had achieved some form of leave-to-remain in Canada, and half of these spent fewer than six months without status. Most people resided in market-rent shared

accommodation; however, five people were in homeless shelters, and three of them had been statusless in Canada for more than a decade.

Having experienced phases of non-status and status, participants were asked how one or the other had affected their opportunities and outcomes in Canada. Their responses reflected the double-bind and contradictory but concurrent meanings attributed to status. On the one hand making the refugee claim increases material access to a number of essential resources (*e.g.*, a work permit, health card, access to social housing and shelters, ESL, Child Tax Benefit) and also affords a sense of liberation from the stress of immigration enforcement; on the other hand, the psychological stress of being within the system can make some people yearn for a return to invisibility.

A number of participants mentioned feeling forced by the severity of their poverty or poor health to make a refugee claim to access services, having been advised by centres and agencies that there was no other way to remain in the country or to receive assistance. Mary was one of these people: "Sometimes I feel so worse when I know that I take wrong decisions in my life. I think that applying refugee was one of them but I got no choice because for one hand, […] nothing in the stomach." Mary had lived without status for almost two decades in Canada, and was a failed refugee claimant with three young children and frail health from type 2 diabetes. She was rejected by a family shelter for not having status, and so she made a refugee claim. While her lack of status was a barrier to emergency shelter, chronic destitution was a barrier to resolving her status. She had received an eviction notice for non-payment of rent on the day of our interview. It was summer and the children were sent to play at a neighbour's house all day. There she knew they would be fed. Her community health nurse had just withdrawn $200 from her personal account to make Mary buy food for herself and her children. In the following quote, Mary explains why she did not:

> She gave $200 for me--That now, I got to save to – I have to pay $550 for my immigration thing. So I put that towards it because she tell me, 'and buy foods for your kids, full up your fridge.' But I couldn't do that because I have my immigration. My freezer, it's empty. All I have is some ice, a bag with peas, a thing of – my sister bring up, from her workplace, she bring up two sprite bottles with milk for me for the kids. I put one in the freezer and one in the fridge. It's like my son asks me this morning, 'When are you going to buy groceries to put in the fridge? What are we going to eat?' I said, 'I will. I will. I'm just defrosting the fridge, clean it up.'

Making a refugee claim to alleviate hunger, homelessness, or sickness is an expensive use of the system, and indicative of the need for alternatives, as is the fact that people starve themselves to pay immigration fees because there is no waiver for the destitute.

At some point since arriving in Canada, over ninety percent of interviewees experienced homelessness or hidden homelessness. Eighteen percent had slept rough and forty-four percent had slept in shelters at some point in their Canadian housing histories. What needs to be addressed immediately by research, advocacy, and policy is the homelessness that children are experiencing as a consequence of parents' statuslessness, or in other words, as a consequence of the systemic barriers to basic-needs entitlements and pathways to permanent residence. Seventy-one percent of the interviewees in this study are supporting children in Canada *and* abroad, and thirty percent of them are lone-parent female-headed households. Children separated from their mothers and left behind in their countries of origin while their mothers seek protection in Canada is both traumatic and dangerous, and remittances place severe emotional and financial strains on parents in Canada, who are also struggling with legal and application fees.

IN CONCLUSION

This paper offers a snapshot of migrants' experiences and characteristics at the intersection of illegality and the refugee determination process. It attempts to connect what may at first appear to be disparate forms of migration: undocumented migrants and refugee claimants, to show that shifting status exacerbates and relieves different vulnerabilities at different scales along different parts of the migration-settlement trajectory. While it dœs not presume, and indeed it has not found, that status alone creates vulnerability, it is clear that women and children in particular are leading extremely precarious lives (Paradis et al, 2008; Decter, 2007; . Murdie, 2008).

From analysis of the thirty-four cases, patterns of disadvantage emerge which might be ameliorated by considering three areas: first, improving access at the front-end of the refugee system in support of fundamental justice; second, improving access to basic health, housing, and emergency services in support of public safety, human dignity, and the best-interests of children; and third, examining innovations in regularisation and return programs to address situations of protracted illegality.

REFERENCES

Berinstein, C. McDonald, J, Nyers, P, Wright, C, and Zerehi, S.S. (2006) 'ACCESS NOT FEAR': Non-Status Immigrants & City Services.

Decter, A. (2007) Lost in the shuffle: The impact of homelessness on children's education in Toronto: Phase 3 of the kid builders research project. Toronto: Community Social Planning Council of Toronto.

Goldring, L, Berinstein, C, Bernhard, J, (2007) Institutionalizing precarious immigration status in Canada, Preliminary Report.

Hiebert, D, D'Addario, S, Sherrell, K (2006) The Profile of Absolute and Relative Homelessness Among Immigrants, Refugees, and Refugee

Claimants in the GVRD. Vancouver, BC: MOSAIC.

Kilbride, K.M. and S. Webber (2006) Plug Them In and Turn Them. On: Homelessness, Immigrants, and Social Capital (Peel Region).

Klodawsky, F., Aubry, T., Behnia, B., Nicholson, C., and Young, M. (2005) Comparing foreign born and Canadian born respondents to the panel study on homelessness (Phase 1). Ottawa: National Secretariat on Homelessness.

Lowry, M, and Nyers, P (2003) `No one is illegal': the fight for refugee and migrant rights in Canada. *Refuge* 21(3), pp 66-72.

Miraftab, F. (2000) Sheltering Refugees: The Housing Experience of Refugees in Metropolitan Vancouver, Canada. *Canadian Journal of Urban Research*, 9(1), pp 42-57.

Murdie, R.A. (2008) Pathways to Housing: The Experiences of Sponsored Refugees and Refugee Claimants in Accessing Permanent Housing in Toronto, *JIMI*, 9(1), pp 81-101.

Paradis, E., Novac, S., Sarty, M., Hulchanski, J.D. (2008) Better Off in a Shelter? A Year of Homelessness & Housing among Status Immigrant, Non-Status Migrant, & Canadian-Born Families, Centre for Urban and Community Studies, Working Paper 213, July.

RCMP-CID The W-5 of Human Smuggling to Canada, Unclassified, October 2006.

Robinson, V. & Segrott, J. (2002) *Understanding the Decision-Making of Asylum Seekers*, Home Office Research Series Paper 243 (74pp). http://www.homeoffice.gov.uk/rds/pdfs2/hors243.pdf

Wiesel, E (2006) *Night*. 1958. New York: Hill and Wang.

NOTES

[1] Pseudonyms are used throughout.

[2] I draw on the language of illegality to describe the production of a category, and not a trait of being. Nobel Laureate, activist, and Holocaust survivor Elie Wiesel, asked the question in his autobiography, "Night": *"How can someone be illegal?"* Wiesel precedes this question by commanding, *"You shall know that no one is illegal."* The agent of transformation between this commandment and that question: the State and its laws. As Dauvergne (2008), Goldring et al (2007) and others have argued, illegality is produced, and the illegalisation of migration is occurring within, and perhaps in response to, what Soysal refers to as, an expanding rights regime (Soysal, 1994).

[3] Claimants can apply for judicial reviews of decisions based on errors in law, and introduce new evidence for consideration under the PRRA. Less than three percent of PRRA decisions are positive (Goldring et al., 2007, p 23). Only twelve percent of applications for judicial review are given leave to be heard. Forty-three percent of the applications for judicial review that are heard overturn negative refugee protection rulings (*Ibid*., p 23). Without an appeal, some participants in this study insist they are safer without status in Canada, than as citizens in countries that they feel fail to protect them from persecution.