

REFUGEE UPDATE

ISSUE NO. 30 A PROJECT OF THE JESUIT CENTRE FOR SOCIAL FAITH AND JUSTICE (JESUIT REFUGEE SERVICE/CANADA) WINTER, 1997

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HUMAN RIGHTS TRAVESTRY IN CELEBRITY INN

BY TANYA SUVENDRINI LENA

Solitary confinement, little heat, little legal assistance, loneliness, confusion and desperation. This is not a description of the situation at the Kingston Penitentiary. Rather, this is the reality for detainees

at the Celebrity Inn Canada Immigration Holding Centre. Over the last year up to one hundred and fifty people at a time were detained at the Celebrity Inn facility, which was built to accommodate only eighty detainees. Some of these people were detained for as long as sixteen months. On December 17, 1995, Michael Akhimen died of diabetic keto acidosis while in solitary confinement at the Celebrity Inn.

Michael Akhimen was a 39 year old refugee claimant from Nigeria. He was married and had five children. He was a member of the Anglican Church and possessed a masters degree in Criminology from the University of Benin. In Nigeria Michael worked for the Department of Defense and the Department of Agriculture. In 1995 Michael was involved in protests against the dictatorship in Nigeria and was active in the struggle for democracy. Michael was arrested, detained, tortured and interrogated for eight months. The where-

abouts of Michael's immediate family are unknown.

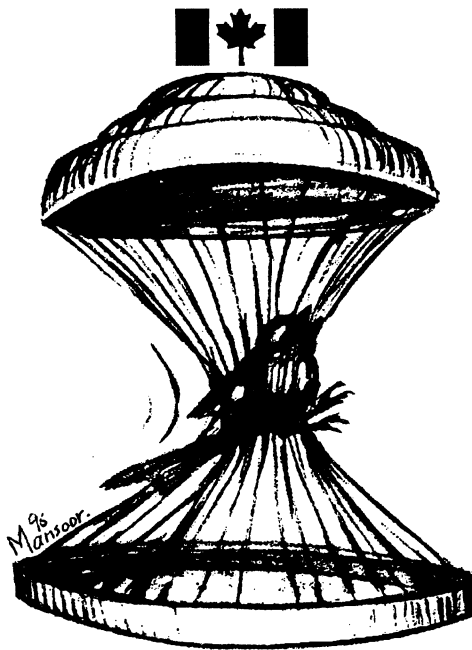
Michael fled to Canada in October 1995. He was apprehended while trying to cross into the United States on a freight train. He was trying to reach the U.S to make a refugee claim.

When he was caught he made a refugee claim in Canada. Mr. Akhimen remained in detention because immigration officers believed that he would not report for his refugee hearing.

Mr. Akhimen withdrew his refugee claim in desperation on November 30, 1995. He wrote the following note of explanation to immigration officials:

"...I can no longer stay in detention when I have committed no crime and my family back home can not be located. I would prefer to suffer and die in Nigeria for a reason than wasting away here far from my wife and kids. I need to go back home to find my family. I will take my chances with the security forces. I want to be removed from Canada immediately please. I need to sign the necessary papers please."

In early December he began to complain of health problems including blurred vision, continuous nausea, dizziness, joint pains and lack of energy and appetite. On December 13th,



CONTINUED ON PAGE 2.

The Coalition for Justice for Michael Akhimen was formed in response to the disillusionment that members of the Nigerian and other refugee communities experienced during the inquest. To date, the Coalition has made petition to the Ministers of Foreign Affairs and of Citizenship and Immigration. A successful demonstration and press conference were also organized. The Coalition is appealing the inquest decision with the help of the African Canadian Legal Clinic and will file a complaint with the UN Committee on Torture on December 17th 1996.

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Over ten years ago, a strike by detainees in Montreal triggered an inquiry by the Parliamentary Standing Committee which contained strong recommendations for reform. This was followed in 1989 by a National Headquarters study, which was also critical of detention conditions. Despite these reports, conditions at the detention centre have deteriorated to the point where the safety and lives of refugees and undocumented people are threatened.

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A CAMPAIGN FOR COMPENSATION AND REFORM OF THE CELEBRITY INN

Michael's death was not an isolated incident, it was a result of systemic problems with the administration and environment within the holding centre.

The jury at the Coroner's inquest made several recommendations about policy changes at the centre. The bulk of these focus on administrative and communications policies.

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The jury concluded that Michael died of natural causes and that his name was Michael Khado Deno not Michael Akhimen. Michael died of diabetes. His death could have been prevented if it had been diagnosed. Instead he was denied medical attention and placed in solitary confinement where guards watched over him unmoved, as he slipped in and out of consciousness. This treatment amounts to "torture or other cruel, inhuman or degrading treatment or punishment" in violation of the UN Convention Against Torture. Michael was also clearly denied access to "essential medical, dental and mental health services". The denial of these services also violates the Convention

Testimony and cross examination revealed that solitary confinement was the usual disciplinary method used at the Celebrity Inn despite the fact that immigration officials have no legal authority to place detainees in solitary confinement. Guards were able to place detainees in solitary confinement on their own discretion if a guard felt personally slighted by the detainee. Guards who watched Michael until he died made detailed notes about the deterioration of his condition but no one attempted to

Despite the coroner's objections, significant facts were brought to light at the inquest. Police investigations revealed that Michael died after making repeated written requests to see a doctor. He only saw the doctor once and during this appointment the doctor determined that Michael did not have diabetes without administering any tests at all. The doctor's practice at the holding centre was distinctly different from his practice at his private clinic. At the holding centre he maintained a policy against prescribing, ordering or allowing medical check-ups or diagnostic tests. Nurses were responsible for screening detainees before they could see the doctor and as a result many detainees were simply denied access to the doctor.

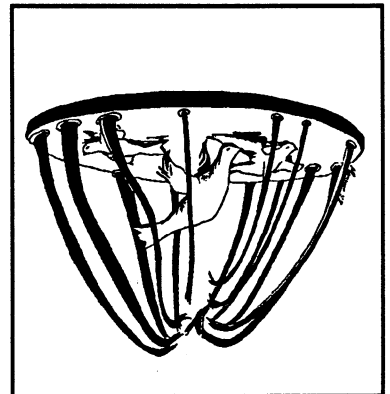
An Inquest was held into the death between May 7 1996 and June 6 1996. The Nigerian Canadian Association acting on behalf of Mr. Akhimen's family and the Native African Inmates and Families Association (NAIFA) were granted standing at the inquest. However, they were barred from calling any witnesses. The presiding coroner was Dr. Trevor Gillmore. At the inquest counsel for Canada Immigration, the Crown and the coroner maintained that the inquest was not an occasion to make inquiries into the policies and practices of the holding centre.

THE INQUEST

Throughout the inquest into his death the Crown lawyer and counsel for Canada Immigration portrayed Michael as a trouble maker and a liar. Many of the key witnesses who knew Michael, watched the deterioration of his health, and could have testified on his behalf, have already been deported from Canada.

On December 17, 1995, a result Michael was put in solitary confinement until his death in the kitchen. A guard tried to stop him and a dispute ensued. As reported that Michael was suffering severe thirst (a symptom of diabetes) and attempted to get a drink of water for himself from the kitchen. A fellow detainee and friend of Michael 1995 Michael was placed

On December 11, 1995 Michael was placed in solitary confinement. A fellow detainee and friend of Michael reported that Michael was suffering severe thirst (a symptom of diabetes) and attempted to get a drink of water for himself from the kitchen. A guard tried to stop him and a dispute ensued. As a result Michael was put in solitary confinement until his death in the kitchen. A guard tried to stop him and a dispute ensued. As reported that Michael was suffering severe thirst (a symptom of diabetes) and attempted to get a drink of water for himself from the kitchen. A fellow detainee and friend of Michael 1995 Michael was placed



The Coalition has asked that a full, independent inquiry be held into the death of Michael Akhimen and the policies and procedures at the holding centre. This inquiry should address the following concerns: health conditions, lack of fresh air and exercise, the exorbitant bonds that detainees are required to post for release, arbitrary and unfair disciplinary procedures, the detention of refugees at prison facilities and the poisoned atmosphere of racism that pervades detention centres.

Immediate attention should be paid to the terrible condition of children in detention who are the most vulnerable and voiceless group in detention. Canada came before the UN Committee on the Rights of the Child in Geneva on May 24 and 26, 1995 for its first evaluation. During the process of evaluation, the Committee raised serious concerns about the issue of children in immigration detention. Since then, there has been little attention to this ongoing problem. Children in detention continue to suffer from constant bouts of flu and colds, and spend months without educational stimulation and without the opportunity to play.

The Coalition is also demanding that an independent body, consisting of human rights groups and recognized representatives of immigrant and refugee communities, should be formally provided with the accessibility and authority to have an ongoing role in the monitoring of the detention centre. Detainees should have access to this body to make complaints with respect to conditions and reasons for detention.

Finally, we recommend that anti-racism training be given to all personnel who work with detainees at immigration holding centres and that compensation be made to the family of Michael Akhimen.

Tanya Suvendrini Lena is a member of the Coalition for Justice for Michael Ahkimen and a Community Legal Worker at Parkdale Community Legal Services (PCLS). She prepared this article with assistance from Komal Mohindra, a law student at PCLS. For more information about the Coalition, call Tanya at 531-2411.

Excerpts from Roberta L. Farkhas-Huezo's presentation at the Fall conference of the Canadian Conference for Refugees on Nov. 22, 1996.

THE SITUATION IN UNITED STATES

If we are going to adhere to the medical analogy made in the title of this workshop (that is, Asylum Internationally: Current State of Health), I am sorry to have to report that, in the United States, the patient is in critical condition.

This has been a banner year in the U.S. for anti-immigrant and anti-refugee sentiment and legislation. In April, an Anti-Terrorism Law was enacted that allows non-citizens accused of terrorism to be deported based on "classified" evidence that they never get to see. Then, in August, a sweeping welfare reform bill was passed and signed into law. This bill, which affects all public assistance recipients, nevertheless hits non-citizens the hardest, as it bars the great majority of legal immigrants from most public assistance programs. It should be noted that, under this law, those who are accepted as refugees in the U.S. are exempt for five years from most of the welfare restrictions placed on other legal immigrants. Refugee claimants, however, are entitled to no welfare benefits at all, as has always been the case in the U.S.

One month after the welfare reform bill was passed, we then saw over a year of Congressional wrangling finally come to fruition in what is known as the "Illegal Immigration Reform and Immigrant Responsibility Act of 1996". This law is a massive and extremely complex piece of legislation. It deals with enforcement issues, enhanced border controls, and increased

penalties for smuggling the undocumented and for document fraud. It deals with the issues of inspection, apprehension, detention and removal of non-citizens. It deals with employer sanctions against those hiring the undocumented and with employment eligibility verification programs. It contains further restrictions on the use of public benefits by the undocumented, but actually ameliorates some of the provisions of the recently passed welfare reform bill. And on top of all that, it makes major changes in the U.S. asylum system.

Following are those provisions of the immigration reform act that are most directly related to asylum seekers:

1. summary exclusion (referred to as "expedited removal" in the act);
2. asylum application filing deadlines;
3. safe third country provisions; and
4. termination of asylum.

All four of these provisions take effect on April 1, 1997. With these legislative changes in United States, and with negotiation on the Canadian-U.S. Memorandum of Agreement (MOA) apparently back on track, it is up to all Canadians to decide whether or not they believe that the U.S. is a worthy MOA partner for Canada. It is also up to all Canadians to act on that belief. It will be necessary to use all means possible to convince the Canadian government that the U.S. and Canadian asylum determination systems are no longer anywhere near comparable.

UNITED STATES ENACTS SUMMARY EXCLUSION LAW

BY BILL FRELICK

On September 30, President Bill Clinton signed into law the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA 96), a measure that fundamentally changes how the United States responds to asylum seekers and what rights they are

accorded. Foreigners

arriving in the United States without proper documents will find a tough new "welcome" and likely will be removed almost automatically unless they can say the right words to gain access to screening for possible asylum consideration. The affect of the new law on negotiations with Canada regarding an agreement to readmit asylum seekers transiting from one country to the other is still unclear.

The law is a comprehensive measure covering a wide range of issues, including:

border enforcement (including expanding pre-inspection at foreign airports and increasing the Border Patrol by 5,000 agents during the next five years); alien smuggling and document fraud; and employment of aliens, public benefits, and parole (which would restrict parole for use "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit").

This article will focus only on those provisions that relate most directly to asylum seekers.

SUMMARY REMOVAL, ADMISSIBILITY

Upon an alien's arrival, whether or not at a port of entry, IIRIRA 96 authorizes an immigration officer to "order the alien removed from the United States without further hearing or

If the alien who entered without inspection or with false documents makes an asylum claim, IIRIRA 96 instructs the immigration officer to refer him or her to an asylum officer. If the asylum officer determines that the alien does not have a

NEW TESTS FOR ASYLUM SEEKERS

The power of an immigration officer to exclude an improperly documented alien (except for Cubans arriving by air) who has not been admitted or paroled into the United States and who has been in the country continuously for less than two years.

Under IIRIRA 96, an alien who is "present in the United States" is deemed to be "an applicant for admission" if he or she has not been formally admitted. This applies whether or not the person entered at a port of entry and includes persons brought to the United States after being interdicted in international or U.S. waters. In effect, IIRIRA 96 removes the distinction between deportation and exclusion proceedings, creating a single "removal" proceeding to determine admissibility. IIRIRA 96 replaces the word "excludable" with "inadmissible." The power of an immigration officer to exclude an improperly documented alien (except for Cubans arriving by air) who has not been admitted or paroled into the United States and who has been in the country continuously for less than two years.

"review" if the officer determines that the alien arrived without proper documents. An exception is made if "the alien indicates an intention to apply for asylum...or a fear of persecution." IIRIRA 96 changes key concepts in U.S. immigration law, such as entry exclusion, entry, even without deportation. Until now, entry, even without

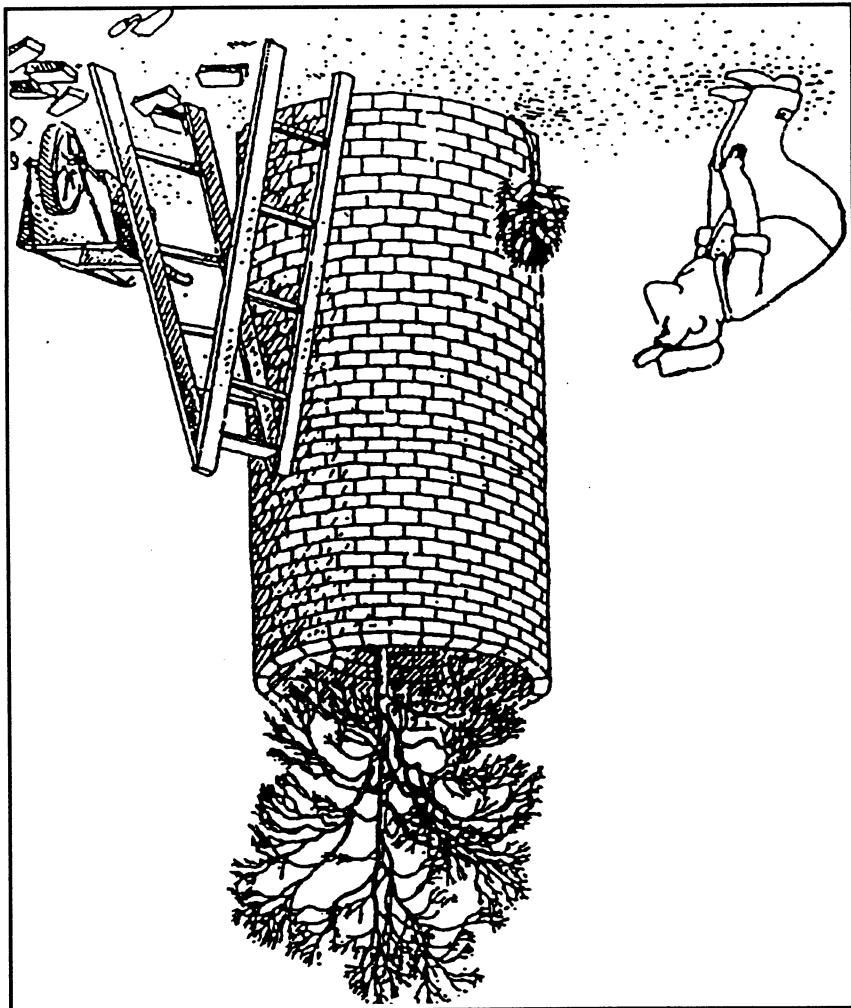


Illustration: Yugoslavian artist Guro Varga

credible fear of persecution, "the officer shall order the alien removed from the United States without further hearing or review."

Under current U.S. practice, even after a full asylum interview, Immigration and Naturalization Service (INS) asylum officers are not authorized to deport aliens. They issue an "order to show cause" for aliens whom they do not grant asylum and who appear to be deportable. This system of referral places the alien in deportation proceedings before an immigration judge, before whom the alien has another opportunity to make an asylum claim.

IIRIRA 96 would permit review by an immigration judge of the asylum officer's negative decision only if the alien requests it. It says that such review "shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days" after the asylum officer's order.

IIRIRA 96 creates a new legal standard for screening asylum seekers: a credible fear of persecution. The credible fear standard means that there is "a significant possibility...that the alien could establish eligibility for asylum" according to the well-founded fear of persecution standard used under current law for adjudicating asylum claims. The law instructs asylum officers to take into account the credibility of the alien and "other facts" known to the officer in making the credible fear determination. The final version of IIRIRA 96 rejected the more liberal interpretation of "credible fear" that had been adopted by the U.S. Senate, which had used a "manifestly unfounded" standard, the standard recommended by UNHCR for use in accelerated asylum procedures.

During the time when the determination of a credible fear of persecution is pending, IIRIRA 96 states that the alien must be detained. Yet even after an asylum officer determines that an alien does have a credible fear of persecution, the law says that the alien "shall be detained for further consideration of the application for asylum."

Anticipating that this and other provisions of the new law will result in vastly more INS detention, the measure also directs the Attorney General and Secretary of Defense to establish one or more pilot programs to use closed military bases as INS detention centers.

IIRIRA 96 says that aliens should be informed concerning the asylum interview and that eligible aliens "may consult with a person or persons of the alien's choosing prior to the interview." It says that such consultation shall be at no expense to the government and shall not unreasonably delay the process.

The law insulates this and a number of other procedures from judicial review. It says that such removal orders are not subject to further administrative appeal except for aliens who claim under oath that they have already been lawfully admitted for permanent residence, admitted as a refugee, or granted asylum. Furthermore, it says that no court shall have jurisdiction "to hear any claim attacking the validity of an order of removal" carried out according to this procedure. These provisions came under attack to no avail by opponents of the bill on the floor of

Congress.

Rep. Carrie Meek (D-Fla.) said, "The bill would prevent the federal courts from reviewing many actions of the U.S. Immigration and Naturalization Service [INS], thereby eliminating a great safeguard against abuse. Federal court orders have often been the last resort in correcting INS decisions that violate the law or the Constitution."

"Just think," said Rep. Jerrold Nadler (D-N.Y.), "a federal bureaucracy with no judicial responsibility. When did the Republicans become such spirited advocates of unrestrained big government? No government should be allowed to act, much less lock people up or send them back to dictatorships, without being subject to court review."

NEW BARRIERS TO ASYLUM APPLICANTS- FILING DEADLINE

The bill's restrictive measures on asylum are not limited to situations giving rise to summary removal. For the first time, the U.S. government establishes a time limit on applying for asylum. The bill requires that asylum seekers file applications within one year of arriving in the United States. An exception is made if the applicant can demonstrate changed country conditions or extraordinary conditions causing delay in filing.

The Senate version would have imposed the one-year filing deadline only on what are called "defensive claims," those that come after an alien has been apprehended and placed in deportation or exclusion proceedings. The final version applied the one-year deadline to "affirmative claims" as well, those filed by persons voluntarily.

OTHER PROVISIONS

IIRIRA 96 mandates increasing the number of asylum officers from their current number of 325 to at least 600 during FY 97, subject to Congress appropriating sufficient funding. It allows the INS to charge fees for asylum applications, an idea that refugee rights advocates had opposed, and the INS had dropped, after the INS first suggested doing it in 1994. On the other hand, IIRIRA 96 puts into statute a regulatory change introduced by the INS in 1995, saying that employment authorization cannot be granted to asylum applicants for the first 180 days after applying for asylum. It also requires that aliens who knowingly make frivolous applications for asylum be permanently ineligible for any immigration benefits.

The law greatly restricts the grounds for suspension of deportation, an avenue of relief from deportation used on humanitarian grounds to allow persons who have lived in the United States for seven years to remain if they are of good moral character and would experience extreme hardship if returned. Suspension of deportation has been suggested as a possible way to resolve the cases of about 140,000 Salvadorans whose cases have been backlogged as a result of a protracted class action suit. Perhaps intending to prevent that from happening, the new law replaces "suspension of deportation" with "cancellation of removal," and requires that it be limited only to persons contin-

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PEARSON AIRPORT PROJECT

On September 3, 1996, a pilot project was initiated at Pearson International Airport (Toronto) with the stated aim of streamlining the procedures used with respect to port-of-entry refugee claims. Under the terms of the project, an Immigration Examining Officer interviews the refugee claimant on arrival and completes a questionnaire concerning documentation, routing, criminality, health and bio-data. Upon completion, claimants are required to complete and return a second more detailed questionnaire within 21 days. This second questionnaire subsequently forms the basis of a paper review with respect to the issues of the claimant's admissibility and eligibility to make a refugee claim.

Thus far, the Pearson Project has had no positive impact on the processing of refugee claimants. Instead, it has served to create unnecessary delays for refugee claimants in obtaining access to essential health care and social assistance services. It has also placed additional burdens on refugee and settlement communities and their ever-shrinking resources with the heightened demand for interpreting services the new process entails.

The new procedures are being monitored and evaluated with a view to possible expansion to other ports-of-entry. Of concern to us, and as yet unanswered, is the durability of this project, the time-line for its evaluation, and the criteria which will form the basis of this evaluation.

nously present for ten years, of good moral character, whose deportation would cause "exceptional and extremely unusual" hardship to a U.S. citizen or legal permanent resident spouse, parent, or child. Extreme hardship to the alien himself or herself is no longer a factor that can be taken into account for this discretionary form of humanitarian relief from deportation.

One of the rare instances in which IIRIRA 96 takes a more expansive view of refugee protection is by defining "persecution on account of political opinion" to include persons who are persecuted for refusal to undergo forced abortion and involuntary sterilization as well as persons persecuted for resisting coercive population control programs. However, it establishes a numerical limitation of not more than 1,000 persons per year who can be granted asylum or admitted as refugees on account of this form of persecution, the first time that the United States has ever established a numerical limit on any ground for granting asylum to persons in the United States.

IIRIRA 96 also specifies that a grant of asylum "does not convey a right to remain permanently in the United States." It says that asylum may be terminated, and the asylum removed or returned, on a variety of grounds, including:

- if the asylum no longer meets the refugee definition, due to fundamental changes in the country of origin;
- if the asylumee is a particularly serious crime, committed a serious nonpolitical crime outside the United States prior to arrival, was involved in terrorist activity, otherwise represents a danger to U.S. security, or was firmly resettled in another country prior to arriving in the United States;
- if the asylum could be removed to a safe third country;
- if the asylumee voluntarily availed himself of the protection of his or her country of nationality;
- if the asylumee has acquired a new nationality.

SAFE THIRD COUNTRY

Of particular interest to Canadians, IIRIRA 96 establishes the existence of a "safe third country" not only as a ground for terminating asylum, but also as an exception to granting asylum. IIRIRA 96 says that aliens should not be granted asylum if they can be removed to a country in which their life and freedom would not be threatened and where the alien would have access to a full and fair asylum procedure.

IIRIRA 96 would not require that the alien had travelled through such a third country before arriving in the United States.

This provision of law cannot be implemented in the absence of a bilateral or multilateral agreement.

Off and on for the past several years, the United States and Canada have been negotiating for just such a readmission agreement. The latest suspension of negotiations occurred last summer, in part because the Canadian government wanted to see how the legislation then pending in the U.S. Congress would turn out.

Now that the immigration bill has been enacted into law, the draft Memorandum of Agreement could be brought back onto the front burner. Certainly, the safe third country provision is an invitation to do precisely that.

However, the draft agreement was negotiated under a different legal regime. Under the new law, a person returned to the United States pursuant to the agreement could be placed into the summary removal procedure, and never have the benefit of a full refugee determination hearing. Because the gap in law between the two countries' asylum procedures is widening rather than narrowing, it would seem less likely that a basis exists for transferring responsibility to examine claims from one country to the other.

Bill Frelick is a Senior Policy Analyst working with the U.S. Committee for Refugees.

What will follow are excerpts from presentation made by David Matas at the Review Meeting of the Organization for Security and Cooperation in Europe (OSCE), held in Vienna from November 4 to 22, 1996.

JUDICIAL INDEPENDENCE AND FAIR TRIALS FOR NON-CITIZENS IN CANADA

BY DAVID MATAS

Mr. Chairman, the Canadian Helsinki Watch Group wishes to address Canadian breaches of the principles of judicial independence and the right to a fair trial in immigration and refugee proceedings. The United Nations Basic Principles on the Independence of the Judiciary provide that the judiciary shall have jurisdiction over all issues of a judicial nature. These Basic Principles provide as well that tribunals that do not use the duly established procedures or the legal process shall not be created to displace the jurisdiction belonging to judicial tribunals. Both these principles have been violated by recent Canadian legislation which came into effect on July 10, 1995.

Before that legislation, any permanent resident or Convention refugee ordered deported could appeal to the Appeal Division of the Immigration and Refugee Board, an independent tribunal. At the hearing of the appeal, the government would be an adversary. After the new legislation, those appeals were cut off if the person had been convicted of an offence under any Act of Parliament for which a term of imprisonment of ten years or more might be imposed and the Minister of Citizenship and Immigration had determined the person to be a public danger. The effective decision on removal was shifted from an independent tribunal on appeal to the government through a public danger determination.

Whether a person is a public danger is an issue of a judicial nature and should be made by an independent tribunal. Furthermore, once the determination is already being made by an independent tribunal, that jurisdiction must not be transferred to government. Taking a jurisdiction away from an independent tribunal where the government is an adversary, and putting it into the hands of the government is a direct attack on the independence of that tribunal and a violation of international human rights standards.

A second attack on the independence of the judiciary I wish

to mention is to be found in a bill now before Parliament. It is fundamental to independence that a judge not sit at the pleasure of the executive. Yet that is exactly what the bill proposes for the Chair of the Immigration and Refugee Board.

Any tribunal should decide on the basis of right and wrong, on the basis of the facts presented to it and the law argued before it, not on the basis of what is politically popular and unpopular. Once the position of the Chair is at pleasure of the government, the Chair, and through the Chair, the whole Board becomes subject to political pressure, the pressure to do what is popular rather

than to do what is right, to decide consistently with a view of the case formed by the public through the media rather than to decide consistently with the view of the case formed from the evidence and arguments presented before the tribunal.

For immigration and refugee tribunals, the insulation from political winds is particularly crucial, because these tribunals, by definition are dealing with disenfranchised minorities. Unless the immigration and refugee tribunals are free to make their decisions independently from temporary swings in public opinion, each occasional spurt of public xenophobia is going to be reflected in the decisions of the tribunals.

The specific manner in which the right to a fair trial is violated in an immigration and refugee context, that I wish to draw to the attention of this conference, is the rejection of equality between the state and the individual in immigration tribunal proceedings. The International Covenant on Civil and Political Rights, which Canada has signed and ratified, provides that all persons shall be equal before the courts and tribunals. The Minister of Citizenship and Immigration and any individual seeking reopening of a previously decided case are decidedly not equal before the Adjudication Division and the Refugee Division

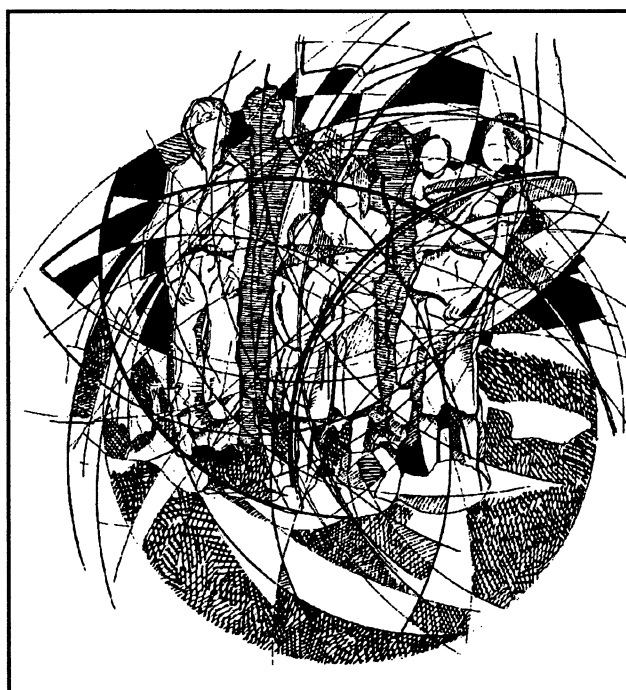
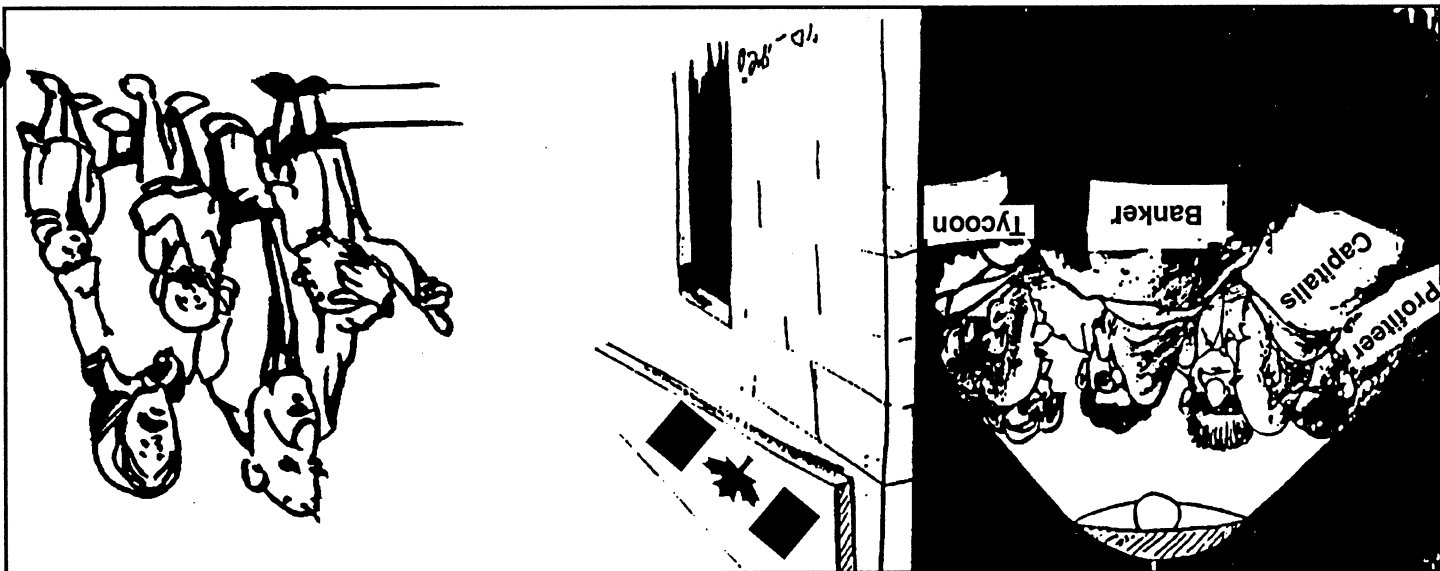


Illustration: courtesy of Human Rights Internet.

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1997 IMMIGRATION LEVELS: AN EXAMPLE OF LIBERALS' PRO-BUSINESS PHILOSOPHY

B Y E Z A T W O S S A L L A N E J A D



The Minister justifies her decision not to increase overall immigration levels on the basis of a public backlash against increased immigration, and the present atmosphere of racism and xenophobia. Despite all the evidence of the positive benefits of immigration,

In "Staying the Course", Robillard claims to be in line with the 1993 Red Book (p. 87) campaign promise to target immigration levels at 1% of the Canadian population. Given the 1994 estimate of the Canadian population at 29 million, (National Report on Population, Minister of Supply and Services, Canada, 1994, p. 3), the 1997 Immigration Levels are less than 0.7% of the Canadian population. The government is certainly not staying to increase the refugee numbers.

On October 29, 1996, Lucienne Robilliard, Minister of Citizenship and Immigration, tabled the 1997 Immigration Levels Plan. Titled her announcement "Staying the Course", Robilliard's plan follows the strategic framework set in 1994 under Sergio Marchi. The 1997 plan holds the total immigration level at the 1996 numbers of between 195,000 to 220,000 immigrant and refugee landings under the various categories. While "staying the course" on overall levels, the 1997 plan significantly decreases the family reunification target in favour of increased numbers of economic immigrants, and

is perpetuating them by giving them publicity and credibility. While the Minister has announced her commitment to "family reunification and the realization of Canada's humanitarian mission," she has targeted "a gradual decline of the family class component" of the 1997 Immigration Levels and her government's intention "to put a greater emphasis on attracting economic immigrants" (Minister's Speaking Notes to the House of Commons, October 29, 1996, P.3). The estimated 1996 arrivals, and the 1997 levels actually show a much more rapid decline of the family class component than outlined in the 1994 strategic framework, which envisioned family class arrivals to comprise 44% of the immigrant arrivals through to the year 2000. If we take an average within the proposed ranges, 107,500 people will come to Canada under the economic classes (63% of the total 1997 immigrants levels and a 21% increase from the 1996 level).

the Minister seems to be influenced by polls that show Canadians believe newcomers aggravate high unemployment levels: "Right now, the Canadian population is divided, according to the last poll we had ... I have to recognize the myth is there. To have more immigration in Canada, we need the support of the population" (The Globe and Mail, Oct. 30, 1996).

els). This should be compared with the total number of 62,000 people who are expected to come under the family classes (a mere 37% of the total 1997 immigrant levels and a 26% decrease from the 1996 levels).

This government is systematically failing to meet its target in family sponsorship. While an average of 88,000 people were targeted to come under the family class in 1995, 81,000 persons arrived under this category. And out of the level set at 81,850 for family class arrivals for 1996, an average of 61,700 people are now projected to actually come (from 1995, 1996 and 1997 Annual Immigration Plans). The Minister has attributed this downward trend to the "modification of the definition of family in our regulations in 1992, and the somewhat tough economic times" (ibid., P. 4). This explicitly speaks to Immigration's restrictive approach to family reunification and the Liberal government's willingness to sacrifice Canadian humanitarian and compassionate traditions for the economic expediency of the marketplace. Compounding this are the unpredictable delays in filing sponsorships due to an assessment of insufficient financial resources, unexpected refusals by Canadian visa officials, and other barriers including identity documents, the imposition of the exorbitant fees for processing, and the travelling costs.

Under the 1997 immigration levels refugees continue

try last year" (ibid., p. 3). The quality of these investments is probably not of interest to Mm. Robillard. Has she forgotten the fact that business professionals and entrepreneurs do not necessarily invest their "skills and entrepreneurial strength" to create jobs? In the epoch of globalization, free trade and the neo-liberal agenda, it is doubtful that these so-called business professionals, panicky of the fluctuations of small business ventures, are much concerned about investing their money in labour-intensive productive activities. Without an alternative approach to the big corporate agenda and in the absence of an effective system of monitoring, this category of immigrants can hardly make a significant contribution to raising the standard of living in our society.

In a nutshell, the 1997 Immigration Plan is a tangible example of the Liberal government's excessively pro-business immigration philosophy. The Minister is thrilled that "the number of economic immigrants exceeded our expectations" this year. She does not intend to impose "a quota" on business class and is determined not to "close the door on immigrants if we happen to hit the top level" (Ibid., P. 2). She is, however, extending this generosity at the cost of refugees and family reunification.

In the words of an eminent trade unionist (Ken Luckhardt, "Workers and Refugees", Refugee Update, No. 27, Fall 1995) "while refugees are forced to wait interminably for their fate to be determined by faceless bureaucrats, the would-be "entrepre-

IMMIGRATION PLAN AND PERFORMANCE (IN 1000 PEOPLE)

CATEGORIES	RANGE (1997)	RANGE (1996)*	1996 ARRIVALS
Economic (Skilled Worker)	82-90	66-73	83-85
Economic (Business)	20-23	18-20	20.7-21.4
Family (Spouses and Children)	35-40	47-51	38-39.5
Family (Parents & Grandparents)	23.4-26.2	31-34.7	22.5-23.4
Other (Caregivers, H & C, etc.)	8.5	8.5	8.8
TOTAL IMMIGRANT CATEGORIES	168.9-187.7	171-187.7	173-179
Refugees (Gov. Assisted)	7.3	7.3	7.3
Refugees (Privately Sponsored)	2.8-4	2.7-4	3.2
Refugees (Landed in Canada)	14-18	12-18	13
Refugees (Dependants Abroad)	2-3	2-3	2.5
TOTAL REFUGEE CATEGORIES	26.1-32.3	24-32.3	26
TOTAL IMMIGRANT AND REFUGEE	195-220	195-220	199-205

Source: CIC, Staying the Course: 1997 Immigration Plan, tabled on Nov. 29, 1996, PP. 3-6.

to constitute only 14% of the total. This is obviously inadequate in the face of the increasing need for the protection of refugees and their resettlement in Canada.

Mm. Robillard is boasting that "immigrant investors injected \$606 million in investment capital into our coun-

neurial immigrants" are encouraged with every scheme imaginable to quickly come and invest."

Ezat Mossallanejad is the Jesuit Centre's Refugee Rights Coordinator and Coordinator of the Jesuit Refugee Service-Canada.

There have been contentious issues, which the Committee continued to address up to the final days of drafting. One concern which caused debate centred on what is commonly referred to as Sponsorship Breakdown. What happens when a refugee does not arrive in his/her intended destination and chooses to go elsewhere? Or arrives in the community only to move elsewhere in Canada within a few weeks or months? Private sponsors have been adamant that when communities apply to sponsor

The new Sponsorship Agreement reflects the interests of both government and private sponsors. It is an agreement of compromises, but hopefully one which is true to the spirit of private sponsorship, and workable from both a government and NGO perspective.

The newly drafted Sponsorship Agreement will come back to the Committee for review in 1998, after the introduction of Settlement Renewal. This will give agreement holders, who sponsor under the agreement, the opportunity to bring forward any concerns which may require "fine tuning", and also address any changes which Settlement Renewal may cast on private sponsorship.

After two years of much give and take on the part of the government and the NGOs the agreement is now complete and has gone to the Minister of Immigration's office for final endorsement. If original deadlines are met all current Master Agreement Holders will receive a copy of the new agreement by mid-January, and will have until March 31, 1997 to sign under the new agreement. All old agreements with the government will expire at that time. Applications will also be sent out to potential new Agreement Holders who will have the option to hold a Sponsorship Agreement with government if they can show they have the resources and capacity to undertake the responsibilities of an agreement holder.

In October 1996, the Government-NGO Committee on Private Sponsorship completed drafting a new Sponsorship Agreement under which private sponsors are given authority to sponsor refugees to Canada.

BY GLORIA NAFZIGER

UPDATE ON SPONSORSHIP REVIEW



Illustration: courtesy of Human Rights Internet.

The Immigration Act appears to violate the requirement of equality in two different ways: first, by allowing the Minister to ignore at the immigration inquiry stage the doctrine that a final judgement cannot be re-litigated, while preventing an individual from reopening an inquiry to make a refugee claim; and second, by allowing the Minister to introduce evidence of changed country circumstances at the Refugee Division of the Immigration and Refugee Board on an ongoing basis while depriving refugee claimants of a corresponding opportunity.

The Canadian Helsinki Watch Group is well aware that the process rights Canada provides to immigrants and refugee when contesting their removal equals and is often superior to that of many other countries. However, the relative ranking of Canada in this sorry contest of deprivation of rights is no consolation to the individuals concerned who are deprived of their rights. The fact that the Canadian system, with its neglect of rights, is better than so many others provides a sad commentary on the rights of non-citizens generally throughout the OSCE space.

The Canadian Helsinki Watch Group calls on the Government of Canada to introduce legislation into Parliament to restore the jurisdiction to the Immigration and Refugee Board it once had to consider whether or not the danger the individual poses to the public would justify the removal of the individual from Canada; and to remove the inequality between the state and the individual in reopening an immigration inquiry or Refugee Division determination so that there can be consideration by an independent tribunal of a change of circumstances in support of a refugee claim. We further call on the Government of Canada to drop its proposal now before Parliament that the Chair of the Immigration and Refugee Board be appointed at pleasure of the Government. Compliance with the human rights commitments Canada has made under the Helsinki process requires no less.

David Matas is co-chair of the Canadian Helsinki Watch Group. He is a Winnipeg lawyer.

CONTINUED FROM PAGE 7.

sor a refugee they do so with the intention that the refugee will live in their community. Budgets are put together, and personal resources are organized for their community. When a refugee chooses to live elsewhere, the carefully drafted budget no longer applies. It may in fact be impossible for the community to support a refugee family in another location. The government has argued that while it is hoped that refugees will settle in the community of the sponsor, the agreement is to support the refugee (and family) wherever they may choose to live in Canada.

Ultimately, the agreement has been drafted to read that the "Citizenship and Immigration where possible will facilitate transferring sponsorship responsibility from one constituent group to another, or on an exceptional basis to Citizenship and Immigration Canada." This can only happen after the Sponsorship Agreement Holder has made all reasonable efforts to make alternate arrangements for the refugee.

Reservations have been expressed that this language is too vague to be helpful, and decisions are ultimately left to regional or local CIC Managers who may not appreciate what entails "reasonable efforts" on the part of the sponsoring group. This issue, and many others, is further clarified in the sponsorship guidelines, a separate document which provides an interpretation of the sponsorship agreement. While the guidelines will provide guidance on the operating principles of the agreement, they are not a part of the agreement and may be changed, altered or added to, as appropriate over time.

The question of sponsorship breakdown begs the question as to what extent the two parties to the agreement are capable of entering into the agreement in the spirit of partnership. The second principle of the Agreement is that "the parties enter into the Agreement in a spirit of mutual cooperation and respect, and agree to work cooperatively to facilitate the integration of privately sponsored refugees."

There may be reasons for private sponsors to be somewhat cynical about working in partnerships with the Federal government. Transportation loans were suddenly made unavailable to

some refugees when the previous agreement stipulated that the government of Canada would be responsible for the issuing of all of these loans. The Right of Landing Fee was introduced in the middle of discussions of the Sponsorship Agreement and has had a negative impact on the ability, and willingness of private sponsors to assist refugees, as they find more and more requests for financial assistance coming from refugees in Canada who are trying to reunite with their families. The partnership is by no means on equal footing. An NGO partnership with the federal government has been likened to that of chickens with Colonel Saunders. NGO's will enter into agreements with the Federal Government with a fair amount of trepidation, and will seek as many assurances as possible. The experience of betrayal however, is one which is far too common, and will overshadow NGO working relationships with government. While agreements such as this are entered into with an understanding of respect and cooperation, government is a bureaucracy, and unfortunately at times the bureaucracy can supersede some of the best intentions of the people who work within it.

The exercise of reaching a final Sponsorship Agreement was truly an exercise in partnership. If the Agreement can be implemented with the same spirit of cooperation which accompanied its drafting, NGO's have every reason to be hopeful that they are not going to be the next lunch for Colonel Saunders.

The private sponsorship of refugees remains a program to which the current government is strongly committed. While there may be imperfections in the new sponsorship agreement from an NGO perspective, it is for the time-being the best agreement which can be expected. Both government and NGO's have everything to gain by continuing to work cooperatively in order to make private sponsorship work into the 21st Century.

Gloria Nafziger is the co-chair of Government-NGO Committee on Private Sponsorship. She is working as the Refugee Coordinator at Mennonite Central Committee-Canada and is also the Chair of Inter-Church Committee for Refugees.

Refugee advocates have recently begun hearing the unfortunate news that the Canadian and American governments have resumed action on the Canadian-U.S. Memorandum of Agreement (MOA). The MOA, an "asylum responsibility-sharing" agreement being negotiated between the two countries, was put on hold last spring, pending the outcome of immigration reform legislation in the U.S. Congress. Now that Congress has finished its legislative work, activity on the MOA has recommenced.

To be sure, the Canadians and American governments seem to be putting different spins of this renewal of activity

MOA UPDATE

BY ROBERTA L.
FARKAS-HUEZO

surrounding the MOA. The Canadians report that negotiations on the MOA have not formally recommenced, that the Canadian government merely wishes to discuss the new U.S. immigration legislation with its American counterpart. Canadian officials point out that they would need authority from Immigration Minister, Mm. Robillard, to recommence negotiations, and such authority has not yet been granted. Indications from American officials, however, appear to paint the renewal of MOA discussions in a much more active light.

One thing is clear: the MOA is back on the table. Meetings between the Canadian and U.S. delegations have been scheduled for early December in Washington, D.C., and both parties have been in contact with the UNHCR with regard to the MOA. Refugee advocates on both sides of the border will have to watch these developments very closely, working diligently to convince their respective governments and the UNHCR that the MOA is counterproductive to the interests of refugee protection in North America.

Roberta Farkas-Huezo is the Refugee Services Coordinator at Vive, Inc., a refugee advocacy and service organization in Buffalo, New York.

This Summer, Ezai Mossallanejad, Coordinator of the Jesuit Refugee Service-Canada, travelled to Rwanda to attend JRS-International's in-service seminar in Kigali. This was a wonderful opportunity to meet with JRS workers from 31 countries and get in-country education and information. Below are his first-hand observations.

RWANDA: TWO YEARS AFTER GENOCIDE

In my trip to Rwanda, I got the opportunity to visit towns and villages, bereaved families, mass graves, sites of genocide, the JRS Centre for Unaccompanied Children, and a refugee camp. Despite their abject poverty, utmost hardship and tormenting bereavement, I found the people determined to continue with the process of reconciliation and reconstruction in their country. I was impressed with the fact that throughout my four week visit, nobody talked to me about retaliation. People urge that the truth about genocide be revealed and that the perpetrators of this sordid crime be brought to justice.

I found the army (Rwandan Patriotic Front) and the government to be in full control of the situation. Cities are controlled by armed soldiers instead

of the police. Soldiers have erected roadblocks at the entrance and exit points of all cities. Trained soldiers check passengers for their identification cards and sometimes search their baggage. It is quite common to see soldiers with machine-guns along the roads and in the gates of the important buildings. This can hardly be called martial law when you see the soldiers' friendly relationship with the ordinary population: chatting, laughing and shaking hands with them. It seems that people appreciate the military presence and consider it necessary for their personal security.

Reconstruction of the country has been continuing at a rapid pace, but with insufficient international support. The General Manager of the Ministry of Rehabilitation told us, in a meeting, that there were 400 international NGOs working in Rwanda. Since the 1994 genocide Western countries and non-governmental organizations have spent more than three billion dollars for reconstruction in Rwanda. This is highly inadequate considering the fact that the country's whole infra-structure was destroyed during the 1994 genocide and there are almost 200,000 orphans and thousands of widows in need of immediate assistance. NGOs have actually started everything from scratch.



At face value, Rwanda seems quiet and peaceful. In reality, however, the country still has a long way to go to bring about ethnic harmony among Hutus (85% of the population), Tutsis (13%) and Twas (2%). In Rwanda today, for all practical purposes, power has been transferred from one ethnic group to the other one. Although the President and the Prime Ministers are Hutus, the real power is with the Tutsis. The Tutsi army controls social and political life. General Paul Kagame, Tutsi, holds the positions of Chief of Staff of the Armed Forces, Minister of Defence, and Vice President. He is the strong man of the country.

With the Tutsis ascending to power in July 1994, two huge movements of people changed the face of Rwanda: 1) 800,000 Tutsi refugees returned to Rwanda

from Uganda and Burundi; 2) more than two million Hutus left Rwanda for Zaire, Tanzania, and Burundi. Despite the recent repatriation of more than half a million refugees from Zaire to Rwanda, thousands of Rwandan refugees are still living in refugee camps abroad: 600,000 in Bukavu, Zaire, 600,000 in Tanzania, and 66,000 in Burundi. In my discussions with NGOs, field workers, officials, UN experts and ordinary people, I found everybody unanimous that repatriation is the key requirement for durable peace and security in Rwanda. There are, however, serious impediments in the way of further repatriation which can only be removed with concerted international action.

Environmental pressures and the scarcity of land, which have frequently acted against peace and security in Rwanda, are among the first obstacles. With an area of only 26,300 square km., Rwanda has a population of 7.7 million people. It is one of the most densely-populated countries in the world (292 people per square km.). More than 90% of the population are living on small family farms scattered all over this hilly country. With the rapid rate of population growth (3.7%) the average size of arable farms are diminishing year by year. This has intensified competition

tition between majority Hutus and minority Tutsis.

Accommodation is another major impediment to repatriation. Upon their return to Rwanda from over 30 years in Uganda, Tutsis occupied houses left by fleeing Hutus. Although the government has officially committed itself to return houses to their previous owners upon their repatriation, the handover is not so easy given the acute shortage of housing.

Refugees are also afraid of repatriating due to the lack of a functioning judicial system in Rwanda, and the on-going violations of human rights by the Rwandan government and the Rwandan Patriotic Front (RPF). I heard complaints about the frequency of arbitrary arrests, imprisonments without trial, disappearances and assassinations in Rwandan society. I was told that people who protest against government excesses are accused of genocide and thrown in jails. There are reports about the massacres of civilians by RPF in Zairian border areas suspected of cooperation with anti-government rebels.

Following the establishment of the new regime in Rwanda, the U.N. Security Council established an International Criminal Tribunal for Rwanda to bring the leaders of the 1994 genocide to trial. This court, which is located in Arusha, Tanzania, is inactive due to the lack of human and financial resources.

The Rwandan government is responsible for the trial of ordinary people who participated in the genocide. At present, there are between 74,000 to 80,000 people accused of genocide languishing in Rwandan jails without enjoying the minimum standard of humane treatment and legal protection. According to official figures, the maximum capacity of all jails in Rwanda is only 12,250. Prisons are like small ant holes, without sufficient space for the prisoners to even sit on the ground. Prisoners are suffering from various infectious diseases, especially gangrene.

Instead of proceeding with trials, the government has kept the prisoners indefinitely under these horrible conditions. The reason is the collapse of the Rwandan judicial system as a result of the 1994 genocide. At present, there are only 36 judges, 14 prosecutors, and 26 police officers in the whole country. There is an urgent need for international assistance to rebuild the Rwandan judicial system.

An external factor which makes the current peace and stability in Rwanda vulnerable is the ongoing infiltrations of the forces of interahamwe from Zaire. They continue with their crime of genocide by massacring families whom they consider witness to the genocide of 1994. The president of Zaire, Mr. Mobutu, is lenient towards these forces. He has permitted them to continue with their military training and use of radio broadcasts designed to provoke Hutus against Tutsis.

Rwanda, once again, is in the centre of media attention as a result of a humanitarian tragedy which is being played out in Zaire and Rwanda. The government of Canada has announced its intention to lead an international military force to protect humanitarian relief operations for refugees in eastern Zaire. This leaves Canada with a heavy responsibility of leading the international community to address the root causes of refugee exodus as well as the need for the safe repatriation of the hundreds of thousands of remaining refugees who are now living under tremendous

risk.

In the context of massive refugee repatriation from Goma in Zaire, Canada and her allies have put the military mission on hold. However, as Lieutenant-General Maurice Baril has recently mentioned "there is still a need for a humanitarian response." Moreover, there are an estimated 600,000 refugees, mostly weak and vulnerable, at the south of Lake Kivu in the Bukavu region of Eastern Zaire whom the international relief organizations have been prevented from reaching.

Canada, in my opinion, should continue its initiatives to play a pioneering role in the international fora and focus on concrete and pro-active steps to bring an end to the refugee crisis in the central African region.

Following are some recommendations for the Canadian government based on my educational and fact-finding trip to Rwanda:

1. To support a safe and voluntary repatriation of the remaining Rwandan refugees in Zaire, Tanzania and Burundi under close supervision of NGOs and international bodies such as UNHCR and UNCHR.
2. To exercise influence and push for firm and coordinated international action to create a favourable atmosphere for repatriation by:
 - a) Helping the Rwandan government and international NGOs in Rwanda to continue with community economic development projects to uphold repatriated refugees by providing financial and technical assistance;
 - b) diminishing fear of refugees to repatriate by urging the government of Rwanda to end human rights violations;
 - c) cooperate with foreign donors in order to provide logistical and financial assistance to rebuild the Rwandan judicial system;
 - d) influence the Rwandan government to quickly begin trials.
3. To extend financial, logistical and moral support to the United Nations International Criminal Tribunal for Rwanda based in Arusha, Tanzania and influence the governments of Zaire, Tanzania, Kenya, Cameroon, and Burundi to cooperate with this Tribunal to ensure that criminals are brought to justice.
4. To activate the United Nations to work towards the ratification of a comprehensive treaty on Crimes against Humanity and review the 1948 U.N. Convention on the Prevention and Punishment of the Crime of Genocide.
5. To support a concerted action to force the government of Zaire to stop permitting the former Rwandan government's militia and the forces of interahamwe, responsible for the 1994 genocide, from using Zairian territory for military operations against Rwanda.

In spite of all its shortcomings, the present government in Rwanda has shown willingness to go beyond tribal affiliation and work towards a durable peaceful solution in this country. These genuine efforts should be supported so as to avoid another act of genocide the spectre of which is today haunting Rwanda, Burundi and even Zaire.

THE JESUIT REFUGEE SERVICE IN LATIN AMERICA

BY: RICHARD S. SOO, S.J.

The recently concluded General Congregation of the Jesuits identified the situation of the millions of refugees and displaced persons as a global crisis. The Jesuits have made a special option to serve refugees and the displaced. In 1980, the Jesuit Order established a "Jesuit Refugee Service" ("JRS") which today serves refugees in 40 countries all over the world. Very soon thereafter, JRS began to serve Latin America. JRS was responding to the extreme violence and Government repression suffered by many peasant communities in Central America. Initially, the work of JRS was limited to the accompaniment of Salvadoran and Guatemalan refugees both in their camps in Honduras and Mexico, as well as those who were internally displaced. JRS is one expression of the Jesuits' social ministry and social analysis, e.g., Colombian Jesuits clearly situate JRS as part of their struggle for peace. From the beginning, JRS focused on pastoral ministry and education. There was also an emphasis on political action geared to the resolution of the conflicts causing displacement and on work to create conditions for voluntary repatriation or integration. From October 7 to 9, 1996, Jesuits from 10 countries met in Campeche, Mexico, to discuss the work of JRS in Latin America. The meeting was hosted by JRS-Mexico and the local Catholic Bishop, a strong supporter of JRS, which serves Refugee camps for Guatemalans in the diocese of Campeche. Also in attendance was a representative of Americas Watch employed by JRS-USA.

According to the World Refugee

Survey of 1996, of the 15,337,000 refugees in the world, 256,000 live in the Americas and the Caribbean. Of the 20,335,000 people displaced by violence in the world, 1,280,000 are found in the Americas and the Caribbean. Given the new context of globalization and the intensity of regional conflicts, there will be a rapid deterioration in the standards of living of the millions of already impoverished Latin Americans - giving rise to a socio-political situation resulting in thousands of refugee and displaced people. Guatemala has begun a fragile peace process. Despite the signing of the Peace Accords, prospects for peace are still uncertain. It will depend on the political will of the state to implement



the Accords and fulfill their part of the agreement. Human rights violations are still rife in Guatemala. In Mexico, the political crisis, the increasing human rights violations, especially in Chiapas and Guerrero, foreshadow a refugee situation. The extreme poverty of Salvadoran peasants is worse now than during the war. In the Caribbean there is enormous growth in the number of emigrants looking for peace and a better future. In Colombia, the war is much worse, generating ever greater numbers of displaced. Finally there are the thousands of Latin Americans migrating north. Migration caused by violence is deeply intertwined with the poverty and misery in which Latin Americans live. Seeing this, JRS is slowly strengthening its response in the following aspects:

1. Direct Accompaniment:

a fundamental objective of the JRS direct accompaniment is the formation of grassroots communities - culturally, collectively, and politically. This is characteristic of all Jesuit social work. This empowerment facilitates refugees' capacity to manage their own community development work once they are able to return or integrate.

2. Research on the structural

causes of displacement and international political action - a task shared by JRS in Canada, the United States, and throughout the world. Given that the social apostolates of Latin American Jesuits have considerable resources both in the intellectual field as well as in political analysis, greater interchange was proposed between JRS and Jesuit research institutions.

JRS international research and social analysis is particularly important at this time when globalization is creating injustice and corresponding new conflicts, which in turn produces refugees. These conflicts and economics have transnational roots and thus require transnational research and responses. Therefore, JRS in Latin America committed itself to explore closer cooperation with Jesuit universities and Jesuit social and political action research centres around the world.

Richard S. Soo, S.J. is a Jesuit priest working at the Jesuit Centre (Jesuit Refugee Service-Canada).

BILL C-49 RAISES NEW CONCERNS FOR REFUGEES

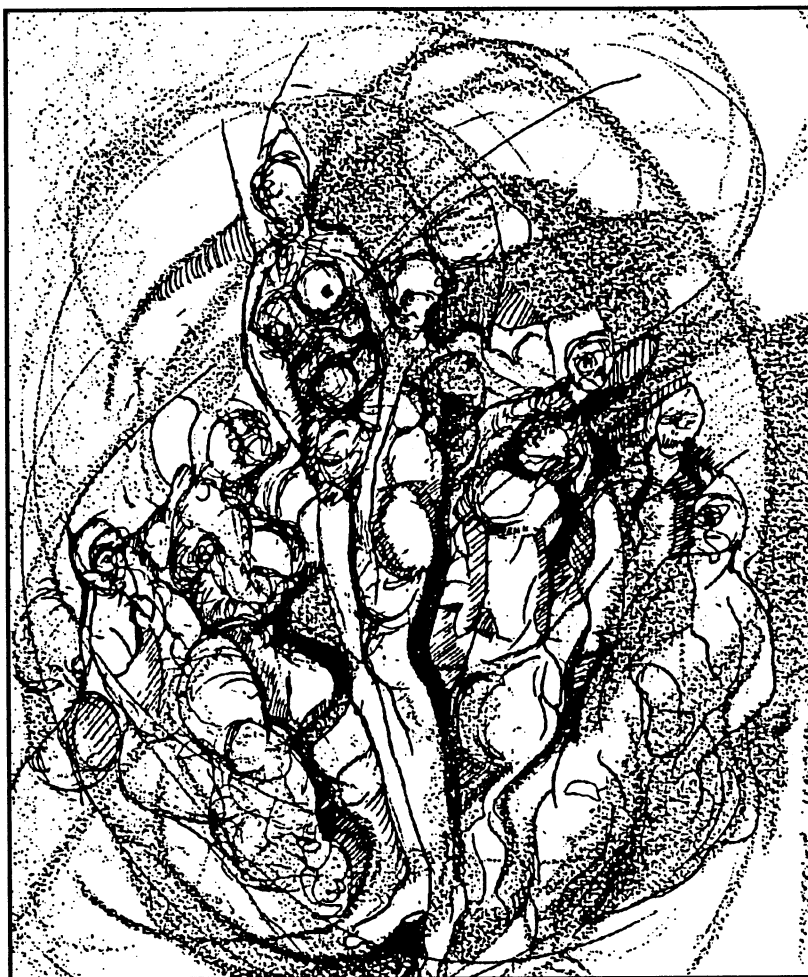
BY RAOUL BOULAKIA

Bill C-49 went to first reading at the House of Commons on June 14, 1996. Its provisions affecting refugees are buried in a massive omnibus bill making changes to a variety of federal boards. The pretence for this omnibus bill is the need to reduce expenditures on all the federal government's tribunals. The bill includes provisions, such as those affecting the Refugee Board, which will have a more substantive impact than simply saving money.

A change is being made to the way the Board's chairperson is hired. Currently the chairperson is appointed to hold office "during good behaviour", and can only be dismissed "for cause" during his/her contract. Under the new bill, the chairperson will be "designated" from current members. In practice the chairperson would be picked by the Minister of Immigration from current Board members, and could be removed at any time without cause, and be replaced by another Board member. This compromises the independence of the Board. Whenever there is political or bureaucratic pressure to change Board policy, the Minister can replace a current chairperson with anyone more willing to carry out the Minister's intentions.

It is fundamental to the Board's integrity that it remain a quasi-judicial institution with an arm's length relationship to the Ministry of Citizenship and Immigration. Refugee determination involves making decisions about human rights abuses in countries Canada may be trading with, and requires members to be politically impartial. It also requires members to be impartial, regardless of media coverage portraying minorities as invading Canada.

The Minister of Immigration is, first and foremost, a politician responding to the flux of political opinion. Sergio Marchi



described Canada as a country that could be invaded by millions of refugees from around the world, in a clear attempt to curry favour with the xenophobic. Lucienne Robillard has openly stated that she will not increase immigrant levels because there is a "social" backlash against immigrants. Both ministers refused to give permanent residence status to Somali refugees, because they see it as popular not to accommodate refugees. Our ministers are far from being above the political fray or wiser than the norm. They have promoted the lowest level of thought, pandering to xenophobia and racism

Illustration: courtesy of Human Rights Internet.

when it suits them. We cannot expect them to keep a hands-off approach to the Board. The Board, like a court of law, must be left with a measure of independence to remain an institution with integrity. Once it becomes a target for the whim of elected officials, it will lose its ability to follow the law without fear.

Another change being made, apparently in response to the Schelew case is that Board members will no longer be able to demand a public hearing before a Federal Court judge if they are subject to a complaint about their conduct. Now the Minister of Immigration can either decide on such complaints herself, or refer the matter to a judge who can hold a confidential inquiry without being bound by any "technical rules of evidence". In Michael Schelew's case, that would have permitted the Minister to fire him based on the second-hand information collected by Nurjehan Mawani's office, without any of the members who were supposedly quoted in it being questioned in a hearing. The definition of what constitutes grounds for dismissal is also vague. It includes "misconduct", failing in "the proper execution" of the

CONTINUED ON PAGE 16.

member's "office", or being "placed, by conduct or otherwise, in a position that is incompatible with the due execution of that office." I find it hard to imagine how to defend oneself against a charge of "being placed" without having done anything that could be called "conduct" "in a position" that is merely "incompatible" with your office. These terms are so vague that the ability of members to be confident they will enjoy independence during their term of office is threatened.

Essentially this change means that it will be far easier for the Ministry to get rid of members, and it will also be possible to make legal orders barring the media and the public from knowing the truth about any hearings into such cases.

These changes have nothing to do with saving money. They are irrelevant to making the Board more efficient. They are changes solely designed to tamper with the Board's independence.

Bill C-49 also reduces the number of Board members hearing refugee claims from two to one member. Unfortunately the media has responded to this change as a mere cost-saving measure, without recognizing how it can affect the integrity of the refugee determination process. The Toronto Star editorialized that judges hear cases alone, so why can't Board members?

Board members are appointed by a process which has so far remained inherently political. Patronage appointments continue to be made, and Board members complain that the Ministry's decisions on re-appointments are so arbitrary that there is no sense that competent work is being recognized. It is in this context, not the context we have at provincial courts, where judicial committees choose well-qualified judges, that one-member panels will exist.

Not all Members possess the same level of expertise with respect to legal issues, nor share common perspectives on human rights issues. At present, this reality is tempered by the Board's ability to pair complementary members. In the future,

both the hearing experience and the quality of decisions will vary considerably depending on which member hears the claim.

The Ministry may be hoping to reduce acceptances by going to one- member panels. The only other experience of going from larger to smaller panels in the refugee law context is at the Federal Court. The government transferred refugee judicial reviews from the three- member panels at the Federal Court of Appeal to the one-member panels at the Trial Division. Decision-making became less consistent and the rate at which leave is granted dropped dramatically.

The comparison between the Refugee Board and ordinary courts of law completely breaks down when we recognize that there is no right of appeal from a Board decision. The Federal Court grants leave as a matter of discretion, and currently grants leave in only 10% of cases. Consequently, members are bound to follow the law more due to the dictates of their conscience than by an imminent threat of litigation. Only members who both understand the law and sincerely care about their vocation will follow it consistently once they are the sole decision-maker at every hearing.

There are alternatives to cutting the number of members in a hearing to save on cost. Increasing the use of expedited or "accelerated" cases where claimants have the option of getting a faster hearing before one member would allow the Ministry to reduce the number of members while ensuring that claimants retain the right to a two-member panel.

With bill C-49, the government is getting away with making substantial changes that attack the integrity of Board decision-making as though these were merely cosmetic, cost-saving changes. These changes affect not only refugees, but also ought to be an issue to anyone who is concerned with justice and fairness within the Canadian refugee-determination system.

Raoul Boulakia is a lawyer in Toronto practising refugee and human rights law.

REFUGEE UPDATE

Is published quarterly by Jesuit Refugee Service/Canada a Project of the Jesuit Centre for Social Faith and Justice

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SUBSCRIPTIONS: 1 year/4 issues individuals: \$10, institutions \$14, 2 years/8 issues individuals \$20, institutions \$28 bulk (20 or more) - \$1/issue.

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