

REFUGEE UPDATE

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LIVING WITH NO STATUS IN CANADA: HUMAN RIGHTS UNDERGROUND

BY: JETTY CHAKKALAKAL AND ALEX NEVE

I. THE PROJECT

Over the past five years community workers have become aware of an increasing number of people who are living and working in the Toronto area without any official immigration status.

In order to learn more, Vigil Toronto, a volunteer organization which gives assistance to rejected refugee claimants, and Parkdale Community Legal Services initiated a collaborative research venture.

The first stage of the project has been to interview individuals living without status in Canada.

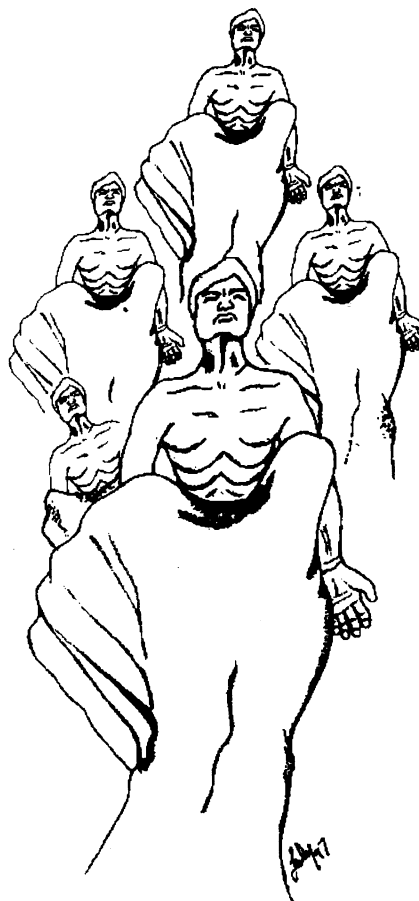
We will then move to the second phase of the project -- a major conference to be held in early March 1998: *Living Without Status in Canada - Human Rights Underground*. The conference will provide further opportunities to gather and share information, develop support networks and resources, learn more about the human rights framework that applies to these issues, and initiate discussions about possible strategies for

improvements, perhaps including law reform.

II. THE ISSUES

It is commonly thought that the number of people who live in Canada without any immigration status is inconsequential. The world of *illegal aliens* is a social reality in the United States and other countries, but not in Canada, goes the thinking. The Canadian government itself asserts this to be the case, and has advanced this as one explanation for its failure to ratify the *United Nations Convention on the Protection of the Rights of all Migrant Workers and their Families*.

As we have noted, however, front-line workers in health and legal clinics, community centres, schools and church-based refugee assistance projects have a very different experience. Increasingly they encounter people living and working in Canada without any lawful immigration status. Increasingly, they are becoming aware of the complex legal and social problems faced by



these undocumented individuals, who must either work illegally or rely on the support of family and friends to survive.

The collective experience of agencies involved with this project, confirmed by some of the preliminary findings from our research, suggests that the majority of these individuals may be women and children.

People are forced or make the choice to live in Canada without status for different reasons. Many are individuals who have come here to escape human rights abuse and violence. Afraid, unaware or misinformed, they might not come forward for months, years, or not at all, to make a formal bid for refugee status.

Of those who do make refugee claims, whether it be upon arrival or following a delay, many will be denied status. That may be because the individual is not believed. Claims are also regularly denied because the case does not fit the legal

definition of a refugee, because the individual received poor or no legal representation, because there were errors in the decision, and a variety of other reasons. Often the individual's personal circumstances or conditions in her or his country of origin may worsen after the hearing of the claim. Whatever the reason, many people denied status in Canada remain fearful of return to their home countries and realize that life without status here is better than detention, torture, rape or death.

Other individuals may come to Canada to escape grinding poverty or to join family and close friends who have already established themselves in the country. They may enter the country initially with short-term status as visitors, students or temporary workers. The strong economic and social ties that develop, however, may lead people to remain after that status has expired. We know that undocumented workers in Canada have often been in the country for many years, some of which may have been spent with some kind of status. In many cases Canada has become home, and to return to their country of birth would be difficult, even traumatic - more so when Canadian born children are also involved.

Documentation and status are the keys to being able to enjoy a wide range of fundamental human rights in Canada. Once granted permanent residence, individuals are able to enjoy most fundamental rights and freedoms and are able to fully access crucial social programs. That is not the case, however, for individuals with lesser forms of status.

Those recognized to be Convention refugees, but not yet granted permanent residence, cannot, for example, be reunited in Canada with their spouses and children, apply for financial assistance to pursue post-secondary

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education, or travel freely to and from the country. Their Social Insurance Numbers begin with the number 9, which many employers interpret as temporary permission to work. In a competitive and scarce employment market, that makes finding a job particularly difficult. Individuals who are in the refugee determination stream, but who have not yet had their claims determined, are unable to access a variety of basic social programs, including some or all forms of social assistance, legal aid, and full health coverage, depending on the province in which they live. Refused refugee claimants who have not yet had their cases scheduled for removal face even greater obstacles and problems. They are not allowed to work and face considerable difficulty in accessing health care, welfare or schools. But it is the wholly undocumented who run the greatest risks, enjoy the fewest rights, and suffer the greatest degree of exploitation. For obvious reasons, it has been difficult to gather comprehensive information about the plight of undocumented workers in Canada. Fear of discovery makes it difficult for people in those circumstances to be able to trust anyone.

What we do know, however, from our previous experiences and the initial results of the interviews carried out under this project is that the sweep of problems faced by individuals who have no status in the country is vast. Access to any government-funded social programs is impossible. There is no education for children, health care, or any form of social assistance. Women remain in situations of serious domestic violence, fearful that making a report to the police will lead to discovery and arrest; hopeful that abusive spouses with status will follow through with promises of sponsorship. Exploitation at work, sub-standard housing, being the victim of a crime -- all are endured, as to challenge, complain or report might lead to deportation.

For instance, we know of "Mira", who has no status and works as a nanny in Canada. She works for a prosperous Toronto family. She fled her home country ten years ago, during a military upheaval, after her husband was executed. When she arrived in Canada she was never advised about the refugee determination system, and never made a claim. Now, conditions in her home country have improved and it is unlikely that she would be granted refugee status. She has, however, very much made Canada her home and does not want to go back to her country of birth. She is afraid to approach immigration officials for fear of being deported. Instead, she tolerates exceedingly long

hours of work and a wage that is well below the minimum.

We know also of "Bill", who came to Canada from what was then Zaire in 1992. His refugee claim and post-claim risk review were both denied. Now, however, Zaire is the Democratic Republic of Congo, and the human rights situation has changed drastically. Immigration has stated that it will not reconsider his risk assessment. He lives in constant fear of deportation. He is no longer eligible for a work permit. He is still able to receive social assistance, but is continuously told that he may be cut-off. He is able to occasionally find work, "under the table," but is unwilling to complain when he is paid less than minimum wage and has endured harassment at the hands of co-workers who have threatened to turn him in to Immigration.

"Carol" has been much luckier. She came to Canada from the Barbados in 1990, having experienced terrible domestic violence. She left three young children behind. In Canada she knew nothing about refugee claims, and felt her only choice was to remain in the country illegally after her visitor's visa expired. For six years she lived in constant fear of deportation. She worked illegally to support herself and to provide some money for her children. She often earned less than the minimum wage, and had to work long hours with no overtime compensation. She encountered employers who readily harassed and threatened her when they learned she had no status in Canada. In 1996, she was arrested by Immigration officials at her workplace and was held in detention for over one month. Finally, though, she was able to get legal advice and learned that the domestic violence she had fled from constituted grounds for a refugee claim. She made a claim, and this year was granted refugee status. She is now looking forward to hopefully being reunited with her children next year.

As this project moves forward we will be carefully considering all of these concerns, and others, with an eye to developing proposals for law reform which seek to protect the basic rights of undocumented workers.

III. WORKING WITHOUT STATUS IN CANADA -- EXPLOITATION IN THE WORKPLACE

Theoretically, immigration status does not matter if an individual wishes to enforce her or his rights as a worker in Ontario, including being paid less than minimum wage, not being adequately compensated for overtime work, and not being paid for work completed. However, anyone working here illegally would directly encounter the weakness inherent in Ontario's *Employment Standards Act* and other labour legislation. Ontario's employment laws assume that employers will follow the provisions voluntarily. Current resources

allocated at the Ministry of Labour do not allow for any pro-active enforcement, such as workplace audits. Instead, in order to launch a complaint, an individual is required to come forward, and provide her or his name and other information to Ministry staff.

Normally, and not surprisingly, an illegal worker does not come forward and initiate a complaint, for fear of discovery and deportation from Canada. If the person is discovered by virtue of making the complaint, she or he would not even be allowed the satisfaction and vindication of seeing the process through. Immigration officials do not wait for employment standards complaints to be settled before deportation.

Recent changes to the *Employment Standards Act* have made it even more difficult for workers, especially undocumented workers, to make complaints. In the past a worker could wait up to two years after a violation to complain. Therefore, in rare cases it was possible to help a person regularize their immigration status before launching the complaint. Now there is a six month time limit. Due to the inevitable time delays that are associated with any immigration application it is virtually impossible for workers without status to complain of violations, without exposing themselves to a very real risk of deportation.

A similar time limit is now also being enforced at the Ontario Human Rights Commission, which is charged with enforcing human rights in a variety of contexts, including employment.

IV. OBTAINING STATUS IN CANADA - ACCESS TO EFFECTIVE REMEDIES FOR THE VIOLATION OF FUNDAMENTAL RIGHTS

We have highlighted the pressing concern that undocumented workers regularly experience violations of employment standards and other laws meant to protect them from exploitation and discrimination in the workplace. Remedies available to enforce those rights are illusory and inadequate, requiring as they do that the individual approach government officials, giving rise to a real risk of deportation. Employment standards is not exceptional. Be it access to health care, education for children, or other pressing needs, without status it is unrealistic to expect individuals to make complaints or pursue legal challenges.

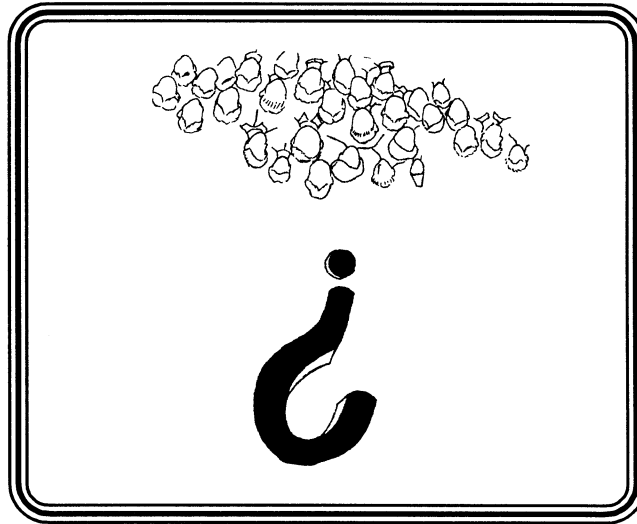
It is for that reason that agencies and advocates working with individuals who do not have lawful immigration status in the country see obtaining some form of status as a prerequisite to being able to enjoy many of these basic rights and access important social programs. At the same time, however, our experiences in pursuing immigration applications in many deserving and compelling cases have been frustrating,

home country. Finally, decisions reached in humanitarian applications are frequently poorly reasoned and consistently fail to acknowledge that many of the concerns advanced engage fundamental human rights, such as child and parent family unity and access to health care. Immigration did previously recognize individuals who had been able to live for a lengthy period of time in the country and have, by that fact, truly become residents of Canada and no longer of their country.

Third, making a humanitarian application does not have suspensive effect, and it is exceptionally difficult to obtain a court order requiring Immigration to delay removal until the application has been assessed. In one recent case, where a Ghanaian man and two Canadian born children, the Court refused to order Immigration to delay removal while the application was pending because the humanitarian factors had arisen while he was living illegally in the country.

Fourth, making a humanitarian application does not have suspensive effect, and it is exceptionally difficult to obtain a court order requiring Immigration to delay removal until the application has been assessed. In one recent case, where a Ghanaian man and two Canadian born children, the Court refused to order Immigration to delay removal while the application was pending because the humanitarian factors had arisen while he was living illegally in the country.

From outside the country, they should be allowed to remain. In theory, the humanitarian process is broad enough to apply to situations where individuals wish to remain in Canada because of strong family links -- such as marriage to someone with status, or being the parent of a Canadian born child. It could also cover cases where individuals have lived in Canada for a long period of time, put down roots and effectively made this country their new home. As well, it should be of assistance to individuals who face the risk of serious human rights abuse but have not been accepted as a refugee or under the PDRCC process; and to individuals who would be at risk because of serious medical problems which cannot be adequately treated in their home country. In practice, though, the humanitarian process more frequently disappoints than succeeds. First, it is expensive. Immigration charges an application fee of \$500 per adult and \$100 per minor child, just to make the application. Second, it is slow. Frequently six to eight months pass before an interview is even held, and several months may pass again before a decision is reached. Meanwhile, the enforcement arm of Immigration begins processing the case toward removal.



The remedy of most relevance to the circumstances of people living in Canada illegally is the possibility of making an application for permanent residence in the country on humanitarian and compassionate grounds, pursuant to section 114(2) of the *Immigration Act*. If an individual would face "undue hardship" if required to leave Canada and apply to return

The acceptance rate under the PDRCC process has generally stood at under five percent. Stress Disorder and face retraumatization if deported. Survivors of torture are suffering from Post Traumatic Stress Disorder and face retraumatization if deported. The acceptance rate under the PDRCC process has generally stood at under five percent.

Anyone fearing human rights abuse or violence in her or his country of origin, who has been turned down by the Refugee Board can apply to have a risk-assessment conducted by an Immigration officer pursuant to the Post-Determination Refugee Claimants in Canada Class (PDRCC). In existence for four years now, PDRCC has proven to be a considerable disappointment. Experienced refugee lawyers and advocates uniformly have found that this process cannot be relied on to pick-up strong and deserving cases. There is no hearing or interview involved. Officers making the decisions receive sparse and inadequate training. Decisions regularly exhibit a failure to appreciate evidence about prevailing human rights concerns in countries of origin, and far too frequently dismiss or overlook compelling medical evidence showing that survivors of torture are suffering from Post Traumatic Stress Disorder and face retraumatization if deported.

For some individuals making a refugee claim may still be an option. However, in most cases a claim has likely already been made and denied, or the individual's circumstances do not fall within the refugee definition. For those who have not yet made a claim, and do indicate a fear of persecution in their home country, the delay between arriving in Canada and initiating the claim will be an almost insurmountable obstacle. Routinely, the Refugee Board concludes that failure to make a refugee claim promptly undermines the credibility of the claim. The Board rarely shows a willingness to appreciate the uncertainties, misinformation and fearfulness that dictate the choices individuals make when fleeing human rights violations. The case of "Carol", the woman from the Barbados granted refugee status this year despite having lived in Canada illegally for six years before making her claim, is exceptional. Beyond the Refugee Board, the remedies available are discretionary, highly inconsistent and generally ineffective.

The Illegal De Facto Residents Policy recognized that there was often undue hardship in deporting "persons who are financially, socially and culturally established to the point where Canada ... is their real home." This policy no longer exists.

As well, until May 1997, the Deferred Removals Order Class program offered the possibility of status for refused refugee claimants who have remained in the country for at least three years since the date of their refusal, worked, and not evaded Immigration. That program has been abolished.

At all of these stages, a negative decision can be legally challenged, by seeking leave from the Federal Court to have the decision judicially reviewed. This has proven to be of minimal use in challenging decisions rendered under the PDRCC and humanitarian processes. The Court allows wide latitude to Immigration officers and only intervenes in exceptional circumstances. The Court has, in particular, highlighted the fact that a humanitarian and compassionate application is a

discretionary, and not rights-based, process. The Court is unwilling to subject those decisions to the scrutiny that our experience indicates is often needed. That leave is required further dilutes the effectiveness of the judicial review process. Lawyers regularly report that leave decisions are inconsistent and unpredictable and often appear to be based on factors other than the merit of the case. Leave decisions cannot be appealed.

In these circumstances, many advocates and agencies collaborating in this research venture have had to turn to international human rights bodies, such as the Inter-American Commission, to enforce the basic rights of individuals without status in the country who are faced with the prospect of deportation. We appreciate your willingness to take these cases seriously.

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CROSSING THE LINE: PROBLEMS AT THE CANADA-U.S. BORDER

BY: ROBERTA L. FARKAS-HUEZO

People transiting the United States to claim refugee status in Canada are facing increasingly difficult barriers at the Canada-U.S. border. These barriers are the result of changes in the way Canadian Immigration is processing refugee claimants at the border, as well as of restrictive new policies being implemented on the American side in light of last year's tough new U.S. immigration legislation.

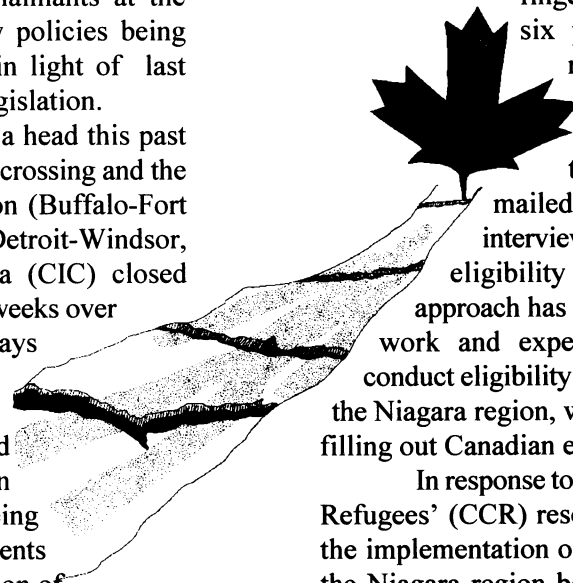
The border situation came to a head this past summer at the Detroit-Windsor border crossing and the border crossings in the Niagara region (Buffalo-Fort Erie and Niagara Falls). At Detroit-Windsor, Citizenship and Immigration Canada (CIC) closed down its refugee processing for many weeks over the summer. This resulted in long delays in the processing of refugee claimants. The refugee shelter in Detroit (Freedom House) was filled to two and a half times its capacity, leading to an enormous amount of pressure being placed on the resources, staff and residents of the shelter. In addition, the expiration of temporary U.S. status for many refugees awaiting entry into Canada made them vulnerable to arrest and deportation from the United States.

At Buffalo-Fort Erie and Niagara Falls, the "Pearson Mail-In Model" was implemented at the

border last May. Refugee claimants are no longer scheduled for personal interviews with Immigration officials to determine their eligibility to apply for refugee status. Instead, they come to the border and are fingerprinted, photographed, given a six page eligibility application and returned to the U.S. to complete the application.

Eligibility is determined through a paper review of the mailed-in application, and a personal interview is scheduled only if the person's eligibility is called into question. This approach has resulted in a major off-loading of work and expense from CIC, which used to conduct eligibility interviews, to American NGOs in the Niagara region, which must now assist refugees in filling out Canadian eligibility applications.

In response to a June 1997 Canadian Council for Refugees' (CCR) resolution expressing concern about the implementation of the "Pearson Mail-In Model" at the Niagara region border crossings, CIC replied that "the mail-in approach...was...agreed to by NGOs prior to implementation and there have not been any significant problems experienced to the present date... Properly completed kits are being processed within 10 days of



receipt." Unfortunately, this characterization of events was a bit off the mark.

Firstly, NGOs in the Niagara region were simply told of upcoming changes and invited to meetings where they were shown how the system would work. They were not asked whether they agreed to the system or whether they thought they could handle the additional work, as was implied in CIC's characterization of events. Secondly, significant problems with the new system have indeed been experienced, particularly during the summer months. American refugee support workers and their programs have been overwhelmed by the additional work of filling out eligibility forms, work for which they do not have adequate resources. During the summer, long waiting lists developed of refugees seeking admittance to Vive's hospitality house, La Casa, where they would receive assistance with their forms. Refugees who could not wait either filled out the forms themselves or turned for help to the manager of a local motel where many refugees stay. Forms

filled out in this way were often incomplete or poorly completed, leading to further delays in processing. In addition, even those assisted by Vive were (and continue to be) forced to use fellow refugees to interpret for them when filling out eligibility forms. This leads to serious questions of confidentiality and quality of interpretation. Finally, while eligibility processing times during the winter have generally remained within ten days from

receipt of the application, processing times during the summer frequently reached three weeks or even more. To be fair, it should be noted that mail-in processing of eligibility applications is not totally without advantage to the refugee claimant. When CIC is up to date with its processing of the applications, as is currently the case in the Niagara region, refugee claimants may actually enter Canada more quickly than they did under the old border interview system. In addition, while a border interview covered issues of eligibility and elements substantively related to the refugee claim (such as persecution suffered and reasons for not wishing to return to one's homeland), the eligibility application covers only issues of eligibility. Under the mail-in system, then, the claimant is not asked about issues substantively related to his or her refugee claim until he or she has been admitted to Canada and has the benefit of counsel.

At this point in time, mail-in processing of eligibility determinations seems to be the wave of the

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future for CIC. Government officials look to the through the reduction of interpreter costs. Mail-in processing was extended to the Detroit-Windsor border crossing in September, and Canadian Immigration officials have mentioned that border crossings in the Vancouver and St. Lawrence regions are leaning heavily in the direction of instituting mail-in processing, as well. While the problems of summer shut-downs at Detroit-Windsor and the problems of mail-in processing are very significant indeed, the most serious problem at the Canada-U.S. border has to do with direct-backs to the United States. Specifically, at various border points, persons who are deportable or detainable in the U.S. are being temporarily returned to the U.S. by CIC after having initiated a refugee claim at the Canadian border. In at least three cases, such persons were detained by the U.S. Immigration and Naturalization Service (INS) upon their return from the border and were deported to their home countries without ever having had access to the Canadian refugee determination process. In

each of these three cases, the deportees were separated from their wives and/or children, who were forced to continue without their deported husbands or fathers. These three cases were cases which had come to the attention of border NGOs; one can only wonder how many deportations have been carried out in total anonymity.

In the past, INS in certain border regions seemed willing to "look the other way" when it encountered deportable or detainable refugees en route to Canada. With tough new immigration laws in place, however, as well as with increased funding for detention and enforcement activities, U.S. Immigration authorities appear to be willing and able to detain and deport those who would have previously been allowed to continue on to Canada. Persons with final orders from U.S. immigration proceedings seem to be particularly vulnerable, as are persons being removed from Canada to the U.S. after a second failed refugee claim.

While INS does not yet seem to be detaining those who are returned to the U.S. after only one failed Canadian refugee claim (unless they have an outstanding U.S. deportation order from the past), it appears that INS is losing patience with the 90 day "revolving door" for failed refugee claimants who wish to reapply. Unfortunately, genuine refugees will be hurt if this revolving door is shut; statistics show that

approximately 50% of second time refugee claimants are successful in Canada. Those wishing to re-enter Canada under sponsorships will also be severely disadvantaged if they are no longer given leniency by INS. It is much easier to await a sponsorship from across the border in Buffalo than it is to await a sponsorship from across the ocean.

Another group which has become particularly vulnerable in light of recent changes in INS policy is

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comprised of
unaccompanied
minors
transiting the
U.S. to apply
for refugee
status in
C a n a d a .
These minors
often have
relatives in
Canada, but
until very
recently,
Canadian
Immigration
authorities
would not
allow the
minors to
enter Canada
until their
relatives were
able to receive
them at the
border .

Meanwhile, on the U.S. side, recent changes to INS rules now require American Immigration authorities to place unaccompanied minors in "protective custody". In several recent instances, Vive has only narrowly avoided the INS detention of refugee minors who were returned to the U.S. by CIC in order to await reunification with their relatives in Canada. In response to the problem of Canada-bound minors being placed in "protective custody" in the U.S., CIC officials at the border crossings in the Niagara region recently agreed not to direct unaccompanied minors back to the U.S. If the minors do not have reception awaiting them at the border, they will be allowed into Canada and released into the custody of an attorney who is willing to take responsibility for the minor until reception is arranged.

The local legal aid body in the Niagara region has agreed to provide duty counsel for this purpose. This is one example in which a CIC-NGO partnership provided a viable solution to a serious problem.

On October 17, 1997, the CCR wrote a letter to the Director of Port of Entry Management at CIC National Headquarters. After laying out the host of problems currently being experienced at the Canada-U.S. border, the CCR requested "that sufficient resources be provided so that all border points continue at all times to respect Canada's obligations towards refugees...; that claimants be admitted immediately into Canada and allowed to fill in eligibility forms inside

Canada, [this
being]
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special
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minors...; [and]
that CIC take
account of the
impact of their
POE procedures
on NGOs and
undertake
meaningful
consultation
with NGOs
when
contemplating,
implementing
and evaluating



changes to procedures." As the CCR awaits a response to its letter of October 17th, all refugee advocacy groups must be particularly mindful of the increasingly difficult and rapidly changing situation at the Canada-U.S. border.

As the stakes are increased, advocates must be ever more aware of the consequences of the advice they give their border-bound refugee clients.

Roberta Farkas-Huezo is the Legal Coordinator at Vive, Inc., a refugee advocacy and social service organization serving Canada-bound refugees in Buffalo, NY. A major portion of this article was excerpted from a presentation on border problems which Roberta made at a September 1997 roundtable meeting between representatives of CIC and the Canadian Council for Refugees.

THE DEPORTATION OF LONG TERM PERMANENT RESIDENTS "PEOPLE DUMPING"

BY: RON POULTON

Charter in the promotion of minority rights, held a consultation on the immigration deportation scheme. MARC's mandate is to address issues related to race, national and ethnic rights, colour and religion in the area of human rights and social justice and to work towards the elimination of racial discrimination and systemic inequality. The deportation of long term residents who have committed crimes fell within MARC's mandate because of the nature and causes of criminality in our society. Poverty created by systemic discrimination and anti-social behaviour stemming from mental illness are two of the root causes of crime. In deporting criminals we are deporting the poor and the ill, the most vulnerable to discrimination and the least powerful to self protection. The consultation brought together lawyers, academics, social rights activists and family members of deportees, for discussions on how to address legal argument aimed at ending the deportation of persons decried defective by Canada's immigration system. Three areas addressed. They were: citizenship and how to apply rights of informal citizenship to permanent residents; international human rights instruments and practice; and, racism.

Professor Joseph Carens spoke on the issue of Citizenship. He suggested factors which constrain state power to decide on who can and cannot reside within its borders. The first is membership in the community. Long term residents of a country are members of that country's society. Membership is not qualified by conduct. Once a bona fides member through passage of time and involvement in community life, always a member.

The second constraint on state authority to expel is social formation. The society in which a person is raised must bear responsibility for the social formation of that person. Deporting a criminal who became a criminal through living in Canada is unacceptable. (Canadian society could create criminals) The third factor is international comity or fairness. Regardless of the particular history of the

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The Department of Citizenship & Immigration has embarked on an aggressive campaign aimed at deporting permanent residents of Canada found guilty of criminal acts. The zeal with which immigration officials have undertaken this task has been matched only by the willingness of the Federal Court to sanction this pogrom of forced removal of those deemed 'criminally defective'-unworthy to remain in this "land of freedom". Once branded with the sign of 'criminal' the permanent resident becomes vulnerable to systems which need not answer to the burden of traditions of humanitarianism, compassion and even forgiveness. The burdens that these fundamental principles create weigh heavily on a bureaucracy, forcing it to answer to higher standards than mere expediency and self righteous determination. If a bureaucrat can expel someone he considers dangerous to the society, he will gladly do so. He will not consider the individual concerned, the length of residence, the children left behind, the wife, the work, the community, the church, the school, the pain and anguish of disenfranchisement of a soul that had known no other place than here - with us. These are the hard considerations because morality requires difficult decisions and choices. Immigration officers no longer need concern themselves with these choices. Under the present system if you have committed a "serious" offence, you must go. If you have family here, who cares. If you have spent your entire life here and know no other, who cares. If you do not speak the language of your nationality, and do not know the customs, people, life of your place of birth, who cares. If you have been punished for the crime you have committed and have successfully reformed yourself to the level of becoming a new person, who cares. You are a criminal, and so must be cleaned from our streets.

On September 26, 1997, the Minority Advocacy Rights Council (MARC), a non-profit corporation formed for the purpose of monitoring, assisting, sponsoring, and undertaking selective litigation concerning human rights legislation and the

other, it must be severely constrained.

State prerogative over those entitled to be within its boundaries is therefore not unmitigated. With the passage of time the conditions of admission become irrelevant and the constraint on deportation, regardless of conduct, more onerous.

The use of international forums for challenging the deportation scheme was discussed. The UN Human Rights Commission in Geneva and the Inter American Commission on Human Rights in Washington are two possible avenues. With the present practice of denying a right of appeal to the Immigration Appeal Division for those deemed a danger to the public, a balancing of state vs. individual interests is no longer possible. The state interests are the only factors now considered. Such an imbalance is vulnerable to international human

rights scrutiny.

Racism. The process by which persons are declared a danger to the public under the Immigration Act has cut a swath through the immigrant community. But who is suffering most?

There are disturbing impressions that racism is a factor and that a disproportionate number of persons of colour are falling prey to these decisions.

Presently, however, it remains still too early to make firm pronouncements on this issue. More time and data collection is necessary.

MARC is currently considering intervention in Court challenges to the deportation scheme.

Ron Poulton is a refugee and immigration lawyer practicing in Toronto.

A FEW DOZEN ROMA REFUGEE CLAIMANTS NAMED THE PERIODIC "FLOOD" FOR AUGUST 1997

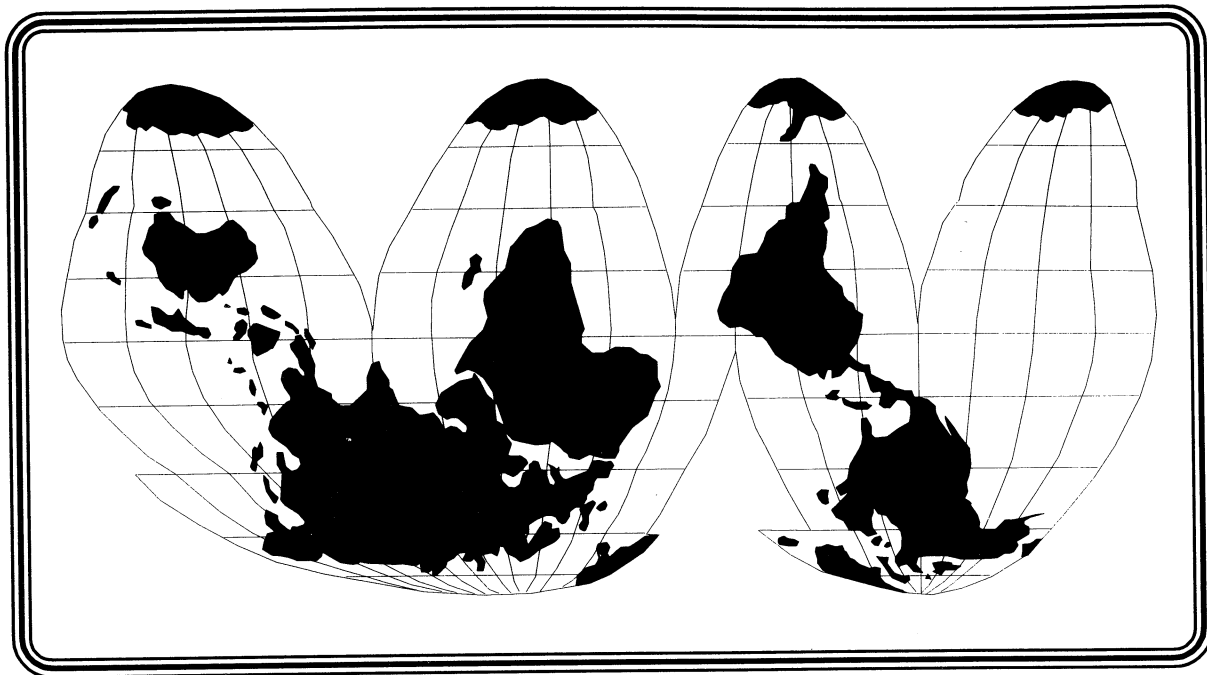
BY: TOM CLARK

A front page headline "Gypsy influx floods shelters" in the Globe and Mail August 21, 1997 followed by two headlines on the front page of the Toronto Star August 22, "Immigration stalls Gypsy refugee bids" and "Canada checks for criminal records", led to radio and TV interviews and a call-in show which revealed anti-refugee feelings in Toronto. "Gypsies face racist protest: waving swastika skinheads target refugee claimants" reported the Globe and Mail, August 22, 1997. The focus of hatred was Roma people (gypsies) from the Czech Republic. There was no flood. Shelters were overcrowded with an unusual number of Canadian poor, not an unusual number of refugees. With no public protest of the overt racial discrimination, Immigration officials used special criminal checks to delay refugee claims of Roma from going forward.

Throughout several years of "flood" stories about 25,000 refugee claimants arrived each year and about 15,000 became landed immigrants as planned. Refugees start to come from one country and stop coming from another. The inside page 12 of the same August 21, 1997 Globe and Mail notes "a little more than 500 Czechs have claimed refugee status in Canada this year ..." The Toronto Star pointed out that 120 had arrived in August. Think about it - 500 people January to August and 120 people in August. Is this a flood?

The smaller print shows hostel workers were "scrambling" for more than the Roma: "... the ranks of poor Canadian families seeking refuge has swelled uncharacteristically over the Summer, a period when their numbers usually shrink." Poor Canadian families were flooding the hostels. When Roma refugee claimants arrived and were forced to spend longer times in the hostels than is usually necessary, they got blamed.

Refugees are linked to something guaranteed to seem unpleasant like smuggling, drugs or crime. The Roma were linked to crime by the Toronto Star headline. The government can routinely check a person for criminality. This is normal. For the government to target an entire racial group for special treatment as criminals is discriminatory. The story plays to a stereotype of Roma as linked to theft. As it turns out, the author was able to determine from UNHCR experts that there is no evidence Roma are associated with serious crime - the only basis in law for preventing refugee status determination. It seems many Roma have records of petty crime such as failure to appear for work under the former Marxist Czech regime. At the same time these records are also evidence of the discriminatory treatment which the Roma experience. Moreover, the Canadian government likely knew this. The newspapers did not uncover and report on these features of Roma "criminality". To its credit, the Toronto Star pointed out



Tom Clark is the Coordinator of Inter-Church Committee for Refugees.

within the real meaning of the word. If 120 claimants a month became 200 it would only amount to 2,500 in a year out of Canada's 25,000. Does this really call for a media extravaganza and the inconvenience and cost of a visa on all tourists from the Czech Republic?

As usual the refugees bear the brunt of these inter-governmental games. Some real Roma refugees will not get protected in a timely way. Roma who got to Canada will be stopped or delayed in getting work, health coverage and education for children.

It may never be possible to stop public hostility and government games. But robbing people of important rights to asylum and to non-discrimination under cover of public hostility is something else. Government immigration activities need much more thoughtful public scrutiny. Over ten years ago, when enforcing rights of refugee claimants, the Supreme Court ruled that rights are meaningless if they can be set aside for administrative convenience. The courts and the media need to take that thought and build it into a fairer new era for refugees.

Legislative change must provide strong legal recourse to protect the rights of refugee claimants who are obviously vulnerable to public hostility. Similarly, there must be disciplinary measures for officials who set rights aside. Our common Constitution is undermined when anyone's rights are diminished.

Refugees are deemed to rob Canadians of something or at least to compete with Canadians for something. Jobs, health care, welfare funds, school classroom space for children, and now shelters for the homeless have been used in this way. "For the hostels, the flood of Gypsies presents one more pressure at a time when the ranks of poor Canadian families seeking refuge has swelled ...", (The Globe and Mail August 22, 1997, page 12). The Minister of Citizenship and Immigration is responsible for providing for the needs of the refugee claimants going through her Department's procedures without overcrowding public housing. Her department prevented Roma refugees from moving speedily out into their apartments. She delayed processing of their claims by investigating criminality. In any event, the overcrowding which had led to the "news" in the first place was overcome by others - even if the means were controversial. Metropolitan Toronto officials were able to place the Roma in other facilities in other smaller towns. The "flood" and the scrambling hostel workers swiftly disappeared. Only the anti-refugee memories remain.

It is remarkable that there was so little protest about the discriminatory racial targeting of Roma for a special criminality investigation and for delayed access to refugee status procedures. Similarly, there was no protest at all when a visa restriction was finally placed on Czech nationals a little time later. There are finite numbers of aircraft links with finite available seats from the Czech Republic. There can be no "flood"

that targeting Roma for a special treatment was discriminatory.

IDENTITY DOCUMENTS AND CIC BROKEN PROMISES

BY DR. MOHAMED TABIT

The Ministry of Citizenship and Immigration is refusing to land thousands of convention refugees who have been determined to be genuine refugees by an independent tribunal (IRB)

Mostly Somalis and Afghans as well as many other refugees from nations torn apart by civil war and anarchy are victims of Bill C/86 which was passed in 1993 and which requires refugees to produce a "satisfactory identity document" before being landed. Immigration Canada recognizes that there has been no functioning government in Somalia for almost seven years. The Minister, however, insists on unobtainable documents.

A stated purpose of the Immigration Act is to fulfill Canada's international legal obligation with respect to refugees and to uphold its humanitarian tradition with respect to displaced people.

Article 27 of 1951 Convention Relating to the Status of Refugees states that contracting states shall issue identity papers to any refugee in their territory who does not possess a valid travel document. The Inter-Church Committee for Refugees, the Canadian Council for Refugees, affected communities, and other advocacy groups have attempted to find a solution to the ID dilemma since the introduction of Bill C/86. In the name of ferreting out criminals, the bill has victimized the victims of war criminals. Left in this legal limbo for the last seven years, Convention refugees in Canada are paying a heavy price in human and economic terms.

The Somali community has been negotiating and collaborating with the Immigration Department to get a solution to the problem of undocumented Convention refugees. In fact, the community argued that delaying the refugees' integration into the society makes no sense. The Somalis have suggested a simpler compromise: sworn affidavits backed by community elders testifying refugees' identity. First it seemed that Citizenship and Immigration Canada (CIC) had accepted the statutory declaration as proposed only to find out later that the Minister was afraid to be publicly embarrassed if she permits the use of affidavits as identity documents. "We are

giving in to pressure from the Somali community," was the *rationale* behind the refusal to accept affidavits. After broken promises, the Somali community took the ID issue to the federal court. The court has ruled that denial to consider that a statutory declaration meets the requirement of S.46.04 of the Immigration Act is an inappropriate fettering of the Immigration officers' authority. All documents submitted by a client for the purpose of landing must be considered. As such, statutory declaration could in some circumstances fulfill the requirement of S.46.04 (8) and therefore serve as a satisfactory identity document for the purpose of landing.

The Parliamentary Standing Committee on Immigration has recommended the need for expeditious processing of application for undocumented class within two years from the determination date. However,

the Minister of Immigration disregarded the recommendation and instead insisted on implementing her five year waiting period. The department promised in a ministerial letter that it has undertaken to accept applications submitted under Undocumented Convention Refugees Class in Canada (UCRCC) up to six months before the fifth anniversary of the IRB decision so that eligible refugees can be granted permanent residence status as soon as possible after that anniversary. On January 31, 1997, UCRCC regulation came into force, and over 400 eligible applicants applied to the Case Processing Centre in Vegreville. So far I haven't seen one single UCRCC applicant landed. On September 11, 1997, we received another Operational Memorandum (OM) from CIC on processing of Convention refugees' application for landing and evaluation of documents for the purpose of S.46.04. In this memorandum, Immigration Canada for the first time provided a partial list of acceptable identity documents. However, they left out valuable documents like driver's license, health and educational certificates. A disturbing and contradicting document, which I have a copy, states that CPC Vegreville has recently deemed all Somali identity documents to be unsatisfactory. "Our office is not even accepting valid passports from Somalia," the document states. Another CIC document reveals that the Minister

**SO FAR I HAVEN'T SEEN
ONE SINGLE
UCRCC APPLICANT LANDED.**

HOW CAN WE BRING WAR CRIMINALS TO JUSTICE?

BY: ALEX NEVE

Dr. Mohamed Tabit is the Program Coordinator of Midaynta, Association of Somali Service Agencies in Toronto.

be accepted. This is, of course, unfair, as it is always possible that the first affidavit be incomplete. Finally, more alarming is the fact that in the OM, there is a threat that Immigration might be seeking to revoke refugee status. In conclusion, I do not believe that Immigration will take any positive step to resolve this long overdue problem, because it has not done so to date.

may designate as not acceptable travel documents which would otherwise appear to comply with the criteria of acceptability. Such a designation has been made regarding passports/travel documents from Somalia. The most recent draft of OM on ID documents is a very poorly drafted document, and is self-contradictory. In one section of the text it states that a statutory declaration alone may not be sufficient, while in the rest of the text, it states that statutory declaration is adequate. The OM further states that once an affidavit is denied, another affidavit will not

Human rights criminals must be brought to justice. On this all can surely agree; human rights activists, advocates for refugee rights, Immigration officials, MPs from all parties, and the Canadian public. However, simply deporting them may not be the answer and may, indeed, only make prosecution impossible or ineffective.

The recently leaked Immigration department report (*War Crimes and Crimes Against Humanity Report, 2 October 1997*) about dealing with suspected war criminals in Canada suggests, once again, that we have failed to ensure that justice is done. Over 300 people in Canada are suspected of having committed modern-day war crimes (with the number expected to rise). Unfortunately the report's recommendations for action could do more to create further injustice than to ensure that criminals will be punished. The report calls for more staff, so that more war criminals can be identified and deported. But would this help? If the problem is bringing war criminals to justice, finding and deporting more war criminals is simply a formula for frustration.

Fundamentally, Canada has a legal and moral responsibility to ensure that individuals who are responsible for killings, torture and other grave human rights violations do not escape justice. The world over, impunity is the most formidable obstacle that stands in the way of creating a political and legal culture in which human rights are respected and protected. When torturers get away with their unspeakable crimes, it only encourages others to do the same. Canada has laws in place to prosecute war

to be determined guilty for their crimes. Yet victims also rightly demand that these persons need behaviour. We want to encourage other to do the same. on to publicly expose the abuses, sometimes at great personal cost. We would not want to punish such violations but have had a crisis of conscience, and gone people who have indeed been involved in human rights troubling ethical dilemmas for us. Sometimes they are At the same time, some war criminals pose of complaining about the difficulties of deporting. behind that defense. Canada should prosecute instead ensure that torturers and others are not allowed to hide attention. Legislative amendments may be necessary to orders. This is where the government should focus its decision allows the defense of following superior effective prosecution a near impossibility. The dealing with a suspected Nazi war criminal, has made the ruling of the Supreme Court of Canada in *Finta*, criminals and other human rights criminals. However,

Whether it be deportation or prosecution, it is crucial that these cases be carefully and expertly weighed. That means all the safeguards we expect of a fair trial in Canada, in keeping with the Charter of Rights. The CIC report may be right to suggest more resources to identify war criminals. But it may be wrong to suppose that immigration officials are best suited to do this. It is not easy to identify the criminals. While accusations against some war criminals may be clear, this is rare. Evidence is frequently confusing or vague, and may be fabricated by enemies continuing the political or ethnic rivalries of their home country. Suggestions others have made would only

compound the injustice. Refugees, in Canada and elsewhere, are the victims of those who commit war crimes and crimes against humanity. Refugees have the most compelling interest in seeing human rights criminals brought to justice. No one wants to see their torturer walking down the street unpunished. Ironically, some have recommended that we address the problem of war criminals by locking up their victims when they seek refuge in Canada.

The inescapable backdrop to this problem is the poor international justice system. International efforts to sew up the holes in the net of international justice have been sporadic and half-hearted. True, there are now two *ad hoc* tribunals, set up to deal with two particularly horrifying human rights catastrophes - Rwanda and the former Yugoslavia. The challenges those tribunals have faced in moving ahead with cases are well known, including inadequate financial support and lack of international cooperation. At that, Canada is unable to extradite individuals to those tribunals. Canadian legislation does not yet provide for extradition to international tribunals.

The international community has been reluctant to go beyond such *ad hoc* measures and ensure judgment of all human rights crimes. This is particularly true when the accused criminals are members of governments promising new markets or sources of raw materials. Human rights activists have campaigned in recent years for decades for the creation of a permanent international court with jurisdiction to try individuals accused of crimes against humanity.

They argue that impunity will only be defeated if a tribunal exists which will respond in all cases, regardless of the political or strategic interests that may lie behind the conflict in the particular country.

The sense of justice we all have, that reacts to alleged criminals coming through our borders by

closing down the privilege of staying in Canada, is not best served by deportation. In fact it may be ill-served by deportation. Canada washing its hands of the matter will in some cases only lead to further human rights violations. Deporting an accused torturer to a country where he or she is likely to be tortured not only violates international law, it serves to reinforce cycles of violence and retribution which fuel human rights abuses. In other cases, it simply allows torturers to escape judgement and walk free.

Canada should take a leading role in ensuring the creation, at the international level, of a permanent, impartial, well-

resourced tribunal to deal with crimes against humanity. In the meantime, in the interim, Canada needs to remedy the failings in our legislation that prevent us from extraditing individuals to the two *ad hoc* tribunals that do exist, and make it effectively impossible to bring human rights criminals to trial here.

Alex Neve is a lawyer and member of the Canadian Council for Refugees



IRB ALARMING STATISTICS

IRB statistics for months April - Sept. 1997:

Of 12,386 cases finalized:
 39% received a positive decision
 38% received a negative decision
 22% were withdrawn, abandoned or otherwise finalized
 (Bear these statistics in mind next time someone says Canada has a 75% acceptance rate).

Also of interest (given the CCR resolution on moratorium of deportation to Zaire) - acceptance rates for claims for Democratic Republic of the Congo(former Zaire):
 National: 59%
 Montreal: 77%
 Toronto: 28%

Of positive decisions, the following is the percentage decided through expedited process

Montreal:	46%
Ottawa/Atl:	13%
Toronto:	3%
Calgary:	12%
Vancouver:	38%

Information compiled by the CCR from IRB statistics.

Since the "backlog" at the Board is a pressing issue, consider the following statistics. They indicate how many months it would take each regional office to work through its "pending" caseload if it continued at the rate of the 6 month period April-Sept. 97 (and didn't deal with any new referrals):

Montreal:	15.5 months
Ottawa/Atlantic:	8.5 months
Toronto:	10 months
Calgary:	21.6 months
Vancouver:	22 months

O, Lord where do you live?

We suffer as if we are not
 a part of the world community
 O, Lord where do you live,
 Where do you live?

Turn your heart to deliver us
 out of foreign lands.

We experience

what we could not experience
 if we were in our home
 O, Lord where do you live,

Where do you live?
 Our beautiful land
 has become disaster to us
 I ask you if you can
 let there be peace in our home
 so that we may go back
 home.
 O, Lord where do you live,
 Where do you live?

Akangelio King Ring
 Kakuma Refugee Camp, Kenya

BOOK REVIEW

VICTOR LAL, **FROM REPORTER TO REFUGEE**

WorldView Publishing, London, 1997

Mr. Victor Lal was born an Indo-Fijian. He was persecuted in Fiji because of his nationality. He fled Fiji to England seeking a refuge even though he did not make a refugee claim at the beginning of his time in England. Instead, his status was as a student to become a writer/reporter. When his student visa expired, he had no other choice but to stay in England. So he applied for refugee status because of all the human rights violations against Indo-Fijians in Fiji. This is such a familiar situation for refugee claimants and refugee advocates in Canada.

Mr. Lal's refugee process in England took a long and dreadful seven years; seven years full of frustration and tenacity; seven years of ups and downs and failures.

It all added up to one big victory. This also sounds very familiar to Canadians.

At the beginning he was refused, so he appealed the negative decision. While he was waiting, he heard that one of his friends, a writer in Fiji, had been captured and tortured. Again, nothing new under the Canadian sky. Then he was offered a short research assignment by the Nobel Peace Prize Office in Norway. It was difficult to receive the authorization and the traveling papers to go to Norway. In Canada, would this be unthinkable. During that trip he also experienced racism at its worst at the German Immigration. This is a reminder of behaviours and attitudes of some Immigration departments in our own continent. Then, shortly after he arrived back in England, he learned that his case was reviewed and that he was accepted. Somehow his "normal" life restarted again, but

not for long. On the one hand, he got married in England to a Norwegian woman. On the other hand, he learned that his sister had died of a 'mysterious cause' and he could not go

to his sister's memorial service. On the one hand, he learned that his wife was pregnant. On the other hand, he could not go to see her in Norway. How many cases like that have you seen here in Canada? At the end of the book, Mr. Lal finally became a permanent resident of England, but he still does not have freedom. No matter what he does, he does not have the freedom of going back to his own country, the freedom to see his mother again, the freedom to visit his sister's and father's grave. How many of our refugees in Canada do not enjoy that kind of freedom as well? How many?

This book is a good example of how refugees' causes and problems are the same all over the world. It is a reminder of the similar problems, gaps and injustices of many "refugee protection" systems around the world. It is a symbol of how tenacity, no matter where you are, is one of the many strengths that a refugee needs in order to survive. Mr. Lal's story could be just another refugee story but it is not because he is a refugee writer . . . because Mr. Lal is one of the many voices of the voiceless.

Review by: Giovanni Rico-Bolaños (grade 10 student) and Francisco Rico-Martinez

THE CRY OF THE VOICELESS

WHEN THE DOOR OF MOTHERLAND
SLAMMED SHUT
WAILING, LAMENTING THUNDERS
WHO WILL HEAR
AGONY OF DESPAIR
WHO WILL SEE

FLASHES OF LIGHTNING
MULTIPLE VOLUMES
AM I A PERSON OR
A NUMBER

AWAY I GO WITH
MY NECK IN A CAST
NEVER TO RETURN
INTO THE TERROR
AND HORRORS OF THE CAMPS
DYING A THOUSAND DEATHS
THE JAWS OF A FOREIGN LAND
TIME HERE CUTS LIKE A KNIFE
CERTAIN OF UNCERTAINTIES

RUN RUN
RUN THE RAT RACE
FOR ME A REFUGEE
WHERE IS MY PLACE

CAN I WAKE THIS WORLD OF
ITS BLINDED SLUMBER
AS SOME FALL
INTERRED BY ULTRA RAYS
THE RESILIENT INSTINCT
KEEPS OTHER CRAWLING
THEIR HUMAN SPIRIT UNYIELDING
LOOKING, SEEKING
REACHING HOPEFULLY INTO THE
UNKNOWN DESTINY

WE BECOME FOREIGNERS
LABEL NONE FITS
WE ARE EVERYBODY'S SUBJECT
YET NOBODY'S CONCERN
EXCEPT FOR A FEW
ONE'S AND TWO'S
WHO WILL SEE THE ANGUISH

TOUCH WITH MERCY
GIVE A CHANCE
PICK UP BITS AND PIECES
SHATTERED DREAMS
LIFE!
HEAR ME, A CITIZEN OF THE WORLD.

BY NATHANIEL BIMBA

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