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Refugee Update

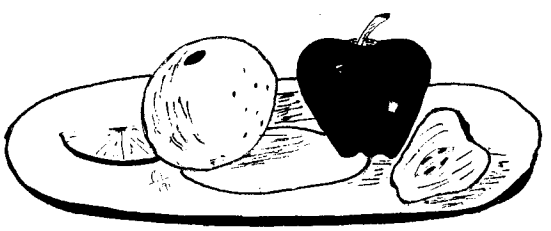
A Project of the Jesuit Refugee Service/Canada and the Canadian Council For Refugees

Inside

REPATRIATIONS AND DEPORTATIONS

"I see 1992 as the year for voluntary repatriation."

With these words, the High Commissioner for Refugees, Mrs. Sadako Ogata, in an address to the Executive Committee of the UNHCR, proposed her vision of how she sees the coming year unfolding for the world's refugees. Citing the Cambodian peace accords, the negotiations in El Salvador, the peace agreement in Angola, the repatriation accord signed with the government of South Africa, and the apparent emergence of the United Nations as an organization able to deal with global problems of peace and security, Mrs. Ogata painted an optimistic picture of a rapidly changing political landscape for the world's seventeen million refugees.



Picking up on the High Commissioner's vision, Immigration Minister Bernard Valcourt, in his report to Parliament, also anticipates that the movement toward repatriation might very well justify fewer government sponsored refugees in 1992. In the last six to eight months the government has used the phenomenon of repatriations as justification for pursuing more vigorously the deportation of rejected refugee claimants. In an April meeting with members of the Canadian Council for Refugees, former Immigration Minister Barbara McDougall cited the massive repatriations to El Salvador as reason for having an increased faith in the security of Salvadorans returned there.

However, what do these repatriations mean? Why do they happen? Under what conditions do they take place? What has been the experience of those who have repatriated? Are people able to repatriate voluntarily under conditions of security and dignity? What is the human rights situation in the countries to which people are repatriating? Have the political and military conditions changed sufficiently to invoke the cessation clause of the 1951 Convention, which is applied to countries that are considered to have achieved sufficient stability that refugees can safely return?

While the Department of Immigration and the Immigration and Refugee Board (IRB) both feel that the integrity of Canada's refugee determination system and control of its borders depend on the government's willingness to deport unsuccessful refugee claimants, and furthermore, while the phenomenon of repatriations might suggest a kind of spring-time for asylum seekers and refugees -- the emergence of conditions of security and safety permitting them to return home --, close scrutiny of the country conditions from which refugee claimants are fleeing is absolutely necessary. The fact is that Canada continues to recognize as refugees a high percentage (71%) of claimants. Also, among the top ten source countries are counted places

such as El Salvador, Sri Lanka, Iran, Lebanon, Ethiopia, and Somalia. Their citizens have all suffered terribly from protracted civil wars and well-documented human rights abuses at the hands of government forces or organizations linked to the government.

It is a highly delicate matter to suggest that in countries plagued by years of war and abuse, voluntary repatriations are a sign that citizens are safe and without reason to fear. Three brief examples illustrate this point:

El Salvador

More than ten years and in excess of 75,000 lives later, this tiny country about the size of Cape Breton Island is groping tentatively towards a UN sponsored peace settlement. Negotiations have been taking place now for more than a year. A major breakthrough was the signing of the San Jose Human Rights Agreement in July 1990. As part of the agreement, the UN was to establish a human rights verification mission inside El Salvador. Known as ONUSAL (its Spanish acronym), the mission is the first of its kind, and symbolizes more than anything else the precarious nature of human rights in El Salvador and the need for international mechanisms to enforce their protection.

Recent studies of the conditions in El Salvador -- one by the Jesuit Refugee Service / Canada and the other by the Central America Monitoring Group -- both document continuing human rights abuses, including harassment, arrest, detention, and in some cases assassination by the military of members of the repatriated communities.

Recent trials of military personnel for human rights abuses, including the Jesuit trial, have left the impunity of the armed forces virtually untouched. And most observers of the Salvadoran scene forecast an increase over the short-term in human rights abuses, as the peace negotiations continue.

As the JRS / Canada study demonstrated, the repatriated communities have been the victim of on-going attacks by the military. The repatriations themselves took place despite the situation in El Salvador, and not because of any improvement in the security conditions in that country.

The returned refugees have managed to survive due to their collective effort at protecting themselves, as well as because of the strength of the international connections they have developed. In short, the repatriations to El Salvador illustrate the continuation, not the end of human rights abuse in El Salvador. Deportations from Canada to El Salvador can not, therefore, be justified on the basis of the repatriations.

Sri Lanka

In 1989, under a UNHCR-sponsored voluntary repatriation programme, 25,000 Tamils returned to Sri Lanka from camps in India. Another 17,000 returned on their own. However, in the spring of 1989 the repatriation programme was suspended after 900 Tamils were returned to India.

Even at the time of the repatriation programme, human rights groups were questioning its continuation in light of detentions and forced conscription of young Tamils into the security forces, as well as disappearances of people. Currently, there are only sporadic repatriations of small numbers of Tamils living in refugees camps in southern India. They are returning to northern Sri Lanka in order to escape the ravages of hunger in India and repression by Indian security forces in the wake of Rajiv Gandhi's assassination, rather than out of a sense that the security situation in the north has improved. In India, they have been subjected to humiliation, arbitrary arrests, confiscation of permits, refusal to renew visitor visas, and threats to personal safety.

While it is true that some Tamils have returned from Canada to Sri Lanka to visit, they have been mainly professionals who came to Canada before 1983 as landed immigrants, mostly from African and Middle Eastern countries. Most of them were originally from

the south, and they visit Sri Lanka for a short period of time with no intention of returning there to live. As for Convention refugees returning, they tend to go to the southern Indian state, Tamil Nadu, to visit relatives there in refugee camps. However, they are not returning to Sri Lanka. The consensus among international observers is that it is generally unsafe for any Sri Lankan to be forcibly returned, and particularly at risk are Tamils.

Iran

In an attempt to bring Iran out of its diplomatic isolation and to improve the economic crisis, the regime has restored diplomatic relations with Western countries and called for the return of those who have fled the country. Critics of the regime agree that the call for repatriation is directed only at Iranian investors and technocrats whose assets were confiscated and who fled after the collapse of the Shah's regime. They point to the continued assassination of Iranians outside the country, the denial of passports by Iranian embassies and the existence of security lists at all Iranian border crossings as evidence that calls for repatriation are not being made in good faith.

Canada's own Immigration and Refugee Board country profile of Iran characterises the situation there in the following terms: "The country has a sorry record of human rights abuse. The rights of religious and ethnic minorities are severely curbed. Torture appears to be routinely practised, both as a form of punishment and as a form of interrogation, while in many cases, summary executions after the most rudimentary of trials are frequent. Change, at present, is difficult to forecast" (pp. 37-38).

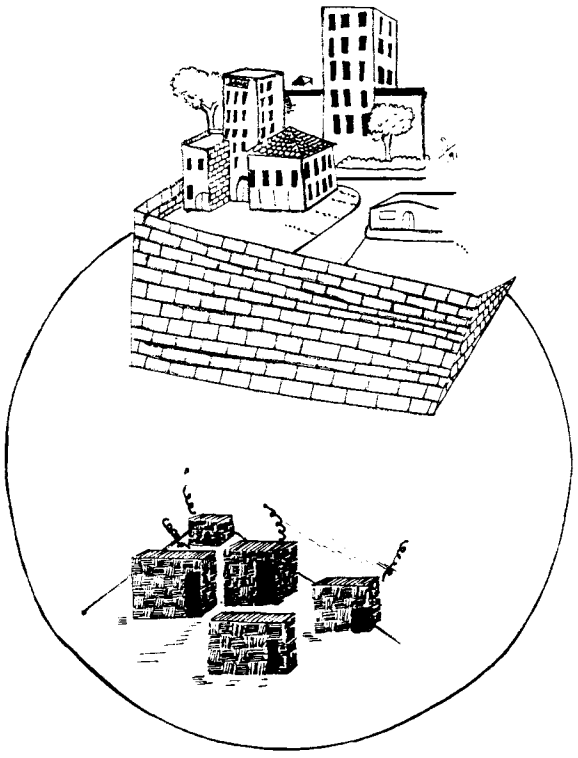
Conclusion

This brief survey of three countries, very different in location, history, and political conditions, countries which account for twenty-four per cent of the total number of refugee claims made in Canada to date this year, suggests that talk about an improvement in the conditions generating refugee flows (as well as the phenomenon of repatriations) cannot be readily accepted at face value.

Refugees may be repatriating, but in and of itself that is not a reliable indication that the military and human rights conditions in these different countries have sufficiently improved to guarantee the secure and safe return of refugees and asylum seekers. As one official of the UNHCR put it in a comment on repatriations and deportations, "They're apples and oranges. They're two different things."

STORM-CLOUD WARNING

Ill health prevented Immigration Minister, Bernard Valcourt, from delivering Canada's address to the Executive Committee meeting of the UNHCR in Geneva this past October, 1991. Still, the speech was



read out and affords us a rare glimpse at the new minister's thinking on the refugee question.

Mr. Valcourt proposed three major actions which the international community should undertake to address the global refugee crisis. He endorsed direct intervention to address human rights abuses before refugee movements occur (as with the Kurds after the Gulf War); he advocated resistance to any broadening of the Convention refugee definition; and he promoted the "harmonization" of policies between countries to enforce the removal of asylum seekers not found to be Convention refugees.

In a subsequent interview, Mr. Valcourt summarized his position: "Why should I, in Canada, be caught up with this whole thing when I could simply direct them back to where they belong or where they came through, the United States?"

New Talks

The context for this last statement was the fact that immigration officials have begun to meet quietly with counterparts from the United States and Mexico to discuss "harmonization". Based on initial discussions in

September, all three countries have admitted that current differences in policies will preclude any quick harmonization agreement.

A key stumbling block in developing such an agreement is the fact that all three countries have given asylum seekers some degree of legal protection under their constitutions. In Canada, for example, the Singh decision of April 4th, 1985, grants refugee claimants in Canada certain rights under our Charter. However, Mr. Valcourt has expressed optimism that a Canada-Mexico-U.S. agreement on the safe third country concept could overcome these constitutional protections.

Reason For Alarm

The government's threats to implement the safe third country rule must be taken seriously. The advice from immigration bureaucrats is that there is no other way to cut back on refugee claimants.

The credible basis test was supposed to get rid of two-thirds of the refugee claimants arriving in Canada. The problem was most people were getting through the credible basis test and, for all intents and purposes, it has been scrapped.

At the refugee hearing level, about 70% of refugee claimants are being accepted. The oral hearing granted to claimants under the new law has demonstrated that the majority of refugee claimants arriving in Canada have a well-founded fear of persecution. The government can do nothing to change these statistics.

Even though the government is doing everything it can to deport the 30% refused at their hearings, it isn't that easy. Some of these people are real refugees whose cases have fallen through the cracks. Because there is no meaningful appeal, people are being forced to go underground rather than face a life-threatening situation back home.

The safe third country concept is a desperate measure. In the two and a half years since it was drafted, the government has found no credible body which would endorse its implementation. Now it appears the government has some reason for optimism.

Need To Respond

We do need to keep working for improvements in the current system. The safe third country concept is unacceptable. We need to continue to press for a meaningful appeal and insist that rejected refugees not be deported to places where they will suffer persecution. But, above all, we need to ensure the survival of the good parts of the system we have now. This will require strategic planning by refugee rights advocates - and the time to begin is right now!

A New Spin on Protection

In his annual report to Parliament, the Minister of Immigration, Mr. Valcourt, made only passing reference to the protection of refugees. Instead he outlined government plans to improve the screening and deterrence of foreign criminals before they come to Canada and to deport immigrants with criminal records: "Immigrants and visitors in Canada who are convicted of serious criminal acts - or a series of lesser offenses - can be deported. The government is implementing a control strategy to strengthen the safeguards to protect society from foreign criminals."

Those who have fought against tyranny and human rights violations in their home countries are often considered criminals by their respective governments. We must also consider that Canada maintains diplomatic and trade relations with many refugee-producing nations,(eg. Iran, El Salvador, China).

Everyone in Canada, including refugees and refugee rights activists, is strongly in favour of tough preventive measures against crime and criminals regardless of citizenship or country of origin. However, given the general anti-refugee policies of the Conservative government and the Minister of Immigration who categorizes the flight of refugees as "sporadic migratory movements", this new policy could act as a pretext for justifying the deportation of genuine refugees.

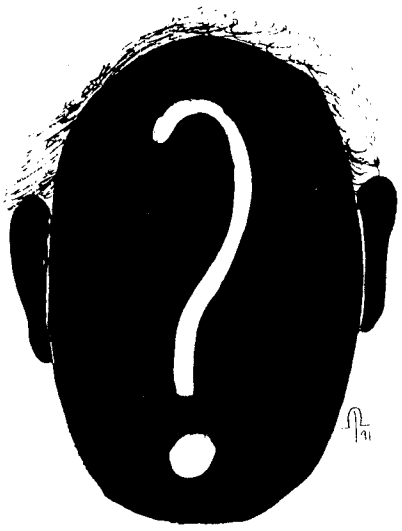
SO LONG AS YOU ARE LIVING IN LUXURY

So long as you are living in luxury,
while we are sleeping on the ground;
and we are striking the drum for you out of fear;
and you are living in peace, and we are in trouble;
So long as personal interests take priority over the needs of the people;
and we are forced to be refugees in foreign countries
like escaped offenders.

Abdulle Rage Darawish Taraweh

ANALYSIS: MEET MR.VALCOURT

Since taking office as Minister of Employment and Immigration, Bernard Valcourt has distinguished himself by remaining silent on virtually every issue within his mandate, including ensuring that Canada lives up to its international obligations toward refugees. He has turned down several invitations to meet with refugee support organizations. Questions are now arising about what this silence means. Is Mr. Valcourt a weak minister, who's really not able to manage his portfolio? Or worse, is he hostile to refugees?



To date, we have heard three major pronouncements from Mr. Valcourt's office concerning the backlog clearance programme, the global refugee situation, and Canada's immigration levels for 1992. In all three cases, a sense of Mr. Valcourt's personal feeling on the refugee issue has been noticeably absent. Indeed he seems to have gone out of his way to avoid personal attention on these issues. Rarely has he been seen on television. Nor have there been the televised scrums with journalists outside the House of Commons so familiar when the former Minister, Barbara McDougal, spoke in the House on refugee matters. Is this the new minister's personal style or has the government decided to lower the profile of immigration and refugee matters?

To gauge the direction of refugee policy under Mr. Valcourt, we must rely on the substance of what is coming out of his office. In this respect the outlook is not good. The Minister was obliged to report to Parliament by September 21 on the backlog clearance program. On that day Mr. Valcourt rose in the House and read a brief statement reiterating the old line about fairness and abusers, and he avoided questions about the justice of keeping people waiting years to have their claim determined.

At the Executive Committee meeting of the United Nations High Commission for Refugees, held in Geneva in October, Canada's address raised many eyebrows for its consistently hardhanded approach to the refugee question. Press reports picked up on the part of Canada's speech that rejected developing nations' efforts to expand the Convention refugee definition and thereby gain greater refugee aid from the international community. Canada said such efforts should be "forcefully resisted." Again, with the Minister no where in sight, there was little for the media to follow-up on.

Most recently, Mr. Valcourt announced the immigration levels for 1992, which contained more bad news on the refugee front. Gone is the promise that private sponsorships will have no ceiling. Also gone is the promise that overseas selection will not be tied to the inland acceptance rate. In his address to Parliament, Mr. Valcourt highlighted management of the system, the threat of immigration to Canadian society, his new efforts to attract economic immigrants, and integration strategies. There was only passing reference to "assist the world's refugee." Media attention focused on impending cuts to family-class applicants. Mr. Valcourt was quoted saying the new definition will more "effectively capture the concept of family as it is generally understood in Canada". Again, however, there were virtually no public appearances by the Minister to accompany these policy announcements.

Mr. Valcourt's virtual silence and inaccessibility as Minister is playing havoc with the Vigil Network. Because the former Minister, Barbara McDougal, was clearly interested in the human rights side of the immigration portfolio, she was willing - in her own tough-minded way - to consider Vigil submissions on behalf of rejected cases. Mr. Valcourt has thus far demonstrated no such interest in human rights, hence Vigil has had to go to extraordinary lengths in some cases simply to get the Minister's attention.

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Mr. Valcourt will have to act quickly to recover some credibility as defender of Canada's human rights policy toward refugees. Otherwise, his weak understanding and performance on refugee matters to date will continue to generate embarrassing news for the government, leaving the impression that the immigration bureaucracy is running refugee policy without a leader.

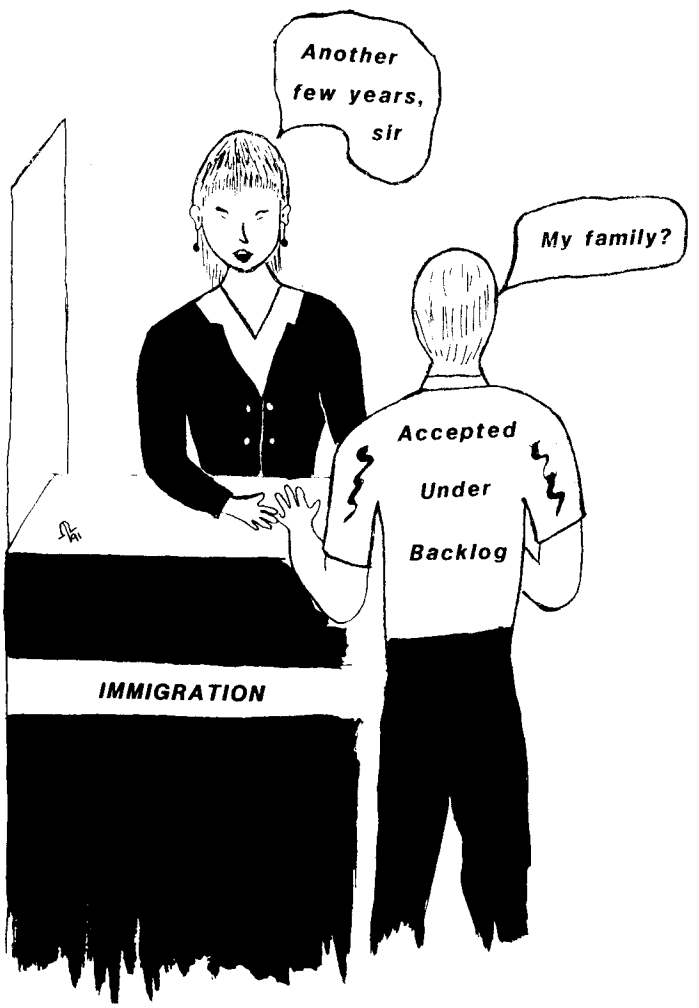
THE BACKLOG AND THE FAMILY

One year to the day (October 22nd) after presenting to the United Nations Human Rights Committee its study on the social and psychological effects of the backlog, the Inter-Church Committee for Refugees (ICCR) and a coalition of other refugee support groups and churches called on the government to end the backlog refugee clearance system.

Announced in December 1988 by then Minister of Immigration Barbara McDougall, the backlog clearance system was supposed to take only two years to clear up the cases of refugee claims made before January 1, 1989. On October 4th, Minister of Immigration Bernard Valcourt announced that with the exception of Quebec and Ontario the backlog would be cleared up by the end of November 1991.

At first blush, the Minister's announcement is good news. A closer examination of the statistics, however, reveals that the backlog is far from over. First of all, outside of Ontario and Quebec the caseload represented only about 5% of the total number of backlog cases.

In fact, the system will take up to another thirteen months to reach a final disposition for the majority of cases. As of the end of August, the last date for which there were complete statistics, decisions had been reached for 58,366 cases (61% of total caseload). Of the decided cases, 38,151 were accepted, 6,886 were rejected, 9,277 were abandoned with people agreeing to leave Canada voluntarily, and 4,052 disappeared.



However, to have a case decided does not mean that it has been finally resolved. With respect to the accepted cases (38,151) less than half have been finalized, that is, either received landing or a Minister's Permit. In other words, after more than two years operation, the backlog clearance system has managed to provide a permanent solution for people with valid refugee claims in less than 20% of the cases.

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In the October 22nd press conference, the coalition of groups once more urged the government to end the backlog and to move quickly to reunite people with their family. The end to this tragedy that is the backlog will not be over until families are reunited.

In order for family reunification to take place, though, people have to be landed. In effect, then, those who are far along in the process, namely have had their cases accepted, are facing up to a further two year delay until they are landed. It is only then that they will be able to apply to have their family members brought to Canada. This is the situation in more than half of the decided cases.

And of course those who have not had decisions on their cases (39% of the backlog), some of whom have a further five to thirteen months before having their cases decided, are facing a still longer delay before they can begin the process of being reunited with their families.

It is conceivable that some people in the backlog, by the time they are see their family, will have been separated for close to ten years. Given this, the coalition has formed to say to the government and the Canadian people: "Enough is enough!" In launching this appeal, the coalition is demanding that the government of Canada abide by its international obligations and end the cruel treatment of these people and their families. A conservative estimate puts at 100,000 those affected by the backlog: the claimants and their family members.

The entire backlog system was recently called

into question with the ruling of an Immigration adjudicator, in Montreal, that it was unconstitutional under the Charter of Rights and Freedoms. Ms. Susan Lavender ruled in the case of a Caribbean couple that the delays involved in the backlog violated their rights undersection 7 of the Charter, and that the only just remedy is to find their claim to be credible. The federal government has indicated that it will appeal this decision.

The family-focused campaign against the backlog represents another attempt to persuade the Canadian government and public that it is time to end this unfair treatment of people. In focusing on the suffering of families, refugee support groups hope to bring pressure to bear on the ethics of in the entire system: it is unconscionable to destroy families out of some bureaucratic interest in preserving the integrity of Canada's borders. Much less is it worthy of Canada, a nation which professes to respect human rights, to use a bureaucratic system to abuse and punish people who come here seeking refuge.

VOICES FROM THE BACKLOG

In what appears below, a refugee woman and a single mother, describes a revealing experience with an immigration interviewer.

She asked where my husband was. She said, "He's gone to get another wife and make more kids. The Canadian government can't go on paying for you and your son. Your husband should be here to work and support you."

This whole time I was crying, and my son that was with me was crying as well. She kept on saying that crying wouldn't do me any good and that I should instead go and find a job. Later another woman walked into the room, and started repeating what the interviewer had said.

She said "Do you realize the money that you are getting is our tax money? It shouldn't be this way." I was told that even though I had my refugee status, I could still be sent back to my country. She said things like, "You've been taking advantage of the Canadian government. You're just using our tax money."

Later on, the interviewer said that she was going to give me a form that I had to fill out then and there. I said that I wasn't in any emotional state to be able to do that.

She got angry and said, "You will do whatever we tell you, you have to obey us and our laws, and we won't let you leave this room until you have filled out this form." To which I responded "What is this place? A prison?" She said, "No. It's Immigration and there are laws."

She went on to say, "I am the best and nicest employee here and if you were dealing with someone else they might handcuff you and not let you leave this place." Then over and over again she stressed that I had to obey the laws and that I had no rights. She paid no attention to the fact that my son was tired and hungry and that he was trying to force his way out of the room. Many times she said, "Today you have already taken up three hours of my time."

GUEST'S COLUMN

WHEN LAWYERS ARE PART OF THE PROBLEM

by Sr. Mary Jo Leddy

"All those guys on the Refugee Appeals Board are a bunch of illiterate pigs." So I was told by a refugee lawyer as we sat in his Fort Erie office.

He had just finished taking notes for the Personal Information Form (PIF) of a 17 year old Ethiopian girl I had accompanied to his office. Having registered his low opinion of the refugee judges, he proceeded to ask the young girl to sign a blank Personal Information Form. "Trust me," he said, "It's faster and easier this way. I do it all the time. I'll get it typed up and send it to Immigration."

The next time he intended to see this young girl was twenty minutes before her hearing.

Needless to say, I told the girl not to sign a blank form and asked that the typed version of her story be sent to her so she could review it before signing.

She was lucky. I have since learned that other refugees who had been assigned to this law firm did indeed sign a blank P.I.F. - with near disastrous consequences for them. In one of the most serious instances, the acronym of a woman's political affiliation was changed. Instead of belonging to a persecuted party, she was listed as a supporter of the party presently in power. Anyone reading her PIF could well wonder why she needed to stay in Canada.

The lawyer's invective against the refugee judges rings hollow when I consider the negligence which seems to have become acceptable practice in this particular law firm. In the months which followed my initial experience with this law firm, I have been appalled by the increasing evidence of this negligence.

In one case, the lawyer spent only about an hour preparing the Personal Information Form. When you consider that half of this time is spent in translation, then this is very little time at all. Indeed, it is barely enough time to compile what they call "the tombstone data" i.e. the basic information. It takes most welfare workers 45 minutes just to compile the "tombstone data" during a basic intake. The next time this lawyer planned on seeing this refugee was twenty minutes prior to the hearing.

This briefest of preparations seemed irresponsible -- especially since the lawyer did not seem to have any clear grasp of the complexities of the politics of the refugee's country.

In another case, the lawyer docketed almost ten hours of interview time when he had only spent an hour with the refugee. Two witnesses have testified to this fact.

Fortunately, most of these refugees were Eritreans and their expedited hearings were all, as a matter of policy changed to full hearings. This gave us some time to find new lawyers for each of them. This was not difficult to do as the refugee action network is a valuable resource of information about the integrity and competence of lawyers. I have been impressed by the efforts of these new lawyers. They have spent hours redoing the original PIF and have sought additional documentation, medical opinions etc. Still, the fact remains that the burden of proof is now on the refugees to prove that they were not lying.

About a month ago, I was waiting in a hallway

with a refugee and his new lawyer, for a hearing to begin. One member of the board had just reviewed the two PIFs -- each with a rather different story. The member commented to the other member of the Board "Oh these Eritreans are all changing their story now and blaming it on the lawyers." The burden of proof is heavy.

It may be that hundreds of refugee claims has been jeopardized by the negligence of these lawyers. The implications are so serious that I felt it was imperative to lodge a complaint with the legal aid office in Niagara. Other lawyers have also advised me to lodge a complaint with the Ontario Law Society. My hope is that a serious investigation will do justice to the refugees and to the lawyers as well.

As I have reflected on this situation, I have wondered whether those of us who are refugee "activists" have been somewhat negligent ourselves in dealing with the issue of legal responsibility. Most of us are so aware of inadequacies of the current refugee policy and procedures that we focus most of our energies on the government and/or the Immigration and Refugee Board. We are also in touch with committed and competent lawyers who share those concerns. This may mean that we are more apt to blame the government for a botched refugee claim than to criticize the lawyers involved. Indeed it may be that some lawyers are shielding themselves from criticism by keeping the focus of attention on the inadequacies of the government.

My experience leads me to believe that refugees are subject to injustices from many directions. At least some of our energy must go into ensuring adequate legal advice for these people. I know that many refugee advocates complain about lawyers -- but how often do we really take the complaint where it counts? Much to my surprise, I learned that the legal aid office in Welland has received very few complaints about lawyers.

I have wondered why certain lawyers are or become so negligent when so much is at stake in people's lives. When I presented the official complaint about a particular legal firm to the legal aid office in Welland, I was told that the lawyers in question were good men who seemed to be very caring as far as refugees were concerned.

There was an effort to understand what had contributed to such apparent negligence: Was it overwork? Burnout? Was the burden of work in Fort Erie simply too much given the relatively small recompense? Was it incompetent clerical help? Had they become cynical? Had they crossed some line and were now acting unconsciously as judges as to who had a legitimate refugee claim? Did they judge that the claim of someone who was listed as a "housekeeper" was not worthy of their time and attention? Or had greed simply taken over the professional ethics of these two lawyers. When is negligence a personal responsibility and when is it a reflection of a systemic fault?

Perhaps we will learn the answers to some of these questions in the weeks ahead. There may be other, more helpful and incisive, questions that I am not yet aware of. What I do know is that these questions are important.

QUESTIONNAIRED

"Tell me again - the name of your wife,
her age both now and when you were married,
children - alive, dead or miscarried,
the name of her father and your mother,
everyone's sister and anyone's brother;

What did you say was the name of your wife?
Is she the second or was she the first?
Did she speak what had been rehearsed?

Income tax - how many dependants?
We'll have to make a few amendments
to previous statements now denied....
Did you declare what you couldn't hide?

By the way, what's the name of your wife?

Is this your present or previous life?

* * *

"Sir, I have told you, I tell you once more-
I still have the one wife I had before.
It's not a question of reincarnation.
Simply a matter of immigration.
Dream or nightmare, this is my life
as I mouth
the sounds
of the name
of my wife."

Tessa Steven

INTEGRITY AND THE REFUGEE DETERMINATION SYSTEM

In its 1990 Annual Report, the Immigration and Refugee Board (IRB) wrote, "The key to the success of the refugee determination system is sending clear signals to the international community that Canada will not tolerate abuses of the system. These signals can only be sent by expeditious removals of those claimants who are not found to be refugees and who are not entitled to remain in the country for humanitarian and compassionate reasons."

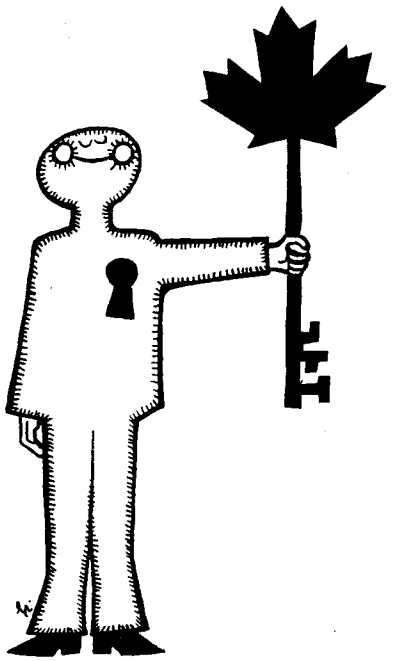
Expeditious removals -- as the IRB puts it -- are key to the system. The integrity of the system! But what integrity is there in a system that, because of expeditious removals, sends a person back to a country caught in the grip of widespread violence and repression? A country in which the state is unable and unwilling to protect its citizens?

Until February 1987, Canada maintained a list of countries -- known as the B-1 list -- to which it refused to deport people. These nineteen countries -- such as El Salvador, Guatemala, Sri Lanka, Iran -- were all places where the level of repression and violence was such that there was a strong likelihood that people deported there would be arrested, tortured or killed. People who made refugee claims, but were unsuccessful, were nevertheless granted a Minister's Permit and allowed to stay in Canada.

The B-1 list was maintained on the basis of a humanitarian consideration of the objective conditions in the countries on the list. This list symbolized Canada's willingness to abide by the international consensus that it is unconscionable to deport civilians to a country in the midst of war, or where any semblance of state protection of fundamental human rights has broken down.

Since the abolition of the B-1 list, the only recourse available to unsuccessful refugee claimants is an appeal directly to the Minister, requesting a Minister's Permit. While there is a final humanitarian and compassionate review of the case before deportation, that system has been decentralized and is breaking down as those administering it are unable to keep up with the changing conditions in countries from which claimants come. In short, unlike the B-1 list, the current system is very discretionary and under pressure to get unsuccessful claimants out of the country in order to deter potential new arrivals.

At the same time that it has foresworn its obligation not to deport people back to dangerous situations, and when its humanitarian and compassionate review system before deportations is being gutted, the Canadian government is also trying to define who is a



refugee in the narrowest possible terms, thus ignoring the changing conditions producing massive flows of people. The most recent public display of this tendency was in Canada's statement to the Executive Committee of the UNHCR, in the middle of October.

In deed and discourse Canada seems to be moving away from exercising any hint of compassion, much less a clear sighted appreciation of country conditions from which people are fleeing, lest that encourage more refugee claimants to come.

The B-1 list was a temporary safe haven program. It was a safety valve, designed to recognize, Canada's humanitarian obligations under international law and custom. It was also designed to deal with the cases that did not fit neatly into the framework established by the refugee Convention: if not everyone was a refugee, still there were some countries to which, by agreement in advance, Canada should not return people. With the abolition of the B-1 list, Canada lost that flexibility, which allowed the government to safeguard the integrity of its refugee determination system, the protection of people fleeing violence.

Judging from recent statements and practices of the Canadian government, the trend is to deal more harshly with those who manage to make it to our borders and claim refugee status. In the end, one wonders what integrity the government is trying to protect.

IMMIGRATION AND REFUGEE LEVELS FOR 1992

Those familiar with refugee and immigration policy issues will know that, among other things, it is often a game of numbers. True, the numbers are more than numbers -- they represent flesh and blood people with names and families. The statistics, though, are significant, for they reveal priorities and trends.

On November 1st, the federal government let Canadians know its priorities for the coming year when the Minister of Immigration, Mr. Valcourt, made his annual report to Parliament. The report outlines the immigration quotas for 1992, and also gives the first official update of the numbers for 1991.

Last year's report to Parliament introduced a five year immigration plan. The first year, 1991, was to see the level of immigration landings rise to 220,000. In his report on November 1st, Bernard Valcourt indicated that the government anticipates landings in the order of 215,000. The shortfall is accounted for principally in two areas: business immigration, down by 9,500; and refugee landings, down overall (taking into account government and private sponsorships and claimants) by 13,000. Overshooting their targets were family class immigration (by 11,000), independent immigration (by 4,000), and assisted relatives (by 3,500).

1991: What's Happened

In explaining the shortfall in refugees landed this year, Mr. Valcourt cited a number of reasons, among them a lack of referrals from the UNHCR in Africa. Canada had reserved 1,750 places for Africa in 1991, while in the same year the UNHCR identified 7,000 African cases in need of resettlement. Mr. Valcourt also identified the improved situation in Eastern Europe as a reason for the decline in government sponsored refugees; yet, the government had already anticipated this, reducing the number of allocations in 1991 for Eastern Europeans to 550, hardly a large enough number to account for the overall shortfall of 5,500 government sponsored refugees.

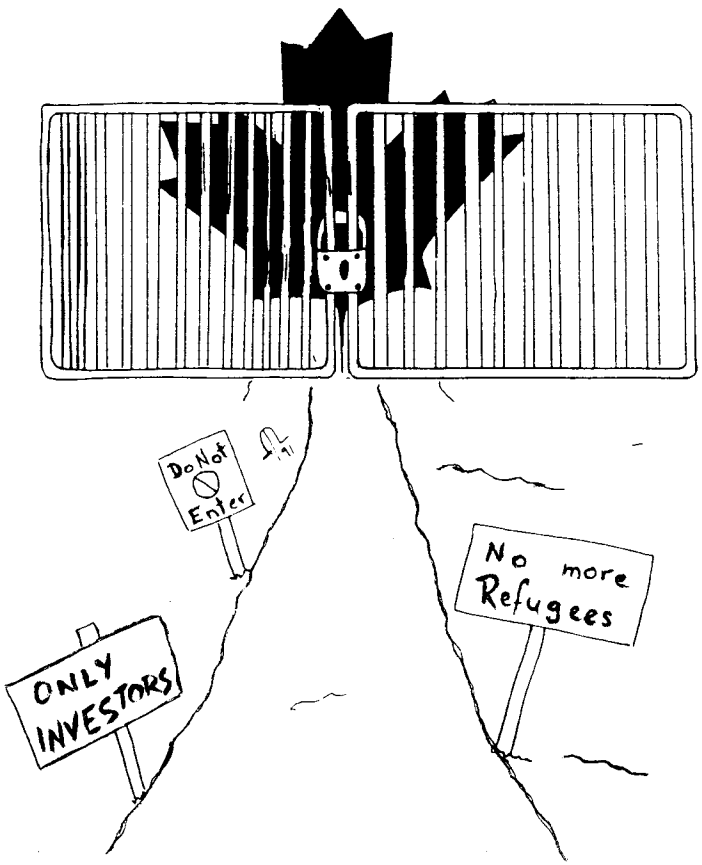
Speculation has it that the real reason for the gap between projected and actual refugee landings in 1991 is due to the backlog. In preparing its projections for 1991, which represent a quota the government says it will not exceed, there was no provision for landing people emerging from the backlog clearance programme. In 1990, the government landed 4,462 people from the backlog. This figure pretty much makes up the difference between the 1991 quota (220,000) and the current estimates from all other sources of 215,000. In other words, add in about 5,000 people from the backlog, and Canada will achieve its quota for 1991. That number represents almost the entire shortfall of government sponsored refugees.

1992: What's Coming

Comparing the recently released levels for 1992 to the projections announced a year ago when the five year plan was unveiled, only the category of refugees has been cut back. Private sponsorships will drop to 17,000 from the projected 20,000 announced last year. Landings of people accepted by the IRB will be cut back to 20,000 from the original level of 25,000. In total, the government is planning 8,000 fewer refugee landings than it had planned to make in 1992.

And, as in 1991, the government sponsored levels are not guaranteed. Mr. Valcourt, in his report, warns that the "target of 13,000 is expected to be met only if situations develop in which third country resettlement of significant persons is required."

The loss of landing places for refugees accepted under the refugee determination system is very serious. From January 1, 1989 until June 30, 1991 the Immigration and Refugee Board (IRB) had granted refugee status in 26,889 cases. All of the people involved are eligible for landing. If the second half of 1991 accepts as many cases as the first half, that total



will reach 38,000 by December 31, 1991. In that same period of time (January 1989 through December 1991), only 12,000 of these cases will have been landed: 1,558 in 1989, 3,575 in 1990, and an estimated 7,000 for 1991.

As 1992 begins, then, as many as 26,000 cases will be left to receive permanent residence. By cutting 5,000 landings from the levels plan for 1992 (from 25,000 to 20,000), there will still be 6,000 people waiting for landing at the beginning of 1993, not to mention those who will be accepted as refugees in the course of 1992.

Add to this delay the fact that already it takes over a year to become a permanent resident and therefore eligible to sponsor one's family, a process which itself can take more than two years, and once more refugees are facing many years separation from their families, with some families of refugees currently in Canada having to wait until 1995 for reunification.

In immigration and refugee work, the numbers tell a story. In Canada, the story continues to be one of declining compassion toward those seeking protection, ongoing heartbreak because of family separation, and the tragic prospect of refugees competing with each other for a fixed and diminishing number of spots in Canada.

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Vigil Report

The response to urgent actions remains high. The main Vigil cases have been the Estrada case from Montreal and the two Iranian cases from Toronto.

On June 20, 1991, in a well-publicized case, a Salvadoran trade unionist, his wife and two young children were deported back to El Salvador , despite last-minute appeals from numerous human-rights and church groups. The family had met their lawyer only an hour before the hearing. As a result, there were major inconsistencies in their story. As well, testimony concerning the wife being stabbed by para military forces was not called at the hearing. Had there been an appeal mechanism, their case would not have been turned down. After the deportation, the family was not heard from for over two months. Although the case generated a great deal of media attention, the logistics of bringing them back have been formidable. Efforts are still continuing.

An Iranian family, whose case was rejected as not credible, was to be deported back to Iran on October 16, 1991. The Refugee Board members ruled that the 35 lashes which the woman had received for not wearing the veil, and which hospitalized her, were "not exceedingly harsh". After the hearing, there was new evidence supporting the family's claim, but it could not be entered into the record because there is no meaningful appeal mechanism in the system. Finally, following media and public attention raised by Vigil Toronto and the Iranian Community Association of Ontario, the Minister decided to review the case and they were granted refugee status.

In a second Iranian case, the Refugee Board rejected the credibility of an Iranian youth imprisoned and tortured in the early 1980s following his involvement in an opposition political party. Medical evidence of torture from cigarette burns to both hands was dismissed; instead a panel member asked if the man had smoked. Evidence that became available following the hearing again could not be entered due to the lack of an appeal mechanism. At the time of writing of this article the man was still in detention in Toronto.

These cases underline the need for a meaningful appeal mechanism in the system. If Mr. Valcourt wishes to protect the system's integrity, then he needs to understand that an appeal is absolutely required.