REFUGEE UPDATE

ISSUE NO. 39 A JOINT PROJECT OF FCJ HAMILTON HOUSE REFUGEE PROJECT AND THE CANADIAN COUNCIL FOR REFUGEES SPRING 2000

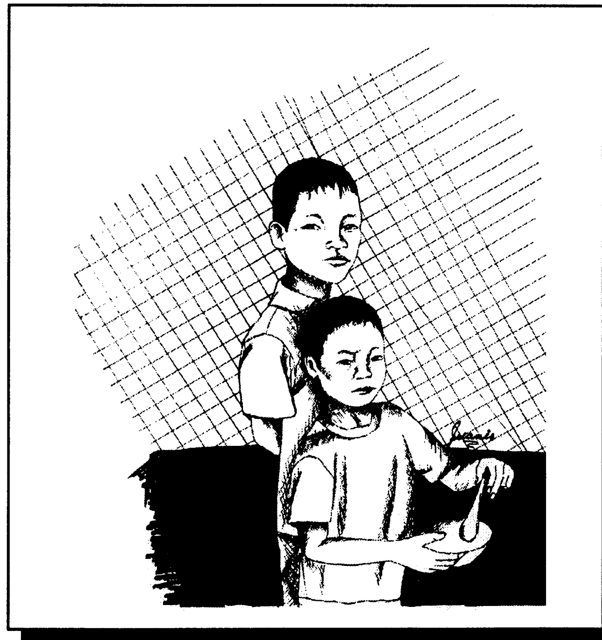
INSIDE:

COLUMBIAN REFUGEE LEVELS PAGE 4
LA NOUVELLE PROCÉDURE À MONTREAL PAGE 5
STANDING COMMITTEE PAGE 8
GLOBAL PREVENTION OF TORTURE PAGE 12
PROMISES TO KEEP PAGE 15

CANADA'S RESPONSE TO THE MARINE ARRIVALS FROM CHINA'S FUJIAN

BY PETER J. STOCKHOLDER

Over the course of last summer four ships arrived off the coast of British Columbia. The ships were carrying people from the Fujian province of China who were fleeing China and hoping to go either to the United States or Canada. It was widely reported that they were being smuggled by organized criminals who intended to use the migrants for various types of indentured servitude. The evidence also showed that the passengers had paid, or promised to pay, large amounts of money for their passage. The ships arrived on Canadian shores on July 20, August 11, August 31 and September 9, and together they contained a total of 599 passengers.



[illegible]9 of the passengers made refugee claims that were referred to the Convention Refugee Determination Division (the CRDD) of the Immigration and Refugee Board. To date there have been 251 decisions determining claimants not to be Convention refugees and six decisions determining claimants to be Convention refugees. The remainder of the people are either waiting for a hearing or a decision, have had their cases declared abandoned or have withdrawn their cases. The ratio of positive decisions to negative ones (241:6) is in contrast to the national ratio for Convention refugee claims from China last year (592:422). The 1999 ratio for Vancouver was 154:56.

The Convention refugee claims were based on a broad range of issues which ranged from simply

being afraid to return to China due to the penalties for having left illegally, to fear of persecution based on religion, political opinion or forced sterilization. The six claims that have been accepted to date were based on fear of persecution resulting from being an evangelical Christian, a Roman Catholic, a member of the Falun Gong, and the threat of forced sterilization

The arrival of these four ships caused an enormous amount of controversy. Accusations of "queue jumping" were made and there were calls for the immediate removal of these people without the benefit of a hearing to determine whether they are Convention refugees. Attacks on the Immigration and Refugee Board became commonplace and some started to demand that the legislation dealing with refugee determination be amended so as to make it easier to detain such people and to remove them without having a full hearing, or without any hearing at all. On the other side accusations of racism and unfair treatment were leveled against the authorities dealing with these passengers. The vehemence of much of the outcry surprised many who worked with refugees.

The effect of these arrivals having such a high profile, resulting from the manner in which these ships arrived, can be seen most evidently in the detention policy of Immigration in regard to the passengers.

It is interesting that there was such an outcry against these people, given the fact that the 549 people from these boats who were referred to the CRDD constitute less than 2% of the 29,396 people who's Convention refugee claims were referred to the CRDD in 1999. The effect of this negative press and the public concern appears evident in what transpired after the arrival of the ships and the differential treatment the passengers received.

Upon arrival the passengers were taken to a military base in Esquiamalt, British Columbia. There they were detained in a group. Armed personnel guarded them and military dogs patrolled the perimeter of the base. They were individually questioned by immigration officials and by the RCMP and legal counsel were not permitted to be present during these interviews. There were allegations of mistreatment of the detainees most of which was alleged to have been done by the RCMP, although the UNHCR representative who subsequently visited the base stated that she was satisfied with the treatment the detainees received.

The fact remains that many of these people were denied the right to counsel. The result of the interviews was that Immigration officials determined a large number of these people not to be eligible to make a Convention refugee claim despite the fact that people said that they feared being returned to China. Judicial Review proceedings in the Federal Court of Canada were commenced and the Department of Justice subsequently consented to the Judicial Reviews of fifty-seven of the cases. These cases have since been referred to the CRDD for a full hearing.

The effect of these arrivals having such a high profile, resulting from the manner in which these ships arrived, can be seen most evidently in the detention policy of Immigration in regard to the passengers. The passengers of the first ship were for the most part not detained. The vast majority of the passengers on the other three ships were detained, and continue to be kept in detention. Altogether there are now 388 people remaining in detention, the vast majority of whom have been there since their arrival last summer. To begin with, Immigration detained these people on the basis that their identity had not been established. After many of them began receiving identity documents they have been subsequently held on the allegation that they are unlikely to appear for removal. In order to establish that they were unlikely to appear, Immigration provided evidence that, in general, people from the Fujian

province of China have a greater likelihood of disappearing than do other groups.

The fact is, however, that Immigration has not, and continues not to, regularly detain Convention Refugee claimants from the Fujian province who arrive by other means, such as by plane. The argument that it is the manner in which these people arrived (in ships arranged by organized criminals) does not justify the detention, as a large proportion of Convention refugee claimants arrive in Canada with the assistance of a smuggler who may have such connections. In my view the real reason behind the detentions has more to do with the concern that by allowing people into Canada, and not detaining them, Canada is opening itself up for yet more people to come to Canada in this manner. This argument has some validity to it, given that many more ships have arrived in the United States and Australia. It seems reasonable, therefore, to assume that should it become easy for the smuggling groups operating in Fujian province to bring people into, or through, Canada, they will do so much more often. The problem is, of course, that in Canada we believe that jail should be a last resort, which is consistent with international standards regarding the detention of asylum seekers. It is not only an extreme breach of a person's liberty rights but it is also an expensive option. To detain people, not for what they have done, but in order to make an international point, is not in line with Canada's belief in the respect for individual rights.

It should be mentioned that to the credit of British Columbia the province did not allow the detention of the approximate 134 unaccompanied minors who arrived on the ships. The province instead appointed a guardian for them under the Family Relations Act. The children were then for the most part housed in group home settings where they have received education and are supervised by social workers. Relatively few of these children have left the facilities where they were staying and gone into hiding.

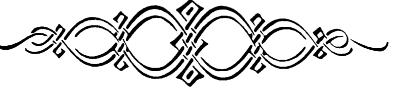
Worse than the decision to detain was the decision to detain the vast majority of the adults in Prince George, British Columbia. This location was worked out between the province and immigration due to a shortage of detention facilities in the lower mainland. Prince George is a northern city in British Columbia, which is isolated from both lawyers experienced in immigration law and from the non-governmental organizations that are experienced in giving support to refugee groups.

The remoteness of the location meant that there were no lawyers available to represent these people in their refugee claims. Refugee claimants' documents did not get processed, while different groups argued over who was responsible for the problem. The Legal Services Society took the position that they did not have enough money to deal with the problem at all, let alone to transport legal counsel to Prince George. They were also unable to find sufficient legal representation there. While Citizenship and Immigration finally assisted with the cost of getting some lawyers to Prince George, the Legal Services Society introduced a bidding process for lawyers to represent the claimants. Four lawyers were selected to represent all the claimants who were held in both Prince George and in Alouette, British Columbia. At the same time the CRDD gave priority processing to these claims based on the fact that the claimants were detained, thus speeding up the process for these claimants while slowing it down for Convention refugee claimants from other groups.

Canada has a checkered history of both being generous in accepting immigrant and refugee populations and of brutally denying them. How this incident will be viewed in the years to come is unclear. If more ships arrive on Canadian shores it is clear that Canada will have to develop a strategy for both efficiently handling the increased flow of refugee claimants but also for maintaining a humanitarian response. It must not be forgotten that China is, in fact, a country that is renowned for its dismal abuse of human rights. In order to arrive at a balanced response to the problem it is important not to have knee-jerk

reactions, such as changing the *Immigration Act* to facilitate easier detention or introducing other draconian measures designed to deny access to the refugee system. What is necessary is working with the current legislation to create a system to process the claims that is efficient while maintaining fairness. One thing that is certain, however, is that shipping such claimants to unnecessarily remote prisons such as in Prince George will not help to achieve the proper balance between fairness and efficiency.

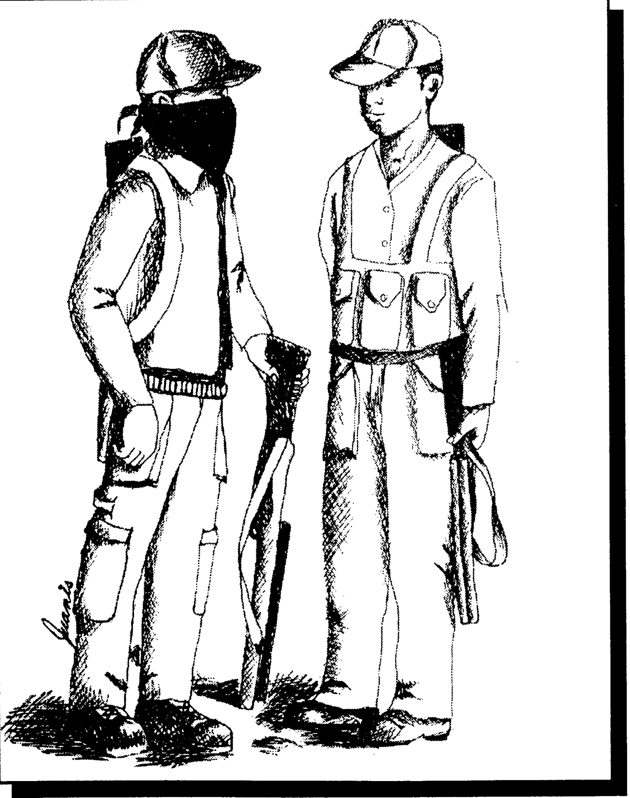
Peter J. Stockholder is a lawyer with Larson Boulton Sohn Stockholder in British Columbia



COLOMBIAN REFUGEE LEVELS - STILL FAR TOO LOW

BY KEN LUCKHARDT

Despite the positive move by the Department of Citizenship and Immigration in1998 to designate Colombia as a "source country", thus allowing Colombian refugees to apply directly through the Canadian Embassy in Bogota, the quotas set then and now are grossly inadequate in relation to the level of violence that continues to characterize that country.



The initial 100 spaces for government-sponsored refugees in 1999 reflected a less than serious response on the part of Ottawa to the greatest human rights tragedy in our hemisphere. With over 30,000 politically-motivated murders in the last decade, with over 1.5 million internally displaced persons, and with Colombian trade unionists accounting for approximately four out of every five unionists killed worldwide in 1998, it was predictable that the 100 spaces would be filled in no time and that the level itself was woefully inadequate.

The level for the year 2000 has been raised to 450 spaces, but again human rights and labour organizations consider this threshold to be far short of what is required to deal with the escalating violence, primarily caused by Colombian state agents and their paramilitary allies.

In briefs presented to the Standing Committee on Foreign Affairs and International Trade (SCFAIT) hearings on Colombia on December 2, 1999, the Inter-Church Committee on Human Rights in Latin America (ICCHRLA) and the Canadian Labour Congress (CLC) appealed for Colombian refugee levels that adequately reflect the crisis faced by Colombian human rights defenders, trade unionists and citizens generally.

ICCHRLA recommended that "allocations for government-sponsored refugees from Colombia be increased even further with augmented resources designated for the consular section of the Embassy in Bogota." Calls for speeding up the processing of medical assessments and a more liberal use of Ministers Permits in emergency situations were also part of the recommendation.

As the U.S. government is determined to intensify the "dirty war" through a massive injection of military aid (all done, of course, under the guise of fighting the "drug trade"), Canadians with a priority for social justice will be well advised to be prepared to pressure Ottawa for significantly increased refugee spaces for Colombians who will inevitably be caught in the crossfire.

Ken Luckhardt is chair of the Social Justice Committee of the Canadian Auto Workers.

❊❊❊❊❊❊❊❊❊❊

METTRE FIN À LA NOUVELLE PROCÉDURE À MONTREAL

PAR JEAN-FRANCOIS FISET

Jean Francois Fiset, President of Aqaadi, gives the concerns of Montreal lawyers with a new procedure for setting up refugee claim hearings before the IRB. Intended to reduce delays before a hearing, the new process is a "catastrophe" which is unjust and does not work. It threatens the right to lawyer of choice who may be expert in the particular country, and ignores the most practical instrument for speeding things up - the "expedited hearing".

Le novembre, la Commission de l'immigration et du statut des réfugiés a introduit à Montréal un nouveau méchanism de convocation et de mise au role pour les audiences des revendicateurs de statut de réfugié. Selon la direction, la novelle politique aurait comme objectif de réduire les délais de traitements des dossiers et de rendres le processus plus efficace. Mais le nouveau méchanism est un échec total - une catastraophe - selon l'Association québecoise des avocats et avocates en droit de l'immigration, Aqaadi. Dans une lettre du 18 janvier, envoyée à la Commission de l'immigration et du statut des réfugiés à Montréal, l'Aqaadi démontre qu'a plusieurs tours la nouvelle procédure est injuste et ne marche point. En effet, le nouveau système de mise au rôle bafoue le droit à avocat - le droit d'un revendicateur de choisir librement son rpocueur - et cela pour des impéritifs de raccourcir les délais de traitement. Elle a été rejetée par tous les advocat(e)s.

Par la nouvelle procédure, on doit suggérer des dates pour une audience à l'interieur d'une petite fenêtre de disponibilité. Cette procedure a pour effet de paralyser l'agenda des avocat(e)s afin de leur imposer un nombre de dossiers à l'interieur d'un délai restreint. Les membres de l'Aqaadi ont déploré l'absence de consultation préalable. Il n'y avait qu'une "séance d'information" quelques jours avant sa mise en vigueur.

On droit suggerer pas moins de six ou huit dates pour un nombre de dossiers à l'interieur de cette seule et même fenêtre de disponibilité. Cela est ingérable selon tous les advocat(e)s ayant une pratique moindrement importante. Plusieurs avocat(e)s plaident non seulement devant d'autres tribunaux, mais aussi, auprès de plus

d'un banc durant la même periode donnée. Puis, le greffe choisit une date d'audience et remets la feuille de convocation au revendicateur, sans toutefois confirmer avec l'advocat concerne. Cela ne respecte pas le droit a l'avocat(e). L'Aqaadi a été choqué d'apprendre que les employé(e)s de la Commission ont reçu des instructions et ont effectivement dit à des revendicateurs qu'un certain nombre d'advocat(e)s sont vu(e)s défavorablement par la Commission, etant donné "qu'ils ont un trop grand nombre de dossiers" et qu'on leur suggère fortement de prendre un(e) avocat(e) moins occupé(e). Mais ceux et celles peuvent être des avocat(e)s spécialist(e)s sur la situation en un pays spécifique. En plus, l'Aqaadi a appris que des interprètes ont profité de cette nouvelle procédure de convocation (7) sept jours, pour faire des pressions sur des revendicateurs afin que ces derniers changent d'advocat(e) en donnant une carte d'affaire en faveur d'un autre avocat(e) avec lequel ces interprètes travaillent à la pige, le tout dans les locaux de la Commission et cela en presence des employé(e)s régulier(e)s.

Les avocat(e)s qui ont toujours collaboré avec la Commission se font aujourd'hui dire par les employé(e)s de la Commission que s'ils ne donnent pas de dates dans la fenêtre suggérée, cela veut dire "qu'ils refusent de collaborer". Alors, jusqu'ici ils ont collaboré de mille et une manières - mise au rôle, collecte de preuve, ajournement, conduite en salle, conférence préparatoire, comité de liaison, comité consultatif, etc.

Cette nouvelle procédure va créer un nouvel arrièrage (back log) car les nouveaux dossiers reçoivent une date d'audition en priorité sur les plus anciens. En même temps, le processus accéléré est de toute fin pratique une "coquille vide" qui ne sélectionne plus, ou à peu près pas de dossiers. Étrangement, le nouveau processus de mise au rôle est "tellement rapide et efficace" que dans les faits, les dossiers qui devraient être envoyés au processus accéléré sont envoyés au fond pour audition. Curiusement, à chaque rencontre, et cela depuis plusieurs mois, la Commssion nous promet un processus accéléré renforcé et amélioré.

Par conséquence, l'Aqaadi demande fortement à la direction nationale et régionale de la Commission de retirer sa nouvelle procédure et de rétablir la procédure qui existait avant ces changements injustes, inéficaces et offensifs.

Jean-Francois Fiset est le Président de l'AQAADI

CANADIAN COUNCIL FOR REFUGEES
SPRING CONSULTATION

VANCOUVER 1 - 3 JUNE 2000

GLOBAL MIGRATION: BRIDGING PRACTICE, POLICY AND RESEARCH
LEARNING FROM THE PAST, PLANNING FOR THE FUTURE

This conference will bring together 300-350 people (refugees and immigrants, representatives of NGOs, government, UNHCR, academics and others) from across Canada and beyond. This is a key opportunity for information-exchange, networking, strategy development and consultation.

For further information call the CCR office: (514) 277-72223 or ccr@web.net

CCR-CLC REFUGEE WORKSHOPS

KEN LUCKHART

What do organized labour and refugee advocacy groups have in common? This is the central question that has led the Canadian Labour Congress(CLC) and the Canadian Council for Refugees(CCR) to hold joint forums throughout the country in 1999 and 2000.

The answer to the question is obvious: workers' rights and refugee rights are two aspects of the same struggle for social justice in Canada and throughout the world. The overwhelming majority of refugees are from working class backgrounds, and they most commonly became refugees for advancing the collective interests of workers and civil society in their own country. When they seek refuge in Canada, it is crucial that they receive unqualified solidarity from organized labour in this country.

Such solidarity however is not automatic. Unless Canadian workers are exposed to a progressive analysis that identifies their common interests with refugees (and refugee claimants), they all too often fall prey to the anti-refugee ideology that is everyday fare in the corporate media and promoted by reactionary, right-wing political organizations such as the Reform Party.

The CCR and the CLC have decided to combine forces and resources to ensure that trade union activists play their proper role in challenging increasingly mean-spirited immigration and refugee policy and offering humanitarian support to refugees who have sought protection in Canada.

The first regional workshops were held in Windsor and Brampton Ontario last November and December. In early February of this year, a very productive workshop in Halifax led to the formation of a 10-person committee from union and CCR community activists that will move forward on the issue of refugee sponsorship in the future.

Leo Cheverie, President of the PEI Federation of Labour, put out the challenge at the Halifax meeting: "If students can sponsor refugees across the country with the small contributions made through campus student unions, trade unions can do as much or more by using the strength of our membership in our union affiliates."

David Fairfax, Worker of Colour representative on the CLC Council, added: "As trade unionists, we need to reinforce the fact that unions have a fundamental responsibility to help shape a progressive refugee and immigration policy."

Upcoming CLC-CCR workshops will be held in Brandon and Winnipeg, Manitoba (March 18-9) and once again in Brampton, Ontario (March 25). Additional workshops for Vancouver and Toronto will be scheduled during the month of April.

The Canadian Auto Workers (CAW) Social Justice Fund has provided financial support for the CLC-CCR joint initiative.

Ken Luckhardt is director of the Social Justice Fund of the Canadian Auto Workers.

❄❄❄❄❄❄❄❄❄❄❄

COMMENTS ON THE REPORT OF THE STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION

Refugee Protection and Border Security: Striking a Balance, March 2000

BY JANET DENCH

The Canadian Council for Refugees is pleased to note that the committee has used a different title for its report than the title of its study. In its submission to the Standing Committee the CCR raised serious concerns about the title "Refugee Determination System and Illegal Immigration", emphasizing the dangers of associating these two issues in this way. The Committee has helpfully clarified in its report that it is "wholly unwarranted" to label all individuals arriving as migrants and claiming refugee status "illegal". The Committee, rightly in our view, notes that "the flight to freedom is often fraught with peril, speed and the necessity to use whatever means are available to reach safety".

We also welcome the commitment to refugee protection expressed by the Committee. A number of the recommendations give concrete form to this commitment, notably in calling for an appeal mechanism and in insisting on the need for the highest possible quality of decision-makers in the refugee determination system. In the view of the Canadian Council for Refugees, the lack of appeal on the merits and the absence of a mechanism to ensure the competence of all board members are the two fundamental weaknesses in Canada's refugee determination system, weaknesses that lead to errors that go uncorrected. Uncorrected errors in refugee determination result in the *refoulement* of refugees to persecution. Remedying these two weaknesses, as recommended by the Committee, will go a long way to ensuring that Canada meets its international responsibilities to protect refugees.

The CCR also supports the Committee's recommendation (Number 22) that the Refugee Division strive to increase the percentage of claims handled though the expedited process.

Some of the other recommendations of the Committee are not however consistent with the commitment to refugee protection and would in fact, if implemented, put refugees at risk. In particular, we are concerned about the following recommendations.

Increased use of detention (Rec. 1-3) against refugee claimants and persons who have been trafficked.

The CCR supports the guidelines of the UN High Commissioner for Refugees to the effect that "[t]he use of detention against asylum seekers is ... inherently undesirable."

There are additional reasons for not detaining persons who are suspected of being trafficked. Such people have been victimized by organizations seeking to profit from their enslavement. They need to be protected by the Canadian government, not further victimized. Canada is involved in a number of international initiatives aiming at combating trafficking in persons offering support and protection to the victims of trafficking. For example, Canada is a member of the Organization for Security and Cooperation in Europe, which in November 1999 proposed an Action Plan 2000 for activities to combat trafficking in human beings, calling on states, *interalia*, to "[d]evelop a national strategy to combat trafficking, including measures to prevent trafficking, prosecute offenders, and protect the rights of trafficked persons".

A policy of detaining trafficked persons is no way to "protect the rights of trafficked persons".Instead, the CCR would like to see the government working, in consultation with NGOs and others, to develop a

bring Canada into line with its international human rights obligations.

Rather than adding more barriers to access the system, the government should, in the view of the CCR, be removing the barriers that currently exist.

Referring intercepted passengers to the Canadian missions or the UNHCR (Rec. 32)
The CCR welcomes the Committee's acknowledgment that refugees fleeing persecution may be among the people interdicted at airports abroad. The consequences of the actions of Immigration Control Officers and the representatives of transportation companies can be extremely serious for refugees. Unfortunately, the recommendation of the Committee to refer intercepted passengers to the Canadian mission or to the UNHCR does not provide realistic protection for intercepted refugees, who are in many cases at risk of immediate *refoulement*.

Janet Dench is Executive Director of the Canadian Council for Refugees.

❄❄❄❄❄❄❄❄❄❄❄

REFUGEE WOMEN:
JOURNEYING TOWARDS HEALING
BY SUDHA COOMARASAMY

' Health is a dynamic process of physical, mental, emotional , social and spiritual well-being. Health is not possible without peace, shelter, education, food, income, a healthy and sustainable physical environment, social justice and equity. Health is a resource for everyday life, not the object of living.'

Men and women who are forced to seek refuge outside of their country are at risk of sustaining their well-being, even in the country of asylum. As refugees, we had to deal with the day-to-day uncertainty, fear , exposure to violence and the loss of control over our lives. Yet, in the safety of the country of asylum, we face other uncertainties, fears, violence and limited control over our lives. Even though refugee men and women face similar problems, women face some problems that are gender specific.

Areas of marginalization that are not gender specific include, language, economic and class barrier, racism and discrimination, and reluctance to engage in activism as a result of the refugee experience. In addition to these, refugee women face the following gender specific areas of marginalization: sexism within own ethno-specific community, socialization in context of patriarchy, visibility as "other" on the basis of adherence to dress code, which increases vulnerability of discrimination. As refugee women we also are called upon to play a dual, contradictory role. Women are expected to be the preservers of culture, the adults responsible to initiate, maintain the cultural practices. Yet, they are also expected to be the agents of change - preparing the younger generation in the process of adaptation to an alien culture.

I have often thought that the term "visible minority" is a misnomer. How can we be "visible" when we are rendered "Invisible" ?. How do we feel when we've been victimized?: frustrated, helpless, full of rage, powerless. Feeling victimized is harmful to our well-being. True, we have policies and guidelines that have attempted to acknowledge the diversity. When the onus is on the oppressed to seek justice, then the experience of being victimized is augmented. Multiculturalism merely states the obvious and does not call for change - it calls for increased "tolerance" and

national strategy as called for in the OSCE Action Plan.

The CCR also questions the Committee's position on what constitutes evidence that persons have been trafficked. Distinguishing between trafficked and smuggled persons on the ground is a challenge – one that has been little addressed either in Canada or internationally. The suggestion by the Committee that arrivals en masse are in themselves evidence of trafficking is questionable. There may very well be mass organized arrivals of smuggled persons. Similarly, trafficked persons may arrive singly or in small groups. The CCR therefore recommends against a simplistic equation between mass arrivals and trafficking.

With respect to the proposal that "refugee claimants who refuse to cooperate in establishing their identity be detained", the CCR notes that "cooperativeness" is a loose concept that lends itself to arbitrary and inconsistent application. The vulnerability of refugees and the cultural and linguistic barriers to communication would open the door to misunderstandings as well as potentially abusive intimidation of refugee claimants.

More detailed questioning of refugee claimants on arrival by immigration officials (Rec. 7-11)

The CCR does not believe that probing refugee claimants immediately after arrival about the basis for their refugee claim is helpful to the refugee determination process or sensitive and compassionate towards people who have fled persecution. Refugee determination, a complex and difficult task, is a matter within the competence of the Immigration and Refugee Board, not the officials of Citizenship and Immigration Canada. For similar reasons, the CCR agrees with the Committee's recommendation (no. 21) to consolidate risk-related decisions at the Refugee Division. Just as it makes sense not to duplicate the IRB's refugee determination expertise at the end of the process, so the respective competencies of each institution should be scrupulously observed from the start.

Limiting access to the refugee determination system (Rec. 13 - 18)

The international standards to which Canada has committed itself in the area of refugee protection are set out in the 1951 Convention relating to the Status of Refugees and other international instruments. The fundamental principle of the 1951 Convention is the principle of *non-refoulement*, i.e. the rule that Convention Refugees not be sent back to persecution.

Canada's refugee determination system needs to [illegible] designed with a view to ensuring that all Convention Refugees are recognized as such and granted protection from *refoulement*. The recommendations of the Standing Committee are unfortunately not consistent with this principle: they would create a system which fails to protect Convention Refugees, on the basis, for example, that they are repeat claimants, or that the claim was made more than 30 days after arrival in Canada. By setting up grounds for exclusion from refugee protection that are not in the Refugee Convention, Canada would be setting itself up to violate its obligations under that Convention.

There are many reasons why refugees needing protection may not make a refugee claim immediately on arrival or may make a second claim. Sometimes there are changes in country conditions or in the personal circumstances of the claimant. In other cases, claimants may not have known that they could make a claim or may not have spoken about relevant experiences: this is particularly the case wi[illegible] women who fear gender-related persecution, or who have been sexually assaulted. To ensure that Canada does not return refugees to persecution, these claimants must have access to the Immigration and Refugee Board, the body in Canada with the independence, the expertise and the mandate to determine who is at risk. (In the case of repeat claims, this would not necessarily have to entail full procedures in all cases, but a review by the IRB, as the competent body, is essential).

With respect to the implementation of the safe third country provision, the CCR has consistently expressed its serious reservations about this mechanism. Experiences in other regions have clearly shown that the safe third country rule works against refugee protection.

It is important to note that the Inter-American Commission on Human Rights, in its recently released *Report on the situation of human rights of asylum seekers within the Canadian refug[illegible] determination system*, raised concerns about the current limitations on access to the refugee determination system and recommended changes to

"understanding". The sense of always looking at one's self through the eyes of others creates the psychology of bicultural identity. It also erodes the sense of self. It is only in recent years that racism is beginning to be acknowledged as a risk factor in Mental Health. When discriminatory and racist practices are daily experiences for refugees, the impact this can have on one's sense of self is very significant. Moreover, when painful experiences keep recurring, the opportunity to heal is inhibited. Compared to men, women are more vulnerable to be at the receiving end of these discriminatory practices. For example, if you take three men - from Somalia, El Salvador and Sri Lanka, the chances are they may get by as newcomer men on the basis of their attire. Yet, if three women from Somalia, El Salvador and Sri Lanka walk into an office, they will be perceived as women from these countries based on their attire.

When people seek refuge in a country far away from home, the perception of the host country is that the decision to leave occurs overnight and one boards the plane and arrives in the country of asylum. Nothing can be farthest from the truth. Very often the decision to leave is the last resort. More people from conflict areas are displaced within their own country or region before some of them decide to leave, seeking safety in foreign lands. The decision to leave is a hard one. Some times the only way is through other countries before you arrive at the country of longterm/permanent resettlement. Therefore, many refugees who arrive in Canada have already spent months, years in other countries, detention centres and refugee camps.

What we do not talk about, cannot heal. Healing can happen through storytelling, exploring dreams and imagery. The essential part in this process is to be able to do it in a supportive and respectful environment. An environment where the experiences one is sharing are validated, respected and believed. I wish to point out here that environments where "your story" is put under the microscope to check for credibility and eligibility are neither supportive nor respectful.

Very often, over enthusiastic service providers advise and encourage refugee women to "forget", to "put it all behind", "start afresh" and "become Canadians". What they forget is that our past is very much part of our present and together past and present help us weave our future. On arrival in Canada, or after the allocated three year 'settlement' period, we cannot cease to be who we were. "We want people to see us not only as who we are now, but also who we were in our home countries" - a participant at 1988 Refugee Women Speak conference in Toronto.

The consequences of prolonged stress, lack of supports, lack of conducive environment to heal, and inappropriate services can be identified under four categories:

1. Psychosomatic problems: pains, headaches, nervousness, insomnia, nightmares, panic attacks, tremors, weakness, fainting, and sweating.
2. Behavioural and personality problems: withdrawal, irritability, loss of affectivity, suicidal thoughts, and lack of sexual drive.
3. Affective problems: crying easily, fear, anxiety and low self-esteem.
4. Mental function: confusion, disorientation, memory disturbance and loss of concentration, abusive relationships, socio-economic marginalization

Considering the complexity of the needs of refugee women and the reality that healing may take months, years, or even a lifetime, it is important to provide integrated services that address the needs of the whole person. For example, a meaningful range of services will address practical needs (housing, refugee determination process and employment), emotional needs (comfort and consolation, validation of experience, feelings ventilation and control), and psycho-social needs (build sense of community, develop sense of belonging, support re: discrimination, rebuild self-esteem and regain sense of dignity). Mental health services may include counselling, psychotherapy, group therapy, family therapy, relaxation techniques, physiotherapy, expressive therapy (art, drama, writing poetry, story-telling, singing, dancing, clay modelling, sculpting, etc.) Artistic expression of emotions and trauma can be cathartic for individuals and for community as a whole. I would like to point out that collective responsibility for individual and community well-being makes more sense to many refugee communities as opposed to the focus on individual needs and rights that drives the euro-centric approach to services. The sense of being invisible is further reinforced when the mainstream media does not report the ongoing war/strife in the home country and our only source of information is the ethno-specific media.

Sudharshana Coomarasamy works at St. Joseph's Health Centre, Toronto

CANADA AND THE GLOBAL PREVENTION OF TORTURE

BY EZAT MOSSALLANEJAD

At the threshold of the new millennium, it is disheartening that the practice of torture appears to be more widespread than ever. Newspapers are constantly filled with global reports, from Kosovo to East Timor,
about the cruel and inhumane treatment inflicted on our fellow human beings. All over the world, torture is used by tyrannical governments as means of extracting information or confessions as well as a tool of political repression. In 1984, the United Nations adopted the *Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment* (CAT), a human rights instrument that outlined universally acceptable standards against torture; the Convention came into effect on June 26, 1987. Numerous other human rights laws, such as the UN Declaration of Human Rights, International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, also express condemnation of the practice of torture. The principles set out in the CAT are indeed admirable; it recognized that torture is a crime against humanity and an affront to human dignity.
However, like other international human rights instruments, its implementation is a tricky matter. The responsibility to implement the Convention is left to the respective countries, even though torture is normally practiced with the sanction of such governmental powers.

> ***Ordinary citizens need to learn about the experience of torture and its after effects and help victims to rebuild their lives.***

In the case of torture, we face a global contradiction: (1) the abundance of international instruments and institutions against torture, on the one hand; and (2) the worldwide prevalence of the crime of torture, on the other. According to the Human Rights Watch World Report (2000), torture is being perpetrated in about 50% of all countries in the world.

In an attempt to address this gap, the UN Commission on Human Rights established a working group to draft an Optional Protocol to the CAT in 1991. The Optional Protocol proposes the creation of an international monitoring mechanism that will enable the effective implementation of the UN Convention Against Torture. Its objective is to enhance the worldwide protection of persons deprived of liberty from torture and other cruel and degrading treatment or punishment. As stated in Article 1 (of the third draft of the Protocol),

A State Party to the present Protocol shall permit visits in accordance with this Protocol to any place in any territory under its jurisdiction where persons deprived of their liberty by a public authority or at its instigation or with its consent or acquiescence are held or may be held.

An elected group [illegible] experts, to be known as the Sub-committee to the Committee Against Torture, will have the authority to conduct periodic and ad hoc monitoring missions of areas such as police stations and prisons where persons may be at risk for state-sanctioned maltreatment. The Sub-committee will be responsible for investigating incidences of torture, drafting summary reports and submitting recommendations to the ruling governments of the countries that they visit.

Three key features of the Optional Protocol highlight its potential in achieving its desired goal:

(1) Prior Consent: Any country that ratifies the Optional Protocol is, in effect, giving the Sub-committee full permission to conduct monitoring missions whenever and wherever it deems necessary. Such consent cannot be revoked at any later time.

(2) Unlimited and Free Access: In order for the Sub-committee to undertake its missions effectively, the Optional Protocol mandates its full,

unrestricted access to any place of detention where torture may take place. As well, the Optional Protocol allows the Sub-committee the right to interview anyone it chooses (e.g. prisoners, prison guards) with neither witnesses nor time limits.

(3) ***Confidentiality of Reports:*** In contrast to other UN Human Rights reports which are automatically made public, the Sub-committee's reports are kept confidential between the UN and the country concerned. The Optional Protocol's goal is not to *punish* or condemn, but rather to help governments strengthen their protection of persons deprived of liberty and *prevent* torture. Using confidentiality as the norm rather than the exception is meant to promote cooperation. However, the Optional Protocol also gives the Sub-committee the option to publish reports if states refuse to cooperate.

Unfortunately, 7 years after the Protocol's initial draft, the ratification of the Optional Protocol has been stagnated by debates over issues such as the requirement of unlimited access to all possible sites where torture may be occurring. In my recent trip to Geneva, I spent a whole week attending the Working Group meeting of the Optional Protocol. Through the discussion of various delegations, I came to know that opinions are divided into 2 camps. On the one hand, the conservative side (including USA, Egypt, Iran, China, Cuba and Saudi Arabia) expressed reservation regarding the implementation of the Optional Protocol, due to concerns about unrestricted access undermining national sovereignty and the individual's right to privacy. The progressive camp (including European countries, Australia and Canada), on the other hand, believed that there is no need for such reservation and that unrestricted access is essential to the effectiveness of the Optional Protocol. If states can place limits on which sites can be inspected, then such restrictions hinder the comprehensive investigation of torture and may well provide states with the opportunity to avoid such scrutiny and hide the practice of torture.

A comment was made by the Chinese delegate that the implementation of human rights instruments, such as the CAT, is not feasible in poor countries like China, where greater priority rests on addressing the fundamental issue of economic development. Claudia Haenni, the Secretary-General of the Association for the Prevention of Torture (APT), the prestigious Geneva-based NGO which first initiated the Optional Protocol refuted this approach. She considered such argument an insult to the Chinese people and an affront to all humankind. She strongly asserted that human rights are universal and that they should be implemented globally with no reservation, regardless of economic conditions.

Another matter worth noting was the position of some countries of the South, like Georgia, Costa Rica, and Brazil, which wholeheartedly supported a liberal approach to the Optional Protocol and, in some cases, went beyond the liberalism expressed by the Canadian, Australian and European delegations. The chair of the Working Group was Elizabeth Odio Benito, the celebrated judge and expert on international law from Costa Rica.

As mentioned before, Canada played a very progressive role in the Working Group, through the efforts of the head of the Canadian delegation, Johanne Levasseur, from the Ministry of Justice. Through her comprehensive knowledge of international human rights, she elaborated on some parts of the Optional Protocol and tried to contribute towards drafting an all-embracing, clear and effective Protocol.

This is not the first attempt by the Canadian government to work towards the global prevention of torture. Canada has accepted a long-term commitment towards eliminating torture, investigating its practice and supporting its victims. Canada is among the first States parties to the Convention Against Torture.

In early 1999, Canada also co-sponsored the

Commission on Human Rights' resolution on "Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment". This resolution condemns torture as actions that "...can never be justified under any circumstances, by any ideology or by any overriding interest..." The resolution has also extended for 3 years the mandate of Mr. Nigel Rodley, the UN Special Rapporteur on the question of torture. Canada closely follows the work of Mr. Rodley and that of the Committee Against Torture, chaired by Mr. Peter Burns, a Canadian independent expert. Support to victims includes annual contributions to the Canadian Centre for Victims of Torture (CCVT), the first rehabilitation centre in North America and the second of its kind in the world. Since its inception in 1977, CCVT has served 11,000 victims of torture from 99 countries.

Although Canada has made sincere efforts towards the prevention of torture and rehabilitation of survivors, there is much work to be done for the achievement of such challenging goals. Canada ought to do more in mobilizing international communities in this respect. The recent ruling of the Federal Court of Appeal (A-415-99 dated January 18, 2000) in Suresh can put the Canadian global leadership against torture at stake. The decision considers, for the first time, the implementation of CAT on the government of Canada. Contrary to similar decisions by the European Human Rights Court, the decision stipulates that the right to be secured from torture (article 3 of CAT) is not an absolute right binding on the Canadian government. With the intervention of various human rights organizations, it is hoped that the Supreme Court of Canada would reverse the decision and would help the government to gain its leadership position.

It is frustrating that the Optional Protocol was not on the agenda of the UN Commission of Human Rights (CHR) in its 55th session last year. It is expected that Canada will give voice to torture victims in the next session of CHR. The pre-requisite for this task is a genuine effort by the Canadian government to reform its own domestic immigration enforcement system, especially our refugee determination system, which is under the mandate of Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board (IRB).

There have been reports that, under the present system, immigration detainees and persons under removal orders have been subject to undue force and trauma. Based on my experience in Toronto, there is a structural problem in almost all CRDD hearings: a lack of any guidelines whatsoever for dealing with victims of torture and organized violence. In Toronto, there is no adequate attention to documentation on physical and/or psychological torture. There is no consistency in Board members' conduct towards such victims. I have witnessed cases of refugee hearings leading to the retraumatization of torture survivors due to the adversarial nature of the hearing. In one case, a formal complaint was filed to the office of the Chair of the IRB and a subsequent investigation was promised. However, even if the IRB comes to know about the merit of such complaints, they have no jurisdiction to reverse the decision or reopen the case. Thus, further investigation does not benefit the victim.

Canada can also present its adversarial judicial system as an example to the international community and help other nations to develop similar legal systems. In this system, the lawyer and the prosecutor (the Crown Attorney in Canada) confront each other in the courtroom. Truth comes out of the adversarial confrontations and minimizes the role of confession in the final verdict.

There also needs to be increased support for new immigrants to Canada who are survivors of torture. At a time in which amendments to the Immigration Act are on the government's agenda, it is extremely important that the government make a genuine effort towards incorporating the CAT into Canadian legislation. Special attention must be paid to Article 3 of the Convention, which is an absolute condition and cannot be balanced with considerations like "danger to the security of the public" or "risk to national security". Article 3 does not allow return of any person to any place where such person could be subjected to torture and other cruel, inhuman or degrading treatment and punishment. Ordinary citizens need to learn about the experience of torture and its aftereffects and help victims to rebuild their lives. In terms of financial support, Canada is one of the initiators of the UN Fund for Torture Victims, but its annual contribution is minimal ($60,000) in comparison with other industrialized countries. Given Canada's prominence in the human rights movement, this is inexcusable. We need to lobby the Canadian

government to allocate enough resources to combat torture and provide adequate services to survivors.

Ezat Mossallanejad is a Policy Analyst working with the Canadian Centre for Victims of Torture in Toronto.

❄❄❄❄❄❄❄❄❄❄❄

"PROMISES TO KEEP; HUMAN RIGHTS, REFUGEE PROCEDURES AND LEGAL RECOURSE"

BY TOM CLARK

The Report following the October 1997 on site visit to Canada by the Inter-American Commission on Human Rights appeared March 16, 2000, and can be found at:
http://www.cidh.org/countryrep/canada2000en/canada.htm

The Site Visit and individual case complaints before the Commission form the backdrop to the Report and to the visit to Canada by the Commission's Principal Specialist, Elizabeth Abi-Mershed, to discuss it on April 4th in Toronto and April 5th in Ottawa and Montreal.

The Report focuses only on selected "issues". While the Commission clearly appreciates Canada's commitment to refugee protection, the Report meticulously reviews in 186 paragraphs plus 135 footnotes the relevant international human rights and the Canadian procedures. The Report concludes that changes are necessary if Canada is to more fully comply with its international obligations.

On access to refugee procedures:

- eligibility to be handled within the refugee status determination process;
- allow the Refugee Division to reopen a case for new evidence;
- expedite family reunification for persons without sufficient identification documents.

On access to administrative and judicial review mechanisms:

- allow refused refugee claimants access to a merits-based review of the decision;
- claimants to have access to effective judicial protection for international and Charter rights;
- a prompt effective procedure for refused claimants facing real risk of torture or cruel treatment if deported;
- legal aid for those who need it within the refugee system as a whole.

On the right to liberty and exclusion and deportation:

- clarification and additional safeguards in "danger to the public" detention;
- additional safeguards for preventative immigration and refugee detention;
- additional safeguards and improved due process for security certificate procedures.

On rights of the child and family life in deportation:

- best interests of the child and views of the child in decision-making affecting children;
- decision-making to conform with international obligation on family reunification and unity;
- adherence to the standards by which deportations separating families require an extremely serious justification to override the resulting interference with family life.

On Canada's overall compliance with international human rights obligations:

- ensure these are observed and given full effect as rights;
- inform and train relevant officials at all levels - particularly judges.

On Canada's status within the OAS:

- Ratify the American Convention on Human Rights; Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women and the Inter-American Convention to Prevent and Punish Torture.

- Make full use of the advisory services of the Commission and Inter-American Court of Human Rights.

Six members of the seven member Commission visited Canada October 20-22 1997 "to observe the procedures applied for granting refugee status and the remedies available..." at the invitation of the government.

According to the Toronto Star:

"Part of the reason for the Commission's visit ... is to determine whether cases it is reviewing are admissible, or if the applicants still have legal avenues in Canada" ... Over the years a number of immigration and refugee cases have been referred to the Commission when advocates feel the Canadian system doesn't provide adequate avenues for appeal."

As far as non-governmental groups were concerned, the visit related to the concern about adequate legal recourse in Canada. The Supreme Court of Canada recognized serious issues with the Immigration Act in the submissions put before it by the Canadian Council of Churches, but ruled in early 1992 that the Council did not have standing to have the courts consider these issues. According to the Court, individuals could and should raise these issues.

The Inter-American Commission on Human Rights is an autonomous organ of the Organization American States, OAS, created to protect a promote the observance and defense of human rights and to serve as a consultative body of the OAS. The 7 members of the Commission are elected by the General Assembly of the OAS for four-year terms. They serve as individuals to represent all the member countries of the OAS.

The authority of the Commission stems from the OAS Charter, the American Convention on Human Rights, the American Declaration of the Rights And Duties of Man, its Statute and Regulations. These instruments define the human rights of the peoples of the Americas under international law and provide mechanisms for their protection. Canada automatically fell under the scrutiny of the Commission by joining the OAS. The Commission can issue study reports and receive individual complaints alleging violations of rights.

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

REFUGEE UPDATE

Founded by Jesuit Refugee Service - Canada
Currently published by FCJ Hamilton House Refuge Project and the Canadian Council for Refugees

BOARD: Lois Anne Bordowitz FCJ, Alistair Boulton, Tom Clark, Sudha Coomarasamy, Marty Dolin, Ken Luckhaart, Helene Moussa, Elsa Musa, Francisco Rico-Martinez, Norrie De Valencia

EDITOR: Ezat Mossallanejad

PRODUCTION: Lois Anne Bordowitz FCJ

CONTRIBUTING EDITORS: Bill Frelick, Marie Lacroix, Bruce MacLeod, Betty Miller, Adeena Niazi, Rabbi Gunther Plaut, Mark Raper SJ, Cecile Rousseau, Jerry Vink, Annie P. Wilson, Hassan Yusuf

GRAPHICS: Juana Maria Diaz Cazares

SUBSCRIPTIONS: 1 year/4 issues: Individuals $20, Institutions $35; Bulk (20 or more) $3.50 per copy

ADDRESS: 83 Hamilton St.
Toronto ON M4M 2C7 Canada
Tel: (416) 469-9754
Fax: (416)469-2670
e-mail: hamilton@ebsi.ca

REFUGEE UPDATE gratefully acknowledges the generous financial support of the Canadian Auto Workers (CAW) Social Justice Fund (SJF) and the Primate's World Relief and Development Fund, Anglican Church of Canada for the production of this issue.

Ideas expressed by writers are not necessarily those of the FCJ Hamilton House Refugee Project and The Canadian Council for Refugees