

REFUGEE UPDATE

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REMEMBERING CHARLES 1920-1999

In October this year, the Inter-Church Committee for Refugees (ICCR) and refugees in Canada lost a good friend and a strong ally. Reverend Doctor J. Charles Hay died after a short illness.

ICCR and I have our own special appreciations of Charles. Charles chose ICCR. He came to us like a gift out of the blue in 1988. He had completed his one year term as Moderator of the Presbyterian Church General Assembly a short time before. Prior to that, he had retired after several years as Principal of Knox College, which provides training for Presbyterian ministers.



Originally an immigrant child from Belfast, Northern Ireland, he became a Presbyterian minister in Toronto. Charles then went to Scotland to earn his doctoral degree in New Testament. Charles returned to Canada to serve as Professor at Knox College, associated with the University of Toronto. He was widely recognized as an excellent and caring teacher. His administrative and consensus building skills played an important part in the development of an ecumenical graduate program for the Toronto School of Theology.

He told ICCR of his "conversion" (his word) by a visit he made as a Moderator to El Salvador where his "eyes were

opened" and his "ears unstopped". He saw world affairs through new eyes, was horrified by the injustices and asked his church if he could represent them on ICCR in response.

Almost immediately, he joined in the Steering Group planning for Court Action. This joint project of ICCR and the Canadian Council of Churches was concerned that proposed changes to the Immigration Act were unconstitutional. The project would challenge the constitutionality before the courts. In 1989, the law came into effect and the Court Action began.

Also, in 1989, Charles Hay became Chair of ICCR for the first time. He was the person for the moment. His stature within church circles helped the Court Action. He strongly supported the Action. I remember Charles attending the court hearings before the Federal Court in 1990, Federal Court of Appeal in 1991 and Supreme Court in 1992. The action was lost when the Supreme Court, noting that the Churches were raising serious issues, ruled that the Churches should intervene when individual cases arose illustrating those issues. Charles remained with the Court Action until he retired from ICCR in 1997. During this time, the project produced a kit to assist lawyers with taking cases before international Committees and

Commissions and played a key role in bringing about a Site Visit to Canada by the Inter-American Commission on Human Rights in 1997.

Charles will be remembered by all who knew him on ICCR. His skills in the Chair were extra-ordinary. Although highly educated, he had a wonderful way of making everyone feel comfortable and valued. His wit, his helpful turn of phrase and his exposition of the bible were all without match. He pressed us to develop clear resolutions to agree to. He taught us how to pronounce "homologate" - what we were doing when we endorsed actions taken prior to a formal meeting.

I am grateful to Charles for the time he gave to advise and work with me during his time as Chair. I am also grateful to Marjorie, his wife, who graciously shared Charles with ICCR during those years of his retirement. I remember calling him to get his reaction to draft letters at the lake side cottage they loved to retreat to over the Summer months at Dwight in the Huntsville area. I remember Marjorie's always supportive - "oh yes, I'll go and get

The emergency evacuation of 5,000 refugees from Kosovo forced many important issues concerning Canada's refugee resettlement program to be placed on the back burner as both government and NGOs struggled to respond to the crisis. Now that the excitement has died down and some of the refugees have repatriated, attention has returned to the future of Canada's overall resettlement program. This means a renewed focus on the implementation of Citizenship and Immigration Canada's (CIC) Refugee Resettlement Model (RRM) and ensuring that Canada meets its resettlement targets.

The RRM is a comprehensive, critical analysis of the Canadian resettlement program with a view to developing a more integrated operational delivery approach which will prepare Canada's resettlement program for present and future challenges. Its purposes are to provide a more integrated program, improve delivery, strengthen and develop new partnerships, improve training and refine and revise resettlement policy. With so many ambitions it is

BACK TO THE FUTURE (OF RESETTLEMENT)

BY MICHAEL CASASOLA



for Refugees.

Tom Clark is coordinator of the Inter-Church Committee

him". During his time with us, Charles, always critical of church people who quote bible texts in isolation, was persuaded to tell us how he thought the bible should be used. The result is a wonderful tool for insight and discussion about what the bible - as a whole - says about outsiders like refugees. Charles always held in reverence those devoting themselves so selflessly to refugees like Nancy Pocock. In our farewell session to him in 1997, we tried to tell him that his different gifts to the common cause had been deeply appreciated as well. I hope he was able to know that.

not surprising that the RRM is a project which will be phased in over many years. It has also become CIC's response to the Legislative Review and the White Paper. The development of the RRM began in the summer of 1997 when CIC faced the possibility of not being able to meet its resettlement targets for that year. This crisis, along with a number of other ongoing problems, led CIC to critically examine its overall resettlement program. While it recognized the existing program as having a strong foundation, it also found the system in a state of disrepair. It acknowledged a number of problems including: that those most in need of protection were not meeting Canadian criteria, that there were inconsistencies in eligibility and admissibility, that private sponsorship was in decline and that there was overall NGO dissatisfaction. Since that time there have been consultations, working groups and most recently the establishment of implementation teams. Those involved have included

representatives of all the actors involved in resettlement: CIC resettlement branch, CIC international regions, CIC regional representatives, visa officers, UNHCR, IOM and NGOs. Having gone through an analytical phase, CIC is now moving into action. Five implementation teams have been established: a training and communications team, a Policy team, an In-Canada team, an Overseas team and an Integrating Resettlement team. These teams are involved in the development of a large number of projects. These include a more extensive visa officer training course, a revised private sponsorship application kit, updating the Immigration Manual Chapter (OP4) relating to refugee resettlement, revising ability to establish criteria, as well as many other projects.

A recent RRM project was a workshop organized by the RRM Policy Team in Ottawa for CIC, UNHCR and NGOs entitled "Who Should Canada Select" which addressed problems with resettlement policy. Participants identified numerous topics of concern. The areas of greatest concern were classic issues: defining protection, reuniting families, the level of importance to be given to ability to establish, and providing urgent protection. The forum provided an opportunity for a frank exchange of views. The participants concluded that protection should be understood in its widest possible terms. It also challenged the need to focus on ability to establish when selecting refugees. While not many new ideas were proposed, there was an overall general affirmation of the direction proposed in the White Paper (relaxing the one year ability to settle requirement, facilitating reunion of families, developing a closer relationship with NGO, ensuring immediate entry of urgent protection cases). Furthermore, the workshop confirmed the relevance of the policy projects that the Policy Team had already begun surrounding eligibility and admissibility criteria and forecasting refugee admission levels.

The issue of refugee resettlement levels, specifically the achievement of the government-assisted target of 7,300, has been a driving issue for CIC. The pressure to meet its stated targets has forced CIC to look for new refugee populations or what CIC often refers to as "refugee pools". Furthermore, it has forced CIC to increase pressure on visa



posts to meet their targets. NGOs are often disappointed that in a world of millions of refugees, the government-assisted program is limited to 7,300. Yet, despite some potential close calls, CIC has always met its resettlement targets, in contrast to some immigration programs.

Changing refugee demographics will mean that Canada's resettlement program will become more responsive to NGO concerns. The re-settlement target for 2000, while still limited to 7,300, will begin to shift away from Europe. Over the past few years Canada has tended to over select from refugee populations in Europe for a variety of reasons, one of which is the number of visa posts available in the region. NGOs have expressed concern that while there are refugees in Europe in need of resettlement, Canada has tended to select refugees from Europe in greater proportion than it selects refugees from other regions of the world.

In the year 2000 Canada will see an increased resettlement program in Africa, with the visa post in Nairobi increasing its resettlement target from the 1999 level of 750 to 1,200 in the year 2000. Other visa posts in Africa, while not as active as Nairobi, will also be increased. This change is not limited to Africa. Increases will also be made to the number of refugees selected from the visa post in Damascus, Islamabad and New Delhi.

The resettlement program in Columbia will increase as well. For years NGOs have been concerned about the human rights situation in Columbia. After years of lobbying, CIC has put Columbia on the schedule of countries listed under the Source Country Class - a program which allows Canada to select individuals in a refugee-like situation still inside their country of origin. Yet, to date, very few Columbians have been resettled. Next year's target is going to be substantially increased from 90 spaces in 1999 to 450 spaces.

The numerical shift is a response to practical realities and may prove difficult for CIC. The reality is that there are fewer refugees in Europe needing resettlement. In addition, the Canadian visa post in Bonn is moving to Berlin. The time and resources involved with the move, along with resulting staff changes will make the visa post in Germany unable to process resettlement applications in 2,000. As a result, if Canada is to resettle 7,300 refugees it must find refugees from elsewhere. The shift away from Europe, while overdue, is going to be a genuine challenge for Canada. Many of the legislative tools and partnerships

CIC is counting on to help deliver its targets are not yet in place.

Resettlement targets is only one RRM issue. CIC is also exploring new approaches to reducing processing times. CIC has initiated discussions with both the US and Australia on resource sharing in the resettlement programs overseas. These countries, along with Canada, are the largest resettlement providers. Further, they share similarities in their refugee selection program. The goal of resource sharing would be to remove duplication and improve coordination among the countries in refugee identification and selection. Conceptually, this could mean that the countries could share the role of refugee identification.

CIC is also continuing to develop its urgent protection

pilot, first proposed during the Women at Risk conference in Toronto in 1998. CIC has been meeting with some provinces in order to respond to their concerns about the proposed pilot project.

While far too early to evaluate, the demographic shifts and the RRM projects will be taking resettlement into a new direction. CIC has begun posting information on RRM developments on its web site. As recognized partners, it is important that NGOs follow these developments and continue to participate in further RRM consultations in order to help mold Canada's future resettlement programs.

Michael Casasola is Director of the Roman Catholic Diocese of London's Refugee Office and an NGO Analyst with the RRM Overseas Team.

TAKING THE CCR INTO THE NEW MILLENNIUM

My dream, my main goal is to preserve and to improve the presence and the governing of the principal of justice in our Immigration and Refugee System.

The only way to do that is to accomplish the following: First of all, to ensure that every member of our refugee family can feel the solidarity everywhere. In other words, that every member realizes that they are not standing alone in working to fulfill the demanding requirements of the refugee cause. Second, that every member realizes the unbelievable capacity of work and presence that we have as a group regarding our cause. Third, that every member can benefit from the tremendous store of knowledge from more than two decades of experience, especially in those that I name as 'historical members of the CCR'. Fourth, to manage to implement new ideas in our struggle for justice that has gone unchanged and somewhat unanswered. Fifth, to learn with you, among you, how to become a better human being and grow in my commitment to the refugee cause. Sixth, to bring to the position of President of the CCR a face that makes clear to the already converted, as well as to outsiders, that I will always try very hard to open more spaces for the participation of unprivileged people both inside and outside our organization in our struggle for justice.

I want to be remembered as a hard to die, but happy, dreamer. I hope that I am not asking for too much.

*Francisco Rico-Martinez
President, CCR*

CANADA AND THE PROTECTION OF STATELESS PEOPLE*

BY EZAT MOSSALLANEJAD

Alli's Story. Ali came to Canada in 1994 after suffering brutal torture in the jails of his home country of Iran. His refugee claim was denied and he exhausted all other remedies. During this period, he made an honest, decent

living as a truck driver and did not inform Immigration his whereabouts. In September 1998, he was put in detention, pending his removal. Immigration officials have returned him to Iran 3 times since then, each time Iran

refused to accept him. Iranian officials have made their position clear to Ali: "even if they bring you here 20 times, we will send you back". Ali also spoke of the constant maltreatment he received from Immigration officials in the course of these removals: e.g. verbal abuse, threats of being drugged if he did not cooperate. Ali has no criminal record whatsoever. By all intents and purposes, Ali is a stateless person although no state or law has recognized this as such. And instead of providing refuge to this stateless survivor of torture, Canada has so far treated him more like a dangerous criminal, resulting only in his continued re-traumatization and deteriorating health. Ali has languished in jail for 13 months, and after great difficulty, community activists are very close to securing his release under bail. The eventual outcome of such efforts still remains to be seen.



Daniela's Story

In 1993, Daniela, a native of Estonia (formerly part of the Soviet Union), came to Canada with her husband. Her marriage did not last and she and her husband divorced. In 1996, she tried to apply for Estonian citizenship, but was rejected due to the new citizenship rules for the recently formed independent republic of Estonia. Two years later, in 1998, conflict with her superintendent resulted in Daniela's arrest and detention by Immigration officials and a deportation order was issued. She tried once again to apply for Estonian citizenship and was rejected. She also attempted to apply for status in Canada, but she failed to produce the required ID documents. This year, the Canadian government returned her to Estonia, only to have the Estonian government reject her and send her back to Canada. She remained in jail for quite some time, with her worsening heart problems, filled with despair and frustration that nobody at the Immigration Department seems to want to lend a compassionate ear to hear the plight of a stateless person such as herself. She was finally bailed out by refugee and human rights agencies and she is presently living in limbo of fear and hope.

The above two cases are symptomatic of the tragic stories of stateless people in Canada. There are millions of similar and even worse tragedies that occur in a global environment that remains a breeding ground for the creation of stateless peoples.

Definition

Crucial to this definition is the concept of *citizenship*.

Essentially, citizenship is official membership in a particular state. Such membership consequently entitles an individual to certain rights. In fact, citizenship is described as simply "the right to have rights". Stateless people, of course, are incapable of enjoying these rights. According to the 1954 Convention relating to the Status of Stateless Persons, statelessness occurs when a person "is not considered as a national by any state under the operation of its law". Unfortunately, this definition is purely technical and does not address the plight of people with no effective nationality. Citizenship is granted usually on the basis of two principles. Under the principle of *jus soli*, persons become citizens if they are born on a state's territory, while the principle of *jus sanguinis* means that persons become citizens if their parents are also citizens of that country. Statelessness can occur when these two principles come into conflict

International Human Rights Instruments

The issue of statelessness and the right to nationality is cited in several UN human rights treaties. There are two legal instruments relating specifically to statelessness: the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The 1954 Convention addresses the regulation and improvement of the status of stateless persons. It spells out fundamental rights and freedoms and protection against discrimination that help to ensure a stable existence for those who are stateless. Although this Convention attempts to guarantee minimum rights for stateless people, it does not go as far as to demand that states grant them citizenship. The 1961 Convention deals with the prevention of statelessness by imploring states to grant citizenship to stateless persons who have a genuine and effective link to that country. It has its focus on the reduction of statelessness and seeks ways in which stateless persons can acquire and retain nationality. This instrument may be used as a model for subsequent national laws about statelessness. As part of its statutory function to work towards protection for refugees and displaced peoples, the UNHCR has been provisionally assigned the responsibilities contained in the 1961 Convention. There are many international legal provisions on the prevention and reduction of statelessness, but a big gap exists in the protection of people who are already stateless. There is hardly any provision for them to acquire a new nationality.

Canadian Position

In its bi-annual conference in May 1999, the Canadian Council for Refugees (CCR) passed a resolution on the question of the "protection of stateless persons". In this

resolution, the CCR has raised concern about stateless people languishing in Canadian detention centres or living in indefinite limbo as a result of the lack of status. The resolution has demanded that the Canadian government play a leading role in this area by releasing stateless people from detention and "develop an internal mechanism to protect them".

Canada enjoys one of world's most progressive laws of citizenship. It has liberally combined both principles of *sanguinis* and *jus soli*. All babies born on Canadian soil as well as those born to Canadian parents abroad are regarded as Canadian citizens.

This liberal approach diminishes when it comes to the protection of stateless people at the global level. Canada

has only ratified the 1961 Convention on the Reduction of Statelessness. In an informal discussion with an official from the Ministry of Immigration, I raised the issue of the need for the Canadian accession to the 1954 Convention as well. The official was not aware of the *raison d'être* behind the government's reluctance. He raised the possibility that the provision of the 1954 Convention on the Protection of Stateless People are incorporated in the 1961 Convention on the Reduction of Statelessness. This is definitely not the case. These two Conventions are totally different and address different issues and concerns. As it was mentioned before, the 1954 Convention deals with granting minimum rights to stateless persons, while the 1961 Convention addresses the root causes of the problem.

There is a suspicion that Canada has refused to sign the 1954 Convention in an attempt to not accept further obligations towards protection of non-citizens and stateless persons in Canada. It is a fact that the 1961 provisions are already in place in Canadian legislation in a more liberal and progressive way. Therefore, ratification of this instrument does not bring much change in the lives of stateless people in Canada. Concrete protection for this vulnerable group could come with the accession to the 1954 Convention.

Four categories are easily identifiable:

1. *Stateless people who come to our borders and apply for asylum*. If all goes well, these people have access to the Canadian refugee determination system and the Immigration and Refugee Board is mandated to deal with their claims. It should not be forgotten that statelessness *per se* does not provide grounds for getting accepted as a

Convention refugee. The claim should be based on the five grounds of the 1951 Geneva Convention relating to the Status of Refugees. Under such circumstances, stateless people, like other asylum seekers, must come up with a well-founded personal story of persecution in order their case to have merit. There is hardly any special attention paid to the condition of people who come from war-ravaged countries with no effective and functioning government in place. We have frequently come across rejected cases of stateless refugee claimants from Afghanistan, Somalia and Sri Lanka. What is lacking here is a specific guideline for CRDD members to deal with stateless persons.

2. *Removable refugee claimants whose countries of origin refuse to accept them*. As illustrated by the case of Ali in the beginning of this article, the only alternative open to this category of stateless persons is prolonged and sometimes indefinite detention, jail, maltreatment and torture.

3. *People who have come to Canada as visitors and have become stateless in the course of their stay*. As was shown in the case of Daniela, the Immigration Department usually issues a removal order against these people and, as there is no country to accept them, they have to remain in detention centres or jails without having committed any crime.

There is neither any regulation nor any institution to deal with last two subgroups of stateless persons mentioned above. It seems that there is neither recognition nor adequate expertise within the Ministry of Citizenship and Immigration to deal with this crucial issue. When I contacted the Ministry, I spoke to one person who was considered a responsible authority on the subject. This official did not have the proper information to respond to the question of statelessness in Canada. I was advised to contact the Enforcement Centre instead. I did not comply with such recommendation, as I knew for sure that the protection of stateless people had nothing to do with a section specifically mandated for removal and enforcement.

The only recourse available to these persons is to apply for Humanitarian and Compassionate review of their cases. But they have hardly any chance to get a positive answer to their H & C application due to the lack of specific guidelines for H & C officers to deal with stateless

Ellnor Caplan, Minister of Citizenship and Immigration
Remarks to Canadian Club, Vancouver, Sept. 9, 1999

"The Canadian Charter of Rights and Freedoms guarantees to any individual who comes to Canada the right to a fair hearing. I am a defender of that right."

people. Moreover, they can hardly fulfill the requirements (e.g. stable employment, regular payment of taxes, money in bank account) for a successful settlement in Canadian society. Another problem is stateless persons inability to produce the required identification document or passport.

4. Potential statelessness for Canadian-born children of parents with no status. The former Minister of Immigration Madame Lucienne Robillard proposed a new Citizenship Act called Bill C-63. Bill C-63 includes the removal of the automatic right of *jus soli* citizenship for children born on Canadian soil. Instead, citizenship would only be granted if one or more of the child's parents has status in Canada. Such a change will only worsen the problem of statelessness, especially for children who are born to already stateless parents. Although this Bill is apparently dead, the new Immigration Minister Elinor Caplan may choose to revive it at any time.

Conclusion

With the end of the Cold War and the subsequent rise of ethnic conflicts, the problem of statelessness will continue to increase and has the potential of turning into a critical global problem. International legal instruments and institutions to handle this issue are inadequate and ineffective

It is expected, in the long and spiral path of resolving this worsening problem, that Canada plays a pioneering role by signing and implementing the 1954 international Convention on statelessness. This will give Canada an

effective voice in accepting leadership in international bodies and in building the cornerstone for the protection of stateless people in this country.

Provision of the 1954 and 1961 Conventions should be incorporated into Canadian legislation especially at a time when the amendment of the Immigration Act is on the government's agenda. Canada should go beyond these outdated international instruments and come up with more generous provisions for the protection of stateless people in its upcoming legislation.

There is a definitely a need for an independent and efficient Canadian institution to deal with this specific issue. The IRB could continue with its mandate of hearing refugee claims on the basis of statelessness, but it needs clear guidelines in order to be able to give cases of stateless persons fair consideration.

As refugee rights advocates, we need to intervene with the government to recognize and address the issue of statelessness and avoid the creation of stateless children in Canada. Furthermore, it is imperative that we raise Canadians' awareness of the national and international protection of stateless people through public education initiatives.

** The assistance of Joan Borja (Masters of Social Work student) in the preparation of this article is much appreciated.*

Ezat Mossallanejad is a policy analyst at The Canadian Centre for the Victims of Torture.

US DETENTION OF CANADIAN-BOUND REFUGEES

BY DEBORAH GREITZER

Like Canadian immigration law, the Immigration and Naturalization Act (INA) in the United States allows the government to detain and deport aliens. In the United States, the possibility of detention was greatly expanded in 1996 by two new laws: the Antiterrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA). As a result of this new legislation, the number of Immigration and Naturalization Service (INS) detainees has more than

doubled since 1996. The threat of detention has had major impact on refugees in the United States who have chosen to go to Canada. Prior to 1996, the INA allowed for arrest of aliens during deportation proceedings, but permitted release on a bond of at least \$500, or parole, both with conditions. Aliens who were "aggravated felons" could be detained "either before or after a determination of deportability" unless they could demonstrate that they were neither a danger to the

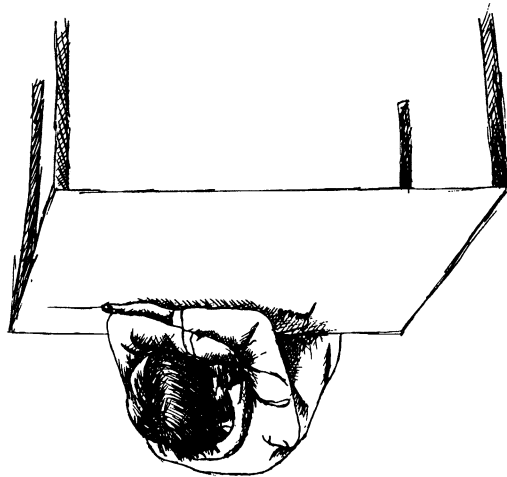
Indeed, confronted with the overwhelming numbers of individuals mandated for detention, the INS has revised its policies, setting priorities within the category of "mandatory" detention cases. Those required to be detained include virtually all aliens chargeable as terrorists or criminals, aliens subject to expedited removal, aliens with aggravated felony convictions, and aliens with final orders of removal. Those charged with fraud before the INS, including fraud in obtaining employment, are in a middle category. Those in the expedited removal process who have been determined to have a credible fear are in a lower priority. This means that most refugees who arrive in the United States and are placed in the expedited removal process will be released as soon as they pass their credible fear interview. On the other hand, in certain districts, the District Directors (DDs) have chosen to ignore these guidelines entirely. Critical for many of the Canadian-bound refugees, the DDs for both New York and New Jersey, will not release refugees, even after they have

to allow for a just outcome to cases.

Even within the INS itself, there are many individuals who of parts of the law is being challenged in federal courts. The constitutionality of provisions that are impracticable to change INA provisions that are impracticable to change INA provisions that are impracticable to change INA provisions that are impracticable to change

Within the United States, many are appalled by the result of the AEDPA and IIRAIRA. There are movements among legal practitioners, legislators, and others to make accommodations in their legal interpretations

removal proceedings, what the resolution of those proceedings was. If they have never been in the United States before or if they were in the US legally and departed in a timely manner, when they enter the United States again, they will properly be placed in expedited removal. In this instance, they probably will be detained until after a positive credible fear determination. If they were in the United States previously, and their case was terminated or administratively closed, they will be placed in removal proceedings. In this case, they may or may not be detained, but will be able to be released on bond. If they were in removal proceedings and either lost their case or failed to terminate or close their case when they left for Canada, they may have a deportation order entered against them. They may or may not be detained. If detained, they will be deported when the INS makes arrangements with their country.



In fact, these laws have been implemented in a variety of ways. Policies have varied from month to month, from district to district, and from officer to officer. This has made it very difficult to provide definitive advice to refugee service providers in Canada who are trying to assist individuals who have to pass through the United States. Whether an individual is detained or not may depend upon such unpredictable factors as the number of beds available in local detention facilities, the policy of individual districts, and the generosity of individual INS officers and IJs. In order to have a good idea whether an individual entering the United States from Canada will be detained, it is basic to know if they have been in the US previously; if so, whether they had status or whether they were in removal or deportation proceedings; and if in

The INS can detain individuals pending grant of status. Torture Convention. Negative decisions can be appealed. asylum, restriction on removal, or protection under the determination--they can present a claim before an IJ for a credible fear--and over 95% have a positive "credible fear" interview. If they are determined to have their home country have the opportunity for screening in a misrepresentation. Those who express fear of return to or arriving aliens who attempt entry through fraud or arriving aliens without valid or suitable travel documents allows for the summary return of

The expedited removal procedure

\$1,500.

can be released on a bond of at least proceedings. People in this category also can detain anyone in removal pending removal orders. The INS inadmissible, and (4) those with (3) other arriving aliens who appear determined to have a "credible fear," border, at least until they had been procedure for those arriving at the removal," the newly instituted (2) asylum-seekers in "expedited criminal or national security grounds,

(1) virtually all aliens inadmissible or deportable on point, the law mandated the detention of four groups: when Transition Period Custody Rules expired. At that IIRAIRA did not take full effect until October 9, 1998, broadening the definition of "aggravated felonies."

The AEDPA expanded the number of INS detainees by judge (1j). They could be released on parole. community nor a flight risk. Newly arrived aliens who did not appear "clearly and beyond a doubt entitled to land" could be detained pending review by an immigration

been determined to have a credible fear. The INS in these districts will take individuals from the airports—even removing them from airplanes—if they do not have visas to enter the United States or Canada.

The United States government enacted IIRAIRA to stem the tide of illegal immigration to the United States. INS personnel who adhere most zealously to the law justify their actions by arguing that enforcement of detention laws sends a message abroad to discourage immigrants from entering the United States illegally. Put positively, it encourages people to follow immigration laws. To release someone who lacks status from detention would be to favor someone who had not followed legal channels for entrance to the United States. Similarly, the Canadian government argues that to make special efforts on behalf of detainees who have no documents to enter Canada would be to encourage someone who had not followed legitimate channels for entering Canada. The United States government views release of Canadian-bound refugees as unneighbourly, unless the Canadian government itself assents. These are the justifications for opposing release of Canadian-bound detained refugees.

There is some legitimacy to these arguments. Immediate relatives who, after dutifully completing paperwork and running about to obtain all necessary supporting documentation, wait well over a year to join their family members in Canada. Refugees suffer horrendous conditions in their countries while they wait for their time to come to enter Canada. This is the normal procedure for earning legal status to enter Canada. It is unfair for these people to be made to wait longer to accommodate ill-conceived US laws.

Nevertheless, many Canadian-bound refugees have compelling arguments for their release. Many have close family members in Canada from whom they have been separated for years, as well as particularly sympathetic refugee claims. Many of them have escaped torturous conditions in their countries. Many had no possibility of going to a United States or Canadian embassy to request a visa—indeed they would have endangered their lives had they attempted such a move. As a culmination to the hardships that they have endured, they end up in an INS detention facility—in many cases, a criminal detention facility—where, unlike real criminals, they face an indeterminate period of incarceration.

Beyond tear-jerking arguments for policies that would allow for release of Canadian-bound detainees, there are

legal arguments. Many international legal documents support the principle of family unity. In addition, international law supports the idea that “[t]he intentions of the asylum-seeker as regards to the country in which he wishes to request asylum should as far as possible be taken into account” and that “asylum should not be refused solely on the ground that it could be sought from another State.” Finally, international law supports the principle that the rights to life, liberty, security of the person, and equality before the law should be respected.

Members of the Canadian Council for Refugees, as well as private practitioners and NGOs in the United States have expressed concern for the plight of detained Canadian-bound refugees in meetings with officials in both Canada and the United States. To date, there is no particular procedure to lubricate the release of such detainees enabling them to enter Canada expeditiously. Those who know of individuals in this situation or who wish to support work on this issue should contact CCR or the legal office of Vive (716 892-5304). In addition, all Canadians should insure that Canadian law does not head in the direction that the Americans have travelled—toward more rigid detention and deportation procedures.

Deborah Greitzer is the staff attorney at Vive. She lives in Canada

ACTION CAMPAIGNS

The Getting Landed Project: Reducing Limbo for Refugees

A Public Awareness and Advocacy Strategy

For more information contact Ahmed Hashi,

Tel.: (416) 979-2443 ext. 31

e-mail: getting_landed@hotmail.com

End Debt and Bondage for Refugees and Migrants in Canada

A Jubilee Campaign – petition to be signed.

For information contact ICCR at (416) 921-9967

e-mail: iccr@web.net

RUNNING IN CIRCLES: INTERNATIONAL PROTECTION FOR REFUGEES

BY TIM WICHERT

\$1 billion (US). Although the numbers of actual refugees has been declining in recent years, the overall numbers of "persons of concern" to UNHCR has been increasing, due largely to those who are displaced within their own countries and remain in dire need of protection and assistance. This year's hot spots, Kosovo and East Timor, highlight the dilemma: when people flee these conflicts - especially into Serbia or West Timor - are they refugees or internally displaced, and who has the mandate to protect them? UNHCR has had difficulty getting access to them.

This policy debate revolves around the question of parameters for UNHCR's responsibility. In recent years, Excom has authorized UNHCR to get involved with internally displaced people who are "in refugee-like situations", and in peace education, reconciliation, human rights training and other pursuits that are justified as being solution-oriented. The challenge for them is to ensure that the search for solutions are balanced with ongoing protection. In this regard, UNHCR has articulated a "ladder of options" concept for ensuring security refugee camps, ranging from multinational civilian police, to training of host country police and UN peacekeepers.

Governments have acknowledged that "complementary forms of protection" need to be developed to enhance the 1951 UN Convention on the Status of Refugees, and the 1967 Protocol. They have encouraged another round of "informal consultations" between UNHCR, Governments, and hopefully NGOs, to look at relevant issues that may include reporting or monitoring compliance with the Convention.

This year's Conclusions, which are meant to articulate important refugee principles, were generally good. The "the consideration of liberal criteria in identifying those family members who can be admitted". And they again

The Executive Committee of the UN High Commissioner for Refugees, commonly known as Excom, meets in Geneva each October to guide the work of the UNHCR and discuss current issues related to refugees. It also serves as a barometer for the direction in which international refugee standards are moving. Apart from the 54 Governments which actually constitute the Executive Committee, there are another 100 Governments, 150 non-governmental organizations and most UN agencies that participate as observers. At least in size, we have definitely moved forward since the first UNHCR Advisory Committee on Refugees met in a small room in Geneva in December 1951, focussing their attention on the European refugee legacy of World War II. There were 15 Governments and 14 NGOs represented at that first meeting.

But there are worrying trends. The principles agreed to in Geneva are too often not heeded on the ground. High Commissioner Sadako Ogata, in her opening remarks, highlighted the conundrum in the context of Africa. Despite the positive steps recently taken to resolve regional conflicts in West Africa and Angola through the Lomé and Lusaka accords, and

the generally positive OAU summit in Algiers, the implementation of principles has simply not progressed. She highlighted an array of trends - an increase in conflicts, ethnic tensions, nationalism, and polarized societies - and ongoing country concerns including East Timor, Kosovo, Nepal, Colombia, Angola, and the Caucasus. These issues dominated the 3 day pre-Excom meetings between NGOs and UNHCR, as well as the 5 day Excom itself.

The increased participation in these meetings has reflected an increase in the number of refugees and concerns related to refugees. UNHCR now has a budget of approximately

Our goal is to make Canada a place for a "brain gain, not brain drain". But we also have a heritage of offering protection to the oppressed and a place where families can reunite and start anew. In the coming year, my Department will take all possible measures to ensure we meet the overall planning range of 200,000 to 225,000 established in the Year 2000 Plan, including some 200,000 immigrants and some 25,000 refugees. I am determined to ensure that Canada remains an open and inviting destination for immigrants.

*Ellnor Caplan, Minister of Citizenship and Immigration
News Conference, Nov. 1, 1999*

encourage efforts to expand protection for gender-related persecution. But a section which had urged specific policy action related to statelessness was reduced to a simple note of concern. And there was an extensive debate over the draft Conclusions related to detention, and only the concerted advocacy of NGOs, taken forward at the 11th hour by the Canadian Government delegation, resulted in the exclusion of the entire paragraph on detention. Some Governments had attempted to limit international detention standards to those "applicable in national law".

While referring annually to some of these issues in the Conclusions may serve to positively reinforce and remind Governments of their responsibilities, the problem is that regular tinkering with these standards sometimes backfires. The insertion of language like that noted above can suddenly weaken standards that had been clearly articulated in the past.

One of the issues taken up in recent years by non-Western Governments was that of burden sharing. They feel they have borne the brunt of refugee burdens, both in terms of numbers and the impact on host countries, even as resettlement numbers in the West have gone down. This year, the focus was on the difference in international attention and available financial resources between regions. It was clearly a reference to the fact that Kosovo attracted a lot more resources than any other refugee crisis. Meanwhile, UNHCR tried hard to explain the "Humanitarian Evacuation Programme" in Kosovo as a unique initiative that could not necessarily be applied elsewhere, despite the fact that some suggested strongly that positive aspects of it should be.

But the traditional, Western resettlement countries are feeling increasing pressure from other countries to increase their numbers. Some African countries that have been opposed are apparently giving greater support to allowing resettlement in principle. Countries like Pakistan are explicitly taking Western Governments to task for their recent resettlement records. The Pakistan delegation's speech quoted directly from the Inter-Church Committee for Refugees (ICCR) brief on the issue of resettlement, urging an increase in levels, streamlined procedures and dropping adaptability criteria. And countries like Benin and Burkina Faso in Africa, and Brazil, Chile and

Argentina in South America, have indicated a willingness to become resettlement countries.

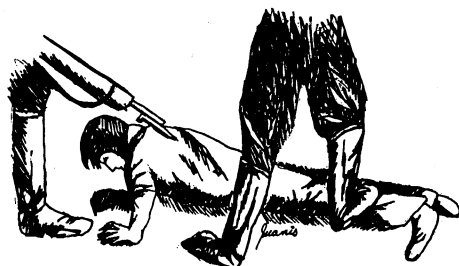
Ongoing Role of NGOs

This year's Excom theme was "Strengthening Partnership to Ensure Protection". NGOs were frequently mentioned as one of the key partners in this process. The new "Reach Out" discussion process is meant to facilitate bilateral consultations between UNHCR and a range of actors, including NGOs, Governments, the corporate sector and "influential members of civil society". A number of delegations even mentioned the need to include refugees themselves in the notion of partnership.

Despite the partnership language, NGOs must be careful not to allow themselves to be marginalised in the protection debate, either at the expense of political concerns or increasing corporate influence. Fortunately, human rights NGOs have played an increasing role in raising protection concerns, both at the Excom itself and at the Excom Standing Committee which meets during the year. For example, the June meeting is devoted to issues arising from the UNHCR's Note on Protection, and for the past couple of years NGOs have been present and have offered a concerted response.

The constant danger of being marginalised has meant that NGOs must work harder at getting their views across. Well articulated NGO briefs, like the ICCR brief mentioned above, are often well received. Advocacy which focuses on those Government delegations which may be supportive of certain issues (though not others), can bear fruit either with references in their speeches, or perhaps in the Conclusions themselves. The fact that only one formal NGO statement, under the auspices of the International Council for Voluntary Agencies (ICVA), can be read during the Excom session is deplorable. But this has meant that NGOs must work together to ensure that their key issues are highlighted, and Governments have actually paid greater attention because there is only one.

Another important avenue for NGO influence has been the NGO representative on a handful of Government delegations. This year, a number of these NGO reps played a key role during the closed Conclusion consultations, especially in ensuring that the offensive provisions related to detention were deleted.



This is an important set of meetings, and NGOs should continue monitoring them. Not only is it a good forum for meeting with NGOs from other countries, and with UNHCR and Government representatives, but it is clear that important policy discussions take place that NGOs can impact.

But NGOs could and should play a greater role, particularly in the discussions related to the Conclusions, which most clearly articulate the direction in which refugee standards are moving. A number of people at Excom, including the new Chair (from Spain) and the Canadian Deputy Minister for Citizenship and Immigration (Michel Dorais), are looking for inputs on reforming the policy debate. This is a potential opening for NGOs to become more involved.

New Chairperson of the IRB

Elinor Caplan, Minister of Citizenship and Immigration, today (Nov. 17, 1999) announced the appointment of Peter Showler as Chair of the Immigration and Refugee Board (IRB), for a period of three years. Mr. Showler replaces Nurjehan Mawani, who served as Chair of the independent tribunal since 1992.

Peter Showler is a lawyer who graduated with a Bachelor of Arts from Carleton University and a Bachelor of Laws from Dalhousie University in Nova Scotia. Mr. Showler has been a member of the IRB since 1994. As a member of the Convention Refugee Determination Division, he has developed country specialties which include Eastern Europe, Africa and the Francophonie. Prior to serving on the IRB, he was Executive Director of an Ottawa-based non-profit community legal services clinic. He has also served as an Adjunct Professor of Law at the University of Ottawa where he taught courses in immigration and refugee law and the history of Canadian immigration policy.

Stormy Seas We Brave:

*Creative Expressions by Uprooted People ** *Compiled by Helene Moussa*

An Interview with Helene Moussa:

RU: What made you think of putting together this collection?

HM: One of the firsts tasks that was assigned to me was to coordinate together with one of my colleagues a policy statement on uprooted people (internally displaced persons, migrants, and refugees). We were requested to engage the member churches in the development of this statement. This was a process that took 15 months. Feedback was received to the various drafts in writing and meetings. One such feedback which struck me the most

Meanwhile, we should also watch what the new Vice-Chair, from Iran, might initiate; next year he is slated to become the Chair. As we approach the 50th anniversary of UNHCR and the UN Refugee Convention, this provides a metaphor for the state of international refugee protection. For while Iran is oted for the refugees that it produces, it is also hosts the largest refugee population in the world. The system may appear to be spinning in circles, however we must remind ourselves that in the midst of many grim circumstances there are clear signs that we have moved forward since those early days when the only acknowledged refugees were from Europe.

Tim Wicher works for the Mennonite Central Committee in St. Catharines, Ontario

was that the churches are always writing or theologizing about the poor, the oppressed, the uprooted, when we should be having uprooted people express their own spirituality and their own experience. There was not much we could do for the policy statement in response to this feedback but I took it to heart and determined to do something about it at a later date.

The collection includes poems, lyrics, reflections, letters, two plays, as well as photographs of sculptures, paintings, drawings and embroidery. The collection celebrates the creativity, resilience and courage of uprooted people.

RU: How did you go about getting the material for the collection?

HM: A lot of letter writing, telephoning, faxing, e-mails and personal conversations on my trips! I wrote over 200 letters to members of the WCC Refugee and Migration Service churches and NGO networks around the world, as well as personal letters to uprooted people whom I knew were writing or using other art forms to express and communicate their reality. While most of the material in this collection is unpublished, I also requested authorization from journals and newsletters for particular writings - they often sent me additional contributions. The collection does not include all countries from which people are forced to leave today. I tried to get contributions from every region of the world and about different forms and experiences of forced migration. I also sought contributions of uprooted people from different decades such as Armenians who fled the Armenian genocide of 1915; refugees from Vietnam, Cambodia, Chile; migrant workers in different parts of the world; people in the Pacific region who are uprooted from their islands because of colonisation.

RU: What was the response to your invitation?

HM: Really overwhelming and humbling. Tamil refugees in India sent twenty-eight lyrics with the English translation. A Guatemalan group set up a special workshop for children to create poems and short stories - they sent the entire collection. I received original water colours by Palestinian children. On one of my trips to the Pacific Islands I was struck by the way people were literally transported from their island to another island so that a multinational corporation could exploit its mineral resources - this island is now totally robbed of its natural resources and vegetation. One of the people from this island offered to compose a poem for the collection! One of the churches in Egypt that has created a space for refugees to paint, sent me some 30 photographs of the art works. One of the contributors is a well-recognised poet; in fact she had been a runner up for the Nobel Literature Prize. She expressed such delight at having her poem with other uprooted people that she sent me a second one to choose from - I selected both! One of the NGOs we supported in Asia asked for a slight delay in the deadline so that they could send me a play written by children of migrant workers... of course I extended the deadline! And many more such stories. The youngest contributor is 7 years old and the oldest is 79. Almost all the contributors used art forms for the first time after they were uprooted. A few were well known artists in their countries of origin and several of them sought to teach this medium of

expression to other uprooted people.

RU: How did you go about organising the material?

HM: It just unfolded.... I read, reflected and re-read and reflected. It was a deeply inspiring process. Apart from the Introduction I make no commentaries. Some of the contributors gave their interpretations of their works or the context, others also shared a little about how they were forced to leave their homes and communities. Each piece speaks for itself, though I did arrange them so that they would (in my perception) be in dialogue with each other. Collectively they weave a powerful tapestry of the human condition.

The collection is divided into five chapters, admittedly organised according to my reading of the works and my desire to present the contributors as shapers and agents of their own lives despite the injustices they experienced:

Chapter 1: Challenging Identities

Chapter 2: Testifying to Oppression

Chapter 3: Seeking the Right to Refuge

Chapter 4: Calling for Peace and Love with Justice

Chapter 5: Struggling Together for Hope

The title of the collection is an adaptation from one of the lyrics.

RU: What problems did you encounter?

HM: The sheer number of contributions made it difficult to make a final selection! As it is, the collection was much larger than anticipated and therefore costlier to print. Sometimes it was difficult to get the authorisation from the contributors because they have moved again. Fortunately I had a wealth of resources to choose from! Contributors to this collection were invited to send their creative works in their language of origin with translations into one of the WCC official languages. Because of the overwhelming number of responses, I made the very difficult decision to have English as the main language of the collection - it was interesting that many of the contributions were seemingly written in English even though this was not the first, let alone the second, language of the authors. Contributions in French, German or Spanish have been included with an English Translation. The risk of course was losing the essence of the original work. I hope however that it means that a larger audience can hear their voices. Two exceptions were one in Tibetan and one in Arabic. Both were sent in beautiful script.

RU: What did you learn and what were your insights?

HM: This is hard to put in words because it has been such a privilege to listen to so many voices. I feel spiritually

enriched and as I say in the Introduction, the collection challenges us to go beyond public and policy statements, academic discourses and statistical surveys. This is not a book that one cannot read cover to cover, neither is it necessarily "pleasurable" reading. To engage with the material one can only be provoked to ask different questions.

RU: What response have you had to the publication?
HM: I have been pleased to hear that some people are using it for different purposes and contexts such as educational/awareness training resources, in articles, for worship and reflections, etc. The most meaningful has been the letters of appreciation from contributors and their hopes, if not expectations, that readers will be challenged to seek to address the forces that cause people to leave their home, communities and countries.

CCR-UNION MEETINGS

The CCR and the Canadian Labour Congress (CLC) are holding a series of regional fora this fall/winter to bring together refugee/migration activists and labour activists. The goal is to strengthen the links between the CCR network and the labour movement.

Some of the key themes to be discussed at the meetings are human rights/refugee rights; public awareness about refugees and immigrants (combating prejudices) and refugee sponsorship.

The first meetings are taking place in Windsor (November 21) and Brampton (December 11). Other dates will be scheduled soon.

THE MIGRANTS WHO ARRIVED BY BOAT ISSUES RAISED BY CCR

RU: Can it be purchased in Canada?
HM: Yes, to my knowledge, in Toronto only from the Anglican Church of Canada Bookroom and the United Church of Canada Bookstore. There is no reason why it cannot be sold in other parts of the country. Individual larger quantities can be ordered directly from WCC.

Helene Mousa joined the World Council of Churches Refugee and Migration Service in June of 1994. She was the Executive Secretary for Uprooted People with regional responsibility with partners in Asia, the Middle East and the Pacific and the focal staff person on uprooted women and children. Returned to Toronto in June 1999, and is now "retired," but not from her vocation!
* Published by the World Council of Churches, Geneva, Switzerland 1998

Immigration
CCR repeated the request for an independent investigation, because of the serious errors that occurred that have the potential to put people's lives at risk.

23 August - Letter to Refugee Branch, CIC

CCR repeated the request for an independent investigation about exclusion of people from refugee claim process (apparently deliberately) and denial of counsel. From notes it appeared that some of those still excluded from making a refugee claim had tried to make a claim.

26 August - Letter to BC Ministry for Children and Families

17 August - Letter to Minister of Citizenship and Immigration/Call to Refugee Branch, CIC
CCR requested an independent investigation into allegations that persons from the second boat wanting to making a refugee claim had, in violation of the law, been denied the right to make a refugee claim and been issued exclusion orders. Migrants were not being allowed access to counsel.

17 August - Press conference by CIC in Victoria - CIC announced that a mistake had been made in some cases and 21 people would have the exclusion order lifted and their cases reviewed (they were subsequently deemed to have made a refugee claim).

18 August - Letter to Minister of Citizenship and

stating, "I think that it is in your best interests to return to China so that you can be with your family".

● August - Letter to Refugee Branch, CIC
CCR outlined a series of allegations about treatment of minors and asked what CIC is doing to ensure minors' rights are protected.



27 August - Letter from BC Ministry for Children and Families

Clarified that the Ministry recognized the minors' right to make a refugee claim and would support that right.

7 September - Letter from BC Ministry for Children and Families

Replied a second time to CCR's letter of 26 August, outlining the measures being taken by the Ministry to care for the children and protect their rights. Stated that Ministry staff had been directed to meet with the minors to clarify the letter sent to them "because of the possible misinterpretation of this portion of the letter", and assured that any correspondence to minors on the third boat would be more carefully worded.

● September - Letter to Minister of Citizenship and Immigration Canada (copied to RCMP et al).
CCR presented a series of allegations and asked for an independent investigation into them:

1. Denial of access to counsel - second boat
2. Denial of right to make a refugee claim
3. Treatment of minors
4. Excessive security measures
5. Detention without review
6. Denial of access to counsel - third boat
7. Abuse of detainees during interviews
8. Use of red overalls
9. Lack of recourse in case of abuse

28 September - Newspaper articles indicated that RCMP officers, hurt by the allegations, are considering suing Victoria immigration lawyers and the CCR.

8 October - At a meeting with Minister of Citizenship and Immigration Canada, CCR was informed that the government had offered to set aside the 57 exclusion orders of migrants denied access to the refugee system (these cases were pending before the Federal Court). The reason given: there had been confusion; the migrants were detained and therefore should have had access to legal counsel, but did not receive it.

The CCR has received no formal reply to any of the letters written or copied to the Minister of Citizenship and Immigration, Refugee Branch, CIC or the RCMP about the allegations (despite the fact that officials at one point said that a letter was written and awaiting signature). Informal reports suggested however that there may have been some improvements in areas such as the security measures.

Compiled by Janet Dench, Executive Director of the CC

☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆

Woman,
your face
on my mirror
screams the pain
grieving the loss
husband, lover and father.
Children gnawing with
questions
your loss growing with
memories.

Seeds of distrust
wn
by oppressors who dictated
our stories

still bring forth fruits
poisoning solidarity.

The sword wedged
between our psyches
drip blood
even today.
Greenhouse enmities
conceived preceding our
births
have bloodied
our promises made through
creation.

Weeping with you,

grieving your loss
I shoulder the burden
of our collective guilt.
Runaway fury of youth
kick, stab and strangle
precious life -
from him, you and children.
When words fail
to dry your tears
will hate fill the space?

In shame
I bow burdened.
'tis blood that
binds,

blinds,
bloodies,
brotherhood.
Keeping vigil
I pray -
let violence cease
denied existence
let it die.

Sudharshana
Nov. 12, 1998
Freddas Bwa Bwa, a 37 yr.
old father of 4 children was
allegedly murdered by a
group of youths in Toronto

TAKING THE UNHCR INTO THE NEW MILLENNIUM

In December 2000, UNHCR will be 50 years old. Over the past half-century, the role of UNHCR around the world has changed tremendously. More and more often we are called upon to work in conflict zones, in areas where civilians are no longer the accidental casualties of war, but the intended victims. These new challenges should not diminish the attention we pay to refugee issues in countries like Canada. On the contrary, they make it more necessary than ever to strengthen support for the institution of asylum, which is the cornerstone of the refugee protection regime.

I have three main objectives for the work of the small UNHCR team in Canada: First of all, we would like to carry out our monitoring of the refugee status determination procedure in such a way as to enable us to contribute constructively to further improvement in the quality of this procedure. Secondly, we want to work closely with Canadian authorities and non-governmental groups to use the Canadian resettlement program to the best possible advantage. Canada has the world's second-largest resettlement operation. We would like to see the places available used as much as possible to offer new homes to refugees who cannot safely remain in their first countries of asylum, or who have special needs which cannot be met there, or who have close family already settled in Canada. Finally, we want to help to raise public awareness throughout Canada of what makes a person a refugee, and of why refugees need a special measure of protection and assistance. I firmly believe that a better understanding of the plight of refugees can help to strengthen support for the institution of asylum, which is a fundamental value of this profoundly democratic society.

Judith Kumin, UNHCR representative in Canada



REFUGEE UPDATE

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