

# REFUGEE UPDATE

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## CCR: THIRTY YEARS AND COUNTING

### EDITORIAL



The Canadian Council for Refugees (CCR) is celebrating its thirtieth anniversary this November. The changes over the last 30 years are breathtaking. The organization began as the “Standing Conference of Canadian Organizations Concerned for Refugees,” an ardently independent gathering of Canadian organizations. They were then facing a new wave of refugees in the aftermath of the Vietnam War. The Standing Conference included religious groups, immigrant service groups, Amnesty International, UNHCR and government representatives. It included refugees from the start, largely Europeans from WWII or refugees from Communist Eastern Europe. That organization has since morphed into a diverse, formally incorporated national organization in its own right - serving as the dominant national voice on refugee and immigrant matters.

Since its beginnings, the CCR has worked to promote inclusiveness in a variety of ways. Early on, it worked to encourage the participation of the legal community so that members could more comfortably advocate on legal and “protection” matters. It looked at international refugee issues. It began to work on gender specific issues. It encouraged a full range of refugees and migrants from new refugee communities to become involved at all levels – including at the highest level of president. Some of that concern for inclusivity continues in the work to avoid oppression in work with vulnerable people.

As well as a more formal structure, the CCR has developed a media expertise, established formal government consultations and has honed its own skills at assembling 1

national reports, reviews and educational tools. It is now the principal national voice for refugees and immigrants in Canada, acting with member organizations in a bewildering variety of fora: governments in Canada and internationally; the courts with important test cases; the media arranging articles or issuing releases; joining meetings in provinces and cities.

There will never be an end to the demands. After faithfully tackling oppressive government policies for decades, with limited success, a new wave of restrictions was introduced following the post 9-11 “war on terrorism” leading into our age of suspect terrorists and security concerns. Backlogs in refugee related procedures continue seemingly without end. The struggle for a full and fair refugee procedure for all has lasted over the lifetime of the CCR – there is still not even the limited appeal promised in the 2002 legislation. Now CCR members must appear before the courts to challenge indefinite imprisonment with no known evidence. CCR members must go before the courts to oppose border returns to the US under the so called Safe Third Country provisions – returns of people known to be at risk of subsequent forcible return to persecution.

For decades CCR and its members have challenged manipulation of the public by media events such as the reporting around the boat arrivals which descended into anti-refugee and anti-immigrant hostility and they have challenged media (and conservative think tanks) promoted stereotypes of newcomers and refugees. Clearly human beings will continue to harbour prejudices which can degenerate into the real evil of racism. That is unlikely to change. But fanning these tendencies must be limited. There has been some progress away

from the more overt racist notions in our national media. Finally, there has been some evolution in the thinking of CCR members about who needs protection.

The need to recognize refugees suffering from expressions of publicly tolerated or condoned forms of violence such as domestic and/or gender based violence, including rape, is now acknowledged. A need to protect victims of human trafficking has been accepted by the CCR but this has not yet been translated into effective government protection. The draft dodgers from an unpopular Vietnam War of the 1970s have given way to the subtleties of soldiers opposed to what is required of them in an Iraq war never sanctioned by the UN. But insights into those protection needs are still being gained.

Despite its development, the CCR still retains its style as the umbrella or coordinator for action for the many member organizations and individuals in Canada which do direct service work with refugees and migrants. Sad to say, there is no end of refugees and victims of violence in sight. So work with refugees, whether to be successful or just to remain true to our best selves and our convictions, must go on.



## EMBRACING EVERYONE IN THE STRUGGLE AGAINST OPPRESSION

ROBERTO JOVEL

Oppression is at the origin of refugees' flight. That refugees should come to Canada only to encounter new experiences of oppression is a matter for concern to all of us.

Consider the case of Omar (fictional name, but real person), a refugee in Toronto from a francophone African country with an important Muslim population. His ability to make himself a new home here in Canada has been hampered by issues like long delays due to security checks - and significant, socially spread Islamophobia. Anti-black racism has also brought about concrete negative impacts on his settlement process, for instance in the area of housing. Omar has further found himself in a situation of isolation, as he is emotionally and sexually attracted to individuals of his gender and he seldom feels

safe when using settlement services.

Omar's experience shares common threads with that of other refugees and immigrants. During the 1990s and into the first decade of this century, 75% of refugees and immigrants have come from the Global South and, thus, belong to racialized communities. Studies based on Statistics Canada data have found that immigrant women who belong to racialized communities are more likely to be unemployed, have a less stable or meaningful link to the labour market and earn 20% less than white immigrant women, who in turn earn significantly less than immigrant men and way less than white Canadian-born men. Refugee women were not a focus of that study, but it is not hard to imagine where they stand in this picture.

The CCR has been addressing different forms of oppression over the last 30 years. In 1996, the Council adopted its Policy and Convention on Anti-Racism and undertook an awareness-building process among its membership across the country, encouraging organizations to commit to anti-racism by adopting the CCR policy or a similar one. More recently, Islamophobia and racial profiling have also been a focus of the CCR's work in the context of the post-9/11 climate. In the area of gender, the CCR held an International Conference on Refugee Women Fleeing Gender-Based Violence in 2001 and advocated for gender-based analysis to be implemented within Citizenship and Immigration Canada, among numerous other initiatives.

Poverty is a major challenge in refugees' efforts to settle and integrate into Canadian society. The Colour of Change Network, a coalition of community-based organizations, has produced a series of fact sheets that show the impact of racial discrimination and systemic racism on members of racialized communities in areas like immigration, employment, health, education and housing, among others. Racialized refugees and immigrants, particularly women, live first-hand the compounded, mutually reinforcing nature of deprivation in those areas. These tools for public education can be found at <http://colourofpoverty.ca>.

Teresa (fictional name, but real person) is a single mother of two who came to Montreal as a refugee from Central-America over 20 years ago. Only recently she spoke to someone for the first time about her love for women. She's been silently coping with this, not knowing that there is a Lesbian Mothers Association of Québec, several hundred members strong, many of them born abroad. Teresa finally heard that she could attend

picnics and other activities with her children where she'd be surrounded by families like hers. Sexual and gender diversity have also been part of the CCR work for many years, and this led to the adoption in 2005 of the Anti-Homophobia, Anti-Heterosexism and Anti-Transphobia policy. Our sector still has to make huge strides in order to be competent, fair and responsive regarding disability issues affecting refugees and immigrants at the same time as racism, sexism, poverty and ageism. The little opportunities and resources from which you benefit as a racialized refugee become even thinner if you face ableism.

The CCR is currently developing a Policy on Anti-Oppression. The policy and its applications will address the central issues of unequal power and privilege. It will foster a process of unlearning the unjust - and help increase understanding and awareness of the manifold ways in which refugees get caught in concurrent, interlocking oppression mechanisms. And it will aim to increase our ability to design services and supports that adequately address those issues, dismantle oppressive practices and advocate for change at various levels. The CCR will be looking at its own practices and ways of doing things, questioning whether they are informed by forms of privilege that reinforce oppression, and challenging privilege and oppression so the CCR can become a true home of justice for refugees and immigrants.

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Roberto Jovel  
Policy and Research Coordinator - Coordonnateur,  
politiques et recherche  
Ontario Council of Agencies Serving Immigrants  
110 Eglinton Avenue West, suite 200  
Toronto Ontario M4R 13A

## ***TAKE ACTION! CCR CAMPAIGN UPDATES AND ACTIVITIES:***

Join the Canadian Council for Refugees in raising public awareness of challenges to refugee rights and successful integration in Canada. Here are some areas where your actions can make a difference:  
*Take Action -*

**Eliminating Transportation Loans:  
Lightening a burden for refugees**

Each year Canada welcomes thousands of refugees, resettled here where they can find safety and a permanent home. But did you know this safety has a price tag? The government expects resettled refugees to pay back the costs of their transportation and their medical exams in the form of a loan. This means that refugee families not only begin their life in Canada with the challenges of establishing a new life, but also with a huge debt. Repaying transportation loans has dramatic impacts on refugees and their families. It affects their ability to integrate. It prevents them from meeting their full potential in their new home.

To help alleviate this burden on refugees, the CCR has launched a campaign to demand the elimination of transportation loans. Given the costs involved, the Canadian government can easily afford to absorb these transportation loans without decreasing the number of refugees resettled to Canada each year.

Too many refugees have paid a high price for protection in Canada. Our government shouldn't be adding to it. We invite you to join the CCR in calling on the Canadian government to change its policy and absorb the costs of transportation loans and overseas medical expenses for refugees. Inform others in your community about the effects of transportation loans on refugee families. Or encourage your Member of Parliament to support efforts to have the Canadian government absorb the loans.

For more information on the campaign, check out the webpage at: <http://www.ccrweb.ca/transportationloans.htm>.

There you'll find background information, profiles of people affected, and other campaigning tools, including 'Hidden Costs', a 15-minute video exposing the burden and painful impact of transportation loans on refugee families.

### **Iraqi Refugee Crisis**

In recent years, more than two million Iraqis have fled to neighbouring countries, like Syria and Jordan, in search of safety. Because of the scope of the crisis, the United Nations Refugee Agency (UNHCR) has asked countries like Canada to provide humanitarian assistance and to resettle the most vulnerable refugees from Iraq.

So far, the Canadian government's response has been minimal, and especially small in comparison to the scale of need. With a crisis on such a vast scale, what can individuals Canadians do? Join the CCR's call for an increased Canadian response to the Iraqi refugee crisis in the Middle East. Join the many organizations and individuals in Canada who have already endorsed the CCR's position statement and urge your Member of Parliament to join the call for increased resettlement of Iraqi refugees to Canada.

For more information on the CCR's campaign for the resettlement of Iraqi refugees in Canada, see: <http://www.ccrweb.ca/iraq.htm>

### ***Campaign Update -***

#### **Cancelling the Canada-US Safe Third Country Agreement**

In fall 2008, the CCR, together with other organizations, filed an application with the Supreme Court starting an appeal to the Federal Court of Appeal's ruling on the Safe Third Country Agreement. The appeal court overturned a November 2007 Federal Court decision which struck down the Agreement, on the grounds that the United States does not comply with international human rights obligations.

The application to the Supreme Court highlights that refugees' lives are at risk, as illustrated by the case of one Honduran man. Turned away from the Canadian border in 2006 because of the Agreement, he was quickly deported by the US to Honduras, where he was soon afterwards killed by the people he had been fleeing. If it weren't for the Safe Third Country Agreement, he would likely be alive and living in Canada today, with his wife and his son, who was born after his death.

#### *A little history...*

The CCR, Amnesty International, the Canadian Council of Churches and an individual (John Doe) launched the legal challenge of the Safe Third Country Agreement in December 2005. Under the Agreement, most refugee claimants arriving in Canada at the US border are ineligible to make a claim in Canada. The organizations argued that some of those denied entry to Canada are not able to receive protection in the US, because the US does not comply with its international obligations towards refugees. The Federal Court upheld those arguments in a November 2007 decision. The Federal Court of Appeal did not dispute that finding: instead it ruled that the lower court's conclusion "that the US does not 'actually' comply is irrelevant."

For the complete September 2008 submission to the Supreme Court, see:

<http://www.ccrweb.ca/documents/STCA-SCC-leave.pdf>

For more information on the Canada-US Safe Third Country Agreement and the CCR's actions, see:

<http://ccrweb.ca/S3C.htm>.

# THE STANDING CONFERENCE... ..

BY GEORGE CRAM

After a series of national meetings held with the financial support for travel costs by the UNHCR and Immigration Canada, Canadian NGOs were being pushed quite hard to form a new organization. The UNHCR wanted us to follow the European model of the Danish Refugee Council, Swedish Refugee Council, etc. which strongly supported the UNHCR and undertook fund-raising campaigns on its behalf. Immigration Canada had its own agenda, they wanted a small representative organization to consult with from time to time, without the need to bring together a large number of NGOs from across the country.

The NGO community wanted to create a new organization, but did not want to be co-opted to become a UNHCR fund-raiser nor a small community ear for Immigration Canada. NGOs felt that their strength was in their breadth of concern for refugees, the diversity of their organizations with a refugee mandate, and the need

to give a strong public boost to the needs of refugees.

Accordingly, after much debate, the pre-cursor organization of the CCR was formed with a limited mandate. The multi-organizational base of NGOs was front and centre, it did not have a fund-raising function, and it was deliberately given an impossible name to avoid sound bites and press releases by the new fledgling group. Media were referred to member organizations for comments.

The strategy worked amazingly well. The Standing Conference of Canadian Organizations Concerned for Refugees, (SCCOCR), with its unpronounceable acronym, allowed the new organization to grow at its own pace until ready for new and bigger roles.

*George Cram is a former IRB board member and was president of the SCCOCR 1980-1982*

## PAST PRESIDENT REFLECTIONS

BY NICK SUMMERS

The Editorial Board has set me the task of recalling a memorable moment from my term as CCR president. This is difficult because the many highpoints (and a few low) that I remember from my years of involvement with the CCR tend to blur together and I cannot be sure that any particular event took place before, during, or after my two years as president. That said, I do recall a particularly dramatic meeting in Toronto in (I believe) February 2005 which brought home to me both the impact that our message can have and the complex nature of our relationship with CIC. For a couple of years leading up to 2005 the CCR had begun to change its approach to delivering our message to government. It was clear that endless consultations with CIC officials was getting us nowhere and a decision was made to raise the CCR's profile with politicians. The result was the implementation of lobby days on Parliament Hill, letters and visits to Senators and MPs in their ridings, and the start of an annual report card on government's activities and policies on refugee and immigration issues. Finally, in 2004 the CCR issued a series of hard hitting reports such as "No Faster Way" and "More than a Nightmare" which dramatically highlighted the human suffering caused by government policies and inaction. All of which

brings me back to that meeting in Toronto. It was a regular roundtable discussion held with CIC officials and it was proceeding in the usual rather unexciting fashion when, for no particular reason, one of the officials stood up and yelled directly at me that the CCR was destroying the morale of overseas visa officers and that our reports were nasty and simplistic. Everyone was a bit stunned by this outburst and for the rest of the meeting everyone was walking on eggshells. When I reflected back on this event I realized that it meant we were on the right track in getting out our message. Clearly this CIC official felt that our reports were having an effect on his political masters and that there could be negative consequences in regards to how he and his colleagues had failed to protect vulnerable people. However, I also saw that our approach was a two-edged sword that had the potential to close off dialogue with CIC and so, for the rest of my term as president, much of my efforts went into attempting to repair fences and striving to keep communication open. The completion of that task took the diplomatic skills and hard work of Liz McWeeny.

*Nick Summers is a lawyer in Newfoundland and was President of the CCR 2004-2006*



## ANNOUNCEMENT: BAD CONSULTANT'S HOTLINE!

BY HILARY EVANS CAMERON

The Parliamentary Standing Committee on Citizenship and Immigration recently released a report confirming what many newcomers to this country already know: that the most vulnerable people in Canada are easy prey for unscrupulous immigration consultants. Now anyone harmed by incompetent or dishonest consultants can help clean up the system.

A new organization for Survivors of Consultant-Related Errors and Willful Exploitative Dishonesty (SCREWED) has been formed, and Downtown Legal Services (DLS), the University of Toronto's student legal clinic, is inviting victims to share their stories on an exploitation hotline. DLS will send these stories on to Parliament, and keep them coming until the government acts on the Committee's report and passes better laws to regulate the consultant industry.

Macdonald Scott, a member of the Canadian Society of Immigration Consultants, has seen the damage firsthand: "One of my clients hired a consultant firm in Montreal. They took his credit card information, charged him two thousand dollars to do an application and did nothing. The next thing he knew he had \$6,000.00 in charges run up on his credit card." The regulator took no action.

has to be done -- we need this government to ensure that people can't get away with crimes just because their victims are in the process of immigrating to Canada," said refugee/immigration lawyer Hilary Evans Cameron. "Bringing these cases forward will ensure that this issue doesn't fall off the radar."

"We already receive calls from former clients of immigration consultants, and we have been able to help a few of them," said Joel Hechter, a DLS law student who made submissions before the Parliamentary Committee last spring. "But we are a small clinic, and can only take on a limited number of files. This hotline will give a voice to many more."

"The Hotline number is (416)978-6447 and its hours are:

Monday	12:30-2:00, 5:40-7:10
Tuesday	12:30-2:00, 4:40-7:10
Wednesday	12:30-2:00, 5:40-7:10
Thursday	12:30-2:00, 4:10-7:10
Friday	Closed

"We have the Parliamentary report -- we know what

## REFUGEES, HUMAN RIGHTS DEFENDERS AND THE INCREDIBLE STORY OF LYDIA CACHO

BY NORRIE DE VALENCIA

*"Can you protect me if my refugee claim is rejected and I have to return to Mexico?"*

*"I am sorry but we cannot protect you. Even human rights defenders are at risk for the work that we do."*

This exchange took place on January 28, 2008 at Regis College, University of Toronto, between a Mexican woman fleeing domestic violence in her country, and a Mexican human rights defender and it brought tears to the eyes of both, and silence among the 125 people gathered. Blanche Petrich, one of the Mexican panelists at the event, referred to the case of human rights defender Lydia Cacho in speaking of the situation in her country.

Months after the above exchange, Lydia Cacho was the

keynote speaker at a Forum in Vancouver, BC, "Valuing Human Dignity and the 2010 Olympics - Challenging the Trafficking of Women". During this event Lydia was awarded the UNANIMA International Woman of Courage Award 2008. A special first nation "blanketing and witnessing ceremony" further honoured her. Lydia's Vancouver plenary can be heard at:

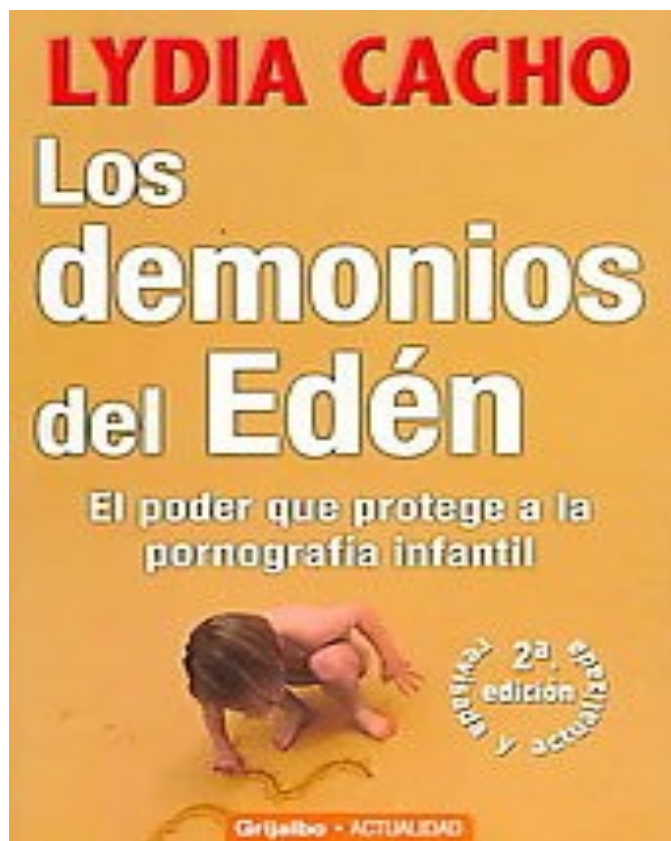
[http://www.interfaithjustpeace.org/media/2008\\_audio/lydia\\_cacho/91-1-lydia\\_cacho.mp3](http://www.interfaithjustpeace.org/media/2008_audio/lydia_cacho/91-1-lydia_cacho.mp3)

Lydia's amazing story is that of a courageous human rights defender and potential refugee. Lydia wrote an investigative book exposing a child pornography and trafficking ring centred in her home city of Cancun, Mexico. The book, "*Los Demonios del Eden*" (*Demons in Eden*) implicates prominent members of the corporate and political power structure, reaching to the highest echelons. However, instead of receiving praise for a well-researched exposé, her

book resulted in threats against her life, arrest, incarceration, torture and a law suit to silence her effort to give voice to the victims. In response, she filed a successful counter-suit for corruption and for violation of her human rights. She is the first woman in Mexico to file a federal law suit against a Governor, a District Attorney, and a Judge for corruption and attempted rape in prison. She became the first woman in Mexican history to take a woman's rights case to the Mexican Supreme Court. A video "Los Demonios del Eden" (English subtitles) is available. Lydia is currently about to publish a new book further documenting the webs of human trafficking and child pornography within Mexico and beyond.

Lydia was awarded the **UNESCO 2008 Freedom of Speech Award** last Spring and she tells her story in her inspirational acceptance speech from Maputo, Mozambique, May 3rd 2008, printed below.

"Mr President, Mr. Director General of UNESCO, Ministers, Ladies, Gentlemen and fellow colleagues: I feel honored to be with you tonight. This award may not protect me from death threats or from death itself. But it certainly helps to protect my written work and to enable a broader audience to know and understand the Mexican reality and the impact of the global crimes of trafficking in persons and of child pornography. By honoring me tonight you are recognizing the talent of my teachers, of the hundreds of women, men and children who have trusted me with their personal histories, their tragedies and their triumphs. Somehow they knew I would honor their trust by doing my job as a journalist. When I was tortured and imprisoned for publishing the story of a network of organized crime in child pornography and sex tourism, I was confronted with the enduring question of the meaning of life. Should I keep going? Should I continue to practice journalism in a country controlled by 300 powerful rich men? Was there any point to demanding justice or freedom in a country where 9 out of every 10 crimes are never solved? Was it worth risking my life for my principles? Of course the answer was... yes. Mexico, my homeland, is a country of 104 million people, a land of great landscapes, of magnificent rivers and unending green fertile mountains. Nonetheless Mex-



*Lydia was awarded the **UNESCO 2008 Freedom of Speech Award** last Spring and she tells her story in her inspirational acceptance speech from Maputo, Mozambique, May 3rd 2008*

ico exports 400 thousand people every year, men and women who flee to the United States, to escape hunger, poverty and violence.

I grew up in a middle class neighborhood in Mexico City. My mother, a feminist psychologist, took me to the slums around town and told me that those kids—kids who were just like me—had no food and no chance to get an education. In this way she prepared me to be a citizen and what is now called a human rights activist. I was born a woman. I found in feminism a philosophy based on equality and peace. It led me to view life from a gender perspective. For years I have lived and moved between two worlds: being a feminist advocate against violence is the way I act as a citizen; being a journalist is the way I practice my

profession. Every day I try to enlarge my ability to listen, to understand, to feel empathy, to question, to be truthful, to be ethical. By listening to peoples' stories I learn ways to add insight and perspective to my coverage of human tragedy and human development. And also I test - as many of my colleagues do - my ability to stay alive.

I am 45 years old, and I have spent most of my life trying to understand human nature. What makes us able to survive, to change, to evolve, to save or to harm each other? I've been watching the news and reading newspapers most of my life. I thought I understood the macro structures of oppression. I knew how the political system works to protect the rights of the elites, at the expense of the majority. But I was not aware what it felt like to be the subject of repression myself. When the mechanisms of state repression were used against me, I found myself in the strange position of being seen as a heroine simply for exercising -with some dignity- my right to freedom and justice.

Thousands of people marched on my behalf. Most of the Mexican media covered my case for almost two years, until the powerful were finally able to buy the silence of some of them. Millions of citizens echoed my demand for freedom of the press and for the rights of the child victims I wrote about. I stood before the Supreme Court with a heart full of hope that they would defend our constitutional right to tell the truth without being tortured or incarcerated. Many thought there was so much hard evidence in this case that there would be no room for corruption. It seemed all of Mexico was hoping for a chance to believe that change was possible. Standing against us was a handful of well dressed lawyers in dark blue suits who defended the politicians I had accused of an unsavory relationship with pedophiles. But this handful of men was able to lobby the majority of Supreme Court judges to dismiss my freedom of the press case relating to child pornography and organized crime. And so I lost and so did my country. But here I am. I was lucky enough to elude death. I had the opportunity to report my own case, to live inside the story of an orchestrated



Lydia Cacho (right) hugs Rosario Ibarra de Piedra, another well-known Mexican human rights defender, before receiving recognition for her book *Los Demonios del Eden* (Eden's Devils) from the Mexican Journalists Club. The book documents allegations about the involvement of powerful businessmen in child prostitution and trafficking.

Photo credit: SUSANA GONZALEZ / AFP/Getty Images

campaign to protect the marriage between organized crime, businessmen and a corrupted government. But most of all I had the chance to keep my promises to the little girls who were abused by pedophiles and child pornographers, and who asked me to tell their stories.

We journalists tend to believe that the shock provoked by reading such stories cannot fail to unite people of good will. That is one of the reasons we keep going against all odds. We know the power of compassion. As journalists we should never become messengers of the powers that be. Nor should we surrender to fear and self censorship. And that is why we are here in Mozambique.

We know there is something wrong with a world that favors a war economy instead of education, that favors silence instead of freedom and truth. A world in which millions of children orphans of the HIV-AIDS pandemic, are unimportant to the rest of the world. There is something wrong in a world where racism and sexism separates us from each other. This gathering symbolizes our determination to keep on going... with cool heads and warm hearts...and to keep on writing. To keep on living with hope."

*Norrie de Valencia is on the CCR Trafficking Subcommittee, and is a member of the Anglican/PWRDF Refugee Network in Vancouver.*



# 3 DECADES OF BACKLOGS, IS THIS ANY WAY TO TREAT REFUGEES AND IMMIGRANTS?

BY GEORGE CRAM

## The start of it all.

It was April 4, 1985. A small band of intrepid refugee advocates crossed the plaza facing the Supreme Court of Canada building in Ottawa. As they walked, a highly placed Immigration Official greeted them and said he was surprised to see them, as there was no chance that their intervention would succeed. He told the group that the Immigration Department's legal team was convinced that people without legal status in Canada did not have rights under the Canadian Charter of Rights and Freedoms.

Everyone proceeded to the Court and listened to the decision that went AGAINST the Government. This was the famous SINGH decision, later commemorated on April 4 each year by the CCR as Refugee Rights Day. It enshrined the principle that refugee claimants in Canada are entitled to an oral hearing before the decision-maker determining the claim.

In subsequent days and weeks, it became only too clear that the Government had made no provisions for losing the case. Until this time, asylum seekers went through an examination-under-oath, and a paper transcript was then made and sent to Ottawa for a decision. The decision-makers never saw nor heard the claimant, and could not assess his/her state of being. New negative refugee status decisions under the then existing system were now invalid. The Government had no Plan B.

## The great backlog.

It took the Government until January 1, 1989 to put a new refugee determination system in place. It would apply to new cases only. By then there were some 101,853 uncompleted cases with an estimated 122,223 people in suspended animation. On December 28, 1988 the Hon. Barbara McDougall, Minister of Immigration, announced a special process to deal with the "Refugee Claimant Backlog". A number of promises were made, and never kept.

The Government set a time-line of two years to complete the backlog clearance. A parliamentary committee in December 1989 reported that a further 6.1 years would be needed if present rates were maintained. An examination of statistics for August 1990 estimated a completion rate of 13,000

cases per year – approximately a 10-year process.

NGO's and other concerned persons complained bitterly that many Backlog claimants had already been in Canada for several years and a promise was made to deal with cases in the order in which the claims were made. This was later deemed to be impractical and never carried out.

For the people trapped in the Backlog the consequences were devastating. New claimants from refugee producing countries were being processed under the new system, becoming landed and reunited with their families. Backlog people from the same countries (even the same villages) were having their cases delayed for years without even being called for a preliminary interview. Imagine the stress to the families left behind. Still subject to the danger of persecution, the spouse and family dependents left at home couldn't believe that Canada would act in such an inhumane manner. Instead, the families would often believe that the claimant in Canada was lying to them or had abandoned the family.

An NGO survey of some 200 backlog claimants was undertaken during the summer of 1990, and measured some twenty symptoms described by the American Psychiatric Association as diagnostic criteria for Post-Traumatic Stress Disorder. A majority, 58%, reported that their symptoms had "worsened" since coming to Canada, while only 16% said their symptoms had become "better". When the respondents were divided into three groups (Single, Married with Spouse in Canada, Married with Spouse Abroad), 48% of the "better" responses were from the Single claimants while representing just 35% of the total sample. Only 17% of the "better" responses were from the Married with Spouse Abroad category, who formed 30% of the sample.

The great backlog continued on its slow pace with its significant toll of family separation and breakdown. The people the process was intended to help, became the victims of it. This This was no way to treat potentially new citizens of Canada.

### Meanwhile a new backlog was emerging.

The new system at the Immigration and Refugee Board (I.R.B.) was unable to keep up with its workload. The number of new cases filed each year, coupled with the inadequate staffing levels provided to deal with the caseload meant that the number of concluded cases was far less than the number awaiting decisions. By the mid-nineties this new backlog had grown to over 30,000 cases and the same stresses seen in the great backlog were becoming more frequent. It was impossible for many refugee claimants to plan for a stable and secure future. Refugee claimants were living under a constant cloud of insecurity and uncertainty, unable to reunite with their families. The stated objective, as expressed in the Immigration Act, (I.R.P.A.), of establishing fair and efficient procedures to maintain the integrity of Canada's refugee protection system was being eroded.

The solution this time was to weaken the system. Originally, two decision-makers heard a claim, but only one positive member could carry a decision. By reducing the number of members hearing a claim from 2 to 1, many more cases could be heard. Once again a promise was made to sweeten the pot. A Refugee

Appeal Division (R.A.D.) would be created to give claimants an appeal that had been missing in the I.R.B. process. This promise too, like so many before, has never been carried out.

### The overseas backlog.

We now return to where we started – refugees and immigrants without rights, subject to arbitrary procedures and changing policies. Thousands of persons have applied to come to Canada as immigrants under rules and fees outlined in Immigration regulations. They expected to be dealt with in a fair and expeditious manner. However, it has already been announced that the rules will change once again, and that those already in the queue will be shunted to one side, to face yet another lengthy backlog. Since these persons are all overseas, there is no Charter protection as was the case in SINGH. The abuse of future immigrants and potential citizens continues. The values, fair treatment, and human rights standards which Canadians hold are being swept aside yet once again. If Canada wishes to regain its once honourable reputation, the needs of people in the queue must be addressed.

## **HUMANITARIAN AND COMPASSIONATE APPLICATIONS SOME FACTS**

BY JACK MARTIN

Humanitarian and Compassionate (H&C) applications allow people who would not otherwise be allowed to stay in Canada become permanent residents.

The legal authority comes from paragraph 25(1) of the Immigration and Refugee Protection Act which allows for exemptions from the Act or regulations which are justified by humanitarian and compassionate considerations. It gives immigration officers the flexibility to approve deserving cases not anticipated by the legislation.

While usually couched in terms of exempting people from the requirement that they apply for landing from

outside Canada, many if not most of the cases approved for H&C would not have met the landing criteria if they had applied outside of Canada.

### **Factors needed beyond successfully living in Canada.**

Many H&C applications submitted are based on showing that the applicant has now successfully established a new life in Canada. In my experience, cases based on establishment alone rarely succeed. Generally, to be successful, an application based on establishment needs to have an additional element.

To succeed it is necessary to show unusual and undeserved or disproportionate hardship. Hardship is different from risk. It is less onerous to prove. From my own experience, and from talking to other lawyers, H&C is a valuable resource in situations where people face harm if returned to their countries. Examples include situations such as people who are HIV positive and would face serious discrimination if returned to their country. It can also include situations of domestic violence where, for one reason or another, a refugee claim was either not successful or not even made. In some instances, the circumstances were not even brought forward at a refugee hearing. Sometimes that is because the abusive spouse was at the same hearing and the victim was still reluctant or too fearful to bring it up. There could also be instances where the claimant was not aware she could base her claim on spousal abuse. In other cases, the person might not have felt comfortable with her counsel.

“Near family” situations can also lead to acceptances. I am referring to family members, such as brothers and sisters, who fall outside of the family class, and to unrelated people who are so close to a permanent resident or citizen as to be considered family. The important thing is the hardship that would be caused by any separation.

I myself was skeptical of the chances of success before talking to colleagues. But it was heartening to hear reports of the acceptance of caregivers whose removal could seriously impact the physical or mental health of a Canadian resident, and of an elderly person with mental health issues without a family to assist, but who had no prospect of assistance in the country of return; in this type of case, in addition to the exemption allowing the person to apply for landing from within Canada, an exemption from medical inadmissibility can be sought and obtained.

### **Best Interests of the Child**

H&C is seen as the part of Canada’s immigration scheme where the best interests of the child need to be considered. Alas, the best interests of the child are not seen as a primary factor in determination. That said, the best interests of the child can tip the balance in favour of an otherwise iffy H&C, and can also lead to situations in which without the hardship facing a child, the family’s case will be difficult to win. On the other hand, humanitarian and compassionate applications might be successful only because of the best interests of the child; even in some cases where there is little prospect that the parents will ever be established.

It is not enough to merely refer to the principle of best

interest of the child in submissions. There has to be evidence to back it up. Evidence from a child psychologist can be persuasive. Expert evidence of the conditions in the country of return may be needed. Unfortunately, the cost of such expertise is often beyond the means of families who would benefit most from them. At least with respect to country conditions, an affidavit from someone who is not an expert, but who has personal experience of conditions in that country may suffice. And in some cases, documentary evidence showing substandard education, and discrimination against girls, say, may make it self-evident that the best interests of the child are to remain in Canada.

### **Uphill for unsuccessful refugee claimants**

While establishment alone is seldom enough to succeed with an H&C application, immigration officers seem to take a particularly hard line for unsuccessful refugee claimants. Decisions are full of fulsome praise before the twist of the knife. They use words like commendable to describe the applicant’s work or entrepreneurial achievements, congratulate the applicants on their volunteerism, and then say that such establishment was to be expected given the length of the refugee determination process. Currently lawyers are challenging the reasonableness of such decisions in Federal Court, given the lack of evidence about what the general level of establishment has been, but given the deference shown by the Court to H&C decisions, it is best to be aware that finding another element to add to an establishment case may be the only way to succeed. In a few cases, the same facts which led to an unsuccessful refugee claim could still provide that extra element, since it is not necessary to show persecution, but only hardship.

### **When to make an application?**

Many people wait too long to start their application. Maybe on account of the cost, many refused refugee claimants, instead of simultaneously starting their H&C at the time of applying for leave to the Federal Court, roll the Federal Court dice and lose valuable time. It is wise to start an application earlier rather than later, supplementing the information as time goes on. A long delay due to bureaucratic backlogs, coupled with some evidence of risk or illness, or unresolved questions of the best interests of the child, could be the basis of a successful stay in Federal Court.

That said, from time to time, Immigration will decide the H&C application quickly. A project in early 2008 sending H&C applications from across Canada to the local office in Vancouver for determination saw some decisions being made with six months. Although the

A book I wrote with Ilana Simon which came out in 1989 under the name *Closing the Doors: The Failure of Refugee Protection* argued that states accept refugee protection in principle but not in practice. The result is distortions which prevent the commitment in principle from translating into real numbers.

At Evian, France in 1938, at an international conference whose objective was resettlement of Jewish refugees fleeing Nazi Germany, States present, including Canada, agreed to resettle Jewish refugees. But the resettlement did not happen. Many of those who would have benefited from the promises made but not kept at Evian ended up ghettoized, deported and massacred.

The conclusion, after World War II, from that experience was that a voluntary commitment to resettle was ineffective, that a legal obligation to protect refugees was necessary. The Refugee Convention of 1951 was borne.

The Refugee Convention in 1951 did not just speak to political lessons from the past. It also spoke to the politics of the then present.

By 1951, the iron curtain had descended on Europe; the Cold War had arrived. The Refugee Convention, with its concept of persecution, suggested and meant to suggest that refugees were fleeing from states which were violating human rights.

The blame was targeted not only at the defunct Nazi regimes but as well at the then current Communist states. Western states signed on to the Refugee Convention. Eastern bloc states did not.

After decolonization, the Cold War spread round world. Western and Communist states fought real wars through surrogates in one third world country after another. Puppet third world regimes of left and right violated human rights with abandon, creating a mass exodus far different from that envisaged in 1951.

The West was reluctant for political, economic and demographic regimes to welcome this new refugee population. Politically, the West did not want to heap the blame of persecution on their puppet regimes, however well deserved the blame might be. Economically and demographically, the outflow presented a profile far different from the then resident population of the West. Stuck with an international law of protection of refugees that states did not want to enforce, governments began a variety of evasions.

One evasion was denial of access. The promise of protection was kept in theory if only you could get to the

Refugee Convention signatory state. But every means possible was put in place to prevent arrival. Devices included safe third country agreements, carrier sanctions, visa requirements, immigration control officers stationed abroad, and interdiction.

Another evasion was cruel treatment. Refugees who arrived could not, legally, be forcibly returned to danger. Instead they were treated miserably to discourage coming or staying. They were, for example, held in detention or remote refugee camps, denied permission to work or go to school, not allowed to move within the country of refuge, barred from welfare, legal aid and free medical services.

A third technique was a narrow interpretation of the Convention refugee definition excluding whole swathes of people in need of protection. The refugee definition in the Convention is general in nature, allowing states signatory to the Refugee Convention a large measure of appreciation. Those hostile to refugees used that margin to exclude from the definition, for example, those who feared persecution from non-state agents, those who were fleeing armed conflict, or those escaping from a state where the whole state apparatus had collapsed.

Yet another way used to avoid commitment to protection was unfair refugee determination procedures. In theory, claimants could present their cases. Yet, distortions in the system, such as the absence of an independent qualified decision-maker, denial of the right to counsel or a qualified interpreter, failure to disclose documents with an opportunity to comment, the absence of an oral hearing, decisions without reasons or appeal, or denial of access to courts for review of decisions, all led to real refugees being denied protection.

All these dodges were documented in the book *Closing the Doors*. The examples were global, but mostly Canadian. Canada, as an immigrant country, was less concerned by arrivals than countries which had no traditional immigration policy. As well, it was, amongst immigrant countries, the most difficult country to access by land or sea, making fears of mass arrivals implausible. Canada consequently had less incentive to distort refugee protection than other countries. Yet, even Canada fell far short of the ideal of refugee protection.

Since 1989, have matters changed? Has the analysis of *Closing the Doors* been superseded by events? It would seem not. In some ways, matters have got worse. The Cold War has ended, replaced by ethnic confrontations and the war against terror. Refugee outflows and the impulse to deny protection remain.



# WHY THE CCR IS IMPORTANT TO THIS REFUGEE AND PAST PRESIDENT

BY FRANCISCO RICO-MARTINEZ

not seen in twenty years! It is a time of real joy, and we all are teary. Two other brothers had their applications rejected in Kampala by an inexperienced temporary duty officer from Canada. Hassan paid \$7,000 to have a lawyer take the cases to the Federal Court – and had the decisions overturned. It was necessary but it should never have happened. We await their arrival.

An Iraqi Kurdish family walks in: mother, married daughter, son-in-law and two little kids. No appointment, but then, what else is new? The door is open. I give each kid a teddy from my closet filled with donated stuffed animals. The couple tries to interpret for mother, but she sobs continuously, so they do the talking. There is a son, 23, married with three kids and still in northern Iraq. All other adult males in the family are dead – not just killed, but murdered – a tribal thing. How can we rescue this family? But they are not refugees – yet. There is nothing I can do.

It's mostly about family, and I've observed this for thirty years. Most of my sponsorships are "family-linked". In all immigration categories it is family connections that drive the desire to come here. But this is little acknowledged in the silos of qualifications and the hoops we make people jump through. If only we could let families build this nation instead of employers and the "labour market strategy" that sets the rules - and the numbers.

Over thirty years the nature of the privately sponsored refugee issues has changed little. But the intensity has, for two reasons. There are today many more persons here of refugee origin to fuel the demand, the "echo effect". And there is less

willingness on the part of successive Federal governments to let in privately sponsored refugees – at least if the annual, long-standing and relatively unchanging cap on numbers is any indication. It is a cap that is much lower than in the halcyon days of private sponsoring. I try to explain to people that it's all about the numbers.

I check my email again. Tekest whom we have sponsored, has written: "I am not feeling well after being released from the police cells.

I was arrested two days ago in the evening while walking from church to home. The Kenya police are very corrupt. I have nothing to give them. They started harassing me. I was just released today after a friend of mine paid my bail fee. They were charging me for stepping on a flower bed and damaging the flowers that are supposed to make the city center beautiful. After I refunded my friend his money I was left broke

and without money. I am now in trouble because my stomach is really aching and I also vomit. The conditions at the cell were very bad as the place was very dirty. The cell mates were also very violent and they beat me up when I could not speak their language and they could not find anything in my pocket." I need to send Tekest some money.

I've sponsored Mengistu and he's written again. He's one of Africa's top marathoners. He's trained at the High Altitude Training Center in Eldoret with Kenya's best. He's been invited to 34 international meets but been unable to get a visa to allow him to leave Kakuma Refugee Camp in the Kenyan desert. His friends and peers were competitors at the Beijing Olympics. He's just as good, but he's getting older and by the time he gets to Canada, his time will have past. What a waste. What can I do?

I'm struck by what Gaspard has written today. He's a



L to R: Francisco Rico-Martinez, Liz McWeeny, Amy Casipullai, Nick Summers

# NON-CITIZENS IN LIMBO

BY EZAT MOSSALLANEJAD

**Canada will be examined by the United Nations Human Rights Council for its compliance with the UN Human Rights instruments. This will be done on the occasion of the February 2009 Periodic Review of Canada. In its report of September 2008 to the UN Human Rights Council, the Canadian Centre for Victims of Torture focused on the human rights of people in limbo. Following is the summary of the report.**

Limbo is normally used to denote any place or condition of uncertainty, instability, or being taken for granted. Based on our documentation about the global perpetration of torture, limbo is used as an actual technique of torture. Living in a state of limbo is specifically fatal for survivors of torture, war, genocide and crimes against humanity. Based on our experience, almost all survivors have suffered by existing in limbo in some form during their incarcerations.

Unfortunately, there are certain gaps in the Canadian Immigration legislation and practices that keep non-citizens in limbo. Following are cases of some CCVT clients:

A Sri Lankan client of the CCVT has been in limbo for the last 21 years. He is a severe mental health patient and has to take different pills in order to stand his uncertain and fearful life. Another client of the Centre, a vulnerable single mother, has been living in limbo for 12 years. The trauma brought on by her experience of torture has been compounded by the uncertainty she faces on a daily basis. She suffers from anxiety and depression, and fears for herself and her daughter, a Canadian citizen who was born a decade back. We at the CCVT suffer from the suffering of another client who has been living under a terrible psychological condition, because of vacillating between fear and hope for the last 15 years. He would love to continue with his studies, but is incapable of doing it because of the lack of proper status. He has frequently asked us with a pale voice: *how long should I pay for nothing?* We have a client who has been imprisoned twice in his country of origin and has gone through various techniques of torture. He has had to escape to different countries and ask for asylum. He has frequently told us about his opposition to violence.

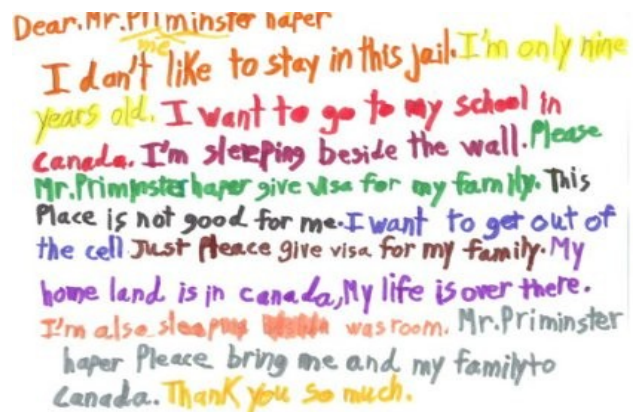
He was posed inadmissible to Canada upon his arrival and was denied access to the refugee determination system. He spent 23 months in a Canadian detention

centre before being bailed out more than five years back. He has been accepted under Pre-Removal Risk Assessment, but has remained a non-status person due to his Immigration inadmissibility. He has nightmares about his torture. The condition of living in a tormenting limbo has made concentration difficult for him, his mind wanders frequently.

We are serving a senior woman, a survivor of torture and trauma, who has suffered at the hands of the tyrannical regime of Saddam Hussein. She has been languishing in limbo for the last seven years due to the slow process of her landing application. At present, she is under tremendous psychological tension. She is a highly vulnerable woman living alone and dealing with her language and other multiple barriers single-handedly. She has been away from her children and ailing husband for years with no prospect of family reunification that requires permanent resident status in Canada.

There are thousands of similar cases of non-citizens in limbo - among them are vulnerable women, youth and senior citizens. People are in limbo due to various reasons, including lack of identity documents, government's security obsessions, lack of immigration status and alleged or real criminality.

The use of the "security certificate" against inadmissible non-citizens has led to keeping them in appalling conditions of limbo in detention. The CCVT has served two clients in this awkward condition of limbo. One of them has languished in jail for seven years without trial. He is presently under house arrest. The security certificate is a legal tool against foreign nationals on the basis of being a risk to the national security. It allows the government to detain non-citizens without charge indefinitely for the pur-



A photograph of a handwritten note on lined paper. The text is written in various colored markers (yellow, red, green, blue, purple) and reads: "Dear Mr. Primister haper I don't like to stay in this jail. I'm only nine years old. I want to go to my school in Canada. I'm sleeping beside the wall. Please Mr. Primister haper give visa for my family. This place is not good for me. I want to get out of the cell. Just please give visa for my family. My home land is in Canada. My life is over there. I'm also sleeping in this was room. Mr. Primister haper Please bring me and my family to Canada. Thank you so much."

pose of deportation. By allowing individuals to be detained indefinitely on the basis of secret evidence and without charges being laid, the security certificate process infringes upon basic rights guaranteed by the *Canadian Charter of Rights and Freedoms*, notably, the right not to be arbitrarily detained and the right to be informed of the reasons for one's detention.

We have had cases of people languishing in Immigration jails or detention centres up to four years. Living for a long time under awkward condition of detention can be very harmful for vulnerable groups such as women and children as well as for survivors of war and torture. It can lead to their re-traumatization and irreparable life-long mental damage.

One of the most tragic effects of keeping non-citizens in limbo is the separation of families. This happens due to the fact that delay in landing of refugees and other categories of uprooted people leads to further delay in family reunification. Furthermore, non-status people cannot sponsor their family members to come to Canada. It is expected that Canada respects its international obligation towards the protection of family life.

Limbo puts double pressure on women, especially, those with children. Women who flee with their children lack the familial support system that is crucial for the children's well-being and the well-being and happiness of themselves.

Limbo has frequently acted as an implicit psychological torture against children who either remain separated from one of their parents or witness ongoing re-traumatization of their both parents. More often than not their own lack of permanent resident status in Canada prevents them from enjoyment of their own rights as minors.

Keeping non-citizens in limbo is against Article 14 of the UN Convention against Torture (CAT). This Article obligates states to guarantee the rights of torture victims to redress, compensation and rehabilitation. Limbo creates a situation that prevents redress, reparation and rehabilitation of survivors. It cripples the hopes of its victims. There is also the loneliness of living in limbo and the feeling of being excluded and rejected.

One of the main reasons of keeping non-citizens in limbo is the existence of a powerful bureaucracy with vested interests that works behind closed doors and prolongs the process. There is also the problem of unjustified discretionary power for immigration and visa officers, and of a total lack of accountability of these officials. The absence of face-to-face contact between people in limbo and immigration officials often results in a lack of compassion and absence of attention to special individual needs and emergency situations. There are also problems dealing with the lack of correct information and the inexperience, inadequate training, and sheer ignorance on the part of immigration or visa officials.

*Ezat Mossallanejad is a Policy Analyst and Researcher/ Settlement Counsellor at the Canadian Centre for Victims of Torture in Toronto and a member of the Editorial Board of Refugee Update.*

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### ADDRESS:

208 Oakwood Ave.  
Toronto ON M6E 2V4 Canada  
Tel: (416) 469-9754  
Fax: (416) 469-2670  
e-mail: fcjrefugeecentre@on.aibn.com