
Refugee Protection

by Kathleen Ptolemy

The Symposium on Refugee Determination held in Toronto on February 20, 1982, was one of the most memorable events in Canada's history of concern for refugees. Speaking to an assembled body of refugee-interest groups, Mr. Lloyd Axworthy, Canada's then Minister of Employment and Immigration, directed himself to the very heart of the refugee issue: "There is no other policy area which reveals so much about the humanitarian instincts of our people, and our moral stance as a nation. An equal test for a nation is how it treats those who are not its own citizens . . . those who find themselves in desperate circumstances and need compassion and help . . . we can set achievable objectives for ourselves that may, in turn, help to set new international standards."

Mr. Axworthy set a tone and established a vision and a will for Canada to assert the fundamental moral goals concerning the protection of refugees, and to reflect those goals in refugee-determination procedures that are fair and accessible to all claimants seeking protection in Canada.

It is distressing that in the short two years since that milestone in our history, the mood of the western world towards refugee claimants has become more inhospitable and suspicious. The situation has, in fact, reached crisis proportions. Canada is not insensitive to this shift, nor to its consequences for Canada. More refugees are turning to Canada for protection and a new community.

Canada's response to this reality is a matter of great interest to all Canadians concerned for refugees, because the consequences are profound for the refugees who seek a safe haven in Canada. Refugee-status seekers are forced to flee their homeland because they have experienced events ranging from

uncontrolled violence and gross violations of human rights to selective persecution. The waiting period on a claim for an opinion from another country is often equally traumatic. Constant signals convey a lack of welcome, suspicion of immigration abuse, and likelihood of rejection. For the refugee-status seeker, this can be a miserable experience, but a safe existence is, at least, temporarily assured.

Mechanisms are being developed by countries to deter spontaneous flows of asylum seekers. As western countries link their economic depression and unemployment to the time-honoured scapegoat of unwanted immigrants, it is becoming politically popular to characterize refugee-status seekers as illegal entrants and unwanted job stealers. This allows governments to introduce policy changes that deter refugee flows at both the point of entry and the country of origin, and for those who do manage to arrive, to restrict the opportunity to the claimant for a fair hearing and appeal, and to admit only on a temporary basis.

Denial of Admission at Points of Entry

Policy changes that seek to deter refugee flows at points of entry erode the principle of non-refoulement. In its narrowest sense, this principle imposes an obligation on a country not to expel refugees but is open to various interpretations regarding the duty of a country to admit. By and large, most countries in their practice have regarded the *duty to admit* as part of their *duty not to refouler*. However, current parlance now includes mention of *elements* needed to *trigger* the principle of non-refoulement at the border.

It is often difficult to know how many refugee-status seekers are being denied

admission at points of entry because these individuals may be summarily removed by border police, customs or immigration officials without ever having established contact with a source inside the country. Reasons for border rejection of such refugee claimants can be based on a number of factors such as protection capability of the country from which the person is arriving, human-rights violations of the country of origin, security threat or a language barrier that prevents the claimant from stating his or her intention to claim refugee status. This practice, which has produced the phenomenon of *refugees in orbit*, flies in the face of all norms of natural justice and the spirit of non-refoulement. It prejudices an individual claim with no recourse to the facts of the individual's claim.

Very few countries in the world today can be said unequivocally to be free of serious human-rights problems. Very few countries can be prejudged on their willingness and ability to provide protection and solutions to the refugee-status seeker. It would be a serious step backward to deny admission on these grounds when the consequences for the refugee are so serious.

Denial of Need to Depart Country of Origin

Another dangerous trend which is growing in popularity is the creation of administrative barriers that go even beyond denying admission to the border — denying the refugee the opportunity to leave his or her country of origin! The barrier in question is the tourist visa — a piece of paper that more and more would-be travellers must obtain in the local embassy or high commission of the country in which they intend to seek protection. Visa requirements are generally imposed on coun-

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tries with rigid exit controls and on countries that are producing significant flows of people who are not considered to be *bona fide* visitors. There is an understandable logic in requiring would-be visitors to undergo the inconvenience of applying abroad for a tourist visa if they are going to be denied admission upon arrival or will make fraudulent refugee claims. This visa requirement does, however, impose profound problems on people fleeing refugee-producing countries.

The Canadian government, in its October, 1983, address on protection to the 34th Executive Committee of the United Nations High Commissioner for Refugees, maintained that the consequences of the imposition of the visa requirement on citizens of refugee-producing countries are not necessarily all bad. The address noted that "It is normal practice in Canada to offset the effect of visa requirements by implementing special immigration measures to ensure refugees in need of resettlement will still have access to Canada through our embassies abroad. This allows us to target our help to those in most need while forestalling the spontaneous influx of those who are perhaps the best informed or the most resourceful, but not necessarily those most in need."

However, recent experiences incorporating this practice of making provisions for would-be refugees to apply for admission to Canada from their country of origin have not provided strong support for its effectiveness, except for the processing of special visible groups such as amnestied prisoners.

In individual cases, refugees experience great difficulties in presenting themselves at foreign embassies, where they feel exposed and visible to local authorities and where they have no protection while waiting for a decision from the embassy — a process which can take several months. The only other option for the refugee is to ask for a tourist visa in order to claim refugee status in Canada — a request that would be denied if there were any reason to suspect that the person might make a claim for refugee status upon his arrival in Canada. The refugee claimant who needs to leave the country immediately is therefore, in desperation, forced to

lie about the reasons for a visit to Canada — lies which can seriously affect the credibility of subsequent claims.

Immigration controls, such as visas, that deny a persecuted person the right to leave his/her country, are not acceptable. Visa impositions on refugee-producing countries create barriers that result in the denial of fundamental human rights — the right to leave a country and to seek and enjoy in other countries protection from persecution. A policy that justifies itself as "not all bad" is just not good enough!

There are no easy answers to the problem, but solutions must be found that uphold a refugee's right to leave his or her country of origin and seek protection elsewhere.

Denial of Right to a Fair Hearing

Canada is seeking ways to ensure a fair hearing for refugee claimants that include the right to an oral hearing but discourage abuse of the process by people with fraudulent or manifestly unfounded claims. At the same time, many western refugee-receiving countries are applying more restrictive criteria to their interpretation of the Convention definition, denying some applicants access to determination procedures on the grounds that their claims would be manifestly unfounded, and restricting appeal procedures. In several European countries, applications are taken by police authorities who, in some cases, make decisions and, in others, pass on the transcript to central authorities. (The question of the *competence* of police or immigration-enforcement officers to properly assess refugee claims has become a matter of growing concern to the international community.) Applications are rejected in some countries as inadmissible on the grounds that protection is available elsewhere. In other countries, appeal procedures are not available to people who entered the country illegally, and in some cases, rights of appeal may be exercised only after the claimants have left the country.

Considerable amounts of energy are being applied to tightening up of procedures: the result is the denial of universally accepted norms for the deter-

mination of refugee status, i.e., personal interviews of all refugee-status seekers by fully qualified central authorities and appeal procedures for unsuccessful applicants before rejection from the country.

The obvious solution to the problem is to allocate sufficient personnel and resources to refugee-status determination bodies to enable them to accomplish their task fairly and within a reasonable period of time. One needs to ask seriously whether a country's refusal to take this logical step is based on lack of resources or lack of will to fulfil international responsibilities.

Denial of Permanent Residence

Different countries use various administrative procedures to keep the refugee in limbo. There is a growing tendency to provide refugees with authorization to remain temporarily, pending either their settlement in another country or their return to their country of origin. Temporary protection then becomes a rather shaky bridge or holding arrangement between flight and return to country of origin. All refugees want to return, and many do, in time, but this bridging period poses serious problems for the refugee when normal residency rights are withheld. It curtails, in varying degrees, freedom of movement, the right to work, the right to acquire property, the right to family reunification and the right to belong to a new community. Most advocates for refugees continue to support the principle of ensuring that the recognized refugees be given the right to apply for permanent residence — a right that recognizes the intense need of the refugee to establish new roots and to resume normal ways of life, even if only until such a time as he or she decides to return to the country of origin. The choice should be the refugee's.

Conclusion

Mr. Moussalli, the Director of International Protection, in his statement to the 34th Executive Committee of the UNHCR, made a comment that sums up in part the increasingly apparent reluctance of the Canadian government to make changes to its already over-

burdened and generally respected determination procedures. "Fortunately for refugees, and for the development of refugee law, many countries have successfully resisted this restrictive current and continue to maintain their liberal policies on behalf of refugees. But it must be recognized that it will become more and more difficult for these countries to maintain this attitude if the other States in their region continue to raise obstacles and to send on to other countries the asylum seekers whom they are no longer willing to accept.

Canada's concern that its "liberal policies" will attract increasing numbers is a real one, but the solution is not to become part of the problem, but part of the solution. Canada has a critical role to play in assuming dynamic leadership for creating a climate that supports the collective efforts of all states to uphold and strengthen principles for the protection of refugees on the basis of international solidarity and co-operation.

As long as the world continues to produce refugees for whom Canada is a logical and accessible country of asylum, the arrivals of spontaneous asylum seekers will persist. The days of Canada's response to refugees only as one of resettlement of carefully selected refugees from first-asylum situations is over. The need now is to ensure admission and fair procedures for all refugee claimants. Canada must also provide desperately needed international leadership in establishing adhered-to norms for fair and humane admission and determination procedures.

The primary issue is the refugee's need for protection and a new community. For it is the refugee, of course, who will bear the consequences of new measures of restrictiveness — a tragedy in light of the constant waves of refugees emanating from all parts of the world. They face the terrible decision to flee and the precarious future of an unwelcome, suspect, asylum seeker.

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Toronto Refugee Affairs Council

On April 25, 1983, several agencies met to develop procedures to facilitate the access of Toronto agencies serving refugee claimants to federal funds that had been received to assist indigent claimants.

It became apparent at this meeting that there was a strong concern to deal with the policy issues underlying the indigent claimants' situation and a need for a larger group to monitor and advise on the Claimants' Assistance Program. For this reason, and given the fact that Toronto is a major claimant and refugee settlement centre, the agencies decided to establish a coalition of Toronto-based agencies and groups serving the refugee community to strengthen each other in their shared work and concerns.

The *Toronto Refugee Affairs Council* — TRAC has emerged from this process. It is composed of voluntary agencies and groups providing settlement, legal and admission assistance to refugees and refugee claimants in the metropolitan Toronto area. Its purpose is to act as a focal point for sharing of information among Toronto-based agencies/groups; to exchange information with other regional or local groups; and to promote public awareness of refugee needs, collective advocacy on specific issues, and co-ordination of services and advocacy. The Council meets once a

month and convenes one annual general meeting per year. The following is a sample of issues/concerns the Council has looked at to-date:

- family reunification — status of common-law wives and children
- refugee claimants' work authorizations
- welfare assistance for refugee claimants
- an emergency shelter for refugees
- improvements to existing English-language courses for refugees.

The Executive Committee of the Council consists of four officers and two members at large:

Chairperson
ANTONIO SARZOTTI
(Catholic Charities — Immigrant & Refugee Services)

Vice Chairperson
NANCY POCOCCO
(Friends Service Committee)

Secretary
EMILY CARTWRIGHT
(St. Peter's Centre)

Treasurer
MIRANDA PINTO
(St. Boniface Multicultural Centre)

Member at Large
STEPHANIE THOMAS
(Centro de Gente de Habla Hispana)

Member at Large
ADOLFO PURICELLI
(United Menonite Church).

Models of Change in Canada's Refugee Status Determination Process

by Barbara Jackman

It is not possible here to outline all criticisms of the refugee-status determination process. Many of these criticisms are directed at secondary issues arising from the actual practices followed by the Immigration Commission — problems with work authorizations, welfare, settlement assistance and other such matters. Rather, I will attempt only to outline the primary concerns with the present process and to put into context the proposals for change.

The concerns fall primarily into two categories — the need for a fair process, which has been characterized fundamentally as a need for an oral hearing, and the need to control frivolous or abusive claims made to gain time in Canada or to work in Canada legally. In these cases, the primary criticisms have centred on the following problems:

1) Unless the claimant is allowed an oral hearing on the second stage of the process, he/she has no opportunity to present his/her claim in person to the tribunal who ultimately considers it.

2) Claims to refugee status can only *lawfully* be made when the claimant is in the immigration-enforcement stream, i.e., in an inquiry. Therefore, violations of the Immigration Act (1976) are implicitly encouraged in order to bring the claimant within the inquiry stream. Further, enforcement officials are responsible for the handling of refugee claims, although a determination of refugee status is a decision that is separate from immigration-enforcement decisions.

3) In practice, the present process is unwieldy. This, coupled with limited manpower resources within the Immigration Commission, has resulted in long delays (sometimes a year or longer) in the decision-making process. The in-

creasing number of claimants has further aggravated the delays.

4) Any person coming into or already in Canada may make a refugee claim. The lengthy processing delays have resulted in frivolous or abusive claims in some cases, by individuals seeking to remain longer in Canada or wishing to obtain work authorizations.

5) Settlement services have only recognized, in a limited way, the needs of refugee claimants during the lengthy time these claimants must await a decision on their claims. With the passage of time and with increasing pressure resulting from the needs of claimants, limited provincial and federal services have been made available. But assistance has been spotty and varies from area to area. The lack of legal status in Canada pending a decision has compounded the difficulties encountered by claimants.

During the six years that the present refugee process has been in existence, long debates and discussions have taken place between church, community and legal groups and with the Immigration Commission officials. The debates have tended to focus on the need for more equitable treatment of claimants counterposed against the fear of encouraging more frivolous claims by improving the treatment accorded to claimants.

This discussion process has resulted in a proposal for legislative change submitted by the Concerned Delegation of Church, Legal & Humanitarian Organizations to the Immigration Commission. The proposed changes are intended to improve the present system while taking into account immigration officials' fears with respect to their responsibility to ensure that the objectives of the *Immigration Act* are met.

The key elements of this proposal are outlined below:

i) The refugee-status determination process should be completely separated from the immigration process through the establishment of a Refugee Review Board.

ii) Any person arriving or already in Canada, regardless of his/her status, should be permitted to make a refugee claim. A screening process should be set up to permit timely acceptance of clearly meritorious claims and rejection of clearly unfounded ones. This could be accomplished by an initial interview of the claimant by a staff officer of the Refugee Review Board, who would be empowered to recommend to the Board acceptance of the claim, to refer the claim to an oral hearing, or to recommend to the Board rejection of the claim. Time limits should be imposed within which the interview must take place. Counsel, an interpreter if required, and recording of the interview should be part of this process. The staff officer's report to the Board should be made available to the claimant.

iii) One Board member would review the officer's report where outright acceptance is recommended and confirm the recommendation or refer to an oral hearing.

- An oral hearing for all claimants so referred would be before a three-member panel of the Refugee Review Board. Right to counsel and an interpreter, along with other rights associated with judicial proceedings, would be guaranteed. The transcript of the initial interview with the staff officer would only be available where there was a dispute about its contents or about the claimant's testimony.

- Where the staff officer has recommended outright rejection of a claim,

the claimant would be given a prescribed time period within which to respond to the officer's recommendation and report. The transcript of the interview could be requested first if there is a dispute about its contents. The officer's report, the claimant's reply and the transcript, if requested, would then be considered by a three-member panel of the Board, who would confirm the recommendation or refer to an oral hearing.

iv) All decisions of the Board would be final, subject only to judicial review.

v) Strict and limited standards should be set out for the rejection of manifestly unfounded claims, for which no oral hearing would be allowed. Recommendations by staff officers to reject a manifestly unfounded claim without a hearing should be limited to cases where:

- the claim discloses no evidence of a fear of persecution for one of the grounds set out in the Convention definition of a refugee.

- the claim clearly indicates that the evidence has no foundation in fact, such as in cases where the claimant is suffering from mental illness and the fear of persecution originates from the affliction rather than any external or real cause, or the person alleges involvement in incidents which never occurred.

- the claim is a second claim and no new evidence is disclosed, in which case the Board could review the first negative decision.

- the claim is made by a spouse and the evidence discloses nothing new or independent from the rejected spouse's claim, in which case the Board could review the original negative decision.

vi) The Commission would have a role

in the determination process limited to the oral hearing, in which a Commission representative would have a right to cross-examine and participate in the hearing. The United Nations High Commission on Refugees should receive a copy of the staff officer's report and a transcript where prepared, should be advised of all proceedings and should be entitled to participate both in the oral hearing and in reply to a recommendation that a claim is manifestly unfounded.

vii) Eligibility for authorization to work should be granted only to those claimants whose cases have been recommended favourably or referred to an oral hearing by the staff officer. Essentially, this would mean that no claimant would be permitted to accept employment until after the initial interview with the staff officer has taken place, and, in the case of claimants where the staff officer has recommended rejection of a claim as being manifestly unfounded, not until the Board has decided to refer to an oral hearing. Because the right to work is so restricted, it is essential that the initial determination by the staff officer and the Board review of manifestly unfounded claims be made within a short period of time. It is thought that these restrictions would discourage abusive claims and at the same time would eliminate the need to control the issuance of work authorizations based on financial need for all other claimants.

viii) All cases rejected by the Refugee Review Board process should continue to be referred to the Special Review Committee for consideration on humanitarian and compassionate grounds.

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The above is a resumé of the Concerned

Delegation brief which was presented to the Minister of Employment and Immigration in December, 1983. A response to the brief has not yet been forthcoming from the Minister, nor has the requested meeting with the Minister been scheduled to discuss the brief. Changes to the refugee-status determination process were promised by the Minister of Employment and Immigration in June, 1983, but none have yet been forthcoming.

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Palestinian Refugees —

Latest Reports

Food: The general distribution of foodstuffs to some 800,000 refugees was suspended in September 1982 except in Lebanon where special arrangements were made for those affected by the crisis.

Housing: UNRWA has provided assistance to more than 13,000 families in repairing or rebuilding their homes (in Lebanon).

Registration: UNRWA has initiated a new registration system to provide one card for each person rather than one card per family to be completed by mid-1984.

Protection: As of June 1983, the Commissioner-General of UNRWA, Olof Rydbeck, considered the prospects bleak for increased civilian security in Lebanon.