



CANADA'S PERIODICAL ON REFUGEES REFUGEE

Vol. 4 No. 2

December 1984

SPECIAL CHRISTMAS DOUBLE ISSUE
CANADIAN REFUGEE POLICY

The Three S's: Selection, Status Determination, Settlement

The core of refugee policy falls into three main areas: the numbers and sources of refugees selected abroad for resettlement in Canada, the refugee status determination process for those refugee claimants making a claim to refugee status within Canada, and the Canadian process of resettling refugees. There are, of course, other aspects of government refugee policy (including special programs for unaccompanied minors that we dealt with in the last issue, as well as support for international agencies abroad, which we intend to focus on in a future issue). All three major areas of Canadian refugee policy are dealt with in this issue.

The byword for all three areas is fairness. But fairness is an equivocal term. In the area of refugee selection, the fundamental criterion for fairness is the degree of need as determined by the number and condition of the refugees in different areas and the degree to which they would benefit from resettlement in Canada. In the case of status determination, fairness takes on a legal

coloration rather than a humanitarian one, and the principle of fairness becomes due process, a fair hearing, etc. In resettlement, fairness takes on a third meaning — equity in the delivery of services and the support given to all refugees whatever the mode of arrival in Canada.

Selection of refugees abroad is a matter of government policy. The private sector may advocate a specific number in its distribution, and may be consulted by government on that number and distribution. The private sector may augment those numbers and affect the numbers brought from a particular

source country through private sponsorship. The private sector may, by participating in the resettlement process as described in the report in this issue, even help save government funds so that monies are freed up to resettle more refugees. But the primary basis of selection policy is rooted in government decisions. In the global approach to planning and allocating a limited number of spaces, the government must distribute those spaces among many source countries. The key question is whether the total allocation is adequate and whether the distribution is fair.

Continued on p.2

The Standing Conference of Canadian Organizers Concerned for Refugees..	6
Refugee Status Determination: A Comparative Study	8
Canada's Refugee Status Determination Procedures	10
Canada Refugee Plans — 1985	12
Canada — A Country of First Asylum	14
Refugee Resettlement: A New Policy	16
Canada As a Country of First Asylum	22



REFUGE

c/o Refugee Documentation Project,
York University, 4700 Keele Street,
Downsview, Ontario M3J 2R6

Editor:

Howard Adelman

*Technical Editor and
Circulation Manager:*
Cathy Mickalagos

Editorial Assistant:
Alex Zisman

Publishing Advisory Board:
Douglas Cohen, Montreal
Claudio Duran, Toronto
Arie Van Eek, Burlington
Daniel Ferguson, Toronto
Michael Pitman, Toronto
Linda Weigl, Regina

Typesetting and Layout:
Publications Department,
York University

Refuge is dedicated to encouraging assistance to refugees, by providing a forum for sharing information and opinion on Canadian and international issues pertaining to refugees. It is published five times a year, in October, December, February, April and June. It is a non-profit, independent periodical supported by a grant from the Canada Employment and Immigration Commission; by private donations; and by subscriptions. It is a forum for discussion, and the views expressed do not necessarily reflect those of its funders, staff or Editorial Board.

All material in *Refuge* may be reproduced without permission unless copyrighted or otherwise indicated. Credit should be given to the author or source if named.

Subscription rates for one year are \$10.00 for individuals and non-profit organizations and \$20.00 for libraries and institutions. Please enclose payment with your order. No discounts can be given for American funds because of bank charges for foreign cheques.

Logo design:
Dreadnaught Cooperative Inc.,
Toronto

Second Class Mail Registration No. 5512
ISSN 0229-5113

Continued from p.1

Refugee status determination is not a matter of Canadian generosity reinforced by self interest in maintaining a stable international order by resettling refugees from abroad, who could otherwise develop into a source of instability in the world. It is a formal legal obligation on the part of the government, an obligation evidenced by our signing an international covenant and protocol. Further, unlike refugee selection, where the motivation and decision making wholly resides within the Canadian polity, the refugee status determination process grants rights to refugee claimants. The process is not simply one of humanitarian policy, but of legal obligations and rights, and any fair refugee status determination process must realize reasonable standards of fairness in allowing refugee claimants to exercise those rights. That is why a good refugee status determination process is based on a quasi-judicial procedure independent of normal immigration mechanisms for screening, enforcement and granting permission

to non-citizens to stay in Canada while, at the same time, avoiding the other perils of undermining and jeopardizing the normal process of immigrant intake. Since we dealt with the refugee status determination process extensively in a previous issue, this time we concentrate on assessing the fairness of Canada's procedure in comparison to the procedures of other western countries. From this assessment we will try to distill the principles inherent in a good refugee status determination process.

Refugee settlement policy, though set by government, is dependent for its effectiveness on the involvement of the private sector: the non-governmental service delivery agencies, religious organizations and the proposed host group system for refugees. This system would be supported by a community infrastructure for stimulating, orienting and supporting a host system to help refugees to help ensure equitable delivery of services and support.

Preliminary Report of the Plaut Commission

Recommendations that received universal support:

1. decision makers should be experts and sepecialists;
2. in depth information should be available to the decision makers;
3. oral hearings were necessary to assess the credibility of the claimant;
4. the decision making body must be independent of authorities making immigration decisions and of political pressures;
5. the system must be made accessible for all claimants without regard to whether they are in or out of status;
6. that support for claimants while waiting determination be improved;
7. most importantly, that the procedures be shortened and made more efficacious.

Open Letter To

The Honourable Flora MacDonald
Minister, Canada Employment & Immigration Department

Dear Miss MacDonald:

Let me congratulate you on your re-election and on your appointment as Minister of Employment & Immigration.

As recently re-appointed NDP critic for Immigration I consider you a good choice. In the past you have expressed compassion for human rights concerns and sensitivity to those oppressions or misfortunes outside Canada that create desperation for millions of refugees and other migrants. I trust that you will let this compassion and understanding guide your judgements as you and your government develop immigration policy for Canada.

I write also today on some matters I wish you may consider during the coming months.

Overall, I believe we must continually try to avoid making refugees and immigrants scapegoats for unemployment in Canada. This can be a tempting excuse. Scapegoating immigrants is unjust, because the evidence has never been accumulated to prove that immigrants aggravate unemployment; it creates distress among many Canadians including immigrants; and it too often allows us to underrate legitimate humanitarian concerns.

One example of this scapegoating was the "temporary freeze" imposed May 1, 1982 on all independent class immigrants who did not have approved job offers. Because the assisted relative class is part of the independent class, this regulation means that sons and daughters over 21 have little hope of being re-united. That decision really hurt. It needs review and revision.

The August announcement on streamlining the "last remaining family member" applications has helped, but it is only a beginning. We need to be compassionate to end the pain of separated families.

Closely related is that section of I.S. 1:39 that allows husbands and wives to sponsor spouses while the spouses being sponsored resides in Canada. I understand reviews have been done internally but there has been no published report to discuss. It appears that I.S. 1:39 does allow for this kind of sponsorship on a case by case basis and under specific criteria — but it also appears that immigration officials interpret these guidelines inconsistently and, over the months, with less and less favour to the applicants.

Again, under I.S. 1:39 (de facto residence), our experience with the Long-Term Illegal Migrants Program has been frustrating. I hope the "third party" or "anonymous" case by case review with a central committee to ensure uniformity can continue. In any case I ask you to meet with a coalition of churches and community groups from the Toronto area who are actively concerned about illegal migrants and their families. They tried for a year to meet with your predecessor.

Another temptation has been to abuse the visa requirement so as to prevent the making of refugee claims within Canada. While there was very little abuse by applicants from countries like Chile and Guatemala before the visa requirement was imposed, such requirement has made the most urgent requests for refugee consideration very, very difficult. Canada ought not to use the visa as a way of avoiding refugee hearings.

Our general refugee review process still has many problems: delays, sometimes poor knowledge of the political and economic circumstances in the home country, and an awkward procedure. Oral hearings have been recommended time and time again. No doubt Rabbi Plaut will again make this recommendation. There is no point in more studies. It is time to establish oral hearings and many of the other recommendations made to humanize and give justice to refugee applicants in Canada.

I trust you will be a sincere and good Minister. I offer the above as advice based on my three years of work in this area with the public and your staff. I would be glad to meet with you to discuss them or any other issue related to the portfolio.

Yours very truly



Dan Heap, M.P.
Spadina

A Letter From The New Minister

Ms. Yvette Knott
President, The Standing Conference of Canadian
Organizations Concerned for Refugees

Dear Ms. Knott:

Thank you for your letter of July 12, 1984, addressed to my predecessor, in which you provided a summary of the concerns expressed by members of the Standing Conference at your meeting in Montreal. I welcome this opportunity for an exchange of views on these important matters.

A. SPECIAL AREA CONCERNS

Guyana

I note your strong interest in the situation in Guyana, and I can assure you that my Commission is maintaining a close watch on developments in that country. As you may be aware, we have recently established a full-time immigration facility in Georgetown and have thus improved our ability to monitor the human rights situation in Guyana. It remains difficult, however, to identify a specific category of individuals whose position would justify special immigration measures. Such measures respond to conditions of oppression or forced displacement which fall within the UN definition of refugee status. While this may well be the case for some Guyanese, it is not a general condition; I do not consider, therefore, that special measures are warranted at this time.

Guatemala

The refugee situation in Central America continues to be a major preoccupation of my Commission. I am aware that the visa requirement for Guatemala has aroused particular concern among your members. I cannot agree, however, that the influx of refugee claimants from Guatemala was "insignificant" before the imposition of the visa requirement. In any event, the special program for Guatemala which was introduced in March of this year has produced welcome results in that the processing of 367 cases (involving 575 persons) was begun between March 15 and August 31, 1984. The new immigration facility in Guatemala City, moreover, has played an increasingly active role in assisting those persons who have shown an urgent need for resettlement in Canada.

The funding for ISAP Agencies has been
increased by 12% from \$3.1 million to
\$3.6 million.

Sri Lanka

The recent outbreaks of inter-communal violence in Sri Lanka have reinforced our concern for the situation of the Tamil community in that country. The roundtable discussions between the Tamils and Sinhalese are continuing, however, and there is still some hope that a compromise acceptable to both sides will eventually emerge. A full review of the Sri Lankan special measures is currently under way, and the question of landing Tamil refugee claimants in Canada will be among the issues given full consideration. In the meantime, the existing special measures (including the moratorium on removals to Sri Lanka) will remain in force in their present form until the review has been completed.

B. REFUGEE LEVELS

I am gratified to learn that both guest speakers on the opening night of the consultation praised Canada's performance in refugee affairs. As you may be aware, the 1983 level of government-sponsored refugee admissions was 90% filled (compared to 94% in 1982). Our focus on non-traditional sources in Africa, Latin America, and the Middle East produced mixed results: in Africa we fell short of our target, but the intake of 651 persons was triple the number admitted in 1982; we were less successful in the Middle East, but our program in that area is steadily gaining momentum; in Latin America we exceeded our target of 2,000 persons by over 10%. In addition, there was a shortfall in the Eastern European program because several hundred persons who applied to settle in Canada had also applied to other resettlement countries and did not make use of the Canadian visas that were made available to them.

It must also be remembered that there are special logistical problems in operating a refugee program which is truly global in scope, and in which we often cooperate with third parties — such as the UNHCR and church groups — in locating and interviewing those persons who are in need of resettlement. Although the target level may not be met in some years and in some places, the strength of Canada's commitment to refugee resettlement cannot be doubted.

With respect to your suggestion that the allocation for government-sponsored refugees from Hong Kong should be revised upwards, I am pleased to report that 100 places were transferred from the regional reserve to Hong Kong last spring. This number was supplemented by an additional 500 in July, making for a total of 600 places. The question of an increased need for places in the refugee allocation for Latin America will be taken into account in the formulation of the Annual Refugee Plan for 1985. We are also supporting efforts to involve more countries in resettlement activities from this area. Australia has recently established a regional office in



Central America, and has begun an active selection program. With respect to Southeast Asia, our Family Reunification Program has assisted an increasing number of persons to emigrate directly from Vietnam to Canada, thereby helping to reduce the refugee caseload in neighbouring countries.

Work Permits for Refugees as of December 3rd will no longer be tied to a specific job.

C. SETTLEMENT CONCERNS

Integration of Central American Refugees

I can assure you that my Commission is aware of the problems faced by Central American refugees in adapting to their new lives in Canada, and my officials are sensitive to the importance of landing these persons and completing the reunification of their families as soon as possible. With respect to employment authorizations for refugee claimants, my Commission has recommended revisions to the relevant regulations which should simplify the administration of this system. I expect to submit these amendments shortly to the Governor-in-Council; upon their approval, the revised regulations will come into effect.

Handicapped Refugees

I share your concern for handicapped refugees in need of resettlement. Many handicapped refugees have already been resettled through the normal movement to Canada, but have not been counted as "handicapped" in our statistics. Nevertheless, my officials are aware of the need to streamline the existing system, and new procedures and objectives for this program will be proposed to the provinces and other interested parties late this year. Your suggestion of a separate level for handicapped refugees has received serious consideration, and has been included in the new objectives for the program.

Immigration Settlement and Adaptation Program

I am pleased to learn that the Standing Conference has expressed its support of the new funding guidelines for ISAP, and my officials will continue to cooperate closely with voluntary agencies in the implementation of these guidelines. We continue, moreover, to be most conscious of the need to provide refugees with effective language training. Federal budget restraints, however, will limit our response to this need in the upcoming fiscal year.

Refugee Determination Procedures

In May, 1984, Cabinet approved a series of initiatives which were designed to secure improvements to the existing refugee determination system in Canada. The

appointment of Rabbi Plaut to conduct a study of this system was one of these measures. As part of his mandate, Rabbi Plaut has undertaken to propose changes to the claims system which would best serve the competing objectives of fairness and efficiency. Rabbi Plaut is expected to issue his preliminary report by the end of 1984, and changes to the claims system will most likely be implemented over the next two or three years.

To this end, the Rabbi has recently completed a series of consultations with interested groups across Canada. Rabbi Plaut's mandate, moreover, includes consultations with officials of other governments, the United Nations High Commissioner for Refugees, and non-governmental organizations outside Canada. Accordingly, Rabbi Plaut recently met with officials in Washington, D.C., and he will shortly visit France, Switzerland, and the Federal Republic of Germany in order to complete his study of Refugee determination procedures in other countries.

I can assure you that Rabbi Plaut has our full support in his effort to devise a more equitable and effective refugee determination system. We are cooperating closely with his study, and will be most interested in the results of his deliberations. In the meantime, the pilot project for oral hearings in Toronto and Montreal is still in effect.

Bond Requirements and Medical Services

I am pleased to note that your members supported the announcement of new procedures to ensure medical examinations for all refugee claimants. I have also noted your willingness to participate in the 1984-1985 national survey on the issue of bond requirements.

Sponsorship/Resettlement Models

The suggestion of a national consultation on sponsorship models — whether in the form of one national meeting or a series of regional and local sessions — has considerable merit. The latter option would appear to be preferably, since services to meet the settlement needs of new arrivals are generally provided by local groups, and techniques applicable in one part of the country would not necessarily prove successful elsewhere in Canada.

I wish to thank you again for forwarding the concerns which were expressed by the Standing Conference in Montreal, and I trust that the responses which I have provided will be of assistance to you. I look forward to continued cooperation with your members in maintaining Canada's traditional position of leadership in refugee resettlement efforts throughout the world.

Your sincerely,



Flora MacDonald

The Standing Conference of Canadian Organizations Concerned for Refugees: Montreal, November 22/24, 1984

Better attended. Better organized. But many of the same themes. After the opening evening session in which — the government announced its planned increase in its target for sponsored refugees by 10% — which was favourably received — the conference zeroed in on the overall global perspective on refugees.

John Contier, of the Catholic Relief Services in the U.S.A., addressed the conference on the situation of Salvadorean, Guatemalan, and Nicaraguan — both Ladino and Miskito — refugees in Honduras. He noted, that unlike the 3,000 or so Nicaraguan Ladino refugees who are unrestricted in their movements and the 18,000–21,000 Nicaraguan Miskito Indians who have been relocated to interior Miskito areas of Honduras, the large numbers of Guatemalan and Salvadorean refugees are kept in camps which are under the control of the military. When, after his talk, he was asked a question about security for the Guatemalan refugees, in particular about a refugee who was killed by the Honduran military authorities, John Contier explained that the incident in question was an accident where a Honduran soldier's gun went off when he was boarding a truck, since that incident was not isolated, an investigation would be appropriate.

In his talk, Contier emphasized three points about the Salvadorean and Guatemalan refugees in Honduras. First, they don't want to be relocated further into the interior in Honduras. Secondly, there was general scepticism about the 'voluntary' repatriation program supported by the U.S., since the security guarantees and the opportunity to be gainfully employed upon return were in doubt. Finally, though these refugees lack freedom of movement, the co-ordinated work of the NGOs in Honduras was invaluable in providing support — material and moral — for the refugees.

Giovanni Fiorino (Centre de services sociaux, Montreal) spoke of the Bangladeshi refugee claimants (90% in Montreal) and the situation back in Bangladesh. In 1982 only 50 Bangladeshis ar-

rived in Montreal and made claims for refugee status. In 1983, September, 700–800 Bangladeshis had arrived to claim refugee status. Their situation only became publicized when they went on a hunger strike. It is estimated that one third of the claimants have been successful. Of the majority who have been refused, some are already under deportation order.

Fiorino stressed how ignorant Canadians were of the situation in Bangladesh in comparison to Chile as an example. He claimed that Bangladesh has been in a virtual continuous stage of siege since 1974. Over 25,000 (he admitted the figure was disputable) political assassinations or disappearances of 28 to 35 year olds have taken place. He vividly described scenes of rape, torture, murder, burial alive, dismemberment, and other violent and unseemly acts. What was needed, he insisted, was an independent investigation of the situation in Bangladesh by human rights organizations in Canada to provide a source of information that went beyond the reports of Amnesty International. In the meanwhile, deportation proceedings against the Bangladeshis should be suspended. The imposition of a visa requirement for Bangladeshis was viewed as discriminatory in preventing them from seeking the protection of Canada.

Annual Review and Consultation

Kirk Bell announced that this year's annual review would be more comprehensive and would start earlier, in January rather than April.

In place of Karl Stumpf from Hong Kong, Lloyd Jones of Thunder Bay reported on the new situation in the closed camps for Vietnamese refugees and the Migration Services Department's program to help sponsors in Canada finance the resettlement of these refugees, a program particularly aimed at Canada as one of the few countries with a private sponsorship program which can augment government quotas.

Joyce Yedid, a lawyer from Montreal addressed the conference on the historical background of the 3,000 or so Lankan Tamils who have applied for refugee status in Canada. Joyce Yedid stressed that the overwhelming number of these made their claims after communal violence of 1983, violence which has recurred with regularity since then. She noted that 25–30% of the claimants had been accepted, that deportation orders are being processed for individuals nearing the end of the claims process — though she admitted that none of the deportation orders had as yet been enforced. She argued that there should be a stay in deportation proceedings, and that those already here should have their status regularized with permanent residence granted for those who had demonstrated that they had been successfully established. Others would be given 6 months to demonstrate that they could establish themselves and adjust to Canada.

Barbara Jackman, a Toronto lawyer, ended her talk with an analysis of the terrible political and questionable legal situation in Chile; she began with a very moving account of her last recent visit to Chile which demonstrated vividly the increased repression in that country. On the first night of her visit to a community clinic in a poor neighbourhood, she personally witnessed the death of a young boy who had been shot in the back of the head at 8:30 while walking home. She spent the second night on the floor of a priest's house as soldiers shot at random in the streets: she has her first grey hairs as a memento of that night. At a subsequent visit of 300 to the grave of Allende, six buses of military police met the peaceful demonstrators as they left the cemetery, forced them back into the cemetery and shot and gassed them without provocation. The de facto state of siege of the poor neighbourhoods has since become a de jure one. The repression has increased and become more systematic.

Of five main human rights organizations in Chile, only one, Vicariate of the Catholic Church, has a working relationship with the Canadian

bassy, though it was not the same quality as that with France, Sweden and Switzerland. Fasic (the Protestant church organization), Jackman reported, had a negative relationship, and the other human rights organizations thought that the relationship was not worth the time. Canada was rated just above the American and British embassies, and well below that of other European embassies with respect to a concern for human rights.

Juan Iteriago spoke on the problem of the Peruvians in Montreal and the increasing restrictive policy in Canada towards Peruvian refugee claimants, explained partially, he said, because Canada does not recognize that Peru is a quasi-democracy because repression and disappearances occurred as in El Salvador but not as extensively as in Argentina.

Iteriago (supported by some other lawyers at the conference) argued that the confidentiality of the claimant was not respected. Pressure at the entry point induced individuals to make declarations that they did not want to make signing documents which permitted the Canadian authorities to contact the local police back home to make inquiries about the refugee. During the session, these charges were clearly and unequivocally denied by representatives of both the Immigration and the External Affairs Departments in Canada. They claimed that the forms refugee claimants sign allowed the authorities to undertake any necessary medical treatment, and, any criminal records only prior to their being granted landed immigrant status, and was not utilized while the refugee was proceeding through the claims process. It could not be used in any way to jeopardize that claim. Contacts were made with Interpol but not with the local police authorities and Interpol files are kept independently of any national police.

Iteriago claimed that Salvadorean claimants were being sent back to the U.S.A., and the U.S. in turn sent them back to El Salvador. Raf Girard insisted that the only returnees to the U.S. would be those who a) had permanent residence in the United States; and b) those for whom guarantees had been received that they would not be sent back to El Salvador.

Iteriago asked that the 'democratic' status of Peru be investigated, that the claims currently in process be reviewed in light of this information, that the suffering of the claimants in Canada be relieved, that a special program be offered for Peruvians, that special measures which he claimed were applied to Peruvian claimants be stopped, and that the visa requirement for Peruvians be removed. In light of the clear and unequivocal denial of some of the claims, the credibility of the whole presentation was weakened.

Raf Girard then reported on the results of the UNHCR Executive Committee (40 countries plus Namibia that oversaw the programs of the UNHCR on behalf of the UN). He summarized 12 days of proceedings dealing with aid and development, protection, durable solutions, etc. He noted that Ex. Comm. (the Executive Committee) proceeded by consensus, making it difficult to table hard hitting resolutions. On the other hand, the bitter block voting and factions of other UN bodies was avoided. No single issue dominated the 1984 Ex. Comm. meetings, perhaps because there was no new large scale exodus demanding world attention. Nevertheless, it was difficult to maintain optimism since there had been erosion in non-refoulement, beginning with the commitment to resettle refugees, and only very slow progress in the word towards durable solutions.

The Supreme Court

The Supreme Court was expected to announce its decision on the key question of whether our Constitution obligated Canada to provide oral hearings for refugee claimants. The announcement of the decision has evidently been postponed until January. Does this indicate that the court will require oral hearings and is merely allowing time for the department to deal with all those claimants who did not receive oral hearings?

Canada was particularly concerned with resettlement and protection. Holland, Germany and Sweden focused on the spontaneous migrants who were looking to better their lot and not seeking protection. These spontaneous

migrants interfered with a country's ability to handle legitimate refugees seeking protection. A study of these spontaneous migrants was to be initiated.

Canada viewed refugee resettlement as an orphaned durable solution without advance planning. The High Commission was requested to use the annual plan of Canada as a systematic framework for all countries participating in resettlement. Overall planning could then be undertaken in this area.

In the protection debate, the pessimistic attitude of the High Commissioner in his introductory remarks was reinforced. Military attacks on refugee camps, rescues at sea and travel documents for refugees were all discussed. Little progress was made on the first issue, particularly because it had political overtones, and UNHCR operated by consensus. Rescues at sea were supported in principle because the rescues had diminished from 20% to 7%. Incentives had to be provided to ship masters and the countries whose flags they flew. In practice, however, Canada did not make a specific commitment to RASRO (The Rescue at Sea Relief Operation). Canada, however, had initiated preliminary discussions with countries with large naval fleets, such as Greece, to attempt to work out a practical formula. These discussions are in progress. The debate on travel documents was uneventful, Girard reported.

Anton Yurkevich of External Affairs reported on other overseas programs of the High Commission, particularly those with which Canada had a concern. He described Canada's involvement in the aid program — Canada donated almost \$13 million dollars, and was the fifth largest contributor. Yet Canada feared creating dependency on the part of the refugees. Canada, therefore, supported attempts to integrate refugees into development programs. Afghanistan was cited as an example. In another instance, \$1,700,000 was pledged at ICARA II to facilitate integration programs.

Canada took a very clear stand supporting the High Commissions efforts to co-ordinate its programs with other UN agencies without diminishing the special programs needed for refugees.

Refugee Status Determination: A Comparative Study

Christopher Avery, "Refugee Status Decision-Making: The Systems of Ten Countries",
Stanford Journal of International Law, Volume 19: 2, Summer, 1983

This is the best article on the status determination process. Packed with information and analytic data, the article compares the legal status of the process, the procedures, the nature of the initial interview, the decision-making apparatus and practice, the rights of the claimants, training procedures and resources and the whole process of review with a brief historical update and evaluation at the end of the analysis of each country. It is a must for anyone interested in the status determination system. Although organized on a country-by-country basis, I found it more helpful to read and compare each stage of the procedure in all the countries.

What the comparative study provides is a checklist of how, in fact, an excellent status determination process would be constituted. First, it would be embedded in law and would apply to all refugee claimants regardless of origin. The Italian system is clearly discriminatory in excluding non-European refugee claimants. Similarly, the process at the border claim point (or internally) is crucial. Can there be a summary expulsion by an immigration officer after a brief interview? Is the interview recorded? Is the officer trained? Is the applicant entitled to counsel? The worst situation seems to be that of Sweden, closely followed by Switzerland's policy and practice. In those countries the decisions of the border officers, who are inadequately trained, are made without record, without counsel, and without appeal. The United States' practice of informally persuading claimants to accept voluntary departure is almost as bad. The new West German procedure allows guards to deny entry if they determine that the applicant has already found protection in another country, has previously been denied refugee status and has no new evidence. The claimant can only appeal from outside Germany.

The best situations, for example in France, are found where the officers

only refer claimants to other specialized groups. The standard practice of Australia, Belgium and the U.K. (though not protected in the latter country by law), and Canada, is to refer claims to a higher authority. In sum, a good system of refugee status determination does not place the responsibility for any decision making onto officers who are responsible for enforcement of immigration laws, whether they are immigration officers, alien policy or come under another rubric.

The real question of quality then depends on the nature of the initial interview, whether the claimant can be present and is entitled to counsel, and whether the interviewer is well trained, knowledgeable about procedures and human rights situations in countries of origin. To be effective, such interviewers must have available the resources of a specialized library and documentation centre. It is clearly preferable if the interviewer is not an immigration, border or alien police officer, but is specialized to deal only with refugee claimants. Further, the training and information resources available to the initial-hearing officer are crucial to the fairness of the procedures. The ideal situation is to be found in France where the claim is referred directly to the Office for the Protection of Refugees and Stateless Persons (OFPRA). The worst situations are in Sweden and Switzerland, where the officers may be well trained in procedures, but may be ignorant of human rights situations in countries of origin; a problem compounded when the officers possess arbitrary powers. Australia and Canada have systems that fall somewhere in between, where the interviewing officers have been helped with improved training and information. In some areas in Canada oral hearings have been instituted on a trial basis. The situation in Belgium is slightly better; the original interview merely determines basic data and can decide inadmissible claims under very narrow

criteria (subject to appeal). Better yet, the initial interviewers in the U.K. establish only basic information. The American Immigration and Naturalization Service (INS) examinations are closer to those of Sweden and Switzerland. The officers receive no training in refugee law or procedures and are poorly informed on human rights situations abroad.

Aside from the powers and training of the border police or immigration officers, the ideal way to maximize the training and minimize the powers of officers and ensure the rights of claimants, is to establish excellent training procedures and a structure which ensures the independence of the decision making body. Again, France provides the ideal in the *Office Français de Protection des Réfugiés*. Although it is a public authority attached to the Ministry of Foreign Affairs, it has its own legal personality and financial and administrative autonomy. The director is a senior diplomat appointed by the Foreign Affairs ministry in consultation with other ministries. The director's practice is to appoint officers who are attorneys with extensive experience in human rights law for one-year renewable terms. OFPRA has an Advisory Council consisting of a chairman from the Ministry of Foreign Affairs, five representatives from other relevant ministries, an NGO representative and a UNHCR representative in attendance. The Advisory Council approves the budget, advises on determination of refugee status, proposes improvements and appoints one member to the Appeals Commission. The latter consists of a chairman appointed by the equivalent of France's quasi-ombudsman office as well as a UNHCR representative. Thus, its procedural structure is based on both fairness and the appearance of fairness. However, the procedure is somewhat weak in supplying information to the officers, although the training resources are adequate particularly at the stage of initial deter-



mination. The claimant has the right to appear at both the initial and appellat stages.

Belgium has an equally independent procedure, where decision making has been delegated to the UNHCR. This procedure is criticized, as well, because of the UNHCR's necessary dealings with the claimant's government of origin. Australia's system proves almost as good, for despite the fact that decision making power is vested finally in the Ministry of Immigration and Ethnic Affairs, in practice it is delegated to the Determination of Refugee Status Committee (DORS) with representatives from various ministries and the UNHCR. However, the candidate may not appear before this body. This is a serious flaw. DORS is equivalent to the Canadian Refugee Status Advisory Committee (RSAC), which is praised for including citizens who are not civil servants. The article does not mention, however, that positions on the committee are sometimes patronage appointments. Canada is also praised for the initiation of oral hearings at the preliminary stage. The seminars and new resource library are all beneficial, but the absence of the right of a claimant to appear before RSAC is viewed as a deficiency.

The West German Federal Agency for the Recognition of Foreign Refugees does interview candidates except in obviously warranted cases. The selection of the hearing officers (by exam) and the presentation of seminars every six months are very helpful in ensuring well-qualified hearing officers. Given Italy's restriction to Europeans, Italy's Joint Eligibility Commission is an excellent structure, especially since all claimants are interviewed. It generally operates by consensus and consists of representatives from the UNHCR (with two votes), the Ministry of Interior and the Ministry of Foreign Affairs (each with a single vote). The lack of a library or documentation centre is a serious deficiency. Similarly, if a claimant can manage to get past the Alien Police in Sweden, the procedure beyond that point is very fair since the determining body is autonomous of government and constituted by a non-political parliamentary committee. The committee's

decisions can be overturned by government policy in order to ensure that the refugee claimant is not returned to his country of origin. In fact, the unfairness practiced by the Alien Police at the preliminary stages is offset by an equally unbalanced process in the opposite direction at the appeal level, where decisions are made more on the basis of the publicity given to a case rather than on its merits.

Switzerland has no equivalent procedure to correct imbalance. Initial arbitrary power is given to the Alien Police. The Federal Police Office in Bern, which reviews documents and the transcripts provided by the Cantonal Aliens Police has the benefit of young attorneys who are experienced, but who lack training in refugee issues. The Swiss process, however, does have the advantage of a resource centre, but there is no allowance for input from the UNHCR. The applicants are granted an oral hearing by right (in contrast to Canada where it is only a matter of experiment), an interpreter and a representative from a refugee aid organization. The latter, however, can only be present as an observer rather than an advocate. An appeal goes to the Justice Ministry and then to the Federal Council based only on the written transcript.

It is obvious that the crucial elements that ensure fairness imply a system of specialized, well-trained officers with a resource library and the input of independent advocates, complemented by a claimant's right to be present at an oral hearing at the initial phase of the procedure. Appeals to detached and disinterested parties at a second level is a double but secondary level of protection. Thus, the U.K. system is good insofar as decisions are in the hands of a specialized refugee unit with effective training procedures, but is weak in that the officers are not well informed on human rights situations abroad (although this situation is being corrected). The process is weakened further by the lack of routine oral hearings. The appeals procedure of an Immigration Appeals Adjudicator specialized in asylum cases equipped with the automatic right of the claimant to have an oral hearing would ensure that the British system is reasonably fair. This is supplemented

by a second level of appeal to the Immigration Appeals Tribunal. However, it is clear that the major weakness and strength depends on the resources, quality, independence and fairness at the initial level of decision making. The input of UNHCR is also crucial in assessing this fairness.

Despite some strengths, the American procedures possess a different set of weaknesses beyond the initial discouragement provided by the border police. The fact that the INS officers and immigration judges do not specialize in refugee cases is a drawback. These employees are civil servants, and few are attorneys. Two-week training sessions are inadequate, particularly with respect to refugee law and fair interview procedures. Training is non-existent on the subject of human rights situations in the countries of origin. The file prepared by the initial interviewer is generally inadequate, the decision by the district director based on the written submissions with an advisory opinion by the State Department, cannot help but be insufficient as well as appear to be blatantly unfair. Most disconcerting is the "enforcement mentality" of the decision-making apparatus, particularly when the decision-making officer began his rise through the civil service from a position in the border patrol. The courts, in the case of Haitians, have found INS to have acted in a discriminating manner. Though the officers have access to human rights information, the practice is to rely on State Department advice and not seek out independent sources of information.

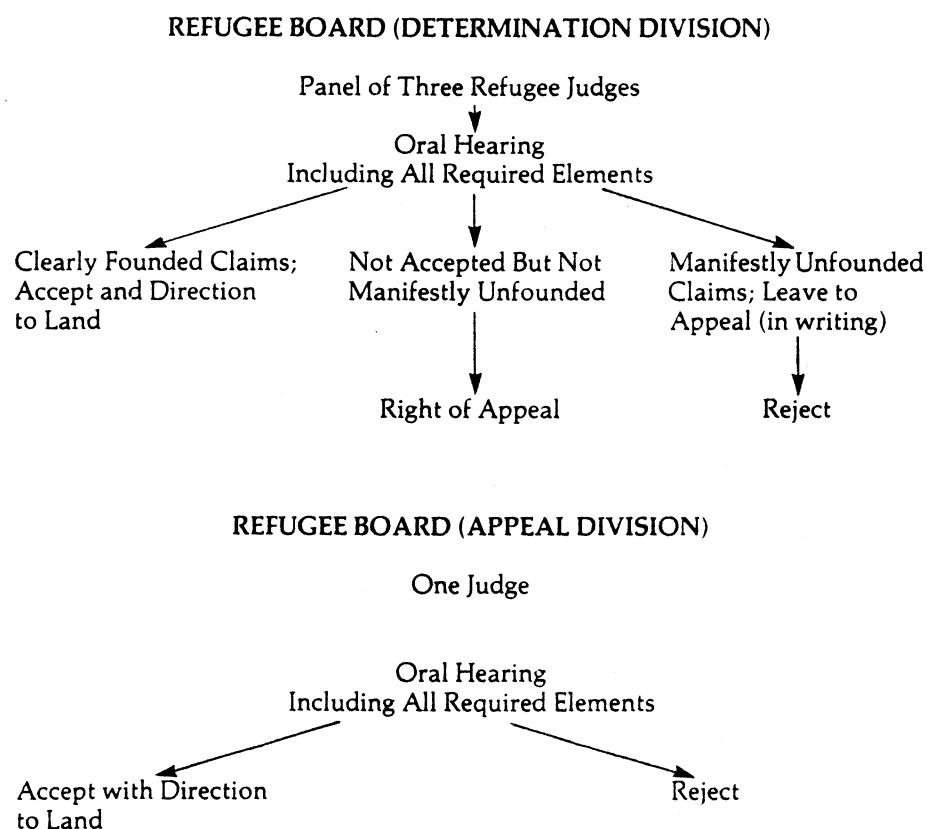
Clearly, independence, training in refugee law and interview procedures and access to independent sources of information are all crucial to the initial level of decision making. The independent input by UNHCR is important as is the right of the appellant to an oral hearing and the presence of an advisor. The appeal procedure should ensure a second check by a body which is seen to be independent of the enforcement process. The appeal group must be experienced and trained in refugee matters with appropriate resources available to it.

Canada's Refugee Status Determination Procedures: *

Required Elements:

- Access to the Refugee Determination Procedure
- Efficient and Expeditious Procedures
- Oral Hearing
- Quality Decision Making
- Right to Information about the Procedure
- Right to Counsel
- Right to Interpreters
- Reasonable Time Limitations
- Compliance with Rules of Evidence
- Balance of Probability and Presumption of Credibility
- Right to Re-open Hearing
- Right to Appeal
- Procedural Safeguards for Unfounded Claims
- Guaranteed Minimum Living Standards
- Right to Family Reunification

Proposed Refugee Determination Model*



*Delegation of Concerned Legal, Church and Humanitarian Organizations to the Plaut Commission



Refugee Week and Refugee Film Festival: Art and Truth in Film — 4-8 February 1985

The Refugee Documentation Project was set up at York University in 1982 to facilitate research on refugees and to provide a library of specialized materials for the use of undergraduate and graduate students as well as faculty members and visiting scholars. Thus far the Project has published three major research reports, a large bibliographical index on refugees and has been extensively used for research purposes. It has also been overseeing the publication of *Refuge*, Canada's periodical on refugees.

Periodically the Refugee Documentation Project engages in seminars, special lectures and film screenings on refugee issues as a mode of publicizing its work as well as drawing attention to the refugee problem.

As part of a Refugee Week, the Project is now organizing a Refugee Film Festival to run from the 4th to the 8th of February 1985 at the York and Glendon Campuses. Screenings starting at 3 p.m. at Glendon and 7 p.m. at York will be followed by panel discussions in which both cinematographic and social issues will be discussed. The emphasis will be on the effectiveness of film as an art attempting to deal objectively with the content emanating from a refugee problem. A distinguished number of filmmakers, critics and specialists in the fields will be among the panellists. Admission to this and other events during the Refugee Week is free and open to the public. At present our film schedule stands as follows:

Monday, 4 February 1985

York Campus:

• World première of *Journey's End?: The Forgotten Refugees* (Canada, to be released in 1985), a documentary dealing with Ethiopian refugees in Sudan directed by Simcha Jacobici and edited by Roger Pike. Followed by Simcha Jacobici's previous film, *Falasha: Exile of the Black Jews* (Canada, 1983).

Tuesday, 5 February 1985

York Campus:

• *One of Many* — Dr. Nhan, directed by Jan Marie Martell (Canada, 1983), recounts the problems of adjustment of a Vietnamese refugee of Chinese origin in Canada.

The Camp on Lantau Island (1984), a UNHCR production on the situation of the increasingly forgotten boat people in Hong Kong.

Wednesday, 6 February 1985

Glendon Campus:

• *Canne Amère (Bitter Cane)*, directed by Jacques Arcelin (Haiti/USA, 1983), a documentary dealing with the conditions leading to the flight of Haitian refugees.

York Campus:

• *Beirut! Not Enough Death to Go Round (Beyrouth! À défaut d'être mort')*, directed by Tahani Rached (Canada, 1983), a film dealing with internal refugees in Beirut.

Thursday, 7 February 1985

Glendon Campus:

• *The Lost Tribes* (1984). The latest UNHCR film on Afghan refugees. **York Campus:**

• *Nueva esperanza* (1982), a UNHCR documentary focusing on Salvadorean refugees in Honduras.

Salute, directed by Bob Stone (Canada, 1984), a brand new account of Salvadorean refugees in Canada.

Friday, 8 February 1985

York Campus:

• *The Shoe (Le soulier)*, directed by Jorge Fajardo (Canada 1980); *Unfinished Diary (Journal inachevé)*, directed by Marilú Mallet (Canada, 1982). Films by two Chilean directors living in Canada which address the problem of the filmmaker as refugee.

In addition to this, the Interfaith Council at York is arranging a lunchtime debate on Tuesday, 5 February 1985 on the role played by different Churches in the elucidation of refugee issues. Prof. Ioan Davis will be the moderator. Participants include Kathleen Ptolemy, Nancy Nicholls, Roger Hyman and Tom Clark.

Various groups and institutions, including the Canadian Cultural Studies, co-ordinated by Prof. Ioan Davies, the Latin American & Caribbean Studies Programme and the East Asian Studies Programme at York University, will also be organizing talks on refugee related topics in the course of the same week.

The John White Society together with CLASP, York's Community and Legal Aid Services Programme, will be organizing a lunchtime panel discussion on Wednesday, 6 February 1985 on Legal Status Determination at the Osgoode Hall Law School. It will be moderated by Prof. F. Zemans and other participants will be Prof. W.H. Angus, Prof. J. Hathaway, Susan Davis and Barbara Jackman.

The refugee problem will be discussed as well during a complementary series of films and seminars on immigrants to be monitored by the Council of the York Student Federation and the Glendon College Student Union, which are also co-sponsoring the Refugee Week.

Furthermore, the York University Bookstore will have a special stand during that week with books on film and refugee issues.

A fine arts exhibit, "Images of Refuge", is also being organized by Prof. Eugenio Téllez.

For further information please contact the Refugee Documentation Project at (416) 667-3639, or Glendon College at (416) 487-6208.



Definitions

Convention refugees are persons who meet the definition set out in the United Nations Refugee Convention and repeated in the Immigration Act. **Resettlement opportunities** are accorded to Convention refugees selected abroad; **protection is extended** to persons who claim refugee status while in Canada and whose claims are determined to be valid by the Minister on the advice of the Refugee Status Advisory Committee (RSAC).

Members of Designated Classes are persons in refugee-like situations who are accorded the opportunity to resettle in Canada because they are displaced or persecuted, or both. Such persons may not be able to meet the strict definition of "refugee" in the Convention for such technical reasons as that they remain in their own countries. Others may in fact be refugees in the strict sense, but are also part of mass movements such as the Indochinese exodus; in these instances, the ability to satisfy the strict definition is irrelevant to the decision that they are eligible for resettlement in Canada.

Designated Classes are so designated by the Governor-in-Council (the federal Cabinet). There are now three such classes: those for Eastern Europeans, Indochinese, and Political Prisoners and Oppressed Persons; the latter class includes, but is not limited to, persons who would have been eligible under the former Latin American Designated Class.

Special measures may include such provisions as relaxed selection criteria for members of the Family Class and the Assisted Relative category, and administrative arrangements under which eligible visitors to Canada may apply to extend their stays or to be considered for landing through Order in Council. In 1983, there were special measures applying to Iranians, Salvadoreans, Lebanese, Sri Lankans, Vietnamese, and Poles; the measures for Poles were terminated on January 1, 1984. Special Measures for Guatemalans were introduced on March 15, 1984.

Refugee and Humanitarian

	Government Sponsored Refugee Admissions**			Private Refugee
	Planned 1984	Actual 1984	Planned 1985	
Eastern Europe	(2,300)	2,649	(2,200)	1.
Indochina	(3,000)	3,013	(3,700)	1.
Africa	(1,000)	653	(1,000)	
Middle East	(800)	296	(800)	
Latin America	(2,500)	2,164	(3,000)	
Others	(400)	166	(200)	
Reserves			(100)	
TOTAL	(10,000)	8,941	(11,000)	4.

**Includes those arriving at ports of entry during the calendar year with immigrant visas, and processed abroad on an emergency basis who enter on the strength of a Minister's Permit, per compliance with the Act and Regulations is demonstrated.

Source: Policy and Program Development Branch, CEIC.



Plans — 1985*

New Policy

The federal government has determined that it would be appropriate to increase the 1985 level for government-assisted refugees to 11,000 from 10,000 which had been identified for 1984. In addition, the federal government is prepared to consider — at any time during 1985 — proposals to increase the global level if sudden and unforeseen circumstances create a new mass outflow or displacement of persons in need of resettlement in Canada.

Themes of Consultation

Two themes emerged from the 1984 consultations with private-sector groups in Canada: First, since the worst effects of the recession are over, more refugees can be resettled without hardship to or the displacement of needy Canadians. Second, government allocations should be more closely managed to ensure the fulfillment of announced allocations.

Reasons for an Increased Refugee Commitment

- the economic recession has resulted in a reduced commitment to refugee resettlement by the world community in general;
- many refugee groups, which would normally be helped through local resettlement or given material aid pending repatriation, have been in interim situations for a long time, thus increasing the pressure for third-country resettlement as a durable solution to their plight; and
- fewer countries are engaging in refugee resettlement, and those who are continuing to provide these opportunities are doing less than in previous years because large waves of asylum-seekers, and others using this route to gain admission to other countries for reasons of economic betterment, continue to flow to developed countries, inundating humanitarian support mechanisms in both the private and public sectors.

Immigrants to December 31, 1983

Category	Claims in Canada (RSAC)	Total Admissions	Special Measures Landings	Total
1.	67	4,274	2,893	7,167
1.	12	4,672	—	4,672
	64	887	—	887
	100	784	621	1,405
	348	2,651	690	3,341
	35	375	32	407
Total	626	13,643	4,236	17,879

and, those pending after full

*Employment and Immigration Canada, November 1984 Annual Report and Background Paper to Parliament on Future Immigration Levels.

Canada — A Country of First Asylum

Is Canada a country of first asylum? If so, do visa requirements for countries such as Guatemala prevent Canada from carrying out its legal, international and moral responsibilities as a first asylum country? These questions were not so much asked as loudly and unanimously answered and affirmed by all the Canadian NGOs — the Canadian Bar Association, the Canadian Council of Churches, the Canadian Jewish Congress, the Canadian Labour Congress, the Canadian Section of Amnesty International, all in attendance at the "Amnesty International Seminar on Canada — A Country of First Asylum" at the Park Plaza Hotel in Toronto on November 21st, 1984.

One theme was carried through all the briefs. Parliament legislated that Canada had a responsibility and obligation to provide protection for convention refugees, and refugee claimants in Canada had a right to make a claim for such protection and status. This law was reinforced by a moral responsibility for Canada to share the burden for the world's refugee population. Responsibilities for burden sharing are not simply financial, but entail territorial obligations. Finally, with the new modes of transportation and virtually direct flights to Canada from far away, whatever the intentions of the law makers, however developed or underdeveloped our sense of moral responsibility, Canada had *de facto* become a country of first asylum.

The practical issue which stood in the way of that vision was the imposition of a visa requirement on Guatemala.

"The Canadian section of Amnesty is opposed to the imposition of a visa requirement on countries to which Canada is a logical and accessible country of refuge, where the number of claimants from the country in question is manageable, and the immigration abuse insignificant."

The briefs argued that whether or not visas were appropriate for controlling immigration flows, they were totally inappropriate in principle as a mode of managing refugee flows. Further, in practice visas put individuals in danger who could not reach our embassies, who feared to go to embassies because they believed they would be under surveillance, who endangered themselves because embassies were in fact under surveillance as demonstrated by recent seizures of nationals after they left Canadian consulate property. The briefs argued further that refugee procedures were not adequate abroad — the lack of counsel for the refugee, lack of time for such issues, and lack of rigorous training in refugee law and interview techniques. The image projected was of a Canadian government which sought to control refugee intake and to use visa requirements as a mode of obstructing legitimate refugee claimants from Guatemala.

What a contrast with the picture painted by Pierce Gerety, the UNHCR Senior Legal Officer, who flew in from Geneva to present an international perspective. In Gerety's opening speech, Canada was lauded as an important leader in refugee matters, as one of the top countries in resettlement and the top one on a per capita basis. Not only were Canadian NGOs praised for their leadership, but the Canadian government's constructive approach to protection was especially noted. Canada's status determination procedure was, in most respects, cited as a model of its kind. The published guidelines were highlighted as exceptional. The processes of consultation and review only added to Canada's esteem.

Which picture of Canada was correct? Are we hard-hearted and discriminating, or humanitarian leaders in forging new frontiers in refugee policy? Some of Gerety's analysis, however, seemed to imply Canadian shortcomings while explicating the meaning of qualifying the Canadian model's merits to "most

respects", even though the UNHCR representative was too diplomatic to point those shortcomings out directly. And the shortcomings were not simply matters of overload and delays plaguing many systems, and which the Plaut commission is presently examining, but were matters of principles.

Canada was not only bound to the convention definition of a refugee as a standard by which to evaluate a claim, but Canada was obliged not to expell or return refugees to situations and homelands where they are in danger. Although Canada has no obligation to admit a refugee, it has an obligation to hear a claim. Was the non-refoulement obligation met if the right to present a claim could only be made in an embassy under possible surveillance and, upon leaving the embassy, claimants may place themselves in danger by going to the embassy? If visas prevented alternative routes to escape, and if claims made in a country of origin conflicted somewhat with the definitional requirement of being *outside* a country of origin, while at the same time placing the claimant in danger, was Canada not in fact practicing refoulement if not legally, then in spirit? These were questions which one could not help asking oneself as Gerety reviewed the principles.

The recommendations on access (agreed to by the 41 members of the Executive Committee of the UNHCR this year) that, for example, a competent refugee/border officer refer *all* claimants to a higher central authority raised the question if Canada was in breach of such a consensus in the mode of handling claimants in Guatemala as well as in Canada? Similarly, when the principle of burden sharing was noted as the provision of resettlement *and* asylum, was Canada in its commitment to the former ignoring its responsibility in the latter area?

The critical issue emerged when Gerety was subsequently asked if non-refoulement, which he held to be a fundamen-

tal principle, entails sharing both the burden of resettlement and of asylum. Gerety answered that it only applied to resettlement since asylum was not an issue of choice; it was not possible to parcel out asylum. This seemed to suggest that Canada had no legal or international obligation to be a country of asylum. If Canada had neither an obligation to admit refugees nor to be a country of asylum, it was up to Canada to define itself as it wanted. Canada only had an obligation to deal fairly with refugee claimants and not return refugees to dangerous situations.

The NGOs, however, argued that if Canada did not have an international legal obligation to grant refugees asylum, it was obligated by its own laws, Canadian morality and the *de facto* situation. The problem really resolved into two ideologically contrary views of Canada with respect to refugee policy. For the immigration officials, Canada is a country of resettlement and only in a very tangential way, a country of asylum. As such, refugees are overwhelmingly selected by Canada. Refugees per se do not have the right to come to Canada even if they do have the right to make a claim for protection once they are here. In the process of selection, the choice is made on the basis of both need and the prospect of adaptation to Canada.

The dilemma remains how can Canada be a selector abroad *and*, at the same time, process claims abroad according to convention procedures. If it does the first, then going through the motions of the latter is a sham. If it does the latter, then Canada cannot be managing refugee flows, for it is the situation of the refugee and the number of claims that will determine the numbers who get through the procedures and not Canada's selection criteria. The problem is that briefs, such as those of the Canadian Bar Association, misstate the issue. They argue that visa provisions and the rationale for a selection policy are instruments to define Canada "as a resettlement country *only* and would limit or *eliminate* Canada as a country of first asylum".

The department does not view Canada as a resettlement country only, how-

ever, it does see it as primarily a resettlement country and fears that if Canada settles on the basis of refugee "preference", the result will be endless numbers of claimants. The department is not trying to eliminate, it is argued, but is trying to limit Canada as a country of first asylum. The NGOs argue that Canada, as a country of first asylum, has equivalent (or even preferential) status in law and morality to the view of Canada as a country of resettlement. The point is well stated in the brief of the Canadian Section of Amnesty International.

In one sense the issue of whether Canada presents itself as a country of resettlement as opposed to a country of first asylum is a moot one. In fact, at the present time Canada receives refugees for resettlement as well as providing a procedure for identifying and accepting those who arrive in Canada for the express purpose of seeking asylum . . . the two functions need not be exclusive . . . despite the Canadian government's preference to characterize Canada as a country of resettlement, implicit in the recent efforts to reform the refugee claims procedure is the acknowledgement that to some, Canada is indeed a country of first asylum.

Setting aside the ideological issue of self-definition and whether access to Canada's procedures are extended abroad or limited to Canada, one concrete issue must be resolved. This is the effect of visa requirements on the lives and safety of individuals who would seek Canada's protection. For the NGOs, the issue is not all the refugees who would seek Canada's protection, but only those refugee-producing countries for which Canada is a logical and accessible place of refuge. And the concern is for those refugees who are in imminent danger and for whom lengthy requirements of visas add to danger.

If, in addition, the immigration abuse is minimal and the number of claimants is already manageable, the argument for a visa seems groundless even according to the department's own criteria of "efficient management". If in 1983, over 70 percent of a total of only 244 claimants were granted status, why

institute a visa requirement? The absurdity of imposing a visa requirement in such a situation seems so apparent that the NGOs not only deride the policy, disagree with the perception of Canada behind that policy, but even make comparisons between the policy makers of the 1980s and those of the 1930s.

Though sometimes distorting and overstating the case, the basic arguments seemed overwhelming. The rationale for Canada's imposition of a visa requirement, granted the differences in perception, appeared extremely weak. The failure of the Canadian government to participate fully in the discussions (restricting comments to clarifications and some elaborations), did not help the department's position. For example, the abstract position of Canada could theoretically have been made concrete to show that it was, in fact, helping more refugees through the Canadian consulate office in Guatemala than through the immigrants who came to Canada. Individuals being helped were more in need than those who actually got to Canada. No analysis of this type was presented though there were some guesses about general figures. The department would also have had to explain why helping refugees within Guatemala necessitated the inhibition of refugees coming direct to Canada to make a claim by the requirement of a visa. After all the laudatory remarks that the UNHCR made about Canada, it seems ridiculous to compromise our principles and efforts on an issue of such marginal importance in our overall planning and of such major importance, not only to the concerned NGOs, but particularly to the Guatemalans whose lives may have been endangered by the Canadian policy.

"Canada should acknowledge at least the small flow of refugees who choose to come from countries for which Canada is logical and accessible as a legitimate part of its international response to refugee needs, and should remove the visa requirement." — Inter-Church Committee for Refugees. November 20, 1984.

Refugee Resettlement: A New Policy

"It has been a long pregnancy, but I'm still not sure we're ready to give birth." With these words, Naomi Alboim, Director of Settlement, Ontario Region, Canada Employment and Immigration Commission (CEIC), opened the proceedings in Toronto on November 2nd, 1984 of the Ontario Consultation Conference on Refugee Resettlement.

At the end of the evening, someone suggested to Naomi that, as a mother of twins, she should have been the first to recognize that the consultative process was now going through labour pains and was about to give birth. This was the harshest rebuke heard at the conference. In fact, if you did not know the players, it was difficult to tell who was a government employee and who came from the non-governmental sector. Not only did the consultative process give birth to a proposed revised Refugee Resettlement Policy, but the partnership of the private and governmental sectors had developed into a real marriage.

After the heady romantic euphoria of the 1979-1981 period when the Canadian government, with the immense help of the private sector, managed to bring to Canada and resettle 80,000 Indochinese refugees, the Minister of Employment and Immigration, Lloyd Axworthy, in the spring of 1982 instigated several evaluations of the Indochinese resettlement experience, and a process of consultations to see how the involvement of the private sector could be encouraged to continue. The evaluations indicated that sponsors would again come forward to help if there was a demonstrated need, if better resettlement services were provided, and if there was more government/private sector sharing and a corresponding elimination of the discrepancies between government and private sponsorship.

The consultative process began in earnest. A number of truths were already accepted: a widespread recognition that the voluntary sector could offer benefits and services that the government could not; that private sponsor-

ship should continue to augment and not substitute for government sponsorship; that there needed to be more flexibility to allow different degrees of non-governmental involvement, while at the same time, allowing the government to act quickly during an emergency.

The Director of Refugee Resettlement in Ontario instituted a steering committee which determined that more research was necessary to prepare an information package and options. That research had to go further to analyze the cost implications, while ensuring true equalization in the delivery of services, and real cooperation between the private and governmental sectors. A plan of action was instigated and graduate students were recruited to undertake the research. Meanwhile, other regions recommended improvements, including better access to information, non-government involvement with government-sponsored refugees, a process for increasing public awareness, increased counselling and orientation for both refugees and sponsors, better guidelines for sponsors, improved language training and skill training for refugees, funding for NGOs to provide an improved infrastructure, possibly through local refugee councils.

The research undertaken in Ontario by graduate students, in addition to compiling a comprehensive basis of information, also demonstrated that private sponsorship of refugees was significantly less costly than government sponsorship because of a number of factors:

- a) much lower furniture costs because most furniture for privately sponsored refugees was donated;
- b) lower clothing costs for much the same reason;
- c) no initial hotel bills;
- d) somewhat lower housing costs, primarily because singles were often accommodated in homes free of charge and some housing was donated;

- e) a shorter period in obtaining employment and achieving self-sufficiency because of the network system of volunteers which assisted the refugees in obtaining employment more quickly.

In other words, the savings in settlement costs of 50 to 60 percent were not the result of bureaucratic inefficiency or extravagance, but simply due to the fact that volunteer members of the community could do certain things that no civil servant could be expected to do. At the same time, the private sponsors were an important component in the orientation and adaptation of the refugees to Canadian life.

The publication of "Federal Government Perspectives on Refugees" in 1983 gave recognition to the role of the private sector. In March 1984, the first consultative conference on resettlement to forge a new policy and partnership was held in Ontario. Individuals with experience and expertise attended from government, service delivery agencies, religious and ethnic organizations and academia. Invitations were extended for the submission of new models and seven were received. At the conference, these models were analyzed and critiqued yet not one survived intact as a suitable basis for a new refugee resettlement policy. Out of the discussion however, an approach to resettlement emerged with the following common elements.

Minimum standards and guidelines needed to be established which would be familiar to all. The refugees had to be involved as much as possible in the resettlement process. Long-term as well as short-term resettlement needs had to be taken into consideration. Certain specific needs were highlighted — better assessment of the refugees on arrival improved backup services for orientation for both refugees and sponsors, need for day-care facilities, dental programs and mental health assistance. Most importantly, there was agreement that every refugee should have the best

Appendix 1

A Revised Program of Refugee Resettlement in Canada

(A very abbreviated version)

The following model is based on the research proposals and the results of the consultation conference. It is a product of the cooperation of academics, the non-governmental sectors and government officials, which developed a consensus on the need to develop the key components of the resettlement process:

- a) Host group as an option available to government-sponsored refugees to assist them in resettlement;
- b) Local refugee councils which can act as coordinators of community efforts in refugee resettlement, and serve to stimulate the development of host groups and sponsors while acting also as a backup resource for those families, sponsoring groups and sponsors of family members.

The Host Group

The host group may be an individual or family. It is expected that the host group will take a personal interest in the ongoing welfare and social development of the refugee. It is the primary responsibility of the host group to undertake the cultural integration and social adaptation of a refugee family for a minimum of a year in accordance with specified tasks set out in agreement with the community refugee council. Certain minimum tasks would include:

- to help with a refugee's understanding of and access to Canadian institutions and systems;
- to assist in locating housing, furnishings and employment;
- to support the individual needs and wishes of the refugee to the extent possible.

A host group will have access to government for direct concerns, but it is expected that the host group will seek general advice from the community council.

The Local Community Refugee Council

The local community refugee council would be based on a defined and coherent area such as London, Ontario or a borough within Metropolitan Toronto

to allow cohesive work to be undertaken in facilitating the development of host groups and coordinating support for refugees. The council, while varying somewhat in its makeup from community to community, would consist of the various agencies providing services to refugees, refugee organizations, sponsorship groups and other individuals actively involved in the resettlement of refugees and committed to coordinating efforts on behalf of the resettlement of refugees. Local federal government officials would be in attendance as observers at the meetings. The councils would be eligible to enter into an agreement with the government for the following services:

- to coordinate, stimulate, promote and identify the CEIC host groups and private sponsors;
- to provide orientation to these host groups and sponsors;
- to provide ongoing consultation and advice to host groups and private sponsors;
- to participate in public education and awareness of refugee issues;
- to ensure appropriate intervention in cases of host group or private sponsor breakdown;
- to engage in community refugee resettlement review and to promote improvements in the provision of services;
- to develop a mechanism on a community basis to assist in the provision of furniture, clothing, housing and employment;
- to develop a local set of guidelines based on the nationally determined minimum standards for host groups and sponsors as well as an inventory of resources available to hosts, sponsors and refugees;
- to develop a community response for areas of special need, if not covered by existing programs. Such areas of special need may include family reunification, day-care assistance, mental health programming, recreation programming, interpreter recruitment to assist host groups and sponsors, facilitating the development of mutual-aid associations for specific refugee groups if required, etc.;

- to maintain accurate statistics, financial records and narrative descriptive records for monitoring and evaluation purposes.

Pilot Projects

In order to facilitate the development of local community refugee councils across Canada, several pilot projects would be implemented in different locales so that the pilot study would be national in scope. The local area selected would have a past record of refugee settlement and be an area designated for future refugee resettlement.

Independent Evaluation

In addition to initiating several pilot projects, the committee recommends that an independent evaluation be arranged to prepare background studies on the areas selected for pilot studies, including in that background documentation the role of the local CEIC, the different existing service agencies and refugee groups, the general record of relationships among those groups, as well as the past record of refugee resettlement in that area. It would describe and assess the mode of organization developed in that pilot area and would undertake a comparative study of success (or failure) in implementing the proposed program of the local refugee council. The study would also include the cost assessment comparing settlement costs where host groups were involved and those in which they were not. The inclusion of user evaluations of the program, including hosts, councils, CEIC officers, and refugees would be crucial to such a study. The individual would be given a travel stipend to visit each of the pilot areas at least three times during the process of the study. It is envisioned that this evaluator would also play the role of animator as he/she would carry news of one pilot project to another, thereby allowing all the projects to benefit from each other's experiences during the developmental process.

etit of a Canadian host who would help provide orientation, friendship and help meet the social and recreational needs of the refugees.

Given the agreement on general themes and needs, there was also a recognition that no monolithic model of resettlement was appropriate. But a gap needed to be filled in the panoply of family sponsorship, joint assistance for needy cases, private sponsorship and government-sponsored refugees. The latter would greatly benefit from a voluntary sector link with a host group, with that host group encouraged and supported by a community backup structure.

The questions left open from the consultation were who would encourage the emergence of hosts as an option for government-sponsored refugees, how would the community infrastructure be developed, and how could both of these initiatives be funded while ensuring the equalization of delivery of services to all refugees? A committee was constituted to explore the subject further and to develop a model within these parameters.

At the consultation on November 2 and 3, 1984, Kathleen Ptolemy introduced the new proposed model (see App. 1). The key element she stressed was the host group. (The original term was a host family, but was revised in the conference to designate the host as a host group of three to six individuals, rather than implying it was to be a single family.) The host group would act to ensure equal access to services. In addition to assisting in the adaptation of the refugees and facilitating access to structures and resources, the host would have the support of a community infrastructure. The model did not depend on a one-to-one case basis for handling refugees, but was to be rooted in the community as an essential element in refugee adaptation.

Gord Barnett, Director of the Settlement Branch of CEIC in Ottawa, sent out a memo for discussion to all regions (App. 2), and reported on the comments received from other regions of the country which had conducted consultations and received the Ontario re-

Appendix 2

Host Group Assistance Program for Refugees

Although there are many elements to the model, the focus for CEIC involvement is simple — to obtain assistance (not financial) in settling the government-sponsored refugees;

This objective is based on the following:

- privately sponsored refugees do benefit from the social contacts and community orientation provided by private sponsors;
- to give government-sponsored refugees these benefits, host groups or friendship families are required;
- CEC and CIC managers would have difficulty identifying and providing orientation, etc., for these groups due to lack of resources;
- some form of organization is required to identify (approve) the host groups to the CEIC, to provide orientation to host groups, etc.;
- since these are government-sponsored refugees, Canada should provide financial assistance to establish or assist the organization which will provide the host groups;
- the funds for this financial assistance have been obtained by transferring funds from the AAP (Adjustment's Assistance Program) on the premise that a host group assisting refugee will result in less AAP cost (less cost for furniture, clothing and earlier employment).

The program itself could be developed in a number of ways:

- through a community refugee council (along the lines of the attached model);
- through the church groups who have signed umbrella agreements for private sponsorship;
- through a combination of the two: church groups or one local church identifies families; and ISAP agency provides families with orientation and support.

In anticipation of these developments, some months ago a proposal was made to cabinet. Cabinet agreed that up to \$250,000 for fiscal year 1984/85 and up to \$500,000 for fiscal year 1985/86 be taken from the AAP to test the host group resettlement proposal. It was proposed to cabinet that the funds be allocated to organizations or church groups on the basis of up to \$500 per refugee or refugee family. At this time, National Headquarters would have these funds allocated through a contribution system, which would allow an organization a great deal of scope in expending the money on resettlement opportunities for refugees, (i.e. hiring a community liaison officer, providing services to host groups, paying out-of-pocket expenses of host groups, paying for rent or publicity campaigns).

gion's proposed model as a basis for a discussion. How would family-sponsored refugees be assisted by the community? Would the hosts be able to name the refugees they helped, thereby complicating the whole process of selection, in assigning refugees to a region of the country? Would it be possible for a single host family to exploit an individual refugee? How would standards be established across the country to prevent the emergence of gross inequities? CEIC counsellors did not have the time to deal with the complaints of a host family as well as the problems of the refugee. Wasn't there a possibility that the community councils would just lead to another level of bureaucracy in

the process of resettlement? Was the purpose of the proposal to cut costs and thereby increase numbers of refugees brought into Canada, or to improve the services to those refugees to which Canada had already made a commitment? Would the host system reduce private sponsorship even further? In his presentation, Mr. Barnett also made clear that the host model was not to be confused with the Joint Assistance Program for needy cases, nor would the costs of the initiative in any way come from the present ISAP (Immigrant Services Aid Program) Funds. Headquarters developed an alternative model (see App. 3).

Host Group Assistance Program for Refugees

Resettlement Branch, CEIC (edited)

Background

One of the main thrusts of the Steering Committee's model, developed in the Revised Program of Refugee Resettlement in Canada paper, is the creation of a local community council which would seek to mobilize in a formal manner the resources of the community. If the development of the community council is considered as a secondary component,

and if we seek only to meet the prime component of the Steering Committee's model, which is to assist government sponsored refugees to resettle, other models suggest themselves.

Models that do not have as a requisite the development of a formal community council should be considered, as in certain communities the council would not

be required or in other instances forcing the development of the council could be disruptive. Keeping in mind that the primary objective is to assist government-sponsored refugees through a host group program, it might be best to simply take advantage of the existing ongoing community support rather than to use resources to create a new support mechanism.



Alternative Models

1. The Signators of Umbrella Sponsorship Agreements

As long as the organization (for the most part these were national church groups and parish groups) is able to provide to the host group and the CEIC the services and support identified in a general way earlier in this paper, agreements could be signed with the umbrella organizations. Some organizations would not be suitable as they would not have the ability to provide the community-level support that will be required by host groups. Others may not have the needed expertise to provide the orientation training, etc. There are, however, a

number of these groups that could fulfill the role. This model would likely have CEIC providing a certain level of funding for each host group identified, trained and matched with a refugee family. In smaller communities, where refugee arrivals are very low (one to five families) and no community organization exists, this may be the only way host groups can be identified and trained.

2. Voluntary Agencies Currently Providing Services to Immigrants

ISAP agencies now funded by CEIC could likely provide the services and support required for a host group program. The difficulty faced by these agen-

cies may be the recruiting of host groups as, unlike the churches, they do not have a membership from which to draw volunteers. On the other hand, they may be best suited to provide the training for host groups and the support host groups will require.

3. Local Church and Voluntary Agency

A mixing of the two models above, but requiring a local church rather than a national body. This would be very close to the community council described in the Steering Committee's model but it is envisaged as being less formal: simply the joining of the two groups to identify, train and support host groups.



Funding the Models

Given that the clients of the host group program would be government-sponsored refugees, CEIC would provide funding for the program. Funding could be provided in the form of a contribution to pay for such costs as establishing the coordinating capability in the community (the council or simply a community liaison worker) training the host groups,

providing ongoing services to the host groups, defraying the expenses incurred by the host groups and other expenditures associated with providing settlement assistance.

A ceiling would be required for the contribution agreements and a funding formula would have to be developed. The simplest would be to set a maximum contribution for each refugee (single) or refugee family assigned to a host group.

The potential contribution to the coordinating organization could be calculated by multiplying this contribution by the number of refugees destined to the community. Advances to assist in organizing the program could be made based on the number of expected arrivals and the number of expected host groups. Payments would be made based on an invoice describing the expenditures incurred.



Pilot Projects

There will continue to be a great deal of uncertainty about particular elements of the program until it is field tested. Consultation and discussion will not provide

the answer to such questions as: are there sufficient numbers of groups wanting to help refugees, what funding level will be required to enable a coordinating mechanism to play the role proposed, will any savings to income support be

achieved through host families, will the proposal or some version of it work in all sizes of communities, how will we monitor the program, etc? From five to ten pilot projects will be required before any national program is launched.

George Cram presented the brief of the Interchurch Committee which was an attempt to establish definitions and parameters rather than to develop a specific model (see App. 4).

The conference reconvened on Saturday morning, and received an excellent presentation by a panel from the London area (Bev Ashton from Metropolitan United Church, London; Debbie Ashford, a settlement counselor at CEIC in London; and Beth Tellaeché, from the London Cross Cultural Learners Centre). This group had already developed a host program, but because of limited personnel to concentrate on such an area and some limitations in the system of informal cooperation, hosts were only available for about 50 percent of the refugees settling in the London area. The London group presented the history of their program and the guidelines they provided to aid hosts in orienting government-sponsored refugees. They also added an important piece of information on the question of whether the development of a host program would reduce private sponsorship for refugees. Their impression was that the host system *increased* private sponsors by exposing individuals to a non-risk experience while raising their awareness, and involving them in the lives of refugees whose families might need sponsorship support. However, not only was the London group limited to matching half the refugees with host groups, but they were unable to reach out very effectively (though they held public awareness programs twice per year) to individuals who were not organizationally affiliated.

A number of points emerged from the presentation. London had been able to develop a uniformity in the information and services for privately sponsored, family-sponsored and government-sponsored refugees. The process required a community team effort involving the churches, service agencies, the government and a resource center providing information and educational services. The host program involved a great deal of work with volunteers who required a support system for orientation, but the limited resources had restricted the program not only to half the refugees, but to specific refugee

groups — the Indochinese and Central Americans. The program was not able to reach out to refugees who had even less support from their ethnic groups. What, in effect, had been accomplished in London was the institutionalization of a host program, which required extensive community interaction, within an informal structure. The London group proposed a model for formalizing what they had developed, and for a community settlement officer to develop the program, who would be responsible to a community group that would involve the local CEIC settlement officer. The London group also made clear that they believed there were savings in settlement costs (though not as extensive as that of private sponsorship) through shorter hotel stays, quicker job placement and donations of clothing. They found organizing furniture donations to be beyond their resources.

The program also was assisted greatly when the central body of the religious institutions involved, as exemplified by the Baptists, provided a clear policy statement and direction for support of host groups for refugees. Yet the stimulation of hosts and the support systems had to be locally based in the community, involving at times the interaction of three different religious denominations to assist a particular refugee family. The host system also prevented exploitation by involving three or more different individuals on the host group.

In effect, the London group was able to answer many of the queries raised by Gord Barnett's cross-Canada consultation — the equalization of assistance to all refugees, however sponsored; the connecting of named refugees with the private sponsorship program to augment sponsorship and refugee intake in general without diminishing or complicating the government sponsored program and the host system; the mode of preventing exploitation; the mode of setting community-based (rather than Canada-wide-based) standards; the unwarranted nature of the fears of increased bureaucratic complications; and improved services while cutting some costs.

The conference then divided into five groups provided with a set of functions

involved in resettlement, as well as questions about those functions. The groups were asked to begin their discussions at different points so that the whole list could be covered. The groups reported back to the plenary in the early afternoon.

Following the reports from groups, an animated discussion emerged centering on a perception that the host concept dealt with some issues, but the model used should enable the community to respond to *all* refugee needs and not just government-sponsored refugee needs. Flexibility was required, but standards, guidelines and some degree of uniformity were needed in some areas. Recognition had to be given to using and strengthening existing resources and agencies, and new structures should not be imposed. The following specific recommendations could be considered the essence of the consultation:

Recommendations

1. Public awareness to be increased through the development of information programs, networks and by using the media to involve both community-based organizations, federal and international agencies.
 2. An evaluation of programs, pilots and existing, be conducted by independent outsiders with the government setting aside funds for regular reviews and evaluations.
 3. A paid professional volunteer coordinator be appointed in each community that warrants to facilitate the host group program, without restricting the coordinator, in any way, to simply that role.
 4. The structure of community coordination for the infrastructure support for the coordinator should remain flexible, and related to the nature of the local community.
 5. The government was to remain the agent of final responsibility.
-

The Churches Involvement in Refugee Resettlement

Definitions

1. **Friendship Family:** An individual/family relationship between a refugee family and persons who connect to them informally, often built around specific needs, no contractual agreement exists.
2. **Host Group:** A *formal* arrangement which exists between a government-selected refugee family and a Canadian group (five individuals, parish, etc.). It would be similar to present agreements without financial/legal obligations and would focus on provision of human support and orientation.
3. **Formal Sponsorship:** A *formal* arrangement for the bringing to Canada of specifically *named* refugees over and above government programs. Similar to the present program, it would involve financial/legal obligations.
4. **Joint Sponsorship:** A formal arrangement for the bringing to Canada of specifically identified difficult cases which would not normally qualify for Canadian resettlement and which

would often require some form of provincial government approval. Their needs would be greater than those which could be met by normal government assistance and host group services. Financial over-and-above obligations would be part of these agreements which would be done on a case-by-case basis.



Shared Responsibility

The resettlement of every refugee in Canada is the shared responsibility of the government and private sector, working in partnership to ensure the successful reception and integration of refugees in Canadian communities.

Partners Contribute What They can do Best

The several partners which contribute to the resettlement of refugees should be allowed to contribute what their particular organizational form, powers, insights, and limitations allow them to do best. Partnership responsibilities should be determined according to the skills, and limitations of each partner.

It is the proper role of government, acting within the provisions for consultation stipulated in the Immigration Act, in ac-

cord with the shared responsibilities of the people of Canada, to determine policy, selection criteria and admissions, and to determine settlement need, with adequate finances to accomplish these tasks.

It is the role of the voluntary sector to share with government those tasks which government cannot adequately do by itself, such as the personal care required to adequately settle refugees and integrate them into a new community.

It is the particular responsibility of the non-governmental partners to provide leadership and concrete action in those areas where it is inappropriate or less effectual for government to act.

Put Need First

The needs of the refugee should be the dominant factor in determining their resettlement program. The refugee should participate in the process of determining decisions re: language training, level of employment, etc.

Equity in Basic Material Needs

The level of assistance provided to refugees should be consistent with local norms. Provision of basic material needs should be on as equitable a basis as possible for all.

The remainder of the afternoon focused on the precise mode of funding the host group coordinator, and the mechanism to enable that coordination to take place, given that the model was no longer dependent on the formation of a community refugee council. Should the funding go to a community agency; an NGO in the community where funding would be based on a per capita basis (so many dollars per host group developed), on a service-contract basis for

the provision of specific host orientation and coordination of functions, or on a project basis, evaluating subsequently whether, in fact, the financial savings and improved services warranted the new development? Essentially, the differences boiled down to a concern with the mechanisms for obtaining funds from the Treasury Board and the desire to ensure results, versus the concern that the mechanism would end up distorting a concern with pro-

viding services to all the refugees resettled and not just the government-sponsored ones. Out of this discussion, it was agreed that at least one of the pilots would be project funded, rather than initiated on a per capita basis, and the independent evaluation could compare the results of this mode of funding a community resettlement coordinator versus a per capita or a service-contract basis.

Canada As A Country Of First Asylum

by David Matas

Should Canada be a country of first asylum for refugees that choose to come to Canada? Or should we be a country of secondary resettlement, and first asylum only for those refugees the Government of Canada chooses to admit?

Right now only a few refugees choose Canada as a country of first asylum. The overwhelming majority of refugees Canada accepts each year are chosen by Canada either from their country of origin or from countries of first asylum.

The Government of Canada has put obstacles in the way of refugees who wish to choose Canada as a country of first asylum. The pattern has been that whenever there has been a significant inflow of refugees from a particular country into Canada, Canada has imposed a visa requirement on that country. In recent years, Canada has imposed visa requirements on Chile, Haiti, India, Sri Lanka, Guatemala, Peru and Guyana, to stop people of those countries from coming to Canada to claim refugee status here.

The visa requirement is a requirement that a person must have a visitor's visa issued at a Canadian post abroad before he appears at a Canadian port of entry for entry as a visitor. Practically, what is more important is that airlines will not transport to Canada a person national of a country with a visa requirement and who does not have a visa. The Immigration Act imposes on airlines the costs of detention and removal of persons brought to Canada without visas who should have them.

The Government of Canada

Officials of the Government of Canada have justified this refusal to allow Canada to become a country of first asylum for those refugees who choose to come here. They argue that Canada is not geographically proximate to any refu-

gee producing country. The appropriate countries of first asylum are those countries geographically proximate to refugee producing countries. For instance, the appropriate country of first asylum for Sri Lankan refugees would be India, not Canada.

Geographically proximate countries are culturally similar. Adaptation of the refugee is easier. The ideal solution to any refugee problem is removal of the situation that caused the refugee outflow, and repatriation. Repatriation is more effectively done from a geographically proximate country than from a geographically remote country like Canada.

For those who cannot flee to a neighbouring country, and for whom Canada is a logical and accessible choice of first asylum, the Government of Canada has established the political prisoners and oppressed persons designated class. Citizens of countries within that class can apply from within their own countries to come directly to Canada. Countries currently within that class are Guatemala, El Salvador, Argentina, Chile, Uruguay and Poland.

Imposing a visa requirement does not mean stopping refugee access to Canada. In fact, by international standards, Canada is one of the more generous countries for refugee resettlement. Canada accepts more than its share of the international burden of refugee resettlement. All a visa imposition does is regulate the flow. Instead of refugees choosing Canada, it is the Government of Canada that chooses the refugees.

If the Government of Canada chooses a refugee abroad, once the person enters Canada, he enters as a permanent resident, or as a person the Government has decided can become a permanent resident. He is free to work or go to school. He has access to the services and benefits available to Canadians.

If a person comes here on his own as a refugee claimant, he will be here for months, in many cases, even years, while his claim is being processed. During that time he is in a state of limbo. He is treated as a temporary resident until his status is determined. He is severely restricted in his access to work, to school, to medicare, to all government services and benefits.

The Government of Canada admits refugees to meet a need, not to cater to preference. By selecting refugees abroad, the Government of Canada can make a determination of need. Without selection, those refugees who arrive may well be refugees who could have received protection elsewhere, but who just preferred Canada as a country of immigration.

If the Government of Canada were to allow refugees the choice of coming to Canada as a country of first asylum, then, instead of directing Canada's refugee resources to resettling our fair share of the world's refugees, we would have to direct our refugee resources to those who chose Canada. We would be able to resettle fewer of those we determine to be in need. Instead, we would be offering asylum, in preference, to those refugees who might be protected elsewhere.

Allowing refugees to choose to come to Canada as a country of first asylum means allowing entry not only to genuine refugees. It means allowing entry, as well, to those who are not refugees, but who wish to gain entry to Canada, even if only temporarily, by abusing the refugee claims system. It is only by cutting off access to the refugee claims system, by imposing visa requirements, that the Government of Canada can control this abuse. With a visa requirement, when the Government of Canada selects refugees abroad, it selects genuine refugees and avoids the entry into Canada of frivolous refugee claimants.



Finally, a visa exemption allows oppressive regimes to expel their opponents. A foreign dictator may take advantage of a Canadian visa exemption to get rid of this opposition, forcing them into Canada. A visa exemption can be an aid to a foreign oppressor, rather than an aid to refugees.

Non-Governmental Organizations

That is the rationale that has been put forward for the imposition of a visa requirement to control Canadian refugee intake. It is not a rationale that has persuaded Canadian non-governmental organizations. In a meeting held recently in Toronto, sponsored by the Canadian Section of Amnesty International, a number of non-governmental organizations (NGO's) came together to discuss the question of Canada as a country of first asylum. All the NGO's represented, the Canadian Council of Churches, the Canadian Labour Congress, the Canadian Jewish Congress, the Canadian Bar Association, and Amnesty itself, took the position that Canada should be a country of first asylum for refugees who choose to come to Canada. Canada should not impose a visa requirement on a refugee producing country as a means of regulating the refugee inflow to Canada.

The attitude of the NGO's was that visa imposition was not appropriate as a form of abuse control. The way to control abuses is to speed up the refugee determination process in Canada. Now the system can take years to arrive at a final determination. The delays are an incentive to abuse. If the system is speeded up, the incentive will be gone. A person will not incur the expense and dislocation of coming to Canada if he is to be expelled shortly after his arrival.

A visa imposition does not just keep out of Canada those who might abuse the Canadian refugee claims system. It keeps out genuine refugees as well. Denial of access to genuine refugees can be a denial of protection.

Canada, along with all other Signatories to the Refugee Convention, has a duty of non-refoulement, a duty not to return a refugee to a country where his life or safety would be threatened. A visa imposition is a form of violation

of this obligation of non-refoulement. There is little difference, to the refugee, between being forced to return from Canada to his country, and not being allowed to come from his country to Canada in the first place.

If a visa exemption means that it is the refugee who chooses Canada, rather than Canada's choosing the refugee, that is the consequence of the Refugee Convention. Signatories are not free to choose whether or not to protect refugees. They are obliged to protect refugees. It is not the Signatories countries that make a person a refugee by choosing him. It is the person with a well founded fear of persecution who makes himself a refugee, by choosing to flee his country.

Practically speaking, a neighbouring country may not be an appropriate refuge. Refugee camps bordering the country of persecution are often viewed by the government of that country as terrorist camps. The camps may be bombed. They may be subjected to intensive cross border raids by the military of the country of persecution.

Often, neighbouring countries are ideologically similar to the country of persecution. On occasion, they actively participate in the persecution of the refugees within their borders. Whether they participate or not, refugees fear that they will assist the country of origin in persecution.

People in refugee camps can end up being there for long periods of time. Life in the camps is one of unmitigated misery, squalid poverty, hunger, disease, and enforced inactivity. If the international refugee burden sharing system were working effectively, and people were moving out of the camps quickly, then the camps might be a viable first step. Because of the prolonged delays refugees face in getting out of a camp once in, insisting all refugees go to camps is cruel.

There are real difficulties with the Canadian refugee selection system abroad. It is not true to say that the Government of Canada selects refugees only on the basis of refugee needs. The Government also considers Canada's needs. The Government chooses refu-

gees that are likely to establish themselves successfully in Canada. It chooses the cream of the refugee crop. It picks a disproportionately small share of the illiterate, the handicapped, the old, the young, the unskilled.

A refugee lawfully in Canada has a right to remain. A refugee in Canada will be given lawful permission to stay if there is no other country that has already given him protection. A refugee outside of Canada has no right to enter, even if he has no protection from any other country. A refugee outside of Canada who needs a visa to get here has to satisfy the likelihood of successful establishment criterion. A refugee inside does not have to satisfy that criterion. He can stay no matter what his skills, his age, his education, his job offers.

It can be difficult for a person at a Canadian post abroad to establish that he is a refugee. The claimant abroad does have an oral hearing, something he does not have, as a right, in Canada. However, abroad, he is not entitled to the assistance of counsel to help him establish his claim. The government officers who make the decision are not necessarily refugee experts, knowledgeable in the refugee definition, and knowledgeable in the conditions of the country from which the refugee has fled. The officers who decide are not independent of the Immigration Commission and the Department of External Affairs. There is no appeal to the Canadian courts from a refusal to recognize someone as a refugee, even where that refusal is wrong in law.

If a person is allowed to enter Canada to make a refugee claim, he is entitled to the assistance of counsel in making his claim. The people who advise the Minister of Immigration on the claim, the members of the Refugee Status Advisory Committee, are experts in the refugee definition and on country conditions. The Committee is independent of the Immigration Commission and the Department of External Affairs. There is an appeal to the courts from a Ministerial refusal that is wrong in law.

When it comes to refugee claims directly from within the country of persecution,

the problems with the Canadian claims system abroad are even more acute. A claimant in his own country may simply be denied access by the local military to the Canadian embassy. If he is allowed access, the Canadian embassy may, nonetheless, be under local military surveillance. A person may jeopardize his safety simply by approaching a Canadian embassy to make a claim. Even if there is access, even if there is no surveillance, a claimant may fear that there is surveillance, and refuse to approach the Canadian embassy because of that fear.

Once a claim is made at a Canadian post abroad, it is not processed immediately. Processing can take six months or more. During that time, the claimant remains in his country, in danger. A claimant may need refuge immediately, not six months.

Canadian posts abroad employ some domestic staff, nationals of the host country. A claimant making a claim in his own country may fear that the confidentiality of his claim will be jeopardized by the nationals of his country in Canadian employ. He will be reticent to put forward all the details of his claim in such a context.

When a refugee makes a claim in his

own country, others may not be willing to assist him in putting forward his claim, because they feel they would jeopardize themselves if they assisted. For instance, doctors in Canada are quite willing to examine refugee claimants and to provide medical reports of the sequelae of torture, to show that claimants have been tortured. Doctors in the country of torture may be reluctant to provide such reports, for fear of putting themselves in danger.

There is the message that a visa imposition gives to an oppressive regime. It is as if the Government of Canada is saying that it washes its hands of the problem. It is not concerned with the violations that have caused the refugee problem.

A Canadian visa imposition can lead to a foreign visa imposition. Visa exemptions are often reciprocated. Mutual visa impositions make it more difficult for Canadians who want to go to the country of persecution to assist the persecuted. Canadian doctors or aid workers will need visas, and may be denied them.

Conclusion

The visa imposition that gave the NGO's the most concern was the visa

imposition for Guatemala. Canada imposed a visa requirement for Guatemala in March 1984. At that time, the refugee inflow into Canada was small — 244 claims were made in 1983. The abuse was minimal — the acceptance rate for claims was 70.5%. Canada coupled the visa imposition with the introduction of a system of processing claims made from within Guatemala. When Canada imposed a visa requirement on Guatemala, Guatemala imposed a visa requirement on Canada.

The feeling of the NGO's was that the visa imposition for Guatemala was just not appropriate. The general conclusion of the symposium was that where the numbers are manageable, where the abuses are small, where the countries of origin are violating human rights in a gross and flagrant manner and where Canada is a logical and accessible country of refuge, there should not be a visa requirement. Guatemala met all of these requirements.

David Matas is a lawyer in private practice in Winnipeg. He attended the NGO symposium on "Canada as a Country of First Asylum" for the Canadian Bar Association.