Issue No. 13
Winter 1992

Refugee Update

A Project of the Jesuit Refugee Service/Canada and the Canadian Council For Refugees

Inside

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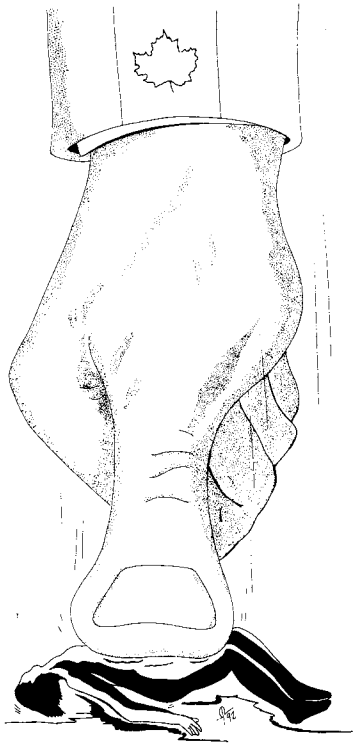
While this case, known as *Yhap*, established a very important principle, it did not deter the government from proceeding with its backlog clearance strategy. It simply rewrote the guidelines to conform with the Federal Court's ruling, and has proceeded with cases in the same way as before.

More recently, some lawyers have started to challenge the constitutionality of the backlog programme on the grounds that it violates refugee claimants' right to security of the person under Section 7 of the Charter of Rights and Freedoms. The lawyers are arguing that the excessively long delays involved in processing peoples' claims jeopardize their right to a fair hearing. Although the courts have delivered some preliminary judgments (in *Akthar* and *Bissoondial*), they've not finally resolved whether the delay argument applies to people in the backlog. Most likely, by the time a final decision is made, the backlog will be all but over.



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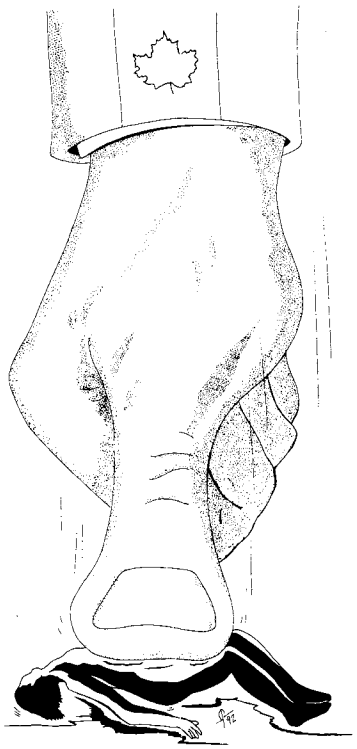

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ing and the right to challenge the legislation. The Supreme Court recently denied the Council standing on any issues, effectively ending the Council's challenge.

The questions for the courts start from the moment that a person arrives at a Canadian immigration border point. One very important issue for refugee claimants is the right to have a lawyer present when being questioned by immigration officials. In a case called *Dheghani*, in 1990, it was argued that a person arriving in Canada is required, under penalty of fine or imprisonment, to answer all questions put by an immigration officer. The lawyer for Mr. Dheghani argued that this requirement to answer all questions is equivalent to detention, and therefore the claimant has the right to a lawyer. The Federal Court, however, held that such a person is not detained in the sense the Charter intends and therefore there is no right to counsel at the port of entry. This decision is now being appealed to the Supreme Court, and the Canadian Council for Refugees has intervened in the case.

The *Immigration Act* allows the government to detain anyone that it considers a security threat. The power is quite sweeping, for the government does not have to demonstrate that the person is a threat. The Minister of Immigration and the Solicitor-General simply have to sign a certificate to that effect. The certificate also allows the government to deny the person the opportunity to make a refugee claim. In the midst of the Gulf War, an Iraqi couple arrived in Canada claiming they were part of a group opposed to Saddam Hussein. The government issued a certificate and the couple was detained indefinitely. They challenged the certificate in the Federal Court, which ruled that the government did not have reasonable grounds for declaring them a security risk.

At the outset of an immigration inquiry a person is asked if he or she wishes to make a refugee claim. If the person says no, then they cannot subsequently make a refugee claim. Known as the single chance question, the Federal Court of Appeal decided that where it could be shown that the person had not initially made the refugee claim on account of duress, the adjudicator was bound to reopen the inquiry and allow the claim to be made.

When a person is refused at the credible basis level, an application to review the decision made to the Federal Court does not stop the deportation order from being carried out, as is the case in an appeal from a negative decision following a full hearing. The Federal Court has decided that it does have the inherent jurisdiction to stay the deportation of a person whose case is pending before the court. However, the three-fold test of serious issue, irreparable harm, and balance of convenience in favour of the applicant can make it difficult to obtain a stay.

According to the Federal Court of Appeal, the burden of proof a refugee claimant bears at the second level is to show that there is a "reasonable chance" that he or she may be persecuted. The Court has defined reasonable chance to mean something more

Top Twelve Countries (1991)

1991 Ranking	1990	Claims*	Withdrawn	Denied Hearing**	Hearing Reject***	Hearing Accept***	Acceptance % 1990	Acceptance % 1991
1. Sri Lanka	1	3805	90	13	154	4458	88	95
2. Somalia	2	3687	58	26	292	3672	92	91
3. China	3	1798	65	46	1951	537	43	21
4. Iran	7	1638	116	4	188	1875	88	86
5. Lebanon	4	1612	106	17	283	1794	77	82
6. USSR	22	1385	31	23	172	433	49	66
7. El Salvador	5	1291	130	22	417	1351	76	70
8. Ghana	11	1191	87	90	285	233	36	34
9. Bulgaria	6	900	98	16	1064	517	44	31
10. Pakistan	8	884	58	19	193	446	82	62
11. Rumania	13	829	36	19	212	392	69	59
12. Ethiopia	12	751	14	3	71	395	82	82
Others		10284	897	1107	2234	3322	-	44
TOTAL		30055	1786	1405	7516	19425	70	64%

(*) Claims concluded at the initial hearing stage.
(**) Includes cases rejected at initial hearing for reasons of ineligibility and found not to be credible.
(***) Includes claims made in 1990 which were awaiting a decision as of January 1991.

(Source: Compiled by the Jesuit Refugee Service/Canada from IRB Statistics)

than a minimal possibility, but something less than a 50 per cent chance of being subject to persecution. While the Court's interpretation of the burden of proof seems reasonable, its reading of the actual definition has tended to be restrictive. In the Ward case, for example, it held that a refugee claimant could not be considered to be persecuted on account of membership in a "social group" if that group was established to overthrow a democratically elected government in countries where the rule of law prevails.

The 1989 changes to the *Immigration Act* provide for an appeal of decisions, but the person wishing to appeal must get permission (leave) from the Federal Court to do so. In 1990, the Federal Court of Appeal said that the test for allowing someone to make an appeal is that there is a "fairly arguable case". In other words, the person has to make a fairly arguable case that the Immigration and Refugee Board made an error in law.

In 1990, the court granted leave in 28% of the applications, and overturned the negative decision in 63% of those cases. This means that overall, 18% (or almost one out five) of the cases where there was a negative decision at either the initial inquiry or at the full hearing won on appeal. In 1991, up through the end of July, 26% of the applications for leave were granted, with 52% of the appeals being allowed, for an overall success rate of 14%. These numbers are significant, for they indicate that there are cases in which the law is being improperly applied and people's legitimate claims are being put in jeopardy.

Conclusion

While it is difficult to assess the impact of this wide range of decisions on refugee claims, some general conclusions are discernible. First of all, the Federal Court is willing to intervene in cases where there are clear errors of law by lower level decision-makers, or where government policy is clearly illegal. Secondly, the court is willing to prevent the deportation of persons whose cases are on appeal.

However, the court is not willing to become so interventionist as to extend the scope of the refugee definition. Nor is it willing to allow advocates of refugees to use the court system to challenge some of the more fundamental flaws of the legislation. As the Supreme Court recently decided, public interest groups will not be allowed to use the Charter for disadvantaged groups, such as refugees.

Finally, with an increase in the number of people applying for leave to appeal, there is going to be pressure on the Federal Court to be more selective in the cases it is willing to examine.

Refugee Determination System New Arrivals and Hearings Opened in 1991

Total Arrivals		30,539
Port of Entry	19,111	
Inland	11,428	
Hearings Opened		28,478
Cases Awaiting Opening		2,061
Average Monthly Delay in Opening Cases		4.1
Atlantic Provinces	1.9	
Quebec	1.9	
Ontario	7.1	
Prairies	2.0	
British Columbia	1.3	

(Source: Compiled by JRS/Canada from Canada Immigration Statistics)

LETTERS TO THE EDITOR

Dear Sir/Madam,

(Re.: Article written by Sister Mary Jo Leddy, Fall 1991) The article written by Sister Mary Jo Leddy for the Guest's Column entitled, "When Lawyers are Part of the Problem", came to the attention of the Fort Erie Bar Association, of which I am President.

I want to make it clear to you that I am writing this letter in my capacity as President of the Fort Erie Bar Association.

Without addressing the specific complaints of Sister Leddy, I am concerned that the article taints all lawyers in Fort Erie. Since all the firms in the Fort Erie area are small firms, the comments in the article could apply to most Fort Erie law offices.

Further, there are only a few lawyers in Fort Erie who represent refugees and who are on the Immigration Panel for the Niagara region. Those lawyers are also tarnished by this article that discusses lawyers in Fort Erie in a very all encompassing manner.

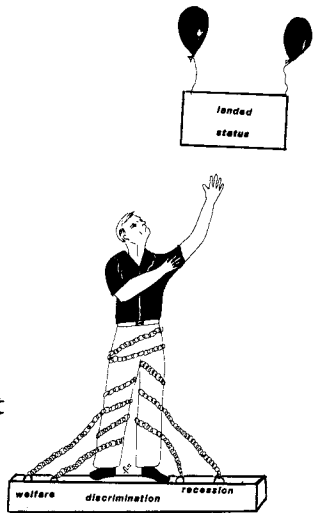
While it may not have been the intention of Sister Leddy to tarnish the reputations of lawyers in Fort Erie, this is exactly what she has done.

I would hope that your publication will be more sensitive and refrain from publishing such general remarks in any articles written in the future.

Doran F. Hallett
Hagan, Hallett & McDowell
Barristers and Solicitors
President of the Fort Erie
Bar Association

PROBLEMS OF LANDING

The impact of the current recession falls disproportionately on the most vulnerable, including refugees. Many refugees who find themselves jobless are discovering that in addition to coping with the psychological effects of unemployment and the difficulties of surviving on social assistance, there is another punishment in store for them. Refugee claimants whose cases have been accepted may find that, when Immigration officials call them in to obtain their permanent residence, they will not be granted landing if they're on welfare. Instead, they will be told to get a job and come back in a few months. And those in the refugee backlog may be sent on to a full hearing before the Immigration and Refugee Board. Of course, without permanent resident status, the claimant will not be able to sponsor family members to come to Canada.



Canada Immigration justifies this policy by pointing to Section 19(1)(b) of the *Immigration Act*, which states that a person must be able and willing to support her/himself and dependants, or that adequate arrangements for support exist. However, Section 8 of the *Immigration Regulations* states that the selection criteria used in assessing applications to immigrate to Canada do not apply to Convention refugees. Clearly, the intent of this provision is to enable immigration officers to grant permanent residence to refugees who might not qualify as independent applicants. To use Section 19(1)(b) of the Act against such persons goes against the spirit of the regulation. Yet, this is precisely what immigration officers are doing.

In July 1991, National Headquarters issued a memorandum to clarify the issues raised when Convention refugees receiving social assistance apply for landing. The memorandum, which should guide all immigration officers at the local level, says, "It is EIC policy to grant landing to Convention refugees who are willing to support themselves and their dependants, notwithstanding that they may temporarily be in receipt of social assistance."

Officers are supposed to consider the reasons that an individual is receiving welfare benefits, and to look at the person's prospects for the future. They are also expected to consider such factors as the length of time the refugee has been authorized to work, how long and how often the refugee has received social assistance, efforts of the refugee to improve employability (education and training programs), and other circumstances relevant to the individual's ability to support her/himself in the future. The memo goes on to say, "Only the most extreme cases, where there appears to be no hope of the refugee ever becoming self-sufficient, should be excluded."

Refugee advocates know that, despite the memorandum, the refusal or deferral of landing continues to be a major problem for welfare recipients.

The memorandum refers only to Convention refugees, and some offices are not applying it to members of the backlog. Thus, members of the backlog are more likely than Convention refugees to encounter difficulty in becoming permanent residents if they are receiving welfare. Canada will not deport a Convention refugee back to the country of persecution, but there is no such protection for someone in the backlog who is sent to a full hearing and whose claim is unsuccessful.

The combination of discrimination in the job market and hard economic times has made stable employment an impossible goal for many refugees. To withhold permanent resident status because a refugee is the victim of the recession or of racism is clearly unfair.

What can refugee advocates do about this problem? In some individual cases, proof in the form of a sworn declaration by the refugee stating willingness to work and supporting documentation showing the efforts made to find work or attend school for upgrading purposes may be enough to convince Immigration. But, a change in Canada Immigration policy and practice is needed in order to ensure that all refugees are treated compassionately and fairly.

Backlog Statistics (December 26, 1991)

Total Backlog		95,000
Decisions Rendered		68,002
Cases Accepted		41,996
Humanitarian Interview	11,803	
Humanitarian Paper Screen	4,053	
Credible Hearing	13,871	
Credible Paper Screen	12,269	
Cases Refused		26,006
Removal Stream	8,458	
Disappeared	6,991	
Voluntary Departures	10,557	
Decisions Pending		26,998
Final Disposition of Cases		45,397
Accepted Cases Landed		26,522
Rejected Cases Removed		4,133
Confirmed Voluntary Departures		7,751
Arrest Warrants Issued		6,991

(Source: Compiled by JRS/Canada from Canada Immigration Statistics)

SIGN A PETITION TO END FAMILY SEPARATION FOR REFUGEE CLAIMANTS

Progressive Conservative MP Barbara Greene has initiated a petition campaign calling on the Immigration Minister to immediately issue Minister's Permits to the spouses and children of all those who have been granted the right to apply for permanent residence. All those committed to refugee rights in Canada are urged to help collect signatures. Several Mps of all parties are circulating the petition. Please encourage your MP to co-sponsor the petition in parliament, as Barbara Greene hopes to reach the maximum twenty co-sponsors.

On January 1, 1989, the new refugee determination system came into force. Uncompleted cases of refugee claimants who arrived before then were called the Refugee Claimant Backlog — many of them in Canada since 1986. In December 1988, then Minister Barbara McDougall announced special measures to resolve within two years the situation of persons in the backlog. No special provisions were made to deal with family reunion.

In 1990, the Inter-Church Committee for Refugees (ICCR) undertook a study on the backlog. On October 16, 1990, at a press conference at the Canadian Council of Churches, ICCR reported that the backlog clearance procedures had turned into one of the most inhumane programmes undertaken by the Canadian government. The ICCR study showed that the backlog process was contributing to increased post traumatic stress symptoms among the claimants. The report concluded that the process was discriminatory, failed to protect the family, and constituted "cruel treatment". All of these are violations of the United Nations International Covenant on Civil and Political Rights.

During late 1990 and 1991, two letters signed by ten national church leaders were sent to the Prime Minister urging an end to the backlog. The response has only been denials from Canada Immigration that any problem exists. On October 4, 1991, Mr. Valcourt issued a press release, announcing December 1992 as the new date for completion of the hearings. He also stated that the backlog process was within budget and that therefore all was well.

Those presently in the backlog would disagree with both the reasoning and the conclusions reached by the Minister. The delays and uncertainties that cause post traumatic stress symptoms go on even after a decision has been made. Even then, a positive decision in the backlog does not guarantee permanent residence, but only begins the next process which can lead to landing.

As of October 4, 1991, the date of the Minister's press release, decisions had been made on only 60% of cases in the backlog and the vast majority of those accepted were not yet landed. Without landing, claimants cannot be reunited with their spouses and children. Under present procedures, family reunion would not occur for up to two or three years.

On January 8, 1992, members of various Toronto refugees and immigrant agencies and ICCR met with representatives of the Ontario Federal Conservative Immigration Caucus to discuss Barbara Greene's petition. At the meeting, a brief was presented outlining the situation of the refugee claimant backlog, with a particular focus on family separation. The brief concluded that:

- without changes, a further two years will be needed to give initial decisions on the remaining cases;
- discrimination, cruel treatment through stress and ongoing trauma, and family separation have continued in the backlog process;
- two years is too long to satisfy the constitutional right to a hearing in a reasonable time. The remedy for this wrong is a positive decision on the case, and an Adjudicator has made this decision on two backlog cases in Montreal in October 1991;
- present family reunion procedures are unsuited to reunite spouses from inaccessible corners of the globe. They are at best cumbersome;
- refugee families are often under special stress and have a special need for prompt reunion and adjustment to Canada together;
- delays in landing are cruel for those with children whose ages are close to Canada's new cut-off age for reunion. A child left behind at the age of fourteen or fifteen can be ineligible for family reunion with a parent in the backlog.

The brief also urged the government to ensure that the spouses and children be given the right to seek work and schooling, and to increase the annual ceiling on landing of refugees and claimants to reflect the actual numbers of anticipated claimants recognised each year along with their spouses and children.

CANADIAN COUNCIL FOR REFUGEES MEETS WITH MINISTER OF IMMIGRATION

On February 12th, representatives from the Canadian Council for Refugees (CCR) met with the Minister of Immigration, Mr. Bernard Valcourt, in Toronto. This was the first time since becoming Minister that Mr. Valcourt had agreed to meet with representatives from the NGO community.

The CCR delegation raised a number of issues with the Minister including, the proposed changes to family class regulations restricting sponsorship of children to those less than nineteen years of age; the delays in family reunification; the need for an appeal in the determination system; concerns about Canada's commitment to the women at risk programme; deportations to Sri Lanka; and rumours about cuts in job training funding.

Mr. Valcourt reiterated that the changes in regulations governing the sponsorship of children, effectively excluding children nineteen years of age and older, will come into effect as announced. However, he did acknowledge the unfairness of the impact of these changes on people in the backlog who have been in the country a long time and whose children may have turned nineteen in the meantime. He said that he felt this involved a small number of people and that a way could be found to accommodate them.

While recognizing that two years was too long for a family to be reunited, he was not prepared to implement any changes in the refugee determination system, preferring instead to look for mechanisms to speed up the system.

Mr. Valcourt was quite firm in stating that he had no intention of adding a right to an appeal on the merits to the present refugee determination system. While he acknowledged that there are mistakes being made, he believes that they are few. And he fears that granting to everyone the right to an appeal on the merits would just lead to all refused claimants appealing, staying in the country a long time, and then groups like the CCR arguing for them to remain in Canada on humanitarian grounds. He agreed that genuine refugees should not be deported to their home countries, and said he would continue to look at and intervene in deserving cases of refused claimants submitted by the NGO community.

In response to a question about Sri Lanka, the Minister was unwilling to declare a moratorium on all deportations to Sri Lanka. These cases, he said, will continue to be handled on a case by case basis, and he claimed that the UNHCR allowed for some deportations to Sri Lanka. However, he did agree to abide by the UNHCR's position.

Mr. Valcourt explained that there would be budget cuts to job training programmes, given the dire economic situation in the country. However, he did not believe that the cuts would be as significant as the agencies feared.

And finally, in response to a question about Canada's commitment to the women at risk programme, Mr. Valcourt admitted that he did not know anything about it. He did say, though, that he would work with NGOs and the UNHCR to ensure the programme was working.

The meeting lasted an hour, and the NGO representatives encouraged the Minister to continue to meet with members of the refugee support community in order to keep in touch with the concerns of refugees.

VIGIL REPORT

In recent months, interventions by National Vigil members have not been very successful. For example, in Toronto, Vigil has only had one case accepted after a large public campaign in October, that of an Iranian woman. Since that time cases have generally been ignored unless a deportation date is coming, and the answers from the Minister's office have generally been negative. In only one case, involving a Sri Lankan Tamil, was the deportation order deferred; to date there has been no final answer on the request for a Minister's Permit.

While the staff in the Minister's office agreed to review Vigil briefs after the Iranian case, it appears to be done with great reluctance. There seems to be a belief that no mistakes occur. Mr. Valcourt's statement to the Immigration sub-section of the Calgary Bar Association, that all rejected claimants are bogus refugees, would indicate why the staff in his office are not too responsive to Vigil submissions.

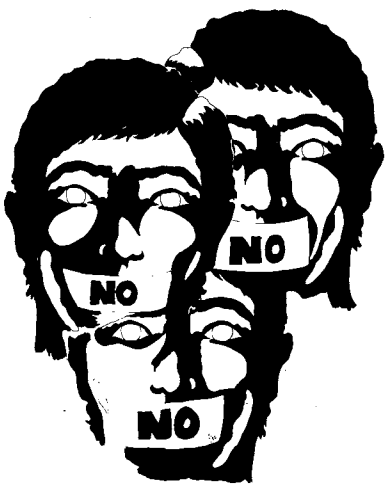
Vigil members and other refugee supporters across the country are expressing concern with the Immigration and Refugee Board's decision-making on refugee claimants from countries where the conditions are changing, particularly in El Salvador, Sri Lanka and China.

The situation of many refugees, particularly those facing deportation, is becoming very difficult. And for those who are temporarily spared deportation, such as Somalis, they find themselves with no status and no idea about what their future holds. The situation grows desperate as more detentions are reported in Toronto and Montreal and as deportations to all countries begin. The growing feeling among Vigil workers across the country is that the time of writing quiet briefs is over, and that more publicity and public action are necessary to achieve their goal of protecting refugees.

SUPREME COURT TO REFUGEES: YOU'RE ON YOUR OWN

The Canadian Council of Churches reacted with disappointment to the recent Supreme Court decision denying it standing to challenge the refugee determination system under the Charter of Rights and Freedoms. Launched on January 3, 1989, the churches' case sought to have the new refugee law struck down as unconstitutional.

The government asked the Federal Court to deny the churches the right (standing) to launch such a challenge. The court didn't grant the government's request saying that there were serious constitutional issues at stake. The government appealed that decision to the Federal Court of Appeal, which ruled that the churches had standing on only four issues. The churches in turn appealed to the Supreme Court, asking to have the number of issues on which they could have standing broadened. The government filed its own appeal with the Supreme Court, asking that the churches be denied the right to proceed even on the four issues granted by the Federal Court of Appeal. At stake in all this legal manoeuvring was whether an organization such as the Canadian Council of Churches could have public interest standing — the right to bring an issue before the courts on behalf of a wider public — to challenge the constitutionality of a piece of legislation.



So, the stage was set for an appearance before the highest court of the land, which took place last October. On January 23rd, the Court issued its ruling, unanimously rejecting the churches' appeal and upholding the government's.

Overview of the Decision and Implications

The churches' appeal foundered on one point, highlighting the Court's ignorance of the situation of refugees. There is a three-fold test to determine whether a group should be granted public interest standing: (1) the substantive issue being challenged must be serious; (2) the public interest group bringing the case forward has to demonstrate a genuine interest in the issue; and (3) the public interest group has to show that there is no other way for the issue to be brought before the court.

On the first two points, the Council satisfied the Supreme Court. Writing for the Court, Justice Peter Cory said, "I am prepared to accept that some aspects of the statement of claim [the substance of the Council's challenge] could be said to raise a serious issue as to the validity of the legislation." In fact, Justice Cory was prepared to admit more issues for challenge than the Federal Court of Appeal had. And later in the judgement, the Court stated, "There can be no doubt that the applicant has satisfied this part of the test [established a genuine interest in the problems of refugees]."

The Court was not prepared to accept, however, the argument that because of their disadvantaged situation refugees cannot make effective use of the courts to challenge Canada's refugee legislation. As the Court put it, "It must be remembered that the basic purpose for allowing public interest standing is to ensure that legislation is not immunized from challenge. Here there is no such immunization as plaintiff refugee claimants are challenging the legislation. Thus the very rationale for the public interest litigation party disappears."

The Court accepted the Federal Court of Appeal's claim that all sorts of refugees are bringing forward appeals, which ignores the very real practical difficulties that refugees face in launching a successful court action. Though refugees may be mounting challenges daily, they in effect don't go very far. As many lawyers point out, it is highly unlikely that refugees will have the resources and the willingness to see a challenge all the way through to the Supreme Court.

In dismissing the Council's appeal, the Court also granted the government's cross-appeal asking for dismissal of the four points on which the Federal Court of Appeal had granted the Council standing.

The Court did say that the churches could raise constitutional issues by intervening in individual cases. The churches had already decided on such a course of action a year ago, but to date have been unable to find appropriate cases in which to intervene.

The Court's decision is clearly a blow, not only for refugees but also for other groups wishing to have public interest standing on behalf of disadvantaged sectors of society. In refusing to expand the basis on which public standing is granted, the Court displayed a preoccupation with what it calls "preserving judicial resources." As Justice Cory put it, he didn't want to see the courts becoming "overburdened as a result of the unnecessary proliferation of marginal or redundant suits brought by well-meaning organizations pursuing their own particular cases." With this kind of conservative attitude, refugee rights supporters, as well as those supporting other disadvantaged groups, cannot expect much relief under the Charter from the courts.

Finally, significantly the Court acknowledged that there were indeed serious constitutional issues in the refugee legislation. In fact, all three courts — the Federal Court, the Federal Court of Appeal, and the Supreme Court — indicated that there were serious constitutional issues in the legislation. However, the Court said that it is up to refugees to clean up the country's refugee legislation.

INTERDICTION AND REFUGEE DETERRENCE

Immigration Canada sent twenty-three immigration officers to eleven international airports during the month of November in order to improve the detection and screening of fraudulent documents outside of Canada. "Project Shortstop" (the code name for the interdiction exercise) prevented over 900 people from arriving in Canada during the month of November.

Basically, Project Shortstop was designed to use Immigration enforcement services to decrease arrivals of refugee claimants. It involved working closely with, and indeed training, airline personnel. Soliciting aid from airlines is seen as a complement to carrier sanctions. Peter Harder, Associate Deputy Minister of Immigration, summed up the department's approach with the airlines: "We are looking at other ways to achieve the objective without simply using the stick. We need a carrot as well...." Gordon Cheeseman, Immigration's chief of intelligence and interdiction, referred to the financial incentive behind the exercise when he told the *Globe and Mail* that the cost of processing one refugee claim is approximately U.S. $50,000. As Cheeseman put it, "I'll leave it to you to do the multiplication of that $50,000 figure times the 900-plus intercepts" (*G&M*, December 16, 1991).

Working outside of Canada in an attempt to curb arrivals represents a new thrust in Canadian Immigration practice. Bernard Valcourt, Minister of Employment and Immigration, emphasized increased efforts outside of Canada in order "to reduce this intake [of refugee claimants]", in his comments to the Standing Committee on Labour and Immigration, on November 25, 1991. And, again, this emphasis on preventing arrivals was confirmed by Len Jodoin, Director of Control and Intelligence at Immigration, who linked interdiction to the integrity of the refugee determination system (*G&M*, December 31, 1991).

Project Shortstop exhibits a trend, found not only in Canadian Immigration policy but internationally, toward strengthening interdiction practices. Airlines are responding by developing strategies to facilitate the practice. According to a recently published document by Scandinavian Airlines, airline personnel should examine closely the papers of travellers bound for Canada and the U.S. who come from "poor regions", who are young men travelling in a group from a poor country, who do not speak English or any international language, and who are travelling in a group from a poor region with tickets issued by the same travel agency. This type of discrimination against people from poor countries or on the basis of national origin is justified in the name of staving off economic migration. Thus, any person fleeing persecution whose country of origin is considered a poor region will face increased scrutiny by airline personnel.

While no one would dispute Canada's right to control immigration, Project Shortstop does not differentiate between refugees and migrants. The particular situation of a person fleeing persecution is discounted by policies designed to restrict migration, primarily economic migration. The result is that western countries are losing sight of the needs of refugees as they shift their focus increasingly to choking off the movement of migrants. Refugees are not, however, a category of migrants. People fleeing persecution have particular needs and rights. They are victims of rights violations and, as such, benefit from the standards of international human rights law.

Chief among the international rights Canada is obligated to respect is the right to seek protection. Yet refugees are finding that they surmount obstacles in escaping persecution in their country of origin only to encounter interdiction practices that deny them access to refuge. Project Shortstop distinguishes solely the documented from the undocumented; the cause of flight is never an issue. However, the test of proper documentation is no indication of the cause of flight. Such gate-keeping operations fail to recognize that genuine refugees don't always have the opportunity to get all their papers in order precisely because they are refugees. The climate of chaos surrounding people fleeing persecution often prohibits proper documentation.

The right to seek protection is meaningless if it can never be exercised, which is the case if the government equates bogus papers with bogus refugees — and this formula appears to be the heart of Project Shortstop.

This new policy of the Canadian government is really based on the contradictory objectives of humanitarianism and deterrence. The consequence of a policy with such competing interests is the risk of sending people back to life-threatening situations. The interdiction policy as it now stands presupposes the undocumented to be abusers and migrants rather than victims of human rights violations. Blurring the distinction between refugees and migrants limits access to the protection of legally binding international human rights standards. Project Shortstop reveals the government's priority of curbing abuse at the expense of respecting rights.

The problem with Project Shortstop is that people fleeing persecution are looking for a home, but they can't even get to first base.

"And hear with me an entire people's cries, half of its numbers destroyed in one day, one pitiless massacre. The other half scattered and left to the luck of the winds."

Antranik Zaroukhian

ANALYSIS: GETTING MOBILIZED TO PROTECT THE VICTIMS

Increasing deportations without providing adequate procedural safeguards and without a close examination of country conditions means that Canada will be rejecting the claims of people who need protection. Mistakes in the refugee determination system happen, as even the Minister of Immigration recently admitted. But there is little in place to catch the mistakes.

Chief among possible tragic errors is Immigration and Refugee Board (IRB) members either failing to evaluate evidence presented or misreading refugee producing country conditions. In the recent case of an Iranian refugee claimant who was recounting his experience of torture, the two panellists wrote notes to each other ridiculing the claimant's experience and the claimant's lawyer. According to the *Globe and Mail*, while the claimant was describing the torture technique, which involved hot boiled eggs, the panel members passed remarks to each other such as, "Boiled eggs under arms/ Hard or soft boiled?", and "Soft conjures a worse picture to me — can you just feel the oozing yolk?" And they referred to the claimant's lawyer as a "dummy" (*G&M*, February 14, 1992).

Some view the cynicism and insulting behaviour of the panel members as the result of compassion fatigue; others read this case as an example of incompetence. Recently released statistics from the IRB show that one third of all refugee claimants are rejected. Sixty-four percent of claimants were granted Convention refugee status in 1991. The overall acceptance rate for 1990 was 70%. Are fewer genuine refugees making claims or is the decrease in acceptance rates the result of compassion fatigue?

Advocates of refugees have identified other mistakes in the determination process. Overly optimistic appraisal of changes in country conditions, errors in translation, key evidence not presented because of the anxiety or confusion of the claimant, and poorly prepared and incompetent designated counsel are among the causes of mistakes in the determination system. The absence of a full appeal precludes catching many of these errors, and it is within this context that the government's deportation strategy alarms refugee rights groups.

Those who work with refugees across Canada are beginning to realize the need to mobilize themselves to protect genuine refugees. Among the strategies being identified is the need to focus more on educating the Canadian public and exposing the system on a case by case basis, and less on simply denouncing government policy.

Some are beginning to raise the question of finding ways of offering sanctuary to genuine refugees who have fallen through the cracks of Canada's determination process. Choosing to go underground rather than face deportation means that these refugees remain in Canada illegally. Some refugee rights workers and church communities feel that they cannot in good conscience turn away from people whom they genuinely believe to be fleeing persecution. In their defense for offering sanctuary, they see themselves as upholding Canada's international legal obligation not to return people to life-threatening situations. And they argue that if their actions can prevent death or torture, then they are obligated to act.

Refugee groups, based on their own experiences, are often in the best position to advocate for refugees who are the victims of erroneous determination. People with a wide range of skills are forced to flee persecution. In the past, working relations with refugees have exhibited tokenism and paternalism. Sometimes the best way of fostering refugee participation in refugee rights work is to listen, especially to their distinct view of Canadian society. Looking for new models of cooperation between refugee communities and refugee rights activists will have to be a focus for action in 1992.

Refugee rights organizations and lawyers are starting to talk about the necessity to work together on a case by case basis to protect genuine refugees. Direct service and advocacy groups have a great deal of first hand experience with the human suffering engendered by mistakes in the refugee determination system. Lawyers encounter the procedural weaknesses of the system on a daily basis. By pooling their resources, community groups and lawyers would be in a better position to ensure that refugees have every opportunity to exhaust their legal remedies. Coordinating efforts between lawyers and refugee rights activists will mean more than going to a meeting; it will require fostering an ongoing relationship so that action can be taken on individual cases as the need arises.

Turning to the media to convey to the Canadian public what is happening in the refugee determination system is seen as an important tool in refugee advocacy. Given the current climate of government intransigence, it will be important to go to the press with cases of genuine refugees who have been denied Convention status. Exposing the rigidity of the refugee determination system is important, but revealing the human suffering that results when errors are made may actually do more to further the education of the public and the protection of genuine refugees.

The consequence of a mistake in refugee determination is returning a person to face persecution. In responding to errors in the refugee determination process and to Immigration's emphasis on deportations, refugee rights advocates must continue to move beyond policy analysis toward mobilizing for action to protect genuine refugees. And that will require greater cooperative efforts.

PEACE IN EL SALVADOR AND THE CESSATION CLAUSE

New year's eve brought tremendous hope for a new year and the beginning of a new life in El Salvador: peace! On December 31st, the government of El Salvador and the Farabundo Marti National Liberation Front (FMLN) reached a final comprehensive political agreement aimed at ending a brutal, twelve year civil war. The agreement was signed officially on January 16th, in Mexico, and a country-wide cease fire came into effect on February 1st.

The war has been extremely costly: more than 75,000 lives lost, countless thousands more wounded and disappeared. As much as a quarter of the population — more than a million people — has been either displaced or forced to leave the country. Canada has accepted between five and ten thousand Salvadorans as refugees. And they are still coming: in 1991, there were 1,383 new claimants from El Salvador, the sixth highest source country for the year.

With peace apparently breaking out in this small, crowded country the size of Cape Breton, how will Canada treat Salvadorans still arriving and claiming refugee status or who've been here for awhile but not had their claims heard?

Canada's Immigration Act and the Cessation Clause

According to the *Immigration Act*, "A person ceases to be a Convention refugee when the reasons for the person's fear of persecution in the country that the person left, or outside of which the person remained, cease to exist"(2.2(e)).

This section of the Act is based on what is called the cessation clause in the 1951 Geneva Convention. In the *UNHCR Handbook on Procedures*, changes in circumstances refer to fundamental changes in the country of origin, which remove the basis of the fear of persecution. The *Handbook* insists, however, that the changes have to be fundamental and not merely transitory. When should the cessation clause apply to a country like El Salvador?

Currently there are no clear guidelines in the Immigration and Refugee Board (IRB) about how to assess the implications of changed country conditions on individual claims. Nor is it clear how the IRB would apply the cessation clause in individual cases. There is some suggestion that IRB members should examine the changes in country conditions at the same time they're assessing the claim of an individual asylum seeker. While it is necessary to examine country conditions when evaluating a claim, still that is different from determining whether changed country circumstances are sufficiently fundamental to warrant the application of the cessation clause.

Those who drafted the refugee Convention imagined that the changes in a country's conditions would meet certain tests before the cessation clause could be applied. Specifically, they felt that the change in the offending country must be politically significant. In other words, there must be a significant democratic reform of all elements of the state apparatus, including free and democratic elections, a government committed to human rights, a judiciary that is independent, enabling accused persons to get a fair and open trial, and able to prosecute human rights abuses.

Also, the changes would have to be truly effective; formal commitments would be an insufficient basis for declaring a country safe. Nor was it assumed that effective change could take place in a short period of time, especially after years of abuse and conflict. It would not be sufficient to invoke cessation based simply on progress that was being made, even observable progress. And the changes would have to be durable and shown to be so.

Given the spirit and letter of both the Convention in general, and the cessation clause in particular, the burden of proof is evidently on the government to establish that change in a country's conditions is sufficiently fundamental to warrant the application of the clause. Furthermore, the question of cessation should arise only after the merits of an individual's claim have been determined. If the government is going to advance reasons why a person should not be allowed to stay in Canada, that should happen only once the person has had a chance to establish the validity of his or her claim to protection.

El Salvador: The Peace Accords

If the peace accords signed in Mexico hold and their reforms are implemented, El Salvador will emerge

from more than a decade of a very bloody civil war, and decades of deep social and economic inequalities. However, most observers feel that it is *time* that this country needs most. Time to heal the wounds of the war; time to heal the scars of forced disappearances, torture, and extrajudicial executions; time for society as a whole to confront the truth of its past.

Time will also be needed to effect the profound economic, social, and political changes agreed to in the accords: land reform; profound restructuring of the state security system, including the national police and the armed forces; incorporation of a whole generation of combatants — on both sides of the conflict — back into civilian life; strengthening of the judiciary; dismantling of the death squads.

The February 1st cease fire will only be a small step on the road to the real peace so many Salvadorans have longed for, and which is the condition for application of the cessation clause. While the peace agreement has set out a timetable for the implementation of its elements, its very comprehensiveness — as well as the powerful forces within El Salvador that do not wish to see the proposed changes take place — suggests that the establishment of the building blocks for true and lasting peace will probably take more than a year. And then, it will again be a matter of more time to see whether the changes will take root and true peace, founded on a respect for human rights and social justice, will begin to flower.

Clearly, under international law and in Canada's own immigration legislation, there is a presumption in favour of refugees seeking protection from a country with proven and long-standing human rights abuses, which argues against a hasty application of the cessation clause.

Last June an official of the UNHCR, in speculating on the application of the cessation clause to El Salvador, said, "We've used it on Latin America twice, in 1984 with Uruguay...[and] December 1984 with Argentina...El Salvador is not a prime candidate by any means, since they're into the fourteenth round of negotiations now. It will probably take a generation [for the situation to stabilize enough to apply the clause]...In El Salvador anything can happen at any time. Everyone in El Salvador is at a higher risk of some form of violence than in most other countries...It would be highly irresponsible for us to apply the cessation clauses in El Salvador right now."

While the negotiations toward a peace agreement have witnessed the signing of an accord, it is premature to say that fundamental change has come to this long-suffering country of five million people. For the immediate future, the watchwords are hope and patience, and the continuing need for Canada to be a haven of protection.

LIMITING ACCESS

Among supporters of refugees in Quebec, there is concern about the tendency to limit access and close the doors to refugees. This is reflected both in Quebec's immigration policies and those of the federal government.

A year ago, then Minister of Immigration Barbara McDougall and her Quebec counter-part, Monique Gagnon-Tremblay, signed an agreement that transferred power over immigration matters to Quebec. The federal government also agreed to compensate Quebec in the amount of $332 million over a three year period. This money was to go for resettlement services for which Quebec was to assume responsibility.

A concern among non-governmental organizations at the time, and today, is that the money will not be applied to the right places.

Since the agreement, the Quebec government has produced a major policy paper which resulted in a special commission on immigration of the National Assembly, and which was followed by a plan of action to implement the policy. In both statements the Quebec government has made it clear that refugee claimants are a federal responsibility, and that Canada should control its borders better. This has led to apprehension in the NGO community that the Province is pulling back even from its former commitment to resettle Quebec's fair share of refugees selected overseas by pleading that claimants are using up scarce resources.

On December 12, 1991, Quebec's Immigration Minister announced her new financial aid programme.

In comparison to the rest of Canada, services for immigrants and refugees are being cut. Although the NGO community shares the government's long-term goal of integration of new arrivals into francophone society, the reality is that the programmes as presently defined do not take into account the real needs of refugees and immigrants at the initial stages of resettlement and adaptation. Newcomers will be eligible for services only during the first year in Quebec instead of three years, which is the case in the rest of the country. These cuts will also affect family reunification, which usually takes place two to four years after a refugee has become a landed immigrant.

The full range of services eligible for funding has been reduced; for example, counselling is no longer a funded service. For a number of years Quebec was funding six front-line agencies to offer basic services to claimants. Only referrals to housing are now eligible for funding. Although welfare, health services and language courses are still being funded, referrals to these services are not.

Since refugee determination remains under federal jurisdiction, it will be easy for Quebec to simply wash its hands of the whole issue. Mrs. Gagnon-Tremblay has already made it clear that protection issues are a federal responsibility and that she will not take a stand on her own in individual cases.

The Federal Scene in Quebec

As for federal policies, there is great concern about the current drop in acceptance rates of claimants and the increase in deportations. There are more and more people who either do not show up for pre-removal hearings (for fear of being detained) or else are "no-shows" for deportation. January saw an important number of family deportations to countries including Bulgaria, Ghana, Mexico, Romania, and Honduras. According to Canada Immigration statistics, there was a 50% increase in deportations in Quebec for 1991.

With the backlog program in Montreal coming to an end, it is becoming increasingly evident there is little concern for giving humanitarian consideration to people who have been here many years. For example, many Ghanaians, who have been here for five or six years, are being deported. The same is happening in the cases of Hondurans and Mexicans. While receiving positive media attention and the active support of many people, they are being returned to their countries of origin. And those who do intervene on behalf of people facing deportation are not even getting answers to their letters, generating anger and frustration.

Finally, there have been problems with federal officials not issuing identity papers to refugee claimants, which makes it impossible for claimants to receive welfare while waiting for their credible basis hearing. In the late summer and into the fall, this forced hundreds of people to turn to the hostel system for shelter. The problem has been temporarily resolved for claimants at ports of entry. However, inland claimants are still having the same problem while waiting for their credible basis hearing. Most refugee workers see the problem as one more instance of the federal government applying pressure to discourage refugee claims.

The news, then, from Quebec is not good. As in other parts of the country, refugee claimants are suffering from an increasingly restrictive federal practice: more rejections and increased deportation, including back to situations of civil conflict and violence.

At the provincial level, despite the agreement of a year ago, the Quebec government is showing little interest in the needs of refugee claimants and sponsored refugees, concentrating instead on independent immigrants, investors and entrepreneurs. With Quebec having gained control of the resettlement purse-strings, this is posing problems of access to resources to assist in the resettlement of refugees.

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