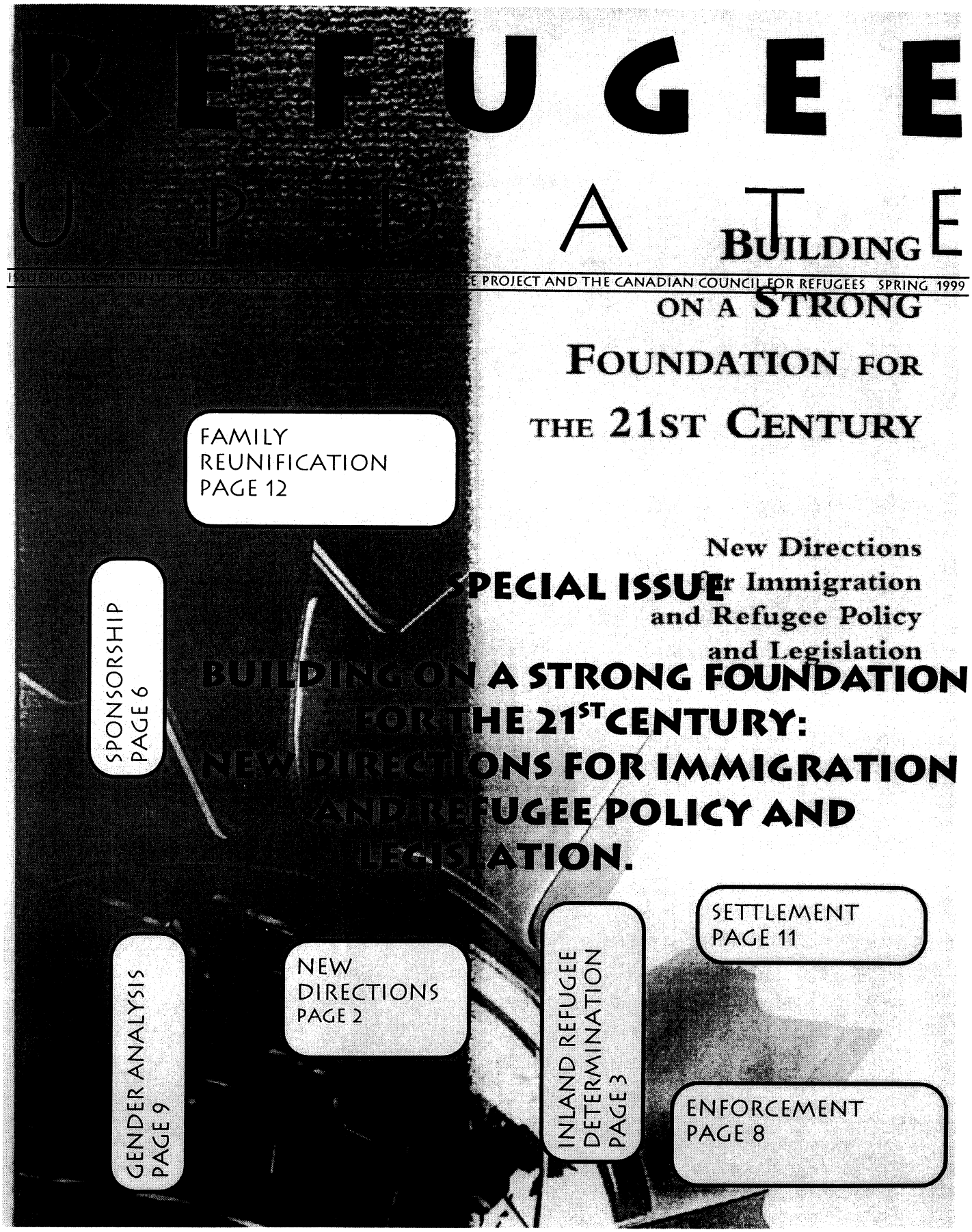

REFUGEE UPDATE

ISSUE FOCUS: AMENDMENTS AND PROPOSED AMENDMENTS TO CANADA'S REFUGEE PROJECT AND THE CANADIAN COUNCIL FOR REFUGEES SPRING 1999

BUILDING ON A STRONG FOUNDATION FOR THE 21ST CENTURY

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New Directions for Immigration and Refugee Policy and Legislation

SPECIAL ISSUE

BUILDING ON A STRONG FOUNDATION FOR THE 21ST CENTURY: NEW DIRECTIONS FOR IMMIGRATION AND REFUGEE POLICY AND LEGISLATION.

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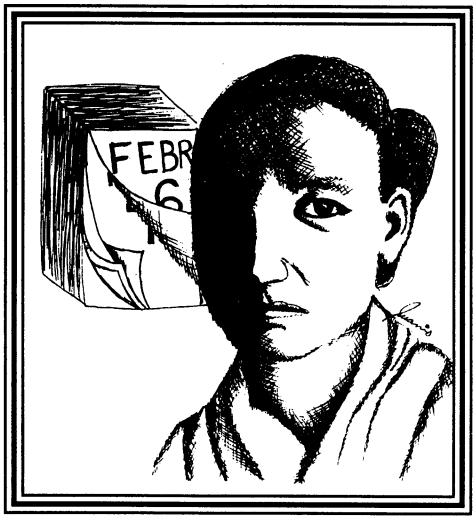
BUILDING ON A STRONG FOUNDATION- NEW DIRECTIONS

BY DAVID MATAS

Objectives

A. Respecting human rights

One of the Immigration Act objectives should be to ensure that any person who seeks admission to Canada on either a permanent or temporary basis or whom the Department seeks to remove is subject to standards and procedures that do not violate the Canadian Charter of Rights and Freedoms, the International Bill of Rights, or any other international human rights instrument by which Canada may be bound. Canadian legislation should adopt and incorporate international human rights standards relevant to visitors, immigrants and refugees.



The recently released government 'white paper' called *Building on a Strong Foundation for the 21st Century: New Directions for Immigration and Refugee Policy and Legislation* (referred to as "New Directions") states as one of its directions "a value based society" (page 9). The current Immigration Act refers to the obligation in the Canadian Charter of Rights and Freedoms not to discriminate, but to none of the other provisions of the Charter. The only reference in the Immigration Act to international human rights is the recognition of the need to fulfil Canada's international legal obligations with respect to refugees. The Act should state as a general objective respect for both domestic and international human rights standards.

B. Ensuring due process

One of the Immigration Act objectives should be to ensure respect for due process and fundamental justice in all immigration and refugee proceedings. "New Directions" states that "fairness in decision making must and will remain a key principle of reform of the immigration and refugee system." (page 11). That statement should be introduced as a an objective in the new legislation.

C. Facilitating freedom of movement

The objective in the current Act of the need to facilitate the entry of visitors into Canada should be replaced by the broader objective of the need to facilitate international freedom of movement. "New Directions" notes: "The current Immigration Act does not respond well to the needs of a world that has change dramatically in the past 20 years. In human history, the movement of people across international borders has never been as extensive." (page 14) The objectives of the Act should recognize this need by articulating the objective of facilitating the movement of people across international borders.

(Editor's note: This is an excerpt from a much longer article. If anyone would like the full document, please let us know.)

David Matas is a lawyer from Winnipeg

Universal Declaration of Human Rights

Article 13: *1) Everyone has the right to freedom of movement and residence within the borders of each state;*
2) Everyone has the right to leave any country, including his own and to return to his country.

Article 14: *Everyone has the right to seek and to enjoy in other countries asylum from persecution.*

BUILDING ON A STRONG FOUNDATION
THE INLAND REFUGEE DETERMINATION PROPOSALS

BY JACK MARTIN

The Minister of Immigration has released a blueprint for future policy and legislative change. The document is called *Building on a Strong Foundation for the 21st Century: New Directions for Immigration and Refugee Policy and Legislation.* It comes after *Not Just Numbers,* the report of the Legislative Review Advisory Group, and the consultations and criticisms which followed in its wake. As its title indicates, it starts from a less alarmist premise.

This article is an attempt to briefly summarize the report's recommendations on inland refugee policy and legislation, and to point out some issues raised by the recommendations. In keeping with the spirit of brevity, *Building on a Strong Foundation for the 21st Century: New Directions for Immigration and Refugee Policy and Legislation* will simply be referred to as the White Paper.

A cynic might say that the goal of the recommendations on refugee determination is to give Canada the best possible refugee determination system and then to make sure that no one can access it. But a realist would see that the recommendations, if carried through, would give Canada a half-decent, but seriously flawed, system to which hardly anyone would be able to gain access.

The recommendations on refugee determination are propelled by two concerns of the Immigration Department: that the existing system has too many "layers" allowing unsuccessful refugee claimants to stay in Canada for a long time, and that improperly documented refugee claimants pose a threat to the security of Canada. All of the recommendations are related to these concerns.

The relevant recommendations are contained in the chapters, "Strengthening Refugee Protection" and "Maintaining the Safety of Canadian Society." It is in the latter that the White Paper recommends increased efforts at interdiction and detention of refugee claimants who are improperly documented.

The White Paper proposes to "enhance interdiction" by "expanding the network of specially trained immigration control officers to intercept improperly documented people before they arrive in Canada." Of course, some of those people are refugees. Refugees often have improper documents because they cannot get proper documents when they are fleeing their countries, or because--and this is the flipside of interdiction--they are from countries whose nationals require a visa to enter Canada, and Canada will not give them such a visa if they admit to being refugees. Therefore they may be forced to use forged or altered documents to get past the specially trained immigration control officers. Interdiction involves the placement of those officers at airports which refugees coming to Canada are known to use. The effect is to prevent refugees from reaching Canada.

The White Paper proposes that Immigration officers gain access to passenger lists of flights bound for Canada. In addition the report recommends the enlisting of airlines for the scanning and electronic transmission of documents of boarding passengers. This would enable Immigration to determine what documents the passenger used to board the plane, while the plane is still in flight.

Those claimants who managed to make it to Canada might face detention upon arrival. The White Paper says: "Refugee claimants who refuse to cooperate in establishing their identity could be detained because of security concerns. Regular detention reviews would be conducted and obligations would be imposed on the government and the claimant to make efforts to establish identity."

This could be cruel and unusual if it means putting pressure on claimants to contact the very authorities they are fleeing. It should be noted that under the current system, claimants are only released from custody if they establish that they are likely to show up for Immigration interviews and proceedings, and that they are unlikely to pose a danger to the public. Establishing their identity is implicit in both considerations. Currently, the claimant's identity is sometimes established by assurances by family members or friends already in Canada,

The White Paper proposes that there be a limitation period

in which to make a refugee claim. Claimants would be required to claim refugee status within 30 days of arriving in Canada. The only exceptions would be if the claimant could show "compelling circumstances."

Presently, delay in making a claim may be seen as casting doubts on a person's credibility, but is not a bar to protection. The Immigration and Refugee Board has recognized that in the case of abused women, as one example, claimants may have been too traumatized to make their claim earlier. In cases of claimants facing persecution because of their sexual orientation, the claimants may be initially hesitant to disclose their sexuality. In both examples, claimants may also be unaware that the risk they face could form the basis of a refugee claim.

It should be noted that for the courts, "compelling circumstances" is often seen as being synonymous with "hardly ever."

Those claimants who managed to make it to Canada would face a more comprehensive screening to determine whether they are eligible to enter the refugee determination process. The White Paper does not propose adding new categories of ineligibility. Examples of ineligibility are criminals whom the minister believes pose a danger to the public, and those persons who have been found to be Convention refugees by other countries and who have status akin to permanent residence there. Very few people are found to be ineligible, even though the Immigration Act allows the Minister to revisit eligibility where new information surfaces. In a report so concerned with layers and efficiency, it is odd that the White Paper does not simply call for the referral of all claimants to the Immigration and Refugee Board, and have that body be responsible for eligibility.

Refugee determination will continue to be dealt with by the Immigration and Refugee Board, rather than by civil servants as proposed in *Not Just Numbers*. The White Paper is silent as to whether the current two-member panels will be retained, or if single member decision-making should be introduced.

Moreover, the IRB's mandate would be expanded to include protection under other international Conventions to which Canada is a signatory, such as the Convention against Torture. The IRB would also undertake the broader risk assessment now allegedly done under the Post Determination Refugee Claimants Class (PDRCC), and the protection component of Humanitarian and Compassionate (H&C) applications. PDRCC would be eliminated. Refused claimants could still make H&C applications, but only in the time immediately following the IRB determination--and the protection issue could not be revisited in the H&C application.

The White Paper says "Pre-removal risk assessment would be available in appropriate circumstances." Apart from refused refugee claimants who return to Canada (see below), it does not suggest what those circumstances might be or say who would do the assessment.

The White Paper proposes that priority in processing be given to "manifestly unfounded claims"--persons coming from countries that are clearly not refugee producing, or whose claims are "clearly related to having nothing to do with protection." It is not clear that such claims would follow the same procedures as others, or if something else is contemplated.

The report's recommendations clear the way for more ministerial intervention at refugee hearings. Presently, the Minister has a right to present evidence at any hearing and a right to question witnesses and make submissions where exclusion issues are involved. In other cases, it is up to the panel to decide if the minister can participate in the hearing. The report proposes that the Minister be allowed to cross-examine claimants as of right. This would make the system more adversarial.

The White Paper says that consideration will be given to improving the recruitment and selection of board members; the selection process and criteria, and the role of the Minister's *existing* advisory committee, could be established in the legislation.

A refused refugee claimant removed from Canada would not be able to make a second claim upon return. Under the present system, a refused claimant can make a second claim if he or she has been outside of Canada for at least 90 days. Under the White Paper proposal, such a person would only be entitled to a "pre-removal risk assessment," rather than a full hearing.

There have been a number of refused refugees who have been found to be Convention refugees upon returning to Canada. In some cases, there have been changes of circumstances in their countries of origin, increasing their

risk (or at least validating the fears they expressed the first time around). In other cases, they have been able to marshal better evidence. In still another group of cases, Refugee Division panels have been able to rectify particularly egregious decisions of their colleagues. This latter "remedy" should not be easily dismissed, since there is no appeal on the merits now, or in the White Paper proposals.

While taking away the right of a refugee to make a second claim, and while not providing an opportunity for the refugee claimant to reopen a refugee hearing to introduce new facts, the White Paper recommends that there be more cases selected for cessation, and proposes that the Minister no longer be required to seek leave from the Chairperson of the IRB before making an application to the Refugee Division to vacate a determination that a person is a Convention Refugee. Cessation and vacation are situations in which the Immigration and Refugee Board can take away someone's refugee status. In the case of cessation, it could be because the situation in the refugee's country of origin has changed for the better so that there is no longer a basis for the refugee's fear. In the case of vacation, it could be that the refugee had misrepresented a material fact, such as status in a third country. Presently, "leave" is only granted if the Chairperson is satisfied that even with the existence of the new evidence, the board could have come to a different conclusion. The White Paper does not provide any evidence to show that the current "leave" requirement has resulted in injustice.

Once found to be a Convention refugee, a person can pply for landing in Canada. It is a condition of landing that a person establish his or her identity. Recognizing that some "improperly documented arrivals" do turn into "undocumented Convention refugees," the White Paper recommends that the waiting period for landing for such persons be reduced from 5 years to 3 years. This class would continue to be limited to claimants from countries where there is no central authority to grant documents (which presently means Somalia and Afghanistan), and the proposal still does not address the problem of Convention refugees who are unable to obtain identification documents from their countries of origin for other reasons.

Building on a Strong Foundation is, on its face, less provocative than *Not Just Numbers*. It is also not nearly as detailed or specific. But it will be important to express our concerns now, because it may turn out that with respect to the inland refugee system, the "foundation" it refers to is not the existing system, but the harsh system proposed in *Not Just Numbers*.

Jack Martin is the Director of the Refugee Law Office and is a Member of the Executive of the Refugee Lawyers Association.

IMMIGRATION AND REFUGEE BOARD STATISTICS
JANUARY - DECEMBER 1998

Percentages

Place	Positive	Negative	Withdrawn	Abandoned + others
Montréal	38%	41%	6%	14%
Ott/Atl	63%	26%	3%	8%
Toronto	52%	30%	7%	11%
Calgary	46%	40%	8%	6%
Vancouver	32%	25%	11%	32%
TOTAL	44%	35%	7%	14%

Source: Immigration and Refugee Board (Collected by CCR)

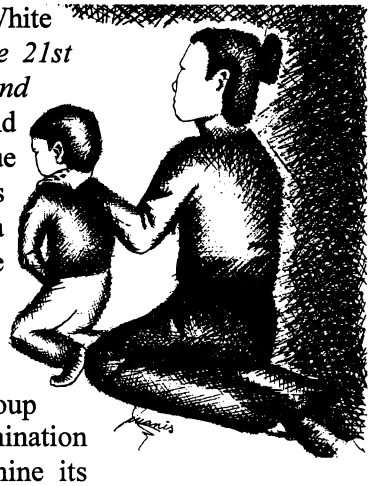
Acceptance rate by country (countries with over 1000 claims finalized in 1998)

Country	Decided	Accepted	Percentage
Sri Lanka	2921	2170	74%
India	1527	435	28%
China	1381	287	21%
Iran	1378	915	66%
Pakistan	1310	561	43%
Congo, DR	1254	688	55%
Algeria	1192	793	67%
Mexico	1179	297	25%
Czech Rep.	1048	738	70%

BUILDING ON A STRONG FOUNDATION- SPONSORSHIP

BY MICHAEL CASASOLA

When describing the government proposals in the White Paper, *Building on a Strong Foundation for the 21st Century -New Directions for Immigration and Refugee Policy and Legislation*, terms like vague and ambiguous are commonly used. This is equally true for the proposals relating to Canada's overseas refugee selection system. The report offers a handful of recommendations which, while appealing, are ambiguous enough to risk being interpreted as little more than the status quo.



As noted in the Legislative Review Advisory Group (LRAG) report, Canada's overseas refugee determination system is fraught with problems which undermine its effectiveness as a tool of protection. The "ability to successfully establish" requirement and the medical requirements barring refugees viewed as excessively costly to the Canadian health system were two barriers identified by the LRAG as needing to be eliminated. In place of the current system, LRAG proposed a new process. Unfortunately, LRAG's model was unclear and threatened to create new impediments to resettlement by introducing admission ceilings and tying overseas resources to the inland system.

In responding to LRAG, the White Paper says very little about resettlement. It makes a commitment to strengthen resettlement through new measures. It proposes "A more responsive overseas resettlement program."(p. 43) Specifically,

> It is proposed that Canada's refugee resettlement program be made more responsive through such measures as:
>
> - shifting the balance toward protection rather than the ability to settle successfully in selecting refugees;
> - establishing procedures that will allow members of an extended refugee family to be processed together overseas and, where this is not possible, providing a mechanism for the speedy reunion of families;
> - working more closely with non-governmental organizations in identifying, pre-screening and resettling refugees; and
> - ensuring the immediate entry into Canada of urgent protection cases.

Overall the goals set out in the recommendations are welcome. However, the recommendations raise the question of how CIC plans to realize these goals.

The "ability to successfully establish" requirement is linked with the historic accusation that Canada's refugee resettlement program targets refugees who make good immigrants. The requirement stipulates that all refugees selected overseas must show some ability to become financially independent within a year of arrival. This requirement has been a lasting concern for NGOs since it can prevent resettlement for refugees in need of protection or a durable solution or those with special needs. This requirement is also problematic at a practical level as well. Determining a refugee's capability to become independent is difficult, the measures are unclear and the requirement is applied inconsistently among visa posts.

The White Paper response seems to propose a more watered down approach in comparison to the LRAG proposal to eliminate the requirement entirely. How CIC plans to shift the balance towards refugee protection is unclear. Officially, the current policy is that the more a refugee is in need of protection, the less emphasis should be placed on the ability to establish criteria. This means that to a certain extent protection should already be of greater emphasis than successful establishment. NGOs should continue to seek the removal of the successful establishment requirement. Nevertheless, in response to this proposal, NGOs should seek an overall diminishing of the importance of successful establishment for all refugees.

The emphasis on immediate entry of refugees needing urgent protection also resonates with the LRAG proposals. The goal is sound but how this would be different from the status quo is unclear. Currently, refugees in need of urgent protection can be brought to Canada through the use of a Minister's Permit which allows a person to bypass legislative and regulatory requirements. In the case of refugees overseas, their processing can be slowed down by criminal, medical and security checks. Minister's permits were often used during the 1980's when a number of

refugees in immediate danger in El Salvador and Guatemala were admitted. However, currently this means of admission is seldom used. Furthermore, when refugees arrive in Canada through such means they often face long delays in becoming landed. The White Paper and statements the Minister has made suggest that she would actually like a reduction in the overall use of Minister's permits. As a result, it is hard to imagine what real meaning this proposal can have if the minister is promoting immediate resettlement of refugees needing protection, while discouraging the use of Minister's Permits. An alternative approach could be providing a refugee in need of immediate protection another means of entry or status which would be readily available to visa officers and help ensure that when the refugee arrives in Canada she will have a status which will allow her to integrate quickly.

The White Paper's interest in working closely with NGOs is again similar to the proposals in the LRAG report. LRAG seemed to propose NGOs being contracted to do the selecting of refugees overseas. The White Paper proposes an American Joint Voluntary Agency style role for NGOs overseas who would pre-screen refugees before meeting a visa officer. The development of "Overseas Service Partners" is an idea that CIC has been considering for some time and of which there will likely be pilot projects on the horizon. The proposal is driven by the decrease in resources overseas and CIC's claim that it has difficulty identifying refugees. If this model is to go forward it is important that it be responsive to NGO concerns that refugees benefit as a result of this partnership and that this not simply become a way for the government to cut costs by using NGOs. The recommendation concerning the speedy reunification of resettled refugees with their families is particularly welcome, since it is an issue not raised in the LRAG report. Resettled refugees face problems of family separation whether it is the separation from immediate family or relatives that may have shared the same household. When a refugee is resettled she is most often resettled only with those immediate family members that are with her at the time, which leaves behind immediate family members located elsewhere and extended family members who are not considered by CIC as immediate family members regardless of the fact that they live in the same household. Once in Canada resettled refugees may try to sponsor their family members through the Family Reunification program, but they are often frustrated by financial and processing requirements. What is needed is a bridging of the family class and resettlement programs. Members of the immediate family of a resettled refugee should also be resettled as the dependents of a refugee. Similarly, relatives sharing a household with a refugee, whether in the country of origin or in the country of asylum, should also be resettled as dependents of a refugee.

Throughout the report are general recommendations, which also relate to resettlement such as the items on Partnership and the Federal Court leave requirement for all those selected from overseas. Of all the items in the report, the leave requirement is the most serious setback for overseas resettlement. It is a well-known fact that the overseas process has problems with inconsistencies in decision-making. Currently, there is no appeal of the decision of a visa officer, but a refugee can seek judicial review of a refusal to the Federal Court of a negative decision for reasons such as errors of law. The White Paper proposes to diminish these meager appeal rights. The rationale for this move is to make the overseas process consistent with the inland process which also requires leave. In doing this, the Minister has opted for the lowest common denominator instead of improving Federal Court access for the inland system.

While the White Paper resettlement proposals seem to be responsive to LRAG issues they are part of a larger effort CIC has underway to adjust its overseas resettlement system through the introduction of its "Refugee Resettlement Model" (RRM). The RRM involves a series of recommendations that were developed by CIC in consultation with NGOs to improve the current system of refugee identification, selection, destining and settling in Canada. The White Paper recommendations are in many ways the tip of the iceberg of the proposals within the RRM.

It is important that NGOs are vigilant in ensuring that the White Paper proposals concerning the overseas process have an authentic positive impact and not simply endorse the status quo. The White Paper in many ways presents an opportunity. Instead of attempting to ward off harmful new measures, the proposals set out goals that are genuinely welcome. Further, it provides an opportunity to propose other measures which would strengthen resettlement such as improved communication and consistency of decision-making. The challenge is to ensure that the goals set out in the White Paper result in meaningful measures so that Canada's resettlement program is an effective and truly humanitarian program.

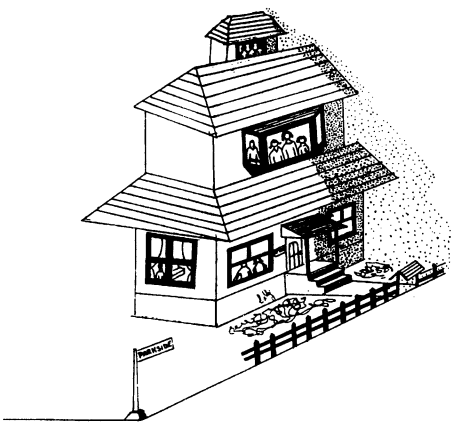
Michael Cassasola is Director of the Refugee Office of the Diocese of London, Ontario.

BUILDING ON A STRONG FOUNDATION - THE ENFORCEMENT PROVISIONS

BY ALISTAIR BOULTON

Enforcement per se receives only brief attention in the Minister's white paper. What could fairly be described, however, as enforcement thinking and, in particular, enforcement language, is evident throughout the report. Of course, one has to be looking out for it since reliance on terms like "punitive" or "coercive" are eschewed in favour of higher and fairer-sounding words like "integrity" and "transparency."

"Integrity" is never used to refer to the fairness of the system, its predictability or internal consistency. Nor is it used to reference the quality of Canada's decision-making vis-a-vis international legal obligations. Rather, it is most commonly used as the justification for announced accretions to Canada's interdiction and expulsion mechanisms.



"Transparency" undergoes a similar metamorphosis. The term is conspicuously absent from its logical place, for example, as a goal in reforms Canada may make to its process for selecting Immigration and Refugee Board members. Instead, as Gordon Maynard has pointed out, the word transparent as utilized by Canada Immigration is "a euphemism for removing language of discretion or processes of flexibility in favour of hard and fast rules." (2)

The principal enforcement recommendations in the report are:

Enhanced Interdiction. Clearly the most effective way to avoid the inconvenience and expense of persons arriving in Canada and claiming its protection is to prevent such people from getting here in the first place. To this end, the report announces that current measures such as:

(a) stepped up disembarkation checks (these do not prevent people from arriving but do allow Canada Immigration to know which airline to fine for each improperly documented arrival);

(b) more intelligence-sharing with other enforcement agencies;

(c) front-end security checks (ie. when a person first makes a refugee claim). This may involve contacting security agencies in the country of feared persecution. Canada Immigration indicates it is aware of the sensitivity and potential danger of such checks but has not abandoned its intention to pursue them;

(d) a new and more secure permanent residence card, which will replace the current Record of Landing (IMM 1000) which Canada Immigration maintains is the single most abused form of document.

The report is silent on safeguards against the interdiction of people genuinely in need of protection. Canada Immigration seems content in its belief that in most cases interdicted persons can access the refugee determination system of the country in which they were stopped while for those who cannot, well, life is sometimes like that.

Expanded inadmissibility. The report proposes to add people smuggling as a ground of inadmissibility. Canada is also apparently working in cooperation with other countries to have this activity declared an

international crime.

Detention for the "uncooperative" claimant. Canada Immigration presently enjoys but does not use routinely because it is too expensive the power to detain people who refuse to cooperate in identifying themselves. CIC is concerned about the 70% of refugee claimants who, it claims, currently arrive without documents or with false documents. The report is vague about what sort of "measures" CIC has in mind for people like this but has talked about a reversed onus for establishing identity (ie. the claimant's obligation to establish rather than CIC's) and a negative presumption at the CRDD for the improperly documented. That still more difficult class, the "uncooperative," is not defined in the report though the increased use of detention for uncooperative claimants --the very thing that today is deemed too expensive to be used-- is clearly a favoured option.

Stays and appeals. Canada Immigration intends to simplify the complex of rules which currently apply to stays of removal. The present system of danger opinions issued by the Minister's delegate is to be abandoned in favour of more transparent, objective criteria. Needless to say, the report assures us that this would enhance integrity.(2) Those convicted of "serious crimes" who otherwise would enjoy an appeal would lose it. The definition would of course be all-important. What has been bruited about is a definition based on length of sentence, a schedule of offences, likely to reoffend or some combination of these things.

In brief, the report is highly informed by enforcement concerns. The streamlining provisions suggested for the inland refugee system, for example, are all premised upon a faster and more effective system of removals for failed claimants. The population at large may find none of this disagreeable while refugee advocates must. Regrettably, a report so keen on transparency and integrity may well be lost on those without a deeper interest.

(1) Gordon Maynard is the chair of the Immigration Section of the Canadian Bar Association, B.C. Branch.
(2). at p. 53

Alistair Boulton is co-chair of the Overseas Protection and Sponsorship Working Group of the Canadian Council for Refugees and President of Lawyers International for Refugees.

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BUILDING ON A STRONG FOUNDATION- GENDER ANALYSIS

BY JETTY CHAKKALAKAL

In 1995, the Government of Canada adopted a policy requiring the application of Gender-Based Analysis in the policy development and analysis process. All federal departments and agencies are now required to analyze their policies and legislation to take into account their differing impacts on women and men ...Gender-Based Analysis is good public policy" -- "Gender Based Analysis: A Quick Guide for Policy-Makers" (brochure) Status of Women Canada.

Canada is recognized the world over as a leader in recognizing and attempting to address the need for gender sensitivity in responding to refugees. In 1993, Canada became the first country to issue guidelines for women seeking refugee status on the basis of gender-related persecution. In 1994, the Minister of Citizenship and Immigration issued a Declaration on Refugee Protection for Women, in which the government committed itself to respecting women's rights to receive international protection on an equal basis with men. As the quote above indicates the federal government has also recognized that such sensitivity should be manifested early in the policy development stage. The current legislative review process

has been going on now for at least 5 years. We are now witnessing what is probably the last stage of development in the policy-making process before the policy crystallizes into a Bill. To date no gender analysis has taken place. Status of Women Canada in their Guide gives an 8 step process for such analysis to take place. The first step is to identify the issue. Gender as an issue, has not been identified anywhere in the latest "White Paper". This is perplexing in light of the fact that the issue has been brought to the Minister's attention time and time again, including briefs presented to her office in the consultations surrounding the LRAG report. Can it be that the policy makers are now so gender sensitive that they do not need to engage in a conscience gender-based analysis? If only it were so. One of the most glaring examples of the need for a gender analysis is in the proposal to create a 30 day time frame for making a refugee claim, subject to some (unspecified) exceptions. We have heard that the time frame was chosen because over 80% of refugees made their claims within the 30 days. The question naturally then presents itself - Why then do we need the time limit? Currently the Board does take into account the issue of delay in making a refugee claim when deciding cases, in fact, generally people who delay making claims are *presumed* to lack a fear of persecution and it is up to them to show otherwise. The Federal Court has found that this presumption cannot be applied to people making non-traditional claims, ie. gender-based claims(1). It has also found that a psychiatric assessment can be supportive of a refugee claimant's explanation for her delay in applying for status(2). The government has not presented us with any factual basis for their implication that "late" claims are abusive claims. Therefore, what we have in this proposal is a draconian measure seemingly aimed at a tiny percentage of claimants that will, in practice, have a huge impact on claims by women and other "non-traditional" claims. And this is only one of many examples in the White Paper that have been identified as having a negative and gendered impact(3).

I am left to ponder, why would the government propose such a measure, after 5 years of policy development? Such a proposal compounds the myth that people who make refugee claims once they are in Canada are somehow abusing the system. Perhaps wide publicity of strict time limits will have the calculated effect of demonstrating to the world that Canada is just as tough as the United States when it comes to refugees? Perhaps the federal government seeks to take a page from the Ontario government's policy-making strategy of creating a crisis then getting the credit for its "solution"?

There are no answers in the White Paper. There is no explanation from the government the failure to apply a gender-based to the exercise of reforming the *Immigration Act*. Although the policy-making process is at a late stage, it is not too late for the government to follow its own laws and take another look at their policy directions. According to the government's own brochure, "[t]he challenge for policy-makers is to ensure that the results of policies and legislation are anticipated, and that these results are as equitable as possible for all women and all men"(4). Only once the government meets this challenge can they claim to start "building on a strong foundation for the 21st century".

1. *Williams* (30 June 1995), No. IMM-4244-94 (FCTD) at 1-3.

2.*Diluna* (14 March 1995) No. IMM-3201-94 (FCTD) at 1, 63.

3.see the upcoming CCR brief on gender and the white paper.

4."Gender-Based Analysis" *supra*

Jetty Chakkalakal is a lawyer with the Refugee Law Office and is a member of the Gender Core Group of the Canadian Council for Refugees

DON'T FORGET TO REGISTER SOON!

FROM THE GROUND UP

Canadian Council for Refugees
Spring Consultation
27-29 May 1999
Halifax

Conference Site: St. Mary's University

Special Session:
Canadian Network for the Health of
Survivors of Torture and Organized Violence
Wednesday, 26 May

For further information:
Canadian Council for Refugees
Tel. (514)277-7223
Fax (514)277-1447

BUILDING ON A STRONG FOUNDATION - SETTLEMENT

BY NANCY WORSFOLD

The new White Paper, *Building on a Strong Foundation for the 21st Century: New Directions for Immigration and Refugee Policy and Legislation* is almost totally silent on the subject of settlement services.

Given that the paper purports to be a blue print for new immigration legislation, it is not surprising that settlement services are not included. Settlement services are not written into legislation, they are governed by policies and procedures. The really important factor for settlement services is the annual budget appropriation in other words how much money is there to spend. The report says nothing about spending on settlement services, but what is perhaps more surprising, the report says nothing about the importance of settlement services. Settlement agencies play a key role in making the immigration system work and making the immigration experience a success.

For example, in the entire Ottawa region there is only one Canada Immigration Centre and that centre closes at 1pm because it simply does not have enough staff to see clients. When clients need help with forms or want to make an enquiry, the CIC regularly refers them to a settlement agency. I am sure that this is the same in all regions. We all keep stacks of forms for all kinds of immigration procedures in our offices. We sit with our clients to fill them out and we work through the endless procedures together. Our work is essential to making the immigration system work. How many of our clients could ever successfully navigate the system without our help?

Over the past 5 years with all of the cutbacks, the Department of Immigration has been reducing its hours, moving to "mail in", and generally making themselves less and less accessible to the public. While this has generated more and more work for settlement agencies, there has been no acknowledgement of this increase in our workload. I would like to highlight two key problems that the cutbacks have created for settlement agencies: overload and lack of training.

Until now, there has been no increase in frontline settlement services in Ontario. Although there is now new money available in the sector, it is not clear how much will be spent in increasing frontline settlement work. In fact, somewhat ironically, a great emphasis has been placed on outreach projects and increasing service accessibility. On one hand, it is clearly important that we reach clients early in the settlement process, but on the other hand, if we generate more demand for our services, we will need more workers to serve them. I don't think that there are currently many idle settlement workers waiting for new clients to come to their agency. In fact, the prevailing atmosphere in settlement agencies is one of worker overload. We are seeing more and more clients who have ever more complex problems.

As all the immigration paper work lands on the desks of settlement workers, agencies need to keep up-to-date on changes to immigration law, regulations, policy, processes, changes in the forms and on and on. If this White Paper ever is written into law or even if some of the proposed regulatory changes are actually made, our workers need to be informed and need to be trained in new procedures. Although it may be different in other regions of the country, in Ottawa this simply doesn't happen. In the Quebec and B.C. regions there are functioning NGO-CIC committees which could address this kind of issue, but in Ontario there seems to be no similar vehicle of communications.

Settlement services aim to make the immigration experience a success for our clients and for most a key factor in their settlement is finding appropriate employment for immigrants in their field of expertise.

The new White Paper *Building on a Strong Foundation for the 21st Century* is depressingly weak in its statement on *Access to Trades and Professions*. In the past two government policy documents on immigration, Marchi's *Into the 21st Century* (1994) and the Trempe Commission's *Not Just Numbers* (1998) recommendations suggested that the government should act to make it easier for immigrants to get employment in their fields of expertise.

Unfortunately, the new White Paper seems to have backed away entirely from any action which could help skilled immigrants successfully obtain employment. The document refers to a "transparent and portable credential assessment". Although it is true that the services which assess credentials could be improved and portability between provinces would be nice, the real issue is that employers and professional associations do not recognize foreign training, however it has been assessed. This discrimination is pervasive and it appears to be totally legal.

The only other statement made on the issue of access to trades and professions is that immigrants should be better warned before they come to Canada that their credentials will not be recognized so that they can make an informed decision before coming to Canada. In our agency we hear story after story of independent immigrants who were told before coming that they would be able to find jobs easily because they are so qualified.

If Immigration Canada is serious about informing prospective immigrants about de-skilling and unemployment I believe that two issues will have to b e addressed. First, the Government will have to accept that the numbers of independent immigrants may fall and this is a 'political' issue because they have been trying to "rebalance" immigration numbers away from family and refugees towards economic immigrants for most of the nineties. Second, the government will have to address the issue of the overseas "immigration consultants" who make a living telling prospective immigrants that Canada is a land of plenty and charge them thousands of dollars for help with the paperwork.

Any changes in immigration law, policy and procedures will affect the provision of settlement services because it affects our clients. But the actual White Paper itself has very few implications for settlement agencies. In fact, other than as people to consult, it does not mention us at all.

Nancy Worsfold is former Executive Director of The Canadian Council for Refugees and presently is Director of the Ottawa-Carlton Immigrant Services Organization.

THE TRAUMA OF FAMILY SEPARATION

BY EZAT MOSSALLANEJAD

Long-term family separation is detrimental to the physical and psychological health of vulnerable refugees especially those who are victims of torture. This group of refugees are in constant danger of re-traumatization.

The dilemma of family separation results from the fact that one or more members of a family are stuck here in Canada (because they cannot go back due to a well founded fear of persecution), while the other members are unable to come to Canada due to lack of visa. This makes both sections of the separated family waiting desperately in a state of hope and despair. The stress resulting from such constant psychological tension and fear, according to a refugee woman separated from her husband for several years, is comparable to the agony

of death. The following true stories (names are fictitious) will provide readers with complexities of family separation in Canada and the inadequacy of the current Immigration policies and practices.

Flix is a Convention refugee and a survivor of torture. He has been detained and persecuted at the hands of both his government and the paramilitary groups. According to a psychiatric report he "is suffering from symptoms of Post Traumatic Stress Disorder as a result of political detention, torture and fear for his life" in his country of origin. As a Convention refugee in Canada, he has applied for family reunification and the Canadian government has accepted his application. The Canadian embassy in a country neighbouring to the country of his origin is processing his wife's file. She has escaped to the neighbouring country waiting for several months under tremendous stress and with no support in the neighbouring country while they are processing her visa.

Flix has been involuntarily separated from his wife for the last three years. As a Convention refugee, it is not possible for him to travel outside Canada. His wife is now in a desperate situation living in a country unknown to her.

Flix has applied for a travel document but his application has been turned down because he does not yet have landed status in Canada. It should be noted that in the case of family sponsorship, Convention refugees become landed with their families. He is not able to obtain a Minister's Permit for a travel document, because he does not have a passport. He thus faces a vicious circle on different fronts.

This is, unfortunately, the case with many Convention refugees in need of travel documents to visit their loved ones and to facilitate their family reunification

Mina is a mother of four children and a victim of torture. Her husband has spent 7 weeks in detention in a foreign country as a result of his attempt to travel illegally to Canada in the hope of joining his family. She and her children have been going through the agony of family separation for the last four years. Mina is presently under heavy medication and is on the verge of losing her ability to function.

As a depressed woman who has faced torture and trauma and is still suffering from the after-effects of torture, Mina is incapable of providing proper care for her children. What will follow is a testimony given by her physician: "The mother has been under lots of stress as a new immigrant with four children in critical ages. This family is suffering from emotional disorder and the mother has been under the treatment for major depression and she is presently taking anti-depressant medications. The mother is crying for help, she wants her husband to be permitted to come to Canada and join the family and share the responsibility of raising children."

Given Mina's present depression, the children are at a great risk as her condition renders her incapable of caring for them. There have been instances of the children roaming the streets looking for their father. The children have continuously bought their father gifts as they expect his arrival.

I am extremely anxious for Mina, as there is a possibility that her husband be deemed inadmissible to Canada. In a similar case, the Canadian embassy considered a situation such as this one as "a crime punishable with 10 years of imprisonment in Canada." This would make him inadmissable.

Gary and his wife Lisa are both professionals. They received their citizenship in 1987. They were living happily till their country of origin went through a drastic geopolitical change. In late 1996, they came to know about the bombardment of their village. They tried to trace their families through the International Red Cross Organization. After months of living between hope and fear, they were informed about the massacre of their entire family by the invading army. An old uncle, two sisters, a niece, and two nephews miraculously escaped the massacre. They had escaped the region to join thousands of other displaced people. The couple made their best efforts and traced their location. After a lull, Gary and Lisa travelled to their war-ravaged country of origin. They visited surviving members of their family and helped them with their accommodation. They put them all up in a big room in a semi-neutral zone.

Gary and Lisa returned to Canada with the hope that they would join with their relatives here. Although their remaining family members are at high risk, there is no prospect of bringing them to Canada. The Immigration Act does not consider siblings and close relatives as members of family class.

In a desperate attempt to save his life, Mohan left behind his wife and a handicapped daughter while escaping his country of origin. He claimed refugee status in Canada 13 years ago. His hearing was postponed three times and when new legislation (Bill C-86) was passed he was trapped in the limbo of the Backlog Clearance Program. By this time his wife had moved to a first country of asylum, as she could not stand military persecution at home. All three waited desperately and could not get reunited. Two years before Mohan got his landed status, his wife died and left their handicapped child with no support. His poor daughter suffered a lot till a local parish protected her.

Long-term family separation is detrimental to the physical and psychological health of vulnerable refugees especially those who are victims of torture.

Mr. Mohan works hard to support his handicapped daughter overseas. He cannot bring her to Canada due to bureaucracy in both countries and the medical inadmissibility here. He would love to leave Canada and stay with his daughter forever. He cannot do that, as he has no status in the country of his daughter's residence.

One can refer to many other instances of the trauma of family separation. Does the White Paper address these problems and complexities? A careful analysis of this document leaves the reader with mixed reaction. Let me begin with the positive aspects.

It is encouraging that the White Paper has recognized Canada's commitment in "keeping the core family together." Other positive aspects of the document, in connection with the question of family reunification, could be summarized as follows:

- reference to "providing fair treatment to common-law and same sex couples";
- "better treatment of the child in international adoptions";
- "increasing the current age limit for a dependent child from less than 19 years to under age 22";
- consideration for removal of inadmissibility based on "excessive medical demand"(this could help survivors of torture).

Despite these positive aspects, the White Paper suffers from certain ambiguities and serious shortcomings. The White Paper has promised to do something about the expansion of family class, which has consistently been demanded by refugee rights groups. There is no suggestion, however, to substantiate this expansion. It seems that the White Paper will keep the existing narrow definition of the family class. Another ambiguity is about the promised reduction of duration of sponsorship. The White Paper has not even come up with a range.

A serious shortcoming of the White Paper is the limitation of sponsorship to "a citizen or permanent resident." This does not address the present ongoing problem of prolonged family separation for Convention refugees. It also does not pay attention to the re-traumatization of torture survivors who are in the limbo of family separation. The White Paper has not attempted to improve the present system of inadmissibility when a spouse is convicted of a crime due to travelling illegally to join her/his partner in Canada. It does not include siblings and other relatives as members of family class even under exceptional circumstances. There have been cases of refugees with no any other family member except siblings or when they have lost everybody and have established close ties with other refugees during transition, in camps or in the first or second countries of asylum.

The White Paper has continued to recognize the processing of applications for spouses and children from within Canada. It has, however, limited provisions of the current Immigration Act by excluding people inadmissible who are without legal status or under a removal order. The new provision does address exceptional cases when a Canadian citizen or permanent resident lives with a foreigner on a common law basis. I have observed cases of handicapped citizens sponsoring their non-status spouses within Canada. It is important that the new legislation broaden the discretionary power of the officials for dealing with such exceptional cases.

It is unfortunate that the White Paper has not even partially addressed the problem of refugees who need to visit their family members overseas. This is being done despite the clear provision of the article 28 of the Refugee Convention which suggests that the "contracting states shall issue to refugees, lawfully staying in their territory, travel documents for the purpose of travelling outside their territory.... "

While I agree with the White Paper that the new legislation must "reflect new social realities and ensure that rules are clear, fair and consistent", I further believe that Canada should continue with its long tradition of family reunification as a humanitarian attitude as well as "a tool of social integration and for the building of communities". Refugees, as most vulnerable and marginalised groups, should be granted special protection.

The above considerations prompt me to come up with the following recommendations:

1. Continue with the current provision of exempting Convention refugees from financial requirements while sponsoring their families overseas. The current provision must be improved at least in 3 areas:
a. Cancellation of the 'head tax' and the processing fee as a source of hardship for Convention refugees and a major hindrance towards family reunification;
b. Convention refugees should be able to sponsor their families with no time limit even if they sponsor their families after obtaining landed status. They must be exempted from financial requirements;
c. Addressing the emergency situations by adding a special provision permitting bringing to Canada the families of Convention refugees (and refugee claimants in condition of high risk) and processing their landing within the country;
2. Remove the age limit and medical inadmissibility for handicapped members of family abroad;
3.'Criminal inadmissibility' for people convicted as a result of travelling illegally to join their families should be eliminated;
4. Broaden the definition of family class to include siblings and the family nucleus that has taken shape during transition, living in camps or the first countries of asylum;
5. Continue with current practice of sponsoring spouses and children with no legal status within Canada;
6. Reduce the length of sponsorship across the board to the level of Quebec (3 years);
7. Consider special provisions for issuing visitor visas to relatives of Canadian citizens and permanent residents abroad;
8. Issue travel documents to Convention refugee and rescind the current requirement of their landed status.

Ezat Mossallanejad works as a Policy Analyst and Advocate at the Canadian Centre for Victims of Torture. He is the Editor of Refugee Update.

THE REFUGEE HAT

BY AHMAD WALI

I was obliged to wear the hat of a refugee in 1994. It was at the end of that year that I left behind my home, culture, independence and other values one has as a human being.

I lived in Pakistan for almost four years. Our family applied to the office of Citizenship and Immigration Canada in Islamabad, Pakistan in 1995. It took us three years to hear an answer from the CIC in Islamabad. We had almost forgotten it.

The favoured moment of 11th March 1998 is an unforgettable day for me as I received a letter from the CIC office in Islamabad regarding the interview. The interview was successful and I was accepted as an immigrant. This was both good and bad news as they rejected my parents because they were *inadmissible and ineligible*. I hate these words and I have removed them from my personal dictionary. However, I was left with no option and had to leave

all because I wanted to remove the refugee hat. To travel as a refugee is one of the hardest things you can ever experience. You leave for an unknown place with no clues whatsoever.

When I arrived in Canada I was warmly welcomed at the airport and then accommodated at an immigration reception centre called COSTI. I still had my refugee hat with me. New life, new culture and new challenges, again for a refugee these things are mandatory. As a refugee you aspire and wish to have your basic human needs such as access to education, work and a decent and modest life. That is the wish of every single displaced person.

Living in Toronto with its multicultural environment is very unique. After a month in Toronto I was in a discouraged state. I looked in the mirror and the refugee hat was still on my head. One morning my counsellor at the Reception Centre told me about a conference that sounded very interesting to me. It was a CCR (Canadian Council for Refugees) conference. I was invited to go, which was a big surprise for me. I had many queries in my mind about that conference, such as whom could I meet and who would listen to me.

Believe it or not, I was able to see the Minister of Citizenship and Immigration (our Minister) from few metres. For a newcomer this is a dream. During that Conference everyone was listened to and heard for their problems. Resolutions were passed and hopes were raised. I quickly went out of the conference room and looked in the mirror. The refugee hat was no longer on my head. Now after returning from the conference I am no longer looking in the mirror dreading that the hat might be on my head again. I have given a certain time for myself and am hoping to hear the results of the CCR conference. I might try to look in the mirror again.

Ahmad Wali is a Convention refugee living in Toronto

GLOSSARY OF TERMS

LRAG: Legislative Review Advisory Group; Not Just Numbers Report released by LRAG in 1997
IRB: Immigration and Refugee Board
H&C: Humanitarian and Compassionate
PDRCC: Post Determination Refugee Claimants in Canada Class
NGO: Non-Governmental Organization
CIC: Citizenship and Immigration Canada

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