

REFUGEE UPDATE

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A SMALL PRICE

FOR THE BEST COUNTRY IN THE WORLD?

B Y A N N A P E L O S I

The Comité d'aide aux réfugiés (CAR) is a non-profit, church-based organization in Montreal whose mandate is to work directly with refugee claimants through advocacy and community organizing. Over the past month we have done research, through individual interviews and the use of questionnaires, on the effects the new "head-tax" has had on different refugee groups. A compilation of the results have been sent to a group of Toronto lawyers challenging this new tax.

Canada's Minister of Citizenship and Immigration has stated that the new right of landing fee is a small price to pay to come to the best country in the world. In a speech given in the House of Commons he likened the tax to the price of a television set and stated that it will not in any way cause hardship to any individual.

The government has justified this new landing fee by shrouding the issue



The Scream, courtesy of the Human Rights Internet.

under a veil called the *loan option*, the logic being that the loan acts as a safety net for those who are unable to pay the landing fees. For refugees, however, there seems to be a gaping hole in this net.

Montreal groups have been told by immigration officials that the present rate of acceptance of applications for the loan programme is only 30%. The loan option is clearly contradictory. While the government sees the loan as a safety valve for those unable to pay, the government, as one refugee pointed out, will only lend to those who are able to repay the loan.

It is common knowledge among NGOs that the repayment rate on the transportation loans is higher than 95%. The Department has a positive experience with this programme and people who have benefited from it have felt a moral obligation to repay. Why not trust this positive experience with the "head tax" loan programme?

The right of landing fee has caused undue hardship for many refugees in Canada. Through our research we found that many suffer psychological, physical, and financial hardship as a result of the new tax. As one Rwandan refugee commented, "we are made to pay for our own tragedy. Where is my place of tranquillity in this world?" (CAR: 1995)

Said is an Algerian man who has been in this country for five months. Presently on welfare and having only just received his work permit in the month of March, one would think him a prime candidate for the loan. But he was refused. The letter from the Immigration Department stated that since the applicant was unemployed, and since his wife in Algeria had never worked, he was not eligible. The total cost of landing for Said, his wife, and three children was to be \$3250.00. This does not include the cost of the plane tickets that Said's wife and children must purchase in order to come to Canada.

Before the right of landing fee was introduced in February of this year, Said had managed to raise \$1300.00 from acquaintances in order to pay the processing fee for his own landing and that of his family. This fee, introduced in June of last year, is \$500.00 per adult and \$100.00 per child. With the introduction of the new head tax in February, Said was faced with the payment of an extra \$1,950.00. This means that he is now unable to bring his family to Canada.

Said's family is having financial difficulty in his absence. The medical tests which they underwent to qualify for entry into Canada cost them 2000 dinars (\$70.00-\$80.00 CDN), and there is no money coming in since Said's departure.

Said is depressed and longs to be reunited with his family from whom he has been separated for eight months. He is uncertain of their safety in Algeria, and struggles to find work and gain a semblance of normality in his life. Having fled persecution in his homeland, Said has yet to find peace of mind and security. Unable to pay the landing fees, he cannot sponsor his family who in turn do not understand why this is all taking so long. Essentially these fees have put Said's life on hold. While Said is expected to integrate into our society, practically every aspect of his life remains uncertain: his children are asking where their father is, his wife is asking when they will all be reunited, and Said is asking himself when he and his family will feel secure again, and if this could be just a bad dream.

Mirla is a single parent and mother of three children, aged nine, ten, and thirteen. She fled her native Panama to escape political persecution. Once in Canada she thought she would be able to start over, and that the Canadian government would allow her to live her life in relative peace and security. Instead she finds that "all the doors are slamming shut in front of me. I feel angry and extremely saddened that I am not even being given an opportunity to pay for the landing fees to which I am subjected".

Just like Said, Mirla also applied for a loan, and she too was denied on the grounds that "her present source of revenue is less than her capacity to repay the loan". Although the Immigration Department has since extended the period within which to make an application for residency to 180 days, at the time of her application Mirla was told to pay within 60 days.

Given these two examples, how can Mr. Marchi claim that no individual is being negatively affected by the right of landing fee? Moreover, the victims of this new policy are not only the adult refugees who are now in Canada, but their children who are still overseas, possibly in danger, and growing up without a parent.

Canada is a signatory to the 1951 Geneva Convention and its 1967 Protocol which are incorporated into our Immigration Act. These Conventions obligate our country. Both the processing fee and the right of landing fee (head tax) clearly hamper the unity of the family.

Within the last two years the Canadian government has asserted its goal of reuniting families within six months. Most refugees, however, are separated from their families for anything from one to three years, depending upon which area of the world they are from and when they came to Canada. The right of landing fee will further prolong the length of time for which families are separated, since residency applications are not processed until both the processing fee and the right of landing fee are paid in full.

The right of landing fee and the processing fee for residency neither "facilitate the assimilation" of refugees, nor do they "reduce as far as possible the charges and costs of such proceedings", which are proposed by article 34 of the Geneva Convention relating to the status of refugees.

The cost of recovering the fees is likely to be almost as exorbitant as the fees themselves. A ceiling of 110 million dollars has been set for the loan programme, to be paid back in 2.5 years, at a rate of 9.06%. What will happen after the money runs out?

Research is presently underway in Montreal to study the effects of family separation. One woman who lost all but two members of her family in the violence in Rwanda is now unable to sponsor them because of the landing fees. This woman nearly lost her own life, was robbed of her family, is contending with the psychological trauma of her loss, and is also endeavouring to integrate into our society. At the same time, she is being asked to pay an exorbitant amount for her right to residency. Sergio Marchi has stated that refugees seek Canada for protection – not for charity. It seems, however, that Canada is denying protection to family members of refugees by leaving them in great peril in their homeland, while the refugees here in Canada try to raise enough money to buy their family's safety as well as their own. As Canadians we do not pay for our fundamental right to protection and security of person. This is simply guaranteed under the Charter. Why must refugees then be asked to pay for the same right?

Canada cannot make claims to a humanitarian tradition when it restricts entry to this country based on financial means. Sergio Marchi has stated that one must pay for living in the best country in the world. After the imposition of these landing fees one is compelled to ask, *the best country for whom?*

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HARMONY WITH WALLS:

CANADA PUSHES FOR A COMMON CANADA-U.S. ASYLUM POLICY

The Memorandum of Understanding (MOU) between Canada and the USA seems to be one of the most open secrets of the year. On an official level there is a tendency for almost complete silence on the subject from both governments; however, since President Clinton's visit to Ottawa in February, much has been written and said about the MOU. The opportunity to speculate so openly on the implications and development of the MOU are thanks to three meetings that have taken place in the last few months. In each of these meetings the subject was considered very closely.

First, a workshop on harmonisation took place during the Asylum and Safe Haven Conference at the National Immigration Forum in Washington DC on May 4. A week later, a joint meeting of the Canadian Council for Refugees and Citizenship and Immigration Canada, focusing particularly on the MOU, was held in Ottawa. And most recently, a special session at the CCR bi-annual conference in Vancouver examined the MOU in great detail. What emerged from all of these meetings was the clear conclusion that it is Canada rather than the U.S. that is pushing most forcefully for a MOU. Canada submitted the first proposal for an MOU in December 1991, and is now more enthusiastic than ever to sign an agreement with the U.S. government. The recent crackdown on "illegals" in the U.S., including the referendum in California which led to the cessation of services to "illegal" residents, has made the bureaucrats from the CIC very worried indeed. They fear that Canada will become an attractive alternative for "illegals" in the U.S. as they find conditions there increasingly restrictive.

The U.S. also favours the agreement, because there is obviously something in it for them. President Clinton's Executive Order of February 7, regarded by many as a precursor to the signing of the MOU, allows immigration officials in the U.S. to conclude refugee determination allocation agreements with other countries. This was preceded by regulatory change in U.S. asylum procedure, which demands that claims for asylum must be made in the country through which the claimant passed before arriving in the U.S.. But the procedure "requires that such returns can only take place with countries having bilateral or multilateral arrangements with the United States for doing so" (Refugee Report, No. 3, Washington D.C., March 31, 1995, p.11). The MOU would pro-

vide such a bilateral arrangement with Canada.

It could be judged from all of the above that the new version of the MOU is in line with the 1991 version, which was leaked to NGO's in early 1993 (see Refugee Update no.17, pp. 1-2). The latest version is still in draft, and has been written by Canada. It is not clear how the U.S. has responded to that draft, and so far no discussions have been held with Congressional staff in the U.S.

The draft MOU contains the following:

1. Guaranteed access to a full refugee determination system;
2. Provision for a "guaranteed venue". In cases, for instance, where the two countries have a different standard of eligibility of access for criminality, the country with the lower threshold would take the claimants.
3. Prohibition on the return to a Third Country in the absence of a bilateral or multilateral agreement (if only one country has the agreement, the other must give permission);
4. Allowance of the exchange of information on itinerary and identity with some provision for confidentiality;

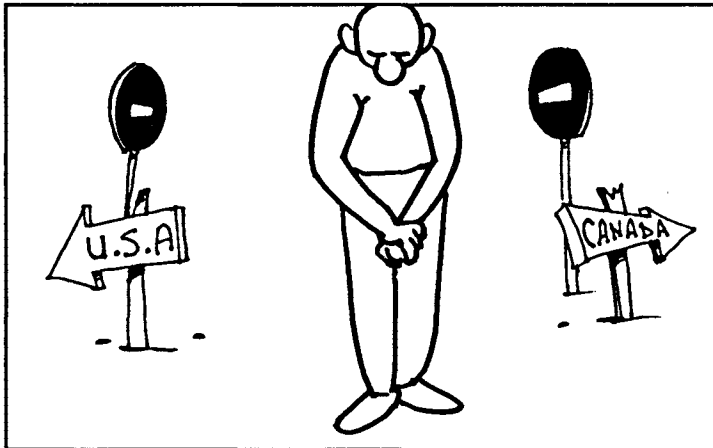
The draft MOU is suffering from the following shortcomings:

1. Refugee claimants are denied the choice of country of asylum.
2. There is no clear provision for ensuring family unification for refugee families who may be forced to leave their home countries separately and by different routes. The draft is not inclusive of the "assisted relative class" as well as the family members of refugee claimants.

As refugee advocates we should continue demanding public scrutiny of the MOU, in order to address its shortcomings. Although no consideration is currently underway to extend the deal beyond U.S.-Canada, the possibility of making a deal with Mexico should not be ruled out completely. Given the novelty of the deal and the lack of administrative preparation on both sides, the implementation of the deal will not take place without serious problems. There might even

be a delay in implementation to allow the U.S. to deal with its backlog. If implemented, NGOs should be ready to monitor the deal with a view to ensuring that refugees are not bounced from one country to another.

Given the past and the present CIC practice of taking NGOs for granted, as well as the current anti-refugee trend in our country, refugee rights groups should make sure that they will not be presented with a *fait accompli* - a signed secret agreement between the U.S. and Canada.



AN ACT OF CRUELTY TOWARD REFUGEES

B Y S A M I F E J I K A

One of the imponderables of current Canadian immigration policy is the requirement that refugees produce valid identity documents before they can be granted landed immigrant status. This issue was anxiously debated at the recent annual meeting of the Canadian Council for Refugees in Vancouver, and yet another resolution was passed highlighting the "extreme emotional, psychological and financial hardship" this requirement has caused to the persons concerned and requesting remedial action from the Minister of Citizenship and Immigration.

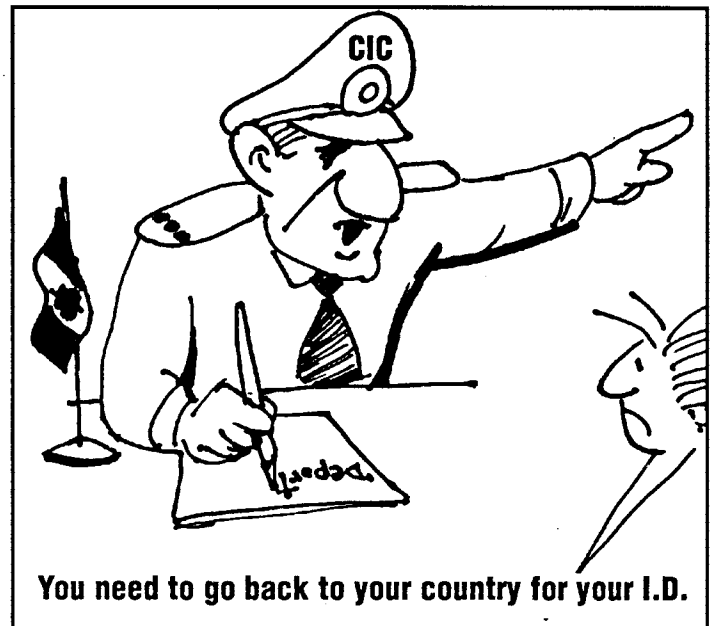
There is here an obvious contradiction: the affected individuals, after a careful assessment of their stories by the Immigration and Refugee Board, were accepted as genuine refugees. To be processed for landing they have to "prove" to the Immigration Department that they really are who they told the IRB they were by producing official identity documents. Presently, there are about 8,000 refugees in this category.

The affected refugees are not able to produce the required documents – birth certificates, passports, etc., because they left their homelands in a great hurry to save their lives. It is not possible for them to obtain official documents from the governments they fear, or from their homeland where, in some cases, there is no functioning government. Many of these refugees left behind relatives who feel intimidated when approaching the authorities.

Refugees affected come from countries such as Somalia, Afghanistan, Iran and Sri Lanka, which have faced prolonged armed conflict and political instability. They live mostly in the Toronto areas where their relatives also often reside. Of about 50,000 Somalis in Canada, about 30,000 reside in Toronto. The Somali community in Toronto has, therefore, been most outspoken about this unjust policy, and on 30 May hundreds of Somalis held a protest demonstration in Toronto. The Somali community in Ottawa has also been active and is considering a legal challenge in conjunction with the three Ottawa-area legal clinics.

A Toronto Star editorial of May 4, 1995 described the concerns of affected individuals: "... they cannot apply for a credit card, or qualify for pensions and training programs, or sponsor spouses and children. In the case of some Somalis, family members have died in refugee camps waiting to come here. Where families are intact, children may be charged stiff school and university tuition fees at the same exorbitant level as foreign students."

Immigration bureaucrats insist that they are still trying to come up with an acceptable solution. Last November the Somali community had agreed to a proposal presented by an assistant from the Minister's office that a certified affidavit be used by affected refugees in place of official identity documents. More than six months later, however, this proposal has yet to be imple-



mented – even after a number of advocacy organizations had written to the Minister requesting a policy change. Instead, immigration officials in hope of catching a few war criminals are considering another option of allowing the affected refugees to remain in Canada on a Minister's Permit for five years before being given landed status. For those five years, nearly 8,000 refugees will remain in limbo. We do not minimise the issue of dealing with war criminals. We point out, however, that there are other means of dealing with this issue. For example, status already given can be withdrawn – a means used in the past.

The refusal to grant landing to some refugees who obviously cannot produce identity documents is cruel. Many of these refugees have faced grave danger, including severe torture in their homelands. And many of those directly or indirectly affected by this policy are women and children.

On these grounds, this immigration policy seems contrary to the intent of Article 34 of the 1951 Convention on refugees. Under this article, Canada agreed to facilitate the speedy settlement (or "naturalization") of Convention refugees.

The recent CCR conference reiterated the Ministry of Immigration's own proposed commonsense solution by way of a resolution urging the government to allow the use of an affidavit. In the alternative, they ought to urgently convene a joint committee with representatives from NGOs and concerned community to suggest appropriate solutions to the issue. This makes so much sense.

Sam Ifejika is the Coordinator of JRS-Canada

NEW IMMIGRATION LEGISLATION (BILL C-44)

Bill C-44, tabled in parliament last June, has now been passed and received Royal Assent on June 15th. The Bill amends the Immigration Act in a number of ways:

- ☛ it prohibits those convicted of serious crimes (considered to be a danger to the public and punishable by a maximum term of imprisonment of 10 years or more) from claiming refugee status;
- ☛ it removes the authority of the Immigration Appeal Division of the IRB to stay or overturn deportation orders of anyone in the above category;
- ☛ it cancels the right of appeal to the Immigration Appeal Division by non permanent residents certified by the Minister of Citizenship and Immigration and the Solicitor General to be a security risk;
- ☛ it removes the possibility for one person to have more than one refugee claim processed at the same time;
- ☛ it stops the processing of applications for citizenship pending the outcome of immigration proceedings;
- ☛ it forbids admission to Canada of anyone who has two summary convictions for non-serious crime, regardless of whether both occurred in Canada or elsewhere;
- ☛ it authorises the Minister to approve requests for rehabilitation for less serious crimes;
- ☛ it prohibits any new immigration inquiries for people who have been ordered to leave Canada;
- ☛ for permanent residents under a removal order, it strips them of their permanent residency;
- ☛ it gives immigration officers the authority to seize and open international mail if they believe that mail to contain forged documents.

TOP TWELVE COUNTRIES

JANUARY 1 - MARCH 1995

1995 RANKING	1994 RANKING	CLAIMS*	WITHDRAWN**	HEARING REJECT**	HEARING ACCEPT**	ACCEPTANCE %		
						1994 03/31	1995 03/31	
1.	Somalia	2	489	33	3	458	92	93
2.	Sri Lanka	1	468	22	28	384	83	88
3.	Iran	4	302	44	35	217	77	73
4.	Algeria	-	250	7	14	212	58	91
5.	CIS/USSR	3	237	40	60	157	46	61
6.	India	5	232	54	55	122	32	53
7.	Pakistan	9	155	21	31	94	48	64
8.	Bungladesh	7	143	9	24	103	61	76
9.	Israel	6	121	18	47	44	25	40
10.	Afghanistan	-	108	10	6	96	89	91
11.	Romania	-	99	11	56	28	40	29
12.	China	10	97	48	44	35	38	28
	Others		1492	414	479	752	46	46
	TOTAL		4193	731	876	2702	57	63

* Claims heard to completion ** Including claims made in 1994 awaiting a decision as of January 1995.
Source: Immigration and Refugee Board as compiled by JRS/Canada.

NAVIGATING THE MAZE - APPLYING FOR A HEAD-TAX LOAN & HEALTH COVERAGE

B Y M A U R E E N S M I T H - G O R D O N

A GUIDE FOR REFUGEES & REFUGEE WORKERS



With the introduction of, and changes to, various policies and programs affecting refugees in 1995, there is a need for front line workers to have information on how to help refugees navigate through the current procedural maze. This article will deal mainly with the new Right of Landing Fee Loan Option and, to a lesser degree, with the change in Ontario to health coverage under the Federal Interim Health Program.

The Right of Landing Fee, popularly referred to as the "Head Tax", has been in place for about 4 months now. At \$975.00 per applicant for permanent residents over 18 years of age, this is a formidable sum. This is especially so for refugees who are usually still getting oriented to their new social environment, learning one of Canada's official languages and just beginning to look for work. For many, if not most refugees unable to pay this fee (which is in addition to the processing fee of \$500.00 for adults and \$125.00 for children), there is a loan program available. The following information may help refugees

to maximize their chances of being granted a loan.

Information about the loan and a loan application are now included in the Convention Refugee Application for Permanent Residence package provided to refugees once their claim has been positively determined. There is a form entitled "How to Complete the Application", which notes at the very top that the loan applicant must provide evidence that they were unable to negotiate a loan with a bank or credit union. **It is very important to note that this requirement has been revised.** According to Kathryn Clout and Saryta Bhatla of the Department of Refugee Affairs, Ministry of Citizenship and Immigration Canada, the requirement to provide a letter from a financial institution demonstrating an inability to obtain a personal loan is now being waived for Convention Refugees who have been in Canada for less than three years. Those who have been here for more than three years must still produce a letter. In this case, it is helpful to provide refugees with a letter to bring to the bank explaining why they are applying for a loan and requesting that the bank provide a letter stating whether or not they have been granted a loan.

People assisting refugees in completing the loan application should be aware of the criteria used for assessing the application. First, applicants must demonstrate that they need a loan because they do not have sufficient financial resources to cover the fee. Present and anticipated income and expenses will be taken into consideration to assess their need for a loan. In particular, if the applicant will also be facing transportation costs of bringing family members to Canada, this should be indicated on the application as it will demonstrate a greater burden on the applicant's financial resources.

Second, the applicant's ability, or potential ability, to repay the loan is considered. This is a more complex assessment because it concerns a number of factors, some of which involve "predicting the future." Although there is no standard weight given to any of these factors, the following is a list of factors taken into consideration:

- a) literacy in own language and in English or French
- b) level of education
- c) work experience in country of origin and Canada
- d) transferable skills
- e) length of time in receipt of social assistance and probable length of time applicant will remain on social assistance

- f) number of potential workers in loan applicant's family within two to three years of the application date
- g) family's expected expenditure over the next three to four years
- h) family's potential income over the next three to four years.

P
ERSONS
UNDER 18 YEARS OLD
MAY NOT APPLY
AS THEY ARE
UNABLE
TO SIGN A LEGALLY
BINDING CONTRACT
(I.E. A LOAN
AGREEMENT)

Based on these criteria, there are several items of information that should be included in the application that may help obtaining a favourable assessment. For instance, although the application does not ask for details about the applicant's literacy, it would be worthwhile to indicate literacy level in English or French, possibly by attaching a certificate from a language training course they are enrolled in. Again, though not requested on the application form, the applicant should provide information about any training programs or volunteer positions, particularly those in Canada, that will help to indicate the applicant's transferable skills, potential for gaining employment (or better employment) and thus, the likelihood of short-term reliance on social assistance. This information can be included in the "Employment History" section of the application, or on an attached sheet. As well, although the loan application is submitted along with the application for permanent residence which requests information about the refugee's educational history, it may be useful to provide further details on the loan application itself.

Finally, there are a few miscellaneous things to note about the Right of Landing Fee Loan Application. First, persons under 18 years old may not apply as they are unable to sign a legally binding contract (i.e. a loan agreement). Second, if the loan is not granted and the refugee is still unable to pay the Right of Landing Fee, they remain protected by the principle of non-refoulement and thus cannot be returned to the country in which they fear persecution. Finally, refugees may re-apply for a loan if their first application is refused.

The transition from health coverage under the Ontario Health Insurance Program (OHIP) to the Federal Interim Health Program (FIHP) for refugee claimants residing in Ontario has inevitably created difficulties as one program replaces another. Persons who claimed refugee status before April 1, 1995, were covered by OHIP but have to transfer to FIHP. These persons

must visit their nearest Canada Immigration Centre (no appointment necessary), preferably well in advance of their OHIP coverage expiring, and request the "Annexed Letter" which indicates their coverage under FIHP.

Please note that if the refugee claimant is visiting the 443 University office in Toronto, they must go between 8:30 and 11:30 a.m. or 1:30 p.m. and 3:30 p.m., on Mondays to Thursdays, and if they are going to the Etobicoke location, they are required to go between 8:00 a.m. and 2:00 p.m. on Mondays to Fridays. For other locations, applicants are advised to check for specific opening hours.

Refugee claimants must have with them the following:

- a) all immigration documents, especially their "Determination of Eligibility Form"
- b) one passport-sized photograph of themselves (colour or black and white)
- c) proof of OHIP expiry - N.B. for those who do not have a temporary OHIP card indicating an expiry date, they must FIRST visit an OHIP office with their immigration documents and obtain a letter stating expiry of their OHIP coverage. This applies even to people who have never had OHIP coverage, but do not yet have FIHP coverage.
- d) someone to interpret for them if they do not speak English or French - this is necessary as they must sign a declaration stating they are not eligible for OHIP or any other medical insurance, and once they become eligible for OHIP (i.e. after having been determined to be a Convention refugee), they will not make claims under FIHP. The declaration must be translated to them if they are to sign it.

The "Annexed Letter" will be issued to them on the spot and is valid for one year. The letter will be used in much the same way as an OHIP card so refugees should carry it on their person.

While some persons who claimed refugee status after April 1, 1995 did not automatically obtain coverage under FIHP and therefore, must go through the process outlined above, Immigration has now streamlined the process. For persons who claim refugee status at a port of entry (border crossing or airport), their "Annexed Letter" indicating coverage under FIHP is now attached to their "Determination of Eligibility Form". For those who do not claim at a port of entry, but claim "inland", their "Acknowledgment of Intent to Claim Refugee Status Form" contains, in the comments section, notice that the person named in that document is covered under FIHP.

In the everchanging landscape of refugee programs and policies, the information in this article may soon be outdated as more modifications occur, but in the meantime it is hoped that some of this will be of use in assisting refugees to access the services they require and are entitled to.

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A RESOUNDING SILENCE:

THE FUTURE OF GOVERNMENT-ASSISTED SPONSORSHIPS ABROAD

BY BARBARA TREVIRANUS

What has happened to Canadian government sponsorship of refugees from abroad? Why, during a period of massive increases in the number of refugees globally, has the government had such difficulty meeting its own (ever-shrinking) targets over the past five years? Why, when the current government consistently states that it supports resettlement from abroad as the "most effective way to admit refugees to Canada who require resettlement", is there such uncertainty about the future of the government-assisted refugee sponsorship programme?

Resettlement is a major instrument of protection, but because of the burgeoning refugee population and the limited number of places offered world-wide, international pragmatism has de-emphasized resettlement as a durable solution over the past decade. Canada is one of only three countries in the world that operates a major refugee resettlement programme through overseas selection. Resettling to Canada refugees who are receiving only temporary protection in a neighbouring country, and who cannot repatriate, constitutes a vital part of our contribution to sharing responsibility for the international refugee burden. But how effective has this contribution been in recent years, and what is the long-term government commitment?

The questions concerning the low levels, effectiveness, and overall commitment to government-assisted sponsorship are not new. In the past year, however, Citizenship and Immigration has at least acknowledged some of the concerns by commissioning a series of studies on "fixing" the processing problems, and by going part of the way towards separating refugee from immigration programmes.

The planned new Resettlement from Abroad Class (RAC) will also address some of the restrictions in the eligibility criteria. In concert with these positive signs, however, came the announcement of the Right to Landing Fee, the overall warnings

about the limit on total funds dedicated to refugee protection, cuts and changes to settlement services, and the desire to develop "innovative new approaches to resettlement" that seem to lead to privatization of the programme.

The refugee portion of Canada's immigration plan includes those who were landed after having their refugee claim accepted in Canada, as well as government-assisted and privately sponsored refugees selected for resettlement from overseas. The Immigration Act of 1978 introduced the policy of reserving a portion of each year's immigration quota for refugees, and also created the provision for private sponsorship. The major change from these early years is that the bulk of the refugee quota is now taken up with refugees selected in-land, rather than overseas; and the media and public attention devoted to the plight of those already within our borders has almost completely overshadowed Canada's commitment to resettlement from overseas.

IN-LAND VS OVERSEAS PROCESSING

Among the Canadian population the distinction between the in-land and the overseas processing of refugee claims is poorly understood. While making a claim in Canada is a right, being permitted to apply for resettlement at a visa post overseas is a very limited privilege. The two systems are fundamentally different, and while concerns with the in-land system are familiar, the very serious overseas processing problems including logistical barriers to access, restrictive eligibility and admissibility criteria, limited human and financial resources, inconsistency of decision-making, lack of appeal and very long delays involved in overseas processing are less well-known to Canadians.

ELIGIBILITY CRITERIA/ LEVELS

In order to be considered by a visa officer abroad, a refugee must currently not only be found to be a Convention Refugee, but a

Convention Refugee in need of resettlement. The strict application of this eligibility requirement essentially means that only a tiny fraction of the world's recognized refugees are even eligible to apply for resettlement, as repatriation or local integration are deemed the desired solution for most refugees. While not feeling bound by their selections, the Canadian government certainly does quote the UNHCR when setting its levels for government sponsorship. The UNHCR 1995 "Assessment of Global Resettlement Needs for Refugees" calls for only 31,900 resettlement places worldwide, among a population of 23 million refugees.

Each year, the overall level set by Citizenship and Immigration for government-assisted sponsorship is divided into regional allocations, and from there subdivided into visa post allocations. Many of the visa posts cover a number of countries, and refugees lucky enough to be referred often wait years for their interviews. This year the regional allocations are as follows:

AFRICA	650
MIDDLE EAST	1525
ASIA PACIFIC	325
LATIN AMERICA	200
EUROPE	4200
SUBTOTAL	6900
RESERVE	400
TOTAL	7300

The basis for these allocations is Canada's assessment of the source of eligible refugees. These allocations offer a marked contrast to the lists of top source countries for refugee claimants in Canada, as refugees from some countries, Sri Lanka for example, are usually not considered in need of resettlement and therefore do not meet the eligibility requirements.

In the past, international requests for the mass resettlement of refugee populations were handled through the establishment of designated classes, which eased the burden of individual determination and resulted in speedier processing. The end of the Indochinese and Self-Exiled designated classes was a major factor in the drop in government sponsorships in the early 90's.

RESETTLEMENT FROM ABROAD CLASS

Over the past several years, the strict application of the eligibility criteria has led to the rejection of a high number of refugee applicants overseas. This even includes rejections of those referred to Canada for resettlement by the UNHCR, as the UNHCR uses broadened refugee definitions. No mechanism is in place to assist those who merit humanitarian consideration but might not meet the strict application of the Convention Definition.

In response to these concerns, and aiming to provide a comprehensive mechanism covering all overseas resettlement, a new Resettlement from Abroad Class (RAC) is being designed. While the creation of this class has been encouraged by refugee advocates for years, the most recent draft of the RAC differentiates between private, and government-sponsored refugees, and has limited flexibility on the basis of source country.

As currently envisioned, the RAC would consist of three

categories:

- *Convention Refugee Category (current programme),*
- *Source Country Category (replaces Political Prisoners and Oppressed Persons Designated Class)*
- *Country of First Asylum Category*

Schedules of eligible source countries are to be compiled for the Source Country and Country of First Asylum categories, and those "seriously and personally affected by civil war, armed conflict, or massive violation of human rights" from those source countries will be eligible if there is no possibility of a durable solution within a reasonable period of time. Significantly, the Country of First Asylum Category is to be applicable only to those applicants who have secured a private sponsorship.

The concern expressed in extending the Country of First Asylum Category to government-sponsored refugees is one of fear of being "overwhelmed with applicants", despite the fact that many limits on applications currently exist, and a new limit – a country source list – is being proposed. Excluding government-sponsored refugees from one of the RAC categories will significantly limit the flexibility of the new class, and calls into question the commitment to making government-assisted sponsorship work.

ADMISSIBILITY CRITERIA

Despite the fact that Canada resettles refugees from overseas as a humanitarian programme to provide protection, refugees must first be judged to have "settlement potential" and not present a medical burden. The application of these immigration criteria to refugee resettlement has long been an issue, particularly as they are applied to refugee women, but the admissibility criteria could be even less fair because of the implementation of the Right to Landing Fee. Canada's humanitarian image is severely tarnished by being the first country to charge a landing-fee. Eligible refugees are already being rejected as they are deemed not to possess the skills required to be able to pay back the transportation loan. How much greater is the burden when the \$975 per adult Right of Landing Fee is factored in? What about the much-lauded Women at Risk programme, which has been in review for years, and is constantly floundering on the issue of transportation loans?

THE FUTURE?

Will we soon be discussing the privatization of Canada's programme to resettle refugees from abroad? While a great deal of attention has been focused on reviving private sponsorship, and while efforts have been made to improve overseas processing procedures, there has been little said about the future of government sponsorship. Even the proposed new designated class excludes government sponsorship from a major component. In a year of many changes to our immigration programme, there has been little word about what was once Canada's major mechanism to provide refugee protection.

Barbara Treviranus is Executive Director of the Centre for Refugee Studies, York University, Toronto.

DROC AGAINST THE CLOCK



B Y A V V Y G O

Xiao Fang (not her real name) came to Canada from Mainland China in June, 1991 with her commonlaw husband. They made a refugee claim when they arrived at the airport. Shortly after she arrived, Xiao Fang's commonlaw husband left her. Being five months pregnant at the time, Xiao Fang was left on her own to fight her refugee case and had to find a job to sustain herself. She finally found one at a restaurant – although her employment authorization clearly prohibited her from working in the food

services industry; however, her job did not last long. She had to quit three months after she started when her first child was born. In February, 1992, Xiao Fang's refugee claim was rejected and her leave to appeal was denied by the Federal Court.

Thananayagam (not his real name) is a Tamil refugee from Sri Lanka. He filed his refugee claim in September 1991. His hearing did not take place until almost three years later in June, 1994. His lawyer, who has since disappeared, had adjourned the hearing several times, because he had not properly prepared for the case. After such a prolonged delay, the Immigration and Refugee Board finally rejected Thananayagam's claim in October, 1994.

Both Xiao Fang and Thananayagam now find themselves disqualified from applying to remain in Canada under the new "Deferred Removal Order Class", or DROC, a programme introduced by Minister of Immigration, Sergio Marchi, last

November. The DROC programme was supposedly set up with a view to allowing thousands of failed refugee claimants who have been left in limbo in Canada for the past few years an opportunity to permanently resettle in this country. Many of these claimants have been stranded here through no fault of their own. Their removal from Canada had been deferred indefinitely partly because of the unstable condition in their own country, and partly because of the incoherent policy of the Canadian government towards refugee claimants.

Mean-while, many of these refugees have established their home in Canada as the government slowly sorts out its plan towards refugees.

According to immigration officials, the purpose of DROC is to redress the unfair and absurd conditions that have been imposed on refugees as a result of government policies. In reality, however, DROC has simply become yet another absurdity. Why? To start with, many problems with DROC arise from its restrictive eligibility requirements.

So, what are some of the criteria that refugees must meet in order to qualify for DROC? First of all, each applicant must pay a \$500.00 application fee. Just like the "humanitarian and compassionate" application, and other landing applications, a DROC application does not come cheap. Assuming that the refugee does have some money to spare, he or she must still meet a number of eligibility criteria. The claimant must have lived in Canada for at

least three years since the day her claim was rejected by the Immigration and Refugee Board, or since the day her removal order was issued, whichever was the later date. As well, the claimant must have worked for at least six months after making her claim under a valid employment authorization. The claimant must also not have any prior criminal record (subject to a few exceptions).

Critics point out that what DROC amounts to is an official justification for the speedy removal of failed refugee claimants. Given that there is a three year residency requirement, many refugee claimants who are subject to an effective removal order and have not lived here long enough to qualify for DROC can be deported by the Canadian government any time before their chances to apply under DROC arrive. It is no coincidence that on the very day the Minister announced the launching of the DROC program, he also made known that the moratorium on deportations to a number of countries including Somalia, China, and Haiti were to be lifted. Indeed, as can be seen in the recent deportations of Russian and Chinese refugees, the government is not wasting any time in effecting these deportation orders.

Fundamentally, the restrictive eligibility criteria under DROC do not take into account the various disempowering circumstances facing many refugees. Nor do the criteria truly capture the ability of refugees to adapt and thrive in their new country, if "adaptability" is indeed a valid factor in assessing a successful DROC applicant.

Because of their uncertain status, refugees are often the victims of systemic discrimination in accessing employment. Many of them are simply not allowed to work because of the policy of the federal government, both under the Tories and to some extent the Liberals, not to issue work permits to claimants. Others find themselves jobless in a recessionary economy. For those who are lucky enough to get a job, their employment experience may not be recognized by the DROC program. Many Chinese refugees, for instance, can only find work in restaurants because of their lack of English skills. In doing so, they may have violated their employment authorizations, which often prohibit refugees from being employed in health and food services fields.

Refugee women who have to stay home to look after their children are also systemically excluded from qualifying under DROC. The lack of affordable child care means they are excluded from participating in the workforce. At the same time, women are also more likely to have their claim rejected because of the gender bias within our refugee determination system.

Still other refugees are excluded from applying at this point simply because of the delay in the processing of their claim. While in some cases the delay may have been caused by the claimants themselves, in the majority of cases it is the legal counsel or the immigration officials who are responsible. Theoretically, these claimants will be eligible to apply as soon as they fulfil the three year residency requirement. That can only happen if the government neglects to execute the removal order against the individual in the meantime.

The problem with the DROC programme lies not only with its eligibility requirement. More important, it is the inconsistency

in the overall government policy that keeps many refugees in an impossible situation. On the one hand, the government gives them a chance to stay so long as they have six months "legal" employment experience. On the other hand, the government also refuses to grant refugees an opportunity to work "legally" by taking away or refusing to extend their employment authorization. Further, with the introduction of the \$975.00 Right of Landing Fee, DROC applicants now have to bear the additional burden of paying the head tax. Without adequate financial resources, refugees cannot even have their application processed under the program. It will not be long before the programme will become redundant because no one will qualify.

The contradiction in the government's approach towards refugees is so flagrant that it is hard not to conclude that the DROC programme is nothing more than an exercise in public relations. It serves to silence refugee advocates by creating a facade that actions have been taken to assist refugees who have been left in limbo. The programme, which is allegedly based on a combination of compassionate and economic criteria, seems to satisfy those unsuspecting critics who believe that a good faith attempt is being made by the government to resettle failed refugees.

At the same time, the restrictive implementation of DROC also works well in satisfying those who want our doors to be closed to "undeserving" refugees forever. Since only those refugees who have worked and have no criminal record are allowed to stay, public concern that our country will be flooded with bogus refugees will be reduced. Tying Canada's economic interest to our international obligation towards refugees, the DROC programme feeds well into public anti-refugee sentiment and the Reform agenda to restrict refugees.

As there are no alternatives to DROC on the table, advocates can only hope to lobby for an improvement of the system as it now stands. Short of amending the DROC regulations to address these issues, the very least that the government can do is to provide policy directives to allow failed refugee claimants to obtain or extend their employment authorizations. As well, policies should include exemption from the six month job requirement for single parents and others who have demonstrated disadvantages in accessing employment.

Avvy Go is the Clinic Director, Metro Toronto Chinese & Southeast Asian Legal Clinic.

REFUGEE CLAIMS MADE AT BORDERPOINTS AND INLAND OFFICES

MONTH	1992	1993	1994	1995
Jan	3845	3413	1744	2100
Feb	3200	980	1530	1700
Mar	2915	1339	1617	2000

Source: Citizenship and Canada Immigration

NOT QUITE IN HARMONY - RECENT DEVELOPMENTS IN THE EUROPEAN UNION

B Y C H R I S B O L E S S J

Though the European Union (EU) wants to harmonise its immigration policy throughout Member States, which will lead to substantial reductions in the numbers of asylum seekers being permitted entry into EU countries, the harmonisation is not as smooth as some would like. One example of the discord is the fact that the Justice and Home Affairs Council of the Union was recently forced to delay the introduction of a single visa for visitors to EU countries. A uniform visa format taking the form of a sticker which would be placed in passports had been proposed, and there were plans for its introduction by the end of 1995, but the proposal has not been accepted by the UK who fear the free movement of people between borders.

Refugee advocates in Europe are concerned that regulations governing the issuance of the visa will become even more restrictive for citizens of certain countries than they are at the moment, further reducing the possibility of people going to Europe to seek asylum. The British government is concerned that a common visa for the EU will lead to the cessation of checks at borders, a move they are strongly opposed to, and which has prevented them from accepting the Schengen Accord.

The Schengen Accord was signed in 1985 by five Member States, namely the Benelux countries, France, and Germany, and later, in 1990, the Schengen Convention was signed, coming into force in 1993. Only from 26 March 1995, though, has it started to become "applied". The application of the Convention only concerns the original signatories plus Spain and Portugal, and, since 28 April 1995, Austria. Soon Italy and Greece will begin to apply the convention also. However, the present signatory states are believed to want a delay in the abolition of border checks at borders with Greece and Italy because of the relative ease of entry into those countries through large unguarded borders. EU estimates suggest that in the first few months of 1995 more than 20,000 nationals of the former Yugoslavia entered Italy clandestinely, with many moving on to other parts of the EU.

Elsewhere, almost as soon as the Convention began to be applied between France and Belgium, it was suspended. On 19 April, French authorities refused permission to the Belgian police to continue their hot pursuit of suspected criminals. Another Schengen initiative, Dutch efforts to allow airline passengers from Schengen-agreement countries to enter Amsterdam without passport control, was suspended on 1 May. Arriving passengers were given a magnetic card to allow them to pass through a turnstile, but it was so low that people simply jumped over. Neither was there any safeguard against an arriving pas-



senger lending a card to a non-Schengen arriving passenger.

Limited harmony seems apparent in the fact the EU agreed as recently as 21 June on a series of minimum guarantees concerning asylum procedures in Member States. The guarantees, however, are not a "common action" and thus have no legal binding upon Member States; rather, they take the form of a Resolution. The Resolution provides for rights of asylum seekers during the period of their examinations, hearings, appeals, and reviews, but leaves the details of how these rights are upheld to the legislature of each Member State. The Resolution also gives supplementary guarantees for women to be assigned qualified female officials and interpreters, and for minors to be allowed to be represented by a competent agency or a designated adult. Asylum claims believed to be "manifestly unfounded" will have none of these rights and claimants can be immediately returned.

Commenting on the Resolution, UNHCR expressed mixed feelings, stressing that the minimum guarantees must not become maximum guarantees. They are particularly concerned about those claims believed to be manifestly unfounded, as there is in these cases no provision for appeal or review, nor is there any possibility of legal representation since the decision can be made instantly at the port of entry.

Why harmonisation in the EU is so difficult, and the reason that the Resolution could not be adopted as common action is ultimately due to the "unanimity rule", which requires unanimous approval of all Member States before becoming an action of the Union. The unanimity rule has also made the adoption of a union-wide definition of refugees impossible. France, for example, wants to limit the definition of who is a refugee to only

those who flee state-engendered persecution. The U.K. is also unwilling to accept the definition of the 1951 Geneva Convention. Unanimity on the definition would imply a *defacto* harmonisation of refugee case law in each of the Member States, which would be almost impossible to achieve because of the great difference in legal systems and constitutional obligations.

There is, however, a certain degree of harmonisation, particularly in matters of cooperation involving only a few of the Member States. Such harmonisation took a new turn in March when three countries – Germany, France, and the Netherlands – coordinated efforts to have Zairian asylum seekers deported. It was the first time that efforts to deport failed cases were coordinated among EU countries. In Amsterdam, 25 supposed Zairians were put on a chartered flight for Kinshasa, and were joined by 6 more from Germany, accompanied by German border police. The plane then flew to Paris where a further 13 supposed Zairians rejected by the French authorities boarded. A number of the deportees, however, were not from Zaire at all. They included nationals of Côte d'Ivoire, Ghana, Senegal, Haiti, and even a

Latin American. Zaire refused to take them; four have since been returned to Germany, one to France, and two to the Netherlands. These last two now join the 9,000 other failed claimants in the Netherlands who cannot be deported, because their supposed country of origin will not accept them.

Despite the problems and the need for unanimity prior to common actions, harmonisation in Europe exists and will develop, particularly harmonisation of policies on immigration and asylum. Though not all countries in the European Union are applying the Schengen Convention, its principles of controlling entry and keeping extensive records is agreeable to all Members. Only the details on implementation divide them. Meanwhile, the guarantee of the right to asylum continues to be stripped away, the first step being vigorous efforts to prevent arrivals, the last step being equally vigorous and expedited removals – even if it is to some country other than the claimants own.

Chris Boles SJ works with JRS-Canada and is studying theology at Regis College, Toronto.

CANADA AND THE UN COMMITTEE

ON THE RIGHTS OF THE CHILD

B Y T I M W I C H E R T

How do we ensure that in all our actions concerning children their “best interests” are a primary consideration? Although imperfect and limited, international instruments such as the Convention on the Rights of the Child attempt to regulate and encourage acceptable norms in this regard. Canada, which ratified the Convention in 1991, came before the UN Committee on the Rights of the Child in Geneva on May 24 and 26, 1995 for its first evaluation.

The committee had before it a 239 page report which the Government of Canada had submitted, as well as written submissions from non-governmental organisations such as the Inter-Church Committee for Refugees and the Canadian Coalition for the Rights of Children. Both of these NGOs had also made oral submissions to the committee at pre-session meetings in January of this year. With that background, the committee, made up of 10 independent experts from different regions of the world, (namely, Egypt, Burkina Faso, Philippines, Sweden, Israel, Russia, Barbados, Zimbabwe, Portugal and Brazil) prepared a list of issues and concerns which formed the basis of the May meeting. The discussion was officially between the Canadian representative and the committee members, with NGOs left to make their comments and submissions in the corridors.

Amongst other things, the committee was concerned about

issues relating to education, health, aboriginal matters, immigration, juvenile justice, mental health and poverty. Specifically, there was concern expressed about the lack of implementation and harmonisation of policies related to children within the federal structure; about the lack of formal training on children's rights for professionals - judges, lawyers, immigration officers, peace-keepers and teachers; and about the fact that the key Convention prin-



CONTINUED ON PAGE 14.

ciple of the best interests of the child does not appear to have been reflected in legislation, especially relating to immigrants and refugees.

It was difficult for a real discussion to develop between the committee members and government representatives. There were a number of important issues to be dealt with, and never enough time. Refugee issues, for example, were dealt with primarily under "special protection measures" at the end of the agenda. Furthermore, neither the committee members nor the government representatives fully knew or understood all the relevant facts, or all the intricacies of Canadian law. Potentially good discussion was therefore pre-empted by fuzzy questions or fuzzy responses, or by someone suddenly moving on to another issue.

Despite this, it was very encouraging that three of the experts found a number of opportunities to focus on refugee concerns. Indeed, immigration and refugee issues figured prominently in the discussions, prompting one observer from the UNHCR to comment that it was the first time the committee had directed such a consistent array of these questions toward a country. In particular, the committee focused on the best interests of the child and the child's right to be heard in immigration hearings, but they also posed questions regarding the separation of parents and children, the effects of the new landing fee, medical coverage, and detention. The committee had been well briefed by the NGOs on these points, and was reasonably aware of the various judicial positions. It was clearly not satisfied with the government's hands-off approach to the particular case of Canadian-born children of non-citizens about to be expelled from Canada.

An interesting exchange took place on the issue of immigration detention. The Canada Immigration representative was somewhat hard-pressed to explain whether a child's best interests and special needs were accommodated in detention. While indicating that it was extremely unusual for children to be in

detention for immigration related reasons, she proffered the notion that in some cases it could actually be in their best interests. Specifically, detention ensures that they remain within the asylum-seeking process, such that, in effect, children are protected from parents who might be tempted to remove themselves illegally from the process. The committee was not convinced; members indicated that it was difficult to envisage any detention as being in the best interests of a child. Indeed, in its final suggestions and recommendations it reiterated the Convention principle that detention or imprisonment of children should only be used as a measure of last resort.

It also recommended that Convention principles be implemented in "all matters relating to the protection of refugees and immigrant children, including in deportation proceedings". Further, it suggested that "any feasible measures be taken" to facilitate and speed up family reunification, and that solutions should be sought to avoid expulsions causing separation of families.

The Committee on the Rights of the Child acknowledges that Canada basically sets a good example in terms of its policies and programmes towards children. Indeed, on the international spectrum, children in Canada are better off than they are in almost all other countries in the world. As a result, the Committee's conclusions and observations are one of the few ways in which international pressure can be brought to encourage better protection of children's rights in Canada. Its concluding observations are perhaps the strongest diplomatic language that can be used. While offering its encouragement and expressing its concerns, the committee is very much dependent on other actors within Canada to take these concerns forward.

Tim Wichert has been seconded by the Mennonite Central Committee to focus on refugee issues at the Quaker United Nations Office in Geneva.

NATIONAL REMOVALS REPORT

FROM JANUARY TO FEBRUARY, 1995

MONTH	TOTAL	FAILED REFUGEE CLAIMANT					DETAINED	ESCORTED	SJF	DD - NOT REFUGEE
		DO	EO	DPO	DD	BA				
Jan.	330	29	40	20	12	31	196	80	3	18
Feb.	400	34	42	35	10	36	164	70	9	15
Total	730	63	82	55	22	67	360	150	12	33
%	100	9	11	8	3	9	49	21	2	5

LEGEND

DO-DEPORTATION ORDER

EO-EXCLUSION ORDER

DPO-DEPARTURE ORDER

DD-DEEMED DEPORTATION

BA-BACKLOG

SIF-SINGLE JOURNEY FORM

Source: Citizenship and Immigration Canada as Compiled by JRS-Canada under Access to Information request.

UNACCOMPANIED MINORS AND IRB

B Y B R E N D A
W E M P

Children are among the most vulnerable victims of war and civil strife. As a consequence, many desperate families, unable to flee themselves, try to save their children's lives by sending them abroad.

According to the IRB the largest numbers of such "unaccompanied minor" refugee claimants in Canada come from China, Sri Lanka, Somalia and Iran.

To date, there are no special procedures for dealing with children who claim refugee status, other than the requirement that any claimant under the age of 18 must have a "designated representative" to safeguard his or her interests in the determination process. This representative is usually a relative or friend of the minor claimant, who may or may not have personal knowledge of the facts of the claim. The minor claimant is also entitled to legal representation, as are all claimants.

As a lawyer, I have represented a number of unaccompanied minors ranging in age from 8 to 17 years old. It is always a challenge to prepare and present such cases to the IRB.

The major difficulty for counsel is in eliciting sufficient evidence to establish the claim. Children may not even know why they were sent here, let alone be capable of providing any details.

Board members have also had difficulty knowing how to deal with minor claimants. Although I have personally found Board members to be sympathetic and open to such cases, in some instances children have been asked to testify as though they were adults, and then their testimony has been judged not credible and their claims rejected.

The Refugee Lawyers' Association (RLA) established a Committee to consider the issues and to make representations to the IRB as to ways of dealing with such claims.

The Committee members gathered documentation and met with experts in the areas of child psychology and law. It also approached the IRB and suggested a working partnership on this issue. As a result, in December 1994, Chantal Bernier of the IRB, Special Advisor to the Chairperson, contacted the Committee to set up a consultation with these experts on the application of the refugee determination process to minor claimants.

The meeting was attended by Geraldine Sadoway, of the Refugee Lawyers Association; Jeffrey Wilson, a lawyer specializing in children and child psychiatrists Dr. Granville Da Costa and Dr. Marlinda Freire. Both psychiatrists have worked extensively with refugee children. Ms. Bernier, two other staff, and one Board member were in attendance from the IRB.

Ms. Bernier has now prepared a written presentation for the IRB, containing a summary of the experts' comments, as well as some examples of cases of minor claimants before the Board. The following is a brief summary of its conclusions:

1. The ability of minor claimants to testify as to their past experiences varies depending on their age group and on the degree and kind of trauma they have experienced. The reliability of the testimony of children, and in particular traumatized children, varies greatly and is subject to many distortions characteristic of a child's mind. It is important that children's testimony be elicited by skilled interviewers.
2. As much as possible, evidence to determine the claim should be elicited without making the child testify. Evidence can be sought from family members or from documentation about the situation of children in the country of origin. It can also be obtained from experts, a psychologist or social worker.
3. Where a child must testify, a more informal process is necessary. Members hearing minor's claims should receive specific training and have a "basic but solid understanding of the main developmental issues in children and adolescents".

The Board is considering modifying its procedures and issuing guidelines to assist members in dealing with minors, and has created "Sub-working Groups on Minor Claimants" to work on this issue. Ms. Bernier's paper will presumably form the basis for such guidelines.

The Board's recognition that special procedures and approaches are necessary when dealing with unaccompanied minors is a positive development, and Ms. Bernier's interest in meeting with experts selected by the Refugee Lawyers' Association is encouraging. I do not believe, however, that the development of procedures and guidelines should be based exclusively on that brief consultation, with its emphasis on evaluating the oral testimony of children. Clearly, guidelines and procedures should ensure that children are not further traumatized by the refugee hearing process.

In my view, greater emphasis should be placed on developing alternate approaches and methods of evaluating the claims of unaccompanied minors. The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (at paragraphs 213 to 219) provides some guidance, and emphasizes the importance of "objective factors" such as the circumstances of others from the minor's country of origin. The Handbook also indicates that the cases of minor claimants "may call for a liberal application of the benefit of the doubt".

Ms. Bernier has provided a copy of her paper to the Canadian Council for Refugees and CCR is now developing a position paper on children refugee claimants.

The RLA Committee on Minor Refugee Claimants is also continuing to work on the issue, and we would be pleased to meet with the local IRB "Sub Working Group on Minor Claimants". We have not, however, been invited to do so to date.

We certainly hope that the IRB will be open to further input and participation from lawyers and others in the community on this important issue, rather than presenting guidelines and procedures as a "fait accompli".

Brenda Wemp is a barrister and solicitor working with the Refugee Law Office in Toronto.

CACHET STAMPS IN SRI LANKA AND ELSEWHERE?

The following letter from a Jesuit in Sri Lanka raises an important and disturbing issue for refugees, that of Cachet Stamps, stamps in passports indicating that a request for a visa to Canada has been rejected. JRS-Canada invites readers who know of other instances of the use of cachet stamps to provide details.

Dear Editor,

Is the practice of the "cachet stamp" (called such by the Canadian High Commission in Colombo, Sri Lanka, in its correspondence with me over this issue) known to the Government of Canada, and, if so, is it used by all Canadian visa-issuing authorities in all countries? If it is used only selectively in certain countries, what is the criterion used for the selection of these countries? How does the Canadian Government justify the "cachet stamp" as being in accordance with human rights?

I enclose a copy of my letter on this subject to a daily English newspaper in Sri Lanka, (*The Island*) published on 22 May 95:

CANADIAN CACHET STAMP VIOLATES HUMAN RIGHTS

To take up again the matter of the cachet stamp placed on passports by the Canadian HC in Colombo to record the refusal of the visa...Very regrettably, I learned from a victim - again a young man whose future lies ahead of him - that the Canadians still follow the same practice. But with two differences.

In 1991 the passports were stamped twice with the visa

refusal, whereas the passport of the young man two weeks ago was stamped once only. But, as if in compensation, the young man in 1994 had to pay 1975 rupees to the Canadian HC, which was not refunded, even upon request, when the Visa Officer returned the passport.

Such a fee was not levied when the passport, stamped with the refusal, was returned to my colleagues in 1991. To have to pay nearly Rs. 2000 for the privilege of having one's passport stamped with a visa refusal is, I think, the giddy limit.

For the HC to say that the cachet stamp is purely an identification mark, and not the record of a refusal is, I am afraid, incorrect. If it is purely an identification mark, then it should be stamped with the same endorsement "CVV" with a number and date on every passport handed in the Canadian visa authorities for the purpose of obtaining a visa, in Sri Lanka or elsewhere, whether the visa is eventually given or not.

The man at the CHC who invited me to a personal interview in 1992 in order to explain that the cachet stamp was only an identification mark was forced to come clean when I, arguing to the contrary, asked him pointedly: 'Would you like to have your passport stamped with such a cachet stamp?' he answered, 'Frankly, I wouldn't!' Why not if it is only an identification mark?

With this practice of cachet stamping visa refusals on passports handed in, for Canada to put itself forward as a preacher of human rights to the Third World is, to say the least, tomfoolery of a high degree.

PAUL CASPERSZ, SJ,

COORDINATOR: SATYODAYA CENTRE, KANDY

REFUGEE UPDATE

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