

Refugee Update

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

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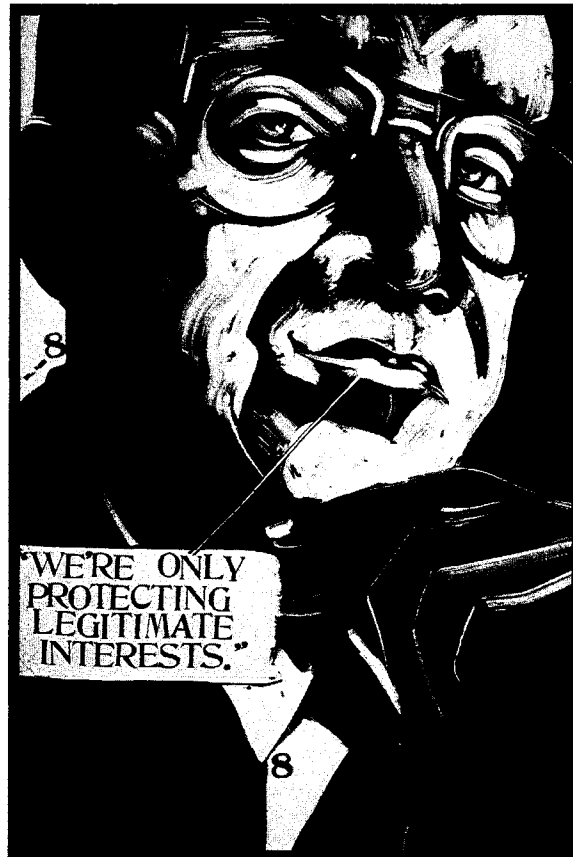
Rumoured Safe Country Memo Surfaces

The existence of a "Memorandum of Understanding Between the Government of Canada and the US" has been rumoured since October of last year. This document would outline a Safe Third Country or "Burden-Sharing" Agreement whereby either country recognizes the refugee determination system of the other as compatible. As a result, refugees travelling through one country to make a refugee claim in the other can be turned back to the first country to make the claim there. Recently, such an agreement has been made between Germany and Poland as the first step of a greater EC intension to allow refugees to make a claim in only one member nation of the EC.

The US draft of the memorandum finally surfaced as part of the preparatory documents for the Standing Committee on Employment & Immigration Main Estimates Meeting held March 25th. At the meeting, Immigration Minister Bernard Valcourt appeared unaware that the document had been made available. He stated that the document has not been discussed at the ministerial level (that is, it has not passed by his desk). He put off responding to its content for this reason.

The next day, Canadian officials stated that officials on both sides of the border are in agreement with this draft and are waiting for the consent of their administrations. It has been

held up in the US by slow Clinton appointments. Mr. Valcourt is saying that consultations will be held before a final agreement is implemented in July, yet he is reluctant to pursue those consultations on the basis of the current draft.



Sylvia Sue Buck

Does the US Protect Refugees?

The recent US policy toward the Haitians has international human rights bodies questioning whether the US is upholding international obligations towards refugees. The most recent concern has been Mr. Bush's Executive Order of May 24th, 1992, mandating the interception and return of all Haitian boat people by the U.S. coastguard. The new Clinton administration has not only continued this policy but stepped up intervention on all sides of the island. Arthur Helton, of the U.S. Lawyer's Committee for Human Rights cited before the standing committee on Bill C-86 that the U.S. Haitian policy constitutes a "fundamental and flagrant violation of Article 33" (the *non-refoulement* article of the U.N. Convention).

Question has also been raised about whether the US uses non-discriminatory application of criteria in making refugee determinations. Throughout the 80's only 1 to 3% of Salvadoran and Guatemalan claims were approved. In a 1990 court

case the US government admitted their discrimination in these cases. Even though the US now has a new determination system, early criticism has pointed to the lack of funding, lack of Asylum Officers and a faltering documentation centre. Whether the system floats or not, the United States has still not ratified the 1951 Geneva Convention, nor shares an obligation with Canada to uphold the Covenant on Civil and Political Rights, the Convention against Torture or the Convention on the Rights of the Child. What guarantees are there that refugees we send next door will have their cases heard in both an unpoliticized way and in a just manner?

Omissions in the Memorandum

Groups such as the Canadian Refugee Lawyers Association (RLA) had immediate criticisms of the memorandum itself. An obvious omission is the lack of any process for the timely unification of refugee families, members of which may, for example, find themselves stranded in the US while the remainder of the family is being settled in Canada. Children (young adults) may find themselves not only separated from their parents, but they would have no possibility of reuniting with them across the border in the future. Traumatized families must remain together if we really care for their establishment and psychological well-being in North America.

Second, time limits for transfers through one country to the next are not only unclear but seem so short (24-48 hours) as to only favour those who are travelling by airline and with a visa. At the outset, therefore, the bias is against such refugees as the Haitians, who arrive by boat, or Central Americans who travel by foot, car, or bus.

Continental and International Implications

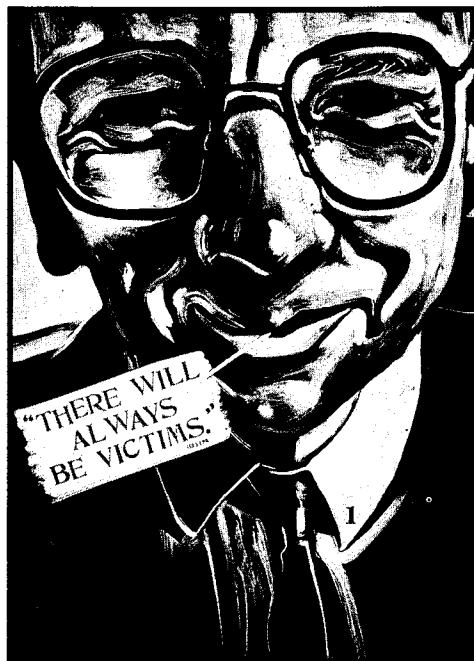
Why would the US consider such a deal when more refugees pass through the US to go to Canada rather than the reverse? The Inter-Church Committee for Refugees believes that an agreement such as this only makes sense if one includes Mexico as the next signatory. In that scenario the US stands to gain by effectively cutting off the northward overland flow of refugees from the Caribbean, Central and South America. Even though promoters of the North American Free Trade Agreement (NAFTA) have clearly stated that immigration issues are off the agenda, this parallel but secret deal concerning refugees has been in the works for the past year. Indeed, Canada and the US approached the European Community to join their "burden-sharing" agreement but were put on hold. Entrance, therefore, into a united First-World refugee block would depend upon North America demonstrating its intentions within its own continent first.

While an agreement such as this appears inevitable, refugee advocates in Canada and the US need to press for immediate safeguards. Many are calling for an independent and impartial commission to monitor these proceedings. Unfortunately, the Immigration Minister will not likely wish to discuss Safe Third Country until it is a "done deal". For this reason communities are now bringing this draft agreement to the attention of their refugee lawyers, counterpart agencies across the border and the media.

Copies of the 5 page Draft Memorandum are now available from Refugee Update. ■

POINTS OF CONTACT: NAFTA and Immigration

While the Mulroney government has been adopting free trade policies, it has also been allowing many new comers into Canada. For this reason alone it is worth asking if there is a connection between the Tory free trade and immigration agendas. But there is another reason. Large numbers of refugees and immigrants have arrived from countries and regions already under free trade regimes: Asia, Latin America, the Pacific Rim, Africa.



Sylvia Sue Buck

Four key points of intersection connect the North American Free Trade Agreement (NAFTA) and Canadian immigration policy. One is the question of how immigration issues were either written into or left out of NAFTA. Second, policies similar to NAFTA in other global regions displace people and cause them to flee as refugees and migrants to countries like Canada.

In the third place western countries including Canada, are trying to ensure that people fleeing free trade regimes do not gain protection under international refugee law. And finally, free trade targets the weakest sectors of the labour market which is typically made up of newcomers, especially women.

The official line on NAFTA is that immigration concerns were left off the agenda. But this needs to be seen as a tactical means of dealing with the many immigration issues naturally involved in any free trade agreement. For example, NAFTA spells out how business and service people will be permitted to move freely across borders. By removing immigration from the agenda, the architects of NAFTA sought to avoid a number of sticky issues. Most of those working in the horrendous labour and environmental conditions of Mexico's existing free trade zones are migrants. In 1992, fifty-four Mexicans were accepted as refugees in Canada. Whereas labour is free to move within the European Community, workers will not be free to move under NAFTA.

A major quid pro quo between the US and Mexico has been that foreign investment in Mexico under NAFTA would give Mexicans the jobs they have been seeking in the US and hence reduce illegal migration. But this has been an argument

for public consumption only. Policy makers know that the free-trade *maquiladoras* are not a workers paradise. They also know that powerful US industries rely on an illegal workforce. And finally, they know that it is not simply employment which has drawn Mexicans to cross the border for centuries.

A more important concern with far less visibility in NAFTA has been Mexico's willingness to accept US immigration (INS) resources to strengthen the southern border with Mexico. With immigration not on the official NAFTA agenda it is difficult to identify what inducements Mexico has received in exchange. The same principle applies in the impending "burden-sharing agreement" between Canada and the US. A central issue in recent changes to Canada's Immigration Act (Bill C-86) is that Canada wants to make a deal such that all asylum seekers who enter Canada through the US can be turned back to have their claims heard in the US. The big question is: what's in it for the United States? The answer lies buried within the two thousand pages of NAFTA.

Many of the recent newcomers to Canada are probably more familiar with policies like NAFTA than most Canadians. Those arriving from the Philippines, Malaysia, India, Sri Lanka, and other countries especially in the South have witnessed first hand the social devastation resulting from free trade policies. The transformation of domestic economies into export economies under free trade has broken traditional life patterns - has rendered once sustainable communities unsustainable. Since the 1970s, literally millions of people have been squeezed out of their homes to look ever farther afield for work. They have been called migrants, economic refugees, and guest workers. Canada has been a prized though largely inaccessible destination for these unfortunates since it offers the possibility of permanent residence, but only to those who can prove refugee status.

A major political objective for the Tories in Bill C-86 was to further undercut public sympathy for refugee claimants. New measures like finger-printing, tougher detention rules, and fines for airlines bringing persons with false documents were all explained in terms of protecting Canadians and the integrity of the system. There is, however, a nastier link between weakening provisions for asylum seekers and free trade policies like NAFTA.

International refugee law protects the right of persons to flee their country, even with false identification. And it spells out that countries should at least interview asylum seekers to determine whether or not they are refugees who, by definition, should not be forcibly returned to the place where they face persecution. These rights can be viewed as a direct threat to the architects of free trade. If workers can escape the imposed impoverishment of a free trade labour market, then that labour force gains leverage toward the improvement of those conditions. International refugee rights are a legal means for workers to escape free trade. This is a necessary consideration as countries like Canada impose suspicion and restrictions on refugee claimants.

Finally, there is the fact that free trade preys on the weakest segments of the labour force. It is no coincidence that the textile and garment industry, employing mainly immigrant women has been among the most devastated sectors in the

European News Breakdown

- ❑ European immigration ministers meeting last November passed a resolution on expulsions stipulating that persons under expulsion orders are to be notified, except where national security makes this undesirable. They have a right to challenge an expulsion order and they have a right to legal counsel.
- ❑ Results of an opinion survey carried out by the Organization for Migration in Bulgaria, Ukraine and Russia has found that only about 27% of respondents would consider emigration.
- ❑ The Swedish Immigration Board has decided that rejected refugee claimants who do not apply to leave the country will lose their right to social assistance.
- ❑ In January, The Prime Minister of Denmark was forced to resign over a scandal in which senior government officials gave misleading information to the Danish Parliament so as to hold up family reunification for Sri Lankan Tamil refugees. Over 5,000 Tamil refugees and asylum seekers now fear a public backlash arising from the scandal.
- ❑ On January 26, five Tamil refugees were found dead in the back of a truck along a highway south of Vienna, Austria. A diary found on one of the bodies indicated that they came from Sri Lanka to Moscow and were headed for Italy. Austria accepted only 3% of Sri Lankan claims in 1992.
- ❑ Asylum applications from the former Yugoslavia were accepted by: Belgium (3,371), Denmark (7,323), France (4,200), Germany (250,000), Portugal (150), Spain (4,650), and the UK (4,624).
- ❑ The Swiss Office for Refugees (ODR) is planning to develop a system of repatriation assistance for rejected asylum-seekers to be implemented this summer.

(Source: Migration News Sheet #119-120)

post Canada-US free trade era. Sectors employing large numbers of newcomers will remain key flash points for the struggle against NAFTA. Some will target the newcomers with their anger. This is a mistake which will only divide workers and weaken resistance.

A smart strategy to resist NAFTA will be one that points to the wretched working conditions newcomers currently face: non-unionized factories, under-the-table deals, piece-work at home, and conditional work permits - all of which subject workers to racism, discrimination and harassment. These conditions illustrate the link to conditions in Mexico and they concretely indicate where NAFTA could take the rest of the Canadian labour market. It will also send a signal to newcomers that their reality is not being overlooked and that they are welcome to join the struggle against NAFTA. ■

ANALYSIS: Between the Cracks

by Tony Cosentino

Rosa Mejía (not her real name) and her three children fled El Salvador in mid-1991. After three weeks of perilous travel through Guatemala, Mexico and the U.S., Rosa claimed refugee status at the Canadian border. Her claim was found to have a credible basis and was issued an Employment Authorization. She immediately found work as a dishwasher. Six months later, her case, presented by an unprepared lawyer, was rejected by the IRB. An unsuccessful appeal by the same lawyer saw the withdrawal of her Employment Authorization, Social Insurance and health cards.

Immigration officials called her employer and explained that she was no longer permitted to work in Canada. Despite the granting of a Legal Aid Certificate for her final Humanitarian and Compassionate review, she was denied General Welfare Assistance until her upcoming review could be confirmed in writing by Immigration. She hopes to appeal the decision through the Social Assistance Review Board. In the interim, however, and without assistance, the Mejías were without any means of support.

A sympathetic landlord allowed them to remain in their apartment for a few weeks after the expiry of the last month's rent. Most shelters were unable or unwilling to accept Rosa and her children, either because they were full or because Rosa was not receiving welfare. A supervisor at a municipal shelter finally agreed to let them stay on the basis of her Legal Aid Certificate. At last word, the Mejías were still there, awaiting the outcome of their Review.

Who are Non-Status Refugees?

Rosa is one of the growing number of persons legally residing in Canada designated "non-status" and thereby

having all social support cut from her. Non-status refugees fall into three groups:

- i) Those whose claims have exhausted all avenues of recourse and are not being deported due to civil strife in their homeland. Many Somali and Chinese claimants, for example, remain in this type of limbo;
- ii) Those whose claims have been rejected, yet remain legally within the determination system to await appeal or final review;
- iii) Those trying to save a little money while awaiting their departure notice.

The net effect is devastating. While facing the trauma of having their refugee claim rejected, the new immigration and welfare measures mean they lose everything at the same time: their jobs, eligibility for social assistance, health care,

education, their homes, child care, etc. They are being made entirely dependent upon the charity of those who have no funding to serve them: friends, church groups, health clinics, food banks, etc.

Up until a few months ago, Immigration removed people's documents only just before the person(s) actually left the country. And under Welfare Law, eligibility has been found by the courts to apply to a person's physical residence in the province and not on their immigration status.

These new practices have the net effect of appearing to coerce people into leaving Canada. One might conclude that this is simply Immigration Minister Bernard Valcourt following through on his promise to get tough with what he calls "abusers" of the system. But the reality is much less clear and consistent.

For example, in some cases, such as Rosa's, it is Immigration who calls rejected claimants in and removes their work permit, health card, SIN card and even their passport. They lose their jobs and are denied eligibility for welfare. In other cases it is Welfare who calls people in and informs them that they are cut-off because they no longer have status. It's hard to find the source of the problem.



Meg Crocker-Birmingham

Immigration does not keep provincial Welfare bureaucracies abreast of people's status, though this could soon be changing. Currently it is up to Welfare to check with Immigration. And of course, both Immigration and Welfare are facing serious cuts in their budgets and resources so the level of up-to-date coordination between these bureaucracies is minimal.

Humane Removals

The plight of non-status refugees raises questions about the ethics guiding Canada's refugee determination system and its commitment to a so-called "humanitarian tradition". Fundamental to this humanitarianism is the right to seek employment. Individuals at work cannot only realize their potential as persons through creation, production and contribution to their society but refugees actually stimulate our economy through consumption and production. The bureaucracies here, however, have chosen to remove work permits from those who, while in limbo, have nowhere else to reside but Canada.

Many refugees have faced unimaginable horrors in their homelands and are anxious to get their lives back on track. Inability to work, coupled with cultural and linguistic isolation often leads to further suffering, depression and illness. Those who have worked with refugees will recognize the phrase "I have suffered more here than I did back home" even when going home would mean certain death.

But a larger issue reveals itself in these new measures that have many First World countries asking a fundamental question: *are we emptying people's pockets before removing them?* These practices, however unintentional, ensure that Canada deports its refugee claimants penniless. One can only interpret this move as done in the name of deterring future refugees from even thinking about making a refugee claim in Canada.

Solutions?

One solution to the plight of non-status refugees lies in protection of the right to seek employment. This requires that our government recognizes refugee claimants' need to work from the time they make their claim until they actually leave Canada. In the event that such persons are in need of social assistance, this option should be available to them throughout their stay as well.

Second, Canada must seriously ask itself why it insists on punishing those who are appealing their refugee claim, or who are considered outside of our narrow refugee definition. The Swiss Government is now considering a removals package for rejected refugee claimants. They would be entitled to work up until they leave, given full social services, including counselling, as well as a small departure allowance, if necessary, to facilitate their departure or repatriation..

Considerations such as these need to be urgently addressed. Thousands in our country await decisions on their claims and decisions on their futures while being forced to live in a dehumanizing state of limbo: thousands like Rosa Mejia and her children. ■

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New IRB Guidelines on Gender Persecution: Pros and Cons

On March 9th, the Immigration and Refugee Board chairperson, Nurjehan Mawani, issued guidelines on women refugee claimants fearing gender-related persecution. These are the first to be issued under the proviso of the current immigration law (Bill C-86). As a product of consultations within the Board and with selected experts, they are intended to advise IRB members how to assess cases where gender is a factor.

The guidelines have classified women refugee claimants into 4 broad categories:

1. Women who fear persecution "**on the same convention grounds, and in similar circumstances, as men.**" Such claims as these neutralize issues of gender in situations of generalized persecution.
2. Women fearing persecution for **reasons pertaining to kinship.** Recognition of women as "members of a particular social group", their families, acknowledges the victimization of women as the indirect target of persecution against their husbands, parents or children.
3. Women who fear persecution as a result of certain circumstances of **severe discrimination on grounds of gender** in which the state is unwilling or unable to protect them. As in No.2, they would be considered as "members of a particular social group." This situation would range from domestic violence to persecution for participating in a women's sub-group.
4. Women who fear persecution for "**failure to conform to certain gender-discriminating religious and customary laws and practices.**" This would be considered persecution on the "grounds of religion or political opinion", (within the UN Convention) and would include such acts as choosing their own spouses, wearing make-up, length of hair or type of clothing - contrary to the social statutes of their country.

Special attention to persecution on the basis of gender is not new in both the global and national levels. Efforts for the 1951 U.N. Convention on Refugees to include gender persecution date back to a 1984 European Parliament resolution and a 1985 U.N. Executive Committee (ExCom) conclusion on "Refugee Women and International Protection." The ExCom in 1990 emphasized that severe discrimination could form a basis for granting refugee status to women.

The ExCom further mentioned that the protection of refugee women requires compliance not only with the Convention, but also "with other relevant international

instruments." Indeed, German, French and British Courts have frequently recognized gender related persecution as a basis for refugee claims.

In Canada, the former Immigration Appeal Board and the current CRDD have, in some cases, understood women as "members of a particular social group": the family. On the heels of a 1992 case of a Trinidadian woman subject to wife abuse, the horrors revealed of the Bosnian rape camps, and the serious neglect of women's issues in Bill C-86, NAC and other Canadian women's groups requested Ottawa to make Canada an international refuge for women. As a federal election approaches, women's groups were finally heard.

The Pros

The guidelines should no doubt be considered a step forward for refugee women's protection. Worth noting are that:

1. Canada has finally recognized the growing trend in the U.N. and among other host countries the concern for gender persecution.
2. The existence of gender persecution guidelines will certainly help to create an environment where a woman's story can be told and where she could expect serious consideration of its content by Board members.
3. The guidelines will help to foster a consistency among IRB members across every region in gender related cases.
4. Board members must provide written reasons if they have departed from the guidelines. These reasons will be scrutinized when a judicial review is pursued.

The Cons

These guidelines, however, suffer many limitations to address the complexity and multi-faceted dimensions of the issue:

1. The application of the guidelines are voluntary and are not legally binding upon the IRB. Mawani insists they should not and will not infringe upon the "effective independence" of each member.
2. The language of the guidelines is not clear enough to rule out different interpretations and inconsistent decisions. Terms such as "severe discrimination", "adequate protection", "random violence", and "possibility of an internal flight alternative" remain open to various interpretations.
3. Similarly, the guidelines hardly provide clear recommendations about such female specific experiences as infanticide, genital mutilation, physical disintegration,

compulsory sterilization, bearing illegitimate children, forced marriage and abortion.

4. Stateless women and women who have escaped generalized violence and tribal wars are virtually neglected by the guidelines. This group of women may face extreme hardship and persecution in case of return and are in danger of, among other horrors, being forced into prostitution.
5. Board members are advised to "ascertain whether the claimant's fear of persecution is for any one, or a combination, of the grounds enumerated in the UN Convention refugee definition." The guidelines fail to offer alternative or expanded definitions to challenge the Convention's limitations.

And More Cons

Furthermore, the guidelines must also be considered within the context of IRB and Immigration Department trends and policies which are clearly restricting refugees from Canada - of which 80% are women and children:

1. New powers acceded to border officials (SIO) allows them to turn away anyone without due process. The first person a woman meets is a uniformed authority figure with sweeping powers to refuse a claim and no one there to advocate on her behalf. Gender guidelines do not apply to SIO decisions.
2. With the intention of our new refugee law to land all refugees abroad and discourage inland claims, much has been left to regulations to determine the selection priorities abroad. No assurance has been given that women refugees will be a priority, while at home these new gender guidelines would be accessed by less and less refugees.
3. The process for husbands to sponsor their partners regularly takes 2 to 3 years to complete. If the relationship breaks down, often the woman is deported. For this reason many women stay in violent relationships rather than face deportation.
4. The special "Women at Risk Program" of 1988, intended to prioritize vulnerable refugee woman abroad for selection in Canada has failed miserably. Only 158 women arrived in its first 4 years.
5. Board members have often not considered rape as a persecution. Very recently a member referred to rape as an "unpleasant experience" rather than a "degrading treatment". These are symptomatic of the board's inability to date in dealing with gender-related persecution.

Refugee rights workers and womens' organizations will remain vigilant to monitor and promote the application of these guidelines. Similarly, we must pressure the government to protect these guidelines by improving their text, expanding the Convention definition, and making them legislation. Hopefully such action as this will prioritize women's refugee rights throughout the Canadian Immigration system and systems of other countries into the 21st century. ■

Reflections from Nada

A woman comes to Canada seeking refuge and runs up against a process designed for men, a process which batters her and then spits her out. The problem is not new, but there has recently been a surge of interest in it.

Much of the media attention has centred on "Nada," a Saudi Arabian woman in Montreal who claimed refugee status here because she could not bear to live with the restrictions imposed on her in Saudi Arabia. She was rejected by IRB Board Members (both male) who heard her claim. She was told by them that she should have obeyed the laws of general application at home. Her case perhaps touched people's imagination because of the very ordinariness of her demands: the laws she did not want to obey prevented her from wearing what she wanted, from travelling freely and from making her own decisions about her career.

Nada was finally allowed to stay in Canada by the Minister's intervention. She herself has had a lot to reflect on in the last few months. The following are some of her thoughts.

On the Canadian Refugee Process

"There should be more consideration given for women's problems. I was really disappointed when I arrived at the airport: they laughed at me when I said I have problems because I am a woman. Even at the hearing, I could see from the Board Members' faces that they were not taking it seriously, that they were going to refuse me. They were conservative, one 60 years old, one maybe 50—maybe they practice the same things at home, maybe they treat their women as objects.

"It's time for women to receive help. This is the duty of all nations around the world. Not all nations are willing. Canada can help, but it isn't really. Maybe this is because those in power are men, or because they are not feminist."

On Media Coverage

"How the media is aware that women have problems, they make many mistakes. Sometimes journalists talk about women having to wear the veil in the whole Arab world. Or they talk about the problems of women in terms of Islam and culture. But it's more politics than Islam. Governments use 'Islam' to impose their will.

"I'm not denying that culture is part of it, but the world changes; people are more educated now. Customs from the past are now being imposed with violence; when they're forced, you can no longer call it culture. I find that people here tend to have a condescending attitude towards the Arab world, but compare the status of women here with only 20 years ago.

"There's also a double standard: people talk about not interfering in other people's culture, but North America is doing it all the time, when you export, say, make-up or perfume. These things are not part of our culture. But no one here says, 'We shouldn't try to sell these things because it's interfering with their culture.'" ■

Still No Meaningful Review

by Alex Neve*
Acting Refugee Coordinator,
English Canada branch of Amnesty International

Bill C-86 finally became law in February. Still lacking, however, is a Canadian refugee determination system with an adequate appeal process: a process by which claimants denied status by the Refugee Board can be assured that their cases will receive a full, meaningful review on the merits.

Amnesty International, the UNHCR and others strongly believe that in view of the potentially grave consequences of an incorrect decision in a refugee claim, a fair determination procedure must include an effective review. The review should be carried out by an independent, impartial, expertly-trained body. This body should rigorously examine the basis upon which the application has been rejected, taking full account of the refugee claimant's response to the reasons for the rejection.

As of February 1, 1993 specially designated officers in immigration centres across the country have been reviewing cases rejected by the Refugee Board to determine whether they qualify for landing under the "Post-Determination Refugee Claimants in Canada Class" (PDRCC). These officers, Post-Claim Determination Officers (PCDOs), carry the mandate to determine whether an "objectively identifiable risk" exists.

Does this review process fit the bill? Will it provide an effective review to ensure that the inevitable mistakes in refugee decisions will be corrected? Will the PDRCC be a reliable "safety net" to ensure that people are not mistakenly, wrongfully deported to danger? While it is still too early to know what the actual results will be under this process, the criteria and other indicators are not encouraging.

It is difficult to envision who will benefit from this review — the test of an "objectively identifiable risk" seems poised to be interpreted in a restrictive fashion. Included are risks to life, and risks of inhumane treatment or extreme sanctions. Excluded are such risks which arise because of inadequacy of medical services. These would seem to be broad categories which could certainly address many of the concerns which arise in refugee claims. However, that is clearly not the aim.

The only risks considered are those that are not faced generally by other individuals. The result is that refugees fleeing civil strife, war, famine and environmental disasters — very compelling "objectively identifiable risks" by all accounts — will find themselves ineligible. Furthermore, their risk must

be one that would be faced in every part of the country. This is a very harsh understanding of the internal flight alternative principle in refugee law. Add to this recent statements which deny the PDRCC process as a review of or appeal from the Refugee Board decision, and very little is left.

The test seems geared to pick up something other than cases which involve Convention refugee issues, but it is unclear what that "other" is meant to be. Some of the most obvious needs, arising in the face of war, famine and other widespread human disasters, are explicitly excluded.

It has been suggested that information regarding a change in country conditions since the date of the refugee hearing or

of new evidence regarding the claimant's particular circumstances can be submitted. While that would be welcome, it does not address the fundamental need for there to be a full review of all negative decisions.

Furthermore, not all claimants are eligible for this review (for instance, if the Board not only rejects the claim but declares it to be without credible basis, the PDRCC review is not available); very short time limits have been set for making submissions (fifteen days from the receipt of the negative decision or fifteen days from the rejection of a Federal Court application); and the review is not being carried out by an independent body. Can this truly be considered a fair and effective process?



Courtesy of Yale Journal of Law and Feminism

Mistakes will continue to occur in deciding refugee claims. That is unavoidable: difficulties with translation, inadequate representation, trauma and fear often mean that a claimant's story is not fully and properly presented at the Board hearing; credibility decisions are made which dismiss claims for reasons unrelated to the central issues; general documentary evidence regarding human rights violations or the claimant's own evidence is often not available at the time of the hearing; and the personal views of some Board members have been known to interfere with objectivity.

Ultimately, we must continue to look to the government for accountability on this front. A full review on the merits is not just simply a desirable extra in refugee determination. It is a fundamental safeguard, necessary before it can truly be said that a fully adequate system of refugee protection is in place. A refugee determination system without a review on the merits is procedurally flawed. The alternatives available in Canada do not meet this need. The current humanitarian and compassionate review process has proven inadequate. Requests for intervention sent to the Minister's office have been dealt with in an arbitrary, unpredictable manner at best. And now, this most recent addition still falls far short of what is required. ■

* This article represents the author's own personal views.

Canada's Declining Rate of Acceptance

On February 12, 1993, the Convention Refugee Determination Division of the Immigration and Refugee Board (IRB) released its year-end Statistical Summary on refugee determination. It shows that the refugee determination system, reflecting the worldwide increase in refugee population, continued to face a growing caseload.

During the year 1992, 31,431 claims were concluded at the first hearing and were referred to the CRDD for the full hearing at the historic rate of 95 per cent. The CRDD heard 29,838 claims to completion, compared with 29,520 in 1991. 37 per cent of all cases were heard through the expedited process.

The major source countries continued to be Sri Lanka, Somalia, Pakistan, China, Iran, CIS\USSR, El Salvador, Lebanon, and Ghana. Since 1991, Bulgaria, Rumania, and Ethiopia ceased to be among top 12 countries. They have been replaced by India, Yugoslavia, and Israel which were not among the top 12 countries in either 1991 or in previous years. "Soviet Jews", the IRB report noted, "continue to account for the large percentage of claimants coming from Israel."

It is disturbing to see that with the exception of Somalia (for which the rate of acceptance has remained stable), *all top refugee producing countries have faced decreased rates of acceptance*. Even a country like Sri Lanka has faced a 3 per cent decrease compared with its acceptance rate in 1991. The percentage of decrease for other countries are as follows:

El Salvador	42%	CIS/USSR	15%
Lebanon	36	Ghana	13
Israel	17	Iran	11

Yugoslavia	10	India	2
Pakistan	6	China	2

These figures reflect in an overall reduction of the rate of acceptance from 64% in 1991 to 57% in 1992.

The drastic decline of the rates of acceptance from El Salvador and Lebanon could be linked with the peace accords in these countries. This has been done despite the fact that the peace has not brought about fundamental changes to their human rights records in these war-ravaged areas.

As a whole, the decline across the board should not be thought of as accidental. Rather, the decline was and continues to be the calculated result of Tory closed-door refugee policies ushered in as Bill C-55 in 1989 (with restrictions expanded in Bill C-86 of this year). Coupled with the pressure inside the Immigration and Refugee Board to refuse people according to unofficial quotas, the declining rate of refugee acceptance appears as such:

1989	76%
1990	70%
1991	64%
1992	57%

There is a possibility that these figures could level off this year in a Tory effort to duck criticism in an election race. More significantly, however, will be the reduction of those who actually apply since the recent draft "burden-sharing" agreement has the capacity to turn all overland claimants back to the U.S. For these refugees, declining acceptance rates mean little when they can't even approach Canada for a claim. ■

Top Twelve Countries (January 1 - December 31, 1992)

1992 Ranking	1991	Claims*	Withdrawn	Denied Hearing**	Hearing Reject***	Hearing Accept***	Acceptance %	
							1991	1992
1. Sri Lanka	1	5742	114	12	297	4831	95	92
2. Somalia	2	3372	87	7	254	3338	91	91
3. Pakistan	10	1624	72	28	354	570	62	56
4. China	3	1321	56	60	1143	292	21	19
5. Iran	4	1288	70	9	226	922	86	75
6. CIS, USSR	6	1245	128	34	540	721	66	51
7. El Salvador	7	946	118	39	693	337	70	28
8. Lebanon	5	908	67	9	442	435	82	46
9. India	-	884	62	53	377	137	24	22
10. Yugoslavia	-	793	51	19	117	240	66	56
11. Ghana	8	765	139	66	612	214	34	21
12. Israel	-	641	21	12	103	68	50	33
Others	-	11902	1071	958	4713	5332	44	44
TOTAL		31431	2056	1306	9871	17437	64	57

(*) Claims concluded at the initial hearing stage. (**) Includes cases rejected at initial hearing for reasons of ineligibility and found not to be credible.

(***) Includes claims made in 1991 which were awaiting a decision as of January 1992.

(Source: Immigration and Refugee Board)



The Long Road Home Begins

by Joe Gunn
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 Jesuit Centre for Social Faith and Justice, Toronto.*

Can you imagine how it would feel to return home after living more than a decade in a foreign land? You might have grown up or had children, perhaps your parents have passed away, relatives moved on, or quite possibly your home, formed and deformed in your memory, would no longer seem like "home".

Refugees from Guatemala are presently asking themselves this very question. As a result 2,400 elected to return to their home from their Mexico exile last January.

More than 100,000 Guatemalans fled to Mexico in the early 1980s as a result of the scorched earth campaign of the Guatemalan Army against a small but growing guerrilla movement.

Speaking 23 different Mayan languages, these once subsistence farmers have had their sacred traditions and ties with the land brutally severed. Some 43,000 people remain in camps in the south of Mexico, although tens of thousands more live dispersed throughout the country.

The refugees did not initiate this return because the human rights situation in their country had improved. Indeed, Canada's Inter-Church Committee on Human Rights in Latin America (ICCHRLA) reported in 1992 that Guatemala's "gross and systematic human rights violations perpetrated against the people continue at alarming levels". No, the refugees returned to create an opening for democratic reform in their country and strengthen the popular movement for change.

The novelty of the first Guatemalan return is that it was a massive, organized and negotiated operation where the refugees themselves set the agenda. With the help of international solidarity, the Guatemalan Government and UNHCR accepted the refugee's demands.

The Permanent Commissions, elected by the refugees as their representatives, were engaged in months of negotiations with the Government of Guatemala concerning exactly how the return should be organized. On October 8, 1992 a six-point accord was reached stating that the return would be voluntary, collective and organized, with full rights of association for the refugees, with national and international accompaniment for protection, rights to land, and finally, no forced military recruitment or military presence in the areas where this population would resettle.

Within the Guatemalan context this was an important precedent. The peasants in Guatemala have been struggling to attain such elemental rights as these for over 30 years. In the peace negotiations between the guerrillas of the Guatemalan National Revolutionary Unity (URNG) and the Government, no such progress has been achieved to date.

Just before the return was to begin, however, the Government refused to allow the refugees to decide on their own route back home. The Guatemalan Army preferred to see the refugees trek through the isolated northern jungle and make their way to the chosen resettlement location in El Quiche. The refugees insisted that they were not criminals, and refused to sneak home unannounced and in shame. Instead they demanded the right to come home in a caravan of buses, crossing at the main border station on the Pan-American Highway, travelling to the capital city, and then making their way north to El Quiche.

When the authorities stalled the caravan, the refugees became more determined. They started on their route toward Guatemala by foot. With added pressure from NGOs, the international community and Nobel Peace Prize winner Rigoberta Menchu, the Guatemalan Government and the U.N. finally acquiesced.

On January 20, 70 buses, in a caravan spanning 10 kilometres, left Comitán, Mexico and made for the border. The refugees were accompanied by 6 Canadian observers, sent from Project Accompaniment, a Canadian church and NGO initiative. At the border, the caravan was met by Rigoberta Menchú, who had arrived with the Canadian

Ambassador and two Members of Parliament, Mrs. Beryl Gaffney (Liberal - Nepean) and Dan Heap (NDP - Trinity-Spadina). The refugees were met with impressive manifestations of support and encouragement as tens of thousands of Guatemalans welcomed their compatriots along the route and in the central plaza of Guatemala City.

Once the caravan crossed the border into Guatemala, however, the Government refused to assist the refugees. The UNHCR, the Catholic Church and other agencies had to step in at the last minute to provide logistical support for the caravan. The trip was by no means easy. With 10 days of insufficient toilet and sleeping provisions, impassable roads forcing the refugees to walk for hours, and no less than two babies being born along the route, they finally arrived home safely. They have since named their community, "The Victory of January 20th"!

Although this initial return represents only 5.6% of the recognized refugees living in Mexico, its success was important and taught profound lessons for continuing the process, since some 14,000 refugees would like to return before the end of the year.

It would be wrong to diminish the role of international pressure on the Guatemalan Government to improve its human rights record. We cannot leave the authorities free to argue that the return of the refugees signals a major improvement in the situation. At the United Nations Human Rights Commission in Geneva, Canada's resolve to place Guatemala under Item 12 of the agenda (that dealing with the world's worst offenders of human rights) must be strengthened.

So far, the Guatemalan Government has not come up with the promised farmland for the next group of refugees returning to the Nentón area. As a result, the next return has been delayed. The authorities in Guatemala must be pressured to honour their promises to the refugees: to protect those who have already come home, and guarantee land and safe passage for the next return.

The zone around "Victory of January 20th" has not been demilitarized as promised. Indeed, interoperations, helicopter surveillance and land mine injuries have been the experience of the newly returned community. Not only does this frightening welcome need to be addressed immediately but demilitarization of the area would provide the long sought for protection needed by thousands of displaced Guatemalans in the area.

Finally, refugee advocates would do well to monitor the deportation of Guatemalans who have come to our country. As the Jesuit Refugee Service/Canada pointed out in its recent brief on El Salvador, repatriation of Salvadoran refugees despite their ongoing war resulted in increased deportations of Salvadorans from Canada. In the case of Guatemala, it is abundantly clear that the return of the refugees came about in spite of, and not because of, the Guatemalan Government's human rights record.

As ambassadors of peace, the courage of the Guatemalan refugees provides for us an incredible example of a commitment to justice. Indeed, the growing solidarity of Canadians to the visioning and rebuilding of the refugees' "home" can only help to set our common foundations in community and communal hope. ■

Backlog Statistics

(January 28, 1993)

Total Backlog	95,000
Decisions Rendered	93,969
Cases Accepted:	
Humanitarian Interview	16,681
Humanitarian Paper Screen	6,117
Credible Hearing	16,080
Credible Paper Screen	15,392
Total Cases Accepted	24,270
Cases Refused:	
Removal Stream	12,499
Disappeared	15,730
Voluntary Departures	11,470
Total Cases Refused	39,699
Decisions Pending	1,031
Final Disposition of Cases	78,499
Accepted Cases Landed	45,770
Rejected Cases Removed	7,816
Confirmed Voluntary Departures	9,183
Arrest Warrants Issued	15,730

ACCEPTANCE RATE **58%**

(Source: Canada Immigration Statistics)

Jesuit Refugee Service/Mexico presents:

"Refugiados"

a 17 minute video on Guatemalan refugees
in southern Mexico: their history, their struggle
to return home, their present situation.



Copies in VHS are available, at cost, for \$10.00 (GST, postage and handling included), from the Jesuit Centre, 947 Queen St. E., Toronto, Ontario, M4M 1J9.

Canadian Council for Refugees Reports on Immigration Consultations

Responding to criticisms that there were no consultations prior to the tabling of Bill C-86, the Minister of Employment and Immigration promised to consult on some aspects of the implementation of the Bill. People invited to the Immigration Consultations, being held in eight cities from Halifax to Vancouver, are now offered a chance to comment on the proposed division of applicants into three streams and the annual levels for immigration.

The consultations serve in part as a mid-term evaluation of the Five Year Plan. There is reason to believe that the Minister actually intends to scrap this Plan. In any case, Bernard Valcourt has made clear that the government wants to shift immigration levels towards more economic class immigrants, at the expense of refugee and family classes. We have already seen the effect of this orientation in the levels set for 1993, where the targets set for government-sponsored refugees are significantly reduced (10,000 from the 13,000 planned in the Five Year Plan).

Concerning the Bill C-86 regulations, participants at the consultations are only being invited to comment on a very limited portion. As you know, some of the regulations are already in effect. Others, such as the lists for Safe Third Countries, are planned for release in July, but they are not up for discussion at these consultations.

The Canadian Council for Refugees was represented at the Ottawa hearing on February 16th. The government's intention to shift immigration levels towards more economic class immigrants, already mentioned by the Minister, came through clearly in these consultations. This move was not, however, supported by the participants at the Ottawa consultation. Indeed, we were pleasantly surprised by the strong position taken by those who attended for humanitarian and family class immigration.

One of the key issues raised at the consultations was the proposed new Humanitarian Designated Class. This would allow people other than refugees who meet certain criteria of need to come to Canada (for example, people still in their country of origin, or people displaced as a result of war). The CCR has been approached to give expert advice on the formulation of the criteria. **If you are interested in participating in this, please contact Janet Dench at the CCR.**

You may also be interested in the positions paper prepared by the CCR for the consultations. Copies are obtainable from the CCR, 6839 Drolet, #302, Montreal PQ, H2S 2T1. Tel (514) 277-7223, Fax 277-1447.

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The Community Speaks

When Refugees Come Calling New Questions, New Voices

Thursday, April 15, 7:30 p.m.

Refugees question Canada's
commitment to international
human rights as government
and advocates debate
protection and its costs.

Speakers:
Dr. Haideh Moghissi
Michael Shenstone

Moderator:
James Hathaway

York Quay Centre,
235 Queens Quay West

Information: 973-3000

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