

REFUGEE

U P D A T E

ISSUE NO. 23 A PROJECT OF THE JESUIT CENTRE FOR SOCIAL FAITH AND JUSTICE (JESUIT REFUGEE SERVICE/CANADA) FALL, 1994

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UPWARD TREND IN ARRIVAL AND ACCEPTANCE

ARRIVALS

The first four months of 1994 saw a fairly steady number of refugee claims made in Canada. The second four months, however, witnessed a gradual rise in claims - although still nowhere near the levels of 1992. More refugee claims were made in each of the first eight months in 1994 than in each equivalent month of 1993 (January is an exception), but not nearly as many as in 1992, when more claims were made both on a cumulative and on a monthly basis. The cumulative figures for the first eight months of both 1993 and 1994 show a downward trend, especially if we compare them with the total figure for the equivalent period of 1992: 22,920 claims for the period of January to August 1992, compared with 12,859 and 13,420 claims for the equivalent periods of 1993 and 1994 respectively (see the Chart below).

REFUGEE CLAIMS MADE AT BORDER POINTS AND INLAND OFFICE

MONTH	1992	1993	1994
JAN	3845	3413	1744
FEB	3200	980	1530
MAR	2915	1339	1617
APR	2554	1112	1458
MAY	2427	1174	1569
JUN	2582	1402	1620
JUL	2620	1640	1781
AUG	2777	1799	2101
TOTAL	22920	12859	13420
SEPT	3417	2020	-
OCT	3256	1856	-
NOV	3822	1847	-
DEC	4305	1934	-



UPWARD TREND IN ARRIVAL AND ACCEPTANCE BY ROMULO ESCUDERO G. TALLER. COURTESY OF HUMAN RIGHTS INTERNET.

SOURCE: CANADA IMMIGRATION

IRB ACCEPTANCE RATE UP TO 59%

On September 9, 1994, the Convention Refugee Determination Division of the Immigration and Refugee Board (IRB) released its statistical summary on refugee determination for the first six months of 1994. It shows a further increase from the 57% rate of refugee acceptance during the first three months of 1994 (see Refugee Update, No 23, Summer 1994). This is a reversal, for the first time since 1990, of the continuous decline of the IRB acceptance rate:

1989	76%
1990	70%
1991	64%
1992	57%
1993	46%
1994: Jan. 1 to March 31	57%
Jan. 1 to June 30	59%

It is still premature to pass final judgement on this shift in the acceptance rate, which is still far below its 1991 level (64%). One explanation could be the recent changes within the IRB and the Board's attempts to respond to nation-wide NGO concerns about a just refugee determination system in Canada.

In the news release accompanying its statistical summary, the IRB declared that 68 percent of claimants had been granted Convention refugee status in the first half of 1994. This figure is a simple comparison between accepted and rejected claims, and must not be mistaken for the rate of acceptance, which should be calculated by comparing the number of accepted claims with the total number of claims, including claims that were withdrawn as well as those rejected. The IRB itself calculated the rate of acceptance this way in all its news releases up to January 1994.

The rate of withdrawal or abandonment has increased slightly (9%) - 2102 withdrawn claims compared with 1928 in the first half of 1993.

The category of "withdrawn/abandoned" in the IRB Statistical Summary raises some questions. It is not clear why claimants withdraw. Is it by their own will or with the encouragement of the immigration officials at the border points? Still unclear also is role of the Senior Immigration Officer in the process of withdrawal/abandonment. Until the implementation of Bill C-86, when the credible basis test was still a practice, "withdrawn claims" and "not eligible" were each identified as separate categories in IRB Statistical Summaries, which was helpful in understanding the true rate of acceptance of the credible claims.

Across Canada, 3,500 - or 27 per cent - of all decisions were rendered through the expedited hearing process. Through this process, the Board identifies straightforward claims that warrant rapid positive determination by the CRDD.

Another trend is the continued low intake and relatively high completion levels: while 9,627 refugee claims were referred to the CRDD by the Immigration Department, 954 claims were heard to completion, withdrawn or abandoned. As a result, the number of

claims that were pending a hearing or a final decision dropped from 17,000 at the end of the first quarter to under 14,500 by the end June 1994 (16% decrease).

The figures below give the distribution of claims heard to completion by the IRB among the regions of Canada. They demonstrate that Ontario and Quebec continue to remain the key points of arrival for asylum seekers.

	# OF CLAIMS	PER CENT	ACCEPT. RATE
ONTARIO	6,478	54.7	55%
QUEBEC	3,470	29.3	68%
OTTAWA/ATLANTIC	966	8.1	75%
B.C.	667	5.6	38%
PRAIRIES	272	2.3	66%
TOTAL	11,853	100.0	59%

As can be seen from the above figures, Ottawa/Atlantic has the highest rate of acceptance, British Columbia the lowest.

The major source countries continue to be Sri Lanka, Somalia, the republics of the former USSR, Iran, India, Israel, China, Pakistan and Guatemala. Lebanon, Peru and El Salvador have ceased to be among the top 12 countries. They have been replaced by Bangladesh, Yugoslavia, and Romania. Other major refugee producing countries were Haiti with 243 claims, Afghanistan 241; Peru 218; Lebanon 196; El Salvador 189; Zaire 184; Sudan 144; Algeria 131; Iraq 128; Ghana 122; Nigeria 122; Kuwait 113; Mexico 105; Burundi 104.

Out of 952 claims for CIS/USSR, 143 claims were made in the name of the USSR. The share of other countries emerging out of the collapse of the Soviet system were as follows: Russia 297 claims; Moldova 193; Ukraine 175; Estonia 67; Latvia 33; Lithuania 12; Belarus and Georgia 6; Armenia, Kyrgyzstan and Kazakhstan, 5 each.

The Claimants from nine top refugee producing countries have met with increased rates of acceptance. The following is the percentage of increase for all top-12 refugee producing countries:

PERCENTAGE INCREASE IN ACCEPTANCE RATES JANUARY TO JUNE 1994 AND 1993

Pakistan	22%	India	15%	Guatemala	0%
Bangladesh	22%	Iran	12%	Somalia	-1%
China	21%	Sri Lanka	6%	Romania	-1%
Israel	16%	CIS/USSR	1%	Yugoslavia	-19%

The sharp decrease (19%) in the rate of acceptance for refugee claimants from the republics of the former Yugoslavia might seem significant. It should, however, be noted that a large number of claims were withdrawn or abandoned (194 claims withdrawn, 24 claims accepted, and 68 rejected).

TOP TWELVE COUNTRIES (JANUARY 01-JUNE 30, 1994)

1994 RANKING	1993+	CLAIMS	WITHDRAWN/ ABANDONED*	HEARING		% ACCEPTANCE		
				REJECT*	ACCEPT *	1993	1994	
1.	SRI LANKA	1	1,834	100	237	1,760	78	84
2.	SOMALIA	2	1,541	85	50	1,522	93	92
3.	CIS/USSR	3	925	175	549	762	51	52
4.	IRAN	5	722	58	137	641	65	77
5.	INDIA	8	508	206	283	273	21	36
6.	ISRAEL	9	434	57	366	268	23	39
7.	BANGLADESH	-	358	48	132	259	37	59
8.	CHINA	7	305	39	205	147	17	38
9.	PAKISTAN	4	302	88	150	233	27	49
10.	YUGOSLAVIA	-	294	194	68	249	68	49
11.	GUATEMALA	12	275	57	117	151	46	46
12.	ROMANIA	-	246	33	133	142	47	46
	OTHER	-	3,282	961	1,728	2,685	44	53
	TOTAL	-	11,053	2,101	4,205	9,092	50	59

+ EQUIVALENT PERIOD (JANUARY 1 - JUNE 30, 1993).

* INCLUDING CLAIMS MADE IN 1993 WHICH WERE AWAITING A DECISION AS OF JANUARY 1994.

SOURCE: IMMIGRATION AND REFUGEE BOARD AS COMPILED BY JRS/CANADA.

REFUGEE POLICY DEVELOPMENTS UNDER MARCHI

The following is a diary of the performance of Sergio Marchi, Canada's Immigration Minister, which illustrates the Minister's position with respect to refugees' fundamental rights, in the context of the immigration bureaucracy and the present xenophobic trends in our society.

OCTOBER 25, 1993: Liberal Party wins majority in federal election. The Conservatives, with majority rule for the past fourteen years, are reduced to two seats in the House of Commons. The separatist Bloc Quebecois edges out the populist (and anti-immigrant) Reform Party as the official opposition. The Liberal election platform on immigration calls for maintaining the 250,000 annual immigration level and putting more emphasis on selecting refugees from overseas. The new Immigration Minister, Sergio Marchi, a self-identified first-generation immigrant, quickly announces that the new government will not go ahead with the previous government's plan to reorganize immigration along with prisons and corrections bureaucracies into a new Ministry of Public Security.

DECEMBER 31, 1993: Minister Marchi announces his first set of appointments to the IRB. A number of prominent NGO



ILLUSTRATION BY JOHN OVERMYER.

critics are appointed. The Minister says "people well versed in refugee cases are better equipped to distinguish *bona fide* claims and fraudulent ones."

JANUARY 15, 1993: The IRB releases *Rebuilding Trust* by Prof. James Hathaway. Based on extensive interviews with NGOs and lawyers, the report presents a scathing picture of collusion between the Immigration Department and sections of the IRB. The report proposes a new separation of immigration functions from refugee determination. The IRB quickly establishes internal and external (NGO) committees to oversee implementation of its recommendations.

JANUARY 24, 1994: The Minister grants work permits to refugee claimants. Work permits have been given and denied to claimants off and on for the past decade.

FEBRUARY 2: The Minister announces an immigration level of 250,000 for 1994 (1% of Canada's population). Within that number there are to be more independent immigrants, and more immigrants with family connections, but fewer refugees than last year's immigration plan (from 44,000 down to 28,300).

FEBRUARY 28: IRB Statistics show a continuous decline in acceptance rates: from 70% at the end of 1990 to 46% on December 31, 1993. Recent deterrence measures show results: 20,472 claims are made in 1993 compared with 37,720 claims in 1992.

MARCH 2: A Montreal lawyer obtains an internal report on Canada's overseas deterrence program through Access to Information legislation. It shows that hundreds of people have been prevented from coming to Canada to seek political asylum. In 1991, under the name *Operation Shortstop*, 338 Iranians, 1,004 Sri Lankans, 260 Somalis and hundreds of people from other nations were stopped from boarding planes bound for Canada.

MARCH 9: On the first anniversary of *Guidelines on Women Refugee Claimants*, the IRB announces that under the guidelines, 350 gender related claims have been made, 150 have been decided, and 70% of those had positive decisions.

APRIL 22: A coalition of human rights activists in Montreal charge Immigration officials with forcibly drugging a pregnant African woman aboard a February 23 flight to her native Zaire. The case is now before the Inter-American Commission on Human Rights.

MAY 13: Immigration Minister Sergio Marchi releases *The Quality of Mercy*, by noted refugee lawyers Susan Davis and Lorne Waldman. This study addresses the absence of a meaningful appeal in the refugee determination system. It recommends a reconceptualization of the immigration/refugee processing, away from treating refugees as exceptions to the immigration system, and towards viewing immigration and refugee classes as equally weighted in a system pointed on achieving efficient remedies. The report is praised by government and NGO.

JUNE 17: The Minister introduces Bill C-44, his four point strategy to "control illegal immigration and control our borders." This was after the slaying of Georgina Leimonis in Toronto on April 5, 1994, by a Jamaican immigrant with a deportation order, and followed up the Minister's remarks about the failure of the system.

JULY 7: Minister Marchi announces "comprehensive reorientation of Canada's removals policies." This announcement rides the crest of public concern about the removal of serious criminals who are noncitizens. The plan includes a taskforce of different police forces to cooperate in carrying out immigration removal orders, a focus on removing serious criminals as a first priority, and imposing a three-year deadline on the immigration department to carry out all the removal orders it issues. This announcement blurs the distinction between criminals and rejected refugee claimants.

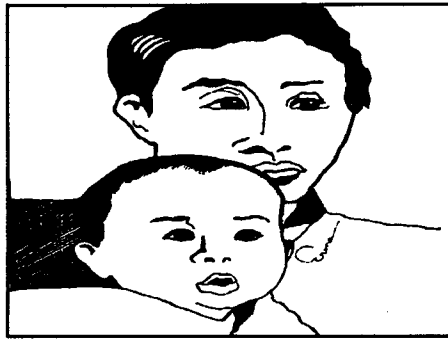
AUGUST 31: In the largest single appointment of new members to the IRB since becoming Minister, Mr. Marchi is generally praised on the quality of those appointed, though criticized for keeping tight control of the appointment process.

SEPTEMBER 15: Only days after a conference in Ottawa winds up Minister Marchi's six-month public consultation process, the Immigration Department leaks a comprehensive set of proposals to a Toronto newspaper. The leak signals a certain insecurity within the Department vis-a-vis Mr. Marchi. Among proposals contained in the leaked document is a suggested drop from 250,000 to 200,000 in the overall immigration level, restrictions in family reunification to include spouses and children only, a lessening of the importance of labour needs in overseas selection, a denial of citizenship to the Canada-born children of refugee claimants, and the separation of refugee and immigrant processing.

CONCLUSION: The Minister has had some success in steering a middle course between compassion and control on refugee matters. Deterrence measures are well in place and resources are being directed towards faster and more efficient removals. The Immigration Department remains in firm control of the policy debate, however, and as the architects of the Public Security plan they appear to be bringing it in through the back door.

A key moment will come this Fall when the Minister will announce a ten-year immigration "framework" and a new five-year plan. It is also expected that he will bring in legislation on a new appeal mechanism for refugee claimants. Thus far, it doesn't look too good. He promised the new appeal process during last year's election, on the basis of advice from respected refugee lawyers and of his awareness that politicians are fed up with doing so much casework for rejected claimants. But that was before he became Minister and had to work with the notorious Immigration Department. The Department seems to be forcing Mr. Marchi to choose between working either with them or with the refugee NGOs. It's a rough game and they play for keeps.

The following are excerpts from decisions of the Federal Court of Canada, reviewing decisions of the IRB (taken from Lexbase, a national fax network for immigration practitioners).



DECISIONS FROM THE FEDERAL COURT OF APPEAL

JULY 18, 1994

Pinard, J.: [...] There is one issue before the Court: did the Board err in ignoring the expert medical evidence presented to it? The Board made no mention of the medical report before it. [...] [I]n completely ignoring the medical evidence before it, the Board committed an error as stated in Paragraph 18.1 (4) (d) of the Federal Court Act. [...] The Board should have at the very least made mention of the medical report, and if the documentation is accepted or rejected the applicant should be advised of the reasons why, especially as the documentation supports the applicant's position.

JULY 18, 1994

Rouleau, J.: [The applicant...] has not applied for [Russian] citizenship nor has he made any inquiries as to whether or not citizenship would be denied him; he has no desire to do so and consequently he describes himself as a "stateless person". [He] cannot expect to base his claim to be a Convention refugee on the fact that he has not applied for or been granted Russian citizenship; to hold otherwise would allow him to undermine the rationale underlying international refugee law as expressed in *Ward v. M.E.I.*, [1993]

International refugee law was formulated to some as a back up to the protection one expects from the state of which one is a national. It was meant to come into play only

in situations when that protection is unavailable, and then only in certain situations. The international community intended that persecuted individuals be required to approach their home state for protection before the responsibility of other states becomes engaged. For this reason James Hathaway refers to the refugee scheme as "surrogate or substitute protection" activated only upon failure of national protection...

Having determined that he was a Russian national I find no reviewable error in the Board's assessment that there is no more than a mere possibility that he would be persecuted if returned there. [Application dismissed]

JULY 26, 1994

Simpson, J.:... [The Board found] that there was no objective fear because Nigeria is seeking to reform its undemocratic regime and I have read this conclusion to refer to reform as it relates to matters of detention. What the Board failed to do was to have regard for the totality of the specific Africa Watch Report it considered. [...] In my view, based on the Africa Watch Report, The Board was not entitled to conclude that positive steps towards democratic reform with respect to detainees were in progress in Nigeria. [Further] the Board relied on the fact that the judicial system was effective. However, the text of the article cited by the Board contradicts the Board's conclusion [and] demonstrates that the judicial system was manifestly ineffective. [...] The Board, in my view, failed to correctly apprehend the evidence that it cited in its own decision. [...]

[Application allowed].

IMMIGRATION CONTROL OFFICES ABROAD

The following is a list of Immigration Control Offices located in Canadian embassies and consulates. While there are 10 locations in Western Europe and North America, we have only three visa posts in Africa and two in the Middle East, with refugee populations of 5.8 million and 4.9 million respectively.

WESTERN EUROPE & NORTH AMERICA: 10 locations
Bonn, London, Brussels (Belgium), Berne (Switzerland), Paris, Rome, The Hague (Holland), Stockholm (Sweden), Miami (Florida), Washington D.C.

PACIFIC RIM: 7 locations
Hong Kong, Tokyo, Manila (Philippines), Bangkok (Thailand), Seoul (South Korea), Taiwan, Singapore

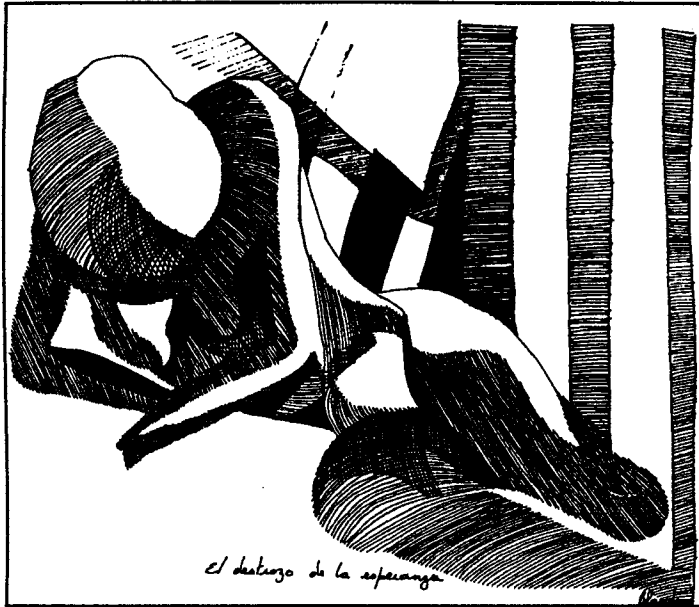
EASTERN EUROPE: 3 locations
Budapest (Hungary), Moscow, Warsaw (Poland)

SOUTH ASIA: 3 locations
Colombo (Sri Lanka), Islamabad (Pakistan), New Delhi (India)

AFRICA: 3 locations
Nairobi (Kenya), Lagos (Nigeria), Accra (Ghana)

LATIN AMERICA: 2 locations
Sao Paulo (Brazil), Buenos Aires (Argentina)

MIDDLE EAST: 2 locations
Damascus (Syria), Cairo (Egypt)



IMMIGRATION CONSULTATION

A N A L Y S I S
BY AVVY GO

“Immigrants and Refugees are taking over our country, and we should stop them from coming into Canada!” “Immigrants and refugees are taking away jobs from Canadians!” “Immigrants and refugees are welfare bums.” “They are all criminals!”

Outrageous and at times contradictory statements like these have been made by some members of the public and are often reinforced by the media portrayal of immigrants and refugees. While many Canadians simply dismiss these stereotypes as discriminatory, others who are less informed accept them as facts. As our economy continues to stay in its recessive mode, immigrants and refugees continue to take the blame for most of our social and economic woes. The backlash has brought about much extra suffering to immigrants and refugees in this country.

But when public perceptions, no matter how skewed they might be, are formulated into official policies, a serious problem arises. In the name of consensus building, the present federal government has embarked on a national consultation campaign on immigration and refugee policies. Public meetings, study circles and town hall gatherings were organized by the government to solicit “public opinion” on the issues concerning immigrants and refugees. Perceptions that have no factual basis were incorporated into and legitimized by a consultation process which lasted for a total of eight months.

For refugees and immigrants, the process of “public” consul-

tation has been one of exclusion. Systematically, people who would be directly affected by the outcome of the consultation were either silenced - by the presence of racists in public meetings, marginalized - by the dominance of “experts” and government selected individuals, or virtually denied access to the process. Community groups that were allowed to be part of the consultation emerged from it disempowered and disconcerted. Activists are now asking themselves whether the consultation was a worthwhile attempt or whether it was just an exercise in futility.

To answer that question, we must first examine the context in which the consultation took place, and the impact it might have on shaping the future direction of government policy.

One of the contextual issues we face is the backlash. Bearing in mind that the media usually report negative public sentiment only, a public consultation could not have occurred at a worse time, with vulnerable groups in our society under the worst attacks. One could almost guarantee that the “public” today would call for a tightening up of our immigration and refugee policy. The Minister’s proposal for legislative amendments after the “Just Desserts killing”, for instance, was a direct response to the immediate “public” outcry. This proposal, one might add, came right at the time when supposedly the government was still engaged in the process of consensus building with all the stakeholders.

While the backlash set the tone for the whole consultation process, the government deliberately avoided confronting these racist, anti-immigrant and anti-refugee sentiments. These are considered by the bureaucrats as legitimate views which somehow must be reflected in the design of the policy. The bureaucratic obsession with negative public opinion was reflected in the consultation agenda. At the national conference in Ottawa, for example, a proposal to select immigrants on the basis of genetic screening was put on the table when participants were asked to discuss health care for Canadians. It was an agenda devoid of principles and values, and did little to advance the interests of immigrants and refugees.

Apart from the hostile public environment, the consultation was also taking place in the deficit cutting, lean-and-mean climate within the government. Rather than addressing the issue of refugees as an extension of our international obligation and our responsibility to uphold human rights, the government approached the issue from a cost-benefit analysis perspective. Under this approach it goes without saying that if the financial cost to Canada of one refugee is likely to exceed the benefit, that refugee will not be admitted into Canada.

Interestingly, the government has never considered the cost of racism to Canada, or for that matter, the cost of maintaining a racist system. Nor has the government assessed the non-monetary benefits that Canada has gained from the cultural diversity of immigrants and refugees, in addition to the economic advances it has thanks to its new citizens.

None of that seems important to the people in power. What matters is how effectively the Ministry and its bureaucrats can reduce their spending on immigrants and refugees. That message

came across loud and clear when an internal review document was leaked to the media one day after the consultation was over. The report called for a reduction in immigration level, the elimination of the foreign domestics program, exclusion of parents from family class, and the removal of the right to automatic citizenship from children born of refugee parents. All these recommendations and more were made under the pretext of cost efficiency. Fundamental principles such as the protection of refugees and their families were based solely on dollars and cents.

What was the impact, then, of the consultations on government policy? To the extent that the consultation reinforced - or was used to reinforce - the presumed negative public perception about immigrants and refugees, the process was useful in the eyes of the bureaucrats to justify the restrictive policies that this government has introduced since it came into power.

The leaked document reveals more than just the hidden agenda of the government. It shows how easily the whole consultation process can be undermined by the deal makings that are taking place behind closed doors. It also signifies a possible convergence of the political and bureaucratic understanding on the future policy direction of the Ministry - an understanding that stems from political and economic expediency.

For the community groups who participated in the consultation as members of the ten working groups, the internal report struck an additional blow to their confidence in the whole process. After weeks of discussion and negotiations, each of the ten working groups had come up with substantive and useful recommendations for reforming the current system and policies. That collective effort may now be derailed by a parallel internal review driven by questionable considerations.

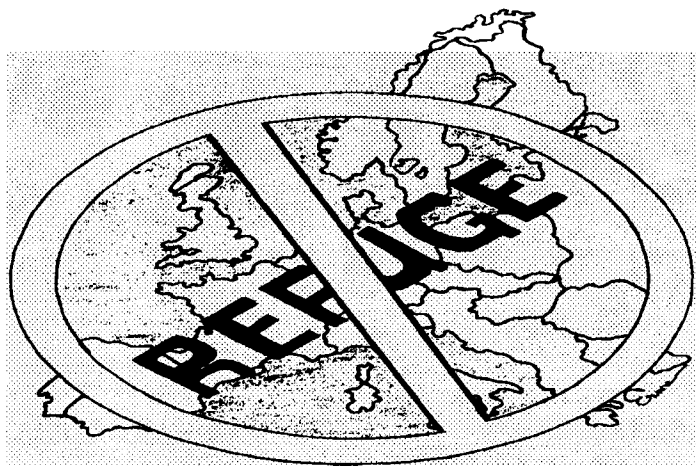
What is equally alarming is that the consultation which took place in Canada may have an impact on policy development in other countries. As an apparently novel way of dealing with migration and refugee issues, the consultation undertaken by the Canadian government has been closely monitored by other countries. The success that our government enjoys in manipulating public consensus will no doubt entice other states to follow suit.

For community groups as well as advocates for refugees and immigrants, we are left with the same perplexing issue: how can we effect positive change for our communities?

We must continue to push for the adoption of the working groups recommendations, particularly those dealing with the protection of refugees. We must ensure that all is not lost and that the well thought out recommendations not be jeopardized in light of the government preoccupation with eliminating the deficit.

Finally, the end of the consultation is just the beginning of the long term policy development process. We must continue to monitor the situation and keep our communities informed about any new changes. We must be ready to mobilize them in our struggle for a fairer and more equitable immigration and refugee policy.

* *Avvy Go is the Clinic Director of the Metro Toronto Chinese and Southeast Asian Legal Clinic.*



NEWS FROM EUROPE

U.K./FRANCE

On 27 July 1994, the hovercraft operator, Hoverspeed Ltd., submitted a complaint against both the UK and the French governments regarding their legislation on carriers' liability for transporting "illegal immigrants". Hoverspeed Ltd. argues the legislation is in breach of those two countries' own obligations, under article 5 and 7a of the Treaty on European Union, regarding the abolition of control at EC internal borders. Hoverspeed Ltd. calls upon the two governments to either repeal their legislation on carriers' liability, or at least restrict its application to passengers arriving from outside EU member states, thus allowing free movement within the EC. G.Ede, Hoverspeed's Managing Director, claims that his firm has objected to such legislation since its inception, pointing out that his company is "in the business of serving customers, not the immigration business." The firm trains its staff members "to welcome people" on board its hovercrafts, "not keep them off."

ITALY

Abandoned by an unidentified ship about 18 km off the Calabrian coast, 185 clandestine immigrants from Sri Lanka were rescued by the coast guards in mid-August as they tried to reach the coast in 23 rubber dinghies, without oars and during a storm. Since January this year, the coastal authorities have arrested some 2,000 clandestine immigrants trying to arrive in Italy by sea. The Minister of Transport and Navigation has already ordered the coastal authorities to intensify their surveillance to curb the arrival of clandestine immigrants.

THE NETHERLANDS

The Ministry of Justice has underlined that talks between the Dutch and Sri Lankan governments on the possible repatriation of rejected Tamil asylum-seekers are purely "informal". The Sri Lankan authorities wish first to evaluate the results of the repatriation agreement which it signed

CONTINUES ON PAGE 8.

BILL C-44: A STEP BACKWARD

with Switzerland on 11 January 1994 (the first with a European Government) before signing a similar one with The Hague.

The Ministry was responding to a report issued by a human rights agency in Sri Lanka, called Inform, which warns that any decision to repatriate Tamils is too premature as there is no structural improvement in the human rights situation there. Although the situation of Tamils appears to have improved over the last few years, the legal structures which enable the violation of human rights still exist. Tamils in the south of Sri Lanka are more carefully watched and more often molested than Singhalese.

SPAIN

On 26 August, the "State Council", the highest consultative body which examines whether laws are compatible with the constitution, warned the government that the draft of a regulation implementing a provision of the new asylum law contains rule which was severely criticised for restricting the movement of people, in particular displaced people from areas of conflict who do not fulfil the criteria for receiving refugee status.

According to two human rights associations, the new asylum law violates the freedom of individuals who apply for asylum at a frontier. If their claims are considered to be "manifestly unfounded", they may be detained, without judicial control, at the frontier for 4 to 7 days pending their deportation. Under the new law, if, after 7 days, an applicant does not receive a definite response from the authorities, s/he must be allowed to enter Spain. However, detentions at the Madrid International Airport have been extended by up to 3 weeks.

What follows is our abridged edition of a brief prepared by David Matas, President of the Canadian Council for Refugees (CCR), to the Parliamentary Committee studying Bill C-44. Refugee Update is grateful to the author and the CCR for making the brief available to us and we encourage our readers to contact the CCR for the full version (tel: 514-277-7223; fax: 514-277-1447).

Right now, a person convicted of a crime abroad is not given access to the refugee determination process when, under Canadian law, the offence is punishable by a maximum imprisonment of ten years or more, and the Minister of Immigration is of the opinion that the person constitutes a danger to Canadian society. People who have already been granted admission to Canada as permanent residents or visitors still have access to the refugee determination process. Bill C-44 proposes to expand the denial of access to the refugee determination process to permanent residents, in addition to those seeking admission to Canada.

It is the position of the CCR that a person convicted of crimes abroad should be given access to the refugee determination process. The denial of access clause that is in the present legislation should not be there. And denial of access should certainly not be expanded to cover new and different categories of refugee claimants.

Officials object that those convicted of serious crimes abroad can be expelled under the Refugee Convention, which does indeed provide that refugees who, having been convicted of (or for whom there are serious reasons for considering they have committed) a particularly serious crime, and who constitute a danger to the community of the country of refuge, may be ex-

pelled whether or not so doing would threaten their life or freedom.

However, under the Convention a determination still has to be made about:

a) whether the crime was political or non-political;

b) whether the charge or conviction are prosecution, or persecution (prosecution may be a vehicle for the persecution of the individual);

c) the seriousness of the crime balanced against the danger to Canadian society.

The Refugee Division is eminently suited to making all these determinations.

The way the Convention defines "serious crime" and the way the Immigration Act defines it are at variance. The Convention is referring to the actual act that was perpetrated, while the Immigration Act is referring to a category or label in the Canadian criminal code, not the act itself. Therefore it does not reflect the seriousness of the act within that category, or any compelling mitigating circumstances.

What the Immigration Act allows for, and what Bill C-44 would allow for in even more cases, is return to certain death, based on the most trivial of criminal acts, provided the label for the act is suitably serious. This could happen without distinguishing between persecution and prosecution, without distinguishing between political and non-political crime, and without balancing the danger to the person concerned with danger to the Canadian public.

Through Bill C-44 the Minister arrogates to himself the power to make all these determinations. This is a mistake for the following reasons:

a) A ministerial determination is an administrative determination. A Board determination is quasi-judicial determination, a decision made by a specialized and specially trained decision-maker;

b) Board determination allows for a decision free from extraneous considera-



tions. Governmental determinations are political determinations;

c) Ministerial decisions may also be based on immigration -consideration;

d) Because of the context in which it was proposed (the April '94 slaying of Georgina Leimonis by Oneil Grant, A Jamaican immigrant who was ordered deported in December '92 and granted a stay of execution for 5 years by the IRB), Bill C-44 is a direct threat to the independence of the Board from government, and indeed of any federal administrative tribunals. It seems an elementary principle of independence that jurisdiction should not be removed solely because the government did not like the result in one particular case in which it was a party.

Failure to make these determinations means that a person can be returned to danger who, according to the Convention, should not be. The government is on a track that is leading it to violations of the Convention, and with Bill C-44 it is adding cars to the train.

If these determinations are not made under the Refugee Division they will have to be made by some other tribunal. Denying access to the refugee determinations process does not avoid Convention obligations.

Bill C-44 also expands denial of access to the refugee determination process to permanent residents who have committed crimes in Canada. For such crimes the issues of political or non-political crimes,

persecutions or prosecutions do not arise. But the balancing of the crime against the risk to Canadian society still exists. Access to the refugee determination process is still important in this case. The determining tribunal will need to know the risk to the person concerned on forced return, and whether or not he/she meets the refugee definition.

The Minister appears to view access to the IRB as a benefit granted to claimants and refugees which they should forfeit if they commit particularly serious crimes. However, legal rights exist for everyone. For the Minister to propose the disintegration of procedural rights is self-destructive. It is all of Canada that loses, not just the claimants or refugees. It is essential to our own humanity that we grant foreigners the fundamental human rights of procedural fairness.

The CCR views Bill C-44 as a step backward. However, it does not just support the status quo. The issue is how to decide on the return of any person who has committed a serious crime, where Canada's international human rights obligations suggest the person should not be returned. The Refugee Convention is one such international human rights obligation, but it is far from being the only one.

Canada also has obligations about return under the Convention against Tor-

ture, the UN Principles on the Effective Prevention of Extralegal Arbitrary and Summary Execution, the Geneva Conventions on the Laws of War, the Declaration on Disappearances, and under customary international law. These obligations are nowhere reflected in the Immigration Act and Regulations, nor even in the *Immigration Manual* as criteria for the exercise of discretion, let alone as entitlements.

Individuals convicted of serious crimes have a whole series of rights that prohibit forced return to danger, but there is still no effective remedy to protect those rights. This is a violation of yet another international human rights obligation, the obligation to provide an effective remedy for the realization of substantive rights.

The position of the CCR is that the jurisdiction of the Refugee Division of the Immigration and Refugee Board should be expanded so that the Division would consider not just the cases of refugee claimants who are convicted of crimes, but also cases of others whose forced return would, potentially, violate Canada's international human rights obligations not to return people to danger.

Bill C-44 should simply be withdrawn. Its subject matter should be referred to the ongoing consultations that the Minister has initiated. A revised Bill C-44 should await the outcome of those consultations.

HISTORICAL CONTEXT

The government first imposed fees for those seeking permanent residence in Canada in February 1986 under the Immigration Act Fees Regulations, as part of the Government's "user-pay" policy. These fees were (and still are) non-refundable, covering about one-third of the processing costs. They were said to be equivalent to those required for the same services in the U.S. (Department of Employment and Immigration, News Release 86-2, January 27, 1986, "Immigration Cost Recovery Program Expected to Net \$15 Million"). In 1986 it cost \$125 to apply for landing in Canada, but Convention refugees were exempted, a situation which continued until June 1, 1994 (s. 3(1) of SOR/86-64, the Fees Regulations).

Now all principal applicants who seek landing in Canada pay \$500, including Convention refugees. The Minister justified this inclusion by referring to a) refugee claimants' eligibility for work permits before their hearing and b) the need for a uniform fee for all landing applicants in Canada.

The equivalent fee for successful asylum-seekers in the U.S. to obtain resident status (Green Card) is currently \$130. It may be useful to note that it costs \$315 to register a corporation in Ontario, \$45 to apply for a Court order forcing a landlord to provide an urgent repair such as heating, and nothing to apply for a pardon.

THE INTERNATIONAL LAW CONTEXT

The cost recovery program as it relates to Convention refugees violates Canada's obligations under international law. Canada ratified the U.N. Convention Relating to the Status of Refugees of July 28, 1951. Article 34 states:

"The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."

It is certainly clear that the government has not made "every effort" to reduce as far as possible the cost of landing for Convention refugees. They are charged the same fee as every other applicant. Why not ask more from immigrating investors, who obviously have the necessary resources, and exempt Convention refugees, or require them to pay only \$50, for example, to be landed?

LEGAL CONTEXT

The Immigration Act requires Convention refugees to apply for permanent residence for themselves and all dependents within or outside of Canada within 60 days from the date of acceptance. An immigration officer will determine if the applicant has another country of refuge, nationality or permanent residence to which s/he



IMMIGRATION FEES HURT CONVENTION REFUGEES

BY RON SHACTER*

can return, whether s/he is criminally inadmissible, and if s/he has a satisfactory identity document. Until the fee is paid, applicants cannot begin the process of landing and family reunification of spouse and dependent children, a process which usually takes between one and two years (Immigration Act, R.S.C.1985, c.I-2 as amended, Section 46.04 (1) (3) and (8)).

POLITICAL CONTEXT

The government stated in its January 1986 news release that the purpose of the Immigration Cost Recovery Program was to reduce the deficit without burdening taxpayers. But there is no rational connection between cost recovery and deficit reduction: the latter

is not in fact justification for imposing fees on Convention refugees, or for that matter on applicants on "H&C" grounds.

APPLICANT'S RESOURCES

As of January 24, 1994, refugee claimants have been allowed to work: "Work permits will be issued in 3 weeks to 2 months after the claim is made." (Minister of Citizenship and Immigration, News Release 94-3, January 24, 1994, Background, p.2).

Refugee hearings are held about five months after the claim is made. In practice, it takes two months to obtain a work permit (the Personal Information Form and medical examination must be completed). So most refugee claimants, if they are able to find employment at all, will have worked at most two months before their hearing. If they are accepted, they must apply for landing and therefore pay the fee within 60 days. Thus they must pay \$500 (for a principal applicant) after at most four months of employment. This is the best case scenario.

I know of very few refugee claimants who work before their hearing: the recession, the shortness of their time in Canada, and lack of child care resources, language and work skills are obvious factors. Most refugee claimants are still dependent on social assistance when they apply for landing.

Clearly what occurs here is not deficit reduction but rather the transfer of money received in social assistance to federal government coffers (cost recovery).

THE CHARTER CONTEXT

The cost recovery program is discriminatory as it relates to Convention refugees because of its adverse impact on this group, which lacks the necessary resources. The program violates s. 15 of the Charter of Rights and Freedoms.

*Ron Shacter is the staff lawyer at the Parkdale Community Legal Services.

MINES RECOGNIZE NO CEASEFIRES

Paul Davies, *War of the Mines: Cambodia, Landmines and the Impoverishment of a Nation*,

with photographs by Nic Dunlop.

Pluto Press, London, 1994.

Elephants and Others: Sri Lankan Refugees in Tamil Nadu and Sri Lanka is a 39-page report on a visit to Tamil Nadu and Sri Lanka (February to March 1994) organized by the Jesuit Refugee Service Directors for Tamil Nadu and Sri Lanka and the JRS Regional Directors for South Asia and Asia/Pacific.

The report provides the reader with a lively and first hand profile of the war which is going on today in "one of the most beautiful countries in the world." The Sri Lankan government spends almost 40% of its budget on arms and the security forces. The Tamil Tigers (LTTE), the leading revolutionary group, "has financial resources to keep fighting for years", even after years of fierce fighting.

In this report of the brief mission, in spite of its "many limitations of access," the reader is transported on a journey into the major camps occupied by Tamil refugees in Madras, South India, and in the land surrounding the church of Our Lady of Madhu, in the North-Central province of Sri Lanka. The plight and living conditions of these people are vividly described in easily accessible language and style.

Interested readers can obtain a copy of the report from the Jesuit Refugee Service-Canada or write directly to Fr. Quentin Dignam, S.J., Regional Director, JRS/Asia Pacific, 24/1 Soi Aree 4, Phaholyothin 7 Road, Phayathai, Bangkok 10400, Thailand. Tel: (66 2) 279 1817, 278 4182; Fax: (66 2) 271 3632.

Landmine warfare is "a humanitarian issue of the greatest concern," according to a document signed by 49 NGOs, including the Jesuit Refugee Service - Asia/Pacific and JRS - Cambodia. As many as 100 million landmines have been deployed world wide, and in more than 35 countries they constitute a serious humanitarian problem. At least two-thirds of the world's internal and external refugees fled from areas with high concentration of antipersonnel landmines. Scores of civilians, especially refugees and displaced people, return home and step on landmines every day.

Apart from causing death and shocking injuries, landmines impoverish entire communities by denying them access to land. The lethal consequences of mines continue years after the termination of direct conflicts: "Mines, unlike other weapons, recognize no ceasefire".

The international struggle to ban anti-personnel landmines, initiated only in 1992, has slowly gained attention. In Canada a number of NGOs, including Physicians for Global Survival and the Canadian Council for Refugees, have taken up the campaign (See "Call to Ban Antipersonnel Landmines," *Refugee Update*, Winter 1994, P.11). A conspicuous problem in this campaign has always been the lack of accurate figures and substantial documentation based on first hand experience.

Fortunately, the problem is being addressed by the U.N. and international NGOs in collaboration with the victims and survivors of the landmines. This book is part of this attempt. It is a case study on the plague of landmines in Cambodia, especially the hilly area of Rattanak Mondul, where the civil war broke out in 1967. Author Paul Davis holds

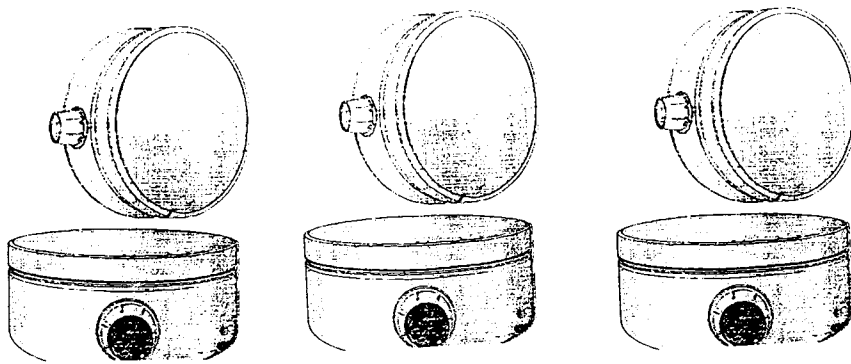
the overseas desk at the British-based Mines Advisory Group, and has worked both in Cambodia and in the refugee camps on the Thai-Cambodian border.

War of the Mines is a thorough, practical, first hand, documentary and multi-dimensional study on the effects of landmines in the life of communities. With its comprehensive approach, the book provides a brief recent history of Cambodia and illustrates, in numerous haunting photographs as well as in words and figures, the human and international cost of indiscriminate landmines. It speaks to the vital need for a substantive demining program for Cambodia, where it is estimated that there might be as much as 250 years of manual clearance work to be done.

The author explores the "significant structural problem with international humanitarian law" by approaching landmines as "the greatest violators" of the global humanitarian legal instruments. He recommends that landmines be vilified, under international law, as are chemical and biological weapons, showing that the only humanistic response is "a complete ban on the manufacture, export and deployment of these weapons."

This is not just the story of one country's tragic civil war and its crippling aftermath, but is also "the story of multinational involvement in the killing and maiming of civilians." In the last 25 years, 56 countries have manufactured 200 million anti-personnel mines. At present some 70 countries produce and/or plant landmines.

War of Landmines is a relevant and timely work in the context of a full examination of the Landmine Protocol of the 1980 Weapons Committee and the Review Conference of the Convention scheduled for September 1995.



UPDATE ON SANCTUARY PROMISE

What follows is an update on sanctuary promised to a group of rejected refugees by refugee workers in Southern Ontario (See Refugee Update, Summer 1993, pp. 1-4) by Dan Heap, an Anglican priest and a member of the Southern Ontario Sanctuary Coalition. Dan worked as NDP immigration critic for 12 years.

LAND MINES AND THE CANADIAN CAMPAIGN

On September 16 a number of Canadian NGOs met for the first time around the issue of landmines, and a second meeting is scheduled for November 22 in Ottawa. A detailed report of the issues arising from the recent meeting will be available shortly. Participants agreed on the following objectives for a Canadian campaign complementing the International Campaign to Ban Landmines:

- Urge a call by the Canadian government for total ban on the use, production, stockpiling, sale, transfer or export of antipersonnel landmines;
- Recognize recent Canadian initiatives and support for further initiatives to assist in humanitarian mine clearance activities. These would include multilateral activities such as support for the Cambodia Mine Action Centre and other UN initiatives, as well as for any unilateral Canadian humanitarian mine clearance activities;
- Request an immediate Canadian moratorium on the production and export of landmines, their component parts and related technology;
- Ask that Canada increase its support for, and participation in, unilateral and multilateral programs providing assistance to the victims of landmines.

For more information contact Celina Tuttle at Physician for Global Survival, 170A Booth Street, Ottawa ON K1R 7W1. tel: 613-233-1982 fax: 613-233-9028 e-mail: cppceli @ web.ape.org.

In May 1993, Prime Minister Mulroney promised the Coalition he would order new reviews of 23 rejected refugee claimants' files.

In September we met with Ms. Blair Dickerson, assistant to Doug Lewis, former Minister of Public Security, and Brian Davis, Director of Case Management. We discovered that crucial documents acknowledged by them in June were not in the files. We gave Davis new copies. He later rejected all 23 claims.

On October 27, 1993, a letter from Davis listed 14 of our clients for whom the outgoing Minister had authorized permits and eligibility for "H and C" landing applications.

By Sept. 28, 1994, not one of the applicants is landed, some have no secure access to work, education, or health care, and files again seem "lost".

REFUGEE UPDATE

is published quarterly by Jesuit Refugee Service/Canada a Project of the Jesuit Centre for Social Faith and Justice

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SUBSCRIPTIONS:

1 year/4 issues:
individuals \$10, institutions \$14.
2 years/8 issues:
individuals \$20, institutions \$28,
bulk (20 or more) - \$1/issue.

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