



CANADA'S PERIODICAL ON REFUGEES

REFUGE

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A Time to Rejoice

"The United Nations High Commissioner for Refugees, Mr. Jean-Pierre Hocké, announced today that the Nansen Medal Committee has decided to award the 1986 Medal to the People of Canada in recognition of the major and sustained contribution made to the cause of refugees in their country and throughout the world over the years." (Press release, United Nations, October 6, 1986)

Very rarely do Canadians working with and for refugees have occasion to rejoice -- there are ten million reasons not to.

The news of October 6th brought us up short. Impersonal and distant non-governmental organizations have been watching Canadians in their official and even everyday humanitarian work. Every Canadian has the sovereign right to be proud of this singular honour, awarded for the first time to all the people of a country. The Canadian effort on behalf of refugees has been collective. It has been animated in local community groups, in agencies and in provincial and federal government ministries in Canada and abroad. It has extended from resettlement in Canada through sustained and sometimes bold efforts to provide Canada's protection nearer their homeland.

November 13th will be the day for momentary rejoicing, to take satisfaction in our efforts, however fledgling and chequered with partial results and half-successes these may be.

But all good things come to an end -- so too with the new-found Canadian euphoria. We can do no greater service in the spirit of Hansen than to be critical of the refugee situation everywhere -- no less in Canada than in countries where social conditions force involuntary migration. And to be critical no less of our own work than of our government's policy.

Thus *Refuge* highlights here two major themes which bring us quickly back to order: first, the issue of refugee determination policy and secondly, that of receiving refugees with well-founded fears of persecution who arrive in a manner to which Canada is unaccustomed.

In these pages Tom Clark underscores the unflagging insistence of the Inter-Church Committee for Refugees on principles of due process for all claimants arriving at Canada's borders. Rabbi W. Gunther Plaut cogently reminds us of the sensibility of these propositions for Canadian life: to treat refugees otherwise is to practice the very discrimination which Canada could eradicate.

The Canadian government's position, too, appears plausible. Due process will be assured but within limits which the government considers practical, and cost-efficient. And government representatives are unwilling to forward policy which in its estimation, it cannot responsibly deliver. Refugee policy is one among many games in the political arena. It is subject to the same type of compromises as foreign aid and wheat subsidies.

The gap remains, bridged by political leaders begging for time and patience, reminding the advocate that yet another round of bargaining will occur in next year's promised consultation.

Yet refugee affairs are affairs of the moment. Certainly the recent arrival of Tamils in Canada illustrates that point. The Tamils unanimously claim past and potential future persecution in Sri Lanka. There appeared no other means of affording them protection collectively as well as individually than to grant them temporary asylum and rights to seek employment and to enjoy health and social assistance benefits while awaiting hearings for judgement on their cases. By all accounts, Canada's move appears at once generous and sensible.

But it is not undebatable. If these Tamil claimants arrived from West Germany, which also granted them asylum, why did they not remain there? How does this particular group differ from other refugees who are discontented with their country of refuge and wish to reunite family members here? Is ingenuity rather than need for asylum being reinforced in this instance?

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The respective responsibilities of two governments are also spotlighted. How often and under what circumstances will Canada be asked to "share the burden" of accepting asylum-seekers from countries where asylum has already been granted? Should Canada routinely receive claimants from countries like West Germany, which discourages refugee arrivals by detention and deprivation of other civil rights, but which at present protects them from refoulement and other perils?

These questions will not pass with the successful adaptation of the small number of refugee claimants from Sri Lanka. Very soon the Canadian government will have to argue that such acts of compassion also have limits -- not only on the number of refugee claimants, but also on the conditions under which third countries such as West Germany may send their claimants to Canada.

Advocates insist that more is better and that quotas are irrelevant in the humanitarian cause of assistance to refugees. By selectively

reinforcing actions of the government such as granting asylum to the Tamil claimants, the urgent points are effectively pressed.

Government for its part will have to enunciate clearly its practical operation. When can we Canadians expect the generous response? How flexible will its policy be without bringing confusion to the very realm which has recognized Canada as its most distinguished contributor? With the gleam of honour comes the rub of increased responsibility. A time to rejoice is a time for sober reflection.

C. Michael Lanphier

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The Nansen Medal

The Nansen Medal is named in honour of Dr. Fridtjof Nansen (1861-1930), an eminent Norwegian scientist and humanist whose diverse activities ranged from exploration of Northern regions through intricate diplomacy.

His contributions to the international assistance to refugees, notably co-ordinating rapid repatriation of some 450,000 prisoners of war after World War I, culminated in his appointment in 1921 to first High Commissioner for Refugees for the League of Nations. He organized the League's refugee efforts to bring about self-sufficiency among refugees.

The Nansen passport for (stateless) refugees was adopted in 1922. Subsequent refugee laws, including financing activities on behalf of refugees under his direction, reflect his pioneering efforts.

The Nansen Medal, struck in 1954, was first awarded to Eleanor Roosevelt and her late husband (President Franklin D. Roosevelt) for initiative in establishing the Inter-governmental Committee on Refugees.

Subsequent recipients have included heads of state, prominent figures in assistance to refugees, as well as individuals who have performed heroically for refugees.

The Nansen Committee, headed by the High Commissioner and composed of nominees of the Norwegian and Swiss governments, and the chair of the commission on refugees of the International Council of Voluntary Agencies, is free to nominate any person or organization. This year the Committee has accorded the medal to a nation, the People of Canada, for the first time.

Refugee Determination in Canada

by Raphael Girard

On May 21, 1986, after extensive study and consultation, the government announced a package of proposed reforms designed to simplify and improve Canada's refugee determination process.

Highlights of the proposed system include: independent decision-making by a specialized Convention Refugee Determination Division; a non-adversarial oral hearing for claimants on questions of merit; decision-making by two-member panels which offer the benefit of the doubt to the refugee claimant; and the right of an appeal by leave to the Federal Court of Canada on questions of law and jurisdiction. The system also contains reasonable limitations on access, in order to discourage unfounded claims and to prevent long delays for genuine refugee claimants.

In order to deal with new claims arising between May 21st and the coming into effect of new legislation in 1987, the "fast track" system, consisting of an accelerated inquiry and refugee determination system as it exists in current legislation, but supported with additional resources, was also announced. The "fast track" is not encumbered by the refugee claims backlog as of May 21, 1986. Its objective is to shorten the time for resolution of refugee claims, to put cases through in a few months rather than in several years.

To make fast track work efficiently, certain types of cases have been held out of the system -- nationals of countries to which Canada does not deport, such as Iran, Sri Lanka, Afghanistan, Lebanon, Czechoslovakia, and so on. These cases receive Minister's Permits to provide equivalent protection for up to one year, pending a review of Canada's removals policy.

An administrative clearance of the refugee claims backlog was also announced in the proposed reforms. Over 20,000 claimant cases are eligible for review, concentrated largely in Montreal (45%), Toronto (45%) and Vancouver (5%). The population is also concentrated in terms of its ethnic and geographic background. Sixty percent of the claimants are from six countries: Guyana, Sri Lanka, Jamaica, Portugal, Iran and El Salvador. Claimants are judged on their establishment or the likelihood of their establishment in Canada. The criteria include: ability; the willingness of relatives to assist; the personal suitability of the applicant; and, the applicant's family

obligations. Notwithstanding this assessment, a claimant with close relatives in Canada can be admitted providing the relative is willing and able to sign a guarantee of support.

Guidelines have also been issued pertaining to applicants who cannot meet the test of successful establishment, but who nonetheless merit favourable treatment because of the adverse effects that would result for the claimants, or members of their families, were they returned to their home country.

All successful claimants must meet the requirements of the Immigration Act insofar as medical, criminal, and security screens are concerned. Applicants who are not selected are free to pursue their claims within the existing refugee determination system.

Special offices have been established in Montreal, Toronto and Vancouver to process the backlog of claimants. Elsewhere, the operation is being conducted from regular Canada Immigration Centres by trained staff.

The norm to which the programme works is the provision of a "one-stop" service. In most cases, claimants are informed of the decision upon completion of their interview; if accepted, they become permanent residents of Canada. Pilot interviews with claimants started the last week in August, and the operation will be in full swing by November. To date, some 2,000 cases have been dealt with by the Administrative Review Project. Interviews with claimants will be completed by June or July, 1987.

The legislation to give effect to the announcements made by the Minister of State for Immigration was given prominence in the Speech from the Throne, on October 1st. This is an indication of the government's determination to bring in legislative reform of the refugee determination system, at the earliest possible opportunity.

Raphael Girard is the Co-ordinator of the Refugee Determination Task Force at CEIC.

Annual Report to Parliament on Future Immigration Levels 1986

The Annual report to Parliament on Future Immigration Levels was tabled on October 30th by Gerry Weiner, Minister of State for Immigration. Canada's intake of 12,000 government-assisted refugees in

1987 repeats the 1986 guidelines. The following statistical table, comparing government-assisted refugee allocations over the past few years, has been compiled using CEIC sources.

Region	1984	1985	1986	1987
S.E. Asia	3,000	3,700	3,200	3,200
E. Europe	2,300	2,200	3,100	3,100
Latin America	2,500	3,000	3,200	3,200
Africa	1,000	1,000	1,000	1,000
Middle East	800	800	900	900
Other	400	200	300	300
Reserve	2,000 (unfunded)	100	300	300
Total	12,000	11,000	12,000	12,000

Principles and Questions

by W. Gunther Plaut

I

When in 1985 I submitted my report *Refugee Determination in Canada* to the federal government, I made 89 separate recommendations. Of these, I consider five to have priority as the principles on which the whole process must rest if it is to be fair.

- **Principle one: Refugees must have access to the process.** Without access there can be no fairness. Any attempt to decide refugee claims by border officials must be resisted.
- **Principle two: The claim of the refugee must be heard by an independent Refugee Board.** The number of members hearing the case is less important than that those hearing it be well-trained and totally independent in their judgment.
- **Principle three: There must be an opportunity for a proper appeal.** Every decent legal system provides for it, because human judgment is often faulty and a review will help to safeguard the accuracy of the decision and the fairness of the process by which it was reached. A proper appeal also means that appeal judges must be familiar with the special nature of refugee determination cases, with their often inaccessible human and factual components. Nothing exists in the domestic realm that compares with them.
- **Principle four: The process must be expeditious.** Judgment delays add an intolerable burden to the claimant as well as to the administration of justice.
- **Principle five: The process of decision-making must be non-adversarial.** Both state and claimant are there to arrive at the truth. The state should not try to prove the claimant wrong. A non-adversarial procedure will also more properly preserve the status of the claimant, who is not to be treated as a criminal. The way we arrive at the truth reflects on our own humanity.

The case of the 155 Tamils who appeared in lifeboats off the coast of Newfoundland illustrates the fact that these principles have so far not been clearly understood. Emotional discussions took place over the right or wrong of accepting these people into our refugee determination process -- when in fact the law gives us no options at all, and neither will the new legislation, if it incorporates the above-named five principles. The difference will be that the process will then be both fair and speedy; and, if it can be reduced to six months, the cost to the taxpayer will be relatively small, and so will the incentive to abuse the process.

II

It must not be denied that abuse of our determination system has lately grown to worrisome proportions. The most flagrant example is the recent arrival of thousands of Portuguese who, on landing, have claimed that they were Jehovah's Witnesses and were being persecuted in their homeland. When the claims reached unmanageable figures, the government introduced visa requirements for Portugal and thereby eliminated a good deal of the problem. Political considerations delayed speedier action and the addition of the Portuguese claims to the already large backlog of cases has threatened the integrity of the system.

Large sums have already been infused into the determination process, especially at the level of the Immigration Appeal Board, to cope with the sharp increase. But that is not enough. The most immediate solution would lie in the immediate admission of all those claimants whom at present we will not return to their homes, that is, to those countries where civil strife exists and the repression of human rights is indubitable. (This would clearly exclude the Portuguese but would include the Tamils.) Such a policy, coupled with the additional admission of those who already have a support system in Canada, would reduce the backlog to reasonable proportions.

It has been said that such an approach rewards those who breach our set immigration procedures and "jump the queue". To this argument, I give two answers:

One is that queues exist for immigrants, not for refugees. The latter are by definition incapable of standing in line at our consulates and embassies, for they are fleeing for their lives. To be sure, not all claimants do, and a number of them will be found to have made insupportable submissions. But this can be ascertained only if the regular legal process so establishes it. By definition refugees do not fit our orderly requirements abroad, for they are the victims of disorderly conditions. Immigrants can wait their turn, refugees cannot.

The second one is that it must be understood that abuse of our present or any future system can never be totally avoided. We cannot build a Berlin wall around Canada, and even such a wall would be breached. At best we can make the process speedy enough so that a stay of only six months in Canada will not appear a worthwhile risk to the potential abuser.

III

Canada is an attractive land. We are on the

whole an orderly society with great potential and a standard of living which is among the highest in the world. We have our warts, but they are small in comparison with our generally healthy complexion. People from other lands consider Canada a most desirable country in which to settle if the opportunity presents itself.

It seems to me that we ought to be happy with the high esteem we enjoy. Immigrants, like refugees who settle here, will benefit and not harm our society. They are most likely enterprising people willing to leave everything they know behind, to go to an unfamiliar world with a difficult climate. On arriving here, they will work hard and bring their determination to bear on our future. Good for them, and good for us.

We have quotas, or as the Department likes to call them, "immigration levels", which are determined by the Cabinet from year to year. These are ad hoc decisions, based on a number of economic factors, chief among them the level of unemployment.

Do the Department and the Cabinet arrive at their levels by way of a generally accepted, scientifically-based analysis? Are there other considerations that are at play, and what are they? Whom should we take and whom should we not admit? Are some parts of the world better than others as sources for Canadian immigration?

These and similar questions are not directly aspects of our refugee determination problem, but they are part of a larger picture and highlight the need for the government to let the public participate in a consideration of long-range population planning for this country. These issues and others were raised in Part II of my report, but so far the government has not released it to the public for consideration and discussion.

Meanwhile we have to deal with the immediate task of reforming our deformed present process. If it is done with ready humanity, rather than petulant hesitancy, we will not only earn the plaudits of the world but benefit the Canadian polity. For it is the kind of people we are, and not the wealth of our resources, that determines our future.

W. Gunther Plaut is Senior Scholar at Holy Blossom Temple, Toronto, and the author of *Refugee Determination in Canada* (published on April 17, 1985), a major report which served as a basis for legislation to be promulgated by the Federal Government in the coming months. Rabbi Plaut's most recent book is his first novel, *The Letter*, published by McClelland and Stewart.

The Government's Refugee Determination Proposals: An Update

by Tom Clark

The government announced proposals for a new procedure for determining refugee status in Canada on May 21, 1986, just days before the May meeting of the Standing Conference of Canadian Organizations working for Refugees.

At the Standing Conference we began to understand the concerns of government officials, but we could not accept the proposals. The Inter-Church Committee for Refugees (ICCR) members subsequently prepared an analysis of their concerns and objections. The government had produced proposals which conflicted with the right to a fair hearing granted under our Charter of Rights and Freedoms. That right was supported by Parliament's Standing Committee on Labour, Employment and Immigration. Missing was the usual appeal to a competent specialized body.

Some argue that there was an error of judgement. The government was put under a time constraint by then Employment and Immigration Minister, Flora MacDonald. Eyeing the problems of overloaded asylum procedures in Europe, and fearing problems here, the government proposed adoption of the same measures considered by European governments for a different set of circumstances and particular problems.

Yet this rationale ignores that denying some groups access to a fair hearing would not have curbed the large-scale arrival of those refugee claimants from Portugal. Indeed, it limits government freedom of action to write responses to hypothetical situations into legislation. Decisive administrative action must be fashioned for specific problems, if they arise. Still, it is plausible that the measures restricting access were an attempt to reassure claimants in the face of the inevitable uncertainties.

Other NGO groups have suggested that the proposals were deliberately unsatisfactory in order to provoke further debate and further delays, arguing that there are certain advantages to delay. The time required for the present procedure has left claimants in uncertainty for years. Although most critics argue that this delay attracted abuse, proponents counter that it

was supposed to serve as a deterrent. The interim procedure announced on May 21st preserves the uncertainty. It grants Minister's Permits, valid for only a year, to persons from countries with severe human rights problems. The right to a fair hearing is replaced by administrative discretion.

However, the deliberate delay theory is too cynical. The absence of an appeal in the government's proposals may rather be a deliberate if over-zealous attempt to speed up the new determination procedure. Yet this hypothesis fails to take into account the fact that administrative discretion has its pitfalls. The reaction to the granting of Minister's Permits to 155 Tamils makes this point. Some Canadians who were confused by the government's response would probably have been reassured if a competent independent refugee body had undertaken a case by case review of the need for protection. The lies and inconsistencies which upset some Canadians would have been less likely in the non-threatening, non-adversarial confines of a respected independent determination body.

Alternately, a fear of abuse seems to be the reason why the government tried to speed up the procedure by not providing a meaningful appeal. In similar areas of Canadian law it is usual to find appeal to a specialized competent appeal body with a final level of appeal to the Federal Court. This important safeguard for a refugee, need not add significantly to the time required for an overall refugee determination procedure. A specialized appeal procedure could be tailored to ensure fairness and efficiency in processing refugee appeals and it would allow the Federal Court to play its normal role as watchdog for gross deviations in matters of law.

All these preoccupations of government, however, fail to consider the needs and the rights of the refugee. The refugee claiming status in Canada should have the right to have his or her case heard before a specialized independent decision-making body in a reasonable time. We remain convinced that government concerns of potential abuse and the refugee's need to begin a new life in a safe place point to the same solution. It is a fair and

expeditious procedure for all claimants with decisive administrative responses tailored to specific abusive situations if these should arise. Within this expeditious procedure it is feasible to provide a refugee with the additional safeguards of appeal to a specialized appeal body on the merits of the case.

The present government has good fortune in an opportunity to make its mark on Canadian history. It could create refugee-related legislation which Canadians will look back on with pride. It could reinforce the humanitarian tradition for which Canada is increasingly recognized internationally. That is on why September 10th, church leaders requested a meeting on refugee determination with Prime Minister Mulroney.

Tom Clark is the Co-ordinator of the Inter-Church Committee for Refugees.

New Publications

- The *International Migration Review* has published a Special Double Issue titled "Refugees: Issues and Directions". The main topics are Refugee Movements, Asylum and Protection, Refugee Issues in Developing Countries, and Adjustment and Resettlement (Center for Migration Studies, 209 Flagg Place, Staten Island, New York, NY 10304, USA).
- *The Hmong in Transition*, edited by Glenn Hendricks, Bruce T. Downing, Amos S. Deinard (Staten Island, New York: Center for Migration Studies, 1986). Thirty leading experts address the effects of mass migration on the Hmong in France, Australia, Thailand and the USA.
- *Working with Refugees*, edited by Peter I. Rose (Staten Island, New York: Center for Migration Studies, 1986). The edited proceedings of the Simon Shargo conference on refugee resettlement.
- *Guide to the Multilanguage Collections in the Public Library Systems of Metropolitan Toronto*. The 1986 edition is available to the public free of charge from their local public library branch in the Metropolitan Toronto area.

ICCR Protests Access Restrictions

ICCR representatives were in Ottawa on May 21, 1986 to hear the government propose the new procedure for determining refugee status and for dealing with the backlog of refugee claims.

Although the announcement of an administrative review will excite many claimants in the 20,000 backlog, the criteria for the review are not yet available and so the ICCR cannot comment on the administrative review at this time.

The proposals for refugee determination have some positive elements but, in spite of ten years of advocacy, still contain measures which erode refugee rights by preventing some claimants from having their case heard by the determination body. The ICCR, with other non-governmental organizations, protested these restrictions in its response to the proposals at a press conference.

On February 5, 1986, leaders of nine Canadian churches and religious bodies had delivered a jointly signed letter to Prime Minister Brian Mulroney seeking assurance that the new guidelines would not limit the right to a full and fair hearing of a refugee claim in Canada (See ICCR Bulletin, Special Issue February 1986). Many individuals and church-related groups had sent similar letters in support of the church leaders. The new proposals ignore this strong consensus.

Short Analysis of the Proposals

The proposed streamlined procedure had three elements: *access*, or who gets to be heard; *determination*, or how the case is decided; *appeal*, or review for possible error. While the new determination procedure contains some welcome improvements, questions of access and appeal would breach the fundamental human rights granted under Section 7 of the Canadian Charter of Rights and Freedoms to all people physically in Canada. No provision is made at the end of the process for a meaningful appeal following a negative decision.

a) Laudable Elements of the Proposals

1. *Oral Hearing*: The proposals entrench the right to an oral hearing for each refugee case granted access.
2. *More than One Decision-Maker*: The decision-making body consists of two people. Only one vote is necessary for a claim to be successful so the benefit of any doubt will go to the claimant.
3. *Separation between Immigration and Refugee Boards*: The decision-making body is separate from immigration procedures and will be directly responsible to the Minister of State for Immigration. However, administrative ties may limit the degree of separation. A research centre will be set up with current information on refugee-producing situations. The Minister's discretion to land refugee claimants under exceptional circumstances is protected.
4. *Non-Adversarial Hearing*: The oral hearing is to be conducted non-adversarially, thus providing a "helpful" environment conducive to eliciting the facts of the case to be presented.

b) Problems with the Proposals Limiting Access

Four specific groups are denied access to the determination process in the proposals:

1. *Refugees with Status from a Signatory Country*: These must have documents to prove the right to residency there. The Minister subsequently stated publicly that this will apply to people with "durable protection".
2. *Persons in Canada for 6 Months without Asking for Status*
3. *Those returning to Make a Repeat Claim*
4. *People with Removal Orders from Canada*

Decisions of immigration officials who deny access will be reviewable by the Federal Court to ensure they are supported by the evidence.

The restrictions on access are justified by the government as a way of preventing anticipated abuse.

Our General Principles:

The lack of universal access to a fair hearing is a denial of human rights granted under the Canadian Charter of Rights and Freedoms. Denying this right to applicants conflicts directly with the Supreme Court of Canada decision of April 4, 1985 on the case of *Singh et al*, which granted an oral hearing to every claimant in Canada. As Judge Wilson noted in the decision: "certainly the guarantees of the Charter would be illusory if they could be ignored because it was administratively convenient to do so" (page 64).

The guidelines for refugee determination, accepted by Canada as part of the 1977 Conclusions of the Executive Committee of the United Nations High Commissioner for Refugees, require that all cases be referred to the refugee determination authority. For immigration officials to control access to this authority is, therefore, unacceptable. The application of such restrictions to access is new and dangerous because it would set a precedent.

Our Specific Objections:

For each group with restricted access we can foresee circumstances where life, liberty or security of person could be at risk. These persons, therefore, have the right to procedures consistent with the fundamental principles of justice.

The ICCR has consistently argued that the just and expeditious refugee determination procedure which it has advocated would not attract abuse.

The proposed restriction of access for some with prior protection as refugees in another country sets a dangerous precedent because other related exclusions could follow. The proposed restriction goes beyond the exclusions set out in the Geneva Convention and Protocol. Canada supported the Conclusions of the Executive Committee of the United Nations High Commissioner for Refugees, 1979, which require

Canada to consider a request for asylum where physical safety or freedom are endangered in the present asylum country. Within the same spirit, under Canadian law, a Convention refugee has the right not to "be removed from Canada to a country where his life or freedom would be threatened" (Immigration Act, Clause 55).

The proposed appeal of the access restriction to the Federal Court is inadequate. An evaluation of a claimant's protection or of changed circumstances and their impact on a claimant is outside the jurisdiction of the Federal Court because it is not a matter of law, and should be decided by a body well versed in current refugee cases.

c) Problems with the Proposed Appeal

If a refugee claim has been denied by the refugee determination body, leave to "appeal" to the Federal Court is provided in the proposals.

Our Objections:

The guidelines for refugee determination, accepted by Canada as part of the 1977 Conclusions of the Executive Committee of the United Nations High Commissioner for Refugees, provide for an appeal.

Such an appeal is normally provided throughout the Canadian judicial system. It is particularly important when life, liberty and security of person are at stake.

Any meaningful appeal must be able to review the merits of the case credibility and facts. Leaves to appeal are only granted when there are flagrant legal violations. In that rare event, the Federal Court does not have the expertise to deal with the facts or the credibility of a refugee claim; it can only make decisions on matters of law.

d) Humanitarian Procedures Unclear

Many groups of refugees flee serious civil upheaval or strife. Although individuals in these groups may not meet the strict definition of Convention refugee, the United Nations High Commissioner for Refugees asks that such refugees not be sent back to unsafe places. An example would be sending Iranians back to Iran.

The provisions for such humanitarian cases in the new government proposals are unclear. It will be important to ensure a fair and effective procedure:

Entry to the procedure for humanitarian review must not preclude an application for Convention Refugee status.

An independent credible body with expertise comparable with that required for refugee determination procedures should control who is allowed to stay on humanitarian grounds.

Those who are allowed to stay in Canada should be allowed to proceed to permanent residence status.

Refugees: Requiring Urgent Reforms

by Sergio Marchi, MP, York West

Opposition Critic for Immigration and Multiculturalism

IN THE PAST TWO YEARS Canada's relation to refugees has been under extensive review. Refugee determination has become one of the key concerns of our present day immigration policy. Although much public attention has been given to this issue, government policy action to rectify the unfair and unjust system has lagged behind.

It is time that we, as a nation concerned with a fair and just democratic system, commence to address this issue expediently and in a responsible progressive manner.

The most obvious and damaging policy component is that the government is prepared to limit access to the refugee determination process on the grounds of the claimant's country of last sojourn. The vast majority of refugees must escape their country into a secondary country before coming into Canada, since persecution cuts off direct access to Canada.

In addition, the government proposes a terribly weak appeal procedure to Federal Court, is silent on the right of legal counsel from the initial stages of the process, recommends legisla-

ting time requirements under which the claims may be heard, and suggests a case-by-case clearance of the backlog rather than instituting a comprehensive and collective policy.

To criticize the Conservative government's approach without an optional programme would be unfair. I found the following liberal principles as the alternative to the government's stand.

Internationally, Canada has established itself as a country of human compassion and understanding, whose borders were open and accessible to all those individuals who needed and sought opportunity and hope for a better future for themselves and their children.

The Conservatives' proposed vision to address the realities of those seeking refuge, and particularly the new phenomena whereby refugees are arriving at our doorstep as opposed to immigration officials selecting them from refugee camps throughout the world, is

inadequate. All of the following principles must be respected:

- 1) Fair and humane treatment of the individual refugee claimant.
- 2) Equal access to refugee determination procedures, regardless of method of entry, country of origin, or country of last sojourn.
- 3) The right to present a case personally before the decision-making body.
- 4) The right of an appropriate and strong appeal mechanism, which emphasizes a second oral hearing before a specialized refugee appeal body, prior to having access to the Federal Court of Appeal. (For further information, see Liberal Party model.)
- 5) The right of counsel for the claimant from the initial stages of the determination process.
- 6) A process that strives to be expeditious with final decisions rendered within a reasonable period of time.
- 7) A clear and distinct separation of the refugee determination process from that of immigration.
- 8) Precedence given to determination rather than extradition; therefore, the elimination of the existing adversarial system.
- 9) Responsible decisions unaffected by political bias.
- 10) Competent and accurate translation services to ensure authenticity of a claimant's situation.
- 11) Speedy reunification of a refugee with his/her family after the granting of refugee status is essential to their well-being; also a lengthy separation has dangerous repercussions for family members who remain in the homeland country.

The afore-mentioned principles will serve to re-establish Canada's traditional leadership role in safeguarding the plight of refugees and their human rights.

Visas Versus Refugees

by Dan Heap, MP, Spadina
NDP Critic, Immigration

CANADA HAS BEEN quick to require visas of people coming from right-wing dictatorships to claim refugee status here, but slow to stop the notorious abuse by thousands of "Jehovah's Witnesses" claimants from Portugal. This seems to be part of a move (coordinated to some extent by international staff discussion) to shut out Third World refugee masses from our neat, tidy and prosperous "First World". Hungry people from countries impoverished by our corporations who use their land to grow cheap crops for us, or from countries ruled by governments more friendly to us than to their own people, sometimes use the facilities of modern travel to arrive in Canada. Our immigration authorities frequently try to keep them out. The legal battles are many and the moral issue is grave. I believe the Minister ought to review our whole visa policy and invite public discussion of it.

On March 14, 1984, Canada imposed visa requirements on Guatemalans. This was the same year Canada co-sponsored a UN Resolution



Forum

condemning Guatemala for grave human rights violations. We had many incontrovertible reports that the armed forces had massacred Indians and other campesinos and that the death squads "disappeared", tortured and killed trade union activists, outspoken intellectuals and church leaders. Mexico was uncertain as safe haven. The US refused safe haven, (not surprisingly, since it was the ally, if not the author, of the reign of military terror). Canada gives safe haven -- for which we are very thankful -- but restricts access to it. Why?

Our government's excuse is that Canada instituted a special programme for Guatemala, by which our Embassy has helped many hundreds of Guatemalans to escape death threats and to enter Canada on Minister's Permits. That is true, but does not justify shutting Canada's door to other genuine refugees who escape the death squads on their own. The government raised the fear of bogus refugees flooding into the country, but their own statistics belie that argument.

From January 1981 till March 1984, Canada accepted 67% of claimants from Guatemala -- 279 whose lives were saved, against 139 who failed to meet the strict Geneva definition but of whom many qualified for entry on

humanitarian grounds. There was no flood of bogus applicants. Canada has done similarly with Chileans and Salvadoreans. From January 1981 to August 31, 1986, three hundred and six Chilean refugee claimants in Canada were accepted, and 296 were rejected. This acceptance rate is over 50%, twice the general average. Two hundred and thirty-nine Salvadoreans were accepted, and 526 rejected -- which is still consistent with the general average.

Why has Canada tried to shut the door to Chileans, Salvadoreans and Guatemalans who came to Canada to claim refugee status? Does Canada restrict access to refugees as a policy? If so, who chose this policy? Not Parliament. The Minister? The bureaucrats? And why?

European countries are faced with a greater volume of inland refugee claimants arriving from countries nearer to them than any are to Canada. They are responding generally by restricting access. Is this becoming a policy of "Western" or "Northern" governments? And is it decided by elected representatives, by the international network of bureaucrats, or by others?

The military and industrial-commercial policies of the "Western" or "Northern" countries align us generally with the governments of many Third World refugee-producing countries. Is this our intention? If not, Canada ought to set a clear humane policy by removing the visa requirements from Guatemala, El Salvador and Chile.

An Interview on the Case of the 155 Tamil Refugees

Last August 155 Tamil refugees were found cramped in two lifeboats off the shores of Newfoundland. They had come from West Germany. However, for four days they claimed that they had sailed from South India, before finally revealing the true origin of their journey. Their arrival stirred a national controversy. *Refugee* decided to interview Sri Guggan Sri-Skanda-Rajah, a community legal aid worker at the Jane-Finch Community Legal Aid Clinic to discuss their fate. Mr Sri-Skanda-Rajah is also Vice-Chair of the Toronto Refugee Affairs Council and Public Relations Co-ordinator, Tamil Eelam Society of Canada.

Refugee: *Why would these Tamils need to come to Canada from Germany? Was it for economic reasons?*

Sri Guggan Sri-Skanda-Rajah: Unfortunately, I think that is the conclusion too often drawn in similar situations. Quite frankly, it is important to realize that there is very little difference between the West German and Canadian standard of living. The difference is not of such significance that people would risk their lives and spend thousands of dollars to make their way to Canada.

The real explanation lies elsewhere. In coming to Canada, the Tamil refugees were responding to their fears about what action the West German government might take if they stayed in that country. Overwhelmed by the sheer number of Tamil refugee claimants over the past year and a half and convinced that these people were economic refugees, European governments such as France, Switzerland, Holland and West Germany sought mechanisms by which they could remove the Tamils from their respective countries. At first these governments attempted to establish refugee camps in Sri Lanka which they would finance and control and to which these Tamils would be returned. Such an action would have been a direct violation of the United Nations charter and a breach of those countries' international obligations. When these countries realized that aspect, they began to look at alternate solutions such as establishing refugee camps in other Third World countries to which these Tamils would be removed. It should also not be lost from sight that in some instances these very countries had removed Tamils to Sri Lanka. It is important to realize that refugees who have

been deported to Sri Lanka have suffered at the hands of their own government. Amnesty International has documented their treatment in its publications.

Faced with the prospect of forcible removal back to Sri Lanka or to some other unknown place and the accompanying danger and uncertainty this prospect posed, the Tamils chose to come to Canada by surreptitious means. It was natural that they would want to take the steps necessary to ensure their safety and security. It is only in light of these extenuating circumstances that their actions can be understood. Unfortunately, the method they chose, and the story they decided to tell, adversely affected their reception in Canada.

Refugee: *What were Canada's options upon their arrival?*

Sri Guggan Sri-Skanda-Rajah: Before the Tamils arrived on August 11th, Canada had instituted a new refugee policy for dealing with people who had been here prior to May 21, 1986 and who had in some form or another indicated their desire to claim refugee status. Under this policy, claims are processed by way of what is called an administrative review. The government instituted the new review process in recognition of the fact that most of these people have established some roots in Canada. They have established themselves by working and saving and in many cases, upgrading their skills. The policy recognized that these people made a contribution to the economy of this country and aimed to give them permanent residency in light of their contributions. About 75% of those people in the so-called backlog would benefit from this administrative review process.

At the same time Canada recognized in addition to the traditionally accepted designated nations of Eastern Europe that there were other countries fraught with political or civil strife and upheaval to which people ought not to be returned. This list of countries included Sri Lanka.

People arriving in Canada after May 21, 1986 would be dealt with under the procedure the government was planning to have in place by the spring of 1987. In accordance with this new policy, the government issued the Tamil refugees Minister's Permits, thereby giving them temporary status and entitling them to a work permit in appropriate circumstances. By

providing these claimants with the right to seek and obtain work, the government hoped to ensure their survival without recourse to social assistance or welfare. The Tamils were not, as is commonly believed, determined to be Convention refugees, nor did these documents confer that status on them. In fact, it is important to understand that the Minister's Permit and the work permit are merely putting these people in a holding pattern until their cases are reviewed under the new determination process.

Refugee: *How might Canada benefit from this incident?*

Sri Guggan Sri-Skanda-Rajah: The positive side of the Tamil incident is that it produced a healthy debate and, in doing so, brought into proper focus the mess of the immigration process and the mess that exists in the refugee determination process. Unfortunately, it also revealed the nastiest elements of Canadian society, arousing people who are hell-bent in their prejudices and determined to send these people home.

Refugee: *How did the Tamils see this situation?*

Sri Guggan Sri-Skanda-Rajah: Safety and security are all-important factors of the decision of a refugee. The refugee is not in normal circumstances and cannot file an application. He is more likely to do that in places like the Austrian camps, or in Southeast Asian camps, because in these places he has some sense of security and the host governments are not likely to remove him back to the country from which he fled. The Tamil in Western Europe is not in so secure a position. He has this constant threat, this constant feeling of insecurity because he does not know what is his future. So long as this feeling of insecurity persists, the Tamil, like any other refugee, is more likely to look for a place in which he is going to feel secure. Canada presents itself as just such a place.

Refugee: *Are the Tamil refugees fleeing a political situation, or are they, in fact, as the European countries seem to perceive them, economic refugees?*

Sri Guggan Sri-Skanda-Rajah: Amnesty International concludes that these people have reason to fear. The persecution in Sri Lanka takes a variety of forms: there have been indiscriminate killings and retaliatory killings.

People have been tortured and held incommunicado, having no recourse to due legal process. There is clear evidence that the government of Sri Lanka has taken no action whatsoever to investigate, charge and prosecute violators of the law; violators who are government security forces, have systematically breached the law, taken lives and tortured people.

The European governments are therefore wrong in concluding that the general Tamil profile is that of an economic refugee, when in fact, they are political refugees in the true sense of the word.

Refuge: *What other factors ought to be taken into consideration in assessing the Tamil affair?*

Sri Guggan Sri-Skanda-Rajah: It is important to look at the community profile. It is important for Canada to look at what it is that the preceding Tamil claimants have done whilst in Canada. I think that an investigation would show that the Tamils are industrious generally, that they are not dependent on social assistance. They work very hard. Some of them have been able to upgrade their skills. They are significant contributors to the economy. Many of them take jobs that are readily available but are not generally taken by others. They are prepared to do a variety of jobs. Some of them have two, maybe three jobs. They are basically law-abiding. There has been no significant or noteworthy incidence of any type of criminality.

It is also important to deal with the rumours and allegations surrounding the boat incident. There was a claim that, since the trip had cost significant sums of money, these monies had been earned by illegal means, such as through terrorist activities or other types of criminal activities such as the selling of illegal drugs. The Royal Canadian Mounted Police Passport Immigration Division did carry out a random investigation of the Tamil refugees and have not come to any such conclusion.

I would merely suggest that these stories were fabricated by people who have their own axes to grind, who have their own motives in suggesting that the Tamils are trying to bring terrorism and violence into this country. It is important to dispel this myth. To do that I simply ask you to look at the record of the Tamil claimants who have come here before and to look at the record of the community which is very reasonable, responsible and low-key. It has existed here for nearly two decades, and there is no evidence that would suggest that this community, despite the violence that goes on in Sri Lanka, is in any way importing that violence here or practicing any form of violence or confrontation.

Book Reviews

John R. Rogge
*Too Many, Too Long:
Sudan's Twenty-Year
Refugee Dilemma*
Totowa, New Jersey: Rowman &
Allenheld, 1985

by **J. Barry Riddell**

John Rogge, a geographer at the University of Manitoba, has produced a thoughtful and interesting account of the remorseless plight of refugees in the Sudan. The work is based upon over ten years of academic investigation of the predicament of these involuntary migrants both in the Sudan and in other parts of the African continent. The author's lengthy and broad experience is reflected in this mature and scholarly account. Rogge has provided order and understanding to a situation which appears chaotic to most observers. He has effectively blended the specifics of the Sudanese situation with general concerns regarding refugee movement and settlement, and he has placed them into the contexts of refugee movement, the several crises of the African continent, and the reality of the Sudan.

The book details the plight of both rural and urban refugees fleeing from political strife and ecological disaster. It describes the problems of the incorporation of these people in this fragile economic and ecological milieu. Rogge is at his best in writing of settlement schemes such as those based upon rural land, the several wage-earning provisions, and the complexity caused by the burgeoning numbers in semi-urban arrangements. The reader learns how these displaced people originated from the turmoil of Ethiopia and Uganda, and how both the Sudan and the international community have responded.

This is a book to be read and savoured. It tells a sad tale without a pleasing conclusion, and in this sense the work is troubling. Indeed, the book's title underlines the view of many of the host Sudanese who have experienced extreme hardship for a great length of time while accommodating such vast numbers; this has only served to exacerbate the Sudan's already burdensome Third World condition. Because the book indicates understanding of the setting and situation, the text provides meaning far beyond a work which

could have been little more than a "case study" of this corner of Africa. Both laypersons and professionals will find the text satisfying and insightful; the use of maps, graphs, and photos to complement and enhance the written word is to be applauded.

J. Barry Riddell teaches Geography at Queen's University.

Gil Loescher and John A. Scanlan
*Calculated Kindness:
Refugees and America's Half-
Open Door 1945 --Present.*
New York: The Free Press, 1986

by **John Van Esterik**

In their introduction, Loescher and Scanlan express hope that this book will influence American policies concerning refugees by "examining the politics which shaped the American response to refugees over the past forty years." (page xiv). The authors start the reader on an odyssey of American politics and policy toward refugees in the post-World War II era.

Chapters outline policy development over the last forty years. Some chapters emphasize politics and policy decisions made by Presidents. Others emphasize the influence of Congress. Each chapter also focuses on a particular refugee group or issue. There is a chapter on the Cambodian crisis and another on the Cubans and Haitians. Approximately half the written text concerns the period from 1975 to 1985, when non-governmental organizations and pressure groups influenced refugee policy.

Attitudes toward refugees in America since the 1940s have greatly changed. Given the public awareness of the Holocaust today, American policy at that time seems brutally callous. Only Roosevelt and Truman seemed to overcome the anti-Semitism in public policy and take a more reasonable view of the issues. Many members of the Congress were bent on ensuring that Jews were excluded from the groups of displaced persons to be accepted as refugees. Both Congress and President Truman were agreed, however, that anti-communism was a suitable basis for refugee policy (Displaced Persons Act). This approach continues to the present time.

The important impact of the United States on world refugee policy is underlined by the influence of the US as the largest contributor to the budget of the United Nations High Commission for Refugees. This occurred despite the fact that the US was not a signatory of the UN Refugee Convention of 1951.

US policy supported claims of refugees from communist domination after the immediate post-war period. The pattern began with the Hungarian refugees of 1956 and the first Cuban arrivals in the late 50s. It persisted with the later acceptance of Cuban migration during the late 60s in sharp contrast with the refusal to accept Haitians during the same period. The story rapidly moves to the Southeast Asian refugees, also escapees from communist control, who began coming to America in 1975. In the midst of this influx, Congress passed the Refugee Act of 1980 to regularize refugee flow. Loescher and Scanlan masterfully show how the Act of 1980 has not taken on the role of opening America to bona fide refugees, but rather has continued to allow Presidential discretion in the same way the system of parole admissions had in the past. Despite the acceptance of the UN definition of refugee in the 1980 Act, accepted by the Johnson administration in 1968, Reagan has continued the policy of accepting fugitives from communism while denying other claims to refugee status.

The authors tantalize the readers in some sections with discussion of interest groups and non-governmental organizations in the US but they mostly limit their discussion to Presidential decision and Congressional battles. For example, they mention the active sanctuary groups for Central American refugees only in passing. Canadian readers may have a few quibbles. In a discussion of Hungarian refugees, the authors note that the US took the greatest number of these refugees, accepting slightly over 38,000. They do not remark on the fact that Canada, which took 37,000 Hungarian refugees, made a much more impressive contribution on a per capita basis. Also they refer to the Ministry for External Affairs as the Foreign Ministry. This is, however, an excellent, well-researched and documented book on US policy over the last forty years.

John Van Esterik teaches *Social Science and Anthropology* at York University.

Projects & News

- The Refugee Documentation Project congratulates Amnesty International on the occasion of its 25th anniversary. A special article titled "Amnesty International and Refugee Reforms", written by **David Matas**, co-ordinator of the legal network of Amnesty International -- Canadian Section (English-Speaking), will appear in our next issue.

- Congratulations also to **Meyer Brownstone**, director of the Toronto Centre for Urban and Community Studies at the University of Toronto, chairman of OXFAM-Canada and one of our contributors, on being awarded the 1986 Pearson Peace Medal by the United Nations Association in Canada.

- The Refugee Documentation Project is sponsoring a Law and Society Colloquium from 4:00 pm to 6:00 pm on Thursday, November 27th at Stedman Lecture Hall A, York University. Prof. **James C. Hathaway** will be presenting Prof. **D. Dewitt**, whose discussion will be on "A Reconsideration of the Underlying Premise of Refugee Law".

- The Honourable **Gerry Weiner**, Minister of State for Immigration, announced on October 29th seven new appointments to the Immigration Appeal Board (IAB). All appointments are for a two-year term. Total IAB membership is now forty-nine. The increase is in keeping with recent legislation which proclaimed an IAB membership expansion of up to fifty. This expansion adds to the flexibility and capacity of the Board to deal with the greater number of cases. The new members are: **Irene Chu**, **Cesar De Morais**, **Taciana T.U. Jew**, **Jean E. MacLeod**, **Beverly J. Rayburn**, **Ernest A. Rotman** and **Irvin H. Sherman**.

- **Brian Coleman**, Refugee Status Advisory Committee member, is collecting poems and songs "on the refugee experience" (exile, problems of integration and resettlement, etc.). The material may be written by refugees or others, relate to any period of time, and should be in English or accompanied by an English translation. Contributions should be mailed to: Brian Coleman, 44 Caroline Avenue, Ottawa, Ontario, Canada K1Y 0S7.

- **Barbara Harrell-Bond**, Co-ordinator of the Refugee Studies Programme at Oxford University, is attempting to compile a directory of current researchers on refugee issues or related topics. Please note the detachable form on page 11. Dr. Harrell-Bond would also be pleased to receive offprints or articles which may be published in their periodical, *Refugee Issues*.

- The Refugee Documentation Project was honoured to have been visited on October 15th by **Hugh Pilkington** of Nairobi, and friends from the World University Services Canada. Dr. Pilkington's special interest in our Resource Centre, refugee research and the projects of our Research Assistants was greatly appreciated. We extend our deepest sympathies on his untimely death, last October 16th, at Brandon University, Manitoba.

- Please note the form on the back page for ordering a book due to be published by the Refugee Documentation Project. It will cover the edited proceedings of the International Symposium *Refugee or Asylum -- A Choice for Canada*, which took place at Glendon College, York University, on May 27-30, 1986. The book will provide an ideal opportunity to keep informed about the main topics of discussion of this extremely successful event.

Refugee Issues

Please fill out the following form regarding refugee-related research which you have conducted, and mail it, together with papers you wish considered for publication in *Refugee Issues*, to:

Dr. B.E. Harrell-Bond
Co-ordinator
Refugee Studies Programme
Queen Elizabeth House
Oxford University
21 St. Giles
Oxford OX1 3LA
England

Name _____

Address _____

Institution/private _____

City _____ Province or State _____

Country _____ Postal Code _____

Telephone _____ Telex _____

• Academic Discipline _____

• Topic of Research (attach extra details) _____

• Refugee Study Country of Origin _____

• Research Conducted Where? _____

• Is your Research Data primarily:
 fieldwork primary documents secondary documents

• Research funding source:
 individual voluntary international independent agency

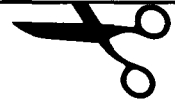
• Is your refugee-related research central or peripheral to your scholarly interests?

• Is your refugee-related research used in your teaching? _____

• Any problems with the publication of material? _____

• List your published work in this field (attach extra details) _____

Refuge or Asylum -- A Choice for Canada? Reservation Form



The edited proceedings of *Refuge or Asylum -- A Choice for Canada?*, an International Symposium sponsored by York University's Refugee Documentation Project in May 1986, will be published in book form in 1987. Those placing a pre-publication order will pay only Can\$27.50 per copy, plus postage. To take advantage of this special offer, please fill out the reservation form below and return it to:

Refugee Documentation Project
York University
4700 Keele Street
North York, Ontario
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M3J 1P3

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I wish to become a friend of the Refugee Documentation Project for the 1986-1987 academic year. I understand that all friends receive *Refuge* as well as information on the research activities of the RDP. My cheque for \$20 (or) made payable to the Refugee Documentation Project is enclosed.

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