



18



PERIODICALS READING ROOM
Humanities & Social Sciences

CANADA'S PERIODICAL ON REFUGEES

REFUGEE

Vol. 8, No. 1

October 1988

Refugees and the Elections

Will refugees be an issue in the forthcoming election on November 21st?

There is no factious debate in Canada over the treatment of humanitarian refugees – those refugees, largely in refugee camps, that our immigration officials select abroad as designated class immigrants for admission under reduced criteria. They make up the bulk of our refugee admissions.

There are those who believe the government should sponsor more humanitarian refugees. Others on the political spectrum oppose the admission of these refugees (as in the Nielsen Report). Nevertheless, there is a general consensus of support for the present policy among the parties and among refugee support groups.

This does not mean that valid arguments are not made for an increase in the total intake. Further, some would prefer a slightly different distribution of the intake. But the option to increase the total numbers and to target specific refugees through private sponsorship defuses any opposition.

The only serious flaw in the whole system of aid to humanitarian refugees, the lack of government personnel in the field, results in long delays before privately sponsored refugees arrive. A serious but relatively minor problem, but not an election issue.

The Mulroney government is to be congratulated for continuing and enhancing the Canadian tradition of offering resettlement opportunities to refugees selected abroad. This is particularly commendable

given some of the attitudes within its own party as evidenced by the Nielsen Report prepared shortly after the Mulroney Tories took power.

But what about those who arrive in Canada and claim to be *Convention* refugees? Has the current government been responsive to their needs?

First, the problem did not begin with the Tories; they inherited a large backlog of refugee claimants. Second, the previous government set up one study after another and failed to come up with a solution. The last commission set up by the Liberals, that of Rabbi Plaut, reported shortly after the new government took power. The new government took half of its period in office to decide to ignore the spirit of the Plaut Report (which focused on a faster and fairer system for processing claims) and to introduce new legislation largely focused on deterring claims and reducing the numbers entering the claims system.

That legislation took the balance of the government's term to pass and set up the implementing agencies. It will only become operational when the new govern-

ment takes power.

On the one hand, the refugee claims backlog has tripled. On the other hand, the government did decide to do something about it. They did introduce enabling legislation and set up the appropriate machinery.

Critics fault these actions and other inactions, on five grounds. First, the new legislation is allegedly motivated by anti-refugee sentiment. Second, critics claim the legislation is unfair; genuine refugees may be denied access to the claims process. Third, nothing has been done about the huge backlog of claimants; nor will the new machinery affect those claimants. Fourth, delays in refugees obtaining work permits have grown much longer with consequent further disruptions in their lives and tremendous cost to the welfare system in Canada. Finally, in addition to criticizing the government for its bad motives, the potential unjust consequences of the new legislation, the ineffectiveness in dealing with past backlogs, and effectiveness in adding to the welfare rolls, the Tories are

Continued on page 2

IN THIS ISSUE:

The Immigration and Refugee Board	page 3
The Mouse that Roared by Howard Adelman	page 4
Who's Who in C.E.I.C. – Ottawa	page 9
Review: <i>Journal of Refugee Studies</i> by C. Michael Lanphier	page 10

accused of using the new Refugee and Immigration Board as a golden opportunity to make a large number of patronage appointments.

Criticizing the Mulroney government for anti-refugee motives is unfounded. When the Sikhs arrived by boat off the Newfoundland coast, the Mulroney government was effusive in expressing its support for refugees and went beyond the call of duty (and, perhaps, prudence) in the speed with which ministerial permits were issued. Further, if the government had been anti-refugee, the Minister of Immigration and Employment would not have made an open and unqualified promise not to designate a country as "safe" for a group of refugee claimants if that country had a bad record in processing refugee claims from that group. The speed and the content of the legislation cannot be attributed to an anti-refugee motive.

The government can be accused of *bad* motives – of pandering to the anti-refugee and/or anti-Asian attitudes still prevalent in Canada. Evidently, the backlash from the Sikh arrival and the Tamil

arrival one year later off our eastern seaboard was virtually unprecedented. The new legislation caters to that backlash, but, ironically, without significantly affecting the numbers who will arrive or be processed by the claims system.

The critics are correct in alleging the new legislation has the potential to be unjust to some genuine refugees. But this is a possibility and not an actuality. Until and unless there is demonstrable proof that genuine refugees have, in fact, been sent back to their home countries where they have been persecuted, the critics will not have much ammunition.

The government can be criticized for not dealing with the current backlog and for adding to the high costs of tax payers in prolonging the refugee claimant's period on welfare because of delays in allowing the refugee claimants to obtain work permits.

But there are other grounds for criticizing the ineffectiveness of the legislation. It will do little to dent the large numbers of refugee claimants entering the system (see this issue of *Refuge* – "The Mouse that Roared"). The numbers of claimants will grow. The backlog will grow. And the issue of spontaneous arrivals claiming refugee status will remain a hot topic on the political agenda. And more positions will be opened up for patronage appointments to the Refugee Board.

Was this really the purpose of the legislation – to provide jobs for Tory straphangers? Though Gordon Fairweather, who heads the whole board, is a Tory, he has an impeccable record of concern for human rights issues. On the other hand, many of the appointees have strong Tory, and, particularly, Mulroney ties. Other appointees are clearly commendable. A large number come from ethnic groups, perhaps indicating the Tory government is intent on displacing the assumed Liberal monopoly on the loyalty of ethnic voters, though there is a striking gap in the numbers of appointees who come from Central and South American countries.

The new legislation has enabled the Mulroney government to mix patronage and political strategy in its appointments with a semblance of fairness and judicious commitment.

Our criticism focuses elsewhere – on assumptions. The new system will be costly. It will not do what it was intended to do – reduce significantly the number of refugee claimants. And the reason is one of false premises. There are policy makers – largely civil servants – who are committed to the view that Canada is a country of immigration and *not* a country of asylum. They are convinced we must *select* who

comes here. Spontaneous arrivals, whether legitimate refugees or not, should be deterred. We must return to the "good old days" when spontaneous arrivals made up an insignificantly small portion of our refugee intake.

However, we have become a country of first asylum, whatever the route refugees use to arrive here. We will remain a country of first asylum. We will continue to have large – and even larger – numbers of spontaneous arrivals. And any system of legislation should focus on that reality instead of a fantasy about Canada. The system should stress both speed of processing and fairness to the refugees – not deterrence.

Deterrence is going to be very costly to the taxpayers. Deterrence is going to be ineffective in reducing the number of claimants significantly. Failed deterrence measures are going to keep the refugee issue on the front pages and add to anti-refugee sentiment.

Yet, the refugee issue will not become a significant election issue. It is not simply that the new legislation is too new and, as yet, untried. Nor is it that the Canadian public must decide on the implications of the U.S. free trade agreement on the future of Canada, an issue putting all others into the shadows. For nothing is more central to Canada than who we allow to become members of our Canadian community and the processes adopted to permit membership.

The major reason for the refugee issue not becoming an election issue is the weakness of the pro-refugee lobby and the somnolence of the anti-refugee lobby lulled into contentment by the new legislation. The pro-refugee lobby showed, when the legislation was first introduced, that it had not developed widespread grass roots committed support which could be activated to write large numbers of letters. And, if the pro-refugee lobby was so uniformly and adamantly opposed to the new legislation, the anti-refugee lobby probably erroneously concluded that the legislation favoured their position.

Finally, elections, as currently conducted, are not the best opportunities for rational debate on fundamental issues. Superficial treatment, the importance of the leader, and the potential for non-rational factors to grab the spotlights, mitigate against using elections to debate the fundamental premises of Canadian society. We await the new parliament to continue the debate.

Howard Adelman, Editor

CANADA'S PERIODICAL ON REFUGEES **REFUGE**

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

Editor:

Howard Adelman

Executive Editor:

Alex Zisman

Refuge is dedicated to the encouragement of assistance to refugees by providing a forum for sharing information and opinion on Canadian and international issues pertaining to refugees. It is published four times a year by the Refugee Documentation Project. It is a non-profit, independent periodical supported by private donations and by subscriptions. It is a forum for discussion, and the views expressed do not necessarily reflect those of its funders or staff.

All materials in *Refuge* may be reproduced without permission unless copyrighted or otherwise indicated. Credit should be given to the author or source, if named.

Subscription rates for one year are \$20.00 in Canada and US \$25.00 overseas. Please enclose payment with your order.

Logo design:

Dreadnaught Co-operative Inc., Toronto

Second Class Mail Registration No 5512 ISSN 0229-5113

The Immigration and Refugee Board

The Immigration and Refugee Board (IRB) was established as part of the amendments to the Immigration Act, when Bill C-55 was given Royal assent on July 21, 1988. The Board is an independent

administrative tribunal that assumes the functions of the former Refugee Status Advisory Committee and the Immigration Appeal Board.

The IRB, the largest administrative

tribunal in Canada, has two distinct divisions, the Convention Refugee Determination Division (CRDD) and the Immigration Appeal Division (IAD). These are linked administratively but remain independent of each other in their decision-making. The CRDD has sole responsibility from the outset for refugee determination. The IAD handles appeals by sponsors of family members and appeals by persons ordered removed from Canada. Refugee claimants may not appeal to the IAD.

Headed by Gordon Fairweather, who is backed by two Deputy Chairmen and ten Assistant Deputy Chairmen, the IRB will have up to 65 full-time members in its Refugee Division and up to 30 permanent members in its Appeal Division. Refugee Division members are *ex officio* members of the Appeal Division, but the reverse is not true.

The appointees will have to undergo intensive training and briefings during a three-week residence programme before starting work on November 15.

The IRB will be supported by a documentation centre with information on human rights, country of origin conditions and on refugee law. The centre will also establish an advisory body of refugee experts.

IMMIGRATION AND REFUGEE BOARD

(IRB)

CHAIRMAN

Gordon Fairweather

Convention Refugee Determination Division (CRDD)

Deputy Chairman
Drasko Bubalo

CRDD

Assistant Deputy Chairmen

- Stanley B. Knight
Vancouver Region
- Elizabeth Bryant
Prairie Region (Calgary)
- Dorothy Davey
• Anna Ker
Toronto Region
- Colette Savard
• Gisèle T. Morgan
Montreal Region

Immigration Appeal Division (IAD)

Deputy Chairman
Nurjehan N. Mawani

IAD

Assistant Deputy Chairmen

- Andrew Z. Wlodyka
Vancouver Region
- Lila Goodspeed
Prairie Region
(Winnipeg)
- Kathi I. Arkin
Toronto Region
- Joseph S. Blumer
Montreal Region

"The IRB must also be an independent organization. Our legislated mandate permits no political influence of any kind on our decision-making. Indeed, the fact that I, as Chairman of the Board, am here making this announcement today underscores the commitment of the Government to the independence of the IRB."

Gordon Fairweather, news release, August 30, 1988

"The new assistant deputy chairman for the Montreal region is Gisèle Morgan, former associate national director of the Conservative Party. Her husband, Keith, is Prime Minister Brian Mulroney's riding assistant. Her son, Richard, is Mr. Mulroney's executive assistant. ..."

"The second Quebec appointment is Colette Savard of Montreal, a lawyer who knows Mr. Mulroney from his Baie-Comeau days and has been active with PC women's groups in Quebec. ..."

"The third Montreal appointment is Joseph Blumer, a former director of the Conservative Party's Quebec wing. ..."

Richard Cleroux, *The Globe and Mail*, September 2, 1988

The Mouse That Roared

by Howard Adelman

A government study shows that new legislation which has been opposed so strongly and for so long by the refugee support community and has been pushed just as stubbornly and uncompromisingly by the government, will, in fact, have little impact on reducing the number of refugee claims. The return to a safe third country will affect, at the most optimistic estimate, 10 percent of claimants and, likely, far fewer. Further, the numbers of claimants would probably have been reduced by twice as much if legislative measures had been introduced which had the support of most refugee support groups.

The "Safe Country" Concept

New legislation passed recently (Bills C-55 and C-84) was intended to reduce spontaneous arrivals into Canada who claim refugee status by enabling Canadian immigration officers to return many such claimants without a refugee hearing. A key concept in the new legislation is "safe country". The "safe country" provision is intended to keep out of the Canadian refugee claims system: 1) those who have received refugee status in another country; 2) those who have applied for refugee status in another country; and, most importantly, 3) those who *could have* applied for refugee status in another country. These requirements have been qualified by Ministerial assurances: the concept of a safe country would only be applied where a first country did not exhibit a pattern of discrimination against certain classes of refugee claimants who, if they had claimed refugee status in Canada, would have a reasonable possibility of being successful. Thus, the United States, which has an extremely low rate of acceptance for Salvadoreans and Guatemalans, in comparison to acceptance rates in Canada, would not be considered a safe country with respect to a specific class of claimants - Salvadoreans and Guatemalans.

The Issues

There are a number of issues that have arisen with respect to the concept of a "safe country." What does the concept mean? Is it a valid principle in terms of the political theory and premises of a liberal state? Is such a concept legally valid given the constitution of Canada? Finally, what is the effect of such a concept in deterring pseudo-refugees and genuine refugees from claiming refugee status in Canada?

The Meaning of "Safe Country"

"Safe country" means, at the very least, a country which has signed the Geneva Convention and agrees not to *refoule* refugees who arrive in their country to establish that they are refugees according to the Convention. At one level, a safe country is any country in the world which has agreed in law to accord protection to refugee claimants.

But the legal requirement is not sufficient. The practice of that law must be taken into account. If the American refugee acceptance rate for Guatemalans and Salvadoreans is extremely low, as indicated earlier, and is much higher in

Canada, then, in spite of the law, the U.S. is not a "safe country" for Guatemalans and Salvadoreans. Law and application of the law must both be taken into account.

A third and more difficult issue is the quality of the protection and whether it is equivalent to Canada's. West Germany, for example, may not be able to deter refugee claimants by use of a "safe country" designation since most arrivals in West Germany do not come via other countries which have signed the Geneva Convention. They very often come from East Germany via Berlin. But West Germany has a constitutional provision requiring the admission of refugee claimants from East Germany. One way of deterring refugee claimants may be to require them to live in camps for several years, ostensibly to learn German and become acculturated. Until then, such refugee claimants may not be given an opportunity to work or pursue their education.

The quality of protection, as narrowly defined, is equivalent to that in Canada; refugee claimants are not being returned to the countries where they claimed they were persecuted. But the *status* of refugee claimants is *not* equivalent; in this broader sense, the quality of protection is *not* equivalent. Those who advocated the "safe country" doctrine tended to define refugee protection narrowly.

The Principle of a "Safe Country"

Is "safe country" a valid principle? To answer this question it is necessary to ascertain the principle behind the obligation of a country to accept refugees. In summary (see my article in the *Journal of Refugee Studies*, Vol. 1, No. 1, for a more detailed discussion) the principle states that when the whole world is divided into nation-states, and a primary obligation of a nation-state is to provide protection for its citizens, when any one of those nation-states fails to fulfill that obligation, the other nation-states have an obligation to provide that protection to victims of that failure who land within the jurisdiction of a state which does protect its citizens. The principle is silent as to whether an individual who lacks protection can pick and choose amongst the states which offer protection based on the quality of the protection accorded them as refugee claimants.

However, it would seem contrary to the fundamental principle of the obligation of the nation-state to accord protection for refugee claimants to choose amongst the protective states on the basis of which one provides the best opportunities once given that protection. Such a principle of choice for the refugee would result in refugee claimants shopping around; the country that afforded the best conditions for renewing their lives would attract the greatest number of refugee claimants. This would, in effect, discourage countries from providing good opportunities, since the better the opportunities the more refugee claimants they would attract.

On the other hand, one of the premises behind the obligation to refugees is the rights of an individual. Every individual should have the right to leave his or her country. Every individual should have the right to choose where to live. *But*, and this is a very important but, the right to choose where one should live is subject to the qualification of the right of any state on behalf of its citizens to control entry into its domain.

Thus, even on liberal premises, a refugee claimant does *not* have the right to choose a country of asylum and to shop around for the country in which to apply for protection. The premises of the refugee protection system is based on circumstances, not choice. The country in

which refugees find themselves cannot *refouler* them and has an obligation to protect them. Further, the implication of allowing that refugee choice may be that countries are encouraged to lower the quality of protection to discourage spontaneous arrivals; if this is the case, the principle of choice is counterproductive to ensuring a high level of protection.

If, however, the premise of refugee protection is based on circumstances, those circumstances will result in some countries receiving a very large proportion of refugee claimants because of the geographical and historical circumstances of that country. In order to offset circumstances, that country might lower the quality of protection in order to pressure refugee claimants to move onto other countries to claim refugee status.

The result is that the very principles and rules set up to guarantee protection for refugee claimants end up acting as a mechanism to lower the quality of protection.

The Legality of a "Safe-Country" Provision

There are a number of questions which have been raised about whether denying a potential refugee claimant access to Canada's refugee claims procedure is constitutional on the basis that they *could have* made a refugee claim in another country. The effect of the new Canadian law is to require a claimant to make a claim in any country which he or she *sojourned*. (Sojourning is defined by the CEIC study as entering that country and passing through its passport controls and staying more than two days.) The effect of the law is to treat two individuals differently on the basis of what one *might* or *could* or *should* have done elsewhere. The individuals did not commit a criminal act in so doing. They did not fail to comply with any positive Canadian requirements for entry into Canada – obtaining a visa, having certain medical inoculations, etc. A number of constitutional experts argue that, according to the Canadian constitution (and cases that already have been judged in accordance with that constitution), this form of discrimination will be found to be unconstitutional by the Supreme Court of Canada. Whether this will in fact take place must await a challenge to the new Canadian law.

The Purpose of a "Safe Country" Provision

In the publicity and speeches of Ministers responsible for introducing the new Canadian legislation, the purported purpose was to keep manifestly unfounded refugee claimants from clogging up the Canadian refugee claims system. Manifestly unfounded claims are not equivalent to claimants who fail to prove the validity of their claims to qualify for refugee status. Of the unproven claims, manifestly unfounded claims are only a portion. Claimants who come from countries with none or very few successful refugee claims make up the overwhelming bulk of manifestly unfounded cases.

A recent study of the Refugee Determination Task Force of Employment and Immigration Canada, *Refugee Claimants: Analysis of Current Flows to Canada* (March 1988), provides documentation to indicate that the new Canadian refugee legislation was *not* aimed primarily at pseudo-claimants, as was publicly claimed, but at claimants from refugee producing countries who were shopping around for countries which either had a more liberal claims procedure or which offered a higher level of protection. This was the point of the "safe return" provision. And the study explicitly admits this.

The concept of safe return is based on the principle that Canada is not the only country in the world which accords protection to refugee claimants. ... It recognizes that many refugee applicants have sought – or could have sought – first asylum in one or more foreign countries where the quality of protection afforded is equivalent to that offered by Canada. (p. 3)

The statistical results of the study reinforce this position. If one eliminates the cases with no indication of refugee acceptance rates and divides the balance of cases surveyed (1209) into those who come from refugee producing countries with acceptance rates over 50 percent (manifestly founded claims), those who come from refugee producing countries with acceptance rates under 15 percent (manifestly unfounded claims) and place the balance in a sundry column in which the character of the claims is not manifest, only 19 percent of the claims can be classified as manifestly unfounded; 55 percent are manifestly well-founded claims, though, since not all are accepted, not all well-founded claims are successful (see Refugee Claimants: Table 1).

Continued on page 6

Refugee Claimants Table 1

Manifestly Unfounded Claims		Manifestly Founded Claims		Non-Manifestly Known Claims		Totals	
Nos.	%	Nos.	%	Nos.	%	Nos.	%
225	19	667	55	312	26	1209	100

The statements of the study and the statistics demonstrate clearly that the "safe return" provision of the new legislation was not primarily aimed at eliminating bogus refugee claimants from the system but at refugee claimants who could have made a claim in another country. Individuals from the refugee support community attending a consultation session with government officials and members of parliament almost two years ago arrived at a consensus (the Hawkes model) on how to deter bogus claimants without any of the draconian measures of the new legislation. If the target had only been unwarranted claimants, the compromise adopted would have provided the basis for the new legislation.

The Effectiveness of the "Safe-Country" Provision

The intention of the CEIC study was not, of course, to prove that government propaganda about the purpose of the recent legislation was false, but to provide evidence justifying its legislation. The study concludes,

It is clear that the concept of "safe return" could affect up to 40% of claimant arrivals, depending upon the range of countries that meet the requirements to be designated as safe for the return of asylum seekers. As a result, it is likely that the "safe return" mechanism will have a substantial impact in controlling the irregular movement of asylum seekers to Canada. (p. 2)

Does the study in fact establish any such thing? To answer the question it is necessary to accept the statistics as published and to ignore some distortions, such as the fact that the sample includes not only refugee claimants, but any person arriving from one of Canada's top ten refugee-claimant source countries even if such individuals did not claim and did not intend to claim refugee status. The study could have published the statistics on the number of individuals coming from refugee-claimant source countries who

expressed *no* intention of claiming refugee status in Canada. But it did not.

Though we must use these statistics with this major assumption, one can note that the effect of this methodological assumption will be first, to inflate the proportion of refugee claimants who arrive with proper documentation (and therefore, who can be sent back to other countries), since, presumably, 100 percent of arrivals not intending to claim refugee status carry proper documentation and, second, to distort the statistics that define direct and indirect arrivals and sojourners as a proportion of actual refugee claimants.

Ignore the distortions. The central question is whether the statistics provide evidence that the legislation on "safe country" return is efficacious. The concept of a "safe country" return is the main instrument for keeping refugee claimants out of the refugee claims process in Canada. Ignore the other issues such as the legality and justice of denying entry to the refugee claims process for claimants from refugee producing countries.

To determine whether legislation is efficacious, it is not sufficient to determine the maximum percentage of cases (the study estimates 40 percent) which will be impacted by the safe country provision. It also requires determining which cases can be deterred without any legislation whatsoever and which cases could have been deterred by other, milder legislation which is acceptable to most parts of the refugee support community as well as the opposition parties. Indeed, milder legislation could have been passed almost two years ago, probably with all party support, and made a major impact on the backlog of cases. Finally, what percentage of cases cannot be deterred because the refugee claimants are undocumented? What percentage of cases cannot be deterred because the refugee claimants arrived in Canada without sojourning (staying over two days) in another country? What percentage of cases cannot be

deterred because the country cannot be classified as a safe country for that class of refugee claimant?

The Alternative Use of Visas

For some of the cases, even mild legislation acceptable to the refugee support community, was not required to deter such claimants. No legislation was required. Two of the countries to which refugee claimants belonged - Nicaragua, with refugee acceptance rates of 19 percent, and Honduras, with 26 percent - had no visa requirement at the time of the study. The imposition of a visa, which required no legislation, could have eliminated virtually all of these claims. The study itself provides the evidence. "The flow of Hondurans has decreased to a mere trickle after the imposition of a visa requirement in mid-September." (p. 10)

Thus, to assess the efficaciousness of the legislation, all cases from Nicaragua and Honduras must be eliminated from the study. In the sample of 1440 cases representing over 2000 individuals who arrived in Canada between August 10 and September 27 of 1987, 276 cases should be deducted since they could have been and were deterred by the imposition of visas. This leaves 1164 cases.

Not all countries where the claimants could have claimed refugee status are "safe countries"; in the case of the U.S., there is a low acceptance rate for Guatemalans and Salvadoreans. In Canada, Guatemalans have an acceptance rate of 70 percent and Salvadoreans an acceptance rate of 79 percent; in the U.S. the acceptance rates are less than 3 percent. Thus, Guatemalan and Salvadorean refugees transiting the United States cannot be returned to a "safe country", even though virtually all of these claimants arrive indirectly. (Salvadoreans - 95 percent; Guatemalans - 98 percent). Guatemalans and Salvadoreans constitute 10 percent of the total in the sample. If eliminated from the targeted group (i.e., those to be returned to "safe countries"), the new system is left with 1027 of the 1440 sample cases, 71 percent of the case load - not an inconsiderable number.

In effect, the "safe country" provision is ineffective when applied to Central American refugees, either because the U.S. discriminates against them in the refugee claims procedure utilized in the United States or because such claimants

could have been deterred by other means.

Note, we included only Guatemala and El Salvador in the list of those to whom the legislation would be inapplicable because of the way the refugee claims procedure operates in the United States. But as the study notes, "With the possible exception of Nicaragua and Iran, *all* of these countries produce RSAC acceptance rates which are *substantially* higher than refugee acceptance rates in the United States." (p. 7, emphasis added) To be accurate we should not only eliminate Guatemala and El Salvador from the list, but also all refugee claimants who arrive from Lebanon (20), Ghana (2), Pakistan (9), Somalia (59) and Sri Lanka (40) who transit the United States. This would reduce the number of cases to which the legislation is applicable to 897 cases or 87 percent of the targetable sample or 62 percent of the total cases.

Applicable Cases – Documented and Sojourners

Assume we do *not* reduce the applicable cases from 1027 to 897, we have the following scenario. In order to return

potential refugee claimants to third countries where they sojourned and might have made a claim, it is necessary to have "documentary evidence to prove status in such a third country." (p. 10) In this case only 526 were documented, 51 percent of the applicable sample or 37 percent of the total number of cases. Thus, on one ground of eligibility for return to a "safe country" – documentation proving a sojourn in that country – the real target would be reduced dramatically.

But the applicable category of those eligible to return must not only have the documentation to prove they sojourned in a third country, they must have actually sojourned in the country. "A claimant who has sojourned in a third country is considered to have stayed more than two days and not been in transit through that country." (p. 5) "A person could not be returned to a third country where the stopover in that country was solely for the purpose of connecting to a flight from Canada." (p. 4)

Unfortunately, the statistics do not provide a breakdown of those who were both inadequately documented for a return *and* who sojourned in a third country. Assume that the documented group

was evenly distributed between those who came directly to Canada and those who sojourned in a third country (though it would seem that more of those who sojourned in a third country would arrive without documentation). Of the 1027 cases in the applicable sample, 420 sojourned in third countries. Of the 420 cases, we assume 51 percent had the proper documentation. That is, the "safe country" legislation would be applicable to 214 cases, or about 15 percent of the total cases.

The sample we used included (for purposes of calculation) those who came via the United States. But, according to the study, the acceptance rates in the United States are substantially lower for all but the Iranians. In reality those who sojourned in the U.S. should be taken out of the total. That is, 28 of the 214 cases should be deducted, leaving 186 cases or 13 percent of the targeted group.

Other Factors

The draconian "safe country" return measure will be applicable to a maximum of 13 percent of the case load. Even this estimate is exaggerated. The total number of cases on which the study was done included *all* arrivals from countries producing refugee claims, not just those who did file or intended to file a refugee claim. Further, the documented arrivals were distributed evenly between those who arrived in Canada directly and those who had sojourned in a third country, when, in all likelihood, the latter category had a higher percentage of undocumented arrivals.

The total numbers of cases to which the safe return legislation will be applicable is unlikely to exceed 10 percent of refugee claimants. This does not take into consideration that the legislation itself is likely to increase those who arrive without documentary evidence to prove status in a third country. Nor does it take into account the possibility that third countries may not re-admit claimants.

In other words, the maximum of 10 percent of the cases to which the "safe country" return mechanism is applicable, according to past patterns, will be further reduced; of that reduced target there is a strong likelihood that many of the refugee claimants will *not* be re-admitted to those third countries.

It appears that years of delayed legis-

Are the targets of the new legislation manifestly unfounded claimants or claimants from refugee producing countries?

"Seventy percent of the claims aren't genuine. These are people who just want to short cut the normal immigration procedures."

Roger White, CEIC spokesman, *Toronto Star*, October 7, 1988

"The concept of safe return [the central device in the new legislation to deny claimants access to a hearing] is based on the principle that Canada is not the only country in the world which accords protection to refugee claimants."

Refugee Determination Task Force of Employment and Immigration Canada, "Refugee Claimants: Analysis of Current Flows to Canada" (March 1988)

The scholars in CEIC know who they want to deter even if a CEIC spokesman does not.

Refugee Claimants Table 2

Country	Total		Documented		Indirect		Sojourned		Protected		Acceptance Rates 87/88 %
	Cases*	%	Cases	%	Cases	%	Cases	%	Cases	%	
Honduras**	228	16	224	98	138	61	33	14	0	0	26
Nicaragua**	48	3	48	100	30	63	14	29	6	20	19
El Salvador	84	6	55	65	80	95	78	93	4	5	79
Guatemala	53	4	20	38	52	98	50	94	4	8	70
Lebanon	83	6	78	94	45	54	15	18	1	2	0
Ghana	142	10	70	49	109	77	23	16	12	11	4
Pakistan	41	3	25	61	36	88	25	61	8	22	22
Somalia	90	6	72	80	76	84	63	70	9	12	64
Iran	265	18	50	19	244	92	125	47	22	9	68
Sri Lanka	175	12	66	38	158	90	93	53	18	11	58
Other	231	16	165	71	149	65	76	33	13	9	-
	1440	100	873	65	1117	79	595	48	97	10	

* Visitor Visa not required

** Note total cases include *all* applicants from refugee claimants producing countries, not just refugee claimants

lation and the alienation of the refugee support community, the bulldozing of the opposition parties and the Senate, has resulted in legislation which will do very little to reduce the number of refugee claims.

Alternatives

One of the measures of efficaciousness is whether a technique of reducing the number of claims is more effective than any alternative. We have tried to indicate that, at the very best, 10 percent of the claimants could be returned to a third country based on the "safe country" criterion. As it happens, the study's statistics indicate that 9 percent of the sample applied for or received refugee status or *de facto* protection in another country. Several years ago, in the prolonged series of meetings between representatives of refugee support groups, government officials, members of parliament and government ministers, legislation acceptable to most parties would provide for the return of refugee applicants to countries where they had applied for or had received refugee status or *de facto* protection in that country (provided that country firmly

protected the refugee). In other words, legislation acceptable to large numbers of people could have been introduced, probably with unanimous consent, to accomplish a reduction of refugee applicants, by passing legislation which provided for the ineligibility for refugee status in Canada for those who had applied for or received refugee status in another country, *providing* those claimants had a hearing to determine that the country protected refugees. In other words, eliminating those who *could have* applied and guaranteeing a hearing to all those who did apply or receive refugee status, would have eliminated the need for a two-stage process that reintroduced complications, alienates the refugee support community, is subject to court challenges and, which, probably won't be effective anyway.

There is one other issue. Ghanaians constitute about 10 percent of the sample. Legislation could have been introduced to define and accelerate the processing of claims from refugee claim countries with very low success rates. This could have been another acceptable method of reducing the number of refugee claims. In other words, alternative and far more acceptable legislation could have been introduced which would have effectively

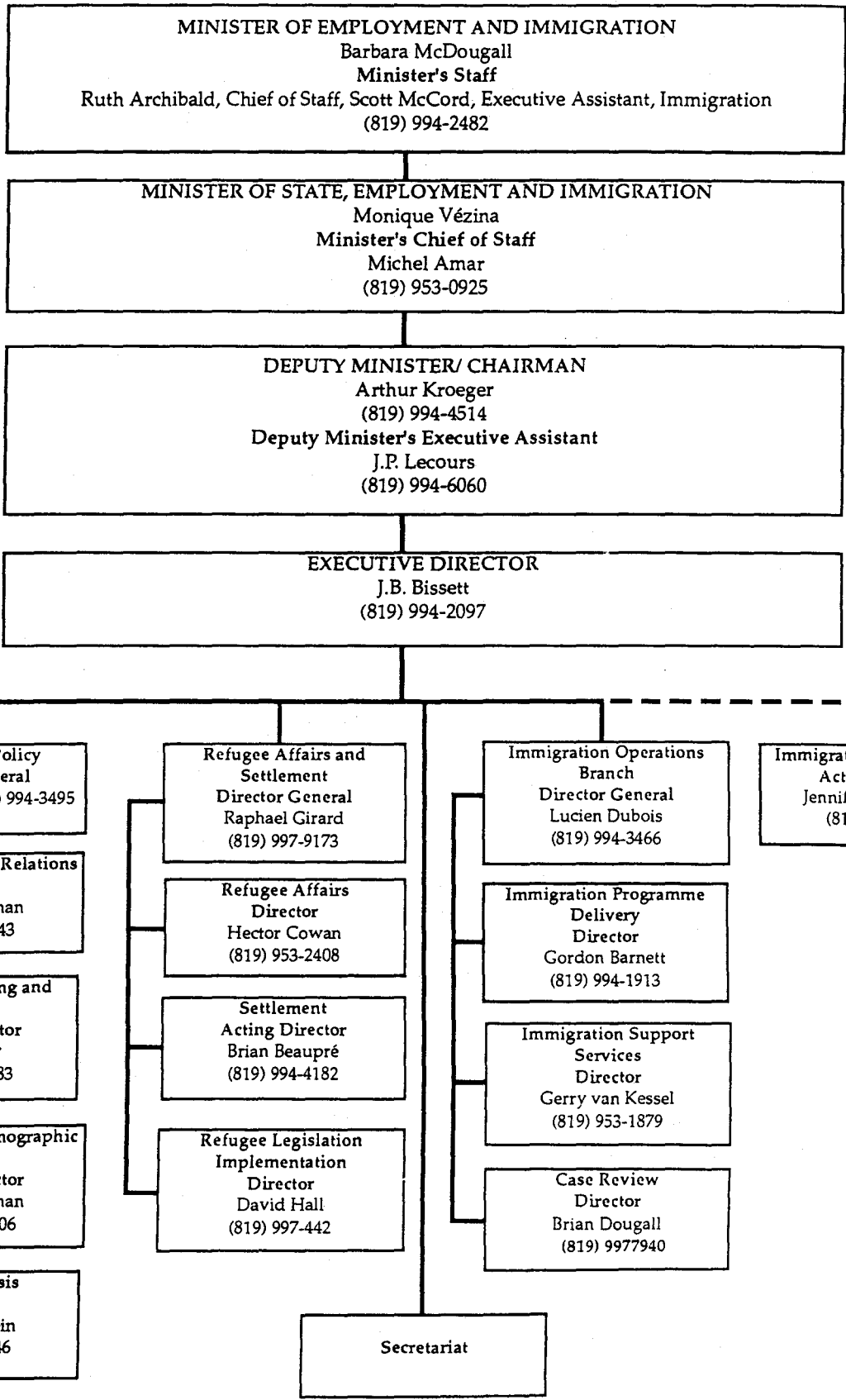
reduced the number of refugee claimants by double the amount that the "safe country" provision is likely to achieve.

Conclusion

It appears that the "safe country" provision is a mouse that roars. It will have little effect in reducing the number of applicants. Other more specific legislation could have been introduced which would have been effective and more accurately targeted towards those abusing the system while ensuring a fair hearing for all claimants. Instead, time was lost. We now will have a system which will be costly to administer, which will affect very few applicants, and which will be challenged in court in any case. In the process, the refugee support community, whose co-operation is so critical to the successful resettlement of refugees in Canada, has been alienated.

Howard Adelman, a Professor of Philosophy at York University, is the Director of the Refugee Documentation Project and Editor of *Refuge*.

**WHO'S WHO
IN CANADA'S EMPLOYMENT AND IMMIGRATION
COMMISSION
(C.E.I.C - OTTAWA)**



Review

Journal of Refugee Studies Vol. 1, No. 1
Oxford: Oxford University Press, 1988

by C. Michael Lanphier

It is a sign of the maturing of a field of study that the first scholarly quarterly, *Journal of Refugee Studies*, has made its debut. Published in association with the Refugee Studies Programme at Oxford University, it intends, as its editor points out, to "consolidate the increasingly disparate" research about refugees and to "enrich theoretical developments" in a multidisciplinary context.

The first number of Volume 1 (1988) delivers on this promise. Philosopher Howard Adelman threads an intricate argument of the rights of refugees through the fabric of the theory of the

state to conclude that the sovereign rights have passed away in all but name. Anthropologist Nicholas Tapp sensitively narrates problems of culture "reformation" among Hmong refugees resettling in the West. Sociologist Robert Bach, in a careful policy-oriented analysis, discredits the popular myth of high public assistance utilization rates among Southeast Asian resettlers in the United States.

Shorter features include a field report on problems of well-being among Mishamo refugees in Tanzanian communities, an interview with a now-refugee Somali novelist, and concise summaries of two conferences on refugee issues. Selected book reviews round out this first number's proceedings.

The scholarly quality is generally high, with a mix of the immediate detail with more conceptual pieces. There is an obvious danger that a multidisciplinary approach may turn into undisciplined eclecticism. The editor appears aware of this pitfall, with a call for papers for a forthcoming special issue on "refugee

mental health". Such special issues will provide a much-needed focusing for subject matter which is inherently globally diverse and conceptually divergent.

Editorial style is militantly English. No diacritical marks are used for words other than English, even in bibliographic citations – an incredible regression for a journal on global issues in the computerized printing age!

The *Journal* may have carved an important niche, resting closely to its neighbouring journals on international migration and development. The forum for exposition and debate directly on refugee issues is a welcome and constructive outcome from one of the most desperate legacies which the twentieth century has bequeathed the human race.

C. Michael Lanphier, Professor of Sociology at York University and Master of McLaughlin College, is the former Director of the Refugee Documentation Project and Editor of *Refuge*. Currently he is the RDP's Research Counsel.

New Publications

- Robert F. Gorman, *Coping with Africa's Refugee Burden: A Time for Solutions* (Dordrecht: Kluwer Academic Publishers/UNITAR, 1987). Traces the evolution of efforts to link refugee and development assistance more effectively, paying special attention to the Second International Conference on Assistance to Refugees in Africa (ICARA II). It analyzes the policies, organizational constraints, and roles of international agencies, governments and NGOs in responding to the refugee-related development needs of host countries. Problems surrounding each actor's role are identified and recommendations for action suggested.
- Richard Plender, *International Migration Law*, revised 2nd edition (Dordrecht: Kluwer Academic Publishers, 1988). Identifies the restrictions imposed by international law on each state's power to restrict immigration. New chapters have been added on the right to leave any country including one's own; on freedom of movement in the European

Communities; on Council of Europe conventions, and on other regional arrangements (Benelux, the two West African Communities, the Central African Community, the Caribbean Community and the Andean Pact), and on the expulsion of aliens.

- Richard Plender, editor, *Basic Documents on International Migration Law* (Dordrecht: Kluwer Academic Publishers, 1988). Brings together the principal international conventions, declarations and instruments governing the law of international migration. There are extracts from instruments governing human rights and full texts of the principal treaties and declarations governing nationality, the protection of refugees and migrant labour. There are also the texts of the principal items of legislation of the European Communities and the principal instruments adopted by the Council of Europe, the Benelux Community and the economic communities of West and Central Africa, and of the Caribbean.
- Gaim Kibreab, *Refugees and*

Development in Africa (Trenton, NJ: Red Sea Press, 1988). Provides a detailed analysis based on extensive case studies of the problems and prospects for African refugee settlement, integration into host communities and/or repatriation. The study tackles erroneous assumptions about life and productive rehabilitation of the refugee host countries, and suggests constructive methods of making refugees active and useful participants in development efforts.

- David Feith, *Stalemate: Refugees in Asia* (Parkville, Vic.: Asian Bureau Australia, 1988). Surveys the main refugee groups in Asia, including Afghan, Indochinese, Vietnamese, Kampuchean, Laotian and Sri Lankan Tamil refugees, and examines some of the issues central to the refugee situation such as world responses, asylum and protection, voluntary repatriation, local integration and resettlement, and refugee camp life. Also provides useful statistics on refugee resettlement by countries from 1975 to 1986.

Refugee Backlog Grows — Processing Stops

"Gordon Fairweather, chairman of Canada's new Immigration and Refugee Board, said yesterday that he has neither enough money nor personnel to clean up the mounting backlog of more than 50,000 refugee applications."

Richard Cleroux, *The Globe and Mail*, August 31, 1988

"The Immigration Department has ordered its staff across Canada to stop processing refugee claims because the current system is overloaded and will not exist when hearing dates come up for most of the cases filed this year."

Victor Malarek, *The Globe and Mail*, September 10, 1988

"Persistent rumours that the federal Government will soon announce a form of amnesty for refugee claimants have triggered a stampede at immigration offices in Toronto and Montreal."

Victor Malarek, *The Globe and Mail*, September 15, 1988

Visas to Curb Panamanian Influx

On September 7, Minister of Employment and Immigration Barbara McDougall announced the immediate imposition of a visitor visa requirement for Panamanian citizens wishing to come to or pass through Canada. The visa requirement was instituted after a wave of over 1,200 Panamanians fleeing the regime of Manuel Antonio Noriega creat-

ed, according to immigration official Georges Quintal, the worst onslaught of refugee claimants at Dorval Airport in 20 years. Close to 500 Panamanians also sought refuge at Lester Pearson Airport in Metropolitan Toronto. While the majority of these Panamanian claimants appear to be escaping mainly economic hardship, the group also includes active opponents,

former government insiders and members of the armed forces who would face certain persecution back home. The Minister indicated that the imposition of visitor visas is necessary to maintain the integrity of the Canadian immigration programme. The recent Panamanian claimants will join the 60,000 odd backlogged cases in the refugee claims system and wait in limbo for a solution to their plight.

African Turmoil: The Heat Is On

• Over 750,000 refugees from Somalia and Sudan have fled to Ethiopia in recent months. UNHCR deputy Director Arthur Dewey indicated that 400,000 Somali refugees moved into eastern Ethiopia since the eruption of civil war in northern Somalia late in May. Sudanese refugees are fleeing a combination of civil war, famine and floods in southern Sudan. This flash flood of emancipated refugees happens at a time when hundreds of thousands of Eritreans have been

turned into refugees as a result of increased Ethiopian attacks on civilians over the past five months to counteract military victories by the Eritrean People's Liberation Front. Most of the Eritrean refugees have been forced to leave a surplus-producing area, and their displacement is bound to exacerbate dramatically the starvation problem faced by millions in Ethiopia.

• Tribal violence and savage army reprisals in northern Burundi

RDP Update

The Refugee Documentation Project at York University is currently involved in the following projects:

- The "International Refugee Crisis Project", a colloquia series involving scholars who will also give a public lecture on their specific field of expertise.
- The "Refugee Women in Canada Project: Initial Adaptation and Integration Issues (Phase II-research)"
- "Refugees in Policy and Practice", the annual academic seminar series, co-sponsored with the Dean of the Faculty of Graduate Studies.
- "The Refugee Crisis: British and Canadian Responses", an international symposium co-sponsored with the Refugee Studies Programme at Oxford University.
- Expanded publication plans of scholarly papers, reports and theses.

The RDP Resource Centre, with its continuously updated library and data base classification system, is open to students and the public from Monday to Thursday from 9:30 am to 4:30 pm.

Postage Paid in Toronto
Second Class Mail Registration No. 5512
Return Postage Guaranteed

Conferences

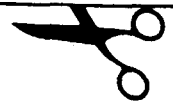
- The Refugee Studies Programme at Oxford University and the Refugee Documentation Project at York University are co-sponsoring a conference on "The Refugee Crisis: British and Canadian Responses". This event will take place at Oxford on January 4-7, 1989. For further information contact: RSP, Queen Elizabeth House, 21 St. Giles, Oxford OX1 3LA, UK, or the Refugee Documentation Project, Suite 290J, A.S.B., York University, 4700 Keele Street, North York, Ontario, Canada M3J 1P3.
- The International Refugee Crisis Project is organizing a Colloquia series on the "Global Crisis in Refugee Migration" at York University. A series of eight seminars will take place between October 1988 and May 1989, focusing on specific topics such as a new conceptual model for the refugee

problem, foreign policy, development and security problems of countries of first asylum, regional organizations, refugee resettlement and backlash, and the international organizational framework. The colloquia will provide an opportunity for scholars, civil servants, practitioners and stu-

dents to communicate concerns about refugees. For further information write to: International Refugee Crisis Project, c/o Refugee Documentation Project, Suite 290J, A.S.B., York University, 4700 Keele Street, North York, Ontario, Canada M3J 1P3.

Global Crisis in Refugee Migration Preliminary Schedule

- Oct. 21, 1988: *Causes and Norms: Towards a New Conceptual Model of Refugees*
- Nov. 4, 1988: *Development Programmes and Refugees*
- Dec. 9, 1988: *Countries of First Asylum: Development Policy and Settlement*
- Jan. 20, 1989: *Countries of First Asylum: Security Problems*
- Feb. 3, 1989: *Regional Organizations*
- March 3, 1989: *Refugee Resettlement and Backlash*
- April 7, 1989: *Refugee Resettlement and Public Policy*
- May 5, 1989: *An International Organizational Framework*



I wish to become a friend of the Refugee Documentation Project for the 1988-1989 academic year. I understand that all friends receive *Refuge* as well as information on the research activities of the RDP. My cheque for \$25 (or) made payable to the Refugee Documentation Project is enclosed.

Name _____ Organization _____

Address _____

City _____ Province or State _____

Country _____ Postal Code _____