

Report on Systemic Racism and Discrimination In Canadian Refugee and Immigration Policies

IN PREPARATION FOR THE
UN WORLD CONFERENCE AGAINST RACISM, RACIAL
DISCRIMINATION, XENOPHOBIA AND RELATED
INTOLERANCE

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I. INTRODUCTION

The UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, to be held in 2001 in South Africa, offers the Canadian Council for Refugees an opportunity to address concerns over the course of restrictionism and discrimination in refugee and immigration policies around the world.

Intolerance of refugees and immigrants, xenophobia and racism are intricately linked. Indeed, in Canada, where open expression of racist ideas is generally not tolerated, hostility towards newcomers serves as an outlet for the expression of underlying racist sentiments. This is especially true in times of economic or political difficulty, when those with less power, including newcomers, are easy scapegoats for the shortcomings of society.

Anti-refugee and anti-immigrant prejudices foster hostility and violence against newcomers, and result in official policies that infringe on the rights of non-citizens. To break this vicious circle, it is essential that government take strong action against racism and xenophobia.

Canada has in recent years been recognized internationally for its liberal immigration and refugee policies. It is known for its refugee protection system which gives responsibility for refugee determination to an independent quasi-judicial tribunal (the Immigration and Refugee Board or IRB), its resettlement program and its active immigration program. Canada has signed numerous international human rights instruments. The Canadian Charter of Rights and Freedoms provides a fundamental safeguard of the human rights of all persons in Canada, whatever their status.

Nevertheless, racism and discrimination are part of the Canadian reality. They are manifested at the personal level in the way individuals are sometimes treated. They are also manifested at the systemic level, through the functioning of government bodies and through refugee and immigration policies that have a differential impact on racialized groups, or that otherwise lead to discrimination against newcomers as a group, or certain sub-groups of newcomers.¹ Despite the extent of the problem, we rarely see the federal and provincial governments taking a leadership role in naming and combatting racism in Canada.

This report looks at two distinct but inter-related problems: 1) the discriminatory manner in which some groups of newcomers, particularly racialized groups, are affected by Canadian refugee and immigration policies; and 2) the way in which refugees and immigrants collectively are treated with intolerance and discriminated against in the enjoyment of their rights.

Section II draws attention to the profound history of discrimination in Canada's immigration policy. Section III takes the form of a table, analyzing systemic discrimination and racism in Canadian immigration and refugee policies and practices. The table is divided into four columns: 1) identification of issues or policies; 2) differential impact; 3) examples drawn from real

¹ See Appendix for definitions of terms used in this report.

experiences:² 4) recommendations, many of which are based on former CCR resolutions.³ In Sections IV, V and VI we briefly examine public opinion issues, individual cases of racism and recourses, and ways to promote anti-racism in Canada and the Canadian selection process abroad.

II. HISTORICAL BACKGROUND TO DISCRIMINATION IN CANADA'S IMMIGRATION POLICY

Canadian immigration history is marked by racism and discrimination. The first immigrants from Europe brought with them the seeds of the racism that would have such devastating impact on the aboriginal peoples of what is now Canada, an impact that continues to be felt to this day.

Almost from the time when the Canadian government began to control immigration to Canada until the 1960s, explicitly racist laws and practices restricted the immigration of certain groups.

The Chinese bore the brunt of racist controls. The first federal Chinese Exclusion Act in 1885 imposed a head tax on Chinese immigrants of \$50, increased to \$100 in 1900 and to \$500 in 1903. From 1886 to 1923, more than \$22 million were collected in head tax payments. In 1923 the Chinese Immigration Act came into force, bringing about the almost total prohibition of Chinese immigration to Canada. The Act was repealed in 1947, but the entry of Chinese remained restricted under more general rules relating to persons of "Asiatic race".

In 1907 a Canadian government delegation to Japan concluded a "gentlemen's agreement" whereby the Japanese government would voluntarily limit emigration of Japanese to Canada to 400 persons a year. During the Second World War, 22,000 Japanese Canadians were expelled from within a hundred miles of the Pacific, thousands were detained, and at the end of the war, "repatriation" to Japan was encouraged. 4,000 people left, two thirds of them Canadian citizens.

In 1908 the Canadian government adopted an Order in Council imposing a "continuous passage rule" which had the effect of excluding from immigration people who could not make a direct journey to Canada. One of the main targets of this measure was prospective immigrants from India, since there was at the time no direct voyage from India. In 1914 a group of 376 Indians challenged this restriction, arriving in Vancouver on board the Komagatu Maru. After two months in the harbour and an unsuccessful court challenge, they were forced to return.

During the years when the Nazis were in power in Germany (and immediately afterwards), Canadian immigration policy was actively anti-Semitic, with the result that Canada's record for accepting Jews fleeing the Holocaust is among the worst in the Western world. Canadian policy towards Jewish refugees was summed up in the words of one official: "None is too many".

² Names or other details may have been changed to protect the identity of individuals.

³ When this is the case you will find the number and date of the resolution in parenthesis. Slight modifications may have been introduced to adapt these to the current issue.

Although in the 19th century Canada represented freedom for some black Americans escaping slavery through the underground railroad, in the 20th century immigration of persons of African origin was actively discouraged. A 1911 Order in Council prohibited “any immigrant belonging to the Negro race, which race is deemed unsuitable to the climate and requirements of Canada”. This order was never proclaimed, but the same effect was achieved through measures such as penalties imposed on railway companies that distributed transportation subsidies to blacks, requirement for additional medical examinations, and the hiring of agents to actively discourage black Americans from coming to Canada.

In June 1919 the entry of Doukhobors, Mennonites and Hutterites was prohibited on the ground of their “peculiar habits, modes of life and methods of holding property”. The prohibition lasted until 1922 in the case of Mennonites and Hutterites, longer for Doukhobors.

Until the 1960s, Canada chose its immigrants on the basis of their racial categorization rather than the individual merits of the applicant, with preference being given to immigrants of Northern European (especially British) origin over the so-called “black and Asiatic races”, and at times over central and southern European “races”.

The goal of excluding certain racialized groups was in part accomplished through the rigid enforcement of seemingly neutral immigration, health and financial requirements. For example, the “continuous journey” rule was strictly applied against Asians in the early 20th century, but not against Europeans. At the beginning of the 1920s, during a period of deep hostility towards Eastern Europeans, the rule was also enforced for a while against Europeans.

Race officially ceased to be a relevant factor with the introduction of the point system in the 1960s. However, there are some aspects of current policies that are reminiscent of earlier forms of exclusion, and the enforcement of seemingly neutral immigration requirements continues to discriminate against certain racialized groups.

The rejection of the explicit racism of immigration policies prior to the sixties was a necessary and important step in the struggle against racism. We must now come to grips with a much more subtle form of racism, less conscious and less easy to pinpoint but just as destructive.

III. SYSTEMIC RACISM AND DISCRIMINATION IN CANADIAN REFUGEE AND IMMIGRATION POLICIES

NB Examples are based on real cases, but names and other identifying details may have been changed to protect identities.

1. POLICIES WITH DIFFERENTIAL IMPACT⁴

Policies	Differential Impact	Examples	Recommendations
<p>Requirement that Convention refugees produce “satisfactory identity documents” in order to be granted permanent residence</p>	<p>This requirement negatively affects certain groups of refugees:</p> <ul style="list-style-type: none"> — Refugees who come from countries where identity is not traditionally established through official documents (notably African countries) — Citizens of countries where there is no government authority that can issue the documents — Groups who are less likely to possess such documents such as youth, women or people from rural areas 	<p>Thousands of refugees from Somalia and hundreds of refugees from Afghanistan have been forced to wait years for permanent residence because there is no functioning government in their countries and such documents as the refugees do have are frequently discounted.</p> <p>Subha fled to Canada from Sri Lanka with her young daughter and was granted refugee status. Her husband arrived one month after her and has been granted permanent resident status. Subha and her daughter however have not, on the grounds that they do not have identity documents, having lost them when their house in Jaffna was destroyed. They cannot get new documents because there is no functioning authority in Jaffna, the Sri Lankan embassy refuses to process the request and the central records in Colombo are so arranged that it is impossible to trace a record without knowing the number of the certificate. Subha and her daughter have now been in Canada five years.</p>	<p>Remove the requirement for identity documents for refugees and give greater weight to personal interviews and other documentary evidence. <i>(Res.15 - Nov.96)</i></p>

⁴ This refers to policies that are neutral, but even when applied neutrally, have a different and negative impact on some racialized groups.

Policies	Differential Impact	Examples	Recommendations
<p>The \$975 Right of Landing Fee (ROLF) that all adult immigrants must pay in order to be granted permanent residence.</p>	<p>Given relative costs-of-living, rates of currency exchange and average annual income, ROLF amounts to a regressive flat tax which affects disproportionately immigrants from the South.</p>	<p>The \$975 fee represents about 6 months salary for many Salvadorans. For a nurse or teacher in Sri Lanka, it might represent 10 months' wages.</p>	<p>Repeal ROLF for all immigrants accepted for landing in Canada (<i>Res.12 – May 95</i>)</p>
<p>Imposition of visa requirement on nationals of some countries wanting to travel to Canada.</p>	<p>Some nationals (generally from southern countries) need visas and others (generally from “white countries”) don't.</p>	<p>Southern countries account for 81% of countries whose citizens require visas in order to enter Canada, while predominantly “white” countries represent only 19% of countries requiring visas. By contrast, predominantly “white countries” make up nearly 50% of countries that do not require a visa.</p>	

Policies	Differential Impact	Examples	Recommendations
FAMILY REUNIFICATION			
<p>Requirement to present official documents (marriage certificates, adoption papers) in order to establish family ties.</p>	<p>This requirement negatively affects people who come from societies where marriage, birth and adoptions are not recorded through documents.</p>	<p>A man from the Ivory Coast sponsored his wife and four children for landing in Canada. The visa officer accepted that the man was indeed the father of the children, but would not accept their parents' traditional marriage, since they had no official documents or registration of the marriage. The children's passports ironically record their mother's name. At the time this case was reported, it appeared that the children would be coming to Canada but the mother would be left behind.</p>	<p>With respect to family relationship, give the benefit of doubt to refugees applying for family reunification.</p> <p>Use flexibility in assessing evidence of relationships and take into account the delays and costs involved in requesting further proofs. <i>Recommendations of the CCR task force on family reunification</i></p>
<p>Narrow definition of the family. Current Canadian policy on family sponsorship is firmly grounded on the premise that "family" means the nuclear family comprising father, mother and dependent children.</p>	<p>This narrow definition negatively affects refugees and immigrants who come from societies where the basic family structure is the extended family since it excludes many people whom refugees regard as integral members of their family.</p>	<p>Marie-Françoise, from DRC (Zaire), raised her three half-siblings since infancy following the death of their parents. After she fled to Canada and obtained refugee status, she applied to bring them to Canada under the family reunification clause but was refused on the grounds that they were not her children. She does not possess adoption papers since this does not constitute an adoption in Zairian society. This puts at risk these children (now aged between 13 and 15) who are in DRC without relatives to care for them.</p>	<p>Adopt the functional approach to family definition.</p> <p>Allow refugees in Canada to sponsor members of their extended family who find themselves in desperate situations. <i>Recommendation of the CCR Task Force on Family Reunification</i></p>

2. STRUCTURAL ISSUES WITH DIFFERENTIAL IMPACT⁵

Issues	Differential Impact	Examples	Recommendations
<p>Visa posts and accessibility</p>	<p>The distribution of Canadian visa posts around the world and the allocation of resources to these offices are biased against the South.</p>	<p>There are 10 visa posts in Europe processing immigrant applicants. By contrast in Africa, whose population is larger than Europe's, there are only 4 visa posts that process immigrant applications.</p>	<p>Ensure a more equitable distribution of visa post resources.</p>
<p>Source of refugees</p>	<p>There has been a historical imbalance in favour of selection of refugees out of Europe.</p>	<p>In 1998, 59% of government assisted refugees came from Europe versus only 12% from Africa, although these two regions account for similar shares of the global refugee population. [Compiled by the CCR from the 1998 UN High Commissioner for Refugees (UNHCR) Statistical Overview and CIC statistics.] More recently there has been a welcome shift towards resettling a larger proportion of refugees out of Africa.</p> <p>In 1999, Canada responded swiftly and generously to the needs of Kosovar refugees, bringing to Canada about 7,000 refugees within a matter of weeks. By contrast, Canada failed to respond to Tutsi Congolese targeted for persecution. A group of these refugees, some of them with family in Canada, was evacuated temporarily (for 6 months) to Benin. Canada failed to resettle any of them within the 6-month period.</p>	<p>Ensure that the numbers of government-assisted refugees from each region of the world reflect their proportion of the global refugee population as well as UNHCR's assessment of resettlement needs regionally.</p>

⁵ Refers to ways in which Citizenship and Immigration Canada (CIC) and the Immigration and Refugee Board (IRB) are organized that have a different and negative impact on some racialized groups.

Issues	Differential Impact	Examples	Recommendations
Representation of visible minorities within Immigration Department staff.	As of mid 2000, representation of visible minorities within CIC staff is at 8.14% (below their target of 9.8%). CIC also acknowledges that visible minorities are disproportionately clustered at lower levels of officer groups.		Take measures to ensure equitable representation of visible minorities at all levels of the Department.
Representation of visible minorities within the Immigration and Refugee Board	22% of Board members and (as of March 31, 2000) 18.6% of public service employees are visible minorities. This is the highest representation of visible minorities reported among federal departments and agencies. However, among public service employees, visible minorities are less well represented at management level (6.4%).		Take measures to ensure equitable representation of visible minorities at all levels of the Board.

3. APPLICATION OF POLICIES TARGETING CERTAIN GROUPS⁶

Policies	Differential Impact	Examples	Recommendations
The imposition of a visa requirement on nationals of some countries wanting to travel to Canada	Interdiction measures result in harassment of Canadian citizens, permanent residents and visitors to Canada, especially if they are from visible minority groups.	Ali Kazimi, a Canadian documentary film-maker of Indian origin, told the Toronto Star in 1999 about the repeated checks and humiliating interrogation he had to go through on his way back to Canada after participating in a film festival in Amsterdam. Mr. Kazimi was finally asked for his citizenship card despite holding a valid Canadian passport.	
Refusal of visitor visa applications to family members trying to visit, attend weddings or funerals, etc. (or to others wanting to visit for other reasons).	It is extremely difficult for people from some countries where visas are required to get visitors' visa to visit their family in Canada.	Julia applied to the Beijing Embassy for a visitor's visa in order to visit her husband who was in Canada on a time-limited program. The visa was refused on the grounds that Julia did not have sufficient ties to go back. However, she was leaving her child behind, her husband had demonstrated his ability to support her while she was in Canada, and he had submitted an employer's letter and a three-party contract indicating that he had a job back in Beijing and was obligated to go back.	Adopt a fair approach in assessing requests for visitors' visas in order to facilitate visits by family members, and provide reasons in cases where visitors' visas are refused.
Request for DNA testing as proof of relationships prior to approval for sponsorship.	<p>Requests for DNA tests are disproportionately made of applicants of certain ethnic groups.</p> <p>The high costs involved in DNA testing (\$975 and up) create barriers to family reunification since many applicants cannot afford the only proof of relationship visa officers would accept.</p>	Ahmed, a Somali, came to Canada in 1995. After he was recognized as a Convention refugee he applied to be reunited with his three children and his nephew who he raised following the death of his brother. Despite the fact that he had submitted the birth certificates for all four children, CIC asked him and his three children to undergo DNA testing. Since he cannot pay the costs of four DNA tests (over \$2,000), he has been barred from being reunited with his children.	<p>Ensure that DNA testing is always the exception, rather than the rule, and that it is called for only in circumstances outlined in published guidelines.</p> <p><i>(Res.16 - May 95)</i></p>

⁶ Refers to cases where policies are applied in such a way that certain racialized groups are particularly targeted.

GROUP PROFILING⁷

Issues	Differential Impact	Examples	Recommendations
<p>Permanent residents who are threatened with expulsion after having been convicted of a crime are denied the right to an appeal from removal if they are designated as a “danger to the public”.</p>	<p>Some racialized groups are being declared “danger to the public” more often than others.</p>	<p>A high proportion of the people found to be “danger to the public” are black. Available statistics (from July 1995 to December 31, 1997) show that of 355 persons deported from Ontario as “dangers to the public”, 138 (39%) were Jamaican. The countries with the next highest numbers deported were Trinidad (22) and Guyana (17).</p>	<p>Abolish the current unfair “danger to the public” concept.</p>
<p>Denial of or delay in granting permanent residence to Convention refugees on the basis that they may pose a threat to Canadian security.</p>	<p>Certain ethnic or national groups are particularly apt to be targeted for extra security checks.</p>	<p>Those who have been found inadmissible, or have been kept waiting without a decision being made, on a security-related provision include significant and disproportionate numbers of Iranians with some association with the Mojaheddin movement and Kurdish people.</p>	<p>Amend the Immigration Act to give a more precise definition of security risk and introduce an obligation to render a decision within a fixed time frame. (<i>Res.13 - Nov.98</i>)</p>
<p>Criminality checks</p>	<p>CIC has made recourse to systematic criminality checks on some groups of refugee claimants based on profiling, stereotyping and public annoyance.</p>	<p>For a certain period in the summer of 1997, all Roma claimants were systematically subjected by Immigration officials to the more detailed criminality checks generally only made on individuals for whom there is reason to suspect criminality.</p>	<p>Avoid targeting certain groups for special treatment, based on profiling, stereotyping and public annoyance.</p>
<p>Detention decisions</p>	<p>CIC has made recourse to detention of groups of refugees based on profiling, stereotyping and public annoyance.</p> <p>Detention is used to deter certain groups of refugees/immigrants from coming to Canada.</p>	<p>In 1999, CIC detained en masse Chinese migrants arriving on the West Coast without individual assessment and based upon general and stereotypical profile of refugee claimants from China. For many of them, detention has lasted over a year.</p>	<p>Avoid the detention of refugee claimants based on profiling, stereotyping and public annoyance. (<i>Res.10 - Dec.99</i>)</p>

⁷ Instances in which CIC or IRB uses group profiling to determine how people are treated, instead of making decisions on each person’s individual case.

4. INTERSECTION OF GENDER AND RACE⁸

Policies/Issues	Double Impact	Examples	Recommendations
ID requirements	Women are less likely to have identity documents such as driving licenses and school certificates.	Roya is an Iranian woman in her mid-forties who came to Canada six years ago and was accepted as a refugee. She escaped an abusive marriage, and her husband has kept all her documents. Since she does not possess the required identity documents, she has been prevented from landing for the last four years.	Remove the requirement for identity documents and give greater weight to personal interviews and other documentary evidence. <i>(Res.15 - Nov.96)</i>
Fees (ROLF, DNA testing, Humanitarian and compassionate review) and financial criteria for sponsorship	Differential impact of financial barriers on women, who are already economically disadvantaged.	N. is a single mother from the Democratic Republic of Congo who arrived in Canada in 1996. Her refugee claim was rejected by the IRB but she remains in Canada because of the continuing war in DRC. She does not have the money to make an application for Humanitarian and Compassionate considerations. Because of her inability to pay the \$600 fee for herself and her child, she has been left for several years without any permanent status.	Eliminate financial barriers disproportionately affecting women.

⁸ Analysis of areas in which gender and race combine to make certain people doubly disadvantaged.

5. ISSUES BEYOND CIC AND IMMIGRATION AND REFUGEE BOARD

Issues	Differential Impact	Examples	Recommendations
<p>Recognition of prior learning (educational and professional)</p>	<p>People who are trained in Western scientific or knowledge systems in the South are not given the same recognition as if they were trained in the North.</p> <p>People who are trained within non-western educational world views or scientific traditions experience great difficulties in gaining recognition for their training and skills.</p>	<p>Anusha is an Indian woman who arrived in Canada in 1996. She has a Masters degree in social work and several years' experience working with Child Welfare in India. Once in Canada, she searched for a job in youth protection or in a children's hospital but could not find work in her field because her degree is not recognized. She has worked for a community organization on contract and is currently unemployed.</p> <p>Research shows that newcomers tend to be underemployed in relation to their training and education, in comparison to the Canadian-born. See for example Jeffrey G. Reitz "Immigrant Success in the Knowledge Economy: Institutional Change and the Immigrant Experience in Canada, 1970-1995."</p>	<p>Establish national credentialing guidelines.</p> <p>Ensure that there is a fair process for newcomers to gain recognition of their skills; newcomers have equitable access to training and internship or apprenticeship opportunities to meet Canadian standards; and appeal from denial of such recognition or access.</p>
<p>Representation of visible minorities within the federal public service.</p>	<p>Representation of visible minorities in the Public Service as a whole (5.9%) is considerably below the workforce availability figure (8.7%). A report on the participation of Visible Minorities in the Federal Public Service notes a "disturbing problem of distribution", the representation of visible minorities in executive positions being only 2.9% (or 1% of all visible minorities in the FPS). See "Embracing Change", Report of the Task Force on the Representation of Visible Minorities in the Federal Public Services, April 2000.</p>	<p>The 1999 Public Service Employee Survey gives insight into how visible minorities perceive the federal workplace.</p> <ul style="list-style-type: none"> · 33% of visible minorities said they had experienced discrimination in their work unit, as compared to 18% for all respondents; · 75% of visible minorities strongly agreed with the following statement: "In my work unit, every individual, regardless of his or her race, colour, gender or disability would be/is accepted as an equal member of the team", compared to 87% for all respondents. 	<p>Introduce employment equity measures in order to:</p> <ul style="list-style-type: none"> · bring the representation of visible minorities within the Public Service as a whole in line with their workforce availability; · ensure that visible minorities are adequately represented in executive positions · Provide support to visible minorities employees

IV. PUBLIC OPINION ISSUES

This section is concerned with media coverage of immigration and refugee issues as well as federal, provincial and municipal governments' own discourse.

1) Discourse of government(s) including provinces and municipalities

While the government usually attempts to offer a balanced view of immigration and refugee issues, it does not always live up to this objective, issuing statements or taking actions that reinforce prejudices against newcomers.

— Bill C-31

In its public presentation of Bill C-31, the proposed new *Immigration and Refugee Protection Act*, the government stated its objective of “closing the back door” to those who might abuse the system in order to keep the front door open. The emphasis, however, was on closing the back door, as shown by the Minister of Citizenship and Immigration’s description of the bill as “tough”. CIC’s News Release on Bill C-31 conveys a unhealthy preoccupation with “security” (the word appears 22 times), “criminals” (18 times), “abuse” of the system (7 times), “fraud and misrepresentation” (4 times), as well as “danger to Canadian society” and “threat to the national interest.” In contrast, there are only 10 references to refugees’ need for protection. By introducing an agenda of cracking down on criminals and abusers, the government legitimizes the public’s concern over the supposed threat posed by newcomers.

— CIC is spreading false information about the cost of the refugee determination system. In the early 1990s, CCR raised concerns about CIC’s use of \$50,000 as the cost per claimant. CIC admitted in 1994 that the manner in which they arrived at the figure of \$50,000 was flawed and undertook to stop using it. However, CIC officials continue to do so publicly.⁹ The use of this inflated figure is exceedingly damaging to refugees, promoting resentment among Canadians about the perceived cost to them of refugee claimants.

— At the provincial level, Ontario Premier Mike Harris, while commenting on the potential resettlement in Canada of Middle Eastern refugees who were imprisoned in Israel (May 1998), expressed concern that “Canada has accepted more than enough criminals from other countries and might begin thinking of shipping abroad some of its own” (The Saskatoon Star Phoenix, May 21, 1998). These refugees had been declared mandate refugees by the UN High Commissioner for Refugees. To characterize them as criminals, simply on the basis that they were in detention, is to promote misinformation, xenophobia and anti-refugee prejudices.

⁹ In March 1999, the CCR wrote a letter to CIC asking them to take measures to ensure that Department officials do not continue using the false figure. CIC declined, saying that they “would hesitate in putting out any kind of directives” as they felt doing so “would only raise the profile of the issue”.

— In June 2000, federal immigration officials in British Columbia presented their staff with golf shirts celebrating the deportation of 90 Chinese migrants. This gesture was intended to reward the staff for the “successful” removal of 90 failed refugee claimants. It provoked outrage because it gave the appearance that the Immigration Department was gloating over the misery of refused refugee claimants. In response to public protest, a local enforcement manager commented: “recognizing staff is not a joke at all. If anybody is offended by this, this was not our intention at all”. (*Furor over immigration officials’ trophy shirts*, *The Province*, 6 July 2000). The Minister’s office later acknowledged that the gesture was in poor taste.

2) Media Coverage of Immigration and Refugee Issues

In tandem with the government, the media is influential in informing public debate. Unfortunately, media coverage of refugee and immigration issues is too often inaccurate and unbalanced. Two recent examples are coverage of Bill C-31 and the arrival by boat of Chinese migrants.

— Bill C-31

Media coverage of Bill C-31 overwhelmingly focussed on the bill’s preoccupation with abuse of the system rather than on the positive measures taken to protect the rights of refugees and immigrants. Headlines on 7 April 2000 included: “Protecting the Borders”; “Enforcement Problems. Terrorists won’t be easy to spot” (*National Post*); “Ottawa tightens refugee rules”; (*The Calgary Herald*); “Ottawa montre les dents aux abuseurs” (*Le Devoir*); “A faster, tougher refugee system” (*The Ottawa Citizen*).

— Boat arrivals on the West Coast

In an article entitled “600 Is Too Many: How the press used four boatloads of Chinese migrants to create an immigration crisis”, Beth Clarkson analyses the role played by the negative press coverage in the differential treatment these people received. She concludes that “the newspaper coverage over the summer reveals not only blatant inaccuracies and misconceptions but also decidedly xenophobic undertones.”¹⁰

3) Failure of government to respond to xenophobia and racism in the media

The media are the most readily accessible sources of information and play an important role in the formation of public opinion. The CCR thus believes that the government has a responsibility to correct misinformation about refugees and immigrants in the media. When the government reacts to misinformation as if it were true, it feeds xenophobia rather than countering it. This creates a vicious circle since by tightening the screw in response to negative public opinion about refugees and immigrants, the government reinforces the prejudices that in the first place informed its policies.

¹⁰ *The Ryerson Review of Journalism*, spring 2000, pp. 6 ff.

4) Recommendation

Given the key role played by government discourse in the formation of public support, the government needs to speak consistently and positively about the importance of respecting the human rights of refugee claimants and immigrants.

V. INDIVIDUAL CASES OF RACISM AND RECOURSES

1) Specific instances

a) In 1996, the Federal Court set aside a decision made by a visa officer in Beijing. In the case of Zhao Guang (IMM-3872-96), Mr. Justice Campbell concluded that “there was a negative predisposition here on the part of the decision maker which unfairly affected the result” and that the claimant was not given a “reasonable opportunity to explain himself”. The judge also concluded that the visa officer had “negative opinions of applicants generally” and made “remarkably unfair statements” that did not deal with the claimant as an individual but were based on her own understanding of what is usual of people who come before her.

b) Sonia works for the United Nations Environment Program (UNEP) in Nairobi, Kenya. IN 1999, she was transferred to the Centre for Bio-Diversity Secretariat (CBD) based in Montreal and applied for a visa at the Canadian High Commission in Nairobi. Along with her application for a visa, she submitted her Rwandan passport, her UN laissez-passer and a covering letter saying she was transferred to Montreal to work for the CBD. The visa was refused with the mention “we are not convinced that this person is going to Canada for a temporary stay”.

When she went to the High Commission to seek an explanation, the immigration officer’s answer was that two of her children had been given student visas in good faith and once in Canada had claimed refugee status. (Her daughters had gone through the refugee determination system and been recognized as refugees. Also, Sonia had been granted temporary visas to Canada several times and had never overstayed.)

The visa officer made several unfounded assertions, for example that her children were on welfare in Canada when this was not the case, and that they had come to Canada only because they wanted facilities to study (when they had paid the full international student fee). He also expressed prejudices (“you have no control over your children”) and suggested that she ought to bring her children back to Kenya (although they have been recognized as Convention refugees in Canada – and are adults). He repeated three times that she was “obviously from a persecuted family” and when she replied that he was lucky not to be born in a country where there are wars and conflicts, she was told “It is not a matter of luck”. Finally, when she asked what he wanted her to do, his answer was “Do nothing! Did I call you?” Sonia reports that during the exchange the visa officer was shouting and turned red, and that he seemed to be speaking with hostility and even hatred.

The CBD asked her to re-apply but her second application was also refused and her laissez-passer mailed back with “visa denied” stamped on it and no explanation.

c) T. was a volunteer with a non-governmental organization that arranges visits to the Immigration Detention Centre in Montreal. When the visits ended and the group of volunteers left the detention centre, T. was on more than one occasion initially prevented from leaving. The guards assumed that T., who is black, was a detainee.

2) Complaints mechanisms (and their effectiveness)

In the case of concerns about the conduct of civil servants working for Citizenship and Immigration Canada or for the Immigration and Refugee Board, complaints must be made to the institution that is the subject of the complaint. There is no ombudsperson or other independent body to which persons who feel that they have experienced racist or discriminatory treatment can complain. There is thus little confidence that complaints will be thoroughly and impartially investigated. A further concern is that it is not very obvious how or to whom complaints should be made. The lack of accessibility is of particular concern in the refugee and immigration field, given that potential complainants often speak little English or French, are unfamiliar with Canadian society and/or lack permanent status.

The Canadian Human Rights Act provides that any individual or group of individuals can file a complaint with the Canadian Human Rights Commission in cases of discrimination. However, the Act excludes from the Commission’s jurisdiction any acts that occur outside of Canada unless the victim is a Canadian citizen or an individual lawfully admitted to Canada for permanent residence. This insulates from review by the Canadian Human Rights Commission most of the actions taken abroad by Citizenship and Immigration Canada.

The Immigration and Refugee Board has a “Protocol Addressing Member Conduct Issues” which provides a mechanism for submitting and evaluating complaints against IRB members. It dates only from October 1999: how accessible and effective it has proven to be will need to be reviewed.

3) Recommendations

- a) A credible, transparent and accessible mechanism for dealing with complaints should be introduced. (Res.13 - Nov.94)
- b) An ombudsperson should be established under the Act. This office should be clearly independent and should be empowered to investigate complaints against CIC and monitor treatment of individuals by CIC, particularly at points where they are vulnerable to abuse (e.g. port of entry interviews, or in removal). (Res. 35 - June 94)
- c) Parallel mechanisms to the Canadian Human Rights Act should be developed to protect non-Canadians who are victims of discrimination on the part of immigration officers.

VI. PROMOTING ANTI-RACISM WITHIN CIC AND IRB

The CCR believes that structures that promote anti-racism must be encouraged because of systemic racism in refugee and immigration services, policies and structures in Canada. (Res.2 - Nov.96)

In its response to a question about anti-racist training in a questionnaire circulated by the UN High Commissioner for Human Rights, CIC mentions a mandatory course on Multiculturalism given to all employees of the department in 1990, and two department-wide training courses on multiculturalism (Cross-Cultural Training and Cultural Profile).¹¹ Information provided the CCR by both CIC and the IRB similarly speaks to the existence of various training programs and other measures addressing, among other objectives, the objective of anti-racism.

While such measures are valuable, the CCR is concerned that issues of racialization be fully and openly confronted, and not considered to be addressed through reference to diversity, multiculturalism and so on.

Recommendations

- a) CIC and IRB should develop measures, including training, specifically designed to promote anti-racism among employees.
- b) Detention guards should receive similar anti-racist training.
- c) CIC and IRB should systematically subject all immigration and refugee policies and programs to anti-racist analyses, and should involve NGOs in this process.

¹¹ Response of Canada to the questionnaire circulated by the High Commissioner, Question 3f, p.40.

VII. CONCLUSION

This report highlights a number of ways in which Canadian policies towards refugees and immigrants are discriminatory and racist. It shows how certain policies, although not explicitly racist, and even when applied neutrally, have a negative impact on certain racialized groups. Examples of such policies are the Right of Landing Fee, requirements for identity and official documents, and the narrow definition of the family. A more blatant form of racism is found in policies that directly target certain racialized groups, based on profiling, stereotyping and public annoyance. Examples of such policies are “danger to the public” certificates, security and criminality checks, and detention decisions. Finally, a more subtle form of racism in Canadian policies towards refugees and immigrants lies in structural issues that have a differential impact on some racialized groups, such as the skewed distribution of visa posts resources and barriers to the access of visible minorities to decision-making positions within the Immigration and Refugee Board and Citizenship and Immigration Canada.

It is a CCR concern that the *Response of Canada to the questionnaire circulated by the High Commissioner [...] with a view to reviewing progress made in the fight against racism, racial discrimination, xenophobia and related intolerance, and reappraising the obstacles to further progress*, makes no mention of the existence of systemic racism. To the question: “Has your government reviewed and, when necessary, revised its immigration policies with a view to eliminating all discriminatory policies and practices against migrants” (question 8), CIC’s response is that “its enforcement policies and procedures comply with the spirit of the international human rights instruments”. In the light of this report, this statement is disturbing, the more so given that to acknowledge the existence of systemic racism represents the first step in successfully challenging it.

In light of the continuing signs of xenophobia in Canada, the government bears a special responsibility to take active measures to combat racism and prejudices against newcomers. Introducing immigration legislation promoted as “tough” and reducing the rights of newcomers is not a responsible policy option in the face of xenophobia. Myths and negative policy feed on each other. To break this vicious circle, Canada needs to undertake immediate, sustained, proactive actions. We hope this report has helped to identify some barriers faced by racialized groups and newcomers collectively as well as possible ways in which they could be overcome. Challenging systemic racism is necessary if Canada is to live up to its ideal of a country that is open, responsible, fair and equitably diverse.

Appendix

DEFINITIONS

Anti-racism

Anti-racism is working toward the elimination of racism by challenging our society and ourselves. (*Waterloo Public Interest Research Group*)

Systemic racism

Systemic racism means the social processes that produce racial inequality in decisions about people and in the treatment they receive. It is the unequal distribution of power combined with institutional practices, policies and procedures, which supports attitudes, practices, and systems of discrimination and inequality. (drawn from: *Waterloo Public Interest Research Group / Final Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*)

Racial Discrimination

As defined in the *International Convention on the Elimination of All Forms of Racial Discrimination (Article 1)*, racial discrimination “refers to any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.

Racialization

Racialization is the social construction of races as different and unequal. (*Final Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*)

Racialized groups

Groups of people classified by reference to signs of origin (such as skin colour, hair texture and place of birth), these signs being used to make judgements about their character, skills, talents and capacity to belong in this country. (*Final Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*)

Xenophobia

Xenophobia is the deep dislike of foreigners. (The Concise Oxford Dictionary, Ninth Edition, 1995)