

CANADIAN COUNCIL FOR REFUGEES



Annual status report on refugees and immigrants November 2004

Introduction

This status report gives an overview of how the Canadian federal government addressed refugee and immigration issues over the past year, from the perspective of the Canadian Council for Refugees (CCR).

The report covers the period from November 2003 to October 2004. Comments are divided into areas of key concern to the CCR.

RESETTLING REFUGEES

On the positive side

900 Sudanese and Somali refugees were resettled to Canada through a group processing project. This new approach allows whole groups of refugees to start a new life, while reducing costs for Canada in processing the refugees.

Canada has resettled a higher proportion of refugees with special needs than in past years, fulfilling a commitment to respond to the most vulnerable refugees.

Canada has played a leadership role internationally in promoting the strategic use of resettlement.¹

On the negative side

Privately sponsored refugees suffer very long processing delays, frequently waiting years in precarious and even dangerous circumstances. The processing times have been getting longer.²

The government has been attempting to limit the numbers of refugees and family members granted permanent residence in Canada, in order to achieve their goal of 60% of immigration being economic and 40% non-economic (i.e. refugees and Family Class).

The government has shown reduced commitment to government-assisted refugees, cutting both the money available for these refugees and the number of refugees to be resettled in 2004.³

¹ Canada co-chaired with the UNHCR a working group that developed a Multilateral Framework of Understandings on Resettlement. It was endorsed by the UNHCR Executive Committee in October 2004.

² The mean processing time of 13 months in 2002 has increased to 18 months in the year from July 2003 to June 2004. Some regions are markedly worse than others: the mean in Africa and the Middle East is 22 months. For more information, see the CCR report, *No Faster Way?*, October 2004.

³ According to CIC's Departmental Performance Report, 2003-2004, Table 5, Planned spending for the Resettlement of Assistance Program was reduced from \$47.2 million to \$41.8 "to meet Federal Budget re-allocation targets." In July 2004, the government announced that the 2004 target of 7,500 for government-assisted refugees was being reduced to 7,300.

PROTECTING REFUGEES

On the positive side
In March 2004, Minister of Citizenship and Immigration Judy Sgro announced a reform of the process for appointing members to the Immigration and Refugee Board, addressing a longstanding and serious flaw in Canada's refugee determination system.
Canada responded promptly to the increase in insecurity in Haiti by suspending removals to that country in February 2004. ⁴
Canada provided appropriate protection to North Koreans who sought refuge in the Canadian Embassy in Beijing in September 2004.
The government transferred responsibility for Pre-Removal Risk Assessments back to Citizenship and Immigration Canada (CIC) in October 2004. CIC is a more appropriate home for this protection function than the Canada Border Services Agency (CBSA), which had held this responsibility starting in December 2003.

On the negative side (continued)
The government continued in 2004 to use the deeply flawed security certificate procedure to seek to remove several refugees to torture, in clear violation of Canada's obligations under international law.
The Immigration and Refugee Board has been using videoconferencing for refugee hearings, meaning that claimants are not even in the same room as the person deciding their future.
"Direct backs" continue at the US-Canada border, with the result that people claiming Canada's protection are sent back to detention in the US. The CCR joined other groups in filing a petition with the Inter-American Commission on Human Rights on this violation of claimants' rights.
The government continues to interdict travellers abroad without any measures to ensure the protection of refugees who are interdicted. In 2003, 6,439 airline interdictions were reported. ⁵

⁴ Removals were deferred starting in February 2004 pending review of the situation and formally suspended, initially for a three month period, in May 2004.

⁵ The number was communicated by the CBSA to the CCR.

On the negative side
The government's new national security policy unfairly portrays refugees as a threat to security and identifies reforms to the refugee determination system as a matter of national security. ⁶
As shown by the Minister of Citizenship and Immigration's May 2004 speech, government plans for "Refugee Reform" focus overwhelmingly on restricting further the rights of claimants. ⁷
The government failed to make any move toward the implementation of the Refugee Appeal Division, despite the fact that it was an essential part of the law passed by Parliament and despite the May 2002 promise by then Minister Denis Coderre to implement the appeal within a year.
Canada violated the principle of sanctuary by arresting Mohamed Cherfi in a church in March 2004. In July 2004, Minister Sgro was quoted in the media criticizing the churches for offering sanctuary and falsely stating that refugee claimants have "between 6 and 20 avenues of appeal."
The BC government withdrew from legal aid for refugee claimants, with no alternative provided by federal government. There was a temporary and partial restoration of funding but only because the number of claimants was down.
There was continued movement towards implementation of the Safe Third Country agreement (which will largely close the door on people making refugee claims at the US-Canada border). ⁸

⁶ *Securing an Open Society: Canada's National Security Policy*, April 2004 (available from www.psepc.gc.ca). For the concerns about the portrayal of refugees, see the CCR media release, *CCR decries security policy's impact on refugees*, 28 April 2004.

⁷ Notes for an Address by Judy Sgro, Minister of Citizenship and Immigration, *Canada's Refugee Program: Upholding our Humanitarian Tradition into the 21st Century*, 11 May 2004.

⁸ The US government pre-published proposed rules to implement the agreement in March 2004. In October 2004, Secretary of Homeland Security Tom Ridge told reporters he expected final approval very shortly.

UNITING FAMILIES

On the positive side
More family members abroad of refugees have been granted permanent residence than projected for 2004, even before the end of the year (although many have waited years for reunification). ⁹
152 family members of resettled refugees have been reunited in Canada through the “one year window.” ¹⁰
In July 2004, the Immigration and Refugee Protection Regulations were amended to permit the sponsorship of some family members previously excluded. ¹¹ However, the regulations continue to bar from Family Class sponsorship most family members if they were not examined by a visa officer when the sponsor immigrated to Canada.

On the negative side
Some refugee families wait years to be reunited, because of long processing delays. 50% of family members must wait more than 13 months, and one in five wait more than 26 months. In the slowest visa post (covering West and Central Africa), half the cases take more than 27 months. ¹²
Families are being separated through deportation, as a result of departmental policy that a bona fide marriage is insufficient grounds for a positive humanitarian and compassionate decision. ¹³
Separated children recognized as refugees in Canada have no legal route for being reunited with parents and siblings. ¹⁴

INTEGRATING NEWCOMERS

On the positive side
The February 2004 Speech from the Throne emphasized access to employment for newcomers, calling for recognition of foreign credentials and better information to be given to potential immigrants. The commitment was renewed in the October 2004 Speech from the Throne. However, as recognized in that speech, “efforts to improve the recognition of foreign credentials and prior work experience have yielded too little progress.”
In March 2004, to lessen the debt burden on refugees, the government brought in a cap of \$10,000 on travel loans for resettled refugees. The cap will help larger refugee families and refugees travelling longer distances to Canada.

On the negative side
The linkages made by the government between terrorism and immigrants and refugees creates an anti-immigrant/refugee atmosphere.
There has been no movement to resolve the situation faced by people without status in Canada (including long-term de facto residents and people who have been living in Canada for years because of a moratorium on removals).
Refugee claimants, who are particularly vulnerable, continue to be denied access to settlement services, despite a recommendation of the Standing Committee on Citizenship and Immigration. ¹⁵

⁹ According to CIC’s 2004 Annual Report to Parliament, 4,337 dependants abroad of protected persons in Canada received permanent residence between January and August 2004. This is already more than the bottom end of the planned range for 2004 of 4,000 to 4,800.

¹⁰ The “one year window” allows family members to apply to come to Canada within one year of a resettled refugee’s arrival in Canada. It benefits refugee families who have been separated in flight and temporarily lost contact with each other. The figure of 152 applies to 2004 to date.

¹¹ SOR/2004-167, subsection 41(4) amending Section 117(9)(d) of the *Immigration and Refugee Protection Regulations*.

¹² These statistics cover the period July 2003 to June 2004 and are taken from the CIC website: <http://www.cic.gc.ca/english/departement/times-int/index.html>. See the CCR report on the topic of long delays: *More than a Nightmare*, November 2004.

¹³ IP5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds, para. 5.17. Although it does not actually say so, this section is being interpreted to mean that a bona fide marriage is not sufficient grounds for a positive decision.

¹⁴ The Act allows adults to apply for reunification with their spouse and children, but children cannot apply for reunification with their parents and siblings.

¹⁵ *Settlement and Integration: A Sense of Belonging*. “Feeling At Home” June 2003, Recommendation 12.

RESPECTING CIVIL RIGHTS OF REFUGEES AND IMMIGRANTS

On the positive side

In October 2004, following submissions from the CCR, the government reinstated the requirement that security certificates be signed by two ministers, overturning the December 2003 order that reduced the requirement to a single signature. The CCR continues to oppose the security certificate provisions which violate the basic rights of refugees and immigrants.

The government introduced regulations restricting who may represent refugees and immigrants before immigration officials or the Immigration and Refugee Board. These new rules will help to protect newcomers from unscrupulous and incompetent consultants.

July 2004 amendments to the Regulations ensure better protection for unaccompanied minors and persons who are incapable of understanding the proceedings by requiring that they be referred to the Immigration and Refugee Board (IRB) before a removal order is issued. The advantage of a referral to the IRB is that a representative can then be designated to act on behalf of these vulnerable people.¹⁶

On the negative side

Refugee claimants, including minors, continue to be detained simply because they are deemed not to have satisfactory identity documents, even though refugees are often forced to flee with few if any documents. From October 2003 to November 2004, an average of 80 persons, many of them refugee claimants, were detained each week on ID grounds. This represents an increase from an average of 61 persons detained on these grounds from June 2003 to October 2003.¹⁷

Racial profiling at borders and within Canada continues to be a concern, particularly in the absence of any accountability from the government for erroneous targetting. The government offered no apology or remedy to the men wrongly identified in 2003 as “terrorist suspects” in Operation Thread.¹⁸

Despite undertakings that a change will occur, applicants continue to be found inadmissible on security grounds without being told that they can argue that they should be exempt because their presence in Canada would not be “detrimental to the national interest.”¹⁹

¹⁶ SOR/2004-167, subsection 63(2) amending section 228 of the *Immigration and Refugee Protection Regulations*.

¹⁷ The average has been calculated by the CCR from statistics provided by CIC/CBSA on weekly detention activities. The statistics report persons detained for part or whole of a week. CIC started providing these statistics from the week of 22 June 2003.

¹⁸ In November 2003, various community and rights organizations joined the CCR in requesting an apology for the treatment of the Pakistani and Indian men, publicly labeled as “terrorists” on the basis of extremely flimsy evidence in August 2003. In her response in February 2004, the Minister of Citizenship and Immigration declined to acknowledge any unfairness in the men’s treatment.

¹⁹ *Immigration and Refugee Protection Act* section 34 creates an extremely broad category of people inadmissible on security grounds, covering many people represent absolutely no security risk. The Supreme Court has found that the broad definition is compatible with the Charter because the Minister can exempt them. However, applicants are not necessarily told they can apply for an exemption until they have been refused, by which time it is too late.

RESPECTING THE BEST INTERESTS OF CHILDREN

On the positive side

There is increased awareness among government officials regarding the detention of children

CIC has implemented procedural guidelines to help officers in dealing with minors making a refugee claim.

On the negative side

Despite the awareness of the need for special concern for minors, detention of children is not always used strictly as a measure of last resort. From October 2003 to November 2004, an average of 17 minors were in detention each week. Of these, 5 were unaccompanied minors.²⁰

There continues to be no policy for separated children, despite the recommendation in October 2003 by the UN Committee on the Rights of the Child that such a policy be developed.²¹

The principle of the “best interests of the child” is misapplied in humanitarian and compassionate (H&C) decisions. In addition, due to a backlog in consideration of H&C applications, people are deported before the H&C application is considered, even when filed well before removal, meaning that the best interests of affected children are not considered.

PROMOTING GENDER EQUALITY

On the positive side

In the October 2004 Speech from the Throne the government committed to tabling legislation to protect against trafficking in persons.

On the negative side

None of the commitments so far made by the government regarding trafficking offer protection for trafficked persons, mostly women. Women who have been trafficked to Canada are treated more as criminals than victims: they are routinely detained and deported.

CIC has not been providing, as required by the Act, a gender-based analysis of the Act’s impact.²² Instead of analyzing how women and men are differently affected by the Act, CIC’s annual report discusses their plans and activities for doing gender-based analysis.

²⁰ The average has been calculated by the CCR from statistics provided by CIC/CBSA on weekly detention activities. The statistics report persons detained for part or whole of a week.

²¹ UN Committee on the Rights of the Child. Concluding observations: Canada. 27/10/2003. CRC/C/15/Add.215, para. 47.

²² *Immigration and Refugee Protection Act*, section 94(2)(f).