

## Refugees in Legal Limbo

### *Newcomers to Canada*

This year, Canada plans to welcome some 200,000-225,000 newcomers. They may be single adults, young families or people with family or friends in this country. But they are all people who want to make a fresh start to build a new life.

Many arrive as workers with expertise in an area in demand by Canadian employers. Others start up new businesses or invest in the economy. Many are spouses, children or parents of immigrants who came first to establish themselves and now seek to reunite their families. While immigrants come to Canada for many different reasons, they have something very important in common. They come here because they want to. They choose to leave their home countries and they choose Canada as their new

home. Some may be able to return to their countries, should their hopes and aspirations not be realized.

But a small proportion of those who arrive in Canada each year have no choice. Fleeing human rights abuse in their home countries, they seek refuge in Canada, hoping for a safe haven and a chance to live in freedom and security.

### *Refugees*

The United Nations High Commissioner for Refugees estimates that there are some 13.2 million refugees in the world today. There are a further 9.5 million internally displaced people, returnees, people affected by war and others in need of protection and assistance [United Nations 1997: 286-9].

The Geneva (UN) Convention relating to the Status of Refugees (1951), and the 1967 Protocol, define as a refugee any person who:

- (a) by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion

The refugee and immigrant series was launched by the Caledon Institute of Social Policy in partnership with The Maytree Foundation's Refugee and Immigrant Program. The purpose of the series is to highlight the problems and policy issues that affect refugees and immigrants to Canada and to propose practical solutions to these problems.

- i) is outside the country of his nationality and is unable or, by reason of that fear, is unwilling to avail himself of the protection of that country or
- ii) not having a country of nationality, is outside the country of his former habitual residence and is unable or, by reason of that fear, is unwilling to return to that country.

According to the Universal Declaration of Human Rights (1948): “Everyone has the right to seek and to enjoy in other countries asylum from persecution” [Art. 14 (1)].

As a signatory to these agreements, Canada has committed itself not to return ‘Convention refugees’ (i.e., refugees as defined by the Geneva Convention) to countries where they fear persecution. Some of our international obligations to protect refugees are incorporated in domestic law in the Immigration Act.

Refugees can seek protection in Canada in one of two ways. They may be processed overseas by a Canadian visa officer, or they may come to Canada on their own and claim refugee status here (‘inland’).

In 1997, 10,100 refugees were resettled from overseas. An additional 22,584 claimed refugee status inland (though only 9,500 were granted permanent residence, or landed immigrant status, along with 3,000 dependants). Canada plans to land 24,100-32,300 refugees of all categories in 1998, which amounts to 12-14 percent of our total immigration admissions this year.

### ***Overseas***

Refugees who have fled persecution in their home countries and are living in temporary

situations in another country, such as refugee camps, may be sponsored by the Canadian government (‘government-assisted’), by a private group of Canadians or jointly by both. In private sponsorships, an organization or group of five or more Canadian citizens or permanent residents undertakes with the government to provide settlement assistance for the sponsored refugee(s) for a period of one year.

Although refugees are selected because they are in need of protection from persecution, Canadian visa officers nevertheless screen these individuals for their ability to settle successfully in Canada. In addition, to be admitted, refugees must be in good health and they cannot have a criminal record or pose a security concern.

In fact, the Immigration Act grants Convention refugees the right to remain unless they are a threat to national security or public order (e.g., they have been charged with serious criminal activity) [Section 4]. The Act further requires that any decision to remove a Convention refugee be reached with due process [Section 53].

Government-assisted and privately-sponsored refugees are processed before they arrive in Canada, so that when they land here they immediately become permanent residents. While loans generally are provided at the outset, government-assisted and privately-sponsored refugees arrive in Canada with a debt load for both transportation costs and the right-of-landing fee of \$975 per adult.

The Canadian government plans to sponsor 7,300 refugees in 1998, significantly fewer than the annual average of 11,700 between 1979 and 1990. Ottawa expects that a further 2,800-4,000 will be privately sponsored, a precipitous drop from the heyday of refugee sponsorship in the early 1980s, when Canada responded with

overwhelming generosity to the Indochinese ‘Boat People’ crisis by sponsoring 60,000 refugees in less than two years.

### ***Inland Claims***

Canada is also a country of first asylum for many refugees. The increasing accessibility of international travel means that it is often as easy or easier for refugees to flee directly to Canada than to seek temporary asylum in a neighbouring country first. Others live ‘underground’ in a neighbouring country for a time before making it to Canada to claim asylum. Inland refugee claimants account for about half of the total number of refugees coming to Canada. Refugees who make it to Canada and claim Convention refugee status, either at a border point or from within the country, must navigate a slow and complex inland refugee determination system in order to arrive at their goals of security and stability.

The process involves two stages: refugee determination by the Immigration and Refugee Board, followed by application for landing. A recent Auditor General report indicates that, on average, it takes the Immigration and Refugee Board 13 months to process a refugee claim. The Auditor General observed that “the federal government has serious problems handling refugee claims quickly and efficiently” and called for corrective measures [Office of the Auditor General 1997].

A claimant who is found to be neither a refugee nor at risk in his or her home country faces removal from Canada. While it is possible to apply for humanitarian and compassionate consideration to remain in Canada, this process is expensive and rarely successful.

If recognized by the Immigrant and Refugee Board, a refugee may apply for landing.

According to Canada Immigration Centre representatives, this second stage of the process typically takes another 12 to 24 months *if everything goes smoothly*. If things do not go smoothly – e.g., if a refugee’s identification documents are deemed ‘unsatisfactory’ or a lengthy security check is conducted – the process can take even longer.

Applicants for landing are charged a processing fee of \$500 per adult and \$100 per child as well as a right-of-landing fee of \$975 per adult. They also must produce ‘satisfactory’ identity documents, meet health requirements and undergo a sometimes lengthy security check.

Canada’s inland refugee determination system and the quasi-judicial nature of the Immigration and Refugee Board, in particular, are seen by the rest of the world as a progressive, responsible and compassionate response to our Geneva Convention and other international obligations.

But there are a number of significant problems with the system. One of the most disturbing is the growing number of refugees who are falling through the cracks or getting stuck in the system, relegated to a state of ‘legal limbo.’ Canada is seeing the rise of a new underclass of people without status.

### ***Legal Limbo***

Convention refugees accepted by the Immigration and Refugee Board and residing in Canada are eligible for limited protection from the state (as long as returning them to their countries of origin would place them at risk), and are protected by the Constitution’s Charter of Rights and Freedoms. Even without permanent residence, they are allowed to work if they apply for and acquire a work permit, to receive social

assistance, attend elementary and secondary school, and obtain essential and emergency public health care.

Without landed status, however, Convention refugees cannot sponsor family members and thus cannot be reunited with spouses and children. They cannot get a bank loan, work in certain professions (e.g., education and health care) or vote. They are ineligible for public loans for post-secondary education. And they cannot travel across international borders, even to the US.

As a very short-term, temporary stage between refugee determination and landing, legal limbo would appear to be a fairly reasonable price to pay. But what was intended to be a short-term process is turning into long-term and even permanent status for thousands of refugees.

### *Causes*

Refugees can find themselves in legal limbo for a variety of reasons.

#### *i. Identification documents*

The Immigration Act requires that refugees produce ‘satisfactory’ identity documents, such as passports and birth certificates, before they can be landed as permanent residents. This requirement presents a serious obstacle for many refugees, most of whom left their countries in a great hurry to save their lives. It may be possible for some of these refugees to have their identification documents sent to them.

For others, however, the requirement presents an insurmountable barrier. For refugees from certain countries, such as Somalia,

Afghanistan, Iran and Sri Lanka, it is not possible to obtain official documents from the governments they fear, or from their homeland where, in some cases, there is no functioning government. In other cases, documents that Canada considers standard do not exist in other societies.

It is estimated that there are 7,500-10,000 refugees in limbo in Canada because they are unable to produce documents that the Immigration Department considers ‘satisfactory.’

The affected communities repeatedly have called upon the federal government to accept sworn affidavits in lieu of official identity documents, but there has been little movement by Ottawa. The only concession made to date has been to apply a five-year waiting period to Somalis and Afghans who do not have the required documents, after which time they may apply to be landed without the documents. Meanwhile, immigration officials are rejecting more documents as ‘unsatisfactory.’

#### *ii. Background/security check*

Before being granted permanent residence in Canada, refugees must undergo a background check conducted by the Immigration Department and/or the Canadian Security Intelligence Service (CSIS). In the majority of cases, this process is unintrusive and reasonably short, usually being completed in six months to a year. However, in some instances, and in the case of refugees from certain countries (notably, Kurdish refugees from Turkey and refugees from Iran), security checks take significantly longer, ranging up to five or ten years, or indefinitely.

Little official information is available on the reasons for these delays, though refugee advocates are investigating the alleged links

between Canada's foreign policy (e.g., trade, strategic and diplomatic interests) and the use of extended security checks to discourage and delay landing of dissidents from current or potential allies. The Security Intelligence Review Committee, the independent body that oversees CSIS, currently is investigating allegations that CSIS is deliberately targeting certain groups on the basis of ill-defined and unsubstantiated concerns about terrorism.

### *iii. Landing fees*

In 1994, the federal government imposed a processing fee of \$500 per adult (\$100 per child) on inland refugees seeking permanent residence. The following year, the government imposed a further right-of-landing fee of \$975 per adult which applies to all categories of refugees and immigrants.

Today, a refugee family of four (a couple with two children) must pay \$3,150 in fees alone to gain permanent residence here. For refugees who arrive in Canada with little more than the clothes on their back, this cost presents a very significant obstacle, and may result in refugees delaying landing for however long it takes to raise the required money.

A loan program established by the federal government to assist refugees who cannot afford the fees is fraught with problems. The most serious is the requirement that borrowers prove their ability to repay the loan – an onerous expectation for a single mother with a child, for example, who comes to Canada with little or no cash and no Canadian job history.

### *Implications*

Refugees can spend anywhere from a year to five years or more in legal limbo. The long-term physical and mental health implications for refugees of living with such uncertainty are staggering; most refugees already have experienced persecution and torture in their home countries, and have come to Canada in search of security. And in most cases, refugees already have been separated from family members for significant periods even before arriving in Canada.

Nor is it just the individuals who are hurt: The impact is felt by their family and friends as well as by the whole community. Canada is deprived of the full potential of the contribution of future citizens and instead shoulders significant costs to maintain such refugees on the margins of society. A *Toronto Star* editorial described the situation this way: "They cannot apply for a credit card, or qualify for pensions and training programs, or sponsor spouses and children. In the case of some Somalis, family members have died in refugee camps waiting to come here" [May 4, 1995].

The impact on society more generally is also cause for serious concern. Marginalizing whole communities of people will cost Canada in terms of social assistance, health and foregone taxes. Ultimately, it could threaten our social cohesion.

*Andrew Brouwer*

*Andrew Brouwer is Program Manager at The Maytree Foundation.*

## References

Canada. Immigration and Refugee Board. (1998). *Country Report, January-December, 1997*. Ottawa.

Canadian Council for Refugees. (1998). "Background: 7,300 government-assisted refugees to arrive in 1998: What's in a number?" .Toronto, February.

Citizenship and Immigration Canada. (1997). *A Stronger Canada: 1998 Annual Immigration Plan*. Tabled October 23. Ottawa.

Office of the Auditor General. (1997). *Report to Parliament*. Ontario, December.

Toronto Star. (1995). *Editorial*, May 4.

United Nations High Commissioner on Refugees. (1997). *The State of the World's Refugees: A Humanitarian Agenda*. London: Oxford University Press, Table 1, pp. 286-289.

Copyright © 1998 The Caledon Institute of Social Policy. Caledon publications are available online at [www.caledoninst.org](http://www.caledoninst.org).

1600 Scott Street, Suite 620  
Ottawa, Ontario, Canada  
K1Y 4N7  
phone: (613) 729-3340 fax: (613) 729-3896  
e-mail: [caledon@caledoninst.org](mailto:caledon@caledoninst.org)