



invisible WOMEN + CONCRETE BARRIERS

**Background Information for Policy Roundtable on Issues Facing Refugee Women
March 6, 2008
9am to 1pm**

Refugees in Canada

This paper is a basic overview of the refugee process in Canada, with information stemming from two main sources: Amnesty International Canada and the Immigration and Refugee Board of Canada. Many participants invited to the *Invisible Women, Concrete Barriers* policy roundtable discussion have voiced concern that they were not familiar with the refugee determination process in Canada. Therefore this brief background paper was prepared to provide context for this discussion.

For more information about the Canadian Refugee System, you can visit the Government of Canada website: http://www.irb-cisr.gc.ca/en/about/publications/overview/index_e.htm
Or you can visit Amnesty International Canada: <http://www.amnesty.ca>

Who is a Refugee?

Refugees are people who are forced to leave their home country to seek protection in another country. The term "refugee" is commonly used to describe a person seeking protection from harm. However, the legal definition of a refugee (the definition that is used by countries to decide if they will offer protection to the individual) is narrower.

Most countries, including Canada, use the definition from the 1951 Geneva Convention relating to the status of refugees, commonly known as the "Refugee Convention".

- *A refugee is a person who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country..."*
 - The 1951 Geneva Convention relating to the Status of Refugees

According to Amnesty International Canada, there are limitations of this definition:

“If we look closely, we see that the Refugee Convention definition of a refugee can be interpreted narrowly. It does not always adequately reflect today's reality. The Refugee Convention focuses on persecution aimed at the individual, not at groups of vulnerable people. According to the definition, a person fleeing from war or civil unrest is not a refugee, even if their life is in danger. Unless they are persecuted because of race, religion, nationality, membership in a particular social group or political opinion, they don't count as a "true" refugee.

Some governments have chosen to interpret the Convention as offering protection only to refugees fleeing persecution by government agents - even though the Convention does not explicitly say this. As a result, refugees fleeing from "non-state agents" - such as paramilitary groups or private individuals -- are denied protection.

Another serious limit of the Refugee Convention is the lack of explicit protection for women. The drafters of the Convention did not consider the different forms of discrimination and persecution aimed at women and men. The Convention says nothing about women fleeing societies that regulate and control women's lives, or fail to protect them from abusive situations. Canada was one of the first countries to recognize the unique forms of gender-based persecution experienced by women. Canada remains a world leader in this regard as many countries fail to recognize gender-based persecution. “ taken from <http://www.amnesty.ca/Refugee/who.php>

Refugee Protection in Canada

There are two means by which Canada provides protection to refugees: Inland Refugee Claims and Overseas Refugee Claims.

Inland Claims are made when refugees flee directly to Canada and claim refugee status here. Overseas claims are when refugees are selected overseas (in a refugee camp or temporary country of refuge) by the Canadian government.

A. Inland Refugee Claims

A refugee can claim Canada's protection at a border point (ie. at an airport or border crossing) or from within Canada. An officer of Citizenship and Immigration Canada (CIC) determines whether or not the claim is eligible to be heard by the Immigration and Refugee Board. A claim is not eligible to be heard if the person:

- has already been recognized as a Convention refugee by another country
- has already been rejected as a refugee by Canada, or has withdrawn or abandoned a previous claim in Canada

- came to Canada from or through a designated "safe third country" where refugee protection could have been claimed
- is deemed "inadmissible" because of serious criminality or security concerns, or the person is a violator of human rights.

If the claim is found to be eligible to be heard, it must be referred within three days to the Immigration and Refugee Board (IRB), a quasi-judicial tribunal that is independent of Citizenship and Immigration Canada. This does not mean that the case will be heard or that the case will be handled within three days; it merely means that the case will be transferred to the IRB from Citizenship and Immigration Canada. The complete processing of a refugee claim usually takes months, or even years.

Hearing before the IRB:

A refugee claimant may undergo an expedited process or a full hearing. If a claim appears to be very well-founded, it may be accepted under an expedited process; or if not, it proceeds to a full hearing.

In a full hearing, a claim is heard before a single IRB Member. Every claimant has the right to be represented by legal counsel, although legal aid is not available in all parts of Canada. An interpreter is provided by the IRB where necessary.

The IRB Member can render his/her decision orally at the end of the hearing or send it in writing later by mail. If the decision is negative, it must include the reasons in writing. If the decision is positive, written reasons are not given and the refugee claimant is given the status of "protected person".

No Right to Appeal an IRB Decision

There is no appeal of a negative IRB decision. Although the new Immigration and Refugee Protection Act does contain a Refugee Appeal Division, its creation has been delayed indefinitely by the Minister of Citizenship and Immigration Canada.

It is possible to request that the Federal Court conduct a "judicial review" of the negative IRB decision. However, this review is restricted to very serious legal errors and a lawyer is needed to prepare and argue the judicial review. The success rate for cases judicially reviewed is very low.

After Determination

A person who has "protected person" status can apply to be a Permanent Resident (also known as "landed immigrant status"). Applicants are charged a processing fee and must produce a "satisfactory identity document" in order to receive Permanent Residence status.

Pre Removal Risk Assessment

A claimant who is found not to be a "protected person" faces removal from Canada. Immediately prior to the removal the Immigration Department conducts a risk assessment to review conditions in the country to which the claimant will be returned.

Humanitarian and Compassionate Review

The only other recourse for an unsuccessful refugee claimant is to apply to Immigration Canada for permission to stay on humanitarian and compassionate grounds. This can be an expensive process (after paying processing and legal fees).

B. Overseas Refugee Claims

A small number of refugees living overseas in a country of asylum (e.g. in a refugee camp or in a country where they cannot settle permanently) are sponsored for resettlement to Canada, either as government assisted or privately sponsored refugees. In both cases, they must first be determined to be "persons in need of protection" by the Canadian Government.

Government-assisted refugees:

Each year the Canadian government undertakes to directly sponsor a limited number of refugees for resettlement to Canada.

Privately sponsored refugees:

Private groups can also sponsor refugees to be resettled to Canada. They are responsible for those they sponsor for the first year of their arrival, and must ensure that the refugee is both socially and economically supported.

Settling In Canada

The government of Canada has a number of programs (<http://www.cic.gc.ca/english/newcomer/index.html>) available to refugees once they arrive in Canada. These include loan programs, health insurance and language assistance programs. Privately sponsored refugees are financially supported by the sponsoring parties for the first year. Those undertaking a sponsorship must ensure that the sponsored refugee is adequately supported in their new home.

 Canadian Red Cross
Croix-Rouge canadienne

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