



Amnesty International

Refugee Determination in Canada:
The Responsibility to Safeguard Human Rights

Response to the Government of Canada's White Paper,
Building on a Strong Foundation for the 21st Century:
New Directions for Immigration and Refugee Legislation

31 March 1999

*At the time of the Gulf war a young Syrian man, forced out of Kuwait, came to Canada to claim refugee status. **

His claim was denied because the Convention Refugee Determination Division of the Immigration and Refugee Board thought the events which had caused him to leave Syria eleven years earlier were not sufficiently serious or recent to warrant international refugee protection. He was denied leave to have the Federal Court judicially review the IRB's decision.

The Refugee Network of Amnesty International Canada looked at his case. After interviews and research we became convinced that, should this man be returned to his country of origin, he would be at risk of grave human rights abuses. Our research corroborated certain details in his history, and demonstrated that the IRB underestimated the intensity with which the Syrian authorities pursued persons having any hint of connection to certain opposition movements in that country.

Shortly after the case was drawn to AI's attention, a deportation date was set. Amnesty International completed its case review process and addressed a brief to the then Minister of Employment and Immigration, setting out our research and our findings, asking the Minister to exercise his ministerial discretion to allow this failed refugee claimant to remain in the country. The UNHCR also intervened.

On the very day of his planned removal, word came to AI from the Case Management Branch at Departmental Headquarters that this man would be allowed to stay in Canada.

*Another young man came to Canada, this time from Iran.**

Raised a Muslim, he had been caught in a raid on a Baha'i' meeting. He was detained one month and tortured to extract information about Baha'i' proselytising. He was released upon signing an undertaking to stay away from all Baha'i adherents. However he continued his association with his Baha'i friends, and took home some Baha'i' materials which he hid in his room. His home was subsequently raided during his absence. He went into hiding until he could escape the country.

The IRB turned down his claim for refugee status, saying that the claimant had failed to prove that he would be viewed as an apostate in Iran.

Lengthy interviews by Amnesty International's Refugee Network, informed by research, shed light on under-examined aspects of his story, and resolved credibility issues that the IRB had identified. Researchers at Amnesty's International Secretariat felt that, in all the circumstances of the case, he would be at risk of detention as a prisoner of conscience or torture if forcibly returned.

Amnesty International sent a brief outlining our concerns to the Minister. However, officials took the position that Canada's refugee determination system and reviews were adequate and reliable, and would not entertain the idea that mistakes were made. The answer from the Minister's office was brief: there will be no intervention. None of our findings, our research, nor our specific concerns was addressed. The claimant was deported to Iran shortly thereafter, and has not been contactable.

***Two actual cases taken on by Amnesty International in Canada.**

INTRODUCTION

Amnesty International has long recognized the central role that effective, accessible refugee protection plays in safeguarding basic human rights. Put simply, refugee protection offers a valuable opportunity to ensure that potential victims of human rights violations are protected before those abuses take place. Consequently, intervening on behalf of individual refugees and refugee claimants, and campaigning for fair policies and procedures, both nationally and internationally, figures prominently in AI's wide-ranging work as a human rights organization.

Both the English and French-speaking branches of the Canadian Section of Amnesty International have well-established refugee programs. This includes working on behalf of individuals who require Canada's protection, as well as calling on the government to ensure that Canada's system is fair and accessible. AI has regularly submitted briefs and made presentations before parliamentary committees and in departmental meetings regarding legislative, regulatory and policy matters in this area. We have participated actively in the legislative review process of the past two years and welcome the opportunity to do so again in response to the White Paper.

Amnesty International has recently devoted a considerable amount of attention to the plight of refugees worldwide. A major global campaign in 1997 highlighted the fact that refugee protection is a human rights issue. Reports issued in conjunction with the campaign documented the sorry degree to which refugee protection is under siege in virtually every corner of the globe.

Worldwide, refugees and internally displaced persons experience seemingly relentless violations of their rights. The nature of the abuses is often horrifying. During the past decade the world has witnessed many instances in which massive numbers of people have fled in a very short time span, escaping genocide, widespread killings, rape, mutilation and torture. Dangerous journeys of escape are replete with further violations of basic rights. Many displaced persons are killed, die or become seriously injured or ill while trying to reach safety.

Yet safe places are increasingly elusive. Most displaced persons are unable to make it to another country and remain instead within their own country, often in the midst of the violence that has led to displacement. Neighbouring countries are increasingly reluctant to allow the displaced to cross their borders and increasingly hasty to send refugees home before human rights abuses have ended. The international community frequently fails to provide the necessary levels of support and security in these countries of first asylum, to ensure that refuge is truly safe. The prospect of finding protection further afield is less likely than ever, with sophisticated means of interdiction, complex inter-state agreements, cruel forms of detention, summary procedures, and restrictive approaches to the refugee definition being used by states to erect a formidable barrier.

Amnesty International believes that displacement is one of the most pressing human rights challenges we face. Amnesty is also of the view, shared by many others, that the present global system meant to ensure

the protection of displaced individuals is in crisis. The current process of reconsidering Canada's approach to refugee protection offers a valuable opportunity to assist in shoring up one of the world's most important human rights remedies.

WELCOME PROPOSALS

We propose only to address those of the White Paper recommendations which touch on Amnesty International's mandate. We begin our comments by highlighting a number of proposals which would, in our view, be welcome developments and stand to make a positive contribution to Canada's ability to provide protection to those in need.

1. *Improvements in overseas program*

We are hopeful that the proposals to develop a more responsive overseas resettlement program for Canada will lead to considerable improvements. Ensuring that an individual's protection concerns, and not his or her ability to settle successfully in Canada, forms the basis for selecting refugees for resettlement is an important change which AI strongly endorses. Similarly, increasing the commitment to ensuring refugee family unity and speedy reunion will strengthen the program considerably. Amnesty has frequently reported that relatives of individuals who have been forced to flee a country due to a fear of persecution do, themselves, experience serious human rights violations. Keeping families together therefore serves an important protection function.

Amnesty's refugee program provides us with the opportunity to work with individuals seeking protection in Canada and abroad. Over the years we have brought a small number of overseas cases to the government's attention and asked that the individuals be allowed to come to Canada, often on an emergency basis. Generally these individuals have been human rights activists known to AI and have, in many cases, already experienced human rights violations. Their difficulties have often been reported in prior AI reports. We have frequently worked with partners in the NGO community to arrange sponsorships and other settlement arrangements for such individuals. In recent years we have intervened on behalf of individuals seeking to escape such countries as Burundi, Haiti, Colombia, Somalia, China, and Peru.

These cases are among the strongest, most credible and urgent protection concerns that come to our attention. Yet, we most often find the process of obtaining protection to be cumbersome, drawn out and uncertain. In fact, the human rights researchers at our International Secretariat approach the AI Canada refugee program with these cases less frequently than in the past; they are finding that the response from other resettlement countries is more reliably positive and more rapid, removing the person from the situation of risk long before Canada's cumbersome arrangements allow.

Consequently AI welcomes the intention to work more closely with NGOs in identifying, pre-screening and resettling refugees; and to ensure the immediate entry into Canada of urgent protection cases. The few cases which AI Canada brings to the government's attention in any given year are precisely "of urgent concern." We look forward to developing a reliable and open working relationship which would ensure

that immediate entry into Canada, and therefore the safety, of such individuals becomes possible.

2. *Refugee Determination in Canada*

Amnesty International is pleased that the government intends to retain the Immigration and Refugee Board and, in particular, the Board's Convention Refugee Determination Division. In its brief to the Minister in response to the report of the advisory group, which had recommended that the Board be dismantled, AI highlighted how vitally important independence, impartiality and expertise are when it comes to making protection decisions.

We are also pleased with the proposal that protection decisions should take account not only of Canada's obligations under the *Convention relating to the status of refugees*, but other international instruments. The *Convention against Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment* is mentioned by name; also included should be the *UN Declaration of Territorial Asylum*, the *UN Declaration on the protection of all persons from enforced disappearance*, the *UN Principles on the effective prevention and investigation of extra legal, arbitrary and summary executions*, and the *International Covenant on Civil and Political Rights* and the *Geneva Convention relative to the Protection of Civilian Persons in Time of War*. In past years the IRB's practice of applying the definition of a refugee "interpreted in the light of international instruments" has produced quite uneven results in Amnesty International's experience. Only explicit importation and implementation of these instruments in domestic law will ensure that they are given full effect. We trust this is the intent of the White Paper recommendation.

Finally, we support the move to consolidate responsibility for decision-making with regard to refugee status and other protection claims within the IRB. The paper highlights the degree to which this should improve efficiency. Amnesty International welcomes the recognition that all decisions with regard to risk and protection should be made by an independent and expert body, such as the IRB. Our reservations about the proposed process, as opposed to the locus, for making such determinations will be discussed below.

AREAS OF CONCERN

The report stresses that "Canada's refugee policy needs to balance two principles: fairness and efficiency." Amnesty International agrees that both fairness and efficiency are important values in refugee determination. Efficiency is directly linked to the question of fairness, as it is crucial that well-founded claims for protection, made by individuals who have often already experienced human rights abuse and serious trauma, be recognized as quickly as possible. Expedient decision-making plays an important part in the process of rebuilding and healing, and ensures that family reunification needs can be addressed more promptly.

Most of the White Paper's recommendations with regard to refugee determination in Canada are cast in terms of improving efficiency and reducing costs. Amnesty International supports some proposals which should serve that end, such as the recommendation to consolidate all risk-related decision-making within the Immigration and Refugee Board. However, we are of the view that many of the recommendations will

in practice sacrifice fairness, and thus put genuine refugees at risk of not receiving the protection they require.

1. *Lack of Meaningful Appeal*

Amnesty International campaigns worldwide for refugee determination processes that include the opportunity to appeal - on the merits - any negative protection decision. In Canada, Amnesty's consistent and most fundamental criticism of the Canadian system has been directed at its lack of a meaningful appeal. The various options now available to a person whose claim for refugee status has been rejected — applying to Federal Court for leave to commence a judicial review application, the Post Determination Refugee Claimants in Canada review process, or the possibility of making a humanitarian and compassionate application — are in our view simply inadequate.

Over the years, we have been involved in a significant number of cases in which mistakes were clearly made at the IRB. We have worked on other cases where circumstances of the case changed dramatically after the refugee hearing. In practical terms there is all too often nowhere to go to claim the protection that is clearly needed. The path to existing remedies is often blocked by limitations of time, ability to pay, and the inherent limitations of jurisdiction.

Under any system errors will inevitably occur. Likewise, no matter how rapidly authorities are able to arrange for the removal of failed refugee claimants, the nature and volatility of the political and human rights situation in many countries is such that circumstances can and will rapidly and unexpectedly change. To address these concerns we have in the past made submissions to the Canadian government describing a possible appeal process, which would be primarily in writing with oral proceedings convened if necessary. We have suggested that appeals be determined by a separate division of the IRB.

AI believes an appeal of a judicial nature, on the merits, and conducted independently is a necessary element in any fair refugee determination system. We are disappointed that the White Paper does not propose to remedy this significant deficiency in the Canadian refugee determination process.

2. *Consolidated decision-making and refocused discretionary powers*

We noted above that we support the proposal to consolidate responsibility for decision-making with regard to refugee status and other protection claims within an independent and expert body, the IRB. However, this idea does not address the inadequacies of review options upon a negative CRDD decision. In fact, giving responsibility for determining Convention refugee decisions, PDRCC risk reviews and H&C applications to one body raises a real possibility that even the inadequate reviews now in place will be weakened, unless clear guidelines are established as to how the various kinds of protection are to be claimed.

Little indication is given of the approach to, or timing of, the various determinations that the IRB would make. AI believes a finding specifically addressing the Geneva Convention obligations must figure in each decision. Beyond that, it is impossible to discern from the White Paper proposal whether evidence and argument about PDRCC and humanitarian issues are to be addressed at the same time as Convention

grounds, or whether the various heads of protection are addressed in sequence. A humanitarian and compassionate application can be made only “immediately after” (no time limits indicated) an individual’s refugee hearing, and no risk-related concerns which formed part of the protection hearing would form part of the H&C. How will risk-related issues not raised during the hearing be viewed? Would new evidence about an issue that had been before the Board would be admissible? How will the complex and potentially time-consuming determination of whether a particular issue had or had not already been heard be managed? It is not possible to discuss proposals for the new regime until these details have been revealed.

The White Paper includes the possibility of a pre-removal risk assessment. It is not clear whether that assessment would be carried out by the IRB, or by an immigration officer. In keeping with our concern that decision-making about protection issues be entrusted to an independent and expert body, AI urges the government to give responsibility for this assessment to the IRB. Efficiency will be served as the IRB will already have a file for the individual, dealing with protection issues at the time of the original hearing.

The White Paper suggests that the pre-removal risk assessment be “available in appropriate circumstances.” Amnesty International thinks that everyone should have the right to require that a pre-removal risk assessment be conducted. This assessment should be conducted according to established guidelines and should consider whether

- “ an individual’s personal circumstances have changed, giving rise to new or increased protection concerns,
- “ an individual has been able to obtain new evidence regarding his or her own situation,
- “ there has been a change of circumstances in the individual’s country of nationality,
- “ the individual can demonstrate *prima facie* that an error was made in the original decision,
- “ the individual has been denied natural justice,
- “ the plan for removal itself will bring on risk of human rights abuses, or will it put the individual into her country in a place and situation which is safe.

3. *Streamlined process*

The White Paper suggests a thirty day time frame for making a claim. This is more generous than the three day proposal made by ILRAG; however we are still of the view that it is an unfair and cumbersome proposition. As we pointed out in our submission to the Minister in response to the ILRAG review, a delay of weeks, months and occasionally even years has not prevented the IRB from recognizing the need of some claimants for protection under the Geneva Convention recognized.

The current practice, where delay in filing a claim is considerable, is to examine the reasons for that delay in depth. In some instances, claims fail due to delay, as the decision-makers conclude that the delay is inconsistent with the assertion of a well-founded fear. In other instances however decision-makers have been convinced that there exist plausible and compelling explanations for the delay. Those explanations include fear, traumatization, misinformation, domestic violence and other forms of abuse, and changes in conditions in an individual’s home country. We are of the view that the present approach is the right one — namely to leave the question of delay for assessment within the context of the overall assessment of the claim. Any other approach stands to put genuine refugees at risk.

It is also likely that imposing a time frame as suggested in the White Paper will lead to inefficiencies. The White Paper rightly notes that there will need to be allowance for exceptions from the time frame “in compelling circumstances”. Most individuals making claims beyond the thirty day limit will inevitably seek to bring their own circumstances within this exception. The time involved in reviewing the submissions made will simply add another layer of decision-making to the process, and lead to further delays as claimants seek judicial review when they are told that their case is not considered exceptional.

The second proposal for streamlining is to deny access to a hearing to those individuals who return to Canada ninety days after leaving, having earlier been turned down by the IRB. To date the option of repeat claims has, in the absence of a meaningful appeal possibility, served an important protection function. Many claimants have succeeded in their second claim. Decision-makers have been convinced that a mistake had been made in the first decision, or have been presented with new and compelling evidence that was not available to the original decision-makers. This option has primarily been open to claimants who are returned to the United States, as the cost and logistical complications of returning to Canada from any other country are generally insurmountable barriers.

Given that the White Paper proposals still fail to provide an adequate appeal mechanism, the option of repeat claims will continue to be an important to receiving needed protection. The proposal is that repeat claimants would have their case examined under “pre-removal risk assessment”. AI suggests that this assessment be conducted by the IRB, involve an oral hearing, and be limited to arguments either as to why the original decision was in error or how circumstances have changed since that time.

4. *Manifestly unfounded claims*

The White Paper calls for priority processing for people from countries that are deemed safe countries of origin, and for others whose claim to refugee status is clearly related to reasons having nothing to do with a need for protection.

‘Manifestly unfounded’ procedures have been adopted in a number of countries. Various jurisdictions have developed various categories of claimants subject to these procedures - e.g, persons arriving from safe countries of origin, persons transiting through safe third countries, or persons arriving without proper documents. The ways in which the ‘manifestly unfounded’ procedures differ from regular procedures vary as well from jurisdiction to jurisdiction. A claim which is deemed to be manifestly unfounded may receive no hearing at all, or may be excluded from the regular process and directed to some other, truncated procedure, or may mean removal before an appeal is heard.

Amnesty International has extensively monitored the effect of manifestly unfounded procedures, particularly in Western Europe and the United States. Our concern that it is dangerous to treat individual claims on the basis of generalizations has frequently been borne out. Refugee determination is, by necessity and by design, an individualized process. Procedures which make assumptions at the outset about a case, based on generalized characteristics, do not adequately ensure that the case is fully and impartially considered on its own individual merits.

The present Immigration Act contains a provision allowing for the designation of safe countries of origin. Sub-section 69.1(10.1)(c) requires that in the event of split decisions, individuals from such designated

countries not be granted refugee status. AI expressed concern about this amendment to the Act when it was adopted. To date no country has been designated.

Sadly, it is our experience that human rights violations take place in a huge number of countries worldwide, including many of the countries that have been designated as safe countries of origin by some European states. Many of those designated “safe” countries are countries from which the IRB has regularly accepted a significant numbers of claims, including India, central or Eastern Europe, Algeria. Against this experience, the concept of “safe countries of origin” proves illegitimate.

While the proposal in question — for priority processing — is admittedly less severe than what has been adopted in many European states and the United States, it is still likely to prove prejudicial to the independent evaluation of claims on their individual merits. As well, in being processed on a priority basis, these individuals will have less time to gather relevant and necessary evidence and prepare for their refugee hearings, increasing the chances that legitimate claims will be refused.

AI would only support priority processing if it were clear that a large number of demonstrably unfounded claims from a particular country were posing a risk to the integrity of the Canadian refugee determination system. Similarly, priority processing might be a reasonable option if there was evidence that large numbers of individuals were making claims for reasons having nothing to do with a need for protection. Absent such circumstances it is unfair to single out certain categories of claimants for special treatment.

It is likely that this proposal will give rise to constitutional challenges. It quite clearly involves unequal treatment before the law, a principle at the very heart of the Charter and other legal provisions which prohibit discrimination in Canada. Such challenges might equally be made by claimants whose cases are delayed because other deemed manifestly unfounded are given priority in the queue.

5. *Improperly documented refugees*

The White Paper outlines a number of measures to “deal with the issue of improperly documented refugees.” These include increased disembarkation checks, enhancing the security of visas, removing current restrictions on prosecuting people who aid and abet illegal immigration,¹ increased transnational data collection on illegal migration, and provisions allowing the detention of refugee claimants who fail to cooperate in establishing identity.

The requirement that individuals wishing to travel internationally be in possession of proper documentation — particularly a passport and, when required, a visa — is one of the most formidable barriers faced by refugees. These requirements, enforced rigorously in Europe and North America, provide no exception

¹ Currently, s. 94.3 of the Act requires that before launching a prosecution under ss. 94.1 and 94.2 (dealing with aiding and abetting illegal entry into Canada) of the Act, the consent of the Attorney General or Deputy Attorney General of Canada must be obtained. We assume that this is the restriction which it is proposed be abolished. No explanation is given as to why this requirement is onerous. It would appear to be an important safeguard meant to ensure against improper use of prosecutory power.

for individuals fleeing persecution. In fact, visa requirements are most frequently imposed, in Canada and elsewhere, at precisely the moment that a country becomes a significant refugee source country.

This inflexible approach to documentation has necessarily forced many refugees to turn to agents who provide false documents, as the only means of ensuring that they are able to reach a safe country. Having been denied a passport by their government, or being too fearful to apply for one, or not having had the time to retrieve it before fleeing, a person who must cross international borders to save her life can only resort to a false passport. Being a national of a country against which Canada has imposed a visa obligation (which is the case for virtually every major refugee source country), the asylum-seeker naturally tries to procure papers from visa-exempt countries. Once the asylum-seeker has seemingly reached safety, these documents are generally either retained by the agent who provided them or destroyed by the refugee claimant who has been told that failure to do so will lead to automatic deportation.

The White Paper proposal suggests improperly documented individuals would only be penalized (i.e., detained) if they failed to cooperate with Canadian officials in establishing their true identity. In practice, however, this standard casts a broad net. Canadian officials generally require documentation from an individual before they will be satisfied as to his or her identity. In practice, satisfactory documentation is scarce. It is clearly not the norm for refugees to arrive with a full range of official papers - in most instances it is either impossible to procure them or too dangerous to travel with them on one's person. While it may be possible to have documents sent from home after arrival in Canada, that may take considerable time. Even then, the documents which eventually arrive are frequently rejected by Canadian officials. To detain an individual throughout the period of establishing identity would be excessive and harsh, absent other reasons to be concerned about their forthrightness. In other cases, it may simply be impossible to obtain any documents from home at all. The prospect of indefinite detention for such individuals is quite real.

If there are well-grounded reasons to be suspicious about an individual's identity, Amnesty International is not opposed to detention. However, lack of documentation and inability readily to produce documentation after arrival is not, in and of itself, sufficient to warrant detention. AI urges the government to consider this proposal carefully and ensure that provisions do not simply further penalize refugees for a frequently inevitable element in their flight to safety - lack of documents.

6. *Decision makers*

Throughout the legislative review process Amnesty International has urged that the Immigration and Refugee Board be retained due to the importance of independent decision-making. We have however simultaneously highlighted our concern that the lack of an open and transparent process for appointing the Members of the IRB seriously compromises that sense of independence. It also fails to ensure the requisite level of expertise that decision makers must possess. Over the past decade many competent individuals with appropriate training and background have been appointed to the Board. Sadly, though, it is clear that many have been named to the Board simply because of their political connections.

The present government took steps to remedy this problem in 1994, with the establishment of the

Ministerial Appointments Advisory Committee. However the Committee's existence, let alone its powers and membership, are not established in legislation or regulation. At present, it is unclear who the members of the committee are, what procedures they use in assessing candidates, and whether those procedures are applied equally to all candidates.

The White Paper recognizes that improvements are needed in the selection process, but is remarkably equivocal in suggesting a need for reform. Whereas in other sections of the paper proposals are confidently asserted, here the only indication is that "consideration will be given" to improving the process and the possibility that selection criteria and process "could" be established in legislation. Amnesty International calls on the government to take decisive steps to improve the selection process. An open and transparent process, along the lines of the mechanisms now in place for the appointment of judges in most provinces across the country, should be established. The process should be clearly established in legislation and be applied equally to all candidates for appointment and for re-appointment.

Refugee decision-making is one of the most difficult forms of any decision making. It requires predicting the future, making decisions in a cross cultural context with incomplete and imperfect information, and interpreting evidence from individuals who have survived torture, sexual violence and other forms of trauma. It is also one of the most precious decision-making responsibilities entrusted to any tribunal in Canada, as the life, liberty and security of individuals is at stake, often dramatically so. In that context, refugee claimants and the Canadian people deserve to know that the individuals making these decisions are independent, expert and up to the task.

7. *New inadmissible classes*

At present, the Immigration Act denies access to refugee determination to numerous categories of individuals, including persons who have been convicted of criminal offences which carry a maximum possible term of imprisonment of at least ten years, persons who may engage in espionage, subversion or terrorism, and persons who have committed war crimes or crimes against humanity. Amnesty International has expressed concern about the breadth of several of these provisions, some of which go beyond the exclusionary provisions of the *Refugee Convention* itself. They also contravene other international obligations binding on Canada, such as the *Convention against Torture's* prohibition against returning anyone to a country where he or she faces a serious risk of torture. We have also urged that these decisions be made by the IRB and not by immigration officers and adjudicators.

Our concern has proven to be well-founded. Over the years we have intervened unsuccessfully in a number of cases in which individuals were facing return to countries where we believed there to be a well-substantiated risk of torture or extrajudicial execution. These individuals had generally been convicted of crimes in Canada and served whatever jail sentence was imposed by the criminal justice system. To further sentence these individuals to torture or death violates fundamental human rights which Canada is obliged to uphold.

We are concerned therefore with the proposal to add at least three new inadmissible classes² to the Act. While the White Paper does not specify whether any or all of these classes will figure among the criteria used to determine access to refugee determination, we assume there is some consideration being given to that possibility.

Amnesty International urges that, in any new regime, all claims be referred immediately to the IRB and any appropriate eligibility issues considered there.

8. *Enhanced interdiction*

We think it is remarkable that the proposal for enhanced interdiction is discussed only in the chapter of the White Paper dealing with maintaining the safety of Canadian society. In all the discussion there is no suspicion of recognizing that interdiction measures impact directly and seriously on asylum-seekers and their right to seek asylum.

Amnesty International has frequently expressed concern about the various measures used by the Canadian government to block the entry of asylum-seekers into Canada, including visa policies, carrier sanctions, the stationing of immigration officers in airports abroad, and the draft Memorandum of Agreement which might have led to the United States being designated as a safe third country. Our consistent concern has not been with the measures themselves, but with the fact that there are no, or inadequate, mechanisms to allow exceptions for individuals who are fleeing persecution.

We see the same likelihood with the White Paper's proposal to expand the network of specially trained immigration control officers stationed abroad. We see no reference to those officers being granted powers to exempt refugee claimants from interdiction. Instead, the only prospect appears to be that a greater number of refugee claimants will be turned back and denied the opportunity to seek Canada's protection.

This proposal to block access does not come at a time of rapidly increasing claims in Canada. The number of claims made inland appears to have been relatively constant over the past several years.³ Further, the number of claims made is not, in our view, inordinate or excessive, particularly when viewed in the international context: other countries, many of which have nowhere near the resources that Canada does, are host to far more refugees.

With this proposal, Canada would be falling into line with the current international trend. Amnesty International is firmly convinced that increased interdiction leading to a global deterioration in refugee protection, as states are increasingly devising ways to avoid refugees or transfer responsibility for their protection to some other country. Canada must resist simply becoming another player in the increasingly sophisticated transnational game of interdiction and avoidance.

² The three proposed new classes are members of governments against which Canada has imposed sanctions further to a multilateral resolution of some sort, people smugglers, and people who make false declarations on permanent residence applications.

³ Figures available to Amnesty International indicate that between 1993 and 1998 the number of claims made in Canada has been consistently in the range of 21,000 to under 26,000. In the past four years there appears to have been a fluctuation of about 1300 claims.

Rather than devote more resources to interdiction, Amnesty urges the Canadian government to take the lead in encouraging states to fashion an international system based on cooperation and solidarity, in which states work together to ensure meaningful refugee protection is accessible worldwide.

CONCLUSION

Amnesty International is disappointed that the White Paper's discussion of refugees is not grounded in the language of human rights but rather in terms of enforcement, and punishment of the relatively few cases of abuse. We recognize that governments are entitled to control immigration and entry to their territory. However, international law requires governments to recognize that asylum-seekers are uniquely situated as they seek entry onto sovereign territory. Their right of access to an asylum procedure is protected by convention and by law. Governments which put general restrictions on entry, such as visa requirements, sanctions on airlines or other transporters or other similar restrictive measures must demonstrate that these do not, in practice, block effective access to their asylum procedures.

The current proposals of the Canadian government to promote interdiction fail to take any account of its commitment to protect persons fleeing persecution. Implementing these proposals as they stand may well make the Canadian government complicit with the persecutors. Amnesty International calls upon Canada to exempt refugee claimants from the effects of the interdiction program.

In addition to being accessible, any regime that determines the right of an individual to refugee protection must be fair. The disorganized and perilous nature of flight must be allowed for in addressing factors such as an asylum-seeker's lack of standard documentation. An understanding of the trauma of persecution and subsequent uprooting must be reflected in a flexibility as regards time limits and other procedural rules that defeat asylum-seekers' rights. Decision-making must be expert and open-minded -- labeling a country as "safe" may hide but not change the sorry reality of persecution experienced by the individual citizen of that country.

As the world witnesses the latest mass flight from persecution and genocide, can there be any doubt that displacement poses a human rights challenge to the global community? As the global community scrambles to respond to Kosovo, is there any doubt that the system meant to ensure the protection of displaced individuals is in crisis?

Amnesty International urges Canada to respond courageously to the displacement challenge by adopting measures that safeguard and strengthen refugee protection in Canada and around the world.
