REFUGEE FAMILY REUNIFICATION

Report of the Canadian Council for Refugees
Task Force on Family Reunification

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EXECUTIVE SUMMARY

In 1992 the Canadian Council for Refugees established a task force to inquire into problems being experienced by refugees with respect to family reunification. The task force, which held public hearings and conducted independent research, found that refugees face a number of obstacles to speedy family reunification. Prolonged separation from immediate family members has serious negative consequences on the refugees in Canada in terms of mental health, financial status, and integration into Canadian society. Family members overseas are often at risk of persecution themselves or living in precarious circumstances; the longer the wait for family reunification, the greater the risk to their health and safety. The long-term effects of separation also appear to be significant, with increased incidence of family breakdown and social difficulties experienced by all family members even after reunion.

The main barriers to family reunification identified by the task force are the following:

. Obstacles to landing of the refugee in Canada.

. Delays in processing of landing applications overseas.

. Problems in establishing family ties.

. Narrow definition of family excluding significant members of the refugee's family.

The task force makes the following core recommendations to address the problems:

. To avoid the delays inherent in overseas processing, spouses and dependent children of refugees in Canada should be granted a “derivative status” immediately upon positive determination of the refugee claim, on the basis of which they could proceed to Canada. (pages 35 - 36)

. To alleviate difficulties faced by refugees in establishing family ties, the benefit of the doubt with respect to family relationship should be given, as a matter of principle, to refugees applying to sponsor their families. (pages 40 - 44)

. To respond to protection needs, visa officers should be directed to issue visas allowing the family to travel to Canada on an urgent basis, where the spouse and children of a refugee claimant in Canada are themselves clearly at risk. (pages 32 - 34)

. To address the realities of diverse family compositions, the government should give serious consideration to the functional approach to family definition recommended in the 1986 report of the Standing Committee as elaborated in the 1994 *Report of the National Consultation on Family Class Immigration*. (pages 53 - 55)

. To allow refugees in Canada to sponsor members of their extended family who find themselves in desperate situations, the special programs should be revived and updated. (pages 49 - 52)

. To ensure that family reunification is not obstructed or delayed, the government should take measures to address the impact of barriers to landing of refugees in Canada, including the various fees. (pages 21 - 26)

. To ease the financial burden on the few communities that are receiving the vast majority of refugees, the federal government should consider increased transfer payments to the provinces where most refugees are settling. (pages 75 - 76)

A number of other recommendations flow from these or touch on specific problems faced by some refugees.

RÉSUMÉ

En 1992, le Conseil canadien pour les réfugiés a mis sur pied une commission spéciale pour étudier les problèmes de réunification des familles rencontrés par les réfugiés. Suite à une série d'audiences publiques et à une recherche indépendante, la commission arrive à la conclusion que divers obstacles empêchent une rapide réunification familiale dans le cas des réfugiés. La séparation prolongée des membres de la famille immédiate a des impacts négatifs importants sur leur santé mentale, leur situation financière et leur intégration au sein de la société canadienne. Les membres de la famille à l'étranger vivent souvent dans des conditions précaires ou encore se retrouvent eux-mêmes en danger de persécution: plus le temps d'attente s'allonge, plus les risques pour leur santé et leur sécurité augmentent. Les effets à long terme de la séparation apparaissent aussi significatifs et augmentent les risques de ruptures familiales et les difficultés sociales vécues par les membres de la famille, une fois réunis.

Voici les principaux obstacles à la réunification identifiés par la commission:

. Obstacles à l'obtention du droit d'établissement par les réfugiés au Canada.

. Délais dans le traitement des demandes d'établissement à l'étranger.

. Problèmes dans la reconnaissance des liens familiaux.

. Définition étroite de la famille, excluant les membres significatifs de la famille du réfugié.

Ce qui suit reprend les principales recommandations de la commission afin d'améliorer la situation:

. Afin d'éviter les délais inhérents au traitement à l'étranger, l'époux(se) et les enfants à charge des réfugiés au Canada devraient se voir accorder un "statut dérivé" immédiatement après la reconnaissance du statut de réfugié. Sur cette base, la famille devrait pouvoir venir au Canada. (p. 35 - 36)

. Afin de diminuer les difficultés rencontrées par les réfugiés à faire reconnaître leurs liens familiaux, le bénéfice du doute en ce qui concerne ces liens devrait être accordé aux réfugiés qui effectuent une demande de parrainage pour leur famille. (p. 40 - 44)

. Afin de répondre aux besoins de protection, les agents de visa devraient être chargés d'émettre des visas pour permettre à la famille de venir au Canada dans les plus brefs délais, lorsque l'époux(se) et les enfants d'un revendicateur du statut de réfugié au Canada sont manifestement dans une

situation à risque. (p. 32 - 34)

. Afin de répondre aux réalités diverses en terme de composition familiale, le gouvernement devrait sérieusement prendre en considération l'approche fonctionnelle de la famille telle que recommandée en 1986 dans le rapport du Comité permanent et élaborée en 1994 dans le *Report of the National Consultation on Family Class Immigration*. (p. 53 - 55)

. Afin de permettre aux réfugiés au Canada de parrainer des membres de leur famille élargie qui se retrouvent dans des situations désespérées, les programmes spéciaux devraient être réactivés et mis à jour. (p. 49 - 52)

. Afin que la réunification familiale ne rencontre ni obstacles ni délais, le gouvernement devrait prendre des mesures pour contrer les obstacles à l'obtention du droit à l'établissement par les réfugiés au Canada, incluant les différents frais exigés. (p. 21 - 26)

. Afin d'alléger le fardeau financier que vivent les communautés qui accueillent la grande majorité des réfugiés, le gouvernement fédéral devrait considérer l'idée d'accroître les transferts de fonds vers les provinces où la plupart des réfugiés s'établissent. (p. 75 - 76)

Plusieurs autres recommandations émanent de celles-ci ou touchent des problèmes spécifiques recontrés par certains réfugiés.

PREFACE

In the summer of 1992 the Canadian Council for Refugees (CCR) established a task force with a mandate to inquire into problems being experienced by refugees in Canada with respect to family reunification. The task force conducted public hearings in the five major Canadian centres where most refugees reside. It also conducted its own research and held discussions with government officials responsible for the administration of Canadian immigration policy. This report presents the basic findings arising from the task force**'**s inquiries and specific proposals for measures to remedy problems that are identified as being within Canadian control.

The task force was chaired by John Frecker, who at the time was working as an independent legislative policy consultant. In his former capacity as a member of the Law Reform Commission of Canada Mr. Frecker directed a study of the inland process for determination of refugee claims in Canada. On 3 April 1995, after the task force had submitted its draft final report, Mr. Frecker assumed duties as Deputy Chair of the Convention Refugee Determination Division of the Immigration and Refugee Board. Final editing of the report was overseen by the CCR's Working Group Coordinator, Janet Dench.

Content of this report reflects the findings of the task force following consultation within the Canadian Council for Refugees. The report is informed by the collective contribution of the many individuals involved in the task force and should in no way be taken as reflecting policy or advocacy for any particular policy position on the part of any person, group or institution other than the task force.

Basic planning for the task force was entrusted to a committee drawn from relevant committees of the CCR. The Overseas Protection and Sponsorship Working Group was represented by Bernadette Walsh. Betty Dilio and Miranda Pinto represented the Settlement Working Group and Nee Okai, the Refugee Protection Working Group. Janet Dench and Elobaid A. Elobaid, principal researcher for the task force, also served on the planning committee.

Public hearings were held by the task force in 1992 and 1993 in Winnipeg, Montreal, Toronto, Vancouver and Ottawa. In each centre other than Ottawa the chairperson was assisted by local commissioners selected by reason of their involvement in refugee affairs and their expertise in particular aspects of the family reunification issue.

Marty Dolin, Executive Director of the Manitoba Interfaith Immigration Council, assisted as local commissioner in Winnipeg. The local commissioner

in Montreal, Denise Casimir, works with the YM/YWCA and is active in a number of family policy organizations. In Toronto the local commissioners were Dr. Albert Rose, Dean Emeritus of the School of Social Work at the University of Toronto, and Dr. Morton Beiser and Ms. Carmilina Barwick, both from the Clarke Institute of Psychiatry and members of an earlier task force commissioned by Health and Welfare Canada to conduct a major study on post-settlement experience of immigrants to Canada.[1] Pat Wilson, a Vancouver alderwoman, and Mary Ann Boschman, British Columbia Coordinator for the Mennonite Central Committee**'**s Refugee Assistance Programs, assisted as local commissioners in Vancouver.

The public hearings were organized by local committees of individuals active in non-governmental organizations providing services to immigrants and refugees. Deb Zehr, Carlos Vialard and staff at the Manitoba Interfaith Immigration Council organized the Winnipeg hearing. The public hearing in Montreal was organized by Stephan Reichhold and Rivka Augenfeld from the Table de concertation de Montréal pour les réfugiés (T.C.M.R.), Sylvie Moreau from the Comité d**'**aide aux réfugiés and Lisa Klein, a student in the School of Social Work at McGill University. In Toronto, Betty Dilio, Miranda Pinto, Winnie Kwok and Isabel Van Humbeck from the Catholic Immigration Bureau served as principal organizers. The Vancouver hearings were arranged by Nancy Miller and Alan Fenichel of the Vancouver Refugee Council. Jean-Marie Messinga and staff at the Catholic Immigration Centre assisted with organization for the Ottawa hearing.

Earlier partial drafts of this report were presented by the task force chairman at the 1993 fall meeting of the CCR in Calgary and the 1994 fall meeting in Montreal. Comments received from these meetings have been taken into consideration in this final report.

[1] Canadian Task Force on Mental Health Issues Affecting Immigrants and Refugees, *After the Door Has Been Opened, Mental Health Issues Affecting Immigrants and Refugees in Canada*, Minister of Supply and Services Canada, Ottawa, 1988.

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INTRODUCTION

Newcomers to Canada, whether immigrants who have carefully planned their move or refugees who have fled to Canada to seek asylum from repressive conditions in their home country, often arrive here without their spouse or children or other family members. Separation from family may be occasioned by economic considerations or by critical disruptive events over which the individuals involved have no control. Newly arrived immigrants or refugees may want to establish themselves in Canada before being joined by their families; or they may be forced to leave family members behind because of tumultuous circumstances under which they took leave of their home country.

Whatever the reason for family separation, it unquestionably has significant negative consequences. Loneliness, depression, anxiety about the fate of family members left behind and integration difficulties in the new country are among the many well-documented problems experienced by newly arrived individuals forced to endure prolonged separation from their families.

These problems are particularly severe for refugees, who by definition are forced migrants. They come to Canada and other countries of asylum in desperation, seeking protection from the threat of persecution, possibly even death, in their country of origin. In many cases refugees have been forced to take flight in great haste with little or no opportunity to plan their departure or to prepare for a prolonged period of family separation. Family members left behind by individuals seeking asylum often remain in great danger and are forced to endure severe hardship in the country from which the asylum seekers have fled. Those who have left spouses, children and other dependants behind in such circumstances suffer great anxiety regarding the plight of the family members who cannot join them in the safety of the country of asylum.

If refugees coming to Canada are successfully to overcome the disruption caused by their forced migration, they need to make a new life for themselves and their families as quicky as possible. Maintenance of the mutual support relationships provided within the family is essential for refugees as they struggle to rebuild their shattered lives in the unfamiliar environment of a country of asylum such as

Canada. Timely reunification for refugee families is, therefore, an urgent priority from both a humanitarian and a purely functional perspective.

Recognizing the importance of family as the basic unit of society, the Canadian government has, in theory at least, made timely family reunification a high priority in immigration policy.[2] A substantial portion of the annual immigration quota is reserved to facilitate family reunification.[3] Nuclear families (i.e. - spouses and dependent children) are accorded special priority and the government has committed itself to process routine cases within six months.[4] More exigent requirements apply where the sponsored relatives are not members of the nuclear family.

Unfortunately, despite the traditional and continuing commitment[5] on the part of the government to a strong reunification program for nuclear families, serious problems are encountered in the processing of landing applications. Many refugees continue to wait months and often years before they can be reunited with their spouses and dependent children.[6] These problems have recently been noted with concern by the United Nations Committee on the Rights of the Child, in its consideration of the first report submitted by Canada. Among its principal subjects of concern, the committee said that it was "particularly worried ... by the insufficient measures aimed at family reunification with a view to ensure that it is dealt with in a positive, humane and expeditious manner. The Committee specifically regrets the delays in dealing with reunification in cases where one or more members of the family have been considered eligible for refugee status in

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[2] The *Immigration Act, s.3(c)* establishes family reunification as one of the fundamental objectives of Canadian immigration policy.

[3] In recent years, between 47% and 53% of all new immigrants landed in Canada have been members of the family class or have come as assisted relatives. (See *Immigration Statistics, 1992*, Minister of Supply and Services Canada, Ottawa, 1994.)

[4] This goal was reaffirmed in *A Broader Vision: Immigration and Citizenship*, Minister of Supply and Services Canada, Ottawa, 1994, p. 9.

[5] This commitment was reiterated by the government in its recent statement of direction for immigration policy for the next 10 years. See *Into the 21st Century: A Strategy for Immigration and Citizenship*, Minister of Supply and Services Canada, Ottawa, 1994, p. xi.

[6] A survey conducted in 1992 by the Comité d'aide aux réfugiés found that of 28 refugees living in the Montreal area 79% had been separated from their families for more than two years and 57% for more than three years. None had any clear indication when reunification might take place. 21 respondents had been given some indication by the immigration authorities of the length of processing: 11 were told it would take one year or more; 8 were told to expect to wait at least two years (*The Problem of Family Separation for Refugees in Canada*, Comité d'aide aux réfugiés, Montréal, December 1992). An informal survey conducted in April 1994 turned up cases of refugees who had already been waiting between 19 and 29 months for processing of their family sponsorships (their actual arrival in Canada and therefore the date of separation from their families were much earlier).

Canada as well as cases where refugee or immigrant children born in Canada may be separated from their parents facing a deportation order".[7]

1.1 Processes for refugee admissions and family reunification

Refugees are admitted to Canada in two different ways. They may make asylum claims in Canada or they may be selected overseas by Citizenship and Immigration Canada for resettlement in this country. As a matter of policy, refugees selected overseas for resettlement in Canada are usually landed as a family unit, with spouses and dependent children all being admitted simultaneously to Canada as Convention refugees. Unfortunately, this policy has not been applied evenly in all cases and a number of refugees resettled in Canada from abroad have been separated from their immediate families for many years before the remaining family members could be admitted to Canada as landed immigrants.[8]

For refugees who make an asylum claim in Canada the problems of family separation tend to be greater, since a significant proportion have had to leave their families behind. If the spouse and children are accompanying the principal refugee claimant when an inland claim is determined in Canada, present practice is for the Immigration and Refugee Board to accord refugee status to the whole family. Similar protection is not extended, however, to family members who are unable to accompany the principal claimant when an inland claim is presented.

Those who seek asylum in Canada must be recognized as refugees before being able to begin the family reunification process. Refugee determination can take months or years. Claimants in the refugee backlog which accumulated in the years preceding 1989 were forced to wait 3, 4, 5 or even more years before receiving a determination.

Once claimants have been accepted as refugees, their next step will normally be to apply for permanent residence. Prior to 1993, refugees and others seeking to sponsor family members for landing could make their sponsorship application only after they themselves had been accepted as permanent residents, which might take six months to a year or even longer. Under amendments to the

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[7] *Concluding observations of the Committee on the Rights of the Child: Canada*, adopted 9 June 1995, CRC/C/15/Add.37.

[8] In some cases there may however be no choice but to resettle a refugee in Canada separately from his or her family, if for example other members of the family cannot be located due to war or other crisis. There may also be circumstances in which a refugee family would prefer to have some members resettled before others (if, for example, some members need to leave urgently because of danger to their lives, while others have pressing family obligations to attend to before leaving).

Immigration Act enacted in 1992, which came into force in 1993,[9] inland refugees are now permitted to include spouse and dependent children in the refugees' own application for permanent residence.[10] The application for the refugee in Canada and the family abroad is processed and permanent resident visas granted simultaneously. This change is supposed to facilitate speedy reunification of refugee families where one family member seeks asylum in Canada through the inland refugee determination process.

Refugees are also treated somewhat differently from other immigrants with respect to assessments of ability to support their families. Regular immigrants are required to demonstrate ability to provide financial support for any relatives, even spouses and dependent children, whom they sponsor for landing in Canada. Refugees are permitted to sponsor spouses and dependent children for landing without demonstrating ability to provide financial support, in recognition of the fact that they are forced migrants, rather than voluntary immigrants. When seeking to sponsor relatives beyond their nuclear family, refugees are subject to the same financial support requirements as apply to other immigrants.

1.2 Canadian policy with respect to family separation

Despite the special provisions for refugee families, prolonged separation remains a major problem. The delays are caused by both administrative inefficiency in the processing of landing applications and policies that make it difficult for many refugees to obtain permanent residence.

Somewhat perversely, significant barriers also exist to prevent family members of refugees in Canada from coming here at a later date to make inland claims in their own right. Family members overseas are generally unable to obtain a visa to visit a person who is seeking asylum in Canada. They are compelled to wait until the claim has been determined and the refugee in Canada sponsors them for landing through ordinary immigration channels.

The task force appreciates that this restriction may be considered necessary to prevent an uncontrolled influx of people who could reasonably be expected to make inland refugee claims in their own right as soon as they arrive in Canada. We are of the view, however, that this fear does not fully justify such a restriction. In granting asylum to an individual, Canada assumes at least a moral obligation with respect to the refugee's dependants who may also be in need of protection.

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[9] S.C.1992, c.49.

[10] *Immigration Act, s.46.04(1)*

Where a determination has been made that an individual is in sufficient need of protection to be considered a Convention refugee or to be allowed to remain in Canada on humanitarian grounds, it is reasonable to suppose that members of his or her immediate family may also be in comparable need of protection. A policy that systematically prevents these family members from having access to the process through which the primary claim was determined, while understandable from an immigration control perspective, is hardly consistent with concern for the well-being of those relatives of the refugee in Canada who may also be in need of protection.

Some have argued for the need to restrict the relatives* access to asylum in Canada because of a perception that some of the individuals accepted as refugees by the Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board are not refugees within the meaning of the 1951 *Geneva Convention Relating to the Status of Refugees*. If this concern were legitimate, an opening of the door to follow-up refugee claims from family members could further undermine the integrity of the immigration system and create an even greater incentive for economic migrants to enter Canada through the refugee stream rather than through conventional immigration channels.

In response to these concerns a number of points need to be made. First, many interpretations of the Geneva Convention refugee definition are possible; none are authoritative. Differences of opinion about whether an individual is or is not a Convention refugee are, therefore, entirely possible. The CRDD is the body accorded the responsibility of making refugee determinations in Canada. Backhanded attempts to undermine its authority are extremely dangerous for the protection of refugees and for the integrity of Canada's refugee determination system. The definition applied by the CRDD is, both in a general sense and in the current international context, undoubtedly a generous one. The task force, however, views this as something of which Canadians can be proud. Affording protection to those who need it, even though they may not technically qualify as Convention refugees, is fully consistent with the spirit of Final Act E of the 1951 Conference at which the Convention was adopted. This statement provides a clear indication that those adopting the Convention intended that:

> "the *Convention relating to the Status of Refugees* will have value as an example exceeding its contractual scope and that all nations will be guided by it in granting so far as possible to persons in their territory as refugees and who would not be covered by the terms of the Convention, the treatment for which it provides."

This policy can be implemented by interpreting the Convention definition of refugee in a broad and generous way, as the CRDD appears to be doing, or by

allowing asylum seekers to remain in the country even though their claims may not fall within the Convention definition, as most European countries appear to be doing. It can also be implemented by providing fairly ready access to asylum in Canada for overseas dependants of refugees in Canada who themselves may also be in need of protection.

The task force is well aware of the perception that the percentage of successful refugee claims in Canada is significantly higher than in any other comparable jurisdiction. We note, however, that the total percentage of refugee *claimants* allowed to stay in Canada and in many Western European countries, either as Convention refugees, on humanitarian grounds, or on grounds that removal to the country of origin is not considered appropriate, is roughly comparable, at approximately 85%. This is fully consistent with the generous approach called for in Final Act E and should be taken as a measure of Canada*s leadership in the humanitarian sphere rather than as an indication of an inherent weakness in our refugee determination process.

1.3 Canada*s shift from country of resettlement to country of asylum

It is a commonplace to observe that Canada with its relatively small population and seemingly limitless space and opportunity to build a new life has long provided an inviting beacon to individuals from other countries in less fortunate circumstances. The vast majority of people living in Canada today are either immigrants themselves, or more likely, are descended from immigrants who came here in quest of better economic opportunities for themselves and their families or in flight from war or oppression in their country of origin. With the exception of Canada's native peoples, who constitute less than 2% of the total, the population is made up of individuals whose ancestors arrived here as immigrants sometime within the past five hundred years. At least half of the present Canadian population are themselves either first generation immigrants or are descendants of immigrants who came to this country during the present century. Approximately one in six persons living in Canada today is foreign-born.[11]

Historically, Canada and the United States, by reason of their physical isolation from the rest of the world and of their need for immigrants to fill the labour force, have been countries of resettlement rather than destinations of temporary asylum. Since prior to 1985 most refugees coming to Canada were selected overseas and arrived with their spouses and dependent children, family reunification was rarely an issue.

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[11] See Canadian Task Force on Mental Health Issues Affecting Immigrants and Refugees, *After the Door Has Been Opened, Mental Health Issues Affecting Immigrants and Refugees in Canada*, op. cit. p.6.

There has, moreover, been little reason to distinguish those who have come as political refugees from those who have immigrated for other motives. The selection of refugees for admission to Canada has, until recently, been a matter almost entirely within the control of the Canadian government. Refugee policy, therefore, has largely been treated simply as a sub-set of immigration policy.

Refugees who arrive in Canada seeking asylum cannot, however, be treated simply as applicants for immigration. International obligations assumed by Canada over the past fifty years require the Canadian government to ensure that no refugee is returned to a country where he or she faces persecution. Life, liberty and security of the person are almost invariably in issue in any refugee claim. That being so, section 7 of the *Canadian Charter of Rights and Freedoms* ("the *Charter*") requires that the claim must be determined in accordance with the principles of fundamental justice. Where credibility is in issue, as it often is in inland refugee claims, the claimant must be given the opportunity to present his or her claim for determination in an oral hearing before an unbiased decision-maker.

Decisions with respect to the admission of immigrants to Canada are made pursuant to selection criteria established in regulations. These criteria are subject to considerable administrative discretion in application and they can fairly easily be modified to meet changing domestic priorities. Decisions with respect to the granting of refugee status, in contrast, turn on the statutory definition of "Convention refugee" in section 2 of the *Immigration Act*.[12] Interpretation of this definition is subject to well-developed jurisprudence so there is limited discretion with respect to its application.

Moreover, the times and numbers of refugee arrivals are necessarily unpredictable since refugees are forced to flee by events in their home countries.

Prior to 1985 Canada received only a small number of inland refugee claims. Developments in international air travel over the past two decades, however, have made Canada a potential asylum destination for a significant number of refugees. In the second half of the '80s, the number of persons making inland refugee claims rose dramatically. Changes in the process by which refugee claims are determined and two major rounds of amendments to the *Immigration Act* have resulted in a reduced number of inland claims over the past few years. The

[12] The definition of "Convention refugee" in Section 2 of the *Immigration Act* is based closely on the definition set forth in the 1951 *Convention Relating to the Status of Refugees* ("the *Convention"*).

annual intake of inland claims, however, still substantially exceeds the total number processed each year in the early '80s.[13]

The challenges of being a country of asylum, including the challenge of ensuring speedy family reunification for refugees, have then only really faced the government in a significant way for the last ten years. A certain amount of inertia in the face of changing situations is perhaps to be expected, if regretted. Another factor is undoubtedly the resistance of managers confronted with a phenomenon which defies planned management.

Canadian authorities can exercise effective control over the number of refugees selected overseas. They can also apply Canadian selection criteria when determining who will be resettled here; but they have little or no control over the attributes of refugees admitted through the inland refugee determination process or over their number. This lack of domestic control over selection of refugees admitted through the inland process is viewed in some quarters as posing a fundamental problem in Canadian immigration policy, a view that is not, however, shared by the Canadian Council for Refugees.

One cannot know in advance how many people will need protection, so it is not possible to “plan” refugee arrivals. Nevertheless, immigration authorities have attempted to manage and control the refugee program, including family reunification, in the same way that they try to manage and control immigration. As a result, the government has in place extensive deterrence and interdiction programs that make it difficult for family members not yet in Canada to obtain even a visitor's visa, which would enable them to be reunited with family members who have been granted asylum in this country.

1.4 The debate over permanent residence vs. asylum

Most individuals who make inland refugee claims in Canada have little or no prospect of being able to return to their country of origin within a reasonable time. The issue of permanent settlement for both the refugees and for members of their families must be resolved as quickly as possible after asylum has been granted. The problem can be addressed by maintaining a strict distinction between asylum and settlement and imposing barriers to permanent settlement by Convention refugees, as many European countries do; or one can accept the fact that the refugees have come to stay and develop an immigration policy that facilitates settlement and early family reunification. The latter is clearly the

[13] For statistics, see below, page 64.

preferable course if refugees are to begin to rebuilding their shattered lives. To date, Canada has clearly favoured this latter approach.

In a report on *The Process for Inland Determination of Refugee Claims in Canada* completed in March of 1992, the Law Reform Commission of Canada (hereafter sometimes referred to as "the LRCC" or "the Commission") argued that there is need to maintain a sharp distinction between refugee policy and immigration policy. Noting that Canada had increasingly become a country of asylum for refugees making inland claims as opposed to a country of settlement for refugees selected overseas,[14] the Commission recommended that Canadian policy should shift from the traditional focus on refugee settlement and should be directed to providing asylum for those in need of protection. According to the Commission, focus on settlement of refugees in Canada tends to draw would-be immigrants to use the inland refugee determination process as an alternative to regular immigration channels.

Based on its conclusion that the prospect of permanent residence draws economic migrants into the refugee determination process, the LRCC recommended that the issue of permanent settlement be completely decoupled from the issue of temporary asylum for refugees. The Commission proposed that persons who have been determined to be Convention refugees and persons deemed to be in need of protection on humanitarian grounds should not be considered eligible to apply for permanent landing in Canada, for themselves or for members of their immediate families, for two years after temporary asylum has been granted. Spouses and dependent children of such persons, if they are also in need of protection, should also be granted temporary asylum. If these family members are not in Canada when asylum is granted, they should be allowed to enter the country to avail themselves of the asylum. According to the LRCC recommendation, admission to Canada of family members living abroad who are not themselves in need of protection, should be deferred until after the two-year waiting period when the sponsoring family member would become eligible for permanent landing.

The LRCC**'**s suggestion that would-be immigrants are drawn to use the refugee determination process as an alternative to normal immigration channels was not shared by the Canadian Council for Refugees**'** Task Force on Overseas Protection, which issued its report in 1992. According to the report, it is the failure of the overseas selection system, rather than the prospect of permanent settlement in Canada, that tends to force refugees to use the inland refugee determination process as an alternative to overseas refugee selection.

[14] This was clearly the trend during the years when the LRCC study was conducted.

The LRCC*s recommendations pertaining to delayed family reunification and delayed eligibility to apply for permanent landing have been strongly criticized as being insensitive to the needs of refugees who seek asylum in Canada. Critics, including the CCR, argue that permanent resettlement in Canada is the norm for most refugees seeking asylum here simply because they have no alternative other than to settle in this country. According to these critics, legal impediments to eligibility for landing serve only to delay the refugees* eventual integration into Canadian society. The recommendation for delayed family reunification, in particular, has been attacked as being inhumane and contrary to fundamental principles of international refugee law, which require that no legal barriers be erected which would force separation of a refugee from spouse and dependent children[15].

Statistics respecting the number of inland refugee claims made in Canada since 1992 (see Table 1) suggest that concerns that early landing for refugees and early family reunification will lead economic migrants to use the refugee determination process as an alternative to normal immigration channels may be unfounded. Despite significant liberalization of policy with respect to permanent resettlement of refugees in Canada[16], the number of inland claims received each year since 1992 has declined rather than increased.

[15] In 1994, as part of broad consultations called by the Minister of Citizenship and Immigration, a committee made up of government officials and non-governmental experts charged with studying Canada's humanitarian obligations considered the question of "temporary protection". They concluded that it was not an effective or viable response in the Canadian context and that Canada should retain its traditional approach of permanent resettlement. They noted that "temporary protection is not viable as it fails to recognize that addressing the root causes of flight often requires long lead times. At the same time, the reality of refugee integration over time into Canadian society cannot be ignored. Immigration actions clearly become much more complex and stressful, for example, when children are involved or the reunification of families is postponed." *The Report of Working Group #3: "How do we meet our humanitarian obligations including the 1951 Convention relating to the Status of Refugees?"*, Immigrations Consultations 1994, Citizenship and Immigration Canada, p. 4.

[16] Prior to February of 1993, any person seeking to sponsor family members for landing could do so only after the sponsor himself or herself had been granted permanent residence status. This limitation was relaxed by an amendment to the *Immigration Act* which came into force in February of 1993. Under the new provision, the spouse and dependent children under 19 years of age can be included on the landing application of a person who is recognized as a Convention refugee in Canada. Prior to this change, spouses and dependent children could be sponsored for landing only after the sponsor had been landed as a permanent resident. Eligibility to apply for landing immediately upon being granted status as a Convention refugee remains unchanged. See above page 3.

Table 1: Inland Refugee Claims Received - 1989 to 1994

1989	19,934
1990	36,735
1991	32,347
1992	37,748
1993	21,061
1994	22,001

Source: Citizenship and Immigration Canada, International Refugee & Migration Policy Branch

In the absence of a thorough analysis of all the factors that influence refugee claimants to seek asylum in Canada, it is difficult to draw any conclusion, one way or the other, on this issue. Suffice it to say, the apparent connection between the policy favouring permanent settlement of refugees in Canada and suspected use of the inland refugee determination process as an alternative to ordinary immigration channels is even less clear today than it may have been when the LRCC report was written in 1992.

1.5 Impact of the government's new 10-year immigration strategy

The annual intake of new arrivals, including both immigrants and refugees, is at present declining. The substantial increase in annual landings observed between 1989 and 1993 peaked in 1993. Total landings for immigrants and refugees in Canada in 1994 were 219,770, falling short of the 250,000 target which the government had established as appropriate.

The 1995 Immigration Plan calls for total immigration landings in the range of 190,000 - 215,000. This includes a range of 24,000 - 32,000 for the Refugee Plan, which for the first time will be managed separately from the general immigration component. The targets for the 1996-2000 period are to be established on an annual basis, although the government maintains a goal of immigration at approximately one per cent of Canada's population.

Under the new long-term immigration strategy tabled in Parliament in November of 1994, the government proposes to place less emphasis on family class immigration. Priority will continue to be accorded to spouses and dependent children, but other relatives will have to qualify on the basis of marketable skills and a working knowledge of either French or English.

If the total number of places available for new landings is greater than the annual demand, as it was in 1994, the priority accorded to spouses and dependent children should pose no problem. If, however, priorized admission of immediate

family members takes away some of the limited number of places available for independent immigrants and for relatives who do not fall within the immediate family class, a *de facto* zero-sum situation may be set up between refugees and others who are seeking to secure some of the limited number of available places. This could generate a political backlash that would have a negative impact on family reunification for refugees. To ensure that this problem does not arise, spouses and dependent children sponsored for landing by Convention refugees in Canada should be classified with the refugees and not counted in the annual immigration quota established by the government. This was done for the first time for the published 1995 immigration levels.[17]

1.6 Present context

Political turmoil and devastating economic and environmental conditions in many parts of the world are forcing literally millions of people to flee their countries of origin. According to recent United Nations estimates, over 27 million people around the world are living outside their countries of origin as refugees or in refugee-like situations. A further 26 million people are internally displaced within their own countries.[18] Understandably, some of these displaced people look to Canada as a possible place of refuge.

At the same time, there are those who claim that present demand for admission to Canada exceeds domestic capacity to absorb the number of persons seeking admission, whether through regular immigration channels or as refugees. The domestic Canadian economy is under severe stress. Large numbers of Canadians are struggling to maintain their present living standards. Demands for services needed by new arrivals, particularly in the areas of education and social welfare, are perceived in some quarters as being in direct competition with demands for initiatives to improve the lot of those already in the country.

This hostility toward immigrants and refugees is born of the insecurity and frustration many Canadians are experiencing in the face of rapid technological change and economic instability. Newcomers, particularly those from racial, religious and linguistic backgrounds radically different from the mainstream Canadian population, provide an easy target against which pent-up hostilities can be directed. Concerns regarding the disruptive impact of immigration are heightened by the fact that the vast majority of new arrivals are settling in Canada**'**s major urban centres.

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[17] *A Broader Vision: Immigration and Citizenship*, op. cit., p. 6.

[18] These figures are taken from *Refugees at a Glance*, June 1995, UNHCR Branch office Ottawa.

The perception that Canada is in danger of being overrun by immigrants and refugees is, in actual fact, off the mark. It has long been recognized that given current fertility rates in Canada, new immigration is needed to replenish the labour force and sustain economic growth. The problem in recent years, where an unexpectedly severe ecomomic recession has distorted labour market needs, should be viewed as an anomaly.

More positively, Canada is historically a country of immigration and remains committed to this tradition. Most Canadians accord high value to maintaining an open and welcoming society and are proud of our reputation as an upholder of human rights and a protector of refugees. These tendencies offer a significant basis for pursuing and promoting policies designed to solve problems faced by refugees.

2. THE EXPERIENCES OF REFUGEES FACED WITH PROLONGED FAMILY SEPARATION

The most consistent message to emerge from the public hearings conducted by the task force was the cry for help from individual refugees who are forced to endure the anguish of prolonged separation from their families. The individual stories each have their own tragic twists. Refugees told the task force of files going missing, of long journeys to visa posts for interviews which were cancelled, of frustrated attempts to discover the status of a file, of medical examinations going out-of-date and having to be redone, of insensitive letters of rejection. They also told of the impact of the long-drawn-out process on the refugees in Canada and on their families overseas: enormous financial burden; difficult and dangerous living conditions for the family members abroad and anxiety for those here; and strained communications and misunderstandings arising between them. The greatest problems seem to be experienced by those who have left spouses or dependent children behind in situations of great danger or uncertainty in the country of origin or in a refugee camp in some intervening country of first asylum.

The experiences related confirmed in compelling detail all of the negative consequences of prolonged family separation already well documented in previous studies.[19] It is well and good to comprehend these problems on an abstract level. Consideration of some of the individual case histories presented to the task force, however, helps one to appreciate more fully the depth of human suffering actually being experienced and the urgent need for effective action to eliminate all barriers to timely family reunification that are within Canadian control.

2.1 Depression

Depression and a deep sense of isolation are recurring themes in studies of migrants who are forced to endure prolonged separation from their immediate family. These problems are particularly acute for refugees, who are often forced to take leave of their families on short notice in circumstances of great danger. Many refugees have little opportunity to plan for the period of family separation. These problems are compounded by the fact that the family left behind may themselves be faced with continuing peril from the forces that drove the primary refugee into exile. Even if their safety is not directly threatened, the family often faces great hardship when forced to get by without the support and protection

[19] For a good overview of the literature on this subject see Canadian Task Force on Mental Health Issues Affecting Immigrants and Refugees, *Review of the Literature on Migrant Mental Health*, Health and Welfare Canada, Ottawa, 1989. See also, *After the Doors Have Been Opened*, op. cit.

previously provided by the refugee. In these circumstances, it is hardly surprising that refugees experience great anxiety when separated from their families for any extended period of time.

A number of individuals who shared their personal histories with the task force at our public hearings confirmed in harrowing detail how isolation from loved ones and absence of support from family members has left them despondent and barely able to cope with daily life. Many related that they have experienced great difficulty in holding steady employment because of their depressed state of mind; some told of failed attempts at taking their own lives and related stories of acquaintances who had succeeded and were now dead. The fortunate ones have been able to obtain medical treatment and support from fellow refugees and local settlement agencies to help them through the dark days of depression. Others suffer in isolation, waiting out the days until their families can be landed in Canada or dreaming of their return to a hostile homeland from which they have been forced to flee.

The pattern described in general terms above is well illustrated by the case of N., a refugee from Zaire, who related to the task force how he had been forced to flee his home country on short notice in 1988 in the face of threats from government agents. He was compelled to leave his pregnant wife and three small children in order to make his escape, but he fully expected that they would be able to join him as soon as he succeeded in obtaining asylum in a safe country.

On the advice of friends, N. travelled to Canada and made a refugee claim immediately upon landing. Unfortunately, his claim was caught in the large case backlog that overwhelmed the Canadian refugee determination process that year. For four years he was not even eligible to file an application to have his wife and children landed in Canada. N. was ultimately admitted under the Backlog Clearance Program early in 1992. Shortly thereafter he was landed as a permanent resident and immediately sponsored his wife and children for landing.

In February of 1993, he informed the task force that processing of this application was being held up because of problems in obtaining medical clearance for his wife and children. They had all passed a medical examination by a Canadian government approved physician in Zaire; but by the time the Canadian visa office in Abidjan was informed that the physician**'**s report had been approved by the reviewing Canadian physician, the medical report was outdated. N**'**s wife was informed that the entire family would have to submit to another medical examination.

By this time, the family**'**s savings were totally exhausted. The wife and children were destitute and unable to pay for the required new medical examination.

Unfortunately, N. had been unable to find any employment in Canada. He could barely provide sufficient funds to cover the family*s basic living expenses, let alone sufficient money to pay for a second medical for each of his five dependents.

Over the years, N*s wife had become increasingly suspicious that he had taken up with another woman and was not making reasonable efforts to have the family landed. She could not understand why, for the four years while he was waiting for his refugee claim to be determined, N. could not leave Canada to join the family in some other place of temporary asylum. When the medical reports were not processed on time, she accused N. of outright complicity in trying to frustrate reunification of the family. N*s assurances that he was doing everything in his power to expedite the landing applications began to fall on deaf ears. She simply could not believe that such a simple issue as getting the family back together again could take so long to sort out.

Faced with this seemingly insoluble problem, N. had attempted to take his own life and was undergoing psychiatric treatment for depression. He reported being caught in a vicious circle: because of his depression, his employment prospects were extremely poor; without a job, he had no prospect of accumulating sufficient funds to pay for the family*s required medical exams. He despaired of ever seeing the family again and allowed that he felt profound guilt about what he believed was his responsibility for their desperate plight.

The task force has not heard further from N. since February of 1993. It is quite possible that his marriage has not survived the stress of continued separation while he struggled to raise money to pay for the new medical examinations for the family. This toll on the well-being of all the individuals involved could be avoided if reasonable measures were put in place to eliminate all unnecessary barriers to timely family reunification.

2.2 Family breakdown

The erosion of trust between spouses illustrated by N*s case is only one aspect of the damage to family unity that can be occasioned by prolonged separation. Another aspect is well-illustrated by the case of J., a government-sponsored refugee from Guatemala. J., a widower, had been living in a refugee camp in Central America with two teenage sons and a daughter. He was advised by Canadian field officers in the camp to come to Canada alone, leaving the children in the care of his brother*s family, who were also living in the camp. He understood that the children would be able to follow in a matter of weeks, as soon as he had settled in Canada and found suitable accommodation. After arriving in

Canada, however, he found that he would have to formally sponsor the children for landing.

For a variety of reasons, the sponsorship process took much longer than expected. Canadian government files from an office in Guatemala City were misplaced while being transferred to the Canadian visa office in San José, Costa Rica. As a result, problems were encountered in documenting the status of J.*s children. It ultimately took over three years to obtain visas for the children. Unfortunately, the eldest son had turned 19 in the intervening years. Despite the facts that the son still resided with the uncle in whose care he had been left and that he had no prospect to become independently established in Guatemala, he was no longer eligible to be sponsored as a dependent child.

J. was advised by Canadian immigration authorities that he could sponsor the son as an assisted relative, but would have to demonstrate financial capacity to support the son before a visa could be issued. Unfortunately, J. had been unable to find any work and therefore could not qualify as a sponsor.

J.*s daughter and younger son were initially reluctant to leave their brother in Guatemala and J. was faced with the prospect of being permanently separated from all three of his children. Eventually the daughter and younger son did join their father, but J. remained inconsolable regarding his inability to be reunited with the eldest son as well.

The long-term disruption of family unity experienced by J. is directly attributable to the change in the son*s legal status that came about inexorably in the wake of delays in processing the children*s landing applications. The delays that occurred in this case are clearly avoidable. In any event, the consequence could be mitigated by modifying the date for determining eligibility for landing as a dependent child.

A variant on the problems experienced by J.*s family was related to the task force by M., an Eritrean refugee. M.*s wife had been murdered during the civil war in Ethiopia, leaving him to care for two young daughters. M. initially sought asylum with his two daughters in Somalia. Eventually the family was expelled from Somalia and fled to Yemen. M.*s brother, who was also in Yemen as a refugee with his family, agreed to care for M.*s daughters while M. moved to Egypt to find work so he could support his daughters. M. eventually did find work with a UN relief agency assisting refugees in Egypt. In that capacity he came into contact with a Canadian official who arranged for him to come to Canada as a government-assisted refugee.

After finally getting settled in Canada, it took some time before M. was able to arrange to bring the daughters from Yemen to join him in Vancouver. One of the daughters, who had come to regard her uncle*s family as her own, refused to leave Yemen. The other did come to Vancouver, but found it extremely difficult to adjust, especially without her sister. She became depressed and suicidal. Eventually, for the daughter*s own good, M. reluctantly agreed that she should return to join her sister in Yemen.

By the time the daughter finally joined him in Canada, M. had been effectively separated from his daughters for almost seven years. Over that time, the daughters had lost their sense of connection with their father, even though he had remained devoted to them and had faithfully provided for their support. This prolonged separation had ultimately robbed M. of the one thing he most longed for, to be reunited with his daughters in a safe and secure environment. While the circumstances that led to the separation of M*s family lay largely beyond Canadian control, the case starkly illustrates the consequences that can befall a family that is forced to endure such prolonged separation.[20]

2.3 Integration difficulties

Superficially, one might think that the absence of family would force refugees to adapt to their new environment more quickly. However, concern about the fate of family left behind, combined with the absence of a supportive family environment, in fact, makes it considerably more difficult for newly-arrived refugees to integrate in unfamiliar surroundings.

Many of the individuals who testified at the public hearings conducted by the task force reported how separation from their families has made it extremely difficult for them to adapt to life in Canadian society. In particular, they noted that the stress caused by separation from the family made it extremely difficult for them to concentrate on acquiring new language and job skills that would enable them to become financially independent.

According to sociologists, family support plays a vital economic role by facilitating "social reproduction". In other words, the social support provided by family enables individuals to engage in sustained economic activity.[21] Timely

[20] Michel Tousignant, professor of psychology at the Université du Québec à Montréal, reported to the task force in February 1993 on research he had done in this area. He found that the incidence of marriage breakdown was much higher among immigrant couples who had endured a period of separation than among couples who had not been separated.

[21] Bonnie Fox and Meg Luxton, "Conceptualizing 'Family*", in Bonnie Fox, ed., *Family Patterns, Gender Relations* 25 (1993), cited in James C. Hathaway, *Towards a Contextualized System of Family Class Immigration, Background Paper for the National Consultation on Family Class Immigration,*

family reunification should thus be seen not only as something that is done for the private benefit of the individuals concerned; it also serves an extremely important functional role in helping those involved become financially independent and able to contribute in a positive way to the Canadian economy and the general good of the communities in which they live.[22]

2.4 Financial struggles

Family members who are truly dependent on a refugee in Canada remain dependent, regardless of whether they are residing in the country of origin, in some other country of asylum, or with the refugee in Canada. Virtually all of the refugees who participated in the task force*s public hearings reported that while they had dependent family members living abroad, a substantial portion of their Canadian income, whether from employment or from social assistance, was being sent abroad to support these family members. These individuals spoke of the tremendous personal sacrifices they make in order to provide the necessary support. They live in crowded, shared accommodation and get by at virtually a subsistence level so they can save money to send to the family members living abroad. Even bearing in mind the fact that living costs in many countries where the family members are residing are considerably lower than in Canada, financial pressures on refugee families could be greatly eased if the family members overseas were reunited with the refugees in Canada.

When family members are finally landed in Canada, it is no longer necessary for the refugee to send money out of the country. It has been pointed out to the task force that this means early family reunification would ease the drain of capital from Canada. It could also have a stimulative effect on the Canadian economy. Many refugees have the skills and the drive to start their own small business; however, these individuals are unable to build up the necessary capital to start their own business when all spare cash has to be sent out of the country to support the missing family members. Furthermore, newly-arrived family members frequently contribute to the success of small business undertakings by providing valuable services without drawing normal wages.

The task force has not made any detailed study regarding possible positive economic spin-offs that might be expected from growth of small businesses as a

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Toronto, Refugee Law Research Unit, Centre for Refugee Studies, York University, 1994, p.7.

[22] Similar points were made by Gary Edwards, Research Scientist at the Clarke Institute of Psychiatry, in a presentation to the task force in March 1993. He reported that results from research indicate that people with spouses present in Canada enjoyed better mental health than those forcibly separated from family. Those without nuclear families present were more vulnerable to depression as a result of resettlement stresses such as unemployment.

result of earlier reunification of refugee families. We are aware, however, that the small business sector is currently the major source of new jobs in Canada. This suggests to the task force that there are sound economic reasons, completely independent of compelling humanitarian considerations, for the Canadian government to pursue a policy favouring early family reunification for refugees.

2.5 Long-term consequences

Prolonged separation of families is likely to have long-term consequences on the emotional, physical, mental and financial health both of the family as a unit and of the individual members. In this regard we note a recent study of the multiethnic clientele of rehabilitation centres for youth in difficulties, published by the Québec Commission de protection des droits de la jeunesse. The study found that a significant proportion of the youth in rehabilitation centres had suffered a rupture in their relationships with their parents, and in the case of youth from ethnic communities, this rupture often took place at the point of immigration. They therefore recommend that the government of Québec work closely with the Minister of Immigration of Canada to promote speedy family reunification.[23]

[23] Camille Messier & Jean Toupin, *La clientèle multiethnique des centres de réadaptation pour les jeunes en difficulté: Résumé*, Commission de protection des droits de la jeunesse, Québec, 1994, p. 16. The report makes the comment: "il est nécessaire de sensibiliser les parents et de les encourager à arriver ici avec leurs enfants ou à les faire venir dans les plus brefs délais, afin qu'ils partagent les difficultés d'installation dans leur nouveau pays et s'y adaptent ensemble" - galling for parents who have been doing everything in their power to be reunited with their children as soon as possible.

3. PROBLEMS IN CANADA RELATED TO LANDING

As noted above[24], refugees accepted by the Convention Refugee Determination Division (CRDD) in Canada can now apply to sponsor their immediate family members outside Canada at the same time that they apply for permanent residence for themselves. This removes one step in the process refugees previously had to pass through before they could be reunited with their families. Nevertheless, the landing application of the refugee in Canada still presents a potential obstacle to family reunification since permanent resident visas cannot be issued to family members overseas until the refugee in Canada has successfully completed the landing process. This section examines the problems related to this landing process.

3.1 Decline in the number of refugees being landed

Despite the apparent shift in policy to facilitate landing of refugees and their families, there has since 1993 been a notable decline in the number of refugees accepted in Canada who are actually being landed. Table 2 shows that the decline in landings cannot be accounted for by a decrease in numbers accepted by the CRDD.

Table 2: Landings of Refugees (in-Canada determinations) - 1992 to 1994

	1992	1993	1994
Refugees accepted	17,437	14,101	15,224
Refugees landed	21,651	13,029	6,468

Sources: CIC, International Refugee & Migration Policy Branch and Immigration and Refugee Board

A number of different factors stand out as possible explanations for this decline. They are discussed below.

3.2 Landing Fee and Right of Landing Fee

First, beginning in June 1994, refugees accepted in Canada have had to pay a substantial non-refundable processing fee with their application for landing: $500 for every adult and $100 for every dependent child included on the application. These fees may be manageable for someone who comes to Canada as an

[24] Page 3.

immigrant in the independent or business class or for an established landed immigrant who is sponsoring family members for landing. They constitute an insurmountable barrier, however, for refugees who have arrived in Canada without any money and who have been unable to find a paying job in this country. Individuals in these circumstances are unable to pay the processing fee for themselves, let alone for members of their immediate family. This fee, while perfectly understandable from a cost-recovery perspective, has effectively defeated the laudable initiative to facilitate family reunification by allowing spouses and dependent children to be included on a refugee**'**s own landing application. This problem is likely to be compounded by the imposition of an additional 'right of landing fee' of $975 per adult announced by the government in February of 1995.[25]

In an effort to mitigate the problems caused by the imposition of the right of landing fees, the government has established a loan program under which the applicant can arrange to pay the fee from future earnings. To qualify for a loan, however, the applicant must demonstrate that he or she has the financial capacity to repay the debt. This requirement effectively precludes many newly arrived refugees from availing themselves of the loan program as it usually takes a considerable time before refugees are able to secure steady employment, especially if they do not speak either of Canada**'**s official languages when they first arrive. In addition, since the loan program does not cover the landing fees, but only the right of landing fees, refugees still must come up with considerable sums of money before they can make their application, even if they are granted a loan. The review of the loan application also adds another step in the process, meaning further delays in family reunification.

Ironically, prolonged family separation occasioned by this financial barrier impedes refugees**'** successful adaptation to their new environment. Inability to pay the processing and landing fees is likely to create a vicious circle from which many refugees will find it extremely difficult to escape.

The problem is compounded by the fact that refugees by regulation have only 60 days from the time they are accepted by the CRDD to make an application for landing. If they fail to meet the deadline, they will still usually be able to apply for landing, but they may no longer be able to include their family members overseas on their application. Thus an inability to meet the considerable financial

[25] The Canadian Council for Refugees has expressed its opposition both to the landing fees being applied to refugees and to the right of landing fee in general. Resolution 39, adopted June 1994, urges the government to eliminate the processing fees for refugees, or in the alternative to defer payment until the point of landing. Resolution 12, adopted May 1995, calls for the repeal of the right of landing fee, noting its discriminatory impact and the distinctive burden it lays on refugees and their families.

requirements of the landing application within a two month period could have the effect of delaying family reunification by perhaps a year or even more.

The fees associated with landing add to the already existing financial burden caused by the often considerable costs involved in the travel of family members to Canada once permanent residence visas have been issued. A loan fund has been established by the government to assist individuals in covering these costs. According to testimony received by the task force, loans have not always been made available to those needing assistance, with the result that travel costs in some cases represent an additional barrier to family reunification.

3.3 Case Processing Centres

Second, processing of landing applications was transferred in 1993 to a mail-in system operated from a newly-established office in Vegreville, Alberta. Transition to the new system has been far from smooth. As a result, significant delays in the processing of individual applications have occurred. Some of the delay is attributable to the inevitable administrative problems associated with transition to the new mail-in system. A number of workers from settlement agencies involved with assisting refugees have pointed out to the task force that the removal of direct personal contact between applicants and the officers processing landing applications constitutes a significant barrier to the effective and timely processing of applications. This is particularly true for individuals who are not proficient in either English or French, a common problem faced by many refugees in the early years after their arrival in Canada.

3.4 Identity documents

Third, under the 1992 amendments to the *Immigration Act*, requirements with respect to identity documents that must accompany an application for landing have been tightened. Section 46.04(8) of the *Immigration Act* now stipulates that:

> "An immigration officer shall not grant landing either to an applicant under subsection (1) or to any dependent of the applicant until the applicant is in possession of a valid and subsisting passport or travel document or a satisfactory identity document."

This provision, which is mandatory, is being applied by Canadian immigration authorities in a fairly restrictive way. While the section allows that an identity document other than a currently valid passport or travel document can suffice, many immigration officers are insisting on production of a valid passport or other travel document. The task force has been advised that there is no firm policy on this matter and that individual immigration officers are expected to exercise

judgement in individual cases. Notwithstanding this laudable element of flexibility, the tightened requirements regarding identity documents is resulting in significant delay in landing of a substantial number of individuals recognized by the CRDD as Convention refugees and consequently of the reunification of these refugees with their families.

Many inland refugee claimants arrive in Canada without proper identity papers. Some have travelled under false documents; others have no papers at all. Given the circumstances under which many refugees flee from their country of origin, this lack of proper identity papers is not at all surprising. A person who fears persecution by government agents will understandably be reluctant to apply to that government for a passport; such person may also be reluctant to visit a foreign consulate to obtain a visa.

In countries disrupted by civil war, it is often virtually impossible to obtain official travel or other identity documents. This is especially true in countries such as Somalia where there is no government authority that can issue the documents. Women and minors are also particularly affected since in many societies they are less likely than men to have access to identity documents.

As a result of the identity document requirement, many refugees have effectively been denied landing. The policy is making it virtually impossible for refugees who do not have proper identity papers to be reunited with their families since dependents included on a refugee**'**s landing application cannot be landed unless their sponsor has proper identity papers.

The restrictive impact of this policy in recent years has fallen overwhelmingly on refugees from Somalia. Refugees who fled that country without proper identity papers have no way to remedy the deficiency. Approximately 12,000 applications for landing of Somali refugees and their dependents are currently held up because of lack of suitable identity papers. Many of the applicants have now been in Canada for four years or more and see no way to be reunited with their families who are still in refugee camps in Africa.

The task force has been informed by persons working in the Somali community that many refugees who do not have identity papers have simply not bothered to file landing applications, especially since the substantial fees that must accompany an application are non-refundable. This allegation is supported by the fact that there has been a sharp decline in the number of landing applications filed since the new documentation requirements were introduced.

For the refugees involved, the problem is reaching crisis proportions. The negative impact of the more stringent identity requirements is not confined to

family reunification. Those already in Canada are also experiencing severe problems in their daily lives. Without permanent residence, they are often restricted in their employment opportunities. They also cannot qualify for many programs, such as student loans, that would enable them to upgrade their qualifications.

One purpose behind the new identity document provision of the law is to ensure that permanent residence is not granted to people with a criminal background who are applying under a false identity. This goal is completely appropriate.[26] Nevertheless, there are several reasons to believe that the means chosen are not proving effective. First and most importantly, the provision is having a devastating impact on large numbers of refugees who simply cannot produce identity documents. By all accounts, this consequence was not anticipated by immigration officials. Second, suspected war criminals who have been uncovered in Canada have entered the country under their own name. This suggests that the fundamental problem lies not with false identities so much as with the Immigration Department's ability to distinguish those with criminal antecedents. Third, there is no indication that there are significant numbers of 'undesirables' among those refugees without documents, a fact acknowledged by immigration officials. Fourth, the emphasis on paper documents is highly questionable. Many parts of the world accord little value to documents and what papers exist do not constitute a very reliable way of determining identity. In any case, no matter what part of the world criminals come from, the more important they are, the easier they will find it to produce convincing false identity documents.

The task force therefore recommends that the government seriously re-examine its present policies, with a view to achieving more effective identification of and action against those guilty of war crimes and crimes against humanity. This must be done in such a way that innocent people are not seriously disadvantaged, as is presently the case.

As an urgent priority, the government must find some resolution for the thousands of refugees unable to be landed. We note with concern that although senior officials from Citizenship and Immigration Canada have indicated that they are acutely aware of the problem and would be taking action imminently, many months have gone by without any resolution.[27] Without forming a specific

[26] The Canadian Council for Refugees has been urging the government to do more to ensure that Canada is not a haven for war criminals and criminals against humanity. Refugees do not want to see their torturers walking down the street in Canada.

[27] In November 1994 the Minister of Citizenship and Immigration noted the problem and promised that measures would be taken to deal with the impact of the problem in 1995. These measures were expected to affect the numbers of landings of successful refugee claimants in 1995, implying that they were to be taken

recommendation on how to address the identity question, the task force encourages immigration officers to develop closer ties with the communities where most of the undocumented refugees are to be found. As they better get to know the individuals involved and become more familiar with the experiences of refugees from Somalia, for example, they should find it easier to deal with identity questions. There are many informal ways in which persons who are strangers to each other can identify if they are related in some way or are members of the same community. There is a strong oral tradition in the Somali community and cues to establish membership in a particular clan are well developed. By getting to know the community and its traditions, Canadian immigration officers could acquire effective tools to validate identity, tools that may well be more reliable than formal identity papers that can readily be forged and purchased on the black market.

The Canadian Council for Refugees has recently adopted a resolution calling for the creation of a working group involving representatives of the government, non-governmental organizations and the affected communities to seek solutions to the identity problems.[28] The task force endorses this proposal.

early, rather than late, in 1995. See *A Broader Vision: Immigration and Citizenship*, op. cit., p. 18.

[28] Resolution 15, May 1995.

4. THE OVERSEAS CONUNDRUM

4.1 Problems with Canadian visa offices abroad

A number of individuals who participated in the task force*s public hearings spoke of problems they or their relatives have experienced in dealing with Canadian visa offices overseas. The problems related appear to apply equally to refugees and other landed immigrants who are in the process of sponsoring family members for landing in Canada. The following three case histories are presented as illustrations of the sort of problems that have been brought to the attention of the task force.

H., a refugee from Ethiopia, related how he had for three years been attempting to sponsor his wife and three children for landing in Canada. His wife and children were living in a remote village in the northern part of Ethiopia. H.*s wife had experienced numerous problems in attempting to set up an appointment through the consulate in Nairobi to meet with a Canadian visa officer on one of his periodic visits to Addis Ababa. When a meeting date was finally arranged and the appointed time came, she made the long bus journey to Addis Ababa to meet the visa officer, only to be informed upon arriving that his visit had been cancelled two weeks earlier and that no new date had been set. No one had bothered to inform H.*s wife of the change in plans, even though the consulate in Nairobi had a contact number where messages could be left for her.

When H.*s wife managed to contact the consulate again after returning to the village, she received no apology. She was told that the visa officer would not be able to see her on his next two visits as his schedule was fully booked. She would simply have to wait in line for an available opening on a future visit at a date to be determined. It took another full year before she was able to meet with the officer to make final arrangements for visas for herself and the children, visas for which all requirements had been satisfied over two years earlier. Similar experiences regarding difficulties in communication with Canadian consulate offices were related by a number of witnesses.

C., a Canadian citizen who had immigrated from Delhi in 1985, related to the task force an experience he had in 1991 when, on a visit to India, he had attempted to meet with a Canadian visa officer to discuss the immigration application of his parents, whom he had sponsored for landing some two years earlier.

Knowing that there would be a long queue at the consulate, he went and lined up in the sweltering heat early in the morning and waited for over five hours before he was even allowed to enter the consulate building. People waiting in

line were badly treated by the Indian police guarding the consulate. Canadian officials in the consulate were fully aware of this situation and did nothing to curb it. According to C., this sort of mistreatment outside the consulate was considered quite normal.

When C. was finally admitted to the consulate, he was politely treated. As soon as he related the purpose of his visit, however, the visa officer suggested that he not press the matter further. The officer cautioned that if he had to pull the file, it would be placed at the bottom of the pile of pending applications and it could take another two years before it would surface again.

C.*s case involved a family reunification application from a landed immigrant who had become a Canadian citizen, not an application from a refugee. Also it related to the consulate in Delhi, which has had particular problems that Canadian immigration authorities have recognized and addressed. Yet it illustrates problems experienced by a number of other people who made presentations to the task force. In particular, C.*s experience in being cautioned not to press his inquiry lest the file end up at the bottom of the pile was corroborated by other witnesses in reference to consulates in places other than Delhi. Apart from the stories related at our public hearings, the task force has also been informed by a number of individuals working with settlement agencies that this sort of response from visa officers is fairly common.

We appreciate that overworked visa officers need some means to discourage unnecessary inquiries that prevent the officers from getting on with work on other files. There is a fine line however between reasonable exercise of discretion to curb abuse and misuse of power to discourage applicants and sponsors from exercising their right to make representations and to be apprised at reasonable intervals of what is happening with their applications.[29]

Family reunification is a matter of great importance for the individuals concerned and it is extremely stressful for them to be left in the dark for months on end. Some means should be found to keep applicants and sponsors better informed about progress on landing applications. The warning that an application will be placed at the bottom of the pile if it has to be pulled to deal with an

[29] In consultation with members of the Immigration Bar, Citizenship and Immigration Canada has recently developed *Service Standards for Communications with Lawyers and Practitioners*, intended to improve communication between lawyers and visa officers. According to these standards inquiries about a file will be answered within a specified timeframe, but only if processing of the case has exceeded published timeframes. Recourse is provided to lawyers in the event that the service standards are not respected by the visa officer. While such efforts at improved communication are most welcome, we note that most refugees are not represented by lawyers in their family reunification efforts, and indeed should not need to engage a lawyer.

inquiry is likely to be perceived by the person to whom it is addressed as a threat. Such a threatening response from a Canadian government official to a legitimate inquiry is rarely, if ever, appropriate.

The problems relating to processing at visa posts overseas go far beyond difficulties in getting satisfactory answers to inquiries. The task force heard many tales of delays and miscommunications, of medical exams which expired and had to be redone, of telexes from Canada which were never received, of interviews which were cancelled without notice, of long months of waiting during which nothing appeared to happen.[30] Many of the sort of processing hitches reported by the CCR's Task Force on Overseas Protection in 1992 appear to continue to be commonplace.

Not all the difficulties can be laid at the door of the visa posts themselves: for example, the less sophisticated and reliable communications systems available in some parts of the world inevitably affect the visa officers' work. Whatever the cause, overseas processing is too often frustratingly slow and inefficient. The task force is doubtful that in the near future changes are likely to be implemented which would enable processing of most family reunification cases within the six months timeframe that the government has established as a target. This conclusion is a major factor in the task force's central recommendation that overseas processing be avoided for family reunification (see below, p. 35).

4.2 Lack of Canadian presence in source countries

A substantial number of refugees landed in Canada in recent years have come from various parts of Africa. Despite the sharp increase in the number of family reunification applications being made with respect to individuals from that region, Canadian consular services in Africa remain extremely limited. The Nairobi visa post, which covers the whole Horn of Africa, including Somalia, Sudan and Ethiopia, is served by 6 visa officers who make periodic visits to the regions. The area covered by the Nairobi office has been the source of tens of thousands of refugees to Canada over the past decade. It is virtually impossible for such a small staff to handle the huge volume of landing applications being generated by refugees in Canada who are seeking to be reunited with family members who have been left behind.

[30] A recent example concerns the attempts of a Salvadoran refugee to sponsor his wife and children who were in hiding in El Salvador. In mid-1994 the relevant papers were sent from Canada to the visa post in Guatemala City. Nothing further happened. No contact was made by the post with the family in El Salvador. Inquiries on the status of the file from the Vegreville Case Processing Centre went unanswered. When the refugee attempted to contact the visa post directly staff there denied all knowledge of the case. By April of 1995 the man's anguish was understandably extreme.

Visa officers working with such a huge caseload and heavy travel schedule can hardly be expected to spend any significant time dealing with individual applications. Also, it is extremely difficult for applicants to maintain contact with the Canadian consulate through which their application must be processed.

Many of the problems described in the immediately preceding section arise directly from the lack of adequate resources being devoted to the areas of the world from which the greatest number of family reunification applications are now originating. The problems being experienced by refugees from Africa who are trying to sponsor their families for landing could be alleviated if resources were reallocated to more closely approximate the shift in sources of new immigration.

Canada assigns 38 visa officers to cover Africa and the Middle East and 66 to cover Europe. In recent years the numbers of immigrants to Canada from these two regions have been quite similar (see Table 3).

It should be possible to meet the needs in Africa without any additional expenditures simply by reallocating existing resources from regions with relatively light workloads. We note that some progress is already being made in that direction. Additional resources were assigned to the consulate in Nairobi in 1993 to help process the flood of applications from Somali refugees waiting to be reunited with their families.

Table 3: Immigration by Source Area - 1991 to 1993

	Africa/ Middle East	Asia & Pacific	S & C America	USA	Europe
1991	41,642	97,578	36,908	6,597	48,056
1992	41,642	120,925	37,867	7,537	44,871
1993	36,402	129,918	33,766	7,982	46,253
1993 %	14.31	51.08	13.28	3.14	18.19

Source: Facts and Figures, Citizenship and Immigration Canada

When large numbers of refugees from a particular country or region are granted asylum in Canada, a proportionate increase in the number of landing applications from relatives seeking to be reunited with the refugees in Canada is virtually certain to follow. This sort of shifting case load is often quite short-lived and does not warrant permanent expansion of existing consular services or opening of new offices. It has been suggested to the task force that “flying teams” of visa officers could be sent to these areas on a temporary basis to process the

applications. This would greatly facilitate timely reunification of refugee families. It would also spare the permanent offices from being flooded with sudden increases in case load that almost inevitably result in serious backlog problems. The task force is not in a position to evaluate the cost or feasibility of this proposal. We believe, however, that it merits serious consideration.

5. GROUPS ESPECIALLY AT RISK

Families of refugees in Canada are likely to be at risk of persecution or other violence in the country of origin, both because of the human rights violations which led the refugee to flee, and more particularly because the persecutors often target the refugee's family as a means of 'punishing' the refugee. In many cases, the families have themselves been forced from their home, and are either displaced within the home country or outside the borders, quite possibly living a precarious existence. The more desperate the situation of their families, the greater the anxiety of the refugees in Canada.

The task force wishes to highlight the particular risks faced by two special groups of refugees, namely single women, with or without children, and children who are separated from their parents or principal care-givers. For these groups above all, timely family reunification is vitally important. We will address our concerns pertaining to these two groups below.

5.1 Single women

In the situations of war and disruption of civil society that prevail in many of the countries from which refugees come, single women are particularly vulnerable. Unless they are protected by family or by a male companion, such women may be in constant peril. Unable to defend themselves, they are ready targets for rape and sexual exploitation.

Wives left behind by refugees who are granted asylum in Canada are vulnerable in the same way as are widows, single mothers and unmarried women who have no family to defend them. If these women have children, the children too are at risk. Indeed, a mother with children may even be more vulnerable because she is not free to move as readily as an adult woman on her own might be. A number of individuals who participated in the task force**'**s public hearings reported that concern for the safety of family members left in such circumstances is causing them great stress. For some, the processing of their immigration papers requires that they travel long distances to the visa post, often under very difficult or even dangerous conditions, perhaps with children. They may need to make several journeys or they may find that they must stay near the visa post for several months while processing is completed, in a place where quite possibly they have no friends or family.[31]

[31] This kind of situation is, for example, reported by Sri Lankans. Some women move from the Jaffna area or elsewhere to Colombo, where they are likely to be very isolated, economically straitened and vulnerable to various forms of discrimination. In some cases apparently the children have not been able to go to school, despite the fact that they were staying in Colombo for many months.

Where a refugee claimant in Canada has left a spouse and children behind, Canada bears some responsibility for the safety of those family members. If the spouse and children are clearly in need of protection, they should be admitted to Canada as refugees in their own right rather than having to wait until the primary refugee's claim has been determined and their applications for permanent landing can be processed. When a situation of this sort is brought to the attention of Canadian immigration authorities, the visa officer handling the case should be instructed to determine whether the family is truly at risk. If so, the officer should be directed to issue visas allowing the family to travel to Canada on an urgent basis.[32]

5.2 Children separated from parents or principal care-givers

Similarly, where a refugee in Canada has left children behind in the care of the other parent or a guardian and the parent or guardian dies or is otherwise unable to care for the children, provision should be made to expedite reunification of the children with their parent in Canada. Recent events in Rwanda highlight the need for a flexible and responsive approach. It is completely untenable for a refugee in Canada to be prevented because of a restrictive approach to family reunification from doing anything to protect his or her children who are without adult protection in some distant part of the world. All restrictions on the children**'**s admission to Canada in such situations should give way to the compelling need to get them into the care of the parent who is seeking asylum in this country. Visa officers dealing with such cases should be directed to take a proactive approach to ensure that the children have proper adult protection. Where such protection is not available, arrangements should be made for them to join the parent in Canada without delay. More generally, serious consideration needs to be given to the implications of the *Convention on the Rights of the Child*. This convention, to which Canada is a signatory, calls for decisions regarding children to be guided by the best interests of the child.[33]

5.3 The general issue of women at risk

The concerns noted above with respect to the perils faced by single women in refugee camps or in circumstances of civil unrest in refugee-producing countries

[32] Present policy is to grant Minister's permits to families of accepted refugees where the family members are at risk. This policy is, however, interpreted in such a way that only in a very limited number of cases are the family members allowed to come to Canada immediately.

[33] The UN Committee on the Rights of the Child has recently recommended that Canada do more "to facilitate and speed up the reunification of the family in cases where one or more members of the family have been considered eligible for refugee status in Canada". See above, p. 2.

raise issues that go beyond family reunification in the narrow sense, that is reunification of refugees with their spouses and dependent children.

Many refugees in Canada have responsibilities for single or widowed sisters or other close relatives whom they cannot readily sponsor for landing. Where such persons are themselves at risk in circumstances that would entitle them to refugee status, consideration should be given to granting them asylum in Canada so they can be united with relatives who have been accepted as refugees in this country. Canada cannot begin to provide for the needs of all women at risk in refugee camps or in other circumstances that make them genuine refugees. Where there is a clear Canadian connection, however, and the prospect that the women in need of protection will benefit by being united with real or *de facto* family members in Canada, it makes sense to grant them asylum here.

6. A PROPOSAL FOR "DERIVATIVE STATUS" FOR FAMILIES OF REFUGEES

The preceding chapters have outlined the very serious effects on refugees of separation from their immediate families, the barriers to landing in Canada which block the family reunification process, the delays overseas and the situations of risk experienced by family members overseas, especially single women and children without adult care-givers. Taken together, these elements lead the task force to the conclusion that the present Canadian system for family reunification is fundamentally problematic. We therefore recommend that the spouses and dependent children of refugees in Canada be granted a "derivative status" on the basis of which they would receive permission to proceed to Canada immediately. All processing of their permanent residence applications, including medical examinations, would be conducted in Canada, in parallel with the refugee's application. This recommendation is based closely on the existing practice in the United States, described below.

6.1 Family reunification in the United States

In the US successful refugee claimants, known as "asylees", can apply immediately to have their family join them from abroad.[34] This process can precede the application for permanent residence, for which they must wait one year. Reunification is for spouses and children only. The asylee must fill out a form and provide proof of asylee status and of the family relationship. These are considered by the regional service centre. If the application is approved, notification is sent to the appropriate visa office, which calls the relatives for an interview. They must satisfy the visa officer as to their identity and relationship to the asylee. Although medicals and security checks are required, these appear to be done expeditiously. Reunification apparently generally takes place within a few months. Family members arrive with an asylee status derivative of the original applicant. They enjoy the same rights as any asylee, for example with respect to the right to employment authorizations.

6.2 A new model of family reunification for Canada

The task force proposes that the following system for family reunification for refugees be adopted. An accepted refugee claimant would submit the letter of acceptance from the CRDD to the Immigration Department together with a request for family reunification for spouse and dependent children overseas. This application would be independent from the application for landing and would not

[34] The information on policy and practice in the US is taken from a paper prepared by Helen Kim during her placement at Parkdale Community Legal Services in the fall of 1994.

be subject to a fee. It would be forwarded on a priority basis to the appropriate visa post, which would be responsible for contacting the family and issuing them special visas according to which they would enjoy, once in Canada, refugee status derivative of the person granted status by the CRDD. Medical examinations would be conducted shortly after arrival. The whole family would be processed for landing together. A similar process would apply for refugees resettled from abroad who were not accompanied by all members of their family when they came to Canada.

If implemented this recommendation would go a long way towards solving the problem of family reunification for refugees and would spare untold suffering. It would not, however, resolve all the issues. Included in the following sections are some problems which require other solutions.

7. OTHER FAMILY REUNIFICATION PROBLEMS

7.1 The 19 year age limitation for dependent children

Refugees, whether accepted in Canada or selected overseas, cannot sponsor for landing their children over age 19 or who are no longer dependants of the primary applicant.

This age limitation has created untold hardship for many refugee families. Stories similar to that recounted above[35], concerning J., the government-sponsored refugee from Guatemala, were repeated many times over in each of the public hearings conducted by the task force. Compelling testimony was heard from a number of individuals who related the anxiety, sadness and guilt they have had to endure because of their inability to bring their older dependent children to join them in Canada. Many children in refugee families, especially unmarried daughters, are dependent on their parents for protection and financial support notwithstanding that they have attained 19 years of age.

A particular injustice arises when children are caught by this age limitation because of delays in processing their landing applications, as happened in the case recounted above. As a matter of administrative practice, family status is determined on the date the completed application for landing is received by Canadian immigration authorities. Refugees recognized in Canada have been able since February 1993 simply to include their spouse and dependent children on their own landing application. Others, however, must fill out an Undertaking of Assistance on behalf of their family members who will be sent application forms by the visa post.[36] Only once these have been completed and returned is the application for landing deemed to be completed.

We find it singularly unfair that an individual can be rendered ineligible to join parents and siblings in Canada simply because of delays experienced in processing the application. Of all of the problems brought to the attention of the task force during our public hearings, this is one of the most galling to the individuals concerned and the one that can most easily be corrected by simple administrative action.

In the case of refugees, strong arguments can be made for setting the cut-off date at the time a refugee claim is made. Refugees, who have had the separation from

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[35] See page 16.

[36] This procedure also applies to inland refugees who have not been able to include their family members on their own landing application, for example because the relatives could not be located or because the refugee's landing was delayed due to an inability to pay the landing fees.

their families forced upon them, should not be penalized for the delays in our determination system, which they must negotiate before they can apply to sponsor their families. Those caught in the Backlog were the most notable victims of the current policy. Nevertheless, the present system can at times take sufficiently long, through no fault of the claimant, that children who were under 19 when the claimant left them to flee to Canada, have passed the crucial age by the time the claimant can begin the sponsorship.

The task force recommends that for refugees, status of a child as a dependent, based on age, be determined as of the date when the refugee made a refugee claim. For others, the cut-off date should be set at the point when the parent first indicates an intention to bring the child to Canada. Where it is established at the time a visa is issued that a child is, in actual fact, no longer dependent on the parents, such child might reasonably be denied landing as a dependant, regardless of age.[37]

The task force also recommends that this change in policy be applied retroactively. Any individual over 19 years of age who was under 19 when the parent initiated a sponsorship and who is still dependent on parents resident in Canada should be landed on the same basis as if he or she had not attained age 19.

7.2 Separation at source

In December of 1992 a story appeared in the Winnipeg Free Press documenting the tragedy that befell Sadik and Halima Hussein, a Kurdish couple who came to Canada as sponsored refugees from Turkey.[38]

> "After four years of waiting in a wretched Turkish refugee camp, the Canadian Embassy in Ankara gave him and his wife Halima a heart-wrenching choice. If they wanted to go to Canada, they and their 17-month old son would have to board the next flight.
>
> "But if they did, their three-month-old daughter would have to remain behind. Sadik said they weren**'**t told why, but they were assured their baby girl would follow within 15 days.

[37] This is quite different from the circumstance where dependency is arbitrarily determined on the basis of age. Marriage and other changes in circumstances that may break a relationship of dependency are within the control of the person who is the subject of the visa application. Age, on the other hand, is subject entirely to the passage of time; and the time taken to process a landing application is largely within the control of the immigration authorities.

[38] Winnipeg Free Press, December 11, 1992, p.A3.

> "Hussein said 10 other couples were given the same choice. Eight decided to stay with their babies. Three flew to Canada believing the Canadian government would keep its word. The Hussein**'**s daughter was left in the care of Sadik**'**s 55-year-old mother."

After the Husseins arrived in Canada it took weeks of persistent questioning by David Walker, their local Member of Parliament, just to find out why they had not been allowed to bring the baby with them. It turned out that Canadian immigration authorities wanted to make sure that the baby had not been given to the Husseins by another family. Apparently there was some confusion in Ankara as to whether there was a passport photo of the baby. Months passed without any satisfactory replies to Mr. Walker**'**s repeated requests for information. On December 6 the baby fell ill in Turkey and died the same day.

The tragedy suffered by the Husseins highlights, albeit in extreme fashion, the agony suffered by refugee families when, for one reason or another, only part of the family is allowed to come to Canada while others are forced to wait to be admitted at a later date.

A number of individuals who have come to Canada as sponsored refugees, particularly from Central America, related to the task force experiences similar to that of J., the refugee from Guatemala whose case history is recounted above[39]. When leaving the source or first asylum country, these individuals were advised to travel to Canada in advance of the other family members. They were given to understand that the others would join them in a matter of weeks. Upon their arrival in Canada, they discovered that their spouses and dependent children who had been left behind could only be landed through the regular sponsorship process. As things turned out, it took over a year, and in one case almost three years, before the spouses and children of these individuals could be landed in Canada. One witness who spoke at the public hearing in Winnipeg was still waiting for members of his family to be landed forty-five months after he had been accepted in Canada as a Convention refugee.

The reasons why these individuals were advised to come to Canada without their families are difficult to determine.[40] It has also been impossible for the task force to determine whether this separation was a relatively isolated phenomenon

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[39] See page 16.

[40] It has been suggested that the problem may have been occasioned by well-intentioned but ill-advised Canadian officials in the field who felt that they could help a larger number of refugee families by apportioning the limited number of places for sponsored refugees to one person in each family and having the other family members come to Canada under different programs. The task force has found no reliable evidence to corroborate this or any other explanation.

affecting only a few families or whether it is a recurring problem. Suffice to note that such separation appears to be entirely unnecessary, and for the individuals concerned has been most unfortunate.

We find it particularly troubling that the individuals involved were never properly informed about the reasons for the separation or about the delays they would be likely to encounter in subsequently trying to sponsor their spouses and children for landing. The task force has been advised that separation of refugee families sponsored from abroad for resettlement in Canada is contrary to established government policy. Officials at Citizenship and Immigration Canada have been made aware of the problem and have assured the task force that steps will be taken to guard against any recurrence or continuation of the problem in the future.

The task force does not have any first hand information on whether any refugees currently in Canada who have been separated from their families through this sort of error or misunderstanding are still waiting to be reunited with spouses or dependent children. If any such cases are still outstanding, we urge the government to take immediate steps to effect the reunification of these families without requiring the applications to be processed through the regular stream.

7.3 Problems in establishing family ties

Canadian immigration authorities require some form of authentication to establish the family connection between the individual in Canada and the members of the family overseas. To a large degree, they depend upon written documents, such as birth and marriage certificates, a practice that is perfectly reasonable in cultures that give a high value to such papers. Many refugees, however, come from parts of the world in which paper documents are almost unheard of, where identity is established in quite different ways. In many cases the circumstances which led to a refugee's flight add to the difficulties in meeting Canada Immigration's requirements, since refugees may have had to abandon many of their personal belongings or documents may have been destroyed. The authorities that could provide copies of documents may be in disarray (as notably in Somalia) or they may be the persecutory agent from which the refugee was fleeing.

The task force has heard a number of cases of individuals who have had difficulty satisfying immigration officials of their family ties. The problem appears to be particularly acute in Africa. Some refugees complained about being

asked for culturally inappropriate proofs, such as Christmas cards.[41] A man from India, married 18 years ago, showed a letter from the visa officer addressed to his wife suggesting she might produce a video of their wedding. Members of the Ghanaian community, in particular, have reported being asked to produce a whole series of different proofs: family photos, correspondence, telephone bills, birth certificates, school attendance certificates, affidavits etc. Some have the impression that the production of one document leads to a request for another. The 'goalposts' seem to be moved without notice: types of document which were accepted one year are found to be unsatisfactory the next. Much time and money is spent applying for documents (which sometimes requires travelling long distances) and having them translated.

People married according to traditional rites face particular difficulties since there are no official documents or registration of the marriage. Traditional rite marriage is nevertheless the norm in many parts of the world, especially outside urban areas. Alternatives to marriage certificates are sorely needed. A distressing example of the effect of this problem is presented by the case of a man from the Ivory Coast who 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, apparently on the basis of a legal opinion that such marriages were no longer valid in the Ivory Coast. The children's passports ironically record their mother's name. At the time this case was reported to the task force, it appeared that the children would be coming to Canada but the mother would be left behind.

The demands made by the Canadian immigration authorities are motivated by a legitimate concern to establish the *bona fides* of the family relationship. The authorities are furthermore preoccupied by the prevalence of fraudulent documents. The task force notes, however, that Immigration Canada is in effect contributing to the market for fraudulent documents by its insistence on papers. The more visa officers ask for documents, the more people will feel driven to come up with something, valid or false. This leads the officials to suspect the validity of the documents and to ask for *more* papers... and so the cycle continues.

The case of A., a Somali man trying to sponsor his wife, to whom he was married according to traditional rites, is instructive. Faced with the need to document the marriage, A. was advised by friends to purchase a false document on the black market in Nairobi, a measure employed by others in similar

[41] Visa officers sometimes ask for personal correspondence. One woman objected to this request, finding that it invaded her privacy. She allegedly told the officer, "No, it's a personal letter to me. If my husband wanted to write you a personal letter, he would send it to you".

situations. His sense of honesty however made him refuse this option. Eventually A. went to Nairobi and he and his wife were married (again) in a civil ceremony, a solution that was expensive, slow and not open to everyone in his situation. This case shows how Immigration Canada offers no incentive to applicants to spurn false documents, quite the contrary.

Increasingly the Canadian immigration authorities have been encouraging the use of DNA tests to establish parent/child relationships. A single company, Helix Biotech Corporation, has been contracted to do the DNA tests. The extraction of the blood sample of the person concerned overseas must be overseen by the Canadian mission to ensure that the sample indeed came from the applicant. A positive DNA outcome will be accepted as evidence of relationship when a visa officer is not otherwise satisfied that the relationship is *bona fide*. The costs involved in the testing must be borne by the applicants.[42]

DNA fingerprinting offers a means of establishing relationships that may on occasion be very useful. Nevertheless, there are also significant disadvantages. The costs are high: $975 plus taxes for the standard test, $325 for each additional person tested and extra costs for taking and shipping the sample from the person(s) overseas. These are considerable sums of money, particularly when added to the costs already involved in family reunification (landing fees, medical exams, right of landing fees, travel to Canada). It must also be borne in mind that, according to research among the general population, DNA testing reveals that a significant number of children are not in fact the offspring of the person they took to be their father. Some applicants may be reluctant to undergo the test, for fear of it showing that they or their wife had been unfaithful. More mundanely, the use of the test adds another step in the sponsorship process, contributing to the already significant delays.

The Canadian Council for Refugees has recently adopted a resolution expressing concern about the increasingly widespread reliance on DNA testing at certain missions, a practice considered to be discriminatory in application and to represent an unbearable burden for the refugees and their families, particularly because of the costs involved.[43] The resolution calls on the Minister to establish and publish clear guidelines defining the situations in which DNA testing would be considered justified.

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[42] Operations memorandum IS 93-21, 5 July 1993; see also *Immigration Selection and Control Manual* (IS) 1.26.

[43] Resolution 16, May 1995.

In most cases, refugees list their immediate family on their Personal Information Form (PIF), if they are claimants, or on their immigration application, if they were selected abroad. These documents should be treated as significant indications supporting the relationship. The converse is however not necessarily true. It has been pointed out to the task force that for a variety of reasons, including mistranslations, cultural misunderstandings and misplaced fears, the information on the forms may be incomplete.[44]

The problems associated with establishing family relationships are considerable and deserve serious study on the part of the immigration authorities. The task force notes that the problem affects some communities much more severely than others, giving the impression, rightly or wrongly, that the affected communities are being discriminated against. These perceptions, in addition to the barriers to family reunification for individuals, make the search for solutions particularly urgent.

The task force accepts that the Canadian immigration authorities need to be satisfied with respect to family relationships. Nevertheless, it is our view that the authorities have erred on the side of suspicion and inflexibility. They justify their approach with reference to cases of fraud. Attempts have been made to discover from the Department the numbers of cases of fraud detected by visa officers. Such information is not available at national headquarters and has not been forthcoming from the visa posts. The conclusion we draw from this is that no systematic analysis has been done of the incidence of fraud. Interpretation of the risks appears to be left to the individual visa post, giving rise to concerns about inconsistency.

The task force notes the danger of visa officers developing a reflex of suspicion. They will almost inevitably hear reports of attempted fraud and will themselves probably deal with some such cases in the course of their work. Since no one likes to be duped, decision-makers may find themselves overly preoccupied with testing for possible fraud. This is a tendency against which they must guard.

Consideration of the possible harm involved leads us to conclude that the immigration authorities would do well to show greater flexibility. For the refugee families, what is at stake is the reunification of the family in a timely fashion. A mistaken rejection by a visa officer likely means that children will not be able to live with their parents, or that spouses will not be able to live together. On the

[44] For example, some people may think that if the form gives only 6 spaces, only 6 names are being asked for, or there may be cultural differences in understanding family relationships. There are also reports of government-assisted refugees who were under the mistaken impression that their application would be processed faster if they had fewer family members.

other hand, a mistake in the other direction means that someone who is not fact related in the way claimed comes to Canada. As long as such cases remain isolated, it is not clear that any serious harm is done.[45]

The task force therefore recommends that, as a matter of principle, the benefit of the doubt be given to refugees applying to sponsor their families. Visa officers should be encouraged to use flexibility in assessing evidence of relationships and should take into account the delays and costs involved in requesting further proof of the family relationship. Information provided on PIFs or previous immigration applications should be given considerable weight. Efforts should be undertaken to ensure that applicants understand the significance of questions relating to family members and that they answer them completely. Special and ongoing initiatives need to be put in place to consult and liaise with the affected communities in Canada, so they can advise as to appropriate means of establishing identity and be kept informed about changes or developing problems.[46] Measures should be taken to combat the possible development of a 'culture of suspicion' among visa officers and to ensure that requirements are consistent among visa posts. Directives should be issued restricting the types of verification to be sought unless visa officers have specific reasons for suspicions about a case. Any cases of fraud should be analysed and the conclusions published. Finally the task force recommends that measures be taken to ensure that DNA testing is always the exception, rather than the rule, and that it is called for only in clearly defined circumstances where no other proof will suffice.

7.4 Visitors' visas

This report focuses on the permanent reuniting of families who wish to live together in Canada. Family reunification can also, however, involve short-term visits. Refugees, like others, want to be able to maintain their relationships with various members of their families and to share with them special occasions, such as weddings, births and funerals. After the trauma of the refugee's flight, relatives, particularly parents, are often anxious to see the refugee for themselves again and to visit their new home. Refugees are usually unable to travel to the country of origin because of the fear of persecution which forced them to flee.

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[45] According to a recent media report (Toronto Star, May 10, 1995, p. A11), over 90% of 849 DNA tests done since 1991 for immigration purposes have had positive results, suggesting that visa officers have had suspicions about a significant number of relationships which were in fact quite genuine. It is not known how many people refused to undergo the test: that number might be used to give some indication of how many cases were fraudulent, although legitimate applicants might have many other reasons for declining the test (including inability to pay the sums involved).

[46] A practice of regular communication with the communities would likely also help to address problems of fraud, since the less people feel alienated from a system, the less they are inclined to tolerate abuse.

For the citizens of most of the countries from which refugees come, a visitor's visa is required for entry into Canada. Some refugees complain that it is extremely difficult, if not impossible, for members of their families to get visitors' visas. It has even been suggested that some people apply for permanent residence rather than a visitor's visa because the former is easier to get. On occasion the media report individual cases of hardship caused by the rejection of a visitor's visa request.[47]

The principal reason motivating refusals of visitors' visas seems to be a concern on the part of visa officers that the individual concerned would not leave Canada when the visa expired. In the case of individuals from refugee-producing countries, officers also worry that the visitors may make a refugee claim.

In many cases, however, the presumption against the applicants seems to be ill-founded. It is wrong to assume, simply because the applicant comes from a country that is refugee-producing or has family members in Canada who are refugees, that the request for a visitor's visa is not legitimate. Even when they are living in situations of persecution, people often have compelling reasons for returning home after a visit abroad.

The task force therefore recommends that visa officers adopt a more even-handed approach in assessing requests for visitors' visas in order to facilitate visits by family members from refugee-producing countries. The risk that the applicant may make a refugee claim should not be exaggerated. Nor should the possibility that a visiting family member might make a refugee claim be considered an evil to be avoided at all costs. Where the person is indeed at risk of persecution, Canada is an entirely appropriate place of asylum, given the existence of family ties with people already here.

[47] Recent examples include a case in which visas were refused to two teenage children trying to visit their mother who was dying of cancer in Canada (Vancouver Province, 23 June 1995, p. A6) and a case of a Montreal pharmacist whose sister and young nephew were refused permission to come to Canada for the impending birth of his first child (Montreal Gazette, 26 June 1995, p. A2). Neither of these cases involved refugees.

8. NATURE OF FAMILY

Current Canadian policy on family reunification is firmly grounded on the premise that "family" means the nuclear family comprising father, mother and dependent children. Prior to the 1993 regulatory changes, members of extended families could be sponsored as assisted relatives provided the applicant merited sufficient points and the sponsor in Canada met specified financial criteria and undertook to support the assisted individual during the initial years after their arrival in Canada. Following the 1993 changes, these relatives are no longer entitled to special considerations but must apply for landing in Canada as independent immigrants. The fact that they have relatives who are permanent residents of Canada is considered, but only as a minor factor in the point count needed to qualify for landing.

For many refugees, this narrow definition of family is unduly restrictive as it excludes many people whom they regard as integral members of their family, individuals who should be able to join them in Canada if the family is ever to be properly reunited. This is particularly the case when relatives have been badly affected by events such as persecution or war in the home country and find themselves in desperate situations, for which resettlement to Canada would provide a solution.

The task force has been unable to identify any alternative definition of family around which there is any clear consensus. In the immediately following sections of this report we will review some of the major issues that have been brought to our attention on this issue.

8.1 Common law marriages

Common law relationships are not recognized for purposes of family reunification. The Canadian government has taken the position that it is too difficult to establish the *bona fides* of a common law relationship. It is suggested that refugees who wish to sponsor a common law spouse for landing in Canada can overcome this limitation fairly easily simply by legally marrying the common law spouse.

In reality, the situation faced by common law couples is not as simple as might appear at first glance. In some cases, the common law marriage cannot easily be made legal. Notwithstanding that the common law relationship may have subsisted for years and children may have been born of that relationship, one of the partners may be unable to obtain a divorce from their legal spouse who may still be living. Also, it may be extremely difficult, if not impossible, for a refugee

in Canada to marry a common law spouse who still resides in the country from which the refugee took flight.

Where a legal marriage still subsists, the sponsor or the sponsored individual could, at least in theory, abandon the common law relationship and seek to sponsor the legal spouse after the common law spouse has been landed. This possibility has been raised as one of the reasons for the government**'**s unwillingness to recognize common law marriages. The task force considers this problem to be more imagined than real. It could easily be forestalled by requiring common law spouses party to a sponsorship application formally to abandon any possibility of sponsoring any legal spouse as well.

It has also been suggested to the task force that the problem with the common law spouse who still resides in the country of origin could be remedied by sponsoring that person as a fiancé(e) and perfecting the marriage when he or she arrives in Canada. Unfortunately, this would not be possible where one or other of the common law spouses is still legally married and a divorce cannot practically be obtained. Furthermore, to be eligible to sponsor a fiancé(e), the sponsor must meet certain financial criteria regarding ability to support the fiancé(e) after his or her arrival in Canada. It frequently takes a number of years after a refugee has been granted asylum in Canada before he or she can secure steady employment and accumulate sufficient savings to qualify to sponsor a common law spouse as a fiancé(e). No similar financial threshold applies with respect to sponsorship of a legal spouse.

Many refugees come from areas of the world where informal marriage arrangements are common. For these individuals, the inability to sponsor their common law spouse other than as a fiancé(e), and the financial requirements that must be met to sponsor a fiancé(e), constitute significant obstacles to timely family reunification.

8.2 Polygamous marriages

Polygamous marriages are even more problematic than common-law relationships. Such marriages are not recognized under Canadian law. They are legal, however, in certain countries that have in recent years produced substantial numbers of refugees to Canada. A person with multiple spouses can legally sponsor only one person as their spouse for purposes of immigration to Canada. All of the children born of polygamous marriages, however, may be sponsored for landing by the common parent. Separating children from one of their natural and nurturing parents in this way can create serious problems for the families concerned.

Children of a polygamous marriage who have been accepted for permanent residence in Canada may, in due course, be able to sponsor their natural parent who has not qualified for landing as spouse of the other parent. The child must, however, demonstrate the capacity to provide financial support for the sponsored parent.

An informal practice has apparently existed by which a spouse in a polygamous marriage applies for landing as an independent immigrant, with the spouse in Canada being named as a relative of the applicant and qualifying points being credited accordingly.[48] Prior to February 1993, this practice may have been easier since the spouse from a polygamous marriage could have been sponsored as an assisted relative provided the sponsor in Canada satisfied financial support requirements. With the changes to the assisted relative class under the 1992 amendments to the *Immigration Act*, however, this last option would no longer be practical.

Once the multiple spouses are landed, Canadian authorities will generally not interfere to prevent effective resumption of a polygamous relationship. Spouses other than the principal spouse, however, are not eligible for protection under Canadian matrimonial property law, nor are they legally eligible to seek maintenance payments from their estranged spouse in the event of marriage breakdown.

Government policy on the issue of polygamy has been criticized by some individuals as ethno-centric and inconsistent with established Canadian policy on multiculturalism. According to testimony received at the task force**'**s public hearings, however, polygamous marriages are less serious a problem than might be imagined. In countries where polygamy is still practised, only the wealthy generally can afford to maintain more than one spouse. Economic conditions in the countries from which refugees are coming are generally so poor that very few people now have more than one spouse. Also, where polygamy is still legal, it is practised more in traditional rural areas than it is in the cities, from which most refugees who settle in Canada seem to come.

Were Canadian immigration authorities to accept polygamous marriages, the problems created would likely outweigh any gain to be had from such a shift in policy. The consequential changes that would be required in Canadian matrimonial law are far reaching and are inconsistent with a fundamental premise on which that law is based, namely that marriage is an exclusive contractual

[48] The task force received only hearsay reports of such informal practice and has been unable to obtain any official confirmation that it has ever existed.

relationship between two individuals, a relationship entailing a set of legal rights and obligations predicated on that exclusivity. The task force is therefore of the view that no change should be made in Canadian immigration law to provide special accommodation for reunification of families based on polygamous marriages. If cases do arise where the inability of the refugee in Canada to sponsor multiple spouses for landing is likely to create serious problems for the family, it may be appropriate for the Canadian authorities actively to assist the refugee to find suitable asylum in a country that is better able to accommodate polygamous marriages.

8.3 Extended families

The nuclear family may be the basic social unit in Canadian culture. In the more traditional societies from which many refugees come, however, it is the extended family that serves as the basic unit for purposes of social organization. Grandparents, uncles, aunts and cousins may all play an important part in the care and nurture of children. In some societies grandparents play the most important role in raising children, leaving the parents free to work and earn the money needed to support the extended family. As a result of the turmoil endemic in many refugee-producing countries, parents are often separated from their natural children. Again, members of the extended family, either grandparents or uncles and aunts or older cousins, may step in to assume the parental role.

The extended family in traditional societies also provides protection to family members who have special needs. For example, in Somali society, when a man dies leaving dependent children, a surviving brother is expected to treat the orphaned children as his own. In such cases, a refugee in Canada who has assumed such responsibility is forced under present Canadian policy to abandon the orphaned nieces and nephews unless they have been formally adopted. The sense of responsibility and the need to remake new family units are of course particularly strong when there has been extensive disruption of the society, as was the case in Somalia, the former Yugoslavia, or more recently in Rwanda.

In certain Latin American communities, an unmarried woman may be taken into the family of one of her married siblings to assume some of responsibilities for the care of her nieces and nephews. A woman in this situation may be totally dependent on the sibling**'**s family for protection and support. Where the head of the family becomes a refugee in Canada, the dependent sister can only be landed in Canada if she qualifies as an independent immigrant. Considering the nature of her dependency, however, it is highly unlikely that she would ever so qualify, even bearing in mind that she may receive some points for having relatives already resident in Canada.

Under present immigration policy, a Convention refugee in Canada who seeks to sponsor other family members for landing in this country is limited to sponsoring only his or her spouse and dependent children under the age of 19. Parents may also be sponsored, but only where the sponsor is able to satisfy financial criteria with respect to ability to support the parents after they are landed in Canada. Other members of the extended family can only be landed if they qualify as independent immigrants.[49]

A number of individuals who testified at the public hearings indicated that this restriction on reunification of their extended families is causing great anguish. The absence of the relative or relatives who functioned for many years as care-giver to the children in a particular family makes it difficult for these children to adjust to life in Canada. Where natural parents have been separated from their children for a long time, the children may have been cared for by close relatives. The familial bond between the parents and their natural children in such cases is frequently weakened to the point that the children look to the relatives who brought them up as their real parents. In such cases, the natural parents frequently experience serious discipline problems with the children when the family is reunited in Canada. These problems could be significantly reduced if provision were made to allow the relatives who have cared for the children to be included on the landing application.

As an alternative, one might suggest in such cases that it would be in the best interest of the children for the natural parents to allow the relatives to adopt the children in their care. This suggestion, however, is completely untenable. It totally ignores the importance of the biological relationship between the parents and their children. It also ignores the fact that the parents have probably been planning to be reunited with their children as soon as they find a safe haven. Furthermore, the relatives who have cared for the children may have done so on the understanding that the arrangement was only temporary.

It has been recommended to the task force that Canadian immigration law should be modified to permit individuals who have functioned as *de facto* parents of children being sponsored for landing to be included in the landing application. This would allow the functioning family unit to be kept intact. Where the care-

[49] Prior to February 1993, some members of the extended family could be sponsored as assisted relatives, provided the sponsor could satisfy established financial support requirements. Regulatory changes have significantly restricted possibilities for sponsoring members of the extended family. These restrictions are likely to be tightened even further under the new policy announced by the Minister of Citizenship and Immigration in early November of 1994. On the other hand the announcement suggests the possibility of allowing greater flexibility in naming the relative to be sponsored, rather than restricting the eligible category to parents. This would be advantageous for refugees who may have compelling reasons for preferring to bring some other member of their family to Canada.

giver does not have a number of other dependents and wants to come to Canada as a member of the reunited family, this recommendation makes good sense. It provides for an eminently workable and humane response that would benefit everyone concerned.

Where the children have been in the care of a functioning family in the country of origin, however, the recommendation is more problematic. It is stretching a point to suggest that a single refugee in Canada should be able to sponsor an entirely autonomous family unit simply because a child of that refugee has become integrated with the other family.

It must also be remembered that this enlarged definition of family would apply equally to immigrants and refugees. Immigrants who have left children in the care of relatives in their home country while they get established in Canada would have an equally compelling claim to sponsor the related family as a unit if the children had developed a special bond with that family. In the opinion of the task force, such open-ended enlargement of the family class would be completely impractical and would seriously erode the ability of Canadian immigration authorities to exercise control over who will be admitted to Canada as landed immigrants.

The task force has been unable to come up with a clear recommendation on how best to deal with this problem. It would be desirable if present policy were relaxed to permit key care-givers to be included in the core family unit that is eligible for expedited reunification; but common sense must be exercised to ensure that such flexibility does not enlarge exponentially the number of people eligible for expedited landing in the family class. Failure to exercise such restraint could result in the exclusion of other groups of would-be immigrants who have equally compelling claims to be landed in this country.

With respect to the more general need for flexibility in admitting members of the extended family, the task force notes with interest the existence of Special Programs. These programs are designed "to allow relatives of Canadian residents who are in a desperate situation to come forward to Canada where relatives can offer them care, assistance and accommodation".[50] In 1992 special measures were announced for citizens of the former Yugoslavia which make eligible for special consideration overseas:

1. citizens of former Yugoslavia who are adversely affected by the conflict; and

[50] *Immigration Selection and Control Manual* (IS), 6.04. The countries for which special programs are in effect are El Salvador, Guatemala, Iran, Lebanon and Sri Lanka.

2. are not residents of another country; and
3. have relatives in Canada who provide evidence that they will assist them in settling in Canada.

Both the special programs and the special measures for former Yugoslavs have the merit of offering refugees in Canada a means of assisting relatives who find themselves in desperate situations. Canada's humanitarian response is through their efforts enlarged, without significant cost to the taxpayer. It is regrettable that the special programs appear to have fallen into desuetude, with no countries being added to the list in recent years. Events in Rwanda in 1994 might, in particular, have been expected to merit a special program. The task force therefore recommends that the special programs be revived and updated to allow refugees in Canada to sponsor members of their extended family who find themselves in desperate situations.[51]

8.4 Adopted children

Children under 19 years of age who are legally adopted by a refugee residing in Canada may be sponsored for permanent landing as dependent members of the refugee*s immediate family. Children who have been legally adopted are treated in the same way as if they were the refugee*s natural children. Where formal proof of the legal adoption cannot be provided, however, the child cannot be sponsored for landing within the family class. This limitation creates major problems for refugees who come from countries where formal legal adoption is either uncommon or is actually prohibited.

Many refugees, particularly from rural areas in Latin America, may simply have taken orphaned children of a sibling into their own home and have treated the niece or nephew as one of their own children. Similarly, where a couple has had more children than they can support, a relative with few or no children may assume responsibility for the care and nurture of one or more of the children from the large family. Such children are often treated as full members of the adoptive parent*s family without the adoption ever being given formal legal status. Where a refugee in Canada has a child who has been informally adopted in this way, landing of the child may be blocked or delayed for a considerable time until the refugee in Canada goes through all of the necessary steps legally to adopt the

[51] The proposed Resettlement from Abroad Class would, if implemented, also widen the net of people to whom Canada might offer resettlement as a humanitarian response. The proposed new categories do not, however, allow relatives in Canada to directly assume responsibility as guarantors of their family members. Given past expressions of concern by the government about private sponsorship applications becoming dominated by family reunification cases (a concern shared by the non-governmental sector), it would be only consistent to offer refugees alternative means of responding to their relatives' situations.

child under the laws of the country from which the refugee has fled. It is often impractical for a refugee to have recourse to legal process in that country because of a reasonable fear of persecution.

The problem is compounded for refugees who come from countries where legal adoption is unknown or from countries in such turmoil that formalization of a past adoption is practically impossible. A substantial number of new refugees granted asylum in Canada in recent years come from such countries. The formal adoption requirement clearly operates inequitably for such refugees. If the requirement is not relaxed, an arguable case may be made that it violates the equality provisions in section 15 of the *Canadian Charter of Rights and Freedoms.* On the other hand, any attempt at relaxing the requirement, if such attempt itself discriminates on the basis of religion or nationality, may also violate the *Charter*.

A restrictive policy on adoption is understandable, given the need to avoid risk of child abduction. From an immigration control perspective, there is in addition a concern that, unless the legal relationship that exists between the natural parents and the child is supplanted by a legal adoption, the child may at some point be legally entitled to sponsor his or her natural parents for landing in Canada.

Notwithstanding these concerns, there is an urgent need to find a way of recognizing *de facto* adoptions. Where it can be established that informal adoption had been effected by a refugee in the country of origin long before the refugee sought asylum in Canada, there is little risk of abduction or abuse. Furthermore, the alleged immigration control problem can fairly easily be curbed by enacting a regulation to the effect that any person landed in Canada as an adopted child of a sponsor is barred from subsequently sponsoring his or her natural parents. Such regulation could apply equally to all adopted children landed in Canada, whether sponsored by a Convention refugee or by any other person. Some flexibility may be required, however, to deal with exceptional situations where natural parents who have been presumed dead are subsequently located and wish to be reunited with their child.

The task force notes the particular need to offer Rwandans in Canada some way to sponsor young relatives orphaned in the course of the recent massacres.

8.5 The notion of functional inter-dependency as a defining characteristic of a family relationship

The report from the National Consultation on Family Class Immigration, prepared by Professor James Hathaway for the Minister of Citizenship and

Immigration in June of 1994,[52] has recommended that formal legal marital status and lineal biological relationship as measures of membership in the family class be replaced by more functional, sociologically-based concepts of intimate partnership and demonstrated emotional and financial interdependency. This report suggests that a landed immigrant, including anyone landed as a Convention refugee, should be able to sponsor as a spouse or spouse equivalent the one person whom the sponsor considers to be his or her intimate partner. In designating an intimate partner, the sponsor would be required to provide some objective proof of an on-going intimate relationship, for example co-habitation in the same dwelling in the country of origin in a relationship based on mutual support and shared financial responsibilities. This report suggests that Canadian immigration authorities should accept at face value the sponsor**'**s designation of an intimate partner, it being understood that a would-be sponsor could sponsor only one person as an intimate partner. The report goes on to suggest that the family class be enlarged to include, in addition to dependent children under 19, other individuals from the sponsor**'**s household for whom a relationship of emotional and economic inter-dependence can be established where at least two of the following three criteria are met:

1) The sponsor and sponsoree are emotionally interdependent;

2) The sponsor and sponsoree are economically interdependent;

3) The sponsor and sponsoree have resided in a common household on an ongoing basis.

The proposal that the formal legal definition of family currently being applied be replaced by a functional, sociologically-based definition was also put forward by the House of Commons Standing Committee on Immigration in 1986. To date, however, the Canadian government has been unwilling to move in this direction. The main argument against such change is that it would be virtually impossible to apply a definition of family modified in this way in an operational context. The present system, which requires proof of a formal legal relationship or of a lineal biological relationship, is at least based on objective, demonstrable criteria. The proposed functional definition, on the other hand, would require substantial exercise of judgement in individual cases.

The task force is strongly inclined to favour the functional approach recommended in the 1986 report of the Standing Committee as elaborated in the 1994 *Report of the National Consultation on Family Class Immigration*. We are

[52] James C. Hathaway, *Report of the National Consultation on Family Class Immigration*, Toronto, Refugee Law Research Unit, Centre for Refugee Studies, York University, June 1994.

cognizant, however, of the operational difficulties noted by Canadian immigration authorities. Additional work needs to be done to resolve the outstanding operational concerns before this sort of change in the definition of the family class can practically be implemented. We have endeavoured to find ways to address the outstanding operational concerns and regrettably must concede that we have been unable to find any ready solutions. We believe this to be a matter of pivotal importance to a long-term solution to the real-life problems of prolonged family separation faced by many refugees. The issue therefore warrants further examination on an urgent basis.

9. INTERNATIONAL LAW CONSIDERATIONS

Canada is party to a number of international agreements that have a direct bearing on the issue of family reunification of refugees.

9.1 *Universal Declaration of Human Rights*, 1948 and *International Covenant on Civil and Political Rights*, 1966

The importance of the family as the basic collective unit in society is recognized in art. 16(2) of the *Universal Declaration of Human Rights*, 1948, which states that: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." These same words are repeated in art. 23(1) of the *International Covenant on Civil and Political Rights*, 1966.

The duty to *protect* the family embodied in these provisions does not appear to require States to take any positive action to assist in the reunification of separated families, whether the separation is occasioned by war, social or economic upheaval or natural disaster or by the voluntarily migration of one or more family members from their country of origin. In contrast with other articles in the *Universal Declaration of Human Rights* and related provisions in other international agreements, the words "is entitled to protection by society and the State" have been interpreted by most commentators to import only a passive obligation to respect family life and *not* to do anything that actively undermines the integrity of families.[53] The clearest provisions in international law establishing a right to family life and a duty among States to remove any barriers to the enjoyment of that right are to be found in the *Convention on the Rights of the Child* (see below, page 58).

It must be noted that the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights* are instruments of general application. They do not specifically address the unique circumstances faced by refugee families.

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[53] Peter van Krieken, "The Family and International Law: The Principle of Family Unity and Family Reunification" in *Family Reunification for Refugees in Europe*, Proceedings of an International Seminar, 15-17 May 1993, Helsingør, Denmark, organised by the Danish Centre for Human Rights and the Danish Refugee Council, under the auspices of the European Council on Refugees and Exiles, The Danish Refugee Council, Copenhagen, 1994, p. 20. "Whenever mention is made of protection of the family and assistance to the family, it is the *unity* of the family one has in mind, rather than *reunification*. ... [M]ost instruments refer to family unity and not as such to family reunification. ...[M]ost observers seem to agree that the actual wording indicates a respect (combined with protection) for family life, rather than a right to family life."

9.2 *Fourth Red Cross Convention of 1949*

Refugees are by definition involuntary migrants who have been forced to take flight because of a reasonable fear of persecution in their own country. When refugees are separated from their families, it is usually amidst circumstances of violence and unrest in the country of origin. As such, one may regard refugees among the intended beneficiaries of the *Fourth Red Cross Convention of 1949*, to which Canada is party. One may infer from this Convention a more active duty on States to facilitate and actively assist in the reunification of separated refugee families.

Art. 26 of this Convention, regarding obligations of warring States with respect to families dispersed owing to the hostilities, provides that "Each Party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible." The 1949 Convention has been updated and elaborated by Protocols adopted in 1977. Art. 4.3 of Protocol 2, relating to armed conflicts within a single country, provides that: "all appropriate steps shall be taken to facilitate the reunion of families temporarily separated". Art. 75.5 of Protocol 1 provides that where families are detained or interned for reasons related to the armed conflict, they shall, wherever possible, be held in the same place and accommodated as family units. Protocol 1, relating to the protection of victims of international armed conflicts, states clearly in art. 74: "The High Contracting Parties and the Parties to the conflict shall facilitate in every possible way the reunion of families dispersed as a result of armed conflicts".

Commenting on these provisions in a paper prepared for a seminar on Family Reunification of Refugees in Europe held in Helsingør, Denmark in May of 1993, Peter van Krieken, a senior UNHCR official with extensive experience in refugee affairs, concluded that, "The rules which should be applied in times of (civil) war, by the warring factions, should *a fortiori* be applied by protecting powers, neutral powers and all others who are confronted with some of the spill-overs of such conflicts. This includes a liberal, generous and active reunification policy: *the reunification of dispersed families shall be facilitated in every possible way*." The task force concurs with this conclusion. Canada, as a signatory to the above-mentioned international agreements, has an obligation, at least moral if not also legal, to pursue a reunification policy that facilitates rather than impedes the timely reunification of refugee families.

9.3 1989 *Convention on the Rights of the Child*

This conclusion is reinforced by our reading of the obligations assumed under the 1989 *Convention on the Rights of the Child*. Art. 9(1) of that Convention states that: "States Parties *shall ensure* that a child shall not be separated from his or her parents against their will, except where competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interest of the child." Read narrowly, this provision may be construed only to apply to actions of a State that has jurisdiction over the child and to constrain that State from arbitrarily separating the child from his or her parents. The task force believes, however, that the provision should be given a broader interpretation to apply to situations where separation occasioned by the forced flight of the child or of one or both parents can be remedied by a liberal family reunification policy in the country in which the fleeing parent(s) or the child have been granted asylum.[54]

The imposition of barriers to early reunification of refugee families can rarely be in the best interests of the children involved, especially if the children are living in squalid conditions in a refugee camp or amidst the violence and social upheaval that caused the parent(s) to flee in the first place. Even if only one parent has been granted asylum in Canada and the other parent has remained with the children in the country of origin or in some other country of asylum, consideration should be given to what constitutes the best interests of the children.

If a refugee in Canada can be safely united with the family in the country where the rest of the family is located, and the family can be safe and stable in that place, arrangements could be made for the refugee in Canada to be transferred to that country. But if the refugee in Canada cannot safely travel to the country where other members of his or her family are located or if the conditions under which the rest of the family are living are demonstrably not in the best interests of the children, the children (and the other parent if applicable) should be allowed to join the refugee in Canada. Best interests of the child would have to be determined on a case by case basis; in any event, these best interests should be of paramount concern.

Other provisions of the *Convention on the Rights of the Child* are also relevant. Art. 10(1) obliges signatory States to deal with applications by a child for the purpose of family reunification in a "positive, humane and expeditious manner"

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[54] This is the interpretation apparently taken by the UN Committee on the Rights of the Child in its recent comments on Canada's compliance with the Convention. See above, page 2.

and to ensure that "the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family". Art. 22(1) states that:

> "States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether accompanied or unaccompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention or in other international human rights or humanitarian instruments to which the said States are Parties."

This provision applies to children who are themselves seeking refugee status or who would be considered refugees in accordance with applicable international or domestic law and procedures. Many of the children left behind by parents who are admitted to Canada as refugees could qualify for refugee status in their own right if means existed for them to have a refugee claim determined in Canada. Unfortunately, a policy that makes it difficult for these children to join the parent in Canada, where they could present their refugee claim, frustrates the right that is supposed to be protected by art. 22 of the *Convention on the Rights of the Child*.

Present Canadian policy, which prevents children of refugees in Canada from obtaining a visa that would allow them to visit their parent in Canada until such time as the children are accepted for landing, runs contrary to the letter and the spirit of the 1989 *Convention on the Rights of the Child*. The task force recognizes that there is a high probability that a child in such circumstances entering Canada under a visitor**'**s visa may make an inland refugee claim upon their arrival in this country. If such claim is well founded, however, it is only proper that the child be granted asylum and that the family be reunited in this country. If the claim to refugee status is not founded, the question of whether the child should be allowed to remain in Canada should be determined in the best interests of the child in accordance with the principles established in the 1989 *Convention on the Right of the Child*.

9.4 *International Covenant on Economic, Cultural and Social Rights*

Art. 10 of the *International Covenant on Economic, Cultural and Social Rights*, 1966, provides that: "the widest possible protection and assistance should be accorded to the family ..." in addition to entitlement to protection referred to in the *Universal Declaration of Human Rights*. This wording indicates a fairly active approach, requiring 'assistance' over and above 'protection', which reflects

a more passive attitude. Reference to "protection and assistance" is also included in preamble to the *Convention on the Rights of the Child*.

9.5 1951 *Convention Relating to the Status of Refugees*

The principle of family unity has not been embedded in the text of the 1951 *Convention relating to the Status of Refugees*, nor has it been formulated as a right to family unity and/or family reunification. However, Final Act B of the Conference of Plenipotentiaries who adopted the 1951 Convention included two specific provisions strongly supporting the view that Parties to the Convention should take measures to facilitate and maintain the unity of refugee families. This Final Act B, dealing with the principle of unity of the family, states as follows:

> The Conference
>
> *Considering* that the unity of the family, the natural and fundamental group unit of society, is an essential right of the refugee, and that such unity is constantly threatened,
>
> *Noting* with satisfaction that ... the rights granted to a refugee are extended to members of his family,
>
> *Recommends* Governments to take the necessary measures for the protection of the refugee**'**s family, especially with a view to:
>
> (1) Ensuring that the unity of the refugee**'**s family is maintained, particularly where the head of the family has fulfilled the necessary conditions for admission to a particular country,
>
> (2) The protection of refugees who are minors, in particular unaccompanied children and girls, with special reference to guardianship and adoption.

9.6 The position of the UNHCR

This perspective has repeatedly been reiterated by the Executive Committee of the UNHCR, on which Canada is represented. In 1977 (Conclusion no. 9), the Executive Committee stated that: "it is desirable that countries of asylum and countries of origin support the efforts of the High Commissioner to ensure that reunification of separated families takes place with the least possible delay ...[I]n appropriate cases family reunification should be facilitated by special measures of assistance to the head of the family so that economic and housing difficulties in the country of asylum do not unduly delay the granting of permission for the entry of family members ...". In 1979, in its recommendation no. 15 regarding refugees without an asylum country, the Executive Committee articulated a

general principle: "In the interest of family reunification and for humanitarian reasons, States should facilitate the admission to their territory of at least the spouse and minor or dependent children of any person to whom temporary refuge or durable asylum has been granted." This principle is reflected in the *Handbook on Procedures and Criteria for Determining Refugee Status*, issued by the Office of the United Nations High Commissioner for Refugees in 1979. Paragraph 184 of that Handbook states that: "If the head of a family meets the criteria for the definition, his dependents are normally granted refugee status according to the principle of family unity."

10. STATISTICAL BACKGROUND

10.1 Total number of immigrants and refugees being landed in Canada

Between 1989 and 1993, the number of persons being landed as permanent residents in Canada rose from 192,858 in 1989 to a high of 255,745 in 1993 (see Table 4). In 1994, total landings declined, in part because of a sharp drop in the refugee category.[55] Convention refugees and members of designated classes have accounted for between 8% (in 1994) and 19% (in 1989) of the total number landed in each year.

Table 4: Total Landings by Year - 1989 to 1994

	1989	1990	1991	1992	1993	1994*
Refugees †	37,359	36,091	35,831	36,756	24,694	17,479
Immigrants ‡	155,499	179,481	196,203	216,669	231,051	202,291
Total	**192,858**	**215,572**	**232,034**	**253,425**	**255,745**	**219,770**

Source: Citizenship and Immigration Canada, International Refugee & Migration Policy Branch
* Figures for 1994 are preliminary.
† "Refugees" includes refugees selected overseas and those landed following inland determination (but excludes Backlog and special measures).
‡ "Immigrants" includes all landings other than "refugees".

10.2 Age distribution

The age distribution of refugees is relatively consistent as between inland claimants and those granted asylum in Canada under other programs. The age distribution is also quite close to that for landed immigrants in general and has remained fairly stable over time (see Table 5).

A substantial majority (72.4%) of refugee claimants and refugees selected overseas are between 20 and 65 years of age. Approximately 1% are over age 65. These individuals would ordinarily not be expected to enter the labour market and would likely be recipients of some social security benefits.

[55] Some of this decline is attributable to the decline in the number of refugee claims being made in Canada as a result of tighter controls on travellers coming to Canada from overseas. There has also been a significant drop in the numbers of refugees being resettled from abroad, in part because of a reduction in the resources allocated to this part of the immigration program. The remaining difference is probably attributable to the sharp increase in recognized refugees who are not able to be landed, notably because they do not have satisfactory identity papers.

Table 5: Age Distribution of Refugees - 1989 to 1994

Age	1989	1990	1991	1992	1993	1994*	% Average
0-14	10,598	12,618	10,583	10,451	6,954	4,074	19.2%
15-19	3,808	4,350	3,630	3,504	2,388	2,294	6.9%
20-44	37,433	47,488	38,801	34,054	20,315	12,719	66.4%
45-64	2,727	3,348	3,425	3,807	2,263	1,565	6%
65+	276	365	505	852	473	364	1%
Unknown	527	473	280	164	83	43	0.5%
Total	**55,369**	**68,642**	**57,224**	**52,832**	**32,476**	**21,029**	**100%**

Source: Citizenship and Immigration Canada, International Refugee & Migration Policy Branch

* 1994 figures to 31 August only.

Note: These figures relate to refugees selected overseas and refugee claimants. Numbers for refugees actually landed are not likely to be significantly different.

Approximately 19% of all refugees arriving between 1989 and 1994 were 14 years of age or younger and another 6.9% were between 15 and 19. Some of these, particularly in the 15 to 19 age group may have been principal applicants. We estimate, therefore, that slightly less than 26% of all refugees landed could be classified as dependent children.

Assuming that the children are distributed fairly evenly by age, roughly 17% of all of the refugees landed would be of school age, that is to say between 5 and 17. The remainder of the children landed in any given year would be either of pre-school age or would be old enough to enter the labour market or post-secondary studies.

10.3 Family status

The task force has endeavoured to obtain accurate statistics on the number of refugees granted asylum in Canada who eventually sponsor spouses and dependent children for landing. Unfortunately, the required information cannot readily be broken out from the statistical reports currently being maintained by Citizenship and Immigration Canada (CIC) or by the Immigration and Refugee Board, even though such information should be readily ascertainable from the Personal Information Forms filed by the claimants.

Furthermore, while information provided by CIC does indicate the percentage distribution by family status of refugees resettled from abroad, similar information is not available for refugees determined in Canada. Since the profile of the two groups is likely to be significantly different, it is not possible to generalize meaningfully from the statistics that are available.

The task force has experienced some frustration at the inability of Citizenship and Immigration Canada to provide statistics on the numbers involved in family reunification for refugees. It is surprising that this should be the case, given CIC's need to plan for the future.

10.4 Shift from overseas selection to inland determination

Over the past ten years there has been a significant shift in the way in which refugees arrive in Canada (see Table 6). Prior to the early 1990s, the vast majority of refugees landed in Canada were selected overseas, and were sponsored for landing in Canada either by the government itself or by private sponsors. A much smaller number were granted refugee status in Canada through the inland refugee determination process.

Table 6: Landings of refugees and humanitarian class - 1985 to 1994

	Gov't Assisted & Privately Sponsored	Inland Determination	Special Measures & Backlog
1985	15,643	1,314	3,376
1986	17,690	1,527	2,853
1987	20,082	1,685	2,906
1988	25,947	964	2,092
1989	35,347	1,699	2,491
1990	31,869	4,068	8,430
1991	24,828	10,891	26,728
1992	15,064	21,651	32,793
1993	11,545	13,029	17,979
1994*	10,110	6,468	3,508

Source: Citizenship and Immigration Canada, International Refugee & Migration Policy Branch, March 1995
* 1994 figures are preliminary.

While it is impossible to get accurate figures for claims made in the early 1980s, because of the determination system in place at the time, Citizenship and Immigration Canada estimates that there were approximately 50,000 claims from 1981 to mid-1986, making an average of 769 claims a month. The years 1986 and 1987 saw a large jump in the numbers with approximately 106,150 claims (3,425 a month) being received between mid-1986 and 1988.[56] The number of inland claims since 1989 averages 28,304 each year, down significantly from the 1988 peak of approximately 48,000, but substantially higher than in the early

[56] The increase in inland claims is generally attributed at least in part to the fact that the inland refugee claims determination process, which was designed to deal with claims by way of a file review, was overwhelmed when oral hearings became virtually mandatory as a result of the *Singh* decision. When a significant backlog developed, a flood of new claims were received, some of them from countries which had not traditionally been sources of refugee claims. Legislation was enacted in 1988 to put in place a new inland determination process properly resourced to handle a large number of claims. It has been suggested to the task force that the sudden increase in the number of inland claims is also attributable in part to difficulties experienced by refugees in having claims dealt with through the overseas selection process.

1980s.[57] At the same time the number of refugees resettled from overseas has fluctuated, with a significant increase between 1989 and 1991 when many people from former Soviet bloc countries were resettled. More recently there has been a marked decrease in the numbers resettled, attributable in large part to a reduction in priority and resources accorded to overseas selection.

The old inland determination process collapsed under the weight of the influx of inland claims and was replaced by the present system under the Immigration and Refugee Board in 1989. Those who still had outstanding claims under the old system were moved into a special backlog process under which they could be granted asylum in Canada and could qualify to apply for permanent resident status if they established that there was a credible basis for their refugee claim or that humanitarian grounds existed.

The Backlog has now been largely cleared and over 81,000 persons accepted under that special program have been landed. Because of delays experienced in clearing the Backlog, individuals caught in that process have had to endure particularly long periods of separation from their families. Many of the most difficult cases that have been brought to the attention of the task force concern families caught in this situation.

[57] These figures are based on statistics provided by Citizenship and Immigration Canada, International Refugee and Migration Policy Branch, in November 1994 and July 1995.

11. SOME SPECIFIC ISSUES RELATING TO FAMILY REUNIFICATION

11.1 Domestic concerns

Anyone reading daily newspapers or following news and public affairs programs on radio or television cannot fail to be aware of the tensions arising in countries that are forced to accommodate large numbers of refugees. The backlash against refugees seen in recent years in Western Europe, particularly in Germany and France, marks the most extreme and disturbing manifestation of this tension. Problems are particularly acute where the refugees come from a racial, cultural or religious background radically different from that in the country of asylum. Tensions are further exacerbated where the refugees congregate in large numbers in specific areas within the country of asylum.

Canadians are genuinely concerned about the plight of individual refugees and are quick to respond when particularly moving cases come to their attention. Unfortunately, however, they are not immune to hostile sentiments against refugees. The public is subject to repeated allegations regarding the burdens placed on Canadian society by immigrants and refugees. Faced with misinformation which generalizes from particular cases to refugees as an undifferentiated mass, the public seems increasingly ready to support policies aimed at restricting access to Canada by refugees and their families and at limiting the support provided to help them adapt to life in this country. If this negative attitude is to be curbed, it is imperative that the public be properly informed on matters relating to asylum and the settlement of refugees in Canada.

11.2 Accommodating cultural, religious and racial differences

Successive generations of newly-arrived immigrants have experienced the sting of rejection and bigotry as they have struggled to find their place within Canadian society. Irish, Ukranian, Jewish, Chinese, Japanese, Italian, and many other ethnically distinct groups of immigrants have had to endure discrimination and active efforts to exclude them from civic life in the early years following their arrival in significant numbers.

Previous waves of asylum seekers came primarily from European countries. While coming from different linguistic backgrounds, many of these refugees at least shared common racial characteristics with the mainstream of Canadian society. In the past, newly arrived immigrants played a critical economic role in most communities where they settled. This facilitated community accceptance of them as productive citizens. They could therefore integrate relatively quickly.

Recent refugees, in contrast, have arrived at a time of economic retrenchment. The racial, religious and cultural background of new refugees, coming largely from Africa and Asia, is radically different from that of the mainstream of Canadian society. As a result, recently arrived refugees face much greater difficulties than did their predecessors in integrating in the communities where they settle.

Those who have come to take for granted the shared assumptions on which Canadian society has been built find it difficult to understand the challenges posed by the newcomers with whom they believe they share so little in common. Nativist resentment from Canadians who feel threatened by these newcomers is easily focused on obvious racial, cultural and religious differences.

For those who would like to limit the presence of refugees in our midst, family reunification for refugees is seen as compounding the problems noted above. To counter the hostility to timely family reunification, it is necessary to remind decision-makers and the public of the harm caused by prolonged separation and to point out the positive contribution that newly arrived refugees and their families are making to Canadian society.

11.3 Settlement implications

As the number of persons seeking asylum in Canada rises and pressures on strained local resources increase, so too does the domestic backlash against refugees. The demographic distribution and total number of people to be admitted as family with refugees is highly relevant in this regard.

Refugees who select Canada as their country of asylum do so for compelling personal reasons. They cannot be expected to factor in Canadian domestic priorities when making their choice. They seek asylum when the need arises and most of them choose to settle in major urban centres where they have the best employment opportunities and are most likely to find support from other members of their own ethnic community (see Table 7). When these refugee families, including school-age children, are finally reunited, the number of newcomers with special needs settling in these urban centres is further increased.

Many refugees require special language and job skills training. Until they find gainful employment, they may also require welfare assistance. Because of hardships endured before they came to Canada, some refugees may have problems that place extra demands on the Canadian health care system. Those who want to restrict the intake of refugees to Canada are quick to point to these demands being placed on the system by refugees as one of the root causes for

present problems. A policy that facilitates reunification of refugee families is seen in some quarters as compounding these problems.

Table 7: Refugees by Metro Area - 1993

Metro Area	Number	Percent
Toronto	7,101	28.9
Montreal	4,409	18.0
Ottawa	1,466	6.0
Vancouver	1,078	4.4
Edmonton	700	2.9
Calgary	680	2.8
Winnipeg	634	2.6
London	564	2.3
Kitchener	540	2.2
Windsor	458	1.9
Other	6,913	28.2
Total	24,549	*100.2

Source: Citizenship and Immigration Canada, Facts and Figures, 1994

***** Percent total exceeds 100 because of rounding

These concerns, while understandable, are greatly exaggerated. Newcomers provide a convenient target for current frustrations; but the underlying causes of our present problems are much more complex then those who place the blame on immigrants and refugees seem willing to recognize. Relative to the total Canadian population, the number of refugees landed each year and the spouses and dependent children sponsored for landing from overseas constitute a small group that one would expect could readily be accommodated. The key problem, as noted above, may be rooted in the fact that a large majority of refugees are settling in a few major urban centres. In the sections immediately following, we address a number of these specific concerns in more detail and examine ways in which the concerns can constructively be addressed.

11.3.1 Educational services

Because refugees tend to congregate in major urban centres, refugee children constitute a significant portion of the student population in the schools of these cities. The need to provide special language training and support services for children who have recently arrived in Canada after undergoing the trauma of forced relocation is forcing a shift in educational priorities in these communities. This shift in priorities is perceived by some ratepayers as a diminishment in the

level of service provided to families who have lived in the communities for many years.

Exact figures on language skills of refugee children are not available, but judging from the countries of origin of recently arrived refugees, one can safely conclude that a substantial number of these new arrivals spoke neither English nor French at the time of their entry into the school system. The absence of a common language in the classroom may make it more difficult to teach the standard curriculum efficiently. On the other hand, the presence of children from such diverse backgrounds offers exceptional opportunities to enrich the educational experience for all children in the affected schools.

The language training needs of immigrant and refugee children are significant in the first few years after their arrival in Canada; however, most school age children master the working language of the classroom quite quickly. A recent study in Québec has found that within a few years of their arrival, immigrant children who had little or no knowledge of French to start with catch up to their native-speaking classmates in language skills.[58]

The landing of children of refugees who have been granted asylum in Canada unquestionably places additional demands on the educational system. The numbers involved, however, are insignificant relative to the total school age population in Canada: we estimate that the total annual intake is less than 10,000.[59] Approximately 400,000 children enter Canadian schools each year. The total number of school-age children in Canada is approximately 4,800,000. The birth rate in this country over the past two decades has been in decline. As a result, the number of Canadian-born children entering school facilities built to accommodate the post-war baby boom generation is decreasing.[60] Thus, the overall demand being placed on the education system, when viewed from a national perspective, is clearly within a range that should be fairly easy to accommodate.

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[58] Monique Richer, "Les enfants arrivants réussissent à l'école", Le Journal de Montréal, 15 March 1994, p. A22.

[59] This estimate is based on the available data on the age distribution of refugees arriving in Canada together with the government's estimate for 1995 of 2,000 - 3,000 landings of dependants abroad of refugees (of whom some would be spouses, rather than children destined for school).

[60] There is some indication that we may be experiencing a bulge in the Canadian-born school age population as the preceding baby boom generation passes through a reproductive peak, but this is generally thought to be a temporary phenomenon that does not have any significant impact on the over-supply of school facilities, especially in inner cities.

The challenge is to find some mechanism to spread the burden more evenly. We note that the federal government is working to send government-assisted refugees to less traditional immigrant-receiving destinations.[61] The task force also recommends that the federal government, representing the entire population of Canada, consider easing the financial burden on the few communities that are receiving the vast majority of refugees now arriving in Canada by way of increased transfer payments to the provinces where most refugees are settling.

11.3.2 Social services

The alleged burden placed on social assistance programs by refugee claimants is often raised as an argument in favour of a more restrictive approach to granting asylum by those who are opposed to Canada**'**s present policy. Reliable figures on welfare needs of refugee families are however difficult to find and those that exist tend to suggest lower than average welfare dependency rates. The portion of immigrants in general who receive some form of social assistance is somewhat *lower* than the portion for the general Canadian population in the same position - 14% for new immigrants vs. 16% for the population at large.[62] A recent study of South East Asian refugees in British Columbia found that the unemployment rate among the group studied was 8%, compared with a rate of 8.9% among the population at large.[63] Analysis of Statistics Canada figures also shows that among the immigrant population in general labour-force participation is similar or greater than among the Canadian-born, when age groups are compared.[64] There is an initial period of adjustment however, before the newly arrived are able to establish themselves: according to one study, after the third year of residence, the average income of immigrants is equal to that of people born in Canada, after which point it is greater.[65]

For refugee claimants there are a number of hurdles to overcome before they can seek employment. They will generally have to wait a few months before they are issued a work permit. While their claims are being determined it may be difficult for them to begin work. In general newly arrived refugees, especially those who speak neither of Canada**'**s official languages, are likely to experience even more difficulty than other Canadians in finding remunerative employment. On the

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[61] *Into the 21st Century: A Strategy for Immigration and Citizenship*, op. cit., p. 51.

[62] *Into the 21st Century*, op.cit., p. 39.

[63] Morton Beiser, *The Mental Health of South-East Asian Refugees Resettling in Canada*, 1994.

[64] Jane Badets & Tina W.L. Chui, *Focus on Canada: Canada's Changing Immigrant Population*, Statistics Canada and Prentice Hall Canada Inc., 1994.

[65] Ather Akbari, "The Benefits of Immigrants to Canada: Evidence on Tax and Public Services", in *Canadian Public Policy*. Vol. 15, No. 4, 1989.

other hand, it is often remarked that some refugees find work extremely quickly, in part because they are willing to take on jobs which the Canadian-born refuse.

Support for refugees resettled from abroad who cannot find work does not come from social assistance budgets for their first year in Canada. Funding for government-assisted refugees is provided by the federal government under the Adjustment Assistance Program. Similarly, refugees privately sponsored from overseas are the responsibility of the sponsors for their first year.

11.3.2.1 Sponsorship breakdown

A specific issue relating to presssure on social services that garnered substantial media attention in the media over the past year is the problem of "sponsorship breakdown". People other than spouses and dependent children admitted to Canada as members of the family class are landed on the strength of a sponsor**'**s undertaking to support the new immigrant during his or her initial years in Canada. The sharp downturn in the Canadian economy in recent years has been accompanied by an increase in the incidence of default by sponsors on their support obligations. Many new immigrants, particularly parents and grandparents of sponsors, have been forced to turn to government-funded welfare agencies because of their sponsor**'**s inability or refusal to honour the support commitment.

This is an immigration concern that goes far beyond the issue of family reunification for refugees. The problem is confined to individuals who have been sponsored by relatives in Canada; it has never been an issue with respect to refugees sponsored from overseas by community groups.

The problem has become more acute in recent years because the financial circumstances of individual sponsors have been adversely affected by the downturn in the economy. Whatever the cause, this increase in sponsorship breakdown has generated a predictable, though somewhat ill-informed,[66] backlash against family class immigration.

The problem of sponsorship breakdown has been exacerbated by lax or non-existent enforcement of sponsorship obligations. Individual sponsors are required to give binding undertakings to provide financial and material support to the

[66] This is not to deny that there have been some serious cases of abuse. Newspaper stories about sponsors who have reneged on support obligations that they are well able to cover tend to inflame public reaction; but they tell only part of the story. The problems being encountered with respect to sponsorship breakdown can be attributed, at least in part, to the general economic downturn. As a result of layoffs, wage cutbacks and decline in income for self-employed persons, sponsors are experiencing many of the same problems in meeting their financial commitments as other Canadians. The problem of sponsorship breakdown can thus be expected to abate as general economic conditions improve.

relatives whom they sponsor for landing in Canada. Much of the alleged abuse that has been brought to light in the media could be corrected by rigorous enforcement of these support obligations. Part of the problem is that the provincial authorities, who have to provide social assistance when sponsors fail to honour their obligations, have no authority to enforce the sponsorship agreements, which are made between the sponsors and the federal government.

11.3.3 Public health concerns

In addition to the social and economic strains being placed on Canadian society by the increased inflow of inland refugee claimants, concern is also being expressed that refugees are potential carriers of communicable diseases such as tuberculosis and AIDS. Many refugees come from areas of the world where such diseases are endemic. The conditions that many refugees have had to endure before reaching Canada place them at great risk for some of these diseases.

Media reports of isolated cases where individual refugees are found to be suffering from a serious communicable disease such as tuberculosis heighten public fears. There is concern that the present generation of Canadian-born children, who have had virtually no exposure to tuberculosis, have not developed any natural immunity to the disease. This problem is compounded by the fact that many modern buildings in Canada have closed ventilation systems. There is fear that the bacilli that cause tuberculosis can multiply and spread in these conditions.

These concerns about threats to public health arise from a mix of sound medical fact and uninformed public hysteria. The prevalence of AIDS and tuberculosis in some of the countries from which refugees to Canada are currently coming is well documented. The Canadian public expects the government to provide effective protection against the possibility of these and other serious but less life-threatening diseases being brought to Canada from foreign sources. Tight control over immigration from countries where such diseases are prevalent is readily seen as an effective way to control the risk. It is fundamentally erroneous, however, to focus on refugees or on the members of refugee families as the principal vector by which such diseases might be spread in Canada.

Canadians travelling to countries where such diseases are prevalent and short-term visitors from such countries are also potential carriers. These individuals are not normally subject to any medical screening before entering the country. Refugees selected overseas, members of their families who are sponsored for landing from overseas and all other persons who come to Canada through regular immigration channels, on the other hand, are subject to rigorous medical examinations before they are allowed to enter the country. Inland refugee claimants at present enter Canada without any medical pre-screening; but they are

immediately referred for medical examination when they make their claim for asylum.

In 1993 some 300,000 immigrants and long-term visitors to Canada underwent mandatory medical screening. Of these, about half of 1% were found to be medically inadmissible. In 1994 the percentage increased slightly but remained less than 1%.[67] The total number excluded on medical grounds is remarkably small. A substantial number of those denied landing on medical grounds are suffering from a long-term disability rather than any communicable disease. Similar figures are not available for inland claimants as a sub-group; but there is no indication that the ratio of individuals suffering from communicable diseases is significantly greater among inland claimants than among those screened overseas.

11.3.4 Burden on the Canadian health care system

The cost of maintaining Canada**'**s universal, publicly-funded health care system has become a particularly sensitive political issue in recent years. In the current climate of severe fiscal restraint there is an understandable reluctance by Canadian taxpayers to accept any additional burden on the health care system that is within the power of government to control. Benefits under the system are provided on a universal basis to all permanent residents of Canada without cost to the individual recipient.

There is a feeling in some quarters that refugees and their families as a group place disproportionate demands on the health care system. Considering the wretched and stressful conditions that many refugees have had to endure before their arrival in Canada, it is not unreasonable to surmise that this may be the case. The task force has been unable to find any reliable information, however, to confirm or rebut this impression.

Section 19(1)(a) of the *Immigration Act* precludes admission to Canada of persons who are suffering from any disease, disorder, disability or other health impairment as a result of the nature, severity or probable duration of which they are likely to be a danger to public health, or to public safety. Similarly, admission is precluded where the person**'**s medical condition is such that their admission would cause or might reasonably be expected to cause excessive demands on

[67] These figures were provided informally in a telephone communication with a CIC official responsible for overview of the medical screening program. There are no published sources for the numbers of persons found to be medically inadmissible.

health or social services. Provision is made in the Act to establish criteria as to what constitutes excessive demand in regulations.[68]

As previously noted, less than a quarter of one percent of the 300,000 individuals undergoing medical screening each year are denied admission to Canada on medical grounds. The medical exclusion is waived for inland claimants who are granted refugee status since it would be contrary to Canada**'**s international obligations to deny asylum on medical grounds and having them remain in Canada without the right to be landed is likely, if anything, to lead to the deterioration of their health problems. Assuming that the percentage of inland refugees who might otherwise be judged inadmissible on medical grounds is similar to the percentage of immigrants and refugees coming from overseas,[69] one can estimate that some 40 to 50 individuals with medical problems that are likely to place an exceptional burden on the health care system are admitted as inland refugees each year. We have no way of knowing the actual costs that are likely to be incurred to care for these individuals. In the context of the billions of dollars spent each year on health care services in Canada, however, it has to be minuscule.

Spouses and dependent children of refugees accepted in Canada may not be denied landing on medical grounds.[70] Those who are being sponsored from overseas must undergo medical screening, however, just like any other immigrant. The provision in the *Immigration Act* that precludes exclusion of spouses and dependent children of refugees on medical grounds has been in place for almost two years. There has been no indication that family members being allowed into Canada under this provision are imposing unreasonable demands on the Canadian health care system. Any suggestion that facilitated family reunification for refugees represents a threat to the health care system seems, therefore, to be without foundation.

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[68] This provision is made in the new Section 19(1)(a) which is not yet in force, since no regulations have been enacted. Present criteria set forth in administrative guidelines provide that a condition that is anticipated to require medical services greater than five times the average required by individuals resident in Canada is deemed likely to cause excessive demand on Canadian health care services.

[69] The percentage of inland claimants who would otherwise be medically inadmissible is probably lower than for those screened overseas. People suffering from the kinds of conditions that render them medically inadmissible could be expected to have problems getting to Canada to make an inland refugee claim.

[70] This only applies, however, if the refugee applies within the 60-day time limit. If a refugee is unable to meet the deadline, for example because he or she is unable to find the money to pay the fees associated with landing, the refugee and his or her family risk being refused landing on the basis on medical inadmissibility.

12. POSSIBLE SOLUTIONS

The factors that tend to generate political resistance to a more liberal family reunification policy for refugees could be minimized by making a number of changes in the way in which immigration authorities deal with family class immigration. The task force notes with interest that a number of these possible changes have been identified in the government**'**s new ten year immigration plan as being worthy of serious consideration.

12.1 Federal financial support for local services

The main problem posed by the influx of refugee families is that the vast bulk of them are settling in a few major urban centres, the same centres where most other new landed immigrants are also settling. Refugee children probably represent significantly less than 20% of the total number of children landed from overseas each year. The influx of some 40,000 immigrant and refugee children each year into the schools of a limited number of major metropolitan centres unquestionably represents a significant strain on the education system in the affected communities. Likewise, these communities carry a disproportionate share of the burden of providing social assistance to refugees during the transition before they become fully established. The cost of providing all manner of social services for recently arrived refugee and immigrant families in these urban centres must be borne by local rate payers, who are inclined to look on the problem as not of their own making but imposed upon them as a result of federal immigration policies.

Since the problem is essentially a collateral product of federal immigration policy, the cost of resolving it should be borne equally by all Canadians through federal taxes. If the portion of the local education budget attributable to the provision of special services for refugee families[71] were assumed by the federal government, much of the local resentment occasioned by the influx of refugees would abate. The task force does not have exact figures that would enable us to calculate the cost of such an initiative as a portion of the total federal budget for

[71] We deliberately limit this suggestion to refugee families because the numbers involved are more manageable. It might not be possible for the federal government to cover the entire burden of special costs incurred at the local level to provide for all immigrant as well as refugee families. Canada**'**s obligation to provide basic amenities for refugees arises from our international obligations, not from a conscious choice to encourage certain classes of immigrants to settle in Canada in response to domestic priorities. Local communities clearly benefit from new immigration even while they have to bear some costs in helping new immigrants settle. The case that local adjustments necessitated to accommodate refugees should be borne by the federal government is marginally stronger, therefore, than it is with respect to accommodation of other immigrants. We emphasize the "marginal" in this context as we recognize that arguments can be made that the entire additional cost related to settlement of new immigrants should be a federal responsibility.

immigration services. It should be possible, however, to cover the cost within the existing budget by adjusting program priorities.

12.2 Improved federal-provincial cooperation to enforce sponsorship obligations

With respect to the problem of sponsorship breakdown, where sponsors who are in a position to meet their obligations fail to do so, federal authorities should take appropriate steps in cooperation with the responsible provincial authorities to enforce the sponsorship obligations.[72] The undertakings to provide support are given to the federal government. When sponsors fail to meet their support obligations, however, it is the provincial and municipal governments that have to provide social assistance. Since the federal government is not directly affected by the sponsorship breakdown, there has been little incentive for federal authorities to enforce the agreements and the legal basis on which this might be done is uncertain. In recent months, however, the federal government has begun to seek solutions to the problem.[73]

Effective action to curb abuse of the system would go a long way to dampen the hostility toward immigrants and refugees that is being generated by the problem of sponsorship breakdown. Where the breakdown occurs because of circumstances beyond the control of the sponsor or the newly arrived family member, however, the case should be dealt with in the same way as would that of any other Canadian in need of social assistance. At the same time the federal government needs to take decisive action to correct misinformation about sponsorship breakdown in order to counteract its xenophobic potential.

12.3 Medical screening in Canada

Since the vast majority of immigrants and refugees are subject to rigorous medical screening, the risk they pose to public health is, if anything, less than that posed by those entering the country from abroad who are not subject to any

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[72] We note with interest recent proposals put forward by the Minister of Citizenship and Immigration to deal with this problem. See *Into the 21st Century: A Strategy for Immigration and Citizenship*, op. cit., pp. 38-41. These proposals include a possible requirement for the sponsor to post a bond to secure the sponsorship obligations. In the event of sponsorship breakdown, the security could be used to cover costs incurred by government to provide support to the sponsored relative. We are concerned that this sort of bonding requirement could constitute a serious barrier to family reunification for refugees who are in particularly strained financial circumstances. The Canadian Council for Refugees adopted a resolution in November 1994 opposing the introduction of bonds, on the grounds that it would create an unsurmountable barrier to family sponsorship for refugees, many of whom are already economically marginalized.

[73] The Minister of Citizenship and Immigration and the Chair of the Regional Municipality of Peel announced June 16, 1995 the implementation of the Peel Pilot Project on Sponsorship Obligations. The project's goal is to study measures to stem unacceptable sponsorship default.

medical screening. Likewise, public fears about extraordinary demands being placed on the Canadian health care system by refugees and their families are simply not supported by the facts.

It is not sufficient merely to detect the diseases. Medical services should be made available to ensure that any communicable diseases detected are effectively dealt with. The individuals concerned may also require careful follow-up and education to be sure that they take appropriate measures to assist their own recovery and appropriate precautions to avoid spreading their disease. Provided effective treatment and patient education are in place, there is no reason to fear a threat to public health from a policy that facilitates reunification of refugee families.

Public fears regarding threats to public health and the alleged drain on health care services occasioned by refugees and members of their families are based on a combination of misinformation and lack of information. To calm these fears, the federal government should make a concerted effort to better inform the public about medical screening and other protective measures currently in place.

The requirement for medical screening overseas is one of the major causes of delay in reunification of refugee families. It has been suggested that delays could be greatly reduced if medical screening could be done in Canada rather than overseas. This arrangement could create major problems if there were any possibility that the individual could be denied landing because he or she is found to be medically inadmissible; but this is not the case with refugees and their families. Having the medical screening carried out in Canada therefore seems eminently sensible.

Provided carriers of contagious diseases can be effectively identified and treated under a system of onshore medical screening, the risk to public health would be no greater than with offshore medical screening. If anything, the level of protection could be higher because all applicants would be screened applying Canadian standards. Such a system would also be preferable from a humanitarian perspective since the individuals concerned would likely have access to better care and have a better chance of regaining good health in Canada than in a refugee camp or a home country torn by civil unrest. Since medical screening and treatment in Canada would benefit the individuals concerned and would serve to protect the health of members their immediate family, one would expect there to be a high level of cooperation and compliance with any restrictions that may have to be imposed.

12.4 Family reunification as an asylum issue

At a more general level, family reunification for refugees should be looked upon as an asylum issue rather than an immigration issue. Had the spouse and dependent children accompanied the refugee to Canada in the first place, they would almost certainly have been admitted to Canada as refugees in their own right. The fact that they were unable to accompany the primary refuge claimant does not materially alter their true status as refugees. Many dependents of refugees should themselves be considered eligible for asylum in Canada. Family members who are in need of protection in their own right should be reunited with the refugee claimant in Canada as quickly as possible. Any social assistance they may require after arriving in Canada should be viewed as part of the cost of our humanitarian obligations towards those in need. Treating reunification of refugee families as an asylum issue rather than an immigration issue would also allow the government to facilitate reunion of refugee families without encroaching on the number of places available for family class immigrants.[74]

12.5 Positive aspects of family reunification

Beyond being beneficial for the refugees themselves, timely family reunification is worth pursuing because it benefits the society at large. Many of the problems noted above can be reduced by timely family reunification. The stress suffered as a result of prolonged family separation would be greatly reduced. The consequent reduction in emotional problems should be reflected in reduced demand for health care services. Reunification of refugee families should also facilitate integration into Canadian society by leaving the individuals concerned in a healthier frame of mind to acquire needed language and job skills. The mutual support provided by family members can also be expected to help the original refugee and the entire family to become economically self-sufficient, thereby reducing dependency on social assistance programs.

No statistics are available on what portion of the spouses of refugees who are landed enter the Canadian labour market or what portion require language training or social assistance after they arrive. Some clearly do find employment. Those who do find paying work, even if it is in only a menial occupation where language skills are not crucial, help to reduce the family**'**s reliance on social assistance. Arrival of the spouse in Canada also relieves the sponsor of the need to send money to the home country to provide support for that spouse. Depending on the amount of money that was being remitted abroad to support the

[74] The 1995 Refugee Plan, announced by the Minister of Citizenship and Immigration in November 1994 includes dependants abroad of refugees landed in Canada. This category was previously included in "Immediate Family". See above, page 12.

spouse before he or she arrived in Canada, the net financial position of the family could be significantly improved after reunification. Relief from the anxiety entailed in prolonged separation should also enable the sponsor to function more effectively in the Canadian labour market.

13. CONCLUSION

For many refugees, separation from family is among the most significant of the many hardships that accompany flight from persecution. As long as they remain apart from the closest members of their families, refugees in Canada cannot properly begin their new life here. Those left behind are often themselves at risk of persecution, or wait in refugee camps or other precarious places of temporary refuge.

The barriers to speedy family reunification are numerous. Some lie beyond the control of the Canadian government. The task force has found, however, that significant delays in family reunification for refugees in Canada are attributable to elements of Canadian government policy and practice. It is on these elements that the report has focused.

Ensuring speedy family reunification is one element of Canada's moral, legal and humanitarian obligations towards refugees. It is also, this report has argued, clearly in Canada's narrower practical interests, in that the social and economic integration of refugees and their families is significantly advanced by timely reunification. These propositions are recognized by the Canadian government, which has committed itself to speedy family reunification for refugees and others, and has already adopted a number of measures to reduce delays.

It is in this context that the task force submits its proposals for addressing continuing impediments to family reunification. The following are the task force's key recommendations:

. To avoid the delays inherent in overseas processing, spouses and dependent children of refugees in Canada should be granted a “derivative status” immediately upon positive determination of the refugee claim, on the basis of which they could proceed to Canada.

. To alleviate difficulties faced by refugees in establishing family ties, the benefit of the doubt with respect to family relationship should be given, as a matter of principle, to refugees applying to sponsor their families.

. To respond to protection needs, visa officers should be directed to issue visas allowing the family to travel to Canada on an urgent basis, where spouse and children of a refugee claimant in Canada are themselves clearly at risk.

. To address the realities of diverse family compositions, the government should give serious consideration to the functional approach to family definition recommended in the 1986 report of the Standing Committee as

elaborated in the 1994 *Report of the National Consultation on Family Class Immigration*.

. To allow refugees in Canada to sponsor members of their extended family who find themselves in desperate situations, the special programs should be revived and updated.

. To ensure that family reunification is not obstructed or delayed by barriers to landing of refugees in Canada, including the various fees, the government should take measures to address the impact of such barriers.

. To ease the financial burden on the few communities that are receiving the vast majority of refugees, the federal government should consider increased transfer payments to the provinces where most refugees are settling.

A number of other recommendations are ancillary to these or touch on specific problems faced by some refugees.

The task force's report on refugee family reunification is submitted with the goal of prompting serious reflection on the issue and a sense of urgency in the search for solutions to the problems we have outlined. Insofar as the task force's recommendations are found to be practical and effective, it is to be hoped that they will be swiftly implemented. Where proposed recommendations cannot be adopted, appropriate alternatives should be sought on an urgent basis.

14. SUMMARY OF RECOMMENDATIONS

"Derivative status"

1. Spouses and dependent children of refugees in Canada should be granted a "derivative status" immediately upon positive determination of the refugee claim, on the basis of which they could proceed to Canada. All processing of their permanent residence applications, including medical examinations, would be conducted in Canada, in parallel with the refugee's application.

Separation at source

2. Citizenship and Immigration Canada should take steps to ensure that refugees are resettled as a family unit unless there is a compelling reason why this is not possible. In the latter case, refugees should be given clear and accurate information about the process and timelines for family reunification before they leave for Canada.

3. The government should take immediate steps to effect the reunification of families presently in Canada who were separated at source through error or misunderstanding. Such applications should not be required to be processed through the regular stream.

Medical screening

4. Medical screening for spouses and children of refugees should be carried out in Canada.

5. The federal government should make a concerted effort to better inform the public about medical screening and other protective measures currently in place.

Establishing family relationships

6. As a matter of principle, the benefit of the doubt with respect to family relationship should be given to refugees applying to sponsor their families. Visa officers should be encouraged to use flexibility in assessing evidence of relationships and should take into account the delays and costs involved in requesting further proofs.

7. Information provided on PIFs or previous immigration application forms with respect to family members should be given considerable weight.

8. Efforts should be undertaken to ensure that applicants understand the significance of PIF and immigration application form questions relating to family members and that they answer them completely.

9. Special and ongoing initiatives should be put in place to consult and liaise with the affected communities in Canada, so they can advise as to appropriate means of establishing identity and be kept informed about changes or developing problems.

10. Measures should be taken to combat the possible development of a 'culture of suspicion' among visa officers and to ensure that requirements are consistent among visa posts.

11. Directives should be issued restricting the types of verification to be sought unless visa officers have specific reasons for suspicions about a case.

12. Any cases of fraud should be analysed and the conclusions published.

13. Measures should be taken to 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.

Particular need of protection

14. Where spouse and children of a refugee claimant in Canada are themselves clearly in need of protection, they should not have to wait until the refugee claim is determined and the applications for permanent residence can be processed. In such cases, visa officers should be directed to issue visas allowing the family to travel to Canada on an urgent basis.

15. Where children of a refugee or refugee claimant in Canada are without adult care-giver, visa officers should be directed to take a proactive approach to ensure that the children have proper adult protection. Where such protection is not available, arrangements should be made for them to join the parent in Canada without delay.

Women at risk

16. Where women in need of protection in third countries have a clear connection to Canada and are likely to benefit by being united with real or *de facto* family members in Canada, they should be granted asylum in Canada.

Visa post services

17. Applicants and sponsors should be kept better informed about progress on landing applications.

18. Additional visa post resources should be devoted to Africa. This should be done by reallocating existing resources from regions with relatively light workloads.

19. Serious consideration should be given to sending “flying teams” of visa officers on a temporary basis to areas where there is a need for additional resources.

Age limit for dependent children

20. For refugees, eligibility of a child for landing based on the 19 year age limit should be determined as of the date of filing of the refugee claim by the parent in Canada, where the child is identified in the parent claimant's PIF.

21. For others, eligibility should be determined as of the date when the parent first indicated an intention to bring the child to Canada.

22. Any child who was less than 19 years of age at the time the parent initiated a sponsorship who has been denied landing on the grounds that he or she has subsequently attained the age of 19 should be considered eligible for landing provided such child is still single and still dependent on the sponsoring parent or parents in Canada.

23. The present 19 year age limit for dependent children should be treated as a rebuttable presumption rather than an absolute limit. Where it can be demonstrated that an unmarried child over the age of 19 is dependent on a Convention refugee in Canada, such child should be eligible to be included on the refugee's landing application.

Functional family definition

24. The federal government should give serious consideration to the functional approach to family definition recommended in the 1986 report of the Standing Committee as elaborated in the 1994 *Report of the National Consultation on Family Class Immigration*. Attention should be given to resolving the outstanding operational concerns involved in implementing this approach.

Common law spouses

25. A common law spouse who would be eligible for protection equivalent to a formally married spouse under Canadian matrimonial laws should be regarded as a spouse for purposes of eligibility for landing in Canada. Any person landed as a common law spouse and any sponsor of a common law spouse should be ineligible subsequently to sponsor as a spouse any person who may have been his or her legal spouse prior to landing.

Polygamous marriages

26. No change should be made in Canadian immigration law to provide special accommodation for reunification of families based on polygamous marriages.

Adopted children

27. Children who are *de facto* members of a family unit that is applying for landing in Canada should be included in the family unit notwithstanding that such child may not have been legally adopted by the family. A *de facto* adopted child should not be permitted subsequently to sponsor his or her natural parents for landing as members of the family class (except where the natural parents who have been presumed dead are subsequently located and wish to be reunited with their child.)

De facto parents

28. Persons who have functioned as *de facto* parents of children being sponsored for landing should be eligible to be included in the landing application, where they are not part of a separate family unit.

Extended families

29. The special programs should be revived and updated to allow refugees in Canada to sponsor members of their extended family who find themselves in desperate situations.

Visitors' visas

30. Visa officers should adopt a more even-handed approach in assessing requests for visitors' visas in order to facilitate visits by family members from refugee-producing countries.

Fees for landing

31. The government should take measures to ensure that family reunification for refugees is not obstructed or delayed by the existence of the various fees for landing.

Identity documents for landing

32. The government should give priority to finding some resolution for the thousands of refugees unable to be landed for lack of satisfactory identity documents.

33. A working group made up of representatives of the government, non-governmental organizations and the affected communities should be established on an urgent basis to seek solutions to the identity document problem.

34. Immigration officers should develop closer ties with the communities among whom are significant numbers of refugees affected by the identity document problem.

Convention on the Rights of the Child

35. Serious consideration should be given to the implications in immigration matters of the *Convention on the Rights of the Child*.

Statistics

36. Citizenship and Immigration Canada should collect and make public more comprehensive statistics on refugees coming to Canada, in particular with regard to their family status.

Sponsorship breakdown

37. Where the breakdown occurs because of circumstances beyond the control of the sponsor or the newly arrived family member, the case should be dealt with in the same way as would that of any other Canadian in need of social assistance.

38. Where sponsors who are in a position to meet their obligations fail to do so, federal authorities should take appropriate steps in cooperation with the responsible provincial authorities to enforce the sponsorship obligations.

39. The federal government should take decisive action to correct misinformation about sponsorship breakdown in order to counteract its xenophobic potential.

Federal transfer payments

40. The federal government should consider increased transfer payments to the provinces where most refugees are settling in order to ease the financial burden on the few communities that are receiving the vast majority of refugees.

Education costs

41. The federal government should assume the portion of the local education budget attributable to the provision of special services for refugee families.