

ANNUAL TRIPARTITE CONSULTATIONS ON RESETTLEMENT
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Citizenship and Immigration Canada
Background Note for the Agenda Item: Security Concerns

How to Protect the Resettlement Mechanisms from abuse by terrorists and other international criminals without unduly impeding resettlement as a tool of protection

Introduction

Canada's dual objectives of maintaining a leadership role in the area of refugee resettlement while denying access to those who pose a security or criminality risk or those guilty of gross violations of human rights or war crimes represent the challenge at hand. Canada's response to heightened security concerns in this post September 11th environment has been a balanced approach whereby enhanced screening measures have been introduced to immigration processing both in-Canada and overseas to exclude those who pose a security or criminality threat while continuing to offer protection to those in need of resettlement. Canada continues to fulfill its humanitarian commitment to resettle the displaced and persecuted, has maintained all processing locations, and expects to meet the projected target of resettling approximately 10,000 refugees in 2002.

Canada fully supports the Executive Committee Conclusions (No. 90 (LII) –2001 paragraph n) on International Protection which reaffirms the importance of tripartite partnerships and the need for a strategic consultative and collaborative approach aimed at ensuring “more responsive and speedy processing, better identification of urgent needs, and coordination; and urges further UNHCR efforts to ensure the integrity of the processing of the resettlement caseload and *encourages* States and the UNHCR to continue to pursue a strategic and systematic approach to the problem of attempted fraud or other abuse;”.

Canada's past experience involving the resettlement of large numbers of refugees has shown that effective screening mechanisms are available and do not impede resettlement and which, done well, instill public confidence and build support for future initiatives.

The introduction of measures focused on improving program integrity has been met with concerns about the potentially adverse effects additional screening measures may have on resettlement programs. Concerns have also been raised about the reaction of some States involved in resettlement and the uncertainty regarding quotas, criteria and timing of resettlement activities. Canada urges other States to maintain their resettlement commitments and asserts that while enhanced screening measures may increase processing time in certain circumstances, it does not impede the desired outcome of offering protection to those who deserve it. Key to accomplishing this desired outcome is ensuring the availability of timely and reliable information. Information needed to make informed decisions about the applicability of exclusion clauses under the Convention as well as ineligibility under State legislation.

Context

Canada's resettlement program operates in response to the needs of the displaced and persecuted, and goes beyond Canada's international obligations under the 1951 Convention and Protocol to provide an in-country refugee determination system. More than 650,000 refugees and displaced persons have been resettled in Canada since the Second World War. The number of refugees and persons in refugee-like situations admitted under Canada's refugee and humanitarian resettlement program is in addition to those who have made successful refugee claims from within Canada. The premise for this approach reflects the importance Canada places on assisting those who are in need of protection where no durable solution exists. Canada's comprehensive approach to refugee protection has allowed us to participate in burden sharing initiatives and has enhanced our relationship with key international organizations such as the UNHCR, the IOM as well as with the non-governmental community. In addition, Canada's voluntary resettlement program benefits from widespread support from the Canadian public and all levels of government. Such public support goes a long way in the promotion and acceptance of newcomers and combats against xenophobia and racial discrimination.

Public support is directly linked to program integrity and therefore any initiative that enhances program integrity will, in turn, ensure ongoing support for resettlement. Canada is of the view that the vast majority of refugees do not pose any security or criminality threat and that refugee

populations by their very nature are often the victims of terrorist acts and not the perpetrators of such acts.

Resettlement is a core Canadian priority, not only because it is an expression of a long Canadian tradition of offering humanitarian assistance but also because the need for resettlement as a durable solution has increased in recent years. The present resettlement environment is affected by a number of factors which include, but are not limited to, protracted refugee situations, increased burdens on asylum countries hosting large numbers of refugees for long periods of time, irregular migration, the incidence of fraud in the resettlement process and security concerns.

While the need for resettlement as a protection tool has increased globally so has the need to ensure program integrity. A key component to safeguarding program integrity is to exclude those who are not eligible for resettlement. While the concept of ineligibility or exclusion in its broadest sense covers basic issues such as meeting the Convention Refugee definition, it is also applicable to those who have a durable solution or who are deemed inadmissible under immigration legislation. Those not eligible also includes those described in Article 1 Sections D, E and F of the 1951 Convention. In brief, Article 1D deals with persons who are already receiving United Nations protection or assistance; Article 1E refers to persons who are not considered to be in need of international protection; and the final group described in Article 1F identifies those categories of persons who do not deserve international protection because they have:

- committed crimes against peace, war crimes or crimes against humanity;
- committed a serious non-political crime outside the country of refuge;
- or are guilty of acts contrary to the purposes and principles of the United Nations.

Players and their roles

The successful selection of refugees for the resettlement program is dependent on the collaboration between three key partners, namely the Department of Citizenship and Immigration Canada (CIC), the UNHCR, as well as non-governmental organizations involved in the private sponsorship and integration of resettled refugees. To a large extent, the success of the Canadian resettlement program is dependent on the number and quality of referrals provided by the

UNHCR. As a key referral organization the UNHCR plays a critical role in ensuring those excluded under the Convention and Protocol are denied access to resettlement programs. It is also recognized that the UNHCR and all resettlement countries face the added challenge of detecting cases involving corruption and fraud.

CIC is responsible for screening all immigrants and non-immigrants in cooperation with key partners, namely the Royal Canadian Mounted Police (RCMP) and the Canadian Security Intelligence Service (CSIS) who together develop and provide effective screening tools to aid in identifying those deemed inadmissible on security and/or criminality grounds or because they are guilty of gross violations of human rights or war crimes. Subsection A9(5) and A19 of the *Immigration Act* deal with inadmissibility. Provisions dealing specifically with inadmissibility based on security concerns include A19 (1)(e)(f)(k)(l).

Non-governmental organizations (NGOs) involved in the private sponsorship of refugees have a key role to play in the identification, resettlement and subsequent integration of refugees. The private sponsorship community is involved in the resettlement of approximately 2,800 refugees annually and clearly demonstrates the important contribution of the volunteer sector in assisting those in need and increasing program capacity. With regards to screening issues, private sponsors have the added challenge of denying the benefits of the private sponsorship program to those who may be excludable or inadmissible based on the availability of limited information. In most instances, it is very difficult if not impossible for sponsors to make any substantive determination regarding eligibility/exclusion due to the availability of limited or incomplete information. For these reasons, it is important to provide the non-governmental community involved in private sponsorship with as much training and information as possible while respecting privacy legislation. NGOs have expressed their concern about the lack of information available to sponsors and to the refugees themselves about both the screening processes in general and the lack of information provided when a sponsored case is referred for further screening. The challenge for resettlement countries is to meet the information needs of key players while maintaining the integrity of the screening process.

Resettlement and Screening

To a large extent, the speed and effectiveness of a screening system involved in processing large numbers of cases is very much dependent on the availability and reliability of information and screening tools. In addition, the legal framework must be in place to allow the effective exclusion of those deemed inadmissible.

From Canada's perspective, the legislative tools are in place to effectively deal with criminality and security concerns. Article 1F of the Convention as outlined above coupled with Canadian inadmissibility provisions provides the legal framework by which access to resettlement can be denied. As a result of caselaw developed by the Supreme Court and Federal Court of Canada, all three Article 1F provisions have been successfully used to exclude persons for terrorist activities.

Within the Canadian context, paragraph 1F(a) has been used to develop the notion of brutal, limited purpose organizations, which include terrorist organizations. This provision extends liability not only to persons personally involved in terrorism but also persons who were or are members of such an organization. The organization in question is one that has committed activities, which amount to war crimes or crimes against humanity. Paragraph 1F(b) has also been examined by the Federal Court of Appeal and was successful in operating against terrorist activities and also limited the notion of what was considered a "political crime". Paragraph 1F(c) has become the instrument of choice in excluding terrorist asylum seekers. A 1999 Supreme Court of Canada decision (Pushpanathan) held that terrorist acts committed both inside or outside the country of refuge were included in the wording of 1F(c) and applied to persons who have either committed a terrorist act or have been convicted of it. In addition, this case held that Article 1F(c) captured not only high state officials but also lower level operatives with no state connection.

The present *Immigration Act* and soon to be implemented *Immigration and Refugee Protection Act* (June 28, 2002) include provisions that allow for a broad application in dealing with cases involving criminality and terrorism. Under both Acts, persons who are or were members of an organization, which has been or may become involved in terrorism, are inadmissible. The

Canadian non-governmental community has expressed concern about Canadian inadmissibility provisions; in particular advocacy groups feel the definition of membership to a terrorist organization is too broad. While neither the term “member” nor “terrorism” are defined in the legislation, decisions by the Supreme Court and Federal Court of Canada have informed and guided interpretations of both terms. In addition, Canadian legislation also includes a unique legislative provision, which allows the Minister of Citizenship and Immigration Canada to designate regimes involved in terrorism, systematic or gross human rights violations, war crimes or crimes against humanity. As a result of this designation, any senior official of such a regime is automatically inadmissible. At present, the Minister has designated eight such regimes, including the regime of Saddam Hussein in Iraq for the period between 1968 and the present.

Kosovo experience:

Canada’s participation in the evacuation of 7,000 Kosovar refugees demonstrates how processing measures can be modified to meet the immediate humanitarian needs of a refugee population in need of assistance on an urgent basis. In April 1999, Canada responded positively to the UNHCR’s request to provide temporary safe haven to Kosovar refugees. Given the urgency of the situation and the need to evacuate a large number of refugees quickly, Canada was not able to conduct in-depth interviews and detailed background checks prior to the departure of Kosovar refugees to Canada. However, the UNHCR had completed basic screening functions to ensure those in the camps were Kosovar refugees. In addition, CIC was able to design and apply tailored screening tools focused on providing field officers with essential information needed to identify individuals in the refugee movement who could be inadmissible. Screening tools focused on assessing inadmissibility on a variety of grounds, including terrorism, organized crime and war crimes. Assessing the character of membership in the Kosovo Liberation Army or “KLA” was a primary focus of security screening since the KLA was considered a terrorist organization in the early 1990s but could be considered “legitimate” military force by Spring 1999. Also, of concern was the organized crime element which is a significant problem in the Balkans as well as war crimes in the form of KLA actions against Serb forces.

Given the international profile of the Kosovo Crisis and the involvement of NATO forces, there was a great deal of information available that was used for screening purposes. In meeting this challenge, CIC developed “ The Kosovo Crisis Field Manual” that provided background on Kosovars and War Crimes in Kosovo. In addition, a supplemental screening questionnaire was developed. The Case Management Branch, War Crimes and Security Review Divisions at National Headquarters were the focal point for the development of all screening tools and communications with the field. These units were also responsible for briefing all CIC personnel who were posted to refugee camps in Macedonia and Albania as well as CIC personnel working in the initial settlement camps in Canada.

It is important to note that the level and quality of screening tools and mechanisms developed in response to the Kosovo crisis was made possible due to the specialized knowledge within CIC on War Crimes and the Balkans as well as the availability of a wealth of information about the crisis. The same approach to screening might not have been possible had the crisis occurred in an area of the world where limited knowledge, expertise and information existed.

To summarize, appropriate screening procedures were developed by CIC and the Canadian Security Intelligence Service (CSIS) for the resettled refugees under the Emergency Evacuation Program. CIC was well informed by key partners on the potential security threat to Canada posed by terrorists, organized crime members and war criminals. Despite the large number of cases involved and the screening concerns, the Kosovar population, in general, did not pose a threat to the integrity of Canada’s immigration program.

Lessons learned from the Kosovo experience include:

- Screening tools must focus on the needs of field officers by being informative, concise and not burdened by excessive security handling considerations;
- Effective communication between field officers and National Headquarters is key and requires a communications infrastructure that is deployable, dependable and secure;
- Links with partner agencies in Canada and abroad must be utilized to their fullest to ensure the timely dissemination of pertinent information ;

- Emerging refugee crises must be monitored to identify the need for contingency planning which includes the development of screening tools, expertise, and data bases

Conclusion

Canada supports a balanced approach that safeguards resettlement programs against abuse by terrorists and criminals while maintaining our traditional humanitarian role. The introduction of enhanced screening procedures has improved program integrity and allowed Canada to continue to extend humanitarian assistance to those who deserve it. For the vast majority of cases, processing times have not increased and recourse to referral for screening purposes has allowed officers to make informed decisions regarding the admissibility of applicants.

Canada will continue to alleviate the hardship suffered by refugees by offering protection through resettlement and will counter the threat posed by emerging criminal elements and terrorists. To meet this challenge Canada remains committed to the further development of effective and timely screening tools and to building upon existing partnerships with national and international stakeholders.

Despite the increased international vigilance in all aspects related to transnational criminality and terrorism Canada is careful not to make any unfounded linkage between terrorism or criminal activity and refugees. Canada urges other resettlement States to maintain their resettlement program to ensure that refugees are not inadvertently negatively affected by a desire to combat terrorists at the expense of genuine refugees in need of protection.

Canada's approach is to uphold international refugee instruments, including established exclusion and ineligibility provisions. In response to September 11, Canada has introduced new security

and criminality screening mechanisms in tandem with the uninterrupted processing of refugees overseas. New challenges have translated into new opportunities to improve existing screening and communication infrastructures both internally and with stakeholder organizations nationally and internationally.

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