

At this international level, the YWCA, as part of a group of non-governmental organizations in Geneva, concerned about the lack of attention given to the specific needs and contributions of refugee women, made a point of raising publicly the question of women as often as possible at the Executive Meeting of the United Nations High Commissioner for Refugees (UNHCR). While the word "women" did not appear in the introductory documents presented at the Executive Committee, two paragraphs of the final document now deal with refugee women's questions. This was not considered a huge movement forward, but at least it shows that the concern has been registered once again by the policy makers of UNHCR and not shelved among the many issues raised.

Closer to home, the national body of the YWCA in Canada has played a meaningful role in relation to refugees. At its

quadrennial Conventions over its long history, the YWCA of Canada has recommended to the government of Canada that action — government support, financial and humanitarian response — be given to refugees in the Middle East, Africa, Asia and Latin America. The YWCA of Canada continues to work with other Canadian refugee aid groups to monitor government policies related to refugees and advocating for refugee women. At the national office of the YWCA of Canada a year ago, the Canadian government announced the "Women at Risk" program in connection with the refugee sponsorship contract signed with the YWCA.

One cannot overlook the work being undertaken by a number of local associations of YWCAs across Canada, which from day-to-day provide a safe haven to refugee women and their children; which feed them, counsel them, and support

them when they are lonely, or uncertain about their futures. Some also organize workshops and work with other organizations to study the problems of refugee women and the root causes of the flow of refugees.

This article would be very lengthy if I were to describe the work of other YWCAs across Canada related to refugee women, or that of YWCAs overseas (in Botswana, Thailand, Malaysia, Papua New Guinea, Middle East, Austria, Italy, and Latin America). Increasingly the YWCA recognizes the magnitude of the problems to be addressed, and that much more still needs to be done to help refugee women help themselves, and advocate for their rights.

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YWCA Brief On Bill C-55:

Submitted to Senate Standing Committee on Legal and Constitutional Affairs (February, 1988)

The YWCA of Metropolitan Toronto is a women's voluntary, non-profit membership organization. It is committed to the achievement of equality for women in society by working for social and economic justice for women and girls. With regard to refugees, our association provides orientation, residential and

counselling facilities, as well as emergency and referral services to women refugees and refugee claimants. Regularly sponsored public events on refugee issues related to women have been an ongoing part of the activities of our association.

As a local association in Canada, we support and are supported

by, our affiliation with the YWCA of Canada and the World YWCA which brings together over 80 national associations. Our concerns regarding Bill C-55 result not only from our direct involvement with refugees in Toronto, but also from our partnership with the world movement that responds to the needs of refugee women on every continent.

Concerns regarding proposed Canadian refugee legislation have been expressed by our world organization. In May 1987 the World YWCA sent the communication to Prime Minister Brian Mulroney quoted above in Barbara Gibaut's article. The concerns expressed by the World YWCA are the concerns of the YWCA of Metro Toronto as well.

Bill C-55: Key Issues

The YWCA of Metro Toronto supports the widely acknowledged need for reformed refugee determination procedures that are fair and expeditious. We deal regularly with victims of the present system — people who live prolonged lives of anxiety and uncertainty, who suffer from the strains of family separation, living hardships and exploitation by unscrupulous employers due to the length of the present determination process.

A more efficient procedure is clearly necessary in order to alleviate these hardships for the genuine refugees and to allow for suitable action with regard to the non-refugee. However, we do not share the view of this Government that efficiency can only be achieved by depriving refugee claimants of the right to make their claim, and to make an appeal if and when necessary.

Our concerns regarding proposed legislation which would put limitations on access and remove a meaningful appeal, have been reflected repeatedly in presentation by many groups of expert witnesses before the Standing Committee on Labour, Employment and Immigration, the

Legislative Committee of the House, and to the Senate Committee. In particular, we endorse the analysis of Bill C-55 prepared by the Toronto Refugee Affairs Council in its Brief "A Critique of Bill C-55," February 1988.

Compelling arguments have been made by many witnesses regarding the inadequacies of the proposed pre-screening and lack of appeal. Serious questions have been raised about those aspects of Bill C-55 which have the potential to create unwarranted risks to the refugee claimant, which violate rights included in the Geneva

they do by reason of the law and by reason of our duty to uphold our international obligations towards refugees.

a) Time of Request Screen. We are concerned that a refugee claimant who fails to make her request for refugee status known to the adjudicator at the outset of the immigration inquiry will be precluded from making the request at any other time. The potential risk to the refugee is aggravated by the short period of time — within 72 hours — in which the government plans to conduct the inquiry. Women arriving as refugees in their own right are inevitably in a state of exhaustion, trauma and fear. Many feel shamed by their situations and are psychologically unprepared to reveal themselves as refugees, particularly to government officials. Women do not take the decision easily to flee their homeland. Hours of counselling and trust-building are often required to prepare for the next reality. For some, making the decision to claim refugee status is, in and of itself, traumatic, especially when the refugee-creating circumstances involve sexual abuse and/or social ostracism. It is unacceptable that a refugee claimant be returned their country of origin simply because of a technical failure to trigger the process at the one avail-

able opportunity. Given the reality of the impact of the refugee experience on many claimants, more flexibility is essential in ensuring that no genuine refugee is fouled as a result of a technicality.

b) Country Compliance with Article 33 Screen. We do not support the so-called 'safe country' screen which will result in the removal of persons to situations where they may be far from 'safe.' We note with concern that the original notion of 'safe country' has been further restricted by amendments to C-55 to remove even the safeguard of 'safe country' as generally understood and expressed by the UN High Commissioner for Refugees. These in-



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Convention relating to the Status of Refugees, which violate procedural safeguards agreed to by Canada in various Conclusions of the Executive Committee of the UNHCR Program, and which violate Sections 7 and 15(1) of the Canadian Charter of Rights and Freedoms. Our brief will not attempt to repeat those arguments, but to underline our concerns regarding additional risks to the refugee claimant who is a woman.

Pre-Screening Issues

The fundamental issue at stake in pre-screening is whether every refugee claimant has the right to a hearing. We believe

clude arrangements between countries which will ensure both the protection and solutions, and the taking into consideration of individual circumstances and the intentions of the asylum seeker.

In addition to the many objections to this proposed arbitrary exclusion which have been expressed by all non-governmental, informed witnesses, we note with particular concern the effects of 'safe country/Article 33' screening for refugee women. It is well known that women asylum seekers in many first asylum situations, especially if alone, face serious protection problems. Incidents of rape are commonplace, as is the demand to exchange sexual 'favours' in return for basic food and medical necessities. Forced prostitution is an all too frequent reality. Implementation of the 'country compliance test' as an indicator of eligibility will certainly force women back into situations which fall short of any acceptable notion of protection and could result in refoulement.

In light of the widely held concerns about the risks to refugees created by this section of Bill C-55, we urge the Senate to propose amendments which would:

1. provide universal access to the refugee determination procedure;
2. deal with the question of "need of Canada's protection" as a right to remain issue to be made after the positive identification of the person as a refugee. Persons determined not to be refugees and outside the scope of our humanitarian programs would, of course, be returnable to their country of origin.

c) Credible Basis Test. The recent changes to C-55 now appear to allow for some consideration of the merits of a claim in the credible basis determination by the adjudicator and Refugee Board member. However, we are deeply concerned of the risks to the refugee inherent in exclusion from the process without the benefit of a full hearing and that the particular sensitivities of a refugee women's claim may well be overlooked in a pre-screening situation.

The credible basis test will not likely ensure the environment and expertise required to make an accurate determination regarding eligibility, especially when the

decision is based on circumstances that have gender implications. It is only in recent years that the phenomena of women asylum seekers has received international attention and representative case law is still lacking. The issue of sexual abuse as a recognized form of persecution is still debated in some circles, as is the act of transgression of social mores as a qualification as a member of a particular social group. Because these issues are relatively new and not widely understood, we fear that women asylum seekers will face an even more onerous burden in meeting the proposed credible basis test. There is no good reason for this test. One full hearing on the merits of the claim before the Refugee Board members would be more efficient and expedient.

Lack Of Appeal

We seriously question the assumption underlying the proposed new determination procedure that the 'right decision' on every refugee claim is virtually assured in the proposed two-person oral hearing. No one with whom we have spoken, especially people who have recognized expertise, is willing to defend the proposed leave to appeal to the Federal Court as an adequate safeguard for the refugees.

It is inevitable that errors will be made in the first determination. There will be errors resulting from inexperienced decision-makers, lack of up-to-date information on country situations and normal judgement error. We also fear that some claimants may fail to establish their claims adequately due to a psychological inability to reveal all the relevant details of the claim at the first hearing.

A reality with a significant number of claimants is their fear, in the first instance to confide horrifying and demeaning incidents to a stranger, whether a lawyer or a government official. It is not until the person comes to terms with the reality that disclosure is essential to achieve protection against refoulement that their internal resources can be mustered to reveal pertinent facts.

Under the new procedures that fast scheduling of hearings many not facilitate the proper development of a case and the possibility of error due to incomplete case presentation will be exacerbated. We do not believe that the lack of a meaningful

appeal can be justified when the chances of error are significant and the consequences of error are so serious. We concur with the views of the Chairperson of the Immigration Appeal Board and the UNHCR that the lack of, at least, an internal, centralized review will undermine the intent of the new procedure to make fast, fair, equitable and accurate decisions. We recommend the model outlined in the Toronto Refugee Affairs Council brief which, if adopted, would effect a fast, fair determination procedure that would be in compliance with the Charter of Rights and Freedoms and our international obligations.

Conclusion

YWCA members across this country and around the world are awaiting the outcome of the Senate's review of Bill C-55 with great hope that the most serious flaws in Bill C-55 will be corrected before people's lives become threatened. Your careful, reasoned response to Bill C-84 gives us confidence that you will also identify those changes to Bill C-55 which are necessary to ensure compliance with constitutional requirements and our international obligations. As you examine the controversial issues, we urge you to remember that the outcome of your deliberations will have very profound consequences for refugees seeking protection in our country. The issues at stake run deeper than legal arguments. They strike at the very heart of our collective Canadian identity and will. The act of offering protection to refugees cannot weaken our social and moral fibre, and our history has shown us many times over that the richness of Canada is derived from the millions of people who sought Canada's protection in other times, but for the same reasons that compel refugee movements today.

We urge your support of the many recommendations here before you that would guarantee the right of every refugee claimant to full access to a determination procedure and, when necessary, to a centralized review mechanism under the jurisdiction of the Refugee Board.

We are confident that you are fully aware of the critical importance of these changes to ensure fair and expeditious procedures.