Chapter 9

AN INTERNATIONAL DISGRACE - DETENTION

It was noted in chapters 7 and 8 that a policy of detention has evolved in Australia and that whilst the law of Canada permits detention it is only mandatory in certain defined cases. In Australia the law regarding detention has been amended on numerous occasions but has moved towards a harsh regime.

The detention of asylum seekers along with other immigration offenders is routine State practice in dozens of countries around the world, both among developed nations and the Third World. That such detention policy has never become a major public issue in any of the States in which it is applied is due in the main to the relative silence on the subject by the governments involved. This in no way reflects the continuing injustice of such policy, nor the desperate plight of those affected by it. A UNHCR report issued on 23 November 1995 criticised European countries detaining asylum seekers. The report said countries were holding asylum seekers for weeks, months and sometimes years in closed camps, prisons and airport transit zones while awaiting a decision on their claim for asylum. The report recognised that some immigrants were using the asylum process to seek economic or other opportunities in Europe, but asked countries to make a distinction between the situation of refugees and asylum seekers and that of aliens.

As part of the policies of governments to deter asylum-seekers, detention policies have been introduced. The concept is that if asylum-seekers are incarcerated they might leave the country or not come at all.

This aim of creating a human deterrence is a highly questionable one both in its effectiveness and in the manner of its application. It is difficult to justify a policy of detention. It has failed to deter further asylum seekers. Only long term solutions to the complex social, political and economic causes of refugee flows will effectively stem the tide in the future. It is wasteful and expensive exacting an enormous economic cost to

the societies instituting it. The cost of detention in Australia was discussed in Chapter 7. Detention causes serious long-term psycho-social effects on the detainees themselves and upon their families, making their ultimate adjustment to a resettled life all the more difficult. Trauma, stress, anxiety, a deep sense of injustice and despair, hopelessness, uncertainty, all haunt the detainees, who may respond by withdrawing, by suicidal behaviour or by more active forms of resistance such as hunger strikes or riots.

The Australian Government has established a detention centre at Port Hedland in the north-west of Western Australia. The policy of mandatory detention and the location of this detention centre are clearly designed to be deterrents to refugees. It is also a deterrent to the media to see what is happening.

The practice of both Australia and Canada will be examined against an analysis of international law. It is not proposed to consider the subject of detention in considerable depth in this thesis. This topic is wide enough to warrant a separate thesis. To omit some discussion would have ignored one of the most contentious matters of concern to NGO's in refugee policy. However, the practice of both Australia and Canada will be examined against an analysis of international law.

What is the position in international law?

Article 1 of the 1951 Convention and 1967 Protocol is the key clause which mandates international protection for those outside their country of origin who have a well-founded fear of persecution there on account of political opinion, race, nationality, religion or social group membership. Article 31 of the Convention provides:

> "1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
>
> "2. The Contracting States shall not apply to the movement of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularised or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country."

In my view Contracting States are obliged not to penalise refugees for illegal entry alone. Furthermore Article 26 provides:

> "26. Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances."

Paragraph (2) of Article 31 permits detention of refugees provided that the detention may be desirable as "... necessary and ... (is) only applied until their status in the country is regularised or they obtain admission into another country". As Robinson (1953, 154) noted:

> "The Convention does not specify for what purposes the restrictions are necessary ... It will depend on the specific nature of the refugee and the conditions prevailing in the country whether the restrictions may consist of confinement in a camp or imprisonment."

Robinson (1953, 154) suggested that the Ad Hoc Committee drafting the 1951 Convention had in mind that necessary restrictions would be to protect national security or to deal with special circumstances as such great and sudden influxes of refugees. Detention for purposes such as establishing the identity of asylum-seekers, conducting essential medical checks of a quarantine or emergency nature and during a reasonable period while refugee claims are assessed would also seem to fall within the scope of the permissible restrictions. Such detention may be said to be not incompatible with the obligations assumed by signatories to the 1951 Convention to extend protection to those who are refugees as defined. Detention to ensure compliance with refugee determinations may also be considered necessary especially where there is reason to suspect the asylum-seeker will abscond to avoid the effects of an adverse refugee determination (Takkenberg 1992, 142).

IS DETENTION NECESSARY?

A number of asylum countries' governments have determined that it can be necessary to detain refugee applicants arriving without authorisation. These countries include United States of America, United Kingdom, Canada, Australia, Hong Kong, the Scandinavian countries, the Netherlands, Germany and Belgium. In some countries, there is an absolute maximum limit on the length of detention; in Germany it is eighteen months (this must be endorsed by a judge at two separate intervals) which

may only be exceeded if the country of origin refuses to accept the applicant's return under deportation.

Several countries, including the United States, have guarantee systems, under which applicants are released but a bond must be paid and a relative or friend or interested organisation such as a Church undertakes to guarantee financial support for the applicant and the applicant's appearance before relevant Tribunals as required. In the Netherlands, applicants may be required to report regularly at their local police station pending status determination. By contrast, the administration of Hong Kong, facing the largest number of asylum-seekers in relation to its population and very limited land area, has determined that necessity requires that no illegally arrived refugee applicants be released from detention.

It may be argued that detention for the objective of deterring other possible asylum-seekers is inconsistent with the objects and purposes of the 1951 Convention. The Preamble to the Convention states that its objects and purposes are to provide a framework within which States Parties would co-operate to assure to refugees the enjoyment of the fundamental rights and freedoms set out in the Charter of the United Nations and the Universal Declaration of Human Rights. Using the detention of those who have sought to obtain for themselves those rights and freedoms to deter others from seeking to enjoy them does not contribute to the attainment of those objects and purposes. Helton (1992, 175) concluded:

> "Categorical detention to deter others, practised both in the United States and Canada, violates the refugee treaty provisions to the extent that it requires incarceration without the possibility of release of asylum-seeker, when these individuals pose no risk of absconding or danger to the community."

The above is applicable to the United Kingdom and Australia. However, I do not agree with Helton's conclusion regarding Canada. There is no detention in Canada other than for security, criminal or health reasons.

As stated above, Article 31 of the Convention provides that contracting States may not "impose penalties, on account of their illegal entry or presence, on refugees who, *coming directly* from a territory where their life or freedom was threatened ... enter or are present in their territory without authorisation". This provision suggests that, if the asylum-seekers do not come directly from their State of origin, where they may be subject to persecution, the prospective receiving State may impose certain sanctions. It could be argued that sanctions could include detention and subsequent deportation

to the third State from which the person came. The Convention does not restrict asylum-seekers to a particular State of refuge. Nowhere does the Convention provide that, because asylum-seekers have travelled through a State other than their State of origin, they are precluded from applying for asylum in a third State. On the other hand, since Article 33 precludes *refoulement* only to the country of persecution, deportation to a country where the refugee is safer from both persecution and *refoulement* is arguably legal under the Convention.

Canada and the United States impose restrictions based on the concept of first refuge. For example, the U.S. Supreme Court in *Rosenberg v Yee Chien Woo*, 402 U.S. 49, 57 (1970) held that the entry of the asylum-seeker into the United States must be "reasonably proximate to the flight [from persecution] and not one following a flight remote in point of time or interrupted by intervening residence in a third country reasonably constituting a termination of the original flight in search of refuge".

In considering the question of the detention of asylum UNHCR Executive Committee Conclusion No. 44 arrived at during the 37th Session of the Executive Committee in 1986 should be taken into account. EXCOM 44 and other such interpretative statements are not binding in international law. Nevertheless, they are highly persuasive of the best interpretations of the 1951 Convention and are entitled to great respect as they are issued by the Executive Committee after due consideration of the issues involved. In this respect they are similar to General Committee of the Human Rights Committee.

Clauses (b), (c) and (e) of EXCOM 44 point to three important principles to be observed in connection with the detention of refugee and asylum-seekers:

> "(b) detention should normally be avoided but, if it is necessary, it should be resorted to only:
>
> (i) on grounds provided by law to verify identity
>
> (ii) to determine the elements of the refugee claim; and
>
> (iii) to deal with those cases where the asylum-seeker has destroyed relevant documents or used fraudulent documents, or
>
> (iv) to protect national security or public order.
>
> "(c) fair and expeditious procedures should be adopted for determining refugee status in order to avoid unjustified or unduly prolonged detention, and

"(e) detention measures should be subject to judicial or administrative review."

Paragraph (1) of Article 31 of the 1951 Convention prohibits the imposition of penalties for the act of illegally entering, or being present in the country, of refuge on refugees who:

(a) came directly from the country where persecution is threatened;

(b) presented themselves without delay to the authorities in the country of first asylum; and

(c) show good cause for their illegal entry.

This provision applies before the person has been recognised domestically as a refugee. Paragraph (2) of Article 31 applies to "such refugees" as are referred to in paragraph (1). It requires the lifting of any restrictions imposed when the asylum-seekers "... status in the country is regularized ..." As Robinson (1953, 154) noted, the refugee's status may be "regularized" either when the person is accepted for permanent settlement in the country of refuge or at some earlier time after the arrival of the refugee in that country when the authorities recognise that the person should be protected as a refugee. Regardless of the correct meaning of regularized, a country would be in breach of the obligations imposed by paragraph (1) of the Article if, at any time before regularisation of the status of a refugee to whom the paragraph applies it sought to impose penalties on that person for illegally entering the country. It would be argued that administrative detention, for purposes of immigration processing, is not a penalty within the meaning of this provision.

Whether Article 26 is relevant depends on whether asylum-seekers who are detained are "lawfully in" this country. The difficulty is to decide what meaning to ascribe to the words "lawfully in". If the problem is approached from the perspective of international law, it is possible to argue that any person who meets the requirements of the definition of refugee contained in Article 1 of the 1951 Convention is lawfully in a country as they may call upon that country to give them the protection to which they are entitled under the 1951 Convention; they may not be returned (*refouled*) to the country in which they face a well-founded fear of persecution (Article 32); and they may not be penalised for entering the country illegally (Article 31(1)). However, if the problem is approached from the perspective of domestic law, such a person would not be lawfully in the country until such time as their refugee status has been recognised and they are issued with an authority to remain.

It is submitted that the better interpretation of the phrase "lawfully in" is that it relates to lawfulness in domestic law so that some processing of the asylum-seeker and grant of an authority to stay in the country is required. Where the drafters of the 1951 Convention intended a provision to operate before the asylum-seeker had obtained municipal approval to remain in the country they made that clear (Article 31). Moreover, Robinson (1953, 133) stated:

> "The intent of Article 26 is to assimilate refugees to aliens in general. This was considered sufficient because freedom of movement are ordinarily granted to all aliens but in some instances certain restrictions may exist (for instance), they may need a special license to move to overcrowded places or to go to restricted areas."

However in most countries aliens are required to hold some form of approval granted under domestic law in order to be allowed to reside in the country. In some countries approval is given to classes of aliens but more usually, each is required to hold a permit issued by the authorities of the country.

Outside of the 1951 Convention international law does not deal specifically with questions of detention or conditions in relation to refugees. However, general human rights law does deal with the question of detention in any circumstances and these general principles would be applicable to the detention of refugees.

General human rights law can be characterised as those rights stated in the Universal Declaration on Human Rights, which were translated into binding form in international instruments such as the International Covenant on Civil and Political rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The United Kingdom, Australia and Canada are parties to both those Covenants. Additionally, it can be argued that some provisions of the Universal Declaration on Human Rights have become binding as rules of customary international law, especially those prohibiting slavery, torture, arbitrary detention and systematic racial discrimination.

As discussed in chapter 5 in 1991 Australia also acceded to the Optional Protocol to the ICCPR. Canada acceded in 1976. This provided for Australian recognition of the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State of a right set forth in the ICCPR. This is an important Protocol. It means any individual asylum-seeker can lodge a communication in relation to prolonged detention. The United Kingdom however, has not acceded to this Optional Protocol

nor has the United States of America. Recent decisions of the European Court of Human Rights have put a limitation on the period of detention. Australia's late accession was, no doubt, for the same reason that the United Kingdom and the United States of America have not acceded namely, whether it is prudent to give individuals a right of access to the Committee. I have doubts as to whether the Australian decision was sound.

As stated above, the 1951 Convention does not specify what is meant by "necessary" restrictions on refugees. In international human rights law, detention of a person must be done for a specified reason and subject to specific laws. Hence, the International Covenant on Civil and Political Rights, Article 9(1) makes it clear that:

> "(1) Everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.
>
> "(3) It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and should occasion arise, for execution of the judgment."

This principle originates from the Universal Declaration on Human Rights.

> Article 3 - "Everyone has the right to ... liberty and security of person."
>
> Article 9 - "No one shall be subjected to arbitrary arrest or detention."

While international human rights instruments do not specifically deal with detention or refugees, it is worth noting that an exception exists in the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms. Article 5(1) of that Convention states:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure described by law:
>
> (f) (including) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

ICCPR

There are a number of other rights and guarantees in the International Covenant on Civil and Political Rights which may be applicable to unlawful entrants to United Kingdom or Australian detainees under the Immigration Act 1971 (U.K.) or Migration Act 1958 (Aust.). These are:

(a) the obligation on State Parties to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the [ICCPR] without discrimination of any kind, such as race, colour, sex, religion, political or other opinion, national or social origin, property, birth or other status (Article 2).

(b) the prohibition on torture and other cruel, inhumane or degrading treatment or punishment (Article 7).

(c) the right of a detainee to challenge the lawfulness of his or her detention before a court (Article 9(4)).

(d) the right of detainees to be treated with humanity and with respect for the inherent dignity of the human person (Article 10(1)).

(e) the right of everyone lawfully within the territory of a State to liberty of movement (Article 12(1)).

(f) the right of equality of all persons before the courts and tribunals (Article 14(1)).

(g) the right of equality of all persons before the law and the entitlement to equal protection of the law, without discrimination.

The rights and freedoms recognised in the ICCPR and which I have enumerated above are stated in broad, general terms. Interpretative assistance is provided by statements of the United Nations Human Rights Committee, the treaty body established under the ICCPR and regarded as the foremost treaty body in the United Nations human rights system. These statements are contained in General Comments on the ICCPR issued by the Committee and in the Committee's decisions on complaints by individuals brought under the First Optional Protocol.

Many of the principles relevant to detention are expressed in instruments which are not legally binding in international law. It might well be that these principles and the guidance which they provide represent much of the current international thinking on relevant issues and may themselves be referred to by treaty bodies such as the Human

Rights Committee for the purposes of interpreting the scope of a particular treaty obligation. The major relevant principles and guidelines on detention practices are to be found in the Standard Minimum Rules for the Treatment of Prisoners (United Nations 1993, 243) and the Body of Principles for the Detention of All Persons under Any Form of Detention or Imprisonment (United Nations 1993, 265). In 1991 the Commission on Human Rights created a Working Group on Arbitrary Detention. The terms of the Working Group's mandate and the Principles it has adopted, which are based on the Body of Principles, provide guidance on appropriate regimes for administrative detention. Moreover, the Working Group sees the Principles it has adopted as reflecting international standards (Working Group on Arbitrary Detention 1993, 10-13).

Article 2 of the ICCPR provides that State Parties shall ensure to **all** individuals within its territory the rights recognised in the ICCPR. This means to the extent provided for in the ICCPR, non-citizens in Australia and the United Kingdom have the same rights and protections as Australian and United Kingdom citizens. The Human Rights Committee at its 27th Session on 14 September 1992 reiterated this obligation in General Comment 15 on the rights of aliens vis-a-vis citizens under the ICCPR.

In international law aliens do not have a right to freely enter or reside in the territory of a State Party and consent for entry may be subject to conditions relating, for example, to movement, residency and employment (Paragraph 6, General Comment 15 HRC). The Human Rights Committee has also stated that the Covenant does not recognise the rights of aliens to enter or reside in the territory of a State Party. It is, in principle, a matter for the State to decide who it will admit to its territory. However, in certain circumstances an alien may enjoy the protection of the covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhumane treatment and respect for family life arise (Paragraph 5, General Comment 15, HRC). Thus, aliens are protected by and enjoy, for example, the principle of non-discrimination, the prohibition on inhuman treatment and the right to liberty and security of the person.

General Comment 8 on Article 9 states:

> "1. ... paragraph 1 is applicable to all deprivations of liberty whether in criminal cases or in other cases such as, for example, ... immigration control etc. ... [T]he important guarantee laid down in paragraph 4, i.e. the right to control by a

court of the legality of the detention, applies to all persons deprived of their liberty by arrest or detention ...

"4. ... Also if so-called preventive detention is used, for reasons of public security, it must be controlled by these same provisions, i.e. it must not be arbitrary, and must be based on grounds and procedures established by law (para 1) ... and court control of the detention must be available (para 4) ..."

In *Alphen v The Netherlands* (Decision adopted 23 July 1990. *Report of the Human Rights Committee* Vol. II, Supplement No. 4 p. 108), the Human Rights Committee considered a case of pre-trial detention for the purposes of criminal investigation. Under Dutch law, arrest and remand in custody of suspects in a criminal investigation is normally limited to 16 days. The complainant was, in fact, detained for 9 weeks. It was uncontested that the judicial authorities observed the rules governing pre-trial detention laid down in the relevant municipal legislation. The Human Rights Committee, however, took the view that the facts disclosed a violation of Article 9(1) of the ICCPR. The Committee found that the reasons the authorities had for the prolonged detention:

> "was (that) the applicant continued to invoke his obligation to maintain confidentiality," and "the importance of the criminal investigation necessitated detaining the applicant for reasons of accessibility."

The Committee held that the complainant was not obliged to co-operate in the investigation and, therefore, the prolonged detention was not necessary in all the circumstances. The Committee stated:

> "The drafting history of Article 9, paragraph 1 confirms that arbitrariness, is not to be equated as 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability. This means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances. Further, remand in custody must be necessary in all the circumstances, for example, to prevent flight, interference with evidence, or the recurrence of crime."

Having regard to *Alphen v The Netherlands* the key issues in determining whether the detention of illegal entrants and unauthorised arrivals is arbitrary for the purposes of the ICCPR are whether the detention regime is reasonable and necessary in all the circumstances or it has otherwise assumed the character of arbitrariness in the sense of inappropriateness, injustice and lack of predictability.

As stated above that detention must be subject to specific laws. In the United Kingdom detention is authorised by the Immigration Act 1971. Pursuant to this Act unauthorised arrivals are only detained if they are refused entry, or pending a decision on whether or not to permit entry. If the decision-maker is satisfied that a person will not disappear into the community, the person is released with temporary authority to remain. Bail or reporting conditions may be applied.

In general, asylum applicants are not detained on the basis that they are unlikely to disappear into the community while their applications are still being considered. All asylum-seekers released into the community are released on bail, which involves lodgment of a surety from the applicant as well as from two members of the community. Bail conditions may also specify a place of residence and/or reporting to the police. However, if an application is considered to be frivolous, and the applicant unlikely to be successful, the applicant may be detained. Where an applicant is detained, it is Home Office policy for the asylum application to be processed quickly. I understand that well over half the detainees at present being held have been held for more than three months.

There is no maximum period of detention specified in the Act. Detention is reviewed as a matter of policy. After 6 months it is reviewed by the Minister personally.

The Asylum and Immigration Appeals Act 1993 increased detention of applicants who lodge frivolous applications and provided that asylum applicants be detained as soon as they are refused, to ensure that failed applicants are removed. As a result the number of asylum-seekers in detention has risen from 317 in July 1993 to 622 January 1994 (*Times* 22 February 1994).

As is stated elsewhere, as a signatory to the 1951 Convention, Canada cannot impose penalties on refugees because they enter Canada or are present without authorisation, provided they come directly from the country of persecution and present themselves without delay to the authorities (Article 31(1)). Article 31(2) provides countries also cannot apply unnecessary restrictions on the movements of refugees on account of their illegal entry or presence. Additionally, Article 9 of the Canadian Charter of Rights and Freedoms guarantees everyone freedom from arbitrary detention. It is difficult to justify the detention provisions of the Immigration Act 1976 (Canada) namely ss 12(3)(b) and 1, 1(7). However, the Courts have taken a different view. In *Dehghani v Minister for Employment and Immigration*, Fed. C.A., Doc. No. 476-89, June 26, 1990, the Court noted that everyone including a Canadian citizen or

permanent resident who has a right to come into Canada is detained when he presents himself for admission at a port of entry. Such persons are not detained in a constitutional sense because they have not been put in the position they are in by an agent of the State, rather the individual has put himself in that position by his own action in seeking admission to Canada. When a person presents himself at a port of entry, admits that he has no right to come into Canada and claims to be a Convention refugee, the immigration officer has a duty to inquire whether that person may be admitted pursuant to section 6(2), section 8 and whether that person should be detained pursuant to section 12(3).

Whilst detention might be sanctioned by international law and domestic law it is submitted that the treatment being given to asylum-seekers is far more severe than that given to persons charged with a serious indictable offence. A person charged with murder with a previously unblemished character has a reasonable chance of getting bail yet an asylum-seeker has little chance. If he does he is subjected to very onerous reporting conditions.

In chapter 7 changes to the law relating to detention in Australia were detailed. The numerous cases relating to detention were not detailed. There are so many. Indeed, detention of refugees in Australia is a topic upon which much has been written and will be written. I, therefore, do not intend to go into this subject in detail. Whether or not refugees should be detained is an emotional issue. There can be no justification for detaining refugees for years as has been the situation in Australia. There is justification for detaining refugees for security, criminal or health reasons as is the position in Canada. There is also justification for detention for an initial period whilst the applicant is being interviewed so that a decision can be made as to whether the claim is "manifestly unfounded" or not. If there is a case for consideration then a Bridging Visa should be granted and the asylum-seeker released into the community as is the case in Canada.

As has been pointed out elsewhere, both Australia and Canada are determined to control who is admitted across the borders. Canada seems to have achieved this without long-term mandatory detention. Australia, on the other hand, seems to consider its policy of detention as a deterrent to refugees. Those with unfounded claims should be repatriated without delay. Detention is not the answer.

Chapter 10

INFLUENCES

In the public policy model advanced in chapter 7 it was suggested that community and other non-government organisations could have direct input into public policy namely refugee policy. For such input to be effective, proposed policy or changes to policy must be well developed. It must be realised by community and other non-government organisations that senior bureaucrats of the Australian Department of Immigration and Ethnic Affairs and Canada Immigration are generally very competent officers and well briefed in relation to developments in refugee policy in other countries. It goes without saying that if there is to be any impact on policy formulation the representatives of those community and other non-government organisations have to be equally professional. The argument has shown the difficult situation that policy has now reached because in both countries it is intended to be a deterrent. In this chapter we test the effectiveness of non-government organisations in shaping and influencing policy before putting forward the need for a fully developed refugee policy in both Australia and Canada but especially in Australia.

In previous chapters, this thesis has examined the role of international law, human rights law and refugee law in the determination of refugee status. It has considered the development of refugee policy and law in Europe and more specifically in Australia and Canada. In this chapter, it is proposed to examine influences on the development of refugee policy in Australia and Canada. As has already been demonstrated, law evolves from policy. It has been shown that refugees need protection and care. UNHCR and States should provide the protection. However, it is generally the responsibility of NGOs to provide care. In this chapter, it is not intended to consider settlement policy or humanitarian aid policy but to examine whether or not government is influenced in policy determination by non-government organisations. It is evident a refugee has no power to influence any government, anyone. Who then is his/her advocate?

In considering the development of refugee policy who exercises power must be considered. Power, most simply put, is the ability to make a difference or the ability to influence the outcome of a situation. We are all in need of power in this most foundational sense. We need to know that we are, at least in some small way, a factor in the equations of life rather than an impotent victim of life. Erich Fromm (1978, 5) has written well of this need. He calls it an "existential need ... a need to effect something, to move something, or to make a dent". When this "existential need" is not healthily fulfilled, a certain rage of impotence can build up within a person. That rage will tend to be destructive to the person concerned and/or others if it is not acknowledged and adequately dealt with.

Governments seek advice from a variety of sources. There is more confrontation in Canada than in Australia, mainly because in Canada there is a greater ability to mobilise public opinion. In both countries there is an attitude: "We know what their views are going to be" expressed by Government and the NGOs. The NGOs are in a difficult situation. On the one hand, they function as partners with government in providing relief, achieving resettlement. On the other hand, they work against government in advocating protection. In Australia, government seeks advice from such diverse groups as the churches, Australian Council of Trade Unions, Industry/Business, ethnic communities, particular refugee groups and aid (material relief) agencies. The Canadian Government has nation wide consultations before drawing up its annual plan. It is usually the function of bureaucrats to advise Ministers on the formulation of policy. In Australia, there is a growing tendency for Ministerial Advisors ("the Minister's Office") to formulate policy, usually based on discussions with departmental officers and outside sources. However, during Senator Bolkus' term as Minister concern has been expressed the Department has not been involved in discussions (Pesonal Communcitions).

NGOs have a further use, one which is not available to the Australian Government and the Department because of mistrust of each other's motives. It is to act as a sounding board for policies and to disseminate policies in the wider community. It is unfortunate that generally the NGOs perceive everything as black or white - there is also a grey area particularly so when dealing with delicate human situations.

UNHCR

In the international arena the United Nations High Commission for Refugees (UNHCR) influences governments and the NGOs influence UNHCR. UNHCR

maintains representatives in most member States. These representatives are often seen by the NGOs as not being proactive enough and the representatives see themselves more as diplomats than as advocates for refugees. In all fairness, representatives cannot be seen to interfere in government. They are bound by the decisions of EXCOM and bring to the attention of a Government the concerns of UNHCR over a particular matter. In both Australia and Canada cordial relations exist with the representatives of UNHCR and there is frequent consultation on matters of policy, for example, the size of the humanitarian programs. While UNHCR has received from the United Nations General Assembly the mandate to provide international protection to refugees and to seek permanent solutions to their problems, it is States that actualise international protection. UNHCR's Statute calls for UNHCR to co-operate with NGOs, as well as with government, for providing protection to refugees and seeking permanent solutions to their problems. The PARINAC (Partnership in Action) program developed by UNHCR in close collaboration with the International Council of Voluntary Agencies (ICVA) aims at enhancing this co-operation. Australian and Canadian NGOs have been to the forefront of the NGOs contributing to this process. They were particularly effective in putting forward a large number of successful recommendations to the Oslo PARINAC Conference in June 1994.

In Australia, prior to 1984, during the term of Mr Guy Goodwin-Gill as Regional Representative, UNHCR fought for individuals, indeed it dealt with every case at primary level. Since then it has been more concerned with policy. There are procedures in place to ensure UNHCR has input into legislation. When a bill affecting refugees is drafted it is examined by the Regional Representative of UNHCR. If it is found to be at odds with the Convention discussions at Officer level take place. If these do not resolve the problems, the High Commissioner in Geneva would pursue the matter from Geneva through diplomatic channels. UNHCR would be, for example, concerned with legislation that would limit the refugee definition. There is no doubt that UNHCR makes policy input in both Australia and Canada however the Australian Government chooses to go its own way (Personal Communications). On the other hand the input of the churches is not effective.

CHURCHES

The view that religion in the modern era is simply a superstitious holdover from premodern times and plays little, if any, role in social movements is rejected. It is submitted that religion remains a major player in the realm of social change, with

special successes and future promise in the area of conflict resolution (cf. Meanjin 1/1993, 49-50; Kepel 1991).

Rather than becoming a faded relic blessing the status quo, as predicted by the modernisation theorists in the social sciences, religion has asserted itself vigorously in the past two decades although many have not yet recognised its transformative role in world affairs. In dismissing religion, the world's superpowers have fallen prey to the same ideological pitfall they so despised in their former Cold War adversary. Most nations attribute social change almost exclusively to political and economic forces ignoring the religious wellsprings of change (cf. Johnston (ed) 1994).

This argument is supported by some examples of the church's transforming role:

- Role of the Moral Re-Armament Network in effecting Franco-German reconciliation after the Second World War;
- Role of the Moravians in the negotiations between the Sandinistas and the East Coast indigenous peoples in Nicaragua;
- Multiple roles of the East German churches in shepherding the conversion to non-communism;
- Role of the Philippine Catholic Church in the 1986 toppling of Ferdinand Marcos;
- Role of the various churches in the collapse of South Africa's apartheid system; and
- Role of religion in the metamorphosis of Rhodesia to Zimbabwe.

The church therefore has influenced public policy as an active agent for change, as in East Germany and the Philippines; as a passive provider of space for political expression, enabling opposition voices to coalesce into a social vision, like the English-speaking churches of South Africa; or a supporter of the status quo until it is forced to change, as happened with South Africa's Dutch Reformed Church. In this thesis, the influence of the Roman Catholic Church is considered. This church is used because it is a universal institution, has a formal organisation and its focus is on refugee issues, settlement and welfare.

The Roman Catholic Church has for many years been at the fore in influencing refugee policy in many countries including Australia and Canada. For example in Australia, the Catholic Church in 1975 worked closely with other community groups

to urge the Government to establish a separate migration category for refugees (Personal Communication, Monsignor Crennan). It was also instrumental in the creation of the Community Refugee Settlement Scheme and a special Assistance Category for Tamil refugees from Sri Lanka. By affirming the dignity and rights of every individual and by indicating the responsibility and purpose of the State and of the international community toward the individual and other States, priority is given to the person in the context of the common good. This moral line of arguing overlaps to a considerable extent with the assumptions of international law. It does, however, run counter to the claim of many democracies that refugees have no right to be accepted into the national community and that their acceptance is a charitable concession (Singer 1988, 111-130). This approach was summarised by Pope John Paul II in his 1992 annual address to the Diplomatic Corps credited to the Holy See:

> "In calling to mind the conditions of those enormous populations we must not forget the men and women who are, perhaps, the most deprived and most exposed to uncertain circumstances of every sort: expatriates and refugees. Let us recall, for example, the tragedy being undergone by those among them who are in camps in Hong Kong, Thailand, Malaysia and other countries or by those who have been forcibly repatriated. In this regard, while affirming that these individuals have the same rights as other people, it is necessary to insist on the duty of the international community to accept its responsibility to welcome them and, at the same time, to promote in the countries from which they come socio-political conditions which permit them to live with freedom, dignity and justice" (*Origins* 21, 570).

Pope John XXIII expressed a longheld view in Christian social teaching when he wrote in *Pacem in Terris* that refugees:

> "... show that there are some political regimes which do not guarantee for individual citizens a sufficient sphere of freedom within which their souls are allowed to breathe humanly. In fact, under those regimes ... even the lawful existence of such a sphere of freedom is either called into question or denied. This undoubtedly is a radical inversion of the order of human society, because the reason for the existence of public authority is to promote the common good, a fundamental element of which is the recognition of that sphere of freedom and the safeguarding of it ... such exiles are persons, and all their rights as persons must be recognised, since they do not lose their rights on losing the citizenship of the States of which they are former members. Now among the rights of a human community where he hopes he can more fittingly provide a future for himself and his dependents. Wherefore, as far as the common good rightly understood permits, it is the duty of that State to accept such immigrants and to help to integrate them as new members" (*Pacem in Terris* 1963, 103-105).

The Catholic declaration of human rights explicitly includes refugees in its provisions, making them possessors of human rights by virtue of their humanity, rather than by virtue of their nationality. After voicing his concern over the injustice and suffering experienced by refugees, Pope John XXIII proclaimed the refugee's rights:

> "For this reason, it is not irrelevant to draw the attention of the world to the fact that these refugees are persons and all their rights as persons must be recognised. Refugees cannot lose these rights simply because they are deprived of citizenship of their own States.
>
> "And among men's personal rights we must include his right to enter a country in which he hopes to be able to provide more fittingly for himself and his dependents. It is therefore the duty of State officials to accept such immigrants and ... so far as the good of their own community, rightfully understood, permits ... further the aims of those who may wish to become members of a new society" (*Pacem in Terris*, 1963, 105-106)

In Catholic thought, the human person is a social being who can only fully experience dignity through participation in a society. Refugee camps and other temporary means of assistance are necessary, but they must never be considered a sufficient response to the refugee problem. The refugee has a right to membership in a society, and States have the duty to offer such membership. In a world of modern territorial States, refugees can only recover this right to full participation in society when they are included in the life of a State.

The moral argument articulated in the Church's social teaching insists on the notion of common good which is the balance of the rights and interests of refugees and of the national and international community, either directly or indirectly affected, whether immediately or in the long term. This argument is also in line with the current human rights debate which proposes a more holistic and integrated approach to the question of refugees, displaced persons and returnees. In this debate the contribution of politics for the resolution of conflicts, the promotion of development, the affirmation of human rights as the content, for example, for exercising the right to stay at home, and the various levels of humanitarian assistance come together. Reference is made to the *Analytical report of the Secretary General on internally displaced persons* (UNESC, 1992). The emphasis on human dignity, on human rights and solidarity comes from the natural moral foundation of the equality of all human beings, a conviction that is generally accepted. The Church has responded by appealing to the world community particularly to governments and NGOs by inviting them to understand and transform the systems and conditions that forcibly uproot people and send them into exile.

This concern is evident in the document entitled *Refugees: A Challenge to Solidarity* jointly issued by the two Dicasteries, the Pontifical Council for the Pastoral Care of Migrants and Itinerant People and the Pontifical Council "Cor Unum". The document is an exhortation directed to all persons and to their national and international leaders to make a renewed attempt to find durable solutions to what John Paul II (1981) addressing on February 21, 1981 the refugees in exile at Morong in the Philippines has called "perhaps the greatest tragedy of all human tragedies of our time".

The document seeks to revive an often fatigued and distracted public opinion by saying no to the silence of indifference toward the inhuman condition of refugees. The Presentation of the document states:

> "Its aim is to stimulate international solidarity, not only with regard to effects, but above all to the causes of the tragedy: a world where human rights are violated with impunity will never stop producing refugees of all kinds."

The document stimulated the Canadian Catholic Church. There is little evidence of it having much effect in Australia. The Australian Catholic Church does not have a good record in social policy. The content of this document focuses succinctly on the various categories of persons in need of protection and on the responsibilities and contributions the international community can make. It points out the way to a solution in the concept and practice of solidarity and it concludes by discussing the specific task of the Church. The document makes five important points.

First, in the broadly defined categories of persons in need of protection are included convention refugees, de facto refugees and people displaced in their own country. Since they are all victims of violence and of threats to their lives and physical safety, there is a demand that international agreements be revised and that the protection they guarantee be extended. For the existing millions of forcibly uprooted people, a mentality of hospitality, generous humanitarian assistance and a quick ending of the artificial and traumatising life in the camps is advocated. Fifteen years after the failed United Nations 1977 Diplomatic Conference on Territorial Asylum, the new geopolitical context seems to invite a renewed effort by the international community to adopt a juridical instrument capable of filling the juridical void caused by the evolution of the refugee situation.

Second, forced repatriation to a country where a refugee fears discriminatory actions and threats to life is totally unacceptable. The principle of *non-refoulement*, now part

of universal customary law, is a non-negotiable ingredient of the treatment of refugees. It is particularly so at this moment when voluntary repatriation is rightly presented as the best alternative to a durable solution of the refugee problem. In fact, very few countries are willing to accept refugees. Resettlement to third-countries is offered to only one per cent of the world's refugees and two-thirds of today's refugees are results of conflicts over a decade old. Voluntary repatriation could become a shortcut to prevent access to asylum procedures or to avoid responsibility for the presence of refugees or simply a euphemism to leave them on their own, if we consider that of the estimated 6.8 million refugees who returned home between 1975 and 1991, over ninety per cent returned in regular fashion making their own risky decisions.

Third, over ninety per cent of all refugees are from rural areas of developing countries and over ninety per cent will stay in developing countries. "Recently the discussion of the causes that generate and aggravate political instability has focused on poverty, the imbalance in the distribution of the means of subsistence, foreign debt, galloping inflation, structural economic dependence, and natural disasters ... However, restructuring of economic relations alone would not be enough to overcome political differences, ethnic discord and rivalries of other kinds" ("Cor Unum" Para. 8). Beyond economics and politics, the Church proposes a way of solidarity and love that alone leads to the heart of the matter. "There will be refugees who are victims of the abuse of power so long as relations between persons and between nations are not based on a true capacity to accept one another more and more in diversity and mutual enchantment" ("Cor Unum" Para. 8). This method prevents the causes of refugee explosions. It implies a right to development and to have a country and the obligation of governments to accept as first point of reference the human person and its inviolable dignity.

Fourth, support is expressed for some specific initiatives and attitudes. Countries which have in the past offered a generous reception to refugees should not succumb now to "compassion fatigue" but should keep the doors open to hospitality and the fair claim of needier persons. Protection is not a concession made to the refugee, but a right. The tendency towards more control - and there is constant reference to closed camps, open camps, detention centres, restricted settlement, holding facilities - should be reversed. "Furthermore, the protection of the human rights of displaced persons require the adoption of specific legislative instruments and appropriate co-ordinating mechanisms, on the part of the international community, whose legitimate interventions cannot be seen as violations of national sovereignty" (Para. 20).

Recognition is given to the felt need for a "system of international control that would ensure refugees the possibility of returning home in total freedom" (Para. 22). Obviously the agenda for action on behalf of refugees is long and challenging.

Finally, "Christians ... are aware that God, who walked with the refugees of the Exodus in search of a land free of any slavery, is still walking with today's refugees in order to accomplish his loving plan together with them" (Para. 25). The local Church in particular "is called upon to incarnate the demands of the gospel, reaching out without distinction towards these people in their moment of need and solitude. Her task takes on various forms: personal contact; defence of the rights of individuals and groups; the denunciation of the injustices that are at the root of this evil; action for the adoption of laws that will guarantee their effective protection; education against xenophobia; the creation of volunteers and of emergency funds; pastoral care. She also seeks to instil in refugees a respectful behaviour and an openness toward the host country" (Para. 26). "Therefore ministers of different religions must be allowed full freedom to meet with refugees (in all camps and settlements), to live with them and to offer them an adequate assistance" (Para. 28).

"The tragedy of groups and even entire peoples forced to go into exile is felt today as a constant attack on essential human rights. The condition of refugees that reaches to the very limits of human suffering, becomes a pressing appeal to the conscience of all" (Para. 35). On her part, the Church offers a disinterested love to all refugees of any and no creed, calls public attention to their situation and contributes with her ethical and religious vision to restore and uphold the dignity of every human person. The Church is not an expert in providing technical formulation. She points out the way of solidarity, the way of the human person, as her way especially the person of the refugee who is most marginalised. In this regard the observation of the Australian National Population Council (1991, 148) is significant in that it is so distant from the policy and practice of the Department of Immigration and Ethnic Affairs:

> "No matter how comprehensive the coverage of the relevant conventions, there is clearly a vast gap between theory and reality in respect of refugee law and doctrine. As the UNHCR Executive Committee stated in 1988, 'a formal legal regime is not the only answer to refugee needs. In particular it cannot operate properly without the political will and commitment on the part of States to ensure that it does so.'"

An International Round Table on *Refugees: A Challenge to Solidarity* was held at the United Nations, New York on 9 March 1993. International Catholic Migration Committee (ICMC) Secretary General, Dr. Andre Van Chau submitted a paper. The

Catholic Conference of the Canadian Bishops (CCCB) submitted a comprehensive paper in which it was argued that:

> "The challenge facing a nation such as Canada, then, is one of forging a consensus about the balance it should maintain between its genuine immigration needs, which include accepting people who can make a significant economic contribution, and more humanitarian responsibilities, such as allowing permanent residents and Canadian citizens to sponsor family members. As well, Canada must decide to what degree and with what spirit of generosity it is willing to abide by its international obligation to provide protection to people seeking asylum."

Subsequently on 16 March 1993 the Catholic Conference of the Canadian Bishops (CCCB) issued "A Prophetic Mission for the Church: Pastoral Message on the Acceptance and Integration of Immigrants and Refugees to Build a Community of Togetherness". This detailed statement which re-enforced the sentiments of *Refugees: A Challenge to Solidarity* was widely distributed throughout Canada.

It is to be regretted that the Australian Catholic Bishop's Conference did not play a similar role. The invitation to attend the New York forum was declined and passed onto the Department. Another opportunity to take part in policy formulation was missed.

CATHOLIC CHURCH IN AUSTRALIA

The International Catholic Migration Commission, headquartered in Geneva, was established in 1951 as an operational arm of the Catholic Church on immigration issues. ICMC extends help to people on the move (refugees, migrants, internally displaced people, returnees) and attempts to influence national and international policy in their favour. Its Council consists of 99 members representing 86 countries. National Bishop's Conferences have designated 84 of the 99 members. The Council has appointed the other 15, consisting of eight co-opted and seven Honorary Members. The ICMC network further extends to affiliations in 72 countries, for example Caritas and Australian Catholic Relief. Two Australian organisations are affiliated with ICMC namely, Australian Catholic Relief (ACR) and the Federal Catholic Immigration Committee (FCIC). The National Chairman of ACR (Mr Michael Whiteley) is President of ICMC. The Australian Catholic Bishop's Conference is not a member of ICMC. It has no national partner in Canada. However the President of Catholic Social Services in Alberta is one of the co-opted Council

members. The eminent Rev. Silvano Tomasic C.S. represents the Holy See. The Annual Reports of ICMC leave little doubt as to the role of ICMC in policy making. For example, ICMC developed a Concept Paper for an agricultural and reafforestation project intended to facilitate the socio-economic integration of Mauritanian refugees into rural society in the Matam region of Northern Senegal. ICMC with an annual income of about $US24 million is mainly involved in "burden-sharing", resettlement and repatriation projects. ACR has supported many of these projects for example in Croatia, Guinea, the Congo, the Central Africa Republic and South Africa. It seems that ACR and not FCIC is the driving force with ICMC. If FCIC was a truly co-ordinating body the reverse would be the case.

Mecham (1991) outlined in detail the history of the Roman Catholic Church in the Australian immigration program. In April 1947 the Federal Catholic Migration Committee was formed. On 14 September 1949 Father (later Monsignor) George Crennan was appointed Director. The Committee was subsequently renamed the Federal Catholic Immigration Committee (FCIC). Crennan remained as Director until 1 July 1995 although now in his nineties.

In relation to refugee matters the Catholic Church lacks structure, there is no co-ordination. FCIC is supposed to be a policy making committee. Its role up to its abolition on 1 July 1995 was uncertain. An undated statement issued by FCIC says:

> "In its particular administrative and supervisory field FCIC treats with governmental, semi-governmental and non-governmental bodies within and without Australia."

It is doubtful whether this mission was being fulfilled.

The primary focus of the Church in regards to refugees originates with the responsibility each diocese has for the "strangers" or new arrivals found within its domain (Personal Communication, Peter Tran CSsR, Pontifical Council for the Pastoral Care of Migrants and Itinerant People, the Vatican). Yet a number of dioceses do not have a Vicar for Immigration. In the Diocese of Parramatta, for example, which has a large migrant population evidenced by the fact there are 16 migrant chaplains who meet with the Bishop at least twice a year there is no formal migration/refugee structure (Personal Communciation, Bishop Heather, 18 May 1995). (In the Archdiocese of Sydney the Vicar sees his role as pastoral. He does not see he has a role in policy development. This is a matter for Canberra and the national office (Personal Communication, Bishop Cremin, 19 May 1995)).

In January 1993, the Bishop's Conference established the Australian Catholic Refugee Office in Canberra, A.C.T. The office was initiated so that the Catholic Bishops would have a vehicle to exercise their pastoral solicitude for the well-being of disenfranchised people. Clearly the office was established to by-pass Monsignor Crennan. The office was established by Archbishop Barry Hickey, Archbishop of Perth and Secretary of the Australian Catholic Bishop's Committee for Migrant Affairs and staffed by Father Larry Reitmeyer, an American. Many see the office as a power base in the east for the Archbishop. The function of the office was to be a resource and policy development office for the Australian Catholic Bishop's Conference; directly aid and support the well-being of asylum-seekers; mediate and be a vehicle for advocacy on their behalf; and facilitate co-operation between organisations involved in refugee work. However, it is really just another example of the discordant, divergent forces of the Catholic Church in Australia.

Senator McKiernan, who seems to be quite anti-refugee in his approach, speaking under parliamentary privilege said of Father Reitmeyer:

> "... the Catholic Priest who purports to look after things for the refugees in Port Hedland. Recently he was barred from any further contact with the people in the Port Hedland detention centre. I do not think Australia, with its 17 million or 18 million people, needs citizens of the United States of America to tell us how we should handle our affairs. If anything grates the public of this country, it is foreigners coming here telling us how to do things and how they could do it better" (*Parliamentary Debates*, Senate, 7 December 1992, No. 20 1992, p. 4299).

Reitmeyer was generally highly regarded for his work at Port Hedland and, of course, he suffered the same fate as others who have the audacity to criticise the Government and the Department on refugee matters. Yet Archbishop Hickey posted Reitmeyer to the new, highly sensitive position in Canberra. It shows a certain lack of understanding of political processes on the part of the Archbishop. It is no wonder relations between the Church and the Minister and his Department are at such a low ebb, so much so that the Bishop's Conference now writes to the Prime Minister rather than Senator Bolkus.

Unfortunately, the Catholic Church in Australia has shown little involvement in refugee policy formulation. In late-1994 the Bishop's Conference appointed two retired NSW public servants, Messrs G. Gleeson and P. Stevens formerly Secretary and Deputy Secretary respectively of the NSW Premier's Department to advise on a

new structure for migrants and refugees and a preferred location. It is understood they recommended that the position of Director be advertised widely with headquarters in Sydney as with the Human Rights and Equal Opportunity Commission, the Jesuit Refugee Service and the Refugee Council of Australia. This advice was rejected by the Bishops. It was decided that the position be advertised but only available to Priests and Religious and be located in Canberra. Whilst Canberra might be the seat of government the majority of people working with, as well as the refugees, are in Sydney and Melbourne. The Bishops decided (*Catholic Weekly*, 7 December 1994) to establish an Australian Catholic Migrant and Refugee Office to advise the Bishop's Conference on all migrant and refugee issues; to be the official Church voice, as approved by the Bishop's Conference, on migrant and refugee issues; to be a channel of communication between the Bishop's Conference and diocesan offices; to provide a mechanism of networking among Catholic and other groups working in this field; and, to lobby governments and other bodies. It is not known how many applications were received. Archbishop Hickey shortlisted two applicants. These were interviewed by a committee comprising Mr G. Gleeson, Bishop J Heaps formerly Vicar for Immigration, Archdiocese of Sydney and now retired, Mr H. J. Grant formerly an officer of the Department of Immigration and formerly Chief of Mission, IOM and Miss Patricia Ravalico, Refugee Officer, St Vincent de Paul Society. The committee did not make a recommendation. It is understood the committee informed Archbishop Hickey he would need some $500 000 p.a. to set up an effective office and that assistance on an interim basis might be available from the Catholic Education Commission. This advice also appears to have been rejected. The Bishop's Migration Committee (Bishop Di Campo, Chair, Archbishop Hickey, Secretary and Bishop Stasiuk, Ukraine Bishop, Melbourne) decided to interview the applicants and make an appointment "on potential". *The Catholic Weekly* (30 April 1995) reported that the unified migrant and refugee office in Canberra would, from 1 July, be headed by Father John Murphy who had been director of the Catholic Immigration Office, Melbourne, since 1969.

The Church clearly needs to present a united front on refugee matters so as to deal effectively with the executive arm of Federal Government. With such dedicated personnel and world-wide resources at its disposal it should be able to be an influential alternative source of advice to government. The Jesuit Refugee Service is part of a well organised, international network reaching the world's refugee generating trouble-spots. It, more so than most other NGOs, understands the global situation in regard to refugees. Unfortunately, this Service is not being used to full potential by the hierarchy of the Australian Catholic Church. It would appear that the

Bishop's Conference being centralist does not want to devolve power to a body over which it does not have absolute control. Along with the Mercy Refugee Service and St. Vincent de Paul Society, the Jesuit Refugee Service is involved with settlement and specific projects, for example, land-mine clearance. These organisations are not involved in policy determination whereas similar Canada organisations are involved in policy formulation. The problem in Australia seems to be that the hierarchy does not comprehend what policy is.

The Church, if it is to be effective in refugee matters, should seriously consider resourcing its new Office adequately. There is a need for the Church to be involved in policy determination, legislation and in the annual discussions with the Department. This requires the employment of specialist staff. It needs to co-ordinate all organisations working in the refugee area including those providing material aid. Until the Catholic Church in Australia can raise its profile on refugee matters, government will not take it seriously. Unfortunately, the new Office sees itself as being essentially pastoral, that is provision and status of Chaplains for the various migrant groups within the Catholic Church (Personal Communication, Fr. John Murphy, 20 July 1995). The result is a muddying of waters. Unlike Canada, the Australian Church is behind where the international Church is at in respect of migration matters.

In 1991, the Australian Catholic Social Justice Council released an issues paper entitled "I am a stranger. Will you welcome me? The Immigration Debate." This paper was intended to stimulate debate on immigration and refugee policy at parish level. Unfortunately, it created little discussion. In June 1992 the Australian Catholic Bishop's Committee for Migrant Affairs and the Australian Council of Churches held a forum "Welcome Stranger". This was well attended however there was no follow up. The Catholic Church in Australia surely has a role in awareness raising and educating its members on matters concerning refugees yet its efforts in this regard are sadly lacking. Leadership from the Bishop's Conference is required as is the situation in Canada

The National Council of Churches in Australia (NCCA), of which the Catholic Church is a full member, has a Refugee and Migrant Service (RMS). The mission statement of this service states:

> "The Mission of the Refugee and Migrant Services of the National Council of Churches is to encourage and assist member churches to respond in an ecumenical spirit to the plight, aspirations and needs of

> refugees and migrants, through policy analysis and development, awareness-raising, education and co-operation effort for solidarity in action" (NCCA 1995, 1).

The range of submissions to the Minister on refugee matters from this service is impressive. They are well presented and the result of wide community consultation. The reports contain options and recommendations. Two example are "The Women at Risk Program: Problems in Implementation and Some Suggestions for Change" and "A Report to the Minister for Immigration and Ethnic Affairs on The Impact of the Humanitarian Migration Program's Travel Costs on Entrants, Community Groups and Non-Government Organisations". However, the most significant is the "Submission to the Minister for Immigration and Ethnic Affairs on Australia's Refugee and Humanitarian Intake 1995-1996". Past submissions were supplementary/ complementary to that of RCOA. This was not the case in 1995. The submission was the culmination of extensive consultations with churches, migrant resource centres and ethno-specific organisations. The report was discussed at a forum convened by NCCA on 10 February 1995. The Catholic Church was invited to participate however its participation was at the level of a staffer of ACR whose experience in refugee matters is limited to material relief. Participation should have been at a policy level. Once again the power struggles in the Church were at work. It is submitted that the Catholic Church would be better served by joining its very limited resources with the Refugee and Migrant Service of NCCA. The Church does not consider it should join with NCCA. It prefers to work with the other Churches in the area of decision-making at Government level (Personal Communication, Fr. John Murphy, 20 July 1995). This Service can demonstrate its influence on policy determination in such areas as SAC, Women at Risk, Refugee Intake. The result could be what a consultant who reviewed RMS in 1991 envisaged:

> "Within the spectrum of NGOs there is some distinctiveness about the church based ones. They are normally a part of an international movement or structure on the one hand and have a real local grassroots presence on the other. They are in the best position to be fully in contact with most dimensions of the refugee experience.
>
> "This puts RMS in a unique position in this country. It should be able to be pivotal in ecumenical networks that reach to regions where refugee situations are caused, to regions of first asylum and resettlement and to those responsible for protection, care and shelter. At the same time it also has the potential to influence the thinking of Australians and their government on humanitarian concerns" (Personal Communication, RMS/NCCA).

Surely the Churches would have more effective participation in the policy process and decision-making at government level if they spoke in one voice.

What is puzzling is why the Christian Church with so much potential voting power if mobilised to back its stance waits until the deathknock before making its views known. Disappointing is the reluctance of the Church across Australia to be a social and political force on all the issues threatening social standards and routine principles of equality. On questions of social justice in relation to refugees especially the church is seen to be hesitant, withdrawn and politically ineffectual.

CATHOLIC CHURCH IN CANADA

On the other hand the Catholic Church in Canada is highly organised. The Catholic Conference of the Canadian Bishops (CCCB) has worked through the Inter-Church Committee for Refugees (ICCR), an ecumenical coalition developing policy positions on behalf of Canada's churches. Since its foundation in 1979, ICCR has developed policy positions both in respect to Canada's own policy and international policy. For example, each year ICCR has prepared a brief to the Canadian government concerning the EXCOM meetings of UNHCR. As well, there have been briefs in response to legislative changes and briefs on such matters as torture, deportations, interdiction and resettlement.

Individual dioceses have agreements with the federal government whereby parishes of the diocese can sponsor refugees to come to Canada. Many parishes have been involved in sponsoring refugees from a variety of countries.

Thompson (1994) outlined the history of ICCR. It is obvious that ICCR has had considerable influence in policy formulation. The Committee has continually pressed for the application of human rights standards in countries of origin. It lobbied successfully for refugee claimants to be given a full oral hearing and for the refugee determination process to be streamlined. With the Canadian Council of Churches, the Committee was granted intervener status by the Supreme Court in the Singh case.

In the human rights arena, ICCR pressed the government about its international treaty obligations with respect to proposed forced returns of certain groups in Canada, specifically Haitian, Salvadorean and Lebanese groups. ICCR also identified human rights violations in Toronto with regard to the procedures followed to handle the backlog of refugee claimants. In October 1990, ICCR was involved in a Canadian

Council of Churches delegation to Geneva to assist the UN Human Rights Committee in its examination of Canada under Article 40 of the Covenant. The Catholic Church in Australia certainly cannot demonstrate such an active position in the case of refugees.

REFUGEE COUNCILS

The need for a strong NGO to comment on government policy and submit alternatives is undeniable. Such an NGO does not exist in Australia. One of the major problems is that there is so much divisiveness that Government is not provided with a representative view, let alone a unified, strongly articulated and well-lobbied position, on any issue.

Austcare is essentially a fundraising body. It is the Australian partner organisation with UNHCR in matters of public information, education and fundraising. The Refugee Council of Australia grew out of Austcare and still receives generous funding from that body. Many people believe it was a serious mistake for the organisations to have separated and that they should be re-amalgamated.

The Refugee Council of Australia is an "umbrella" organisation. It is made up of over fifty non-government organisations working with and for refugees, both within Australia and around the world. According to the Council's 1991/92 Annual Report, since its establishment in 1981, the Council has been working as a co-ordinating and policy development body on matters of concern to refugees and has been promoting public awareness of the problems affecting refugees. In 1988, the Council established a Refugee Advice and Casework Service (RACS) to assist persons seeking refugee status and change of status on humanitarian grounds and, where appropriate, their applications for appeal and review. This has since been separated from RCOA.

> "The principal aim of the Council is to ensure that Australians, through their government and its international affiliations, adopt and maintain, wherever possible, the most humane, just and constructive policies towards refugees.
>
> "The aim is pursued in a number of areas, including the monitoring international protection; the seeking of appropriate protection of asylum-seekers upon and after their arrival in Australia; contribution in the areas of aid and assistance, the seeking of durable solutions for

> refugees, the construed commitment of Australia as a country of resettlement, and the resolution of the root causes of refugee problems.
>
> "The Council seeks to increase public awareness and media sensitivity towards the predicament of refugees, and to ensure maximum flow of current and accurate information amongst its members as well as to non-member bodies, wherever possible" (RCOA 1992, 1).

The question must be asked: does the Council meet its stated objectives? Many people believe the Council is now ineffectual, particularly since a public argument at the Second National Immigration Outlook Conference between a senior officer of DIEA and the Council's Executive Director. Relations are still strained. In the past three years there have been two extensive reviews of the Council and its activities. The second report has not even been released to its membership. In this time personnel of the Executive Committee have changed. At this juncture the Committee is divided between those who support the Executive Director and those who do not. This internal dispute is, no doubt, affecting the efficacy of the Council. It should be noted that most of the "running" of the detention of asylum-seekers problem was done by the Coalition for Asylum-Seekers. The official reason given for the formation of this Coalition is that if the Council became too vociferous against Government policy DIEA would cut its subsidy. This seems rather odd. One would be excused for believing that in a liberal democracy it is one's right to criticise government. RCOA received and has continued to receive funding for specific projects.

Government considers that the NGOs have an agenda and their views are not unbiased. The Government further assumes that the organisations will take on any case even if it is very flimsy and that they are driven by human concern. The organisations see this as their role. They need to be up-front in deciding whether their rationale is pastoral or political, in other words whether the Council adopts a game-keeper or poacher position. Government considers RCOA should raise its own funds for its political activities. Raising funds would indicate community support. RCOA's membership is not large. Some of its current membership are striving to further limit their membership by restricting the voting rights of individuals. This would make membership by individuals meaningless. It is difficult not to support the Government's view. Funding of environmental campaigns is undertaken by its membership. Why should not RCOA and its membership raise funds for its activities? The environmental movement has achieved much in the areas of research, public awareness, fund raising through its network of volunteers. It is not considered the existing RCOA has the personal skills to attract necessary support.

The question that must be asked is whether there is a need for the Refugee Council in its present form. For the Council to be effective it must have vision, it must be seen to be an effective facilitator, it must be the voice of the refugee movement to government. To achieve this, RCOA would have to consult its membership. At present it does not have a consulting mechanism. It simply expects other groups to "rubber-stamp" its views. The Council is so splintered that it would be difficult for government to regard it as the peak organisation. Indeed, it has not had a President since January 1995. RCOA does not have the experience of NCCA. There are those who believe RCOA should be disbanded. This would not disadvantage refugees. The Churches, FECCA, overseas aid organisations and human rights groups would soon pick up the void but would they grasp the political nettle: the need for a strong, articulate, representative focused lobby as in Canada.

On the other hand, the Canadian Council for Refugees (CCR) seems to be an active, vibrant organisation whose views are sought by Citizenship and Immigration Canada. It has some 140 constituent organisations including the Churches, ethnic organisations, human rights groups and overseas aid groups. Its list of publications and policy documents is impressive.

Its Mission Statement is as follows:

"The Canadian Council for Refugees is a non-profit umbrella organization committed to the rights and protection of refugees in Canada and around the world and to the settlement of refugees and immigrants in Canada. The membership is made up of organizations involved in the settlement, sponsorship and protection of refugees and immigrants. The Council serves the networking, information-exchange and advocacy needs of its membership.

The mandate of the Canadian Council for Refugees is rooted in the belief that:

* Everyone has the right to seek and enjoy in other countries asylum from persecution; (Universal Declaration of Human Rights, article 14.1)

* Refugees, refugee claimants, displaced persons and immigrants have the right to a dignified life and the rights and protections laid out in national and international agreements and conventions concerning human rights;

* Canada and Canadians have responsibilities for the protection and resettlement of refugees from around the world;

* Settlement services to refugees and immigrants are fundamental to participation in Canadian life;

* National and international refugee and immigration policies must accord special consideration to the experience of refugee and immigrant women and children and to the effect of racism.

The Canadian Council for Refugees is guided by the following organizational principles:

* The membership of the Canadian Council for Refugees reflects the diversity of those concerned with refugee and settlement issues and includes refugees and other interested people in all regions of Canada;

* The work of the Council is democratic and collaborative;

* Our work is national and international in scope.

The Canadian Council for Refugees fulfils its mission by:

* Providing opportunities for networking and professional development through conferences, working groups, publications and meetings;

* Working in cooperation with other networks to strengthen the defence of refugee rights;

* Advancing policy analysis and information-exchange on refugee and related issues;

* Advocating for the rights of refugees and immigrants through media relations, government relations, research and public education" (CCR, 13 November 1993).

The Council kindly made available a number of documents for consideration. The Summary Report of the CCR-CIC Roundtable Meeting held on 31 January 1995

attended by 19 very senior officers of CIC mainly from policy areas, 11 representatives from CCR and 2 from ICCR indicated a partnership and dialogue not known in the Australian situation. This, of course, does not mean agreement on every issue. Notes of a meeting on 9 May 1995 between CCR and CIC on the US - Canada. Memorandum of Understanding also indicated dialogue. CCR meets with the Minister at regular intervals. Minutes of these meetings indicate frankness on the part of Minister Marchi. CCR's submission on the 1995 intake of refugees was a well-researched, well-argued document.

CCR seems to be an effective organisation, listened to by government. Unlike RCOA it has a consulting mechanism and seems to be the voice of the refugee movement in government. It sits on several joint committees. In summary, it seems to fulfil its Mission Statement because it is a focused lobbyist.

FECCA

The Federation of Ethnic Communities Council of Australia (FECCA) has a strong interest in national immigration and refugee policy and plays a key advocacy role in the development of this policy. It was, however, not until the Perth Conference in December 1993 that FECCA decided it should have a separate refugee policy as distinct from its immigration policy. FECCA is not a member of RCOA - it regards itself as a peak body.

The emergence of FECCA in the refugee area was brought about by its membership and by government widening its sources of advice. During the debate on the Cambodian detainees, Cambodian community organisations sought to involve FECCA. Those organisations could not understand why FECCA was not participating in the debate. There was also pressure from Chilean, Chinese and Vietnamese organisations to participate in the debate. As a result FECCA organised a seminar in Canberra on detention. It also presented a submission to the *Inquiry into detention practices* (Australia, Joint Standing Committee on Migration, 1993).

Minister Bolkus has suggested that FECCA should express community concerns. Accordingly, it has made submissions on legislation and on the migrant and humanitarian programs. Where it differs from other organisations is that it actually circulates all members of its network, for example, on Migration Amendment Bills 1995 (Nos. 2 and 3), 90 questionnaires were distributed resulting in 21 responses.

The method has the advantage of being able to present empirical evidence to an inquiry in support of its views.

The need for the refugees plight to be put to government in an unbiased manner is undeniable. So too is Government's need to present its policy to its electorate. Government, NGOs and refugees stand to gain much if there was a tri-partisan approach. The interests of the asylum-seeker as human beings must be acknowledged.

In its submissions on the migrant and humanitarian program it does not suggest numbers (as does RCOA and NCCA). It considers the Minister, who is politically responsible, should make the determination.

Whilst its detractors claim FECCA does not understand the global refugee picture, given the ethnic nature of its membership, many of whom are former refugees it would seem to be well positioned to make a contribution. It operates on an expert committee system and consults widely with outside experts. An NGO is only as good as its volunteers. FECCA has observer status with IOM, has sought to investigate conditions in refugee camps overseas and detention centres in Western Australia. Lack of funds has so far prevented this. It has also developed links and information sharing with kindred organisations abroad. Provided it can continue to attract persons of high calibre and motivation, it is considered FECCA could work in partnership with the Department to mutual advantage. Threatening, however, FECCA's future and capacity to make a contribution in the refugee area has been the emergence initially in Victoria of the Coalition of Ethnic Committees (COEC). This rival with membership from principal and well serviced ethnic communities, such as the Chinese, Vietnamese, Italian, Greek and Jewish is being courted as well by the mainstream political parties. COEC, unlike FECCA, could virtually operate without government funding.

Those involved in advancing the causes of refugees in Australia and Canada would do well to examine the role in policy-making, fund raising activities and effective lobbying of the environmental movement in these two countries. The environmental movement is well organised, disciplined at national, state (province) and local levels and effective. It speaks through a peak body.

I have shown in this chapter that in Australia the very organisations one would expect would keep government honest namely the churches, the Refugee Council and other

NGOs are so splintered, so interested in internal power struggles that they are ineffective. Is it any wonder, therefore, policy is virtually non-existent and Ministerial and bureaucratic excesses go unchecked? On the other hand, in Canada, a united front makes its presence felt. Could one imagine the Australian churches pursuing a refugee's case to the High Court as the Canadian churches did in the *Singh* case? Humanitarianism and foreign policy are considered in the next chapter.