Reducing Incentives for Abuse: Canada's Inland Refugee System

by

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Abstract

The growing interdependence in the world and the increasing number of refugees has made public policy in this area one of the key challenges facing nations today. A number of countries have introduced policies aimed at deterring non-genuine refugee claims. Canada is lagging behind in developing solutions to its growing refugee problems, namely large backlogs and growing number of applications. This study identifies the challenges of Canada's current inland refugee system to recommend policy options to reduce incentives for abuse by non-genuine claimants. Using a comparative case study analysis of Australia, the UK, and Sweden, it provides policy recommendations on how these can be addressed. The analysis shows that streamlining procedures, having one agency responsible for claim processing, and the provision of social benefits being tied to a claimant's compliance with claim processing lead to an efficient refugee determination system. The policy options proposed focus on these policies as they have been successful in other countries but are missing in Canada. Designating all refugee claim-processing matters to the Immigration and Refugee Board of Canada is presented as the best of the three policy alternatives.

Keywords: Inland refugee determination system, refugees, asylum seekers

To the dedicated public service employees who strive to effectively do their jobs as officers while being compassionate towards refugees who are in genuine need of Canada's protection.

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List of Acronyms

AAT	Administrative Appeals Tribunal
ASU	Asylum Screening Unit
AIT	Asylum and Immigration Tribunal
ASAS	Asylum Seeker Assistance Scheme
ATIP	Access to Information and Privacy
AVR	Assisted Voluntary Return
CBSA	Canada Border Services Agency
CIC	Citizenship and Immigration Canada
CCR	Canadian Council for Refugees
DIAC	Department of Immigration and Citizenship
DLR	Discretionary Leave to Remain
IFHP	Interim Federal Healthcare Program
IRPA	Immigration and Refugee Protection Act
IRB	Immigration Refugee Board
ILR	Indefinite Leave to Remain
IMA	Irregular Migrant Arrival
IOM	International Organization for Migration
NAIU	National Asylum Intake Unit
OECD	Organization for Economic Cooperation and Development
PRRA	Pre-removal Risk Assessment
RAD	Refugee Appeal Division
RPD	Refugee Protection Division
RRT	Refugee Review Tribunal
STA	Safe Third Agreement
UNHCR	United Nations High Commissioner for Refugees
UKBA	United Kingdom Border Agency
VAARP	Voluntary Assisted Return and Reintegration Programme

Executive Summary

The increasing number of refugee applications in the world every year has made policy making in this area a key challenge for countries. The United Nations High Commissioner for Refugees (2011) reports that an estimated 43 million people were newly displaced in 2011, which is the highest number in more than a decade. In Canada, there was a nine percent increase in the number of inland applications. As the number of applications continues to rise, the refugee determination system in Western countries has become one of the main sources of controversy. This presents a difficult challenge for policy makers to strike a balance between providing protection in adherence to international obligations and protecting abuse of the system from dubious claimants.

The current inland refugee system in Canada is inefficient in curbing abuse by non-genuine claimants. Moreover, it has resulted in a number of unintended consequences including lengthy processing times and large backlog of claims. A case study analysis of best practices approach is taken. The three countries chosen for examination are Australia, the UK, and Sweden. The research shows that some policies have been effective in these countries but do not exist in Canada. These include designating a single expert agency for all matters relating to the processing of refugee claims, implementing a refugee intake unit to streamline cases, and the use of a refugee identity card linked to the reception of social benefits to ensure compliance with the process. These policies are suggested as policy alternatives for Canada.

The designation of all refugee claim matters to the Immigration and Refugee Board of Canada is chosen as the best of three policy alternatives. Having a single expert agency has the ability to avoid duplication of efforts while lowering processing times and ensuring that all claimants are treated equally. This policy alternative is the option most likely to achieve both short-term and long-term objectives for an efficient refugee determination system that balances protection with control.

1. Introduction

The growing interdependence in the world and the increasing number of refugees has made public policy in the area of forced migration one of the key challenges facing nations today. By the early 1990s, the number of asylum applications and refugees had increased dramatically compared to previous years. The United Nations High Commissioner for Refugees (2011) reports that an estimated 43 million people were newly displaced in 2011, which is the highest number in more than a decade. In addition to the rising numbers, there has been a highly unequal distribution across countries of refugee applications. As a result of the increase in applications in the developed world in the 1990s, many nations have responded with a serious policy backlash. Although many of the Organisation for Economic Cooperation and Development (OECD) countries are signatories to the Refugee Convention, there are many ways in which individual countries can enact policies to deter non-genuine claimants from making a claim for refugee status. Several OECD countries have introduced significant containment and deterrence policies. However, Canada is lagging in developing solutions to its growing refugee problems.

Given the increasing number of economic migrants, there is a screening problem for hosting countries in distinguishing between genuine refugees and those who are looking for economic opportunities (Bubb et al., 2011). Consequently, there is a need for individual countries to balance protection concerns with control. Recipient countries need to be concerned not only with international commitments to refugee protection but also with the economic and social costs of processing refugee claims. These concerns have been heightened in Canada since the arrival of the MV Sun Sea, a vessel that brought 492 Sri Lankan refugee claimants to Canada in August 2010. Furthermore, there was a nine percent increase in the number of asylum applications lodged in Canada in 2011 (UNHCR, 2011). More importantly, there is currently a backlog of approximately 65,000 refugee claims waiting to be heard (IRB, 2012). Considering that Canada is generally not an easy country to reach for asylum claimants, the rising number of applications made is concerning.

This study identifies the shortcomings of Canada's current inland refugee system to deter non-genuine claimants from abusing the system. The analysis is based on a case study of best practices in Australia, the UK, and Sweden. It concludes by providing policy recommendations on how these can be addressed. It is important to note that this study focuses only on the inland refugee program, i.e. people who make a refugee application at the border or after arriving in Canada.

This capstone is organized in the following way: Section 2 provides a history of Canadian refugee policy and a summary of the legislative framework. Section 3 examines the push and pull factors making people leave their home country and choose their destination. Section 4 explains the structure of inland refugee system in Canada and outlines the refugee determination process. Section 5 depicts recent trends in refugee displacement in the world and more specifically in Canada. Section 6 outlines some of the main challenges of the current refugee system in Canada. Section 7 defines the policy problem and stakeholders. Section 8 identifies the main features of a fair and efficient refugee system, outlines the methodology of the study, and provides an evaluation framework for analysing the case studies. Section 10 analyses the case studies. Section 11 presents the policy objectives and policy alternatives and to conclude, section 12 discusses the results of the policy analysis and makes a policy recommendation.

2. Refugee Protection in Canada

The formal recognition of refugees did not materialize until 1969 when Canada signed the 1951 United Nations Convention related to the status of Refugees and its 1967 Protocol[1]. The Refugee Convention was initially created with the intention of protecting European refugees following World War II (UNHCR, 2012). The Refugee Convention also introduced the concept of 'non-refoulement', which forbids countries from returning a refugee to a territory where their life or freedom is threatened (UNHCR, 2012). However, as the problem of displacement continued throughout the world, the 1967 Protocol was developed to clearly outline the definition of a refugee, the rights of a refugee and exclusionary grounds for protection (UNHCR, 2012). Today, both the Refugee Convention and its Protocol continue to remain the cornerstone of refugee protection in the world. In addition to the Refugee Convention, Canada is also a signatory to two other United Nation conventions related to the status of refugees: the 1966 International Covenant on Civil and Political Rights and the 1984 Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (IRB, 2012).

Although Canada had previously admitted refugees without an official process, refugees were not recognized as an immigrant category until the Immigration Act 1976, which came into force in 1978 (CIC, 2000). At the end of 1981, a total of 70,000 Indo-Chinese refugees were admitted into Canada (CIC, 2000). The 1976 Immigration Act became the foundation for Canadian refugee policy and the current Immigration and Refugee Protection Act, which came into force in June 2002. Two types of refugee protection are defined in the IRPA: convention refugees (section 96) and persons in need of protection (section 97)[2]. Section 96 of the IRPA is based on the Refugee Convention, which defines a refugee as someone who,

[1] The 1951 Convention and its 1967 Protocol will be referred to as the Refugee Convention from this point on.

[2] Refer to Appendix A for the complete text of sections 96 and 97 of the IRPA.

> Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (Article 1, Subsection (A)(2))[3].

Section 97 of the Act defines a person in need of protection according to the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. A person in need of protection is defined as a person who cannot be returned to his/her country of nationality or habitual residence because his/her removal would subject him/her to a danger of torture, a risk to life, or a risk of cruel and unusual treatment.

The Canadian refugee system has two main programs. The first is the Refugee and Humanitarian Resettlement Program where refugees make a claim outside Canada (CIC, 2012). The second program is the In-Canada Asylum Program, also known as the inland refugee system, where people make a claim from within Canada. This includes people who make a claim while already in Canada and those who make a claim at a port of entry upon arrival to Canada (CIC, 2012). The focus of this study is the inland refugee system.

The IRPA states that a claim for protection made inside Canada needs to be made to an officer and cannot be made by a person who is the subject of a removal order. After a person makes a claim for refugee protection, an officer has three days to make an eligibility determination before referring the claim to the Refugee Protection Division of the Immigration and Refugee Board (IRB). A claim is ineligible for six reasons[4]:

> (a) Refugee protection has already been conferred under the Act,
>
> (b) A previous refugee claim was rejected by the IRB,

[3] See Appendix B for full text of the Refugee Convention.

[4] These reasons are similar to the exclusionary grounds of the Refugee Convention; see Appendix B.

(c) A previous claim was determined to be ineligible, withdrawn or abandoned,

(d) The claimant has already been recognized as a Convention refugee by another country and can be returned to that country,

(e) The claimant came directly or indirectly to Canada from a safe country, or

(f) The claimant has been determined to be inadmissible on grounds of security, violation of human or international rights, serious criminality or organized criminality (IRPA, Section 101(1))

There are exceptions to the ineligibility criterion. Only the United States is a designated safe country. The Safe Third Country Agreement between Canada and the United States requires refugees to file a claim in the U.S. unless they qualify for an exception (CIC, 2002). The exceptions include: having a family member in Canada; being an unaccompanied minor; being a document holder; and public interest. The definition of a family member is quite expansive and is not limited to immediate family[5]. Document holders are those who hold a valid Canadian visa or those who are not required to get a visa for Canada but required a visa to enter the USA. Public interest exception applies to claimants who are charged with or convicted of an offence that could subject them to the death penalty in their country. In addition to these exceptions, people who make their refugee claim once already in Canada are not subject to the Safe Third Country Agreement.

To summarise, refugee policy in Canada was not formalized until 1978. Under the IRPA, claims for refugee protection are first assessed for eligibility and then referred to the IRB for processing. Although it is important to understand legislation surrounding refugee policy, it is just as important to know the push and pull factors that cause refugees to seek protection outside of their home country. The next section examines what causes refugees to flee and how they choose their destination country.

[5] Family members include spouses, common-law partners, legal guardians, children, siblings, grandparents, grandchildren, uncles and aunts, and nephews and nieces.

3. Push-Pull Factors of Refugee Displacement

This section provides an overview of the literature on the push factors that cause refugees to become displaced and the pull factors that attract them to some countries. It also examines the implications of these factors for policy making.

3.1. Push Factors

A number of studies have assessed the causes of refugee flight. One of the most significant sources of displacement is conflict and persecution. Neumayer (2005) finds that factors such as economic hardship, political oppression, human rights abuses, violent conflict and state failure created more asylum seekers[6]. Schmeidl (1997) also finds that political violence is the single most important cause of massive flows of refugees who tend to flee from generalized violence. Other important findings of the study show that genocides and civil wars with military intervention are better predictors of a change in refugee stock. In contrast, civil wars without foreign intervention and ethnic conflict are found only to be important for triggering small to mid-sized refugee movements. Similarly, Hatton (2011) argues that the number of asylum seekers generated during a conflict depends on how generalised the violence is.

Studies also find that economic factors are important determinants of refugee flight. Neumayer (2005) uses a regression model to test a number of independent variable including GDP per capita, average annual growth rate over 3 years, and economic discrimination against ethnic minorities. The results of the analysis show that higher GDP and economic growth decrease the number of asylum seekers, whereas higher economic discrimination against ethnic minorities increases them (Neumayer, 2005). Comparably, Hatton (2011) also finds that the per capita income of a country is always statistically significant and negative, meaning that poorer countries generally produce more asylum seekers. These findings confirm that economic motives are

[6] The terms refugees and asylum seekers are used synonmously throughout the study.

important in understanding refugee flight. Nevertheless, studies that have examined refugee flows following conflicts find that the relationship between conflict and refugee flight is far from perfect.

3.2. Pull Factors

Although it is usually possible to determine the causes of refugee flight, it is more difficult to determine how asylum seekers pick one country over another. Numerous studies have analyzed the effects of certain factors on the choice of destination country of asylum seekers. These studies find that economic and social factors are of great importance in refugee migration. The pull factors identified in the literature can be organized into three main categories: geographical proximity, migrant network effects and economic incentives. These factors are examined in detail below.

First, Neumayer (2004) finds that geographical proximity is an important facilitator of asylum migration as it reduces the costs and complexities associated with travel. Second, migrant networks are also important because they lower the transition and adaptation costs (Neumayer, 2004). Migrant networks include existing refugee communities, family, friends, and previous colonialism links. Several studies find that migrant networks are the single most important and dominating variable in explaining asylum seekers' destination choice (Havinga & Bocker, 1999; Thielemann, 2004; Robinson & Segrott, 2002).

Lastly, economic incentives are also strong indicators of destination choice. Several studies have found that the unemployment rate in the destination country is strongly and negatively correlated with the number of relative asylum applications (Hatton 2011; Neumayer, 2004; Thielemann, 2004). This supports the observation that labour market conditions in the destination country impact asylum applications. Thielemann (2004) finds that asylum seekers apply in greater numbers in the countries that provide greater employment opportunities. This relationship remains strong even after controlling for other factors included in the model. Similarly, in Havinga and Bocker's study (1999), a majority of the interviewees considered access to the labour market an important factor in choosing a destination country. This suggests that people

seek asylum in the country that offers them the best economic opportunities for their future.

In summary, generalized violence in the form of genocides and civil wars generate higher number of asylum seekers. In terms of choosing a destination country, asylum seekers tend to choose a country based on the highest long-term benefits. The factors that are most important in this decision-making process are geographical proximity, migrant networks, and economic opportunities. Nevertheless, it is important to recognize that push and pull factors are not mutually exclusive as they help explain refugee flight and destination choices in combination with each other.

4. Canada's Inland Refugee System

This section describes the structure of the refugee system and the refugee determination process for inland applicants. It is broken down into two parts: first, a discussion of the structure of the system including the roles and procedures of each agency involved, and second, I describe the determination process.

4.1. Agencies Involved

There are three main agencies involved in processing refugee claims: Citizenship and Immigration Canada (CIC), Canada Border Services Agency (CBSA), and the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (IRB). In addition, the Federal Court of Canada is responsible for hearing and deciding on appeals of IRB decisions (IRB, 2012).

Eligibility determination, described in section 2, is the responsibility of both CIC and CBSA. CIC is the department of the Government of Canada that has the overall responsibility of the immigration and refugee programs in Canada (CIC, 2012). In addition to determining eligibility, CIC also designs refugee policy, undertakes pre-removal risk assessments (PRRA), makes decisions on humanitarian and compassionate grounds applications, and grants permanent residency (IRB, 2012). The CBSA is an agency of the Ministry of Public Safety Canada responsible for administering over 90 pieces of legislation, many on behalf of other federal departments (CBSA, 2012). It was created in 2003 by consolidating the Customs duties of the Canada Customs and Revenue Agency, and the operations of CIC and the Canadian Food Inspection Agency delivered at the border (CBSA, 2010). The agency's main functions include making refugee eligibility determinations at ports of entries, detaining people who are a danger to the public, and removing people who are inadmissible to Canada, which includes failed refugee claimants (CBSA, 2012). Aside from its presence at port of entries, the CBSA also has inland enforcement divisions throughout Canada (CBSA, 2010).

The IRB is Canada's largest administrative tribunal[7]. It reports directly to Parliament through Citizenship and Immigration Canada. The IRB has three regional offices: the Central region in Toronto, the Eastern region in Montreal, and Western region in Vancouver. The Central region is responsible for Ontario, the Eastern region is responsible for Quebec, Ottawa, and the Atlantic provinces, and the Western region is responsible for the Western provinces and the Northern territories (IRB, 2012). However, it also holds hearings in offices located in Calgary and Ottawa. The Refugee Protection Division (RPD) within the IRB decides refugee claims made by people in Canada, through refugee determination hearings. IRB judges, known as members, make the final decision on claims. During the hearing, the claimant provides testimony and evidence about his or her claim to a single member of the IRB. The refugee hearing is non-adversarial, meaning that no one argues against the claim. During the hearing, a claimant has the right to be represented by counsel, to use an interpreter provided by the IRB, and to be provided with written reasons for final decisions (IRB, 2012).

Once a final decision is reached and if the claim for refugee protection is accepted, the refugee claimant can make an application for permanent residency with CIC. If a claim is rejected, a claimant may file an application for review to the Federal Court of Canada. The court consists of two separate courts, the Federal Court and the Federal Court of Appeal. An application for review must be submitted within 15 days after the IRB decision. The process involves two parts: the "leave" stage and the "application for review" stage[8] (CIC, 2012). In order for leave to be granted, it must be shown that an error was made or that the decision was unfair or unreasonable. If leave is granted, an oral hearing is held. If an oral hearing is granted, this places an automatic stay on the removal order issued until a final decision is made, which means that the claimant cannot be removed until such time (CIC, 2012).

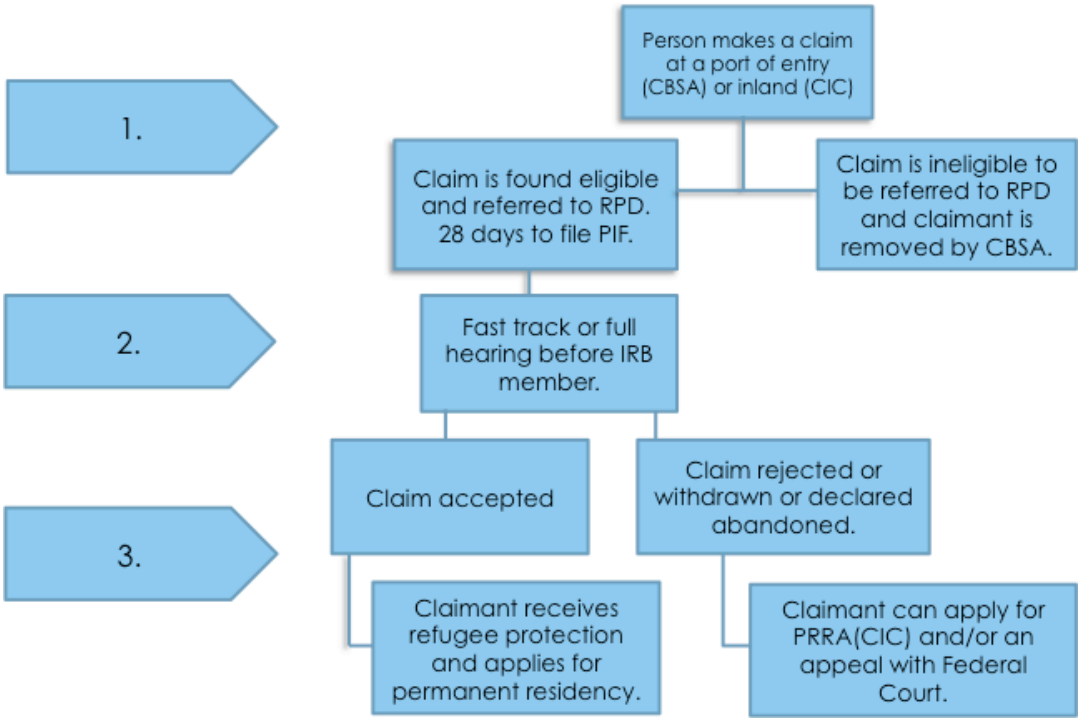
[7] The IRB is made up of three divisions: the Refugee Protection Division, the Immigration Division, and the Immigration Appeal Division. When referring to the IRB, this study is only concerned with the first division.

[8] "Leave of court" is a legal term to describe asking the court to grant permission to have the case heard.

4.2. The Refugee Determination Process

The refugee determination process is initiated when a person makes a claim at a port of entry (airport or land border) or inside Canada at an immigration office. The process is depicted below in Figure 1. The process can be divided into three main steps. Each one is described in this sub-section.

Figure 1. Inland Refugee Process



Source: Adapted from IRB (2012)

Making a Claim

Depending on where the claim is made, either CIC (if inland) or CBSA (if at a port of entry) makes an eligibility determination[9]. At a port of entry, the CBSA completes the front end processing, which includes fingerprinting, photographing, and background

[9] The eligibility determination is not the same as making a decision on the claim itself. The purpose of the determination is only to make a decision on whether the claim is subject to the exclusionary grounds or not. If it is subject to any of these exclusionary grounds, then it is not eligible to referred to the IRB for a hearing.

checks for a criminal record. It is important to note that the CBSA does not make an assessment of the claim, as the IRB is responsible for determining if the claim is well founded and meets the definition of a refugee. If a claim is found ineligible, the claimant is issued a removal order and removed from Canada by CBSA. For claims found ineligible at the port of entry, the claimant has the right to make an application for pre-removal risk assessment. The application must be submitted immediately but the claimant must still leave Canada, as there is no stay of removal (CIC, 2009). However, if the claim is found ineligible because the claimant came from a safe third country, there is no access to a pre-removal risk assessment. If a claim is found eligible, the claimant is allowed into Canada and has 28 days to file a personal information form with the IRB, which asks questions about the facts of the claim (IRB, 2012). If the claim is made inland at an immigration office, CIC makes the eligibility determination. If the claim is found eligible, it is referred to the IRB to schedule a hearing. If it is found ineligible, the claimant's file is transferred to the CBSA for removal. However, the claimant is eligible to apply for a pre-removal risk assessment (PRRA) with CIC within 15 days. Until a decision is made on the PRRA application, the removal order is suspended. The risk assessment is based on new evidence that was not presented previously and is usually made without an oral hearing. The decision is based on a risk of danger, torture or persecution that the claimant would face in the home country if removed from Canada (CIC, 2012).

Scheduling a Hearing

Once the personal information form is received by the IRB, a hearing is scheduled. In the meantime, the hearings unit at CBSA receives a copy of the personal information form to review the document for intervention purposes (IRB, 2012). Although a claim may be found eligible initially, the CBSA can intervene at any point after receiving a copy of the personal information form if the claim is subject to any of the exclusionary and ineligibility grounds outlined in the IRPA (CBSA, 2012). As mentioned in section 1, these include reasons of security, serious criminality, violation of human or international rights, and being recognized as a refugee elsewhere. The CBSA files a notice of intervention and if the IRB agrees, the claim is refused and the CBSA proceeds with removal. However, the claimant may apply for a pre-removal risk assessment.

If the CBSA decides not to intervene, an officer employed by the IRB reviews the claim to determine the most appropriate of the three types of processes. The three processes are a fast-track expedited process, a fast-track hearing or a full hearing (IRB, 2012). The fast-track expedited process is for claims from certain countries or for certain types of claims, which changes depending on country conditions (IRB, 2012). This process does not involve a hearing and only involves an interview with a refugee protection officer, who is an IRB employee. The refugee protection officer interviews the claimant and then makes a recommendation on the claim, which is then forwarded to an IRB member who decides if the claim should be accepted without a hearing (IRB, 2012). A hearing is only held if the claimant is not granted refugee protection through this process. The fast-track hearing is for those claims that appear to be simple because they can be decided on one or two issues (IRB, 2012). A fast-track hearing is generally held within six to eight weeks and a decision is issued one week following the hearing (Becklumb, 2008). The full hearing is for claims that involve more than two issues and for those that may be complex (IRB, 2012).

Claimants are eligible for a number of social benefits: authorization to work and study, access to health care, and social assistance. They can apply for a work permit through CIC if they can demonstrate that they have no other means of support. Children under 18 are can obtain a study permit to attend primary and secondary school. Access to health care is provided by CIC through the Interim Federal Health Program (IFHP), which provides limited and temporary coverage for those who are not eligible for provincial health care plans or private health insurance (CIC, 2012). These benefits are available until a final decision is made. Claimants are also eligible to apply for social assistance through the province or territory of residence. Finally, claimants are eligible to make an application for permanent residency based on humanitarian and compassionate grounds to CIC while their refugee claim is being processed (CIC, 2012). Humanitarian and compassionate grounds include excessive hardship that a claimant will suffer if returned to their country of origin[10].

[10] Refer to CIC website for more information on the factors considered in a humanitarian and compassionate grounds application.

Final Decision

A positive decision always results in permanent residency and immediate family members can be sponsored in the permanent residency application. However, if the decision is negative, a claimant has the option to apply for a pre-removal risk assessment (PRRA) with CIC and/or file an appeal with the Federal Court of Canada. If a Federal Court or PRRA decision is positive, the claimant receives the status of "protected person" and may apply for permanent residency (CIC, 2012). If a PRRA decision is negative, the claimant can apply to the Federal Court for a review of the decision (CIC, 2012). If a Federal Court appeal is rejected, a removal order is issued and CBSA removes the person from Canada.

In summary, the inland refugee determination system in Canada is highly complex involving multiple stages and agencies. This results in a constant shifting of a file between the various agencies involved. In addition to having access to a pre-removal risk assessment, claimants have the opportunity to appeal a decision at every stage of the process. Finally, a positive decision on a claim or pre-removal risk assessment always results in permanent residency.

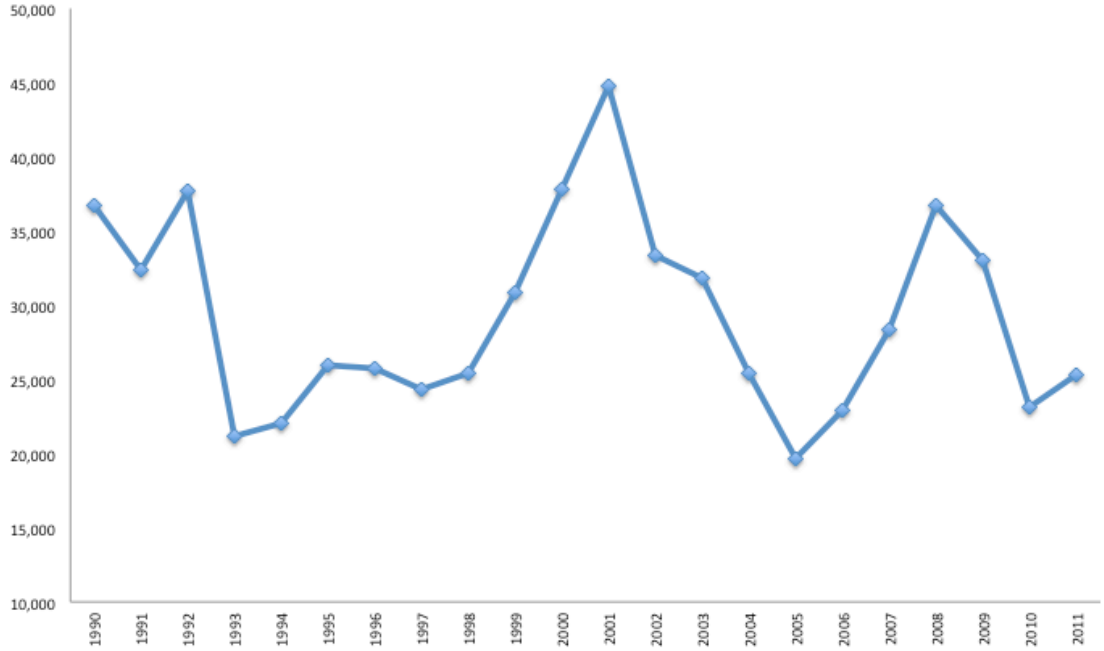
5. Refugees in Canada

This section provides a statistical picture of refugee applications in Canada over the last ten years. The 2011 global trends of refugee displacement are first briefly discussed.

In 2011, an estimated 43 million people were newly displaced in the world (UNHCR, 2011). Over 800,000 people were displaced as refugees across international borders, the highest number in more than a decade, and 3.5 million people were displaced within the borders of their own country. Approximately 441,300 refugee applications were made in 2011 in 44 industrialized countries, the highest level since 2003. In North America, approximately a quarter more claims than in 2010 were registered in 2011. The major source countries of refugees in industrialized countries include Afghanistan, China, Iraq, Serbia and Pakistan. The major destination countries for individual refugee applications were USA, France, Germany, Italy, Sweden, Belgium, UK, and Canada (UNHCR, 2011).

The trend in the total number of refugee claims over the last ten years in Canada is depicted below in Figure 2. In Canada, there has been a nine percent increase in the number of refugee applications between 2010 and 2011 (UNHCR, 2011). But, Canada has dropped from fifth in 2010 to eighth in 2011 in the ranking of the top 15 receiving countries.

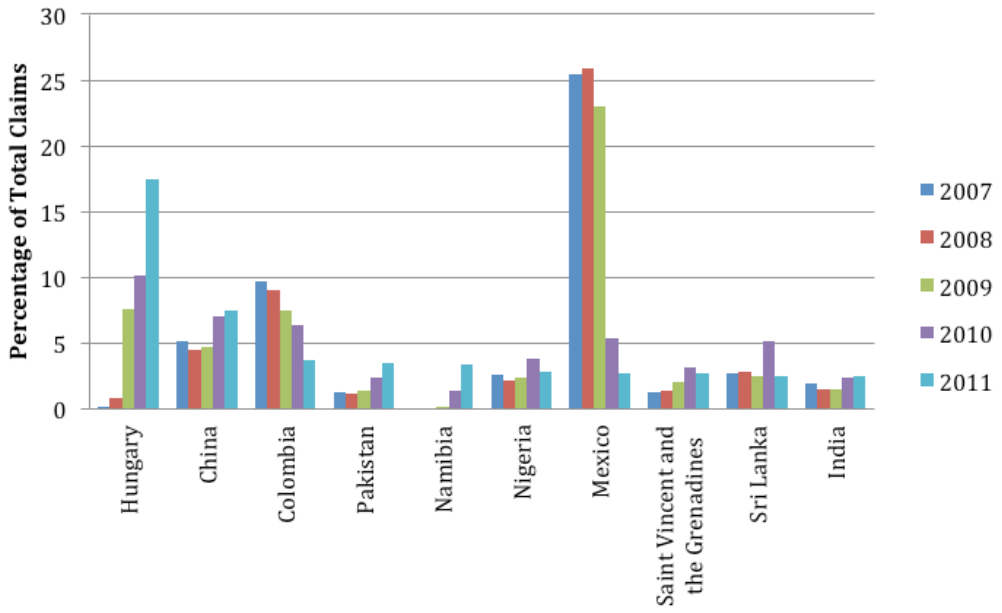
Figure 2. Total Number of Refugee Claims, 1990-2011



Source: CIC (2011a), UNHCR, (2004)

To give a picture of refugee claims in Canada, this graph shows the evolution of refugee claims since 1990. Claims were close to 40,000 in 1992 until dropping to 20,000 in 1993. From 1993 to 1999, they remained stable at around 25,000 new claims per year until the largest increase in 2001 with approximately 44,000 claims. However, after the events of September 11, there was a drastic decline in the number of claims. More recently, refugee flows have been up and down. After a large increase in claims since 2005, there was a substantial decrease in 2009 and 2010. The number of claims first dropped from 36,779 in 2008 to 33,077 in 2009. In 2010, the numbers dropped again to 23,074 in 2010, a 30% decrease. Since 2010, there has been an upward trend in the number of claims with a 9% increase. The decrease in 2009 may be due to visa requirements imposed on the Czech Republic and Mexico in 2009, which significantly reduced the number of claims from these two countries. The top 10 source countries between 2007 and 2011 are depicted in Figure 3. These countries account for approximately 48.6% of total refugee claims (CIC, 2012).

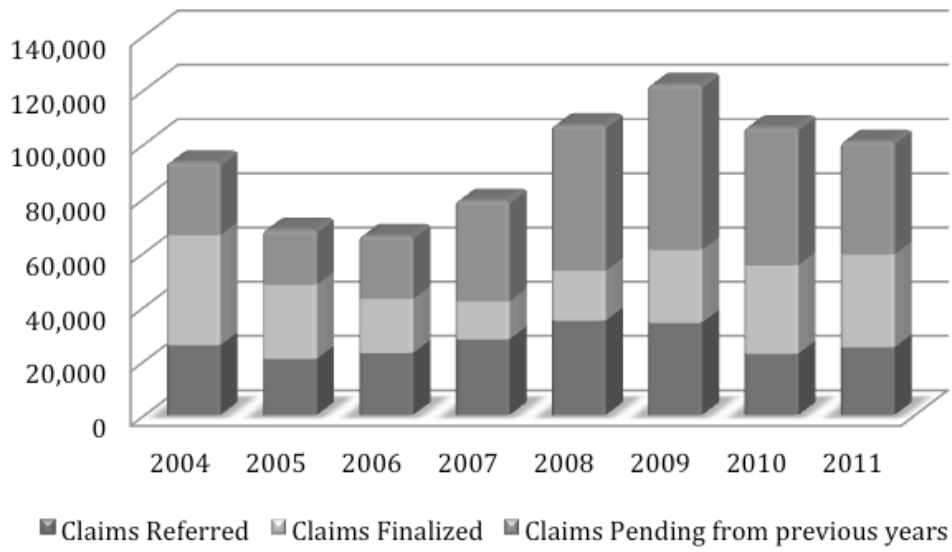
Figure 3. Top 10 Source Countries as a Percentage of Total Claims, 2007-2011



Source: CIC (2011d)

The most significant changes are the drop in applications from Mexico and the rise in applications from Hungary. With the introduction of visa requirements for Mexican citizens in 2009, the percentage of applications from Mexico dropped from 23 percent in 2009 to 2.7 percent of total refugee claims in 2011. Similarly, the number of claims from the Czech Republic also dropped from 6.3 to 0.1 percent, and it is now no longer in the top 10 source countries. Furthermore, claims from Hungary and China combined represented approximately a quarter of all claims in 2011. It's worth nothing that Canada did not receive applications from most of the major source countries identified in the UNHCR report. China is the only source country in Canada that was also a major source country in all industrial countries. Figure 4 depicts the Refugee Protection Division case backlog between 2004 and 2011.

Figure 4. Refugee Protection Division Case Backlog, 2004-2011



Source: Provided by IRB on November 6, 2012.

There are currently 41,740 pending claims from 2010 while 24,979 new claims were referred to the IRB 2011 (IRB, 2012). This amounts to a case backlog of 66,719 claims. It is also visible that the number of pending claims has been larger than the number of claims finalized since 2006. However, the number of pending claims has decreased since the substantial increase in 2009.

Table 1 shows the acceptance rate of claims over the last ten years. The rate has decreased considerably and has averaged at approximately 42% over the last ten years. In addition, there has also been a large increase in the number of claims abandoned and withdrawn since 2007.

Table 1. Acceptance Rates, 2002-2011

Year	Accepted	Rejected	Abandoned	Withdrawn or other	Acceptance Rate
2002	15236	11141	3093	3262	47%
2003	17778	18066	3927	2958	42%
2004	16041	19263	2839	2436	40%
2005	12116	11868	1650	1691	44%
2006	9299	8142	969	1506	47%
2007	5952	5443	765	1797	43%
2008	7644	6851	1055	2773	42%
2009	11189	9883	1384	4380	42%
2010	12336	13754	1637	4901	38%
2011	12932	16074	1773	3448	38%

Source: Provided by the Immigration and Refugee Board on November 6, 2012.

In short, after a significant fall in the number of claims in 2009, Canada is again on an upward trend. In addition, the top source countries have changed from Mexico and Colombia being the top two in 2007 to Hungary and China in 2011. Of the top source countries, China is the only country that was also one of the top source countries in most other countries. However, the number of pending claims remains substantial at over 66,000 claims in 2011. With the rise in applications, changing source countries, and decreasing acceptance rate, the inland refugee system faces a number of challenges in the future.

6. Consequences of the Current System

This section highlights the main challenges the inland refugee system faces that create inefficiencies and provide incentives for abuse. These challenges are related to both the structure of the system and the process. It also highlights the reforms recently introduced to address some of the challenges of the inland refugee system.

6.1. Lengthy processing times

The current system faces a number of challenges. There is a considerable backlog of pending claims, which has resulted in lengthy processing times of 22 to 32 months for a first-instance decision[11] (IRB & CIC, 2012). In 2010, the IRB received additional funding of $9.3 million for a backlog reduction plan (IRB, 2012). Twelve additional members were appointed for the backlog and by the end of November 2011, the Refugee Protection Division had finalized 14,544 claims (IRB, 2012). Nevertheless, there are currently over 66,000 pending claims (IRB, 2012). Some of the reasons for these backlogs can be attributed to a large number of postponements and adjournments. According to the IRB (2008), 33% of hearings were postponed in 2007-08, and 17% were adjourned. In addition, in the last four years, an average of 14-22% of claims were either abandoned or withdrawn prior to hearings (IRB, 2012). The IRB therefore is now making efforts to hold pre-hearing conferences to ensure claimants are able to proceed with their hearing (IRB, 2012). The delays in processing claims and removing failed claimant's results in a difficult situation of having to remove people who have established themselves in Canada for long periods of time.

There are also high economic and social costs that result from a slow system. The Immigration Refugee Board (IRB) estimates the cost per refugee claim to be $2500,

[11] Critics have pointed out that processing times vary anywhere between four to six years from beginning to end when the appeal process, including the Federal Court and Pre-removal Risk Assessment, is taken into account (Showler, 2009).

which amounts to approximately $84 million for the 33,500 claims finalized in fiscal year 2010-2011 (IRB, 2011). Moreover, in 2011, the IFHP program incurred a cost of $84.6 million (CIC, 2012). It is important to note that these costs do not include the social support costs of the various levels of governments (i.e. accommodation, integration assistance, welfare etc.).

6.2. Shortage of IRB members

There is also a problem with the lack of members to process the flow of claims. According to Simeon (2010), in order for a refugee determination system to be effective, there is a need to have sufficient capable and competent decision makers who are able to manage the level of new asylum applications. Both interest groups and the members themselves have criticized the appointment and renewal process of IRB members (Crepeau & Nakache, 2008). IRB members are appointed for a short term, which does not allow them to develop sufficient expertise in refugee issues[12]. The current system of a single member panels also results in a large shortage of board members. In 2009, the IRB anticipated that the considerable shortfall in decision makers would result in the highest inventories in its history (IRB, 2009). According to the Governor-in-Council appointments website, there are currently only 145 full time members in the IRB for all three divisions across Canada, with a majority of them in Toronto (84) and Montreal (36).

6.3. Lack of communication

There is a considerable lack of communication between the various agencies involved in the process. This lack of communication is most evident in the administration of social benefits. As discussed earlier, the IFHP is administered and funded by CIC, whereas social assistance is administered provincially. CIC has noted that as there is no 'exit strategy' to ensure prompt termination of the IFHP program (CIC, 2010). There is no

[12] A study on the decision-making process of the IRB found that board members fail to carry out their duties effectively as they do not know how to treat expert evidence and have difficulty in conducting a hearing correctly according to basic rules of evidence and procedure (Rosseau et al., 2002).

direct communication between CIC and IRB in terms of whether the claimant has been granted refugee status or received a negative decision to ensure that IFHP coverage is terminated on time. Consequently, claimants can continue to be covered for health care long after their claim has been refused. Similarly, accommodation and welfare is also provided provincially. There is also no direct communication between provincial organizations and IRB or CIC to determine if a claimant is no longer eligible for housing and welfare support due to a negative determination.

6.4. Lack of streamlining procedures

There are currently no effective streamlining procedures in place. Although provisions such as the Safe Third Agreement exist, there are many exceptions to the agreement and it does not apply to claimants who file their refugee claim inland. Given the rise in inland claims, the CBSA (2010) suggests that the rise is partly due to irregular migrants entering Canada between the ports of entries to avoid being turned back on the Safe Third Agreement. The results of this are evident in the number of inland claims compared to port of entry claims. Of the 23,074 claims in 2010, approximately 22,500 were made inland (CBSA, 2010). There are also no procedures in place to interview claimants at the earliest opportunity to obtain relevant information regarding the particular circumstances of the claim. The Auditor General (1997) concluded that information about the circumstances surrounding the country of origin, the reasons for the claim and the last point of embarkation is fundamental to informed decision-making and improves the quality of the final decision (Auditor General, 1997). In addition, once a claimant is allowed forward into Canada, there are not necessarily interviewed by an officer about their claim and are only required to submit their personal information form[13] (IRB, 2012). The refugee claim officer reviews the personal information form to decide on the most appropriate of the three processes for the claim (IRB, 2012).

[13] An interview may be requested if the refugee claim officer deems it necessary.

6.5. Lengthy appeal and removal

The appeal and removal process in Canada is also complicated with countless administrative stages, and with each stage being subject to judicial review by the court. As there is no appeal division within the IRB, a negative decision allows claimants the opportunity to apply for both PRRA with CIC and a judicial review with the Federal Court. A mere 2.1% of PRRA applications are found positive. Claimants can also apply for a judicial review of a PRRA decision (CBSA, 2010). Of the Federal Court's total caseload, 73% are related to immigration matters. Approximately 32% of these are leave applications from the Refugee Protection Division (Federal Court, 2012). The Federal Court approves only 13% of these leave applications and only 0.4% of IRB decisions are overturned (CBSA, 2010; IRB, 2011a). Consequently, the whole process results in a slow and ineffective system, with few original IRB decisions being overturned. In addition, it ends up taking several years to remove failed claimants. Since 2001, a total of 94,803 failed refugee claimants have been removed from Canada, however, 39,854 unexecuted removal warrants for failed claimants remain outstanding as of January 7, 2013 (ATIP request, CBSA, January 16, 2013).

In summary, Canada's refugee determination system is inefficient, slow and costly. The challenges are not only problems with the structure of the system design but also with the execution of the responsibilities of the different government agencies involved in the process. There are gaps within the system including the lack of streamlining procedures to address slow processing times for hearings, the untimeliness of removals after a negative decision and the presence of countless administrative stages. Moreover, the numerous exceptions to the Safe Third Agreement have largely made the agreement ineffective in deterring claimants from abusing the system and instead may have diverted land border claims to an increase in the number of inland claims. These gaps need to be addressed to effectively to deter non-genuine refugees from making unfounded claims.

6.6. Recent Reforms to Canada's Inland Refugee System

To address some of these challenges and to expedite the processing of claims, the Minister of Citizenship, Immigration and Multiculturalism introduced the Balanced Refugee Reform Act (Bill C-11) in June 2010 and Protecting Canada's Immigration System Act (Bill C-31) in June 2012 (CIC, 2012). Both include legislative amendments to the IRPA. Some of the main changes to the refugee system are[14]: setting processing time limits for refugee claims; designating countries as safe countries of origin allowing for claims to be identified as unfounded; creating a Refugee Appeal Division; placing limits on pre-removal risk assessment and humanitarian and compassionate grounds applications; removing failed claimants within one year; and, introducing a pilot Assisted Voluntary Return and Reintegration (AVVR) program in the Greater Toronto Area (CIC, 2012). The new system aims to process claims from designated countries of origin within 30-45 days, and for all other claimants, within 216 days.

In light of the existing challenges and recent reforms, the next section defines the policy problem and the stakeholders involved.

[14] For a detailed description of the changes, see Appendix D.

7. Policy Problem and Stakeholders

The inland refugee system was designed with the intention of assisting those in need of protection and not to be used by those who do not need protection as a means to prolong their stay in Canada. This study addresses the following policy problem: why Canada's current refugee determination system is inefficient in curbing abuse by non-genuine refugees. Given the shortfalls of the current system, this study aims to determine what policies can be implemented or improved on to better address the issue of abuse.

The large numbers of refugee claims over the past ten years has placed great pressures on Canada's inland refugee system. Although there was a significant drop in the number of applications following the implementation of the Safe Third Agreement in 2004 and the imposition of a visa on Mexico in 2009, refugee claims in Canada are on the rise again. Moreover, the backlog in claims currently stands at over 66,000 pending claims. As identified above, the Canadian refugee determination system is slow, inefficient and costly. There is no effective pre-screening and streamlining procedures in place and the current backlog has resulted in lengthy processing times. In addition, the involvement of three agencies in the process results in a lack of communication between the agencies and repetition with countless administrative stages that extend the overall length of the process. These inefficiencies allow both non-genuine refugees and failed claimants many opportunities to use the system to delay their removal. Finally, there is not enough significance and resources allocated to the timely removal of failed refugee claimants. Therefore, the system does not quickly grant refugee protection to those who genuinely need it, nor does it discourage those who do not need it from making a claim for protection.

The major stakeholders involved in this issue include the Government of Canada and immigration and refugee groups. The three agencies, CIC, CBSA, and the IRB, discussed earlier in section 3 are directly involved in the processing of claims and removal of failed claimants. Together, they are also responsible for policy development and the costs associated with running the system. All three agencies have an interest in

ensuring that genuine claimants are given protection. Refugee support groups also have a direct interest in refugee policy and procedures as they affect them personally in the processing of their claims and the impacts of the final decision on their lives. The major support group includes the Canadian Council for Refugees (CCR), which is a large non-profit umbrella organization for refugee rights. CCR monitors, researches, and comments on the development of refugee policy in Canada, and, occasionally intervenes on individual cases before the courts.

The minor stakeholders include the Amnesty International, Canadian Association of Refugee Lawyers, and Citizens for Public Justice. These groups monitor the developments in refugee policy to ensure that Canada is keeping up with its international obligations under the UN Refugee Convention. Other minor stakeholders include the immigration and refugee service agencies throughout Canada that provide accommodation and integration services. Immigration and refugee service agencies have an interest in serving refugee claimants in finding housing, employment and community support.

The next section examines the literature on the essential features of an effective inland refugee system.

8. Analysis Framework

The analysis uses a primary and secondary methodology to examine the shortfalls of the Canadian refugee system and determines how to address the gaps. The primary methodology is a comparative case study analysis of three OECD countries. The goal is to identify best practices of an inland refugee system. The secondary methodology assesses whether the alternatives can be considered best practices through an examination of academic studies and government annual reports and evaluations.

The three countries chosen as case studies are Australia, the United Kingdom and Sweden due to their similarity in political structure. The countries were also chosen due to their geographical location and the relative difficulties in reaching these countries to make a refugee application. I review the literature and official government data of each country to collect information about refugee policies, refugee statistics and reforms using library databases and official government websites. For each country, I provide a brief survey of the relevant aspects of refugee policy and the structure of the inland refugee system.

8.1. Case Study Selection

In selecting the case studies, the following criterion were used: (1) countries have introduced procedural and policy reforms to address the heavy flow of refugee applications (2) they have a similar refugee authority, (3) they have processing times for claims of one year or less, (4) the claims pending in 2011 are 15% or less of the total claims made over the last five years, and (5) they have some similarity in the top source countries of refugees. Comparisons of the main characteristics are provided in Table 3.

Table 2. Case Study Selection

	Australia	United Kingdom	Sweden
Recent reforms	Yes (1992, 1996, 1999, 2001, 2005, 2007, 2008, 2012)	Yes (1993, 1996, 1999, 2002, 2010)	Yes (2006, 2008)
Total Change in Applications since Reform	-19%	-10%	-2%
Refugee authority	Case officer (Department of Immigration and Citizenship)	Case owner (Home Office-UK Border Agency)	Case officer (Swedish Migration Board)
Average Processing Time for Claims	3 months	1 month	3 months
Claims Pending in 2011 as percentage of total claims filed 2007-2011	13%	11%	12%
Top 10 source countries (2011)	China, India, Pakistan, Egypt, Iran, Fiji, Nepal, Iraq, Malaysia, and Indonesia	Iran, Pakistan, Sri Lanka, Afghanistan, Eretria, China, Nigeria, Libya, Sudan, and Bangladesh	Serbia, Somalia, Afghanistan, Iraq, Kosovo, Iran, Bosnia, Russia and Macedonia

Source: Hatton (2011), UNHCR (2011), Swedish Migration Board (2012), DIAC (2012), & UK Home Office (2012).

Recent Reforms

Australia, the UK and Sweden are selected because they have all introduced reforms various parts of the determination process to address the heavy flows of asylum applications. Due to the increasing number of boat arrivals, Australia introduced a series of reforms between 1992 and 2012. In 1992, the Migration Reform Act extended mandatory detention to all unlawful arrivals (Hatton, 2011). In 1996, the onshore asylum grants were included in the overall target with offshore grants to reduce the total number of protection visas granted (Hatton, 2011). With further increases in the arrival of asylum seekers, three-year temporary protection visas were introduced in 1999 (DIAC, 2012). In response to the arrival of a Norwegian freighter carrying 433 asylum seekers in 2001, the government introduced additional reforms[15]. They included the exclusion of Christmas Island, Ashmore Reef and other small islands from Australian territory to process boat arrival claims elsewhere (Hatton, 2011). In addition, applicants who had spent at least seven days in a 'safe' country before arriving in Australia were excluded from being eligible for a permanent protection visa (Hatton, 2011). Most recently in 2012, the government announced further reforms including the introduction of complementary

[15] Since 2011, there has been a gradual softening of the strict policies previously introduced.

protection and the implementation of a single process for boat and air arrivals (DIAC, 2012)[16]. The new reforms also ban boat arrivals from sponsoring their family members to discourage people from risking their lives at sea (DIAC, 2012).

The United Kingdom reforms also demonstrate a gradual tightening of asylum policies and rules. The Immigration Act introduced a fast-track procedure for applicants from safe countries of origin in 1993. Soon after, the safe third country concept was introduced in 1996 (Hatton, 2011). In 1999, the Immigration and Asylum Act created the National Asylum Support System to disperse asylum seekers outside of London and to substitute vouchers for welfare benefits (Hatton, 2011). This was followed by changes to the removal and work authorization policies. The 2002 Nationality, Immigration and Asylum Act no longer suspended deportation while processing appeals and permission to work past six months was abolished (Hatton, 2011). Most recently, in 2010, the UK Border Agency implemented the Asylum Improvement Project to effectively screen applications and speed up the inland refugee process (UK Home Office, 2010).

Sweden introduced major reforms to the inland refugee system in 2006. This involved the establishment of the Migration Court and the Migration Court of Appeals to hear appeals from the Migration Board (European Migration Network, 2006). In addition, the definition of a refugee was expanded in the Aliens Act to include persons who are persecuted on the basis of gender and sexual exploitation (European Migration Network, 2006). Further changes were made to work authorization rules in 2008 to allow asylum seekers who have been rejected to seek a change of status and apply for a residence permit without having to leave Sweden (European Database of Asylum Law, 2012). Recently in 2009, a pilot project 'Shorter Waiting' began. The purpose of this project was to test a new approach to processing asylum cases with the objective of reducing waiting times for the applicants and improving legal rights (Swedish Migration Board, 2012). Since then, the project has been tested on a larger scale and implemented in additional processing units across the country (Swedish Migration Board, 2012).

[16] Complementary protection is a subsidiary category of protection based on a risk of significant harm if returned to the home country.

Change in Applications since Reforms

Australia experienced a sharp decline for the years 2002-2006 when multiple reforms were made to tighten asylum policy[17]. The UK has had a steady and significant decline in the number of claims since the introduction of various reforms. Since 2002, the UK has witnessed an average decrease of 10% in the number of annual applications between 2002 and 2011. In Sweden, between 2008 and 2011, there has been an average decrease of 2% in the number of applications. It is clear that since the implementation of tightening reforms, all three countries have seen a decline in the number of applications.

Refugee Authority

Australia's refugee and humanitarian program is administered by the Department of Immigration and Citizenship (DIAC) and consists of two components: the offshore and the onshore program (DIAC, 2012). The offshore component is for refugees overseas who are selected for resettlement. The onshore program is for people who make a claim for protection after arriving in Australia, which is the inland refugee system. Both the components are numerically linked, as the number of visas granted in one component impacts the number of protection visas available in the other component. In Australia, individual case officers of the DIAC are responsible for processing claims for protection and making decisions on refugee claims (DIAC, 2012). In the UK, since 2007, a single case owner who is an employee of the UK Border Agency (UKBA) processes an application for asylum from beginning to end (UKBA, 2012). In Sweden, the Swedish Migration Board is the central administrative authority responsible for processing asylum applications (Swedish Migration Board, 2012). However, within the Migration Board, there are a number of different units staffed by case officers who are involved in the different stages of the process (Swedish Migration Board, 2012). Consequently, the case

[17] There was decline of 19% in the number of applications. It is important to note that the calculations do not include 2007 as this year saw a large increase in the number of applications from Iraq in all industrial countries. Following 2007, restrictions from earlier reforms were removed and Australia saw a 40% increase in the number of applications until 2011 when there was -9% decrease.

officer who completed initial interview does not make the final decision. All three countries have an inland refugee system with a specialized asylum authority.

Average Processing Times for Claims

In Australia, the DIAC requires decisions to be made within 90 days of receipt of the application (DIAC, 2012). In the 2010-2011 period, 60.7% of the applications were processed within this 90-day period (DIAC, 2012). In the UK, the aim is for the case owner to reach a final decision within 30 days of the date on which the application is made (UKBA, 2012). According to the UKBA (2012), 61% of the applications received a decision within 30 days by February 2011. In Sweden, the average processing time for applications has been 3 months since the introduction of the "Shorter Wait" project in 2009 (Swedish Migration Board, 2012). So, in all three countries, the average processing times average is below 3 months compared to over a year in Canada.

Pending Claims

With regards to pending claims, the numbers are calculated in terms of the claims pending in 2011 as a percentage of the total number of claims made over the last five years. In all three countries, the percentage was below 15%, compared to approximately 28% in Canada.

Top 10 Source Countries

Source countries vary depending on the geographical location of the receiving country. Nevertheless, Iran was a top source country for all three receiving countries, while China, Pakistan and Afghanistan were in top 10 source countries for two of the three case studies.

8.2. Evaluation Framework

As discussed in section 4, there are many pull factors that lead people to seek protection in one country over another. Given the fluctuations and unpredictability of world conditions that cause refugee displacement, it is difficult to design an inland refugee system that can be universally applied to all countries. Nevertheless, there are

minimum procedural requirements that are necessary. In addition, there is a need to balance refugee protection with control measures to discourage abuse of the system by non-genuine refuges. Certain minimum procedural requirements for refugee status determination are outlined by UNHCR, which are necessary for a fair refugee system and are in line with international refugee protection standards (UNHCR, 2005). In addition to these guidelines, a number of other factors are important for an efficient refugee determination system that tightens the system to reduce applications and prevent abuse (Hatton, 2011). These factors are summarized below in Table 2.

Table 3. Refugee Policy Index

Minimum Procedural Requirements	
Asylum authority	Specialized authority with knowledge of refugee issues to make an informed first instance decision.
Procedural safeguards	Access to: information in native language, legal aid, a qualified and impartial interpreter, and confidentiality of personal information. An individual assessment of each claim.
Final Decision	Written reasons must be provided. Claimants should have a right to appeal to an independent body and the right to remain in the country until a full decision is made.
Access to territory	
Visa Requirements	Imposition of visa requirements on certain countries and stringency (e.g. application from abroad, biometric passports, fingerprints etc.)
Border Controls	Enhanced border patrol, excision of territory for offshore processing, deportation of undocumented arrivals.
Smuggling Penalties/Carrier Liability	Substantial financial or criminal penalties for smuggler and for carriers by land, sea or air, including detention and imprisonment.
Application processing and status determination	
Definition of a refugee	Rules of causes of persecution such as gender and sexual orientation and persecution by non-state agencies.
Speediness of processing	Time limits on processing claims and reducing processing times overall.
Eligibility criteria	Implementation of ineligibility criteria to designate safe countries of origin, safe third countries, and limits on time elapsed since arrival.
Existence of subsidiary status	Offering an alternative category of protection if claimants cannot obtain protection under the Refugee Convention.
Right to appeal	Access to appeal of first-instance decision, the number of levels of appeal and rules relating to stay of removal during appeal.
Welfare of asylum seekers	
Detention	Rules relating to detention policies during claim processing and for failed claimants.
Employment	Claimants right to work during claim processing.
Access to benefits	Cash benefits, medical care, accommodation, dispersal policies etc.
Family reunification	Rules relating to eligibility to sponsor family during claim processing and after positive determination.

Source: Adapted from Hatton (2011) & UNHCR (2005)

The above refugee policy index includes policies aimed at reducing applications and deterring abuse of the refugee system while incorporating minimum procedural requirements for a fair refugee determination system. The procedural requirements include having a specialized asylum authority, procedural safeguards, access to appeal, and stay of removal during appeal. The policies related to access to territory, the processing of applications, and the welfare of asylum seekers have been used by many OECD countries to reduce asylum applications (Hatton, 2011). Access to territory policies include visa requirements, tougher border controls and increased penalties for smuggler and carriers who arrive with undocumented passengers. Policies related to the processing of applications include the definition of a refugee, the speediness of application processing, eligibility criteria, and the right to appeal. Lastly, the welfare policies include detention procedures, access to employment and social benefits, and the right to sponsor family members. Given the uncertainty in the flow of refugee applications, for a refugee system to be both fair and efficient, it is important to combine UNHCR principles with policies that are aimed at deterring abuse of the system.

As there is no perfect model for a refugee system, the evaluation framework is based on the above policy index. I use the framework to assess the extent to which the case studies provide a fair and efficient inland refugee system that balances protection with control. The framework is summarized in Table 4 below.

Table 4. Evaluation Framework

Principle	Characteristic	Measure
Fairness	Refugee Definition	Is the definition of a refugee and the rules relating to causes of persecution limited to those in the Refugee Convention?
	Subsidiary status	Is there a category of protection for claims are outside the Refugee Convention definition?
	Specialized asylum authority	Is there a specialized agency responsible for the processing of refugee claims?
	Appeal authority	Is there a special appeal authority for negative decisions?
Speed	Pre-screening procedures	Is there pre-screening (i.e. safe third country agreement)?
	Streamlining procedures	Is there an intake unit to streamline claims?
Efficiency	Administrative steps	Is there only one agency responsible for processing claims from start to finish?
	Appeal steps	Is there only one appeal opportunity?
Incentives/ Disincentives for Abuse	Final Status	If the claim is successful, does it lead to permanent status?
	Authorization to work	Are claimants prohibited from working?
	Social Benefits	Are claimants entitled to only limited access to welfare benefits and medical care?
	Compliance	Is there a compliance mechanism to ensure claimants comply during the process?
	Detention	Is there mandatory detention?
	Removal process	Are failed claimants assisted in their removal?

Table 4 specifies the characteristics that should be present in a fair and efficient inland refugee system and defines the measures to identify the best practices. The framework includes four main principles: fairness, speed, efficiency and incentives/disincentives for abuse. The fairness principle includes the definition of a refugee, access to subsidiary status, the presence of a specialized refugee authority, and access to appeal. These characteristics are the minimum procedural requirements for an inland refugee system outlined by the UNHCR. The speed principle includes characteristics such as pre-screening and streamlining procedures to speed up processing of claims. These measures ensure that claims are screened for eligibility to make a claim and that the most appropriate decision-making process is selected. Efficiency is related to the administrative steps involved in the determination process and the appeal process for failed claimants. The administrative steps include the number of agencies involved in processing the claim from beginning to end and the number of appeal opportunities for failed claimants. The more administrative steps involved, the

less efficient the system will be due to duplication, communication gaps and a lengthy process. Finally, the incentives and disincentives for abuse covers the policies employed by countries to deter abuse of the system. The characteristics in this principle include the final status granted following a positive decision (temporary versus permanent), access to social benefits such as authorization to work, social assistance and medical care, compliance mechanisms, the use of detention, and assistance with removal. These policies can impact the decisions of claimants to make an application for protection in one country over another. The presence or lack of these policies can provide either incentives or disincentives for abuse of the refugee system by non-genuine claimants.

The next section examines what characteristics are available in Australia, the UK, and Sweden.

9. Case Study Analysis

This section examines the refugee determination systems in the three selected countries: Australia, the United Kingdom and Sweden. Each subsection describes how the components of the refugee system for each country address the various principles of a fair and efficient refugee determination system. From this analysis, I determine what features are present in the case studies but absent in Canada, and those features are examined in further detail. The summary of the comparative analysis is shown below in Table 5.

Table 5. Comparative Analysis

Principle	Characteristic	Measure	Australia	U.K.	Sweden
Fairness	Refugee Definition	Is the definition of a refugee and the rules relating to causes of persecution limited to those in the Refugee Convention?	Yes	Yes	No
	Subsidiary status	Is there a category of protection for claims are outside the Refugee Convention definition?	Yes	Yes	Yes
	Specialized asylum authority	Is there a specialized agency responsible for processing refugee claims?	Yes	Yes	Yes
	Appeal authority	Is there a special appeal authority for negative decisions?	Yes	Yes	Yes
Speed	Pre-screening procedures	Is there pre-screening (i.e. safe third country agreement)?	Yes	Yes	Yes
	Streamlining procedures	Is there an intake unit to streamline claims?	No	Yes	Yes
Efficiency	Administrative steps	Is there only one agency responsible for processing claims from start to finish?	Yes	Yes	Yes
	Appeal steps	Is there only one appeal opportunity?	No	No	No
Incentives/ Disincentives for Abuse	Final Status	If the claim is successful, does it lead to permanent status?	Yes	No	Yes
	Authorization to work	Are claimants prohibited from working?	No	Yes	No
	Social Benefits	Are claimants entitled to only limited access to welfare benefits and medical care?	Yes	No	No
	Compliance	Is there a compliance mechanism to ensure claimants comply during the process?	Yes	Yes	Yes
	Detention	Is there mandatory detention?	Yes	No	No
	Removal process	Are failed claimants assisted in their removal?	Yes	Yes	Yes

9.1. Fairness

Refugee Definition

The first measure relates to the definition of a refugee and the rules relating to causes of persecution. In Australia, refugee protection is provided to those who meet the definition in the Refugee Convention or under other international human rights conventions. Australia recently introduced complementary protection in March 2012 to grant refugee protection to those who are not found to be refugees according the Refugee Convention definition but cannot be returned to their home countries for reasons such as the death penalty, torture, cruel, inhuman or degrading treatment or punishment (DIAC, 2011).

In the UK, refugee protection is also granted according to the Refugee Convention definition. In addition, claimants also have access to Discretionary Leave to Remain (DLR), which is essentially a humanitarian and compassionate grounds clause for those who cannot obtain refugee status based on the Refugee Convention grounds (UKBA, 2012b).

In Sweden, a refugee is the same as the Refugee Convention but also includes sexual orientation and gender as grounds for persecution. Moreover, Sweden's 'person in need of protection' category also includes protection from war and environmental disasters (Swedish Migration Board, 2012a). So, all three countries have definitions of a refugee in accordance with the 1951 Refugee Convention. Sweden has a broader definition.

Subsidiary Status

The second measure relates to whether the country has a subsidiary category of protection for claimants who do not qualify for protection under the Refugee Convention. Australia offers complimentary protection to those who face a danger to their life for reasons other than those outlined in the Refugee Convention (DIAC, 2012). Applicants who are given protection under this category receive the same visa as a person who is granted protection under the Refugees Convention. In the UK, claimants who are not eligible for protection as refugees are given temporary protection based on humanitarian

reasons or 'discretionary leave to remain', which is only given in exceptional cases based on individual circumstances (UKBA, 2012b). Sweden offers three types of subsidiary status based on the following factors: risk to their life, armed conflict or environmental issues, and particularly distressing circumstances such as serious health issues or adaptation in Sweden (Swedish Migration Board, 2012a). Protection based on all of these categories most commonly results in the issuance of a permanent residence permit. Therefore, all three countries offer a subsidiary category of protection to claimants who do not qualify for protection under the Refugee Convention grounds.

Specialized Asylum Authority

The second measure relates to whether the country has a specialized asylum authority. In Australia, individual case officers employed by the Department of Immigration and Citizenship (DIAC) are responsible for processing claims from beginning to end (DIAC, 2011). In the UK, individual case owners in the immigration division of the UK Border Agency, process refugee claims and deal with every aspect of the process from start to finish (UKBA, 2012b). In Sweden, the Swedish Migration Board is responsible for processing applications for immigration and asylum. The Migration Board employs a case management system where asylum seekers are appointed an asylum case officer who processes the application and makes a decision and a caseworker who refers refugees to social services[18] (Banki & Katz, 2009). As discussed above, all three countries have a specialized asylum authority. Moreover, in all of the countries, individual case officers are responsible for processing claims and making a first instance decision.

Appeal Authority

The third measure relates to whether there is a special appeal authority for negative decisions. In Australia, there are two levels of appeal, the Refugee Review Tribunal (RRT) and the Administrative Appeals Tribunal (AAT). Most negative decisions are heard by the RRT as the AAT only reviews decisions that are based on the exclusionary

[18] However, within the Migration Board, there are several units that deal with different parts of process and therefore the same case officer that completed the initial asylum interview does not make the decision on the application.

grounds of the Refugee Convention. In addition, failed claimants can apply for federal judicial review of an RRT or an AAT decision (DIAC, 2012a). A federal judicial review is the last resort of appeal. In the UK, there are two tribunals, a first-tier tribunal and an upper tribunal with an Immigration and Asylum Chamber in each (UKBA, 2012b). The first-tier consists of the Asylum and Immigration Tribunal (AIT), which includes two stages of appeal. The second-tier deals with decisions made by the first-tier tribunal. A decision of the upper tribunal can also then be appealed to the Court of Appeal. In Sweden, there is a three-step appeal process. The first step involves an appeal with the Migration Board's Administrative Procedure Unit. In the second step, the appeal is forwarded to the Migration Court if a decision needs to be changed. The last step in the appeal process is the Migration Court of Appeal where the claimant must first obtain permission to appeal (FARR, 2011). In short, all three countries have at least one specialized appeal authority for negative refugee determinations.

9.2. Speed

Pre-screening Procedures

The first measure relates to whether the country has any pre-screening procedures in place. Pre-screening generally includes a 'safe-third country' agreement. In Australia, the Safe Third Country Agreement came into effect in June 1996 and only applies to China for former refugees of Vietnamese origin (Karlsen et al., 2011).

Both the UK and Sweden belong to the European Union and abide by the Dublin Convention. The Dublin Convention, enacted in 1997, gives EU Member States the ability to remove asylum applicants who have travelled through another 'safe' EU Member State (European Commission, 2012). The United Kingdom has additional safe third country removals, whereby applicants are returned either to the safe third country of embarkation or to another safe country if there is evidence that the applicant would be admitted to that country (UKBA, 2012c). Examples of these countries include the United

States of America, Canada and Switzerland[19]. Therefore, all three countries have safe third agreements but they are more limited in Australia than in the UK and Sweden.

Streamlining Procedures

This measure relates to whether eligible claims can be streamlined. In Australia, there are no streamlining procedures and there is a single procedure. In the UK, there is a special asylum-screening unit (ASU) for basic screening. From the ASU, all cases are then referred to the National Asylum Intake Unit (NAIU), to determine the appropriate processing route, which includes third country cases, non-suspensive appeals, detained fast-track or the general process (Rice & Angus, 2011). Third country cases include those that fall under the Dublin Convention. Non-suspensive appeals include applications from countries deemed generally safe leading to "clearly unfounded" claims[20]. A clearly unfounded claim is defined as a claim "which is so clearly without substance that it is bound to fail' (UKBA, 2011c, p. 4). The detained fast track procedure is for applicants whose claim appears it can be decided quickly.

In Sweden, two units of the Migration Board, a Reception Unit and Asylum Examination Unit, carry out an investigation within one week of an asylum application (Banki & Katz, 2009). An individually tailored plan is developed to identify the stages that are required to reach a decision. There is an accelerated process for manifestly unfounded claims, which results in a refusal with immediate enforcement (FARR, 2011). A claim may be manifestly unfounded if a claimant is a citizen of a EU country or any other country where human rights are generally respected or because the Migration Board considers it to be self evident that a claimant lacks grounds for asylum (FARR, 2011).

So, both the UK and Sweden have special streamlining procedures in place. These generally include an asylum intake unit where claims are assigned to the most appropriate process. Australia, however, does not have any streamlining procedures.

[19] However, there are no binding agreements between these countries and all decisions whether to apply safe third country provisions are considered on a case-by-case basis.

[20] Currently 26 countries are designated as safe. The list of designated countries is available on the UKBA website.

9.3. Efficiency

One Processing Agency

The first measure relates to the number of agencies involved in the process. In Australia, the Department of Immigration and Citizenship (DIAC) is responsible for processing claims for refugee protection. In the UK, the UK Border Agency is responsible for all matters relating to immigration and asylum. It is one of the largest law enforcement agencies in the UK and is divided into four unified divisions including international, immigration, intelligence, and enforcement and crime. In Sweden, the Swedish Migration Board is responsible for processing applications for immigration and asylum. So, all three countries have a single agency involved in the processing of a claim from beginning to end. No third agency is involved in the processing of the claim at any stage.

Multiple Appeal Opportunities

The second measure relates to the number of appeal opportunities. In Australia, there are two levels of appeal: the Refugee Review Tribunal, the Administrative Appeals Tribunal, and the Federal Court (DIAC, 2012). In the UK, there are multiple opportunities for appeal. Most failed applicants can appeal first to the First Tier Tribunal and then to the Upper Tribunal. Following a negative decision from the Upper Tribunal, claimants can then appeal to the Court of Appeal (Rice & Angus, 2011). The last resort is to apply for judicial review in the Administrative Court (Rice & Angus, 2011). For claimants that were routed through the safe-third country or non-suspensive appeal process, appeals can only be filed from outside of the UK because an appeal does not suspend removal for these cases (Rice & Angus, 2011). In Sweden, there are also multiple appeal opportunities (FARR, 2011). The first appeal process begins within the Migration Board where the Board reviews the appeal and determines if the decision needs to be changed. If the Migration Board stands by its original decision, the appeal is then forwarded to the Migration Court for review. A negative Migration Court can be appealed to the Migration Court of Appeal for a final review. In short, all three countries provide for multiple opportunities to appeal a negative decision.

9.4. Incentives/Disincentives for Abuse

Final Status

The first measure relates to the final status granted to successful claimants. Australia had a temporary protection visa up until 2008. Currently, once a protection visa is granted, claimants are immediately eligible to apply for permanent residency and sponsor family members (DIAC, 2012a). However, those who arrive by boat are no longer eligible to sponsor family members as of September 2012. In the UK, successful claimants are given temporary permission to stay for up to five years. Claimants who are given protection status under a subsidiary category are granted temporary permission to stay for up to three years (UKBA, 2012b). Both categories of protection allows for the sponsorship of family members. At the expiration of the initial five years, claimants can apply for indefinite leave to remain (ILR). However, for claimants who received protection under a subsidiary category of protection, an application for permanent residence cannot be made until they have lived in the UK for at least 6 years. Sweden also offers permanent resident status to all successful claimants[21] (Swedish Migration Board, 2012a). With regard to the final status, each country varies in the protection it offers once a claim is found to be successful. Both Australia and Sweden offer permanent status to all successful claimants, while the UK initially only offers temporary protection.

Authorization to Work

The second measure relates to whether claimants are authorized to work during the processing of their claim. Australia provides permission to work to most claimants. Under the new work arrangements introduced in July 2009, permission to work depends on the bridging visa they hold and the stage of processing of their application (DIAC, 2012e). There are different types of bridging visas and they are given to people without lawful status as a temporary visa to remain lawful. Moreover, to obtain permission to work, claimants must demonstrate that they are in financial hardship, have a compelling

[21] Temporary protection is granted in some exceptional cases, for those who are receiving emergency medical care, or where there are temporary impediments to removal.

need to work, "remain lawful, meet time limits and actively engage with the department to resolve their immigration status" (DIAC, 2012e). In the UK, claimants are not allowed to work except when the processing of their claim has taken over 12 months (UKBA, 2012b). In addition, if permission to work is granted, self-employment is prohibited and employment is only authorized for a job included in the UK Border Agency's list of shortage occupations. Sweden allows all asylum claimants the right to work as long as they help establish their identity and cooperate with the Swedish Migration Board in processing their claim (Swedish Migration Board, 2012a). So, all three countries differ in their provision for the right to work for refugee claimants. Australia authorizes refugee claimants to work in most cases while Sweden allows all claimants to work. UK is the only country that does not authorize claimants to work during processing.

Social Benefits

The third measure relates to social benefits such as welfare payments and medical care. The Australian Government provides assistance for eligible asylum seekers through the Asylum Seeker Assistance Scheme (ASAS), which offers limited financial, legal and medical care assistance. Claimants are only eligible for this scheme if the application is taking longer than six months to process or if they meet one of the exemption criteria[22] (DIAC, 2012b). Those who are ineligible for ASAS have to obtain financial assistance and medical care on their own through refugee support programs. The UKBA provides accommodation, financial support and medical care to all claimants. Support is given conditionally and all claimants must sign an Asylum support agreement (UKBA, 2012b). Claimants do not have a choice on where to live, but are instead sent to wherever suitable housing is available. Financial support is provided for essentials weekly and the amount depends on age and family status. Dental care, prescriptions and vision tests may also be provided free of charge for a period of six months if a claimant can provide evidence that they cannot afford to pay for these services on their own. In Sweden, claimants are provided with temporary accommodation (Swedish Migration Board, 2012a). Claimants have lower fees for medical care, dental care, and

[22] Exemptions include unaccompanied minors, elderly persons, families with children under 18 years old, people who are unable to work due to a disability, illness, care responsibilities or the effects of torture or trauma, or people experiencing financial hardship resulting from a change in circumstances since arriving in Australia.

prescription drugs. Also, if medical expenses exceed CAD$60 within a six-month period, claimants are eligible for reimbursement from the Migration Board[23]. A daily allowance is also given to claimants for food, for basic living if they are not working and housing if no Migration Board accommodation is available. All three countries provide a range of financial and medical services to claimants. Australia is the only country that offers limited financial assistance and medical care to claimants that meet specific exemption criteria.

Compliance

The fourth measure relates to whether a claimant's cooperation is tied to the administration of social benefits. These benefits can include the right to work, financial assistance and medical care. In Australia, the Australia Red Cross under contract to the DIAC administers the assistance scheme (DIAC, 2012b). The support can be withdrawn if the claimant does not cooperate with the department in resolving their status. In the UK, access to benefits is tied to a claimant's application registration card (UKBA, 2012b). If the claimant does not comply with requests of the UKBA, all social benefits are withdrawn. In Sweden, claimants are issued an asylum seeker card. The Swedish Migration Board is responsible for providing claimants with financial assistance, accommodation and medical care expenses (Swedish Migration Board, 2012a). Therefore, a claimant's access to these benefits is tied to their cooperation with the Board. In all three countries, support for claimants is tied to their cooperation with the refugee determination process as the administration of these services is done by the processing agency. If at any point during the process, a claimant does not cooperate, including the removal stage, the support is removed.

Detention

The fourth measure relates to the practise of detention for refugee claimants. Australia practices mandatory detention for all 'unlawful' arrivals under the *Migration Act 1958*. The government offers four different types of detention facilities: immigration

[23] Based on Bank of Canada currency converter accessed on January 4, 2013. 400.00 Swedish krona(s) = 60.16 Canadian Dollar(s), at an exchange rate of 0.1504 (using nominal rate).

detention centres, immigration residential housing, immigration transit accommodation and alternative places of detention (DIAC, 2012d). Claimants are only held in detention until they are approved for a bridging visa. Currently, a majority of persons in detention are boat arrivals (97%), also known as Irregular Maritime Arrivals (DIAC, 2012d). The UK employs a discretionary approach to detention for refugee claimants. The only mandatory detention used is for the detained fast-track category (Banki & Katz, 2009). In Sweden, the use of detention is also discretionary. Claimants are subject to detention if identity has not been established, national security risks are present and if there is a high probability that the claimant is to be removed soon or if the claimant is expected to go into hiding if released (Swedish Migration Board, 2012a). Consequently, detention practices do not vary much in the three countries. Both UK and Sweden use discretion is making decisions on detention, whereas Australia employs mandatory detention for all claimants.

Removal Process

The final measure relates to whether claimants are assisted in their removal. Australia offers an Assisted Voluntary Return (AVR) program in partnership with the International Organization for Migration (IOM) to aid failed claimants return to their home country (DIAC, 2012a). The IOM is an inter-governmental organization founded in 1951 that works with government and non-government partners to "ensure orderly and humane management of migration" (IOM, 2012). Voluntary return programs in host countries are usually administered in partnership with the International Organization for Migration. These programs provide orderly, humane and cost-effective return and reintegration of failed claimants. IOM caseworkers in Australia provide help with information about the home country, reintegration support, purchase of air tickets, and help arrange departure and travel documents.

The UK also offers a Voluntary Assisted Return and Reintegration Programme (VAARP) through the IOM, which is co-funded by the European Union and the Home Office. This program offers reintegration assistance, a relocation grant to cover expenses, help with making travel arrangements and obtaining necessary travel documents (UKBA, 2012b). In Sweden, the International Organization for Migration (IOM) office also provides an Assisted Voluntary Return (AVR) service in partnership

with the Swedish Migration Board[24] (Swedish Migration Board, 2012). This program also provides assistance with travel arrangements and the issuance of travel documentation. Failed claimants for eligible countries may be able to apply for reestablishment support ranging from CAD$4512 for each adult to a maximum of CAD$11,280 per family[25]. So, all three countries offer some type of voluntary assisted program in partnership with the IOM to create incentives for failed claimants to return to their home countries voluntarily.

In light of the case study analysis, the next section examines the select characteristics that have been effective in increasing efficiency and reducing abuse in the three countries.

9.5. Successful Policies

This section aims to support key findings from the comparative analysis on refugee systems. Academic articles and Government annual and evaluation reports are used to assess whether the policies present in the three countries examined have been effective in reducing the number of refugee applications and incentives for abuse of the refugee system.

Tightening of refugee determination system

Various studies have examined the effects of asylum policy on the number of applications. One of these policies include visa restrictions, however, a number of studies find that the effect is short-term and there is a side-effect of redirecting refugee flows to neighbouring countries (Havinga & Bocker, 1999; Zetter et al., 2003). In addition, as visa policies have become restrictive in all countries, refugees tend to travel to countries with no visa requirements or where visas are not difficult to obtain to subsequently enter countries with difficult visa requirements on foot or by car illegally. Moreover, refugees are inclined to use false documents or other clandestine ways to

[24] Sweden also offers reestablishment support programs for specific countries. Examples of such countries include Afghanistan, Angola, Burundi, Central African Republic, and Iraq.

[25] Based on Bank of Canada currency converter accessed on January 4, 2013. 75,000.00 Swedish krona(s) = 11,280.00 Canadian Dollar(s), 30,000.00 Swedish krona(s) = 4,512.00 Canadian Dollar(s), at an exchange rate of 0.1504 (using nominal rate).

enter countries with visa requirements (Havinga & Bocker, 1999). To assess the effects of asylum policies on deterring asylum applications, Hatton (2011) examines changes in policies in 19 destination countries. The study finds that policies that impact access to the country and those that tighten the refugee status determination procedure have strong negative effects on the number of asylum applications (Hatton, 2011). These results reveal that on average policies that tightened access to territory reduce applications by 14% and policies that toughened the determination system reduced applications by 17% across the 19 destination countries between 2001 and 2006 (Hatton, 2011).

Aside from simply implementing policies aimed at deterring asylum applications, Hatton (2011) argues that tough policies need to be accompanied with enforcement of the policies and effective communication of the policies to potential asylum seekers. The success of such an approach be seen in Australia's experience following the arrival of a Norwegian freighter in 2001. One month after the arrival of the freighter, the Australian government passed six new bills aimed at toughening the asylum system (Hatton, 2011). These new policies were coupled with increased enforcement and publicity about the tough policies. As a result, Australia saw a significant drop in the number of applications, from 13,000 in 2000-1 to 5000 in 2002-3 and a negligible 3000 applications in 2003-4 (Hatton, 2011).

Streamlining Procedures

In both Sweden and the UK, a number of reforms have been introduced over the years to pre-screen and streamline cases for faster and efficient processing of claims. The use of a reception unit that involves a case officer and a caseworker has allowed Sweden to have one of the highest levels of return of failed claimants in Europe, with 76% departing voluntarily (Mitchell, 2001). In addition, since the start of the 'Shorter Wait in 2009, the Swedish Migration Board has been able to both reduce average processing times and the number of pending claims (European Migration Network, 2011). By 2011, the average processing time had been reduced to 149 days compared to 267 days in 2008 (European Migration Network, 2011). Moreover, the number of pending claims had also been reduced by 24% (European Migration Network, 2011).

Likewise, the UK introduced the New Asylum Model in 2007 and the Asylum Improvement Project in 2010 to speed up the processing of applications. The New Asylum Model introduced the concept of case ownership. An audit report found that case ownership improved the process for managing asylum applications by having one person responsible for a file without the need to pass it from office to office (Auditor General, 2009). A further evaluation report shows that as a result of the two projects, in 2011 approximately 60% of claims are decided within 30 days (UKBA, 2011). However, the report also found that over 70% of applicants appealed against the decision to refuse asylum due to rushed decisions. Approximately 20-25% of the appeals were upheld. In addition, the new system was not able to cope with sudden changes in the number of applications received. To address some of these problems, the Asylum Improvement Project has added a number of new initiatives including improvements to the case management system and senior officer review of case owners decision.

Assisted Voluntary Return Programs

Voluntary return programs provide orderly, humane and cost-effective return and reintegration of failed claimants. In the UK, the program was launched as a pilot in 2005 and later became a permanent program. An evaluation report in the UK Home Office finds that in 2006 the Voluntary Assisted Return and Reintegration Programme accounted for approximately one-third of all removals (Comptroller and Auditor General, 2009). The report also finds that although the average number of days to complete a voluntary assisted return is longer than an enforced return, the financial costs are lower and it is more positive for those involved. The efficiency of such programs is evident in the removal rate of failed claimants in the United Kingdom, with 21% of the claimants being removed within 12 months of initial application.

Similarly, the number of voluntary departures through the program in Australia has experienced a steady increase since being expanded nationally in 2009 (DIAC, 2012f). The program has also been expanded to include irregular maritime arrivals (IMA's). Of the 38 failed IMA asylum claimants removed in 2011-12, all but two were returned voluntarily (DIAC, 2012f). In Canada, since the start of the program in June 2012, 867 failed refugee claimants have been removed voluntarily through the Assisted

Voluntary Return and Reintegration Pilot Program (ATIP request, CBSA, January 16, 2013).

Summary

In summary, there is a great deal of similarities between the countries in relation to each of the measures. Table 6 below summarises the main findings from the analysis with the comparison to Canada[26].

Table 6. Analysis Summary

Principle	Characteristic	Measure	Australia	U.K.	Sweden	Canada
Fairness	Appeal authority	Is there a special appeal authority for negative decisions?	Yes	Yes	Yes	No
Speed	Streamlining Procedures	Is there an intake unit to streamline claims?	No	Yes	Yes	No
Efficiency	Administrative steps	Is there only one agency responsible for processing claims from start to finish?	Yes	Yes	Yes	No
Incentives/ Disincentives for Abuse	Compliance	Is there a compliance mechanism to ensure claimants comply during the process?	Yes	Yes	Yes	No
	Removal process	Are failed claimants assisted in their removal?	Yes	Yes	Yes	No (Pilot Project)

The findings show that some policies have been very effective but do not exist in Canada. These include:

- Special appeal authority
- Effective streamlining procedures
- One expert agency for processing claims from beginning to end
- Effective compliance mechanism
- National program to assist failed claimants with removal

Although Canada does not currently have a special appeal authority, under the Balanced Refugee Reform Act, the IRB will be implementing a Refugee Appeal Division

[26] See Appendix C for full evaluation framework table with comparison to Canada.

in 2013 (IRB, 2012). However, not all failed claimants will be eligible to file an appeal with the Refugee Appeal Division but all claimants retain the right to appeal to the Federal Court[27] (CIC, 2012). In relation to the speed principle, two of three countries have streamlining procedures that includes a intake unit to efficiently streamline all claims for the quickest decision making route. Australia is the only country without such procedures but this may be due to the relatively lower number of applications (11,510 in 2011) compared to the UK (25,420 in 2011) and Sweden (29,650 in 2011). The lower the numbers of applications are, the less the need for streamlining procedures. In relation to assisting failed claimants with removal, Canada implemented a pilot assisted return program for failed claimants in June 2012. This program is currently only available in Toronto and may be considered for expansion following an evaluation in March 2015 (CIC, 2012).

The characteristics missing in Canada are used to formulate policy options to address the inefficiencies in the inland refugee system to prevent abuse.

[27] For more information on when a refugee is ineligible to appeal, refer to the CIC website.

10. Policy Objectives

This section outlines the policy objectives and the criteria and measures used to evaluate the policy alternatives. It concludes by proposing three policy alternatives.

The objectives focus on both short-term (within the next year) and long-term goals. In the short term, three main objectives need to be met in light of the refugee reforms that have already been implemented and those that will be rolled out in 2013. These include concluding the backlog of claims from previous years and lowering processing times. Moreover, there is a need to implement a better system of compliance to ensure that the system is not open to abuse by non-genuine claimants and that failed claimants are removed promptly. The long-term objectives include reducing incentives for abuse by increasing efficiency of the system and better allocating resources towards the integration and support of genuine refugees.

10.1. Criteria and Measures

To determine the policy option that best accomplishes the short-term objectives identified above, five main criterion are chosen. These are operating costs, legal and administrative feasibility, effectiveness, stakeholder acceptability and equity. Each criterion is given a measure that is then compared to a benchmark, which determines an index value from one to three. The indices have a scale of low (1), medium (2), and high (3). When a criterion has more than one measure, the average of the index is taken to retain an equal weight for each criterion. Policy alternatives are given a total score based on the values for individual measures. Each criterion focuses on different components in order to ensure the success of the policy. The alternative with the highest total score is considered the most favourable. Table 7 summarizes the criteria and measures.

Table 7. Criteria and Measures

Criteria	*Definition*	*Measurement*		*Evaluation Index*
Cost				
Annual Expenditure	Financial cost to operate policy option	Annual operating dollars per year	<$5M $6-$10M >$10M	3. High 2. Medium 1. Low
Effectiveness (average)				
Processing Times	Extent to which policy directly impacts average processing times for first-instance decision	Reduction to 3-6 mos Reduction to 6-12 mos No direct impact		3. High 2. Medium 1. Low
Disincentives for abuse	Whether policy removes incentives to abuse system during five stages of process	Removes incentives in 4 or more Removes incentives in 2-3 Removes incentives is 1 or less		3. High 2. Medium 1. Low
Feasibility (average)				
Legal	Whether policy can be implemented within current legislative framework	No change in legislation and regulation Requires a change in regulation Requires new legislation and regulation		3. High 2. Medium 1. Low
Administrative	Amount of hiring and re-training of staff required	Requires only retraining of current staff Requires retraining and some new staff Requires hiring of completely new staff		3. High 2. Medium 1. Low
Acceptability				
Administrative	Extent to which policy changes the roles and responsibilities of the 3 agencies	1 of 3 agencies are impacted 2 of 3 agencies are impacted All three agencies are impacted		3. High 2. Medium 1. Low
Stakeholder	Whether the policy addresses CCR's five main recommendations	Address 4 or more Addresses 2-3 Address 1 or less		3. High 2. Medium 1. Low
Horizontal Equity				
Equal treatment for refugees	Whether the policy provides equal treatment to all refugees	Provides equal treatment to all refugees Does not provide equal treatment		3. High 1. Low

Cost

Cost is based on the annual operating dollars required (in millions) per year for the policy option. Implementation costs are not included as they are one time costs necessary for any policy intervention. Cost is determined using the estimated cost given by the IRB to implement and operate the new Refugee Appeal Division as a benchmark. The IRB estimates the operating cost to be approximately $20.6 million per year (IRB, 2012a). The Refugee Appeal Division represents an expansive investment in the system

but none of the recommended policy alternatives involve such an extensive investment. It is then reasonable that the costs of any policy option will be equivalent to approximately one-half of this amount. Therefore, an annual cost of $10 million is used as the benchmark. The policy alternative is ranked high if the costs exceed $10 million, medium if the costs range between $6-10million, and low if the costs are less than $5 million.

Effectiveness

This criterion captures the extent to which each policy option addresses the challenges of the current system. It has two measures: processing times and disincentives for abuse. For processing times, a policy is ranked high if it reduces average processing times to 3-6 months, medium if it reduces the processing times to 6-12 months, and low if there is no direct impact on the average processing time. These are evaluated using statistics from Australia, the UK and Sweden on the impact of policies on processing times.

The second measure is based on whether the policy option removes incentives for abuse during the five stages of the process. These five stages include:

(1) The application for protection at a port of entry or inland
(2) Timely submission of the personal information form
(3) Reporting in person and complying with conditions while waiting for a hearing
(4) Collection of social benefits, and,
(5) Removal proceedings.

The policy option is ranked high if it removes incentives to abuse in 4 or more stages of the process, medium if removes incentives in 2-3 stages, and low if it removes incentives in one or less of the stages. This measure does not address the issue of claimants going underground as this is expected in any immigration system when claimants do not wish to return to their home country. However, it is expected that if incentives to abuse the system are removed at each stage, the likelihood of claimants going underground is lower.

Feasibility

This criterion evaluates the difficulty of implementing each policy option within the current refugee system. It is broken down into legal and administrative feasibility. Legal feasibility is based on whether the policy alternative can be implemented within the current legislative framework. Similarly, administrative feasibility is concerned with the amount of retraining and hiring of staff required within the current refugee determination system. For legal feasibility, a policy option is ranked high if there is no change in legislation or regulation, medium if there is a change in regulation, and low if requires new legislation and regulation. For administrative feasibility, an option is ranked high if it only requires retraining of current staff, medium if requires some retraining and minimal hiring, and low if requires hiring of new staff.

Acceptability

Administrative acceptability is based on whether the policy is acceptable to the CIC, IRB, and CBSA. Acceptability is measured based on the extent to which the policy changes the roles and responsibilities of the three agencies involved in the process currently. The option is ranked high if the roles and responsibilities of only one agency is changed, medium if the roles and responsibilities of two agencies are changed, and low if the roles and responsibilities of all three agencies are changed.

Stakeholder acceptability is acceptability among refugees and support groups. The measure is based on whether the policy addresses the recommendations of the Canadian Council for Refugees (CCR). The CCR suggest five main recommendations to better address the rights of refugees in Canada (CCR, 2013). These include:

- Allowing all refugee claimants equal access to a hearing
- No fast track procedures
- High quality first level decision makers in an independent tribunal
- Reasonable time limits (30 days) to file personal information form and appeals, and,
- No removal during appeal.

Therefore, an option is ranked high if the policy alternative address 4 or more of CCR's recommendations, medium if it address 2-3, and low if address one or less.

Equity

This criterion assesses whether the system treats all refugees equally during the processing of their claim. The equity measure is only related to claims found eligible to be referred to the IRB for processing, and therefore does not assess equity during the initial eligibility determination. It is important for a fair and efficient refugee system to not discriminate on grounds of country of origin, age, or sex. This criterion is ranked on an evaluation index of only low with a score of 1 and high with a score of 3. A policy alternative is ranked high if it treats all refuges equally and low if does not provide equal treatment.

11. Policy Analysis

The alternatives are based on information concerning gaps in the current refugee determination system in Canada, as outlined in section 9. The options are not mutually exclusive and therefore can be implemented separately or together. For the purpose of this analysis, each policy alternative is analysed independently. In this section, policy alternatives are ranked and tallied according to each individual measure for a final policy recommendation based on the total result.

11.1. Policy Alternative 1: Status quo plus

The processing of claims in Canada currently involves three different agencies. As described in the analysis, all three comparison countries have designated a single agency for the processing of refugee claims to avoid duplication and increase efficiency. A single agency is responsible for taking the initial claim, making a decision, and removing failed claimants. Therefore, it is recommended that Canada designate all responsibilities related to the processing of claims to one agency. Given that the current challenges discussed in section 6 are related to the processing of the claim after it has been found eligible, CBSA can continue to make eligibility determinations for port of entry claims. However, for all claims made inland and for claims found eligible by CBSA or CIC, refugee protection officers employed by the IRB should be responsible for all matters relating to the processing of claims including pre-removal risk assessments. Moreover, CBSA would no longer be responsible for intervening when exclusionary grounds are raised and CIC would no longer process pre-removal risk assessment applications.

This option would be similar to the system is the UK and Sweden where specialized refugee caseworkers are responsible for claim processing matters. Refugee hearings would continue to be heard by an IRB member in the Refugee Protection Division and appeals by the new Refugee Appeal Division. As the IRB would be responsible all processing matters, there would be communication between the IRB and

CBSA for removal of failed claimants. The main purpose of creating the CBSA was to designate all enforcement matters relating to the immigration and refugee programs to a single agency, therefore, responsibility of removing failed claimants would remain with the CBSA. In addition, the CBSA has both the experience and resource capacity to justify retaining the duty of removal. In 2012, removal activities consisted of CBSA's third largest expenditure (CBSA, 2012c).

Policy Analysis: Status quo plus

Cost: The cost of this option is minimal, as it would only incur an administrative cost of rewriting operating manuals and new Memorandum of Understandings (MOU) between the three agencies clearly delineating the roles and responsibilities. Moreover, there would also be a cost to hire some new staff and retrain current staff on their new roles. To determine the cost of this option, the costs incurred by the IRB for the recent refugee reforms are used. The IRB reported an increase of $9 million to implement the reforms in fiscal 2011-2012 (IRB, 2011c, 2012a). However, a total of $4.85 million was for the backlog reduction plan resulting in an increased of $4.15 million due to implementation of refugee reforms (IRB, 2012d). Therefore, this option is ranked high, as it would cost less than $5 million.

Effectiveness: There will be a change in processing times due the removal of duplication in the process. If one agency is responsible for the handling of claims from beginning to end, then there is a greater degree of efficiency leading to faster processing times. In addition, refugee protection officers will be better aware of the complexity of the claim and be able to schedule a hearing accordingly. The UK employed a similar approach in the New Asylum Model, which introduced the concept of case ownership to avoid passing a file from office to office. The new model resulted in 55% of claims being decided within 6 months. However, individual case owners decided claims and there was hiring of new case owners. As this option does not address the hiring of more decision makers, this criterion is assessed within the capacity of the current system. Therefore, in terms of processing times, this option ranks medium for a reduction in processing times to 6-12 months from the current 22 months.

In relation to the disincentive for abuse, this option removes the incentive to abuse the system in the initial application and during the claim processing stage. Since

the IRB will be responsible for all claim-processing activities, claimants will be better aware of the process and what is required of them. Therefore, this options ranks medium as it removes incentives in 2 of 5 stages.

Feasibility: This option only changes the roles and responsibilities of the government agencies. Therefore, in terms of legal feasibility, this option scores high as it does not require a change in either legislation or regulation. As this option would require extensive retraining of current IRB staff and some hiring of new staff to deal with the added responsibility of processing inland claims, it scores medium on administrative feasibility.

Acceptability: The IRB has added responsibilities while both CIC and CBSA are devolved of some of their responsibilities. CIC would no longer be responsible for pre-removal risk assessments and CBSA would no longer play a role in intervening when exclusionary grounds are raised. In terms of administrative acceptability, this option is ranked low as it changes the roles and responsibilities of all three agencies.

In relation to acceptability among refugees and support groups, it addresses all five recommendations. All refugees have equal access to a hearing as there are no fast track procedures, there will continue to be an independent tribunal for hearings, claimants have one month to submit their personal information form, and claimants continue to have a stay of removal until a decision on appeal is made. This option only changes the agency responsible for processing the claims. Therefore, this option ranks high for acceptability.

Equity: This option allows all refugees equal treatment in the system. Therefore, this option ranks high for equity.

11.2. Policy Alternative 2: Refugee Intake Unit

This alternative proposes the creation of a refugee intake unit in each province within the IRB. The main goal of this option is to streamline refugee claims for increased efficiency and as a result, some claimants are given priority over others. The unit would only deal with the application stage of the process. IRB members will continue to hold

hearings and make final decisions. CBSA would continue to be responsible for ministerial interventions when exclusionary grounds exist. A screening intake unit would allow for refugee protection officers to interview claimants early in the process and explain the process to claimants. The first interview will be brief to collect basic biographic data and information about the claim. The claimants will continue to have a month to submit their personal information form. After submission of the personal information form, the officer will follow up with a more thorough interview to make a determination on the best route in the process for each individual claim. The intake unit would include different types of processes for different types of claims including a fast track process for claimants from designated countries of origin and those deemed to be manifestly unfounded, an expedited process for claims deemed to be simple or urgent for humanitarian reasons, and a regular full hearing process for cases deemed complex. The intake unit would follow each individual claim from beginning to end. This would assure that successful claimants are given guidance on applying for permanent residency and unsuccessful claimants are advised on removal proceedings and that their file is timely forwarded to CBSA for removal.

The intake unit would be modelled after a combination of the asylum intake unit in the UK and the reception unit in Sweden. In Canada, there are 3 regional offices but hearings are also held in Calgary and Ottawa. According to CIC, a majority of refugee claims were made in Ontario (67%), Quebec (18%), BC (5%), and Alberta (4%) in 2011 (CIC, 2012). So, there would be one intake unit in each of the 3 regional offices and one in Calgary. The unit would use a concept similar to that in the UK where 25 units exist throughout the UK, with 12 case owners in each who are expected to process approximately five cases per month (UK Refugee Council, 2007). However, in the UK, case owners also make decision on claims. Given the distribution of claims across Canada, three time as many refugee protection officers would be required in Montreal and Toronto and twice as many in Vancouver and Calgary, plus five support staff and three caseworkers in each office. A detained fast track similar to that in the UK is not recommended as claimants may be incorrectly detained due to the difficulties in determining if a claim can be resolved within 1-2 weeks. Therefore, the decision to detain would remain discretionary as it currently is. Similar to Sweden, the system would adopt a system of refugee protection officers and caseworkers. The refugee protection

officers would be responsible for processing the claims, whereas the caseworkers would be responsible for counselling claimants on the process and integration services.

Policy Analysis: Refugee Intake Unit

Cost: Although this involves implementing a new unit, only operating costs are measured. This option requires retraining old staff and hiring some new staff. It is expected that a total of 120 refugee protection officers, 20 support staff, and 12 caseworkers will be required. The annual salary for refugee protection officers is approximately $68,000 and $45,000 for administrative services employees (Treasury Board Canada, 2013). For all of Canada, this would amount to $9.6 million per year. Overhead costs also need to be included and would generally amount to 100% of the cost of the unit[28]. So, the total cost would be approximately $18 million. Therefore, this option is ranked low for cost.

Effectiveness: The primary purpose of the intake unit is to provide a single unit responsible for all matters related to refugee claims. By streamlining claims through the appropriate procedure according to whether they come from a designated country of origin or if the claim is deemed simple or urgent for humanitarian reasons, IRB financial and human resources will be used most effectively. As a result, there will be significant reductions in processing times. For example, in both the UK and Sweden, following the implementation of streamlining procedures and individual case officers for claims, the average processing times were reduced to 6 months for the UK and 3 months for Sweden (UKBA, 2012; Swedish Migration Board, 2012). Therefore, this option ranks high for processing times, as it would reduce processing times to 3-6 months.

In relation to disincentives for abuse, this option targets four out of five of the stages of claim processing. It reduces incentives in the initial application stage as claimants are interviewed briefly and explained the process. It also allows claimants a full month to complete and submit their personal information form followed by another complete interview about their claim to determine the most appropriate process. Claimants again have the chance to have a face-to-face communication and ask

[28] I would like to thank the external examiner for the comment on overhead costs in the federal government.

questions about the process. By having one unit and one agency responsible for processing claims, it provides for greater interaction and follow-up with the claimant throughout the process. For unsuccessful claimants, the intake unit would provide guidance on removal proceedings and timely transfer the file to CBSA for removal. The only stage this option does not address is the collection of social benefits. Therefore, this option ranks high for this measure.

Feasibility: Under section 6 of the IRPA, the Minister of CIC can designate any officer to carry out any purpose of any provision of the Act. As this option only requires the creation of a unit within the IRB, there is no need to change legislation or regulation. It would require an amendment to the CIC Legislation manual, which contains the Instrument of Designation and Delegation (CIC, 2013). Therefore, this options ranks high for legal feasibility. In terms of administrative feasibility, this option requires both retraining of current staff and some hiring of new staff. The hiring of new staff would be minimal as IRB can use the internal hiring process to offer lateral transfers for employees of CIC and CBSA who have significant experience and knowledge of the refugee programs. Consequently, this option is ranked as medium for administrative feasibility.

Acceptability: For administrative acceptability, both the IRB and CIC are impacted in terms of a change in roles and responsibilities. CIC would no longer process claims made at an inland office as this responsibility is transferred to the intake unit of the IRB. So, this option ranks medium for this measure.

For stakeholder acceptability, it meets four of the five recommendations because this option introduces fast track procedures. All claimants would have a month to submit their personal information form and have access to a hearing, including those in the fast track procedures. The hearings would continue to be heard by independent tribunal members and there would be no removal until a decision on appeal is made. Therefore, in relation to acceptability among refugees and support groups, this option ranks high.

Equity: The main goal of this option is to streamline refugee claims to achieve efficiency. As a result, some claimants will be given priority over others. Moreover, some

claimants will be fast-tracked and therefore will not have the same amount of time to seek legal aid or prepare for the hearing. Consequently, this option ranks low for equity.

11.3. Policy Alternative 3: Refugee Identity Card

Many different government departments currently administer the provision of social benefits including welfare, unemployment insurance, and medical services. This option can be modelled after a combination of the Asylum Registration card model in the UK and the support service model of the Swedish Migration Board. The card itself can be modelled after the Canadian Permanent Resident Card. The option involves the issuance of a refugee identity card by the IRB for all eligible claimants. This option could allow for the transfer of funding from individual provinces to the IRB to provide financial assistance for refugees. However, it is unlikely that the provinces would cede funds to the federal government[29]. As an alternative, this option would give Provincial service agencies access to a web tool linked to the IRB to determine the status of the claim. Refugees would need to sign a form allowing the federal departments to share information for the sole purpose of ensuring eligibility for services. This would also include transferring the responsibility of the Interim Federal Health Program from the CIC to the IRB.

Similar to the UK and Sweden, claimants would need to show their identity card for all dealings with the IRB, to collect their support payment, and at the doctor's office for medical care. However, accommodation will continue to be the responsibility of individual service agencies within each province. Currently, there is no direct and immediate communication between the different departments and IRB regarding the status of refugee claimants, which allows failed claimants to continue to receive medical care and social benefits. This disconnect between the departments therefore provides no incentives for claimants to cooperate with the processing of their claim. The identity card would be tied to the IRB and therefore would require compliance with the process

[29] A recent example of this is the federal governments plan to take control of skills development in Canada by requiring provinces to match up to $5000 in funding (Government of Canada, 2013). As a result, there has been a large backlash by many provinces wanting to maintain control and funding over skills development (Bouw, 2013; Babbage et al., 2013).

to ensure continued support payments and access to medical care. This option would provide incentives for claimants to cooperate with the processing of their claim and avoids financial losses due to abuse of the system by non-genuine claimants.

Policy Analysis: Refugee Identity Card

Cost: This option requires significant operating costs. The operating costs of the refugee identity card are expected to similar to those of BC's new care card, which is expected to be over $10 million (Legislative Assembly of BC, 2011). The actual costs of financial assistance to refugees are not taken into account. Therefore this option is ranked as low as it is expected to cost over $10 million.

Effectiveness: Refugee identity cards have been used by a number of countries around the world for both security purposes and to reduce processing times. The UK began issuing Application Registration Cards to applicants in 2002 to allow for faster verification of identity (UK Home Office, 2003). The UNHCR also assisted with developing an identity card in South Africa in 2000 to both counter abuse and to speed up the processing of asylum applications (UNHCR, 2000). These identity cards contain basic biographical data (name, date of birth, country of birth etc.), a photograph, and fingerprints. Claimants are required to show their card when appearing for any meetings with the processing agency. As the card is linked to the processing of the claim, it allows for faster processing by bypassing verification of identity and determination of where in the process the claimant currently stands. However, there have been no evaluations completed to determine the direct impact of identity cards on reducing processing times. So, in terms of reducing processing times, it is ranked low.

In terms of addressing the disincentives for abuse, this option removes the opportunity to abuse the system in 4 stages. Claimants would have an incentive to receive financial and medical support for timely submission of the personal information form. Support would be withdrawn if there is non-compliance with the IRB during the processing stage and when the claim is rejected. As support would no longer be provided for failed claimants, there is an incentive for claimants to be compliant and depart Canada. This option is therefore ranked high for this measure.

Feasibility: In terms of legal feasibility, this option only requires amendments to existing regulations as the administration of social benefits for refugees are only specified in the regulations and relevant processing manuals. The amendments will mainly include those relating to the administration of the Interim Federal Health Program (IFHP). Consequently, this option is ranked medium for legal feasibility. For administrative feasibility, this option involves significant hiring of new staff to operate the new program. Therefore, it is ranked low for administrative feasibility.

Acceptability: In relation to acceptability among government agencies, this option impacts both CIC and IRB. These changes require CIC to transfer the responsibility of the IFHP to the IRB. Therefore it is ranked medium for this measure.

In relation to acceptability among refugees and support groups, this option allows all claimants access to a full hearing by an independent tribunal and does not introduce any fast track procedures. All claimants have one month to prepare and submit their personal information form. Lastly, claimants cannot be removed until a final decision on appeal. Therefore, this option meets all five recommendations and ranks high for acceptability.

Equity: This option does not differentiate between refugee claimants and therefore provides equal treatment to all refugees. All refugees will be issued an identity card and required to abide by the same conditions to continue receiving assistance. As a result, this option ranks high for equity.

The outcomes of the analysis are summarized below in Table 8.

Table 8. Policy Analysis

Policy Option	Option 1 Status Quo Plus	Option 2 Intake Unit	Option 3 Refugee Identity Card
Cost	**3**	**1**	**1**
Annual Expenditure	High (3)	Low (1)	Low (1)
Effectiveness (average)	**2**	**3**	**2**
Processing Times	Medium (2)	High (3)	Low (1)
Disincentives for abuse	Medium (2)	High (3)	High (3)
Feasibility (average)	**2.5**	**2.5**	**1.5**
Legal	High (3)	High (3)	Medium (2)
Administrative	Medium (2)	Medium (2)	Low (1)
Acceptability (average)	**2**	**2.5**	**2.5**
Administrative	Low (1)	Medium (2)	Medium (2)
Acceptability among refugee groups	High (3)	High (3)	High (3)
Horizontal Equity	**3**	**1**	**3**
Equal treatment for refugees	High (3)	Low (1)	High (3)
Total (Max: 15)	**12.5**	**10**	**10**

11.4. Policy Recommendation

The results of the policy analysis indicate that no single option is largely dominant. Although the status quo plus option scores the highest, the other two options do not differ significantly in the scoring and therefore result in some visible trade-offs. The most obvious trade-off exists between the effectiveness of the program and equity. The intake unit is more effective in both reducing processing times and removing disincentives for abuse. However, it is less equitable as it differentiates between refugees and the cost is much higher than the status quo plus option. With regards to feasibility, both the status quo plus and intake unit option are easy to implement within

the current legislative and administrative framework. The refugee identity card was the only option to score low on three different measures.

Nevertheless, the cumulative results of the policy analysis suggest that the status quo plus option be implemented immediately. It is the least costly to implement and it provides for increased efficiency. Given the introduction of recent reforms, a number of teams within the CIC and IRB were set up to transition into the new system (IRB, 2012). If introduced immediately, this option can be easily integrated into the recent reforms. This option allows one agency to process claims from beginning to end, with the exception for eligibility determinations made at ports of entries by the CBSA. It avoids having to pass the file from office to office during the different stages of the process. Moreover, it allows all claimants to receive the best service from experienced and knowledgeable refugee protection officers.

Refugee policy is a sensitive issue as it involves making difficult decisions that affect vulnerable people's lives. Some of these people have endured great difficulties and genuinely fear for their life. However, there is also a problem for policy makers to distinguish these genuine refugees from those seeking better economic opportunities in Canada. Both CIC and CBSA have multiple other mandates relating to Canada's immigration system. As evidenced in the case study analysis in section 10, all three case studies only have one main agency responsible to process refugee claims. Therefore, it only makes sense that the IRB as the expert refugee agency in Canada be responsible for all matters relating to refugee claims.

12. Conclusion

This study examines the deficiencies of the current inland refugee system in deterring non-genuine claimants from abusing the system. It investigates the consequences of the current system and the factors that make the system vulnerable to abuse. In designing a fair and efficient refugee system, it has become difficult for policy makers to balance protection principles with control against abuse by those who do not genuinely require refugee protection. The design of an inland refugee system has significant consequences for both the government and refugees.

This research has demonstrated that the current system is inefficient in curbing abuse by non-genuine claimants. It has created unreasonable and lengthy processing times. In addition, there are few compliance mechanisms to ensure claimants comply during the processing of their claim and leave when their claim is rejected. There is also a lack of communication between the various agencies involved and a duplication of work. This study is based on a case study analysis of best practices in refugee systems in Australia, the UK, and Sweden. The findings show that some policies have been effective in these countries but do not exist in Canada.

As refugee flows are highly unpredictable due to changing world conditions, it is difficult to conceive a flawless refugee system. The policy options were therefore envisioned with the intention of addressing the consequences of the current system. Three policy alternatives are developed: designation of all matters relating to the processing of claims to the Immigration and Refugee Board of Canada, implementation of a refugee intake unit, and the implementation of a refugee identity card. It is recommended that all claim-processing responsibilities be designated to the Immigration and Refugee Board of Canada. Successful implementation of this policy alternative will reduce processing times and allow for greater communication between agencies resulting in fewer opportunities for abuse by non-genuine claimants. Canada has acknowledged the challenges of the existing system and is moving forward. However, the refugee reforms fail to address the inefficiencies created by the involvement of too many agencies in the processing of refugee claims. Designating a single agency with the

responsibility of refuges in Canada addresses both short term and long terms policy objectives.

This research addresses some of the major problems that arise out of the current system, mainly the lengthy processing times and incentives to abuse the system. One limitation of this capstone is that the analysis is based on information about the refugee system that was readily available using online sources. In addition, it would be helpful to conduct a qualitative study involving interviews with refugees and front line officers that process refugee claims to better understand the decision making process of refugees in choosing their destination country and the problems encountered by both front line officers and refugees. This would assist in determining how serious the problem of abuse is in Canada's refugee system while providing greater insight to specific types of challenges that the system faces. For a long-term approach, it would be valuable for Canada to complete evaluations of the refugee system on a regular basis to enable effective intervention as problems can be detected early.

Moreover, this capstone only addresses the pull factors of refugee displacement. Future research in this area needs to place a greater emphasis on the push factors to address the problems that cause people to flee their home country to claim asylum elsewhere. This would include greater funding in foreign aid and development projects in refugee producing countries. Instead of directing refugee policy at deterrence and security of our borders, there is more to be accomplished by finding long term solutions to the underlying problems that have lead to the current asylum crisis around the world.

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Appendices

Appendix A.
Immigration and Refugee Protection Act

Immigration and Refugee Protection Act, SC 2001, c 27

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

Exclusion — Refugee Convention

98. A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.

Appendix B.
Refugee Convention

Convention Relating to the Status of Refugees, 28 July 1951, United Nations Treaty Series, 189, p. 137.

Protocol Relating to the Status of Refugees, 31 January 1967, United Nations Treaty Series, 606, p. 267.

Article 1

A. For the purposes of the present Convention, the term “refugee” shall apply to any person who:

(2) As a result of events occurring before 1 January 1951 and owing to well- founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is out- side the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
(2) Having lost his nationality, he has voluntarily re-acquired it; or
(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; Provided that this paragraph shall not apply to a refugee falling under section A(I) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because of the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence; Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 33

Prohibition of expulsion or return ("Refoulement")

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, member- ship of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Appendix C.
Evaluation Framework – Comparison to Canada

Principle	Characteristic	Measure	Australia	U.K.	Sweden	Canada
Fairness	Refugee Definition	Is the definition of a refugee and the rules relating to causes of persecution limited to those in the Refugee Convention?	Yes	Yes	No	Yes
	Subsidiary status	Is there a subsidiary category of protection?	Yes	Yes	Yes	Yes
	Specialized asylum authority	Is there a specialized agency responsible for the processing of refugee claims?	Yes	Yes	Yes	Yes
	Appeal authority	Is there a special appeal authority for negative decisions?	Yes	Yes	Yes	No
Speed	Pre-screening	Is there pre-screening (i.e. safe third country agreement)?	Yes	Yes	Yes	Yes
	Streamlining Procedures	Is there an intake unit to streamline claims?	No	Yes	Yes	No
Efficiency	Administrative steps	Is there only one agency responsible for processing claims from start to finish?	Yes	Yes	Yes	No
	Appeal steps	Is there only one appeal opportunity?	No	No	No	No
Incentives/ Disincentives for Abuse	Final Status	If the claim is successful, does it lead to permanent status?	Yes	No	Yes	Yes
	Authorization to work	Are claimants prohibited from working?	No	Yes	No	No
	Social Benefits	Are claimants entitled to only limited access to welfare benefits and medical care?	Yes	No	No	Yes
	Compliance	Is there a compliance mechanism to ensure claimants comply during the process?	Yes	Yes	Yes	No
	Detention	Is there mandatory detention?	Yes	No	No	No
	Removal process	Are failed claimants assisted in their removal?	Yes	Yes	Yes	No (pilot project)

Appendix D.
Summary of Changes to Canada's Refugee System

	Current System	New System
Estimated total processing time	1038 days.	30-45 days (DCO refugee claimants) 216 days (non-DCO claimants)
Personal information form	28 days to submit form to IRB.	Changed to Basis of Claims form Port of entry claims – 15 days Inland – during eligibility interview with either CIC or CBSA
Initial RPD hearing	No time limits – currently time line is 19 months.	No later than 30 days for inland claims (DCO) No later than 45 days for port of entry claims (DCO) No later than 60 days for all non-DCO claims
Appeal of IRB decision	No appeal division within IRB.	Refugee Appeal Division (RAD) within IRB created
Designated countries of origin (DCO)	None currently.	New list created based on rejection rates, withdrawal and abandonment rates.
Pre-removal risk assessment	Any foreign national can apply.	No PRRA for one year after negative refugee claim decision. No PRRA for 36 months for DCO claims. RPD will process PRRA. Accelerated timelines – 15 days.
Reopening applications at IRB	IRB can reopen previously decided claims.	IRB can no longer reopen once final decision made at RAD or Federal Court.
Ministerial interventions	CBSA intervenes for security or criminality reasons.	More flexibility for CIC and Public Safety ministers to intervene before RAD.
Removal times	Average 4.5 years. Automatic stay of removal for all.	No automatic stay of removal for all. Launch of Assisted Voluntary Return program.
Criminality	Person convicted of serious crime in Canada **and** two year sentence denied access to RPD.	No longer require two year sentence. Can still access PRRA.
H & C Application	Cannot have two H&C applications at once. Cannot examine risk already considered during refugee hearing.	No access to H&C for 12 months following negative IRB decision. No H&C application when there is an ongoing refugee claim. Can withdraw refugee claim and then make an H&C claim.

Source: Adapted from CIC (2012b)