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An Investigation Of The Relationship Between A Designated Country Of Origin List And Access To Legal Aid In Ontario

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ABSTRACT

This qualitative and exploratory research project focuses on the Designated Country of Origin policy in the upcoming legislation, Bill C-31: the Protecting Canada's Immigration System Act and its relationship to Legal Aid Ontario. Through interviews with refugee lawyers and refugee settlement workers as well as analysis of policy and Legal Aid documents, research findings provide insight into the effect the Designated Country of Origin list will potentially have on access to Legal Aid Ontario services for refugee claimants from designated countries. Research recommendations point to the importance of reconsidering the manner in which Legal Aid funding is disbursed, as well as policy implications including adjusting the timelines outlined in the upcoming legislation, implementing more stringent designation policies and access to appeal processes.

Key Words: Refugees, Designated Country of Origin, Legal Aid

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Introduction

According to Peter Showler, former chair of the Immigration and Refugee Board (IRB), refugee determination is one of the most complex adjudication functions in industrialized society (Crepeau, Foxen, Houle & Rousseau, 2002). It is one of the few processes through which decisions can be a matter of life and death; it is therefore imperative that every measure to prevent errors be utilized. One of the most important measures to guarantee fairness in refugee determination is access to legal counsel for claimants. Current Canadian immigration legislation provides that refugee claimants in proceedings before the Immigration and Refugee Board (IRB) "may, at their own expense, be represented by a barrister or solicitor or other counsel" (Immigration and Refugee Protection Act, 2002). This provision does not provide refugee claimants with a right to publicly funded legal representation. Legal aid is not universally available for representation in refugee proceedings (Mossman, Schucher &Shmeing, 2010), and, as a result, many refugee claimants go unrepresented at their hearings.

New immigration and refugee legislation known as Bill C-31: The Protecting Canada's Immigration System Act will be introduced in Canada later this year. This bill includes a large number of changes to the current refugee claim process in Canada. This paper will focus on the implementation of a "Designated Countries of Origin" list that will subject claimants from countries designated by the Minister of Immigration as safe or non-refugee producing to restrictions in claiming refugee status in Canada.

The purpose of this study is to explore the relationship that will exist between claimants designated under the Designated Country of Origin policy and access to Legal Aid in Ontario.

As the literature put forth by Rehaag (2010), Gould, Sheppard and Wheeldon (2010) as well as Ramji-Nogales, Schoenholtz and Schrag (2007) indicates that legal counsel is an integral aspect of refugee determination and that Legal Aid is often necessary to secure legal counsel for refugee claimants, as well as fact that the right to legal counsel is a fundamental human right, any policy that has the potential to hinder that right risks violating human rights. It is for this reason that it is necessary to understand the relationship between this new policy and access to Legal Aid, for both designated claimants who will be directly affected, as well as all Canadians concerned with maintaining basic human rights in Canada.

Literature Review

Legal Aid Ontario

Legal Aid Ontario (LAO) is the second largest justice agency in Ontario. As established by the Legal Aid Services Act in 1998, LAO is an independent, publically funded and publically accountable non-profit corporation, responsible for administering the province's legal aid program (LAO). LAO consists of 77 community legal clinics across Ontario that provide information, legal advice and representation, including the Refugee Law Office (RLO) in Toronto. Legal aid is also administered through a certificate program through which clients receive a Legal Aid Certificate for a certain number of hours to reimburse a private bar lawyer for legal services. LAO also provides duty counsel for certain areas of law. In order to qualify for Legal Aid assistance, refugee claimants must meet certain financial criteria as well as pass merit screening (Legal Aid Ontario Mandate, 2012).

In order for a refugee claimant to be eligible for Legal Aid funding, they must pass a financial means test as well as a merit test. The financial requirements for funding consist of two tests: an income test as well as an asset test. Criteria for the income test are summarized in the chart below:

Family Size	Legal Aid Certificate	Contribution Agreement
1	Under $10,800	$10,800-$12,500
2	Under $18,684	$18,684-$22,500
3	Under $21,299	$21,299-$26,220
4	Under $24,067	$24,067-$30,120
5+	Under $26,714	$26,714-$33,960

http://www.legalaid.on.ca/en/getting/certificateservices.asp

Income included in the financial test is workers' compensation, employment income, employment insurance, pensions, social assistance, commissions, self-employed earnings, child

tax benefits and rental income. The financial test also considers payroll deductions, day care, child support payments, and necessary household expenditures (food, clothing, transportation, telephone, cable service, debts and personal expenses) (Legal Aid Ontario Mandate, 2012). The financial test also utilizes an asset test that is based on family size as well:

Family Size	Asset Value Allowed
1	$1000
2	$1500
3+	$2000

http://www.legalaid.on.ca/en/getting/certificateservices.asp

However, if a claimant has family in Canada that can reasonably be expected to pay for legal services, they will not be financially eligible for Legal Aid.

The merit test that claimants face takes into account current acceptance rates of claims from their country of origin at the IRB. LAO maintains a "country list" as well as listed types of persecution in specified countries from which claimants face minimal screening to receive full funding; this list changes as country conditions evolve. However, if a claimant does not fall in this category, they are most often given an "opinion certificate" which allots three hours for a lawyer to write an "opinion letter" assessing whether or not the claim has merit based on both acceptance rates of claims from their country of origin at the IRB, country conditions in their country of origin, the facts of their case, and the likeliness that their case will be successful. Generally, if the lawyer finds their case to have merit, they will receive a certificate for a certain number of hours (based on the claim) from LAO that can be used for services of a private bar lawyer (Rehaag, 2012).

If a claim does not qualify for the certificate program, they are able to seek legal advice at a community legal clinic such as the Refugee Law Office, which is located in Toronto and employs several staff lawyers (Legal Aid Ontario Mandate).

Funding for Legal Aid Ontario comes from several sources, the most significant contributors being the province of Ontario, the Federal government and the Law Foundation of Ontario. The following chart provides a breakdown of LAO funding:

Source	Income
Province of Ontario	$315.44 million
Law Foundation of Ontario	$4.84 million
Government of Canada (administered through province of Ontario)	$53.3 million
Contributions from Clients	$21.88 million
Other	$1.93 million
Total	$344.09 million

http://www.legalaid.on.ca/en/about/fact_funding.asp

The Federal government of Canada provides a portion of funding to contribute to criminal, immigration and refugee law and Youth Criminal Justice Act matters as well as other expenditures that fall under the Federal government's jurisdiction. These contributions are allocated through the provincial government. The Law Foundation of Ontario (LFO) administers the interest earned on lawyers' trust fund balances and Legal Aid Ontario receives 75 per cent of this income. This method results in revenue levels highly dependent on the Bank of Canada overnight rate and real estate activity levels (Legal Aid Ontario Fact Sheet).

Evolution of Bill C-31: Protecting Canada's Immigration System Act

In 2001, the Immigration and Refugee Protection Act (IRPA) was introduced in Canada. This act was created to recognize that the refugee program is in the first instance about saving

lives and offering protection to the displaced and persecuted. Its objective was to offer safe haven to persons with a well-founded fear of persecution based on race, religion, nationality, political opinion or membership in a particular social group, as well as those at risk of torture or cruel and unusual treatment or punishment (Immigration and Refugee Protection Act, 2002). The act thereby fulfilled Canada's international legal obligations with respect to refugees, while maintaining the integrity of the Canadian refugee protection system as well as protecting the health and safety of Canadians and the security of Canadian society.

In March 2010, an act to amend IRPA, known as Bill C-11, the Balanced Refugee Reform Act was proposed. This Bill was a reaction to allegations that the current refugee determination system was inefficient, leading to large backlogs as well as leaving it vulnerable to exploitation. Bill C-11 therefore sought to increase the speed and efficiency of the system while continuing to support the underlying principles of Canada's asylum system: ensuring fairness, protecting genuine refugees and upholding Canada's humanitarian tradition (Legislative Summary Bill C-11, 2010). In order to achieve these goals, the Balanced Refugee Reform Act (BRRA) proposed important amendments to IRPA. The Bill underwent revisions and received Royal Assent in June 2010. The proposed amendments included introducing an information gathering interview 15 days after arrival rather than a Personal Information Form (PIF), an initial hearing by independent public servant members of the Immigration and Refugee Board (IRB), new classes of claimants known as "Designated Countries of Origin" claims and "manifestly unfounded" claims, implementing a Refugee Appeal Division (RAD), strict time limits on the claims process as well as restrictions on Pre Removal Risk Assessment and Humanitarian and Compassionate applications (Legislative Summary Bill C-11, 2010).

However, these changes were not implemented, and in February 2012, further amendments were proposed in the form of Bill C-31: An Act to amend the Immigration and Refugee Protection Act, the Balanced Refugee Reform Act, the Marine Transport Security Act and the Department of Citizenship and Immigration Act, also referred to as the Protecting Canada's Immigration System Act. The new bill proposed changes that build on reforms to the immigration and refugee system passed as part of the Balanced Refugee Reform Act, claiming that the measures would provide faster protection to genuine refugees, and faster removal for illegitimate claimants (Legislative Summary Bill C-31, 2012). The proposed amendments include even stricter timelines, further restrictions for "Designated Countries of Origin" and "manifestly unfounded" claims, replacing the proposed information gathering interview with a document called a "Basis of Claim Form", and reversal of permanent resident status if protected person status or refugee status ceases (Legislative Summary Bill C-31, 2012).

Designated Country of Origin Policy

When the Balanced Refugee Reform Act (BRRA) was introduced, it included clauses that would establish a "Designated Countries of Origin" list (Legislative Summary Bill C-11, 2010). This would give power to the Minister of Citizenship and Immigration to designate by ministerial order nationals of a country or part of a country, or a class of nationals of a country considered "safe", who would face accelerated timelines in the refugee process. In order to make a designation, a threshold for claim volume and claim rejections had to be reached, consideration had to be given to certain factors including the human rights record of the country in question and the availability of mechanisms for seeking protection and redress, and recommendation had to be given from an advisory panel of experts (Legislative Summary Bill C-11, 2010).

Bill C-31 however amends the Designated Countries of Origin clause. Unlike the BRRA, Bill C-31 allows only for entire countries to be designated, rather than certain parts or groups in a given country (Citizenship and Immigration Canada, 2012). Bill C-31 also changes the criteria for country designation, according to two different situations. First, when the number of claims from a country reaches a certain threshold (that is to be established by ministerial order), the rate of rejected, withdrawn and abandoned claims of nationals of that country is the only criterion for designation. However, when the number of claims from a country is less than the threshold established by ministerial order, the Minister may make a designation if he or she believes the country in question "has an independent judicial system, recognizes basic democratic rights and freedoms and makes available a mechanism for redress and if civil society organizations exist" (Legislative Summary Bill C-31, 2012). Under Bill C-31, claimants from designated countries of origin would face greater restrictions in the claim process, including a complete bar from accessing the Refugee Appeal Division (RAD) to appeal a negative Refugee Protection Division (RPD) decision. Claimants would still be able to file a leave to appeal application to the Federal Court, however unlike non-DCO claimants, they would not be granted an automatic stay on removal upon filing. DCO claimants would also not be eligible for Pre-Removal Risk Assessment (PRRA) until 36 months after receiving a negative RPD decision. The government has also indicated its intention to make DCO claimants ineligible for a work permit until their refugee claim is approved by the IRB or 180 days have passed (Citizenship and Immigration Canada, 2012).

Literature used to begin initial research into the topic was obtained through social science servers as well as legal and government publications. Literature was chosen based on its relevancy to the current frameworks used to examine refugee determination, including the

human rights approach as well as legal approaches. The literature reviewed indicates a relation between access to legal counsel and outcomes in refugee determination. Sean Rehaag (2010), Gould, Sheppard and Wheeldon (2010) as well as Ramji-Nogales, Schoenholtz and Schrag (2007) conclude that legal counsel is a deciding factor in positive refugee outcomes, demonstrating the importance of legal aid to claimants. Having established the importance of access to legal counsel, it is evident that any policy impeding access to legal representation for refugees negatively affects their chances of positive outcome. The vast majority of refugee claimants require Legal Aid funding in order to get legal representation, which has been identified as integral to a successful claim. Therefore it is important to determine the nature of the relationship between the Designated Country of Origin list and access to Legal Aid. The Designated Country of Origin policy is new to Canada, so little research exists studying its effect on Legal Aid. However literature regarding inequalities in the refugee determination process are an effective indicator of the disadvantages faced by claimants from countries likely to be designated under the new policy. Amnesty International (2010), Crepeau, Foxen, Houle and Rousseau (2002), Foxen and Rousseau (2010), Lacroix (2004), Millbank (2009) and the Canadian Bar Association (2010) indicate that certain characteristics common to claimants from Designated Countries put them at a disadvantage in the refugee determination process. The assumption that this pattern can be applied to the legal aid distribution process, this indicates that Designated claimants will be equally disadvantaged in obtaining Legal Aid funding.

Importance of Legal Counsel

As the Designated Country List is a new concept in Canadian law, there is a dearth of research in the Canadian context considering the effect of legal counsel on status decisions of

Designated Country claimants. Research regarding the effect of legal counsel in refugee determination generally was considered an accurate indicator for the purposes of this study.

Greacen acknowledges the general importance of representation in legal proceedings, claiming that lawyers can more effectively steer litigation; he extends this concept to refugee determination in Canada (Greacen, 2002). Sean Rehaag (2010) and Gould, Sheppard and Wheeldon (2010) found competent legal counsel to be one of the key indicators of positive legal outcomes for refugee claimants in Canada. Ramji-Nogales, Schoenholtz and Schrag (2007), the Transactional Records Access Clearinghouse (TRAC) at Syracuse University (2006) similarly found legal representation to be a key driver of successful outcomes of asylum applications to American immigration courts.

The study conducted by Rehaag showed that unrepresented claimants were 395.3% more likely to have their claims withdrawn or declared abandoned than claimants represented by lawyers, and 275% more likely to have a negative outcome if their claim was heard (Rehaag, 2010).

Especially relevant when considering the Designated Country of Origin policy is his finding that claimants from countries with lower than average grant rates were disproportionately more likely to be unrepresented in their claims, and when they were represented were 343.8% more likely to succeed in their claims (Rehaag, 2010). This is significant as it demonstrates even before the list of "safe" countries is formalized through legislation claimants from these countries are at a disadvantage.

Ramji-Nogales, Schoenholtz and Schrag (2007) found that asylum seekers with representation received positive outcomes at a rate of 45.6%, almost three times as high as the

16.3% rate for those without representation. Even with all other variables held constant, represented asylum seekers were substantially more likely to win their case than those without; thus the study concludes that representation is the single most important factor in claimant outcome (Ramji-Nogales, Schoenholtz and Schrag, 2007).

TRAC studies examining data collected by the U.S. Executive Office for Immigration Review from 1994-2005 found that there was a difference in asylum granting rates based on whether the claimant had representation (TRAC, 2006).

The importance of legal representation is conveyed in a paper prepared for LAO by Osgoode Hall Law School, which states that "the quality of justice received in our system…is impacted by the presence or absence, and quality of legal representation" (Mossman, Schucher & Schmeing, 2010). The literature discussed in this section acknowledges that with expedited procedures where the normal safeguards of the refugee status determination procedure are absent, practical accessibility of judicial review to all claimants is imperative to maintain a fundamentally just system.

Impact of Country of Origin on Availability

For the purposes of this literature review, research regarding impact of country of origin on refugee outcomes in general will be taken as indicative of its potential impact on access to legal aid, for both of these processes rely on the merit of a claim.

Rehaag (2010), TRAC (2006), Greene and Shaffer (1992), Baum (1994) and Epstein and Knight (1998) find that the country of origin of claimants plays a significant role in their outcome.

Rehaag is of the opinion that the test for financial eligibility for legal aid funding in Ontario is overly strict. LAO maintains a "country list", as well as listed types of persecution in specified countries from which claimants are generally automatically provided certificates to fund legal representation. Outside of these groups, claimants usually get "opinion certificates" which pay lawyers to prepare opinion letters assessing the merits of the claim and whether coverage should be provided. These letters are then reviewed and coverage is provided where LAO deems it meritorious (Social Planning and Research Council of British Columbia). Rehaag found that legal aid programs are becoming increasingly restrictive and merit screening processes are being applied in arbitrary fashions. He identifies a pattern of increasing reliance on country of origin in determining whether claims have merit for the purposes of legal aid eligibility. Rehaag further points out that this is a problematic pattern in funding: an increasing proportion of LAO refugee funding is being used toward opinion letters, which provide no actual legal assistance. Rehaag also raises the possibility that LAO's screening process is not in fact merit based, but rather a quota system, created by manipulating the country list, the persecution list and the definition of "merit" (Rehaag, 2010). LAO seems to be adopting increasingly restrictive standards of merit in order to reduce refugee law expenditures (Rehaag, 2010).

TRAC found that nationality was a key factor in predicting asylum application outcomes, with claimants from El Salvador, Mexico and Haiti more likely to be denied asylum than those from Afghanistan and Burma (TRAC, 2006). Similarly, Greene and Shaffer found that investigation of cases filed with the Federal Court of Canada indicated relation between the country of origin of the applicant and the decision regarding their claim. Research by Baum (1994) as well as Epstein and Knight (1998) suggests that the demographics of the claimant, including country of origin, can be used as outcome predictors.

The study by Ramji-Nogales, Schoenholtz and Schrag suggests that legal aid policies screen out claimants from countries with low yearly refugee claim acceptance rates in order to save the expense of paying for robust merit screening processes (Nogales, Schoenholtz & Schrag, 2007).

Problematic Policy Design

There is no reliable and objective means of consistently distinguishing between safe and unsafe countries in terms of human rights protection (Lacroix, 2004; Macklin, 2001). Many human rights violations remain largely undocumented or poorly documented, as they often occur in isolation. General knowledge of country conditions frequently does not translate into knowledge of the experience, or documentation of the human rights abuses of all citizens of those countries (Millbank, 2009). For cultural reasons victims are often reluctant to report the violations, particularly in the case of gender based or sexual orientation based violence, who face deeply entrenched stereotypes that discourage them from speaking out about violence, discrimination and other human rights concerns (Amnesty International, 2010). It is also possible that even victims who do come forward to report violations may not be believed for political, economic or other reasons (Amnesty International, 2010).

Credibility

The criteria for Legal Aid funding involve assessment of the merit of one's claim (Rehaag, 2010), which requires judgment of claimants' credibility. A positive recommendation in a lawyer's opinion certificate is integral to obtaining Legal Aid, however a major issue with credibility determination noted in the literature is that of subjectivity. Personal perceptions of law professionals are heavily relied upon in granting Legal Aid; however the literature indicates that

claimants from countries with low grant rates that are likely to be designated have encountered higher levels of trauma, negatively affecting their behaviour and therefore perception by decision makers (Foxen, Rousseau, 2010; Byrne & Shacknove, 1996, CBA, 2010; Crepeau, Foxen, Houle, Rousseau, 2002; Millbank 2009; Macklin 2001).

When making credibility determinations, decision makers often look for consistency, plausibility and demeanor (Millbank, 2009).

The Canadian Bar Association (CBA) finds that claimants from countries likely to be designated because of low grant rates are often the most traumatized, requiring time in order to acclimatize to Canada and navigate the refugee system, as well as to build trust with representatives in Canada in order to communicate their narrative (Canadian Bar Association, 2010). Accounts of claimants from countries likely to be designated often include instances of torture, rape, arbitrary detentions, threats and armed attacks, which cause post-traumatic psychological reactions, affecting their ability to testify. Trauma can alter a claimant's perception of time, distort spatial perception, block memories and cause "dissociative phenomena", which can all also compromise coherence of trauma stories. Such reactions to trauma, combined with difficulty concentrating result in mistakes that can be perceived as lack of credibility (Foxen, Rousseau, Crepeau, Houle, 2002). Byrne and Shacknove concur on this point, acknowledging that traumatized claimants may hesitate in their speech, be aggressive, withdrawn or anxious, or offer confused testimony which can lead to an incomplete factual record, giving rise to doubts about credibility (Byrne & Shacknove, 1996). Foxen and Rousseau also found that traumatized claimants are more likely to experience extreme reactions in hearings such as fear, distraction and incomprehension that can be interpreted as 'non-genuine' indicators (Foxen & Rousseau, 2010).

Expedited procedures are ill-equipped to accommodate the protection needs of victims of trauma, as persons who have experienced torture, sexual violence, the execution or disappearance of family members, or communal violence are unlikely to be identified in an accelerated procedure (Byrne & Shacknove, 1996). Foxen, Rousseau, Crepeau and Houle claim there is a lack of knowledge of psychological consequences of trauma, as well as improper use of expert reports prepared by medical experts (Foxen, Rousseau, Crepeau, Houle, 2002).

When considering demeanor, physical appearance and perception of manner play an important role; hesitation or lack of detail is often interpreted as indications of falsehood (Millbank, 2009; Macklin, 2001), though these are common in trauma claimants (Foxen, Rousseau, Crepeau, Houle, 2002).

Claims rest largely upon personal testimony, and decision makers often rely on "ring of truth"; whether the story 'sounds' credible (Millbank, 2009). UNHCR however states it is unlikely refugees will ever be able to prove every aspect of their claim (Millbank, 2009). This would be especially true for traumatized claimants, who have often undergone trauma that render sharing their story difficult (Foxen, Rousseau, Crepeau, Houle, 2002). Additionally, claimants from Designated Countries are even more likely to be encouraged by their communities and networks to dramatize/exaggerate their narratives in order to be believed, resulting in perception as not credible and fake claimants (Macklin, 2001).

Consistency consists of two aspects: "external" consistency refers to the extent to which the applicant's narrative is contradicted by outside knowledge, such as applicant's own behaviour or history, or "generally known facts" (Millbank, 2009). This can be subjective, as it has already been acknowledged that 'generally known facts' about country conditions are not

necessarily accurate indicators of true circumstances (Millbank, 2009), and erroneous country information contributes to erroneous credibility assessments (Macklin, 2001).

"Internal consistency" refers to the extent to which applicant's oral narrative in the hearing correlates with other claims (Millbank, 2009). Claimants who have had traumatic experiences often present inconsistencies because of the negative effects associated with trauma (Crepeau, Foxen, Houle, Rousseau, 2002), and decision makers themselves acknowledge that contradiction is inevitable in virtually every case (Millbank, 2009). Millbank finds that a culture of disbelief is created surrounding refugee claims from countries likely to be designated, and therefore negative credibility findings should not be made unless an applicant is given a chance to explain inconsistencies (Millbank, 2009).

The concept of plausibility relies on assumption or inference as to how people would behave in certain situations (Millbank, 2009). The nature of plausibility makes it very subjective, as it rests more on speculation than evidence and speculation will be affected by the conceptual framework of the decision maker (Macklin, 2001). Credibility assessment is generally viewed by decision makers as "relying less upon rules than upon a constant effort to keep an open mind, to listen, to remain focused on the core elements of the claim, to guard against judging plausibility based on one's own cultural norms" (Macklin, 2001). Keeping an open mind and focusing on the core elements of the claim becomes problematic when a Designated Country of Origin list is imposed, as decision makers are vulnerable to automatic bias toward claimants from the list (Macklin, 2001).

Issues related to credibility in refugee determination are effectively captured in a quote from Earl Russell: "Credibility is a way by which the interviewer is able to express his ignorance

of the world. What he finds incredible is what surprises him" (Millbank, 2009). The wider the gulf between the experiences of the claimant and the knowledge base and cultural frame of the decision maker, the greater the likelihood that credibility assessment may be inaccurate (Millbank, 2009). As the literature discussed has indicated, credibility determination is not an exact science whether in deciding a refugee claim or screening for Legal Aid funding and it puts certain claimants at a disadvantage.

Social Discourse

Given the subjectivity of opinion certificates, the prevalent social construction of claimants is important to consider as it will inevitably play a role in credibility determinations.

Multiple studies including those by Rehaag (2010), Greene and Schaffer (1992), Baum (1994) and Epstein and Knight (1998) have found that positive outcomes are affected by claimant demographics, which include nationality and ethnicity; prominent social discourse states that some countries have "reputations for honesty and integrity" (Gilboy, 2002); this would imply that Designated Countries would be perceived as the opposite, having reputations of producing fraudulent refugees (Macklin, 2001).

The new Canadian legislation has been criticized for its negative discourse, emphasizing criminals and abusers of the system, and stereotyping certain groups of refugees in highly negative terms such as queue jumpers and de facto immigrants (Lacroix, 2004).

The media is also integral in constructing social discourses, and has used this influence to create a sense that Canada is facing a refugee crisis, implying that the government is unable to control the source and volume of arrival of asylum seekers. This culture of fear encourages

decision makers to be hyper-critical of Designated Country refugee claims (Lacroix, 2004, Macklin 2001).

Lack of familiarity with the political and social situation in the claimant's homeland can lead to stereotypes and misrepresentations of daily life in a country in conflict presented in the media, causing incomprehension of problems with time sequence and narrative coherence in accounts of war and flight influencing credibility and merit findings (Creapeau, Foxen, Houle, Rousseau, 2002); however as has already been acknowledged, even general knowledge regarding a country does not provide sufficient basis for credibility determinations (MIllbank, 2009).

Political Influence

Although traditional asylum determinations are, in principle, humanitarian rather than political decisions, Foxen, Rousseau, Byrne, Shacknove and Rehaag indicate that even these decisions are influenced by political environment.

Designating a country as essentially "safe" has obvious foreign policy implications, and moves governments away from the objective and humanitarian evaluation of individual claims (Foxen & Rousseau, 2010); Byrne and Shacknove point out that the establishment of a Designated Country list can lead to a passive approach to fact finding on the part of merit screeners, as they feel their findings should be consistent with government ideology and public opinion; as well as heightening the burden of proof and to exaggerate doubts about an applicant's credibility (Byrne & Shacknove, 1996). There is general consensus among scholars that the government's opinion of formal safe country criteria is not a satisfactory substitute for independent review (Byrne & Shacknove, 1996; Foxen & Rousseau, 2010).

Rehaag references the increasingly unfriendly political environment regarding refugees in Canada as a reason for negative legal aid funding trends (refusal rate for full funding has decreased every year since 2009) (Rehaag, 2010). Rehaag and Byrne and Shacknove indicate that to the extent that standard of merit of refugee claims shifts depending on the financial priorities of legal aid programs, existing legal aid distribution is controlled by political agendas (Rehaag, 2010). Similarly, where the immigration bureaucracy faces backlogs, a concern for speed is likely to trump a concern for protection (Byrne & Shacknove, 1996).

In the past, refugee determination has been considered from a variety of theoretical frameworks. These include a human rights approach which emphasizes the rights of refugees as well as a state sovereignty approach which emphasizes the importance of nations being able to independently decide who is admitted as well as when and how they are admitted to their country (Lambert, 2009). The securitization of the state approach has become more prevalent in the years following September 11 2001, which focuses on maintaining national security as a top priority (Lambert, 2009). I have chosen to combine a human rights approach with a legal framework, understanding refugee law as human rights for this study.

Methodology

Framework

This is a qualitative, exploratory study that will employ grounded theory. Grounded theory is a qualitative research method that utilizes a systemized set of procedures to develop and inductively derive theory about a phenomenon (Strauss & Corbin, 1990). Applying the grounded theory method in research, instead of formulating the hypothesis in advance, the researcher begins with an area of study and allows relevant theoretical constructs to emerge from that process of study. This allows an intrinsic relationship to develop between the data and theory. I am employing grounded theory as I believe that under the circumstances of the policy not yet being in effect, it will yield the most accurate and viable conclusions.

Constructivism, a concept developed by Glasersfeld, consists of the central idea that knowledge is not nonphenomenal, it cannot exist outside from the knower's experience. Knowledge is created through a series of processes of inner construction (Glasersfeld, 1989). Social constructionism is a strand of constructivism that focuses more on social processes and interactions. It seeks to understand how social actors recognize, produce and reproduce social actions and how they come to share an intersubjective understanding of specific life circumstances. Social constructionism as a conceptual framework is relevant to this study, as it addresses the subjectivity of various concepts integral to the policy, including the definition of refugee and the definition of safe which vary greatly among individuals, communities and countries.

The theoretical framework through which this study is understood is refugee law as human rights. International human rights law is fundamentally a means of delimiting state

sovereignty; refugee law as it currently exists is fundamentally concerned with the protection of powerful states (Hathaway, 1991). However in this study, refugee law is considered from a human rights perspective as subsidiary and interim human rights protection. Adopting the framework of James Hathaway (1991), refugee law should be an effective means of enabling persons to disengage from states which have forfeited their claim to international legitimacy by failure to adhere to basic standards of human rights law. The role of refugee law should be to provide a source of interim protection for all such persons, until and unless the risk to human dignity in the country of origin ceases. Any person whose basic human dignity is at risk in her home state must be empowered to leave the abusive situation. Refugee law should affirm autonomous right of individuals and communities to access an interim remedy when continued residence in their own state ceases to be viable. Refugee law would therefore facilitate and complement international human rights law (Hathaway, 1991).

Scope

This study considered only the relationship between country designation and access to Legal Aid in Ontario. The Designated Country of Origin policy is a new concept in Canadian legislation. Therefore information gathered is limited to opinions and conjectures of those with significant involvement in working both with refugee claimants as well as Legal Aid Ontario, based on previous experience.

Interviews

The study involved interviews with six individuals: three refugee lawyers and three refugee settlement workers. Refugee law professionals were chosen to participate in the study because of their familiarity with not only the refugee determination system, but with legal aid

procedures and the legal aspects of immigration policy. Refugee settlement workers were chosen to participate because they have a high level of involvement with refugee claimants and are likely to be familiar with the current situation of refugee claimants in Ontario and able to offer legitimate hypotheses regarding the implications of enforcement of the new policy.

In order to be considered for inclusion in this study, participants had to be currently working directly with refugee claimants, either as legal representatives or settlement workers. Potential participants were excluded from the study if they are directly involved with immigration and refugee policy development in the Canadian federal government at the time of the interview. Participants were recruited from refugee settlement agencies in the Greater Toronto Area (GTA), refugee/immigration law offices in the GTA, as well as faculties of law in Ontario Universities.

Interviews aimed to gain first hand insight into how the Legal Aid process is carried out in practice, and the current situation for claimants from countries likely to be designated under the Designated Country of Origin policy.

Textual Analysis

To understand the process and implications of country designation, government legislation including Bill C-31 itself as well as relevant backgrounders and legislative summaries were examined. Legal Aid Ontario documents were also considered , as knowledge of criteria for distribution of funds to obtain legal counsel is imperative to understanding who will be negatively affected under the new legislation.

Examination of the popular discourse was also used as a tool to understand both the motivation for Bill C-31 as well as the implications of the Designated Country of Origin list. Media outlets (i.e. newspaper articles) were chosen to as they are the most accurately indicative of the contemporary social construction of and general attitude of the public toward refugee claimants as well as the refugee determination system in Canada. In particular, the language used to describe claimants from countries likely to be designated demonstrates the negative perception of these individuals held by the general public. This examination allowed a deeper understanding of the environment in which the legislation is being passed and Legal Aid Ontario must operate, which influences the feasibility of practical implications of the research.

Analysis

The data collected was then analyzed. This involved critically examining the content of the texts examined (i.e. use of language, omissions, justifications) and identifying potential relationships between the Designated Country of Origin policy and Legal Aid criteria. Information gathered through interviews will be used to explore how these potential relationships will manifest in the claims process.

Limitations of Methodology

Due to time constraints as well as limited resources, the number of interviews conducted had to be limited to six. This provides a narrow view of the Refugee and legal Aid systems, however this limitation was countered by a conscious effort to select diverse interviewees in order to include a variety of perspectives.

As Bill C-31 has yet to come into effect and the Designated Country of Origin list has yet to be publicized, projections as to the effect the DCO policy on refugee claimants is based on previous experience of interviewees.

Findings

As mentioned, I employed grounded theory in carrying out this research. Therefore, in conducting interviews, while there were general topics of discussion I had previously established, it was important to allow conversation to follow the direction participants took. In this manner, ideas, insights and opinions of participants remained uninfluenced and free from outside bias, reflecting only their own personal experience.

During interviews, I took extensive field notes to capture the key points of the interviewees' responses. Upon completion of the interview, I would consult the interviewee to ensure my record of their responses was accurate, elaborating where necessary. After completing all of the interviews, I analyzed the participant responses to find common themes as well as diversions in opinion. Once I had established general conclusions from the interviews, I examined both government legislative documents including Bill C-31, Legislative Summaries of Bill C-31, major speeches in Parliament regarding Bill C-31, as well as government backgrounders regarding Designated Countries of Origin, and Legal Aid criteria for qualification, "An Analysis of Immigration and Refugee Law Services in Canada", and "A Discussion Paper for the Strategic Visioning Process by Ontario Legal Aid Clinics" to understand the relationship between these documents and ideas put forth by interview participants.

Three themes emerged as particularly significant in the relationship between the Designated Country of Origin policy and access to Legal Aid in Ontario from the interviews: Legal Aid funding, eligibility issues and timeline issues.

Funding

A common theme mentioned equally by refugee lawyers as well as refugee workers as a hindrance to disbursing Legal Aid in Ontario is insufficient funding for the Legal Aid program.

According to Settlement Worker 1, Legal Aid Ontario is currently in a "financial crisis" (Settlement Worker 1 Interview). Examination of contributions of financiers of Legal Aid Ontario supports this opinion, as it demonstrates the deterioration of Legal Aid funding in recent years.

Legal Aid Ontario itself acknowledges that the funding it receives from the Law Foundation of Ontario is highly volatile, as it is dependent on the Bank of Canada overnight rate and real estate activity levels. Refugee Lawyer 1 pointed out that as a result of the recent economic recession of 2008, the LFO funding contribution has significantly suffered (Refugee Lawyer 1 Interview). However, the federal and provincial governments have been slow to react to the economic situation, leaving the program with a sudden and substantial deficiency in funding (Refugee Lawyer 1 Interview). This deficiency influences the immigration and refugee branch as well as the entire provincial Legal Aid system.

The ability of Legal Aid to take on cases is directly reliant on the amount of funding it receives. Refugee Lawyer 1 and Lawyer 2 point out that the financial crisis Legal Aid Ontario is currently facing limits the number of cases LAO is able to support. It becomes a question of quality versus quantity; to maintain an acceptable level of service to clients LAO is forced to reduce the number of cases to which it grants funding (Refugee Lawyer 1 and 2 Interviews).

In addition to reducing the number of cases Legal Aid Ontario is able to support, shortages in funding will also affect the number of hours dedicated to each case (Interview). The certificate program at LAO operates based on awarding clients a certificate to redeem for a certain number of hours with a lawyer; with more limited funding, the number of hours each client is awarded is reduced. A full certificate for a refugee hearing in Ontario has been reduced from 29 hours to 16 hours. This not only results in a lower quality of service, but also more complex cases being turned away by lawyers who recognize that the number of hours they have been given are not sufficient to build a strong case. Exacerbating the issue of having to limit hours is LAO's plan to gradually increase the hourly rate for legal aid lawyers. Prior to 2007, lawyers with less than 4 years of experience received $77.56/hour, February to April 2010 they received $81.44, and after April 2010 they receive $85.51 (Legal Aid Ontario, 2010). Settlement Worker 1 infers that the increasing hourly tariff likely explains the decision to reduce the maximum number of hours allotted for various processes in the refugee claim process (Settlement Worker 1 Interview).

These cuts being made by Legal Aid Ontario inevitably affect its disbursement of funds; Settlement Worker 1 states that Legal Aid Ontario's financial distress has impacted the manner in which they provide service and to whom they provide service (Settlement Worker 1 Interview). Settlement Worker 3 states that "In some provinces, there is no funding for legal aid for refugees. In others, the funding is inadequate. Also, both in Ontario and elsewhere, there is very limited funding beyond the refugee claim itself even though subsequent procedures are quite important" (Settlement Worker 3 Interview). While it is positive that Legal Aid Ontario does provide some funding for refugees, both family law and criminal law are higher priority areas for Legal Aid Ontario and therefore receive the majority of the budget; only approximately

15-20% of the Legal Aid Ontario budget in the 2011-2012 fiscal year was dedicated to immigration and refugee matters (Legal Aid Ontario, 2012). As a result of its inferior position in the Legal Aid hierarchy, refugee law suffers the most due to financial deficiencies.

The funding Legal Aid Ontario receives affects not only how much is allocated to immigration and refugee law, but also every aspect of the services it provides within this branch. The limitations on the number of cases funded by Legal Aid influences the number of refugee cases that are funded as well as the type of case that is funded. According to Settlement Worker 1, LAO's financial situation causes the organization to "respond to the needs of the system rather than the needs of the refugee" (Settlement Worker 1 Interview). He further foresees this resulting in insufficient services for claimants from Designated Countries of Origin, as they will be the lowest priority case of the lowest priority branch of Legal Aid due to eligibility issues that will be discussed in the next section (Settlement Worker 1 Interview). The extent to which DCO claims are less likely to be successful at the IRB than other claims will lead to fewer of these types of cases being funded by LAO.

On a general level, the funding deficit has an impact on overall efficiency of the Legal Aid system in Ontario. The recent trend of LAO has been to eliminate area offices to cut costs (Department of Justice, 2005). While this might redirect more funds to client representation, according to Settlement Worker 2, it hinders the accessibility of Legal Aid to those who need it, as they must increasingly communicate only by telephone or fax, services to which many refugee claimants do not have access (Settlement Worker 2 Interview). A reduced staff also has the potential of leading to slower decisions on eligibility for Legal Aid.

Refugee lawyers as well as settlement workers also acknowledge that Bill C-31will render the refugee claim process more complex, even more so for Designated Country of Origin claimants (Settlement Workers 1, 2, 3 and Refugee Lawyers 1, 2, 3 Interviews). DCO claimants will not only be subject to stricter timelines, but will also face a higher burden of evidence in proving their claim. As a result of cases becoming more complicated, legal counsel will become even more important to the claims process; however as mentioned reduced funds will lead to fewer cases receiving Legal Aid (Refugee Lawyer 2 Interview). In addition, with fewer hours being allotted per certificate, even claimants that are granted Legal Aid may have a difficult time finding a lawyer willing to take on such a complex case with such limited time; lawyers interviewed agreed that it is not possible to prepare a complete case for a client facing the type of scrutiny those from Designated Countries will face in the hours Legal Aid is currently granting (Refugee Lawyer 1 2 and 3 Interviews). While they do not want to refuse these clients, taking on too many of these complex cases is not financially feasible for a lawyer (Refugee Lawyer 1, 2 and 3 Interviews). This group will be in need of a high level of representation, but because poor funding has resulted in stricter merit screening, they are at risk of being denied the funds to acquire this representation.

Eligibility

In order to adapt to the inadequate funding discussed in the previous section, Legal Aid Ontario has been and will likely continue to be forced to adopt stricter eligibility policies. When the number of cases LAO funds is being decreased, it must ensure that the cases it does fund are worthy, and likely to succeed.

As mentioned, eligibility screening for legal aid funding for refugee claims involves both a financial test and a merit test. The country of origin of the claimant is a primary consideration in merit decisions, at various levels. Legal aid utilizes a list of countries of origin and types of persecution that are considered to be "refugee producing". These countries are subject to a more relaxed level of merit screening, essentially being automatically granted a full certificate (Refugee Lawyer 2 Interview). Refugee lawyers interviewed believe that when the Designated Country of Origin list is established, it will be used in a similar way, subjecting claimants from these "non-refugee producing" countries to significantly stricter screening. Lawyer 2 even speculated that LAO may decide to deny funding automatically to claimants from countries on the Designated Countries of Origin list in the same way they automatically grant funding to those on the "refugee producing" list (Refugee Lawyer 2 Interview). Settlement Worker 1 believes this strategy would render the Legal Aid application process less just than it is currently. He claims that the system as it currently operates allows a certain amount of flexibility when country of origin is an issue, as there are certain types of claims that are generally favoured for funding; he went so far as to give the example of rape, calling it the "magic word" that will guarantee Legal Aid funding. He believes that should the Designated Country list be used as a block to funding, exceptional cases that are deemed meritorious by Legal Aid now would "slip through the cracks" (Settlement Worker 1 Interview).

Even if Designated Country of Origin claimants are not automatically denied Legal Aid, they will undoubtedly be required to get an opinion letter from a lawyer. Country of origin is an important factor in this process as well, as when asked what factors are taken into consideration when writing an opinion letter for a client, every lawyer interviewed stressed the importance of the claimant's country of origin (Refugee Lawyer 1, 2 and 3 Interviews). While they also

consider the facts of each individual case, they must first and foremost consider the likeliness of success for the claimant at the IRB, upon which country of origin has a large impact. Currently, most lawyers refer to acceptance rates of the country of origin at the IRB as an indication of the potential a case has (Refugee Lawyers 1, 2 and 3 Interview). However, if a Designated Country of Origin list were formalized, lawyers would already know that realistically decision makers at the IRB are likely to be highly influenced by it (Refugee Lawyer 3 Interview). Decision makers may feel pressure to ensure that their rulings agree with the government's belief about certain countries, or they may use the list as evidence that the claim has no credible basis, and be less attentive to individual stories at hearings or less dedicated to researching country conditions themselves (Baum, 1994). This disadvantage will then influence the opinion letter of the lawyer. Whether or not they believe a country belongs on a designated list, its presence on that list decreases the case's chance of success.

The very fact that Designated Country of Origin claims will need to get an opinion letter decreases their chances of obtaining Legal Aid Funding. Designated Country of Origin claimants face accelerated timelines, and valuable time is wasted going through the process of getting an opinion certificate from Legal Aid, taking that certificate to a lawyer so they can write an opinion letter and the lawyer submitting the opinion letter back to Legal Aid (Settlement Worker 2 Interview). Even if the claimant is granted funding, by the time they get it, it may be too late to be of use. Some claimants may decide to spend the time they have working on their case themselves rather than applying for legal counsel that may not even be granted (Settlement Worker 2 Interview).

Refugee settlement workers interviewed indicated that claimants from countries they expect to be designated, countries that are generally considered "safe", have often suffered

severe trauma. Settlement Worker 1 stated that these claimants often did not suffer generalized violence, but personalized discrimination and harassment, citing as an example sexual orientation claimants or gender based violence cases, which are commonly the type of claim coming from countries considered to be otherwise "safe" (Settlement Worker 1 Interview). As Refugee Lawyer 2 stated, "not all safe countries are safe for everyone" (Refugee Lawyer 2 Interview). Settlement Worker 3 stated that these claimants are sometimes reluctant to share their stories due to fear or shame, or have experienced such trauma that they are unable to remember details, or their memories are inconsistent (Settlement Worker 3 Interview). This interferes with eligibility, as all lawyers interviewed acknowledged that while country of origin and probability of success are the primary factors they consider, the client's narrative and personal presentation play into merit decisions as well. If a client is unable to communicate their case to the lawyer, or appears "guilty", it will work against them in an opinion letter (Settlement Worker 3 Interview).

Refugee Lawyer 2 also acknowledged that public discourse surrounding refugees from "safe" countries also affect the perception of their eligibility (Refugee Lawyer 2 Interview). Government bodies assert that "most" refugee claimants make use of social services upon arrival in Canada, which combined with other health, legal and settlement expenses generate significant costs for Canada. Immigration Minister Jason Kenney has expressed the view that Canada is "…wasting hundreds of millions of dollars of public resources on people who are making fraudulent asylum claims, while at the same time there are millions of people stuck in UN refugee camps who can't return to their home" (Payton, 2009).

Settlement Worker 1 specifically referred to Roma claimants from Hungary. The situation of this group is reflective of many of the issues mentioned by the other settlement workers and lawyers. In Settlement Worker 1's experience, the culture and experiences of the

Roma community lead them to distrust authority figures, and as a group they generally deal with emotional devastation with lethargy. This makes it difficult for them to muster the energy to properly file their claim. Settlement Worker 1 believes that the perceived apathy toward their claim as well as low acceptance rates at the IRB negatively influence the opinions of lawyers writing letters on their behalf. This cycle of non-acceptance and resulting perception of country of origin demonstrates the difficulties claimants from Designated Countries will likely face (Settlement Worker 1 Interview).

However, Minister Kenney attacks this group of claimants, saying that Roma refugees from the Czech Republic are "coached to come to Canada, make a false asylum claim, and then register for provincial welfare benefits" (Carlson, 2011). The promotion of these claims by the Minister of Immigration is perpetuated by other immigration professionals, leading to the generalization of Roma refugees as "having done a calculation on how much they can milk from the Canadian and provincial governments" (Carlson, 2011). Generalizations such as this against Roma claimants, and all claimants from other countries likely to be designated, have an important and negative effect on eligibility decisions.

Timelines

Bill C-31 introduces stricter timelines for all refugee claims, but claims from designated countries are subject to timelines that are even more accelerated. While standard refugee claims, manifestly unfounded claims, claims with no credible basis and claims that have violated the safe third country agreement have 60 days to prepare for a hearing, Designated Countries of Origin claims made at a port of entry have 40 days while Designated Country of Origin claims made inland have 30 days (Legislative Summary Bill C-31, 2012).

Refugee settlement workers interviewed point out that while support systems for refugee claimants in Canada exist, they are difficult to find and to navigate, especially for individuals as vulnerable as refugee claimants (Settlement Worker 1, 2 and 3 Interviews). They believe that it is unlikely the new timelines will allow sufficient time for claimants to locate necessary social services, especially if they are not in the care of a refugee centre as language issues and ignorance of the system are significant barriers for claimants (Settlement Worker 1, 2 and 3 Interviews). As mentioned in the funding section, Legal Aid Ontario is moving toward a phone operated system rather than area offices; while this is more economical, it is more difficult for claimants to access without guidance. They must also obtain welfare prior to applying for Legal Aid, as it is necessary to prove financial need. The refugee workers interviewed are of the opinion that the imposition of such strict timelines will result in a greater number of refugee claimants not accessing Legal Aid, whether it is because they do not have enough time for the application, or do not realize it is an option in time to utilize it (Settlement Worker 1, 2 and 3 Interviews).

Lawyers interviewed stated that even under the current process, which allows 28 days to fill out a Personal Information Form and can sometimes take years to get a hearing, they struggle to prepare and complete a high quality case. They believe that the timelines introduced in Bill C-31 are unrealistic. They acknowledge that they would be less likely to take on a difficult case with such strict time limits because they would be unable to present the best possible case; it may not be possible to secure necessary documents (medical, etc) for their client, or deal with translation issues in the given time frame (Refugee Lawyer 1, 2 and 3 Interviews). It has already been established that Designated Country of Origin claims in particular will be more complex

and must rebut a higher burden of proof; lawyers require more time in order to prepare such a case (Rehaag, 2010).

Designated Country claimants are likely to be more traumatized, thereby requiring more time to build a relationship of trust with their lawyer in order to communicate their narrative. The lawyers interviewed gave many examples of past clients who took extended periods of time to reach that comfort level. They acknowledged that they would be less likely to give a positive opinion letter to a claimant that will not speak or give details of their ordeal, as they know they will not have the time to wait until they are ready to prepare their case (Refugee Lawyer 1 and 2 Interviews).

One of the criteria for a country to be designated involves the rates of withdrawal, abandonment or rejection of claims from that country (Legislative Summary Bill C-31, 2012). Settlement workers interviewed however point out that the stricter timelines force some claimants into abandoning or withdrawing their claim if they miss a deadline, or simply become overwhelmed and discouraged at all they have to do in a small amount of time, and give up (Settlement Workers 2 and 3 Interviews). While this does not reflect the merit of the claim, it keeps the country on the designated list. Some claimants who are aware of the need to secure legal counsel quickly forgo Legal Aid completely, rather hiring an "immigration consultant", who is often unqualified to prepare their case or dishonest in their self-portrayal (Settlement Worker 2 Interview). Settlement Worker 1 also believes that some refugee lawyers take advantage of refugee claimants who have received Legal Aid, agreeing to take on their case to receive compensation, but then do not do the work required to file the claim. This in turn increases withdrawal and abandonment rates, keeping countries on the Designated Country List (Settlement Worker 1 Interview).

To demonstrate the detrimental effects of strict timelines Settlement Worker 1 offered an example of a family whom he assisted through the refugee claim process. The family had 2 daughters who were attending school in Canada. The girls were being abused by their father, however this was not made known to anyone until the refugee hearing when school officials came forward with the information. The girls were then able to file their own claims separately, and were granted refugee status; however under stricter timelines it is unlikely anyone would have been able to defend the girls at their hearing, and they would have been denied refugee status and sent home with an abusive father (Settlement Worker 1 Interview).

Overall, the refugee workers and lawyers interviewed believe that the timelines imposed on all refugee claimants, but especially Designated Country of Origin claimants are unrealistic, and a way of limiting access to legal counsel for claimants.

Analysis

Considering the opinions and experiences shared by the refugee lawyers and settlement workers interviewed, there are several important areas that must be further examined in order for the implementation of the Designated Country of Origin list to be fair. While there are important implications for the government of Canada to consider, Legal Aid Ontario as an organization will have to introduce initiatives to its system in order to adapt to this new legislation.

Implications for Legal Aid Ontario

According to the lawyers and settlement workers interviewed, even currently the Legal Aid system in Ontario is not operating at prime efficiency, and the introduction of the Protecting Canada's Immigration System Act with the Designated Country of Origin list will only serve to worsen service.

Settlement Worker 3 emphasizes the inefficiency of Legal Aid's use of opinion certificates. He states:

> "An increasing proportion of LAO's refugee funding is being used to pay lawyers to prepare opinion letters, which does not provide refugee claimants with any meaningful assistance. In other words, significant resources are going into merit screening procedures. Ideally, these resources should instead be allocated towards providing actual legal assistance for refugee claimants" (Letter from Settlement Worker 3).

Settlement Worker 1 suggests an alternate method that he believes would be more beneficial to both refugee claimants and Legal Aid Ontario: he believes that all refugee claimants should receive the 3 hours usually given in the form of an Opinion Certificate, but rather than using it to obtain an opinion letter, provide all claimants with assistance filling out their Personal Information Form (soon to be Basis of Claim form under the Protecting Canada's Immigration System Act). This way, each claimant will have a solid foundation for their claim, and their

forms can then be used to determine the merit of their case and whether or not they should receive further funding from Legal Aid (Settlement Worker 1 Interview).

When discussing timelines, Lawyer 2 also raised the issue of insufficient time to obtain Legal Aid and a lawyer to assist in filling out the Basis of Claim form. He suggests that Legal Aid Ontario consider retroactive funding for refugee claimants (Refugee Lawyer 2 Interview). This way, refugee claimants could immediately seek the services of a lawyer to assist in completing the Basis of Claim form, allowing them to submit it within the time lines, and their lawyer would be compensated when they receive Legal Aid coverage.

Legal Aid Ontario has been considering how to respond to deteriorating funds; a strategy they have identified, and that all lawyers agreed is a worthwhile option, is delegating a greater amount of basic and administrative tasks to paralegals, in order to allow lawyers to concentrate on legal matters (Legal Aid Ontario, 2012).

> "For example, paralegals may be able to provide more first language services and culturally competent services as they are a more diverse group than lawyers. Whereas lawyers in Ontario are growing to reflect the diversity of the Ontario population paralegals do reflect the diversity of their clients" (LSUC, "Statistical Snapshot of Paralegals in Ontario" online).

This would not only address the funding issue as the tariff for paralegals is lower than that for lawyers, but it would especially benefit claimants from Designated Countries of Origin as it would allow more individual attention from the paralegal, allowing them to establish the trust and comfort necessary to share their narrative.

Legal Aid Ontario has already begun to consider initiatives to improve service to their clients, however a great deal more can be done and must be done in response to the upcoming Protecting Canada's Immigration System Act.

Policy Implications

While the lawyers and settlement workers interviewed acknowledged that some countries produce more refugees than others, they do not agree that this should be used as a means of denying claimants from seemingly "safe" countries legal counsel and the opportunity to plead their case. Their combined experiences with the current system and opinions of the new legislation suggest several policy adjustments.

The first and most clearly articulated is to adjust the timelines imposed on Designated Country of Origin claimants. While Settlement Worker 3 says he understands that the timelines are meant to increase efficiency at the IRB, he does not agree that the risk of overlooking a genuine refugee is worth speeding the decisions process (Settlement Worker 3 Interview). All lawyers and settlement workers interviewed agreed that imposing stricter timelines in the overall refugee claim process is an acceptable step, however all claimants should face the same timelines regardless of their country of origin (Settlement Workers 1, 2, 3 and Refugee Lawyers 1, 2, 3).

Another aspect of the policy with which the interviewees took issue is the criteria to designate a country. Lawyer 3 feels that more defined regulations must be introduced, with a higher level of scrutiny applied to designation. He proposes mandatory consultations with country experts on any country that is considered for designation, as well as allowing parliament an opportunity to discuss and debate any designation proposal (Refugee Lawyer 3 Interview). Settlement Worker 3 also feels that all countries on the Designated Country of Origin list should be re-evaluated on a frequent and regular basis, as country conditions can and often do change quickly (Refugee Lawyer 3 Interview).

All interviewees agreed that barring access to the Refugee Appeal Division as well as application for a stay on removal pending an appeal is excessive. While both Lawyer 2 and

Lawyer 3 acknowledge that stricter timelines on accessing the Refugee Appeal Division for Designated Country of Origin claimants would be acceptable, they feel that completely denying access to this safeguard poses too great a risk of violating Canada's "non-refoulement" obligation (Refugee Lawyer 2 and 3 Interviews).

Conclusion

The right to legal counsel is a fundamental human right, and in order for refugee claimants in Canada to obtain counsel Legal Aid is often necessary. Refugee lawyers and refugee settlement workers interviewed had diverse opinions as to what exactly will be the effect of a Designated Country of Origin list not only on Canada's refugee protection system but also on the ability of claimants from designated countries to access Legal Aid services in Ontario; however they all agreed that there will be a significant effect, and that effect will be negative. The stricter timelines and eligibility criteria as well as the negative social discourse that is already associated with certain countries that are considered to be "safe" will hinder the ability of claimants from Designated Countries to access Legal Aid services and obtain funding from Legal Aid Ontario. Funding shortages that Legal Aid Ontario is already experiencing will also exacerbate this problem, as it establishes a higher level of eligibility criteria to ensure its limited funding is being put to good use.

To ensure fairness for claimants from Designated Countries, interviewees recommend policy amendments as well as suggestions for improvements to Legal Aid services. A move away from Opinion Certificates and as an increase in the responsibilities of paralegals were both suggestions to increase the efficiency of Legal Aid Ontario. In addition, to assist in dealing with the shorter timelines, retroactive billing is recommended to ensure legal representation for all claimants.

In terms of policy amendments, interviewees believe that an overall decrease in timelines is legitimate. They are of the opinion that the timelines should be equal for all claimants, regardless of country of origin. It is acknowledged however that subjecting claimants from Designated Countries to stricter timelines in appealing to the RAD is acceptable, though a

complete ban from the RAD is unacceptable. The process for designating a country must also be addressed, as it is currently too subjective and open to political influence. Specific recommendations from interviewees included consultation with country experts, submitting designation proposals for Parliamentary scrutiny as well as frequent and regular re-evaluations of designated countries.

Overall, in interviewing refugee lawyers and refugee settlement workers, I have found that there will be a relationship between the implementation of a Designated Country of Origin list and access to Legal Aid services in Ontario. This relationship will be a negative one, putting claimants from Designated Countries at risk of being denied legal representation throughout the refugee process based on their country of origin. This violates Canada's obligations to human rights. In order for this aspect of the Protecting Canada's Immigration System Act to be implemented justly, amendments must be made not only to the policy itself, but to the manner in which Legal Aid Ontario operates.

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