

SANCTUARY

A Guide for
Anglican Parishes in Canada



The Primate's World Relief and Development Fund
The Anglican Church of Canada





**50
YEARS**

IN FAITH JOIN HANDS INSPIRE HOPE

THE PRIMATE'S WORLD RELIEF AND DEVELOPMENT FUND
Anglican Agency for Relief, Refugees, Development and Justice

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Sanctuary for Refugees? A Guide for Congregations
The United Church of Canada. Revised 2004.

Sanctuary: A statement and guidelines for congregations
A report presented to the 132nd General Assembly (2006) of The Presbyterian Church in Canada.

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A REFLECTION ON SANCTUARY



Archbishop Fred Hiltz,
Primate of the
Anglican Church
of Canada

Sanctuary: A Guide for Anglican Parishes in Canada honours a request made by the 2004 General Synod to develop educational materials to assist parishes and dioceses in giving prayerful consideration to the moral, ethical and legal challenges raised by requests for sanctuary.

I am pleased to commend this guide as our response to that request.

Written from a perspective of faith, *Sanctuary* reviews the circumstances that force people to seek a safe haven. In the vast majority of cases, people who request sanctuary are traumatized by threats or acts of violence and yet are unable to gain refugee status. They are highly vulnerable people for whom the future is very uncertain.

Responding to a request for sanctuary can present many challenges. Not only is a congregation called upon to provide shelter, food and other basic necessities of life, it must provide ongoing pastoral support. In addition, members must commit to carrying out a ministry of advocacy on behalf of those seeking sanctuary, calling on government to reconsider refugee status.

Ultimately, a congregation must be prepared to walk with those in sanctuary, for the long haul if need be. The spirit of such a ministry is reflected in the lovely words of "The Servant Song."

I will hold the Christ-light for you
in the night-time if you fear;
I will hold my hand out to you,
speak the peace you long to hear.

I will weep when you are weeping;
when you laugh, I'll laugh with you.
I will share your joy and sorrow
'til we've seen this journey through.

(Common Praise, #500)

I pray this guide will enhance our capacity for this ministry.

THE MEANING OF SANCTUARY



Michael Pollesel,
General Secretary
of the Anglican
Church of Canada

The word “sanctuary” has many meanings. It can refer to the consecrated area of a church, temple or synagogue, especially around its altar or tabernacle. It also can mean a place of safety and protection. Centuries before Christ’s birth, sanctuary was a place where criminals could seek asylum in designated “cities of refuge,” as described in the Torah. For many centuries since then, people have been able to claim asylum or sanctuary by seeking refuge in churches in different countries.

While the seeking and offering of sanctuary is not new, since the 1980s there has been a resurgence in the sanctuary movement. Importantly, there is at least one major difference between sanctuary of the past and what we are experiencing now. In most cases today, those who seek sanctuary are not criminals, but people who have fled their homelands for a variety of reasons.

In our Baptismal Covenant, we are asked:

- Will you seek and serve Christ in all persons, loving your neighbour as yourself?
- Will you strive for justice and peace among all people and respect the dignity of every human being?

I would suggest that each of these questions can be interpreted as asking what we do with and for — as well as how we treat — people whose lives may be in danger because they are at risk of being deported back to their country of origin.

This guide gives us an opportunity to think and act from our faith perspective. Some among us will prayerfully discern that God’s justice and mercy override our country’s laws when it comes to offering sanctuary. These people stand in a long line of others who have dared to offer what some would call “radical hospitality.”

Through their actions God’s justice is lived out.

INTRODUCTION

Many Anglicans across Canada have raised the need for tools to better assess and respond to requests for sanctuary. Such requests come from families and individuals whose claims for refugee status have been rejected by the Immigration and Refugee Board of Canada.

In January 2007, with the help of diocesan refugee coordinators and staff, as well as the expertise of members of other churches and refugee-serving organizations, The Primate's World Relief and Development Fund (PWRDF) and the Partnerships department of the Anglican Church of Canada set about developing sanctuary guidelines for the Anglican Church of Canada.

Sanctuary: A Guide for Anglican Churches in Canada provides practical information for Anglican parishes responding to a request for sanctuary. It frames the meaning, theological foundation and ethical concerns of sanctuary, and outlines a process to help a parish assess the implications, legal and otherwise, of that response. Finally, it provides information about Canada's refugee-determination system and the legal options available to the person requesting sanctuary.

It is important to note that this resource does not replace spiritual and legal counsel for the parish or refugee. Fundamentally, the decision to grant sanctuary belongs to the parish and must be an informed decision and a decision of faith.

What is sanctuary?

Sanctuary is derived from the Latin word *sanctus*, meaning holy. Sanctuary can be many things, including:

- a place consecrated to the worship of God;
- a sacred and inviolable asylum;
- a place of refuge and protection; and
- a place of comfort for those who seek relief.

The concept of sanctuary dates back to the Old Testament. In ancient Israel and medieval Europe, sanctuary was provided for and governed by law, and was reserved primarily for a nation's own citizens and its resident aliens.

The Bible repeatedly exhorts the faithful to offer refuge.

In Matthew 25:31-41, Jesus calls his disciples to offer hospitality to the sojourner: "I was a stranger and you welcomed me" (verse 35). "Truly I tell you, just as you did it to one of the least of these who are members of my family, you did it to me" (verse 40).

In Romans 12:13, Paul advises: "Contribute to the needs of the saints; extend hospitality to strangers." Hebrews 13:2 repeats the refrain: "... do not neglect to show hospitality to strangers, for by doing that some have entertained angels without knowing it."

In modern times, there has been a resurgence in requests for sanctuary as more and more people are displaced because of war, persecution and other reasons. Until the mid-20th century, however, countries were under no obligation to provide refuge to people seeking sanctuary.

While initial enthusiasm is important, it takes a committed, courageous congregation to be able to cope with the long-term challenges of supporting a refugee in a situation of great uncertainty. The decision to grant sanctuary must be made with full understanding of the responsibilities involved.

Ultimately, granting sanctuary is about much more than offering food and shelter. It is about welcoming the stranger and helping that person feel safe, psychologically and emotionally.

It is about faith.

Who is a refugee?

In 1951, the United Nations passed the Convention Relating to the Status of Refugees. According to this treaty (often referred to as the Geneva Convention), and the 1967 Protocol amended to it, a *convention refugee* is a person living outside his or her country who has a "well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion."

Every year, thousands of people seek refuge in Canada after fleeing war, violence and persecution in their homelands. *Refugee claimants* are people who enter Canada by any means and declare themselves to be refugees.

CANADA'S REFUGEE SYSTEM

A person seeking Canada's protection initiates a refugee claim by notifying an immigration officer at any port of entry or at a Canada Immigration Centre. His or her claim is then assessed by Canada's Immigration and Refugee Board (IRB).

To determine which of the thousands of claimants are legitimate refugees, Canada uses the definitions provided in the 1951 Geneva Convention and its 1967 amendment. However, since the passage of the Immigration and Refugee Protection Act in June 2002, Canada may also accept refugee claimants even if they do not meet the definition of a convention refugee. In these cases, it has been established that these people are also at risk of torture or death if they return to their homelands.

Once a claimant has been deemed a legitimate refugee by the Immigration and Refugee Board, he or she may apply for permanent residence in Canada. This confers "landed immigrant" status and paves the way to obtaining citizenship. It is important to note, however, that the Board denies refugee status to more than 50 per cent of claimants.

Determining refugee status is a complicated process. Any person or parish considering a sanctuary request must work closely with people who have expertise in refugee determination to understand the implications of any particular person's situation.

Canada's Immigration and Review Board, created in 1989, determines refugee-protection claims made in Canada, hears immigration appeals and conducts admissibility hearings and detention reviews. The Board, which reports to Parliament through the Minister of Citizenship and Immigration, has three divisions:

- the Refugee Protection Division;
- the Immigration Appeal Division; and
- the Immigration Division.

A fourth division, Refugee Appeal, exists in law but at the time this guide was being prepared, had not yet been implemented by the government. This means refugees currently have no way to appeal when a claim is denied.

Claims can be ineligible if a refugee:

- has a history of serious criminal activity, human or international rights violations or poses a security risk;
- has been recognized as a refugee by another country to which he or she can be returned;
- has made a refugee claim in Canada previously, whatever the result of that claim; or
- makes his or her claim at the land border between Canada and the United States (see below).

Since December 2004, the United States has been designated a safe country for refugees, making most claimants at the border ineligible. The principal exceptions are for:

- some claimants with family members in Canada;
- some unaccompanied minors; and
- claimants from *moratorium countries* to which Canada generally does not deport people. (For more information about moratorium countries, see page 11.)

Refugee claimants fill out a personal information form that serves as the basis of their hearing. Some straightforward, well-founded claims may be expedited without a formal hearing. Usually, a single decision-maker determines the refugee claim following a hearing. About 47 per cent of the cases heard are determined to be convention refugees, also known as *protected persons*, but the acceptance rate varies greatly across the country. Refugee claimants are able to apply for welfare or obtain work permits but are not considered permanent residents. Securing refugee status, however, opens the way to gaining permanent residence, and eventually, Canadian citizenship.

A minority of failed claimants who present new evidence of risk upon return to their homeland or who offer compelling humanitarian and compassionate grounds for staying in Canada, may have a slight chance of gaining permanent residence. When all options have been exhausted, however, ineligible claimants face deportation.

Review of a denied refugee claim

After the IRB denies a person refugee status, he or she has few options. In June 2002, the Immigration and Refugee Protection Act introduced the Refugee Appeal Division, but the Act has been implemented without an appeal process for refugees.

An unsuccessful claimant has 30 days to leave the country voluntarily before a removal order is acted upon, or 15 days to apply to the federal court for a judicial review of the case. Usually, claimants can stay in the country while the federal court hears their case.

Leave for a judicial review is granted only if there has been an error in the law. It is not an appeal based on the merits of the case. When leave is granted, the case is heard by the federal court. If the federal court decides in favour of the claimant, the case returns to the IRB for a new hearing. If leave is denied or the federal court rejects the application, claimants can apply for something called pre-removal risk assessment.

Pre-removal risk assessment

Most refugee claimants who face an order of deportation may apply to the Canada Border Services Agency for a pre-removal risk assessment. This review protects those for whom there is new evidence (since the IRB made its decision) that they qualify as convention refugees or that they face certain torture or death if deported. The risk assessment cannot

be used to argue that the original decision of the IRB was in error. While a decision on the risk assessment is being made, an applicant's removal order is stayed.

If the risk assessment is judged in favour of the claimant, the claimant is considered a protected person and can apply for permanent residence. However, if the claimant's application is inadmissible, a positive risk assessment will result only in a *temporary stay of removal*. An application is considered inadmissible if the person poses a threat to security, has a history of serious criminality or has committed serious human or international rights violations, or if the claim was rejected by the IRB on the basis of one of the exclusion clauses.

If the risk assessment is negative, the applicant must comply with his or her original removal order. The Canada Border Services Agency then makes arrangements to deport the applicant.

Humanitarian and compassionate review

Rejected claimants can apply to Citizenship and Immigration Canada for a humanitarian and compassionate review if they have a compelling reason to remain in Canada. Potential reasons include:

- family circumstances;
- long-term stay or commitment; or
- other compassionate considerations.

To apply for this review, claimants must pay \$550 for each adult and \$150 for each person younger than 22 years of age.

The non-refundable fee excludes some applicants; others are deterred by the restrictive interpretation of humanitarian and compassionate reasons and the low acceptance rate. However, a church congregation may decide to pay the application fee so that all options for a particular claimant have been exhausted. There may, for instance, be options for referring the case to international human rights bodies such as the Inter-American Commission on Human Rights and the UN Committee Against Torture.

There is no stay of removal pending a decision on a humanitarian and compassionate application. Applicants often wait years before a decision is made. In some cases, Citizenship and Immigration Canada may, on a discretionary basis and in consultation with Canada Border Services Agency, decide not to remove a person until his or her application has been decided. If a person is removed, it is to the country of origin.

Political intervention

All domestic administrative and judicial options should be exercised before seeking an appeal from the Minister of Citizenship and Immigration or appealing to international human

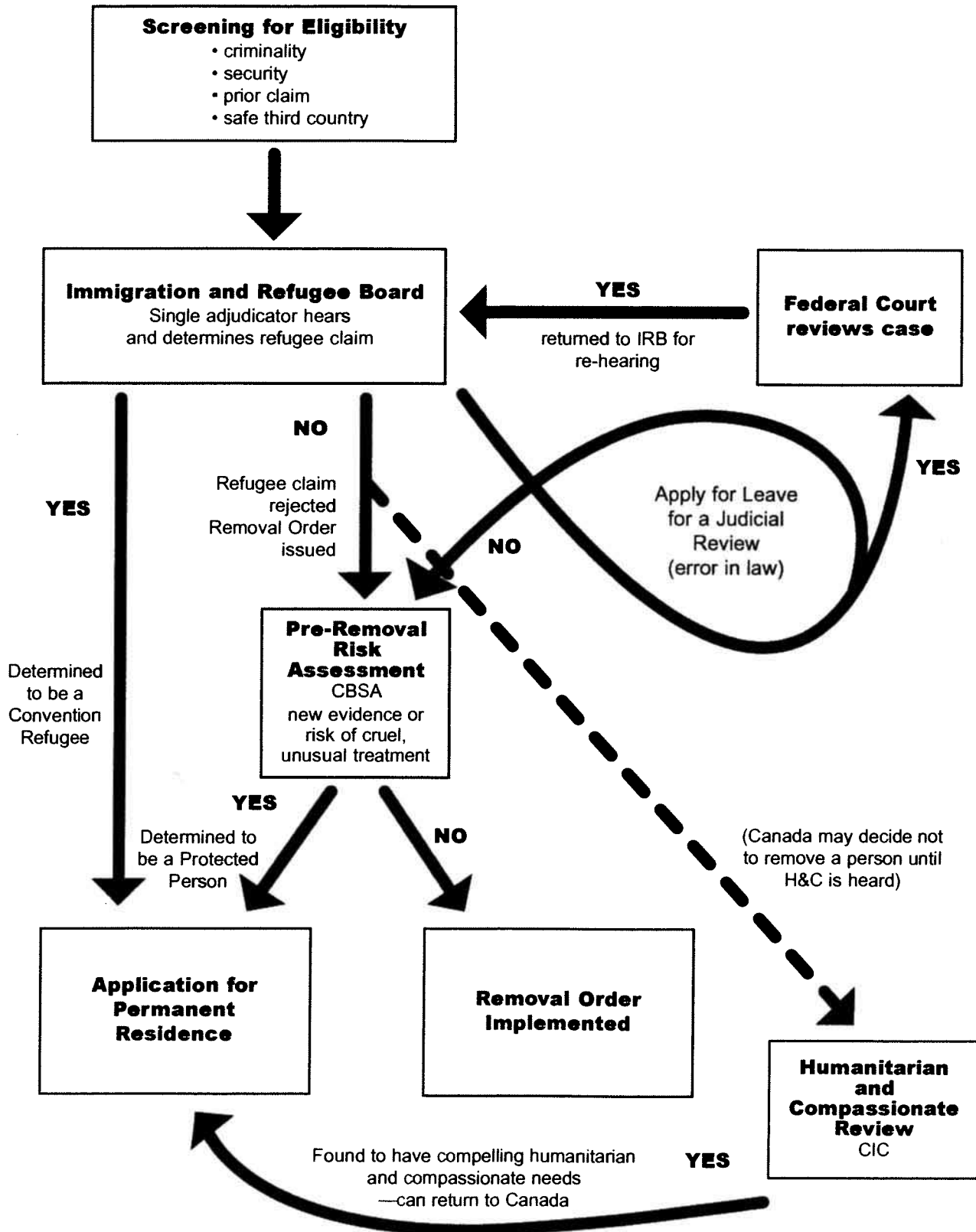
rights bodies. When all options have been exhausted, the one remaining hope is for political intervention. Under the Immigration and Refugee Protection Act, the Minister of Citizenship and Immigration and the Minister for Public Safety can exercise their discretion to allow a person to stay in Canada. It is wise to appeal to both of these ministers and to copy the Prime Minister.

Moratorium countries

There are certain countries, called moratorium countries, to which no persons (with the exception of convicted criminals) can be deported because of widespread violence or humanitarian disaster in that country. In 2008, for example, there were temporary stays of removal in place for Afghanistan, Burundi, the Democratic Republic of Congo, Haiti, Iraq, Liberia, Rwanda and Zimbabwe. Citizens of such countries who have had their claims rejected and have received a removal order may be allowed to remain in Canada indefinitely. However, the rejected claimant's removal order stands ready to be implemented as soon as the country's situation improves.

People from moratorium countries receive only emergency medical care. They cannot be reunited with family members, including spouses and children, who have been left behind in the country of origin. Students cannot register for post-secondary education and there are limited employment opportunities for workers.

Canadian Refugee Determination Process



Source: *The United Church of Canada*

SANCTUARY AND THE LAW

When all options have been exhausted and a refugee claimant is ordered removed from Canada, he or she may seek sanctuary. It is critical to note, however, that a refugee applicant who has lost his or her case and seeks to avoid deportation from Canada is committing an illegal act. Helping a refugee avoid deportation by providing sanctuary is breaking the law and any protection for people offering sanctuary under the Constitution is uncertain. Despite the fact that the Canadian government can take counter measures, including criminal prosecution, many people in Canada — as in other countries — often feel compelled to offer sanctuary.

The Canadian Immigration and Refugee Protection Act as well as the Criminal Code of Canada contain several provisions specifying illegal acts in offering sanctuary. To knowingly induce, aid, abet or counsel anyone to contravene these provisions is to commit a crime. For instance, if the claimant refuses to comply with a removal order, a sanctuary worker who aids or counsels the claimant could be charged and convicted. The penalty for aiding or abetting a person to contravene the Immigration and Refugee Protection Act is up to two years imprisonment or a fine of \$50,000, or both. Under certain circumstances, multiple convictions are possible, leading to potentially heavier penalties.

In practice, prosecution is discretionary; the authorities can also decide, for political reasons, not to press charges. In either case, those who offer sanctuary must be well informed about the law and have access to competent legal counsel. If the authorities decide to press charges, the congregation must be prepared for the consequences. A successful defence can be very difficult since case law and legal precedent have yet to be established.

MAKING THE DECISION

Once a refugee claimant has requested sanctuary, the congregation must weigh the implications. There are many things to consider.

1. Verify the claimant's case.

A claimant must be open and transparent with the congregation so that the following questions can be answered:

- Can the claimant and the case withstand intense scrutiny?
- Is there anything in the claimant's history that would discredit the sanctuary campaign?
- Will publicity put the claimant's family members at risk in the country of origin?

2. Face the difficult moral decisions.

Not every claimant should remain in Canada. Not all claimants are refugees or at risk upon deportation. In some cases, the most appropriate action for the church is to support the refused refugee with counselling and to help him or her prepare to return home. Other cases may qualify under various immigration categories.

3. Consider the consequences.

The success of granting sanctuary can depend upon a high public profile, constant media attention and the moral support of the surrounding community. Highly vulnerable claimants must be supported to live under the glare of publicity while coping with the physical confines of sanctuary.

4. Document the case.

The decision to offer sanctuary should be made openly and properly recorded, and must be well supported. After all, the congregation that decides to offer sanctuary does so in the hopes of convincing the Canadian government to reconsider a deportation decision.

5. Get set for the long haul.

Sanctuary is an open-ended invitation; resolution can take months or years. Through an interpreter, if necessary, let the claimant know that a positive result, at least in the short term, is unlikely.

Financial and social considerations

While it is imperative that the congregation get legal advice on the implications of granting sanctuary, there are also financial and social factors to consider. The offer of sanctuary involves a financial commitment for an open-ended period of time. Expenses may include food, furniture, phone calls, translation services as well as legal and medical costs.

Some questions to consider:

- If the refugee is going to live in the church, does the living space meet local zoning by-laws?
- Will renovations be necessary?
- What will they cost?

Sanctuary is more complicated if children are involved; in such cases, there will be additional demands and stresses for the family and the congregation. An educational program and extracurricular activities will need to be developed. How will the family cope in an enclosed space for an uncertain period of time?

The congregation must consider establishing a team to provide ongoing pastoral and social support. The congregation should inquire if support can be provided by neighbouring congregations and other community organizations.

Decision Checklist

Before the decision to offer sanctuary is made, the congregation must consider the following:

For and about the refugee:

- Has the person exhausted all administrative and legal provisions available in the refugee determination process?
- Would the person be at risk upon returning to the country of origin? (Risk can be physical or psychological.) Under the Immigration and Refugee Protection Act, victims of torture are not to be returned to the country where they were tortured.
- Has a pre-removal risk assessment been considered?
- Are there compelling compassionate or humanitarian reasons for the person to remain in Canada? Has a humanitarian and compassionate review been considered?
- Has this person been denied human justice within Canada or according to international laws?
- Does the individual have a history of crime or terrorism?
- Can the case and the individual withstand the scrutiny and the stress of long-term sanctuary?
- Can the individual and his or her family abroad tolerate public and media attention?
- Has the refugee been told about the longer-term difficulties of sanctuary (schooling, medical needs and so on) and that success is not guaranteed?

For the congregation:

- The parishioner being approached with a request for sanctuary should contact the parish priest and wardens/or the refugee committee, the parish advisory board, the parish council, etc.
- Set up an interview committee, arrange for a translator, if required, and ensure continuity by naming at least one person to be present at all meetings.
- The committee needs to have information that is as complete and substantive as possible to make a just assessment. This includes any supporting documents from third parties such as the claimant's lawyer.
- Set up an interview with the refugee claimant to discuss and explain
 - public and media attention;
 - possible impact on family abroad;
 - the stress of long-term sanctuary;
 - schooling, medical needs, financial considerations, etc.; and
 - possible police action.
- Does the congregation understand the financial, legal and moral risks involved in granting sanctuary?
- Are there resources (financial, housing, legal fees, insurance, psychological, volunteer assistance) to support long-term sanctuary?
- Is there broad commitment across the congregation for this action? (Sanctuary that lasts months or years can prove divisive.)
- How and what residential accommodations can be made for the refugee and his or her family? For example, is the church's plumbing adequate?
- Can the congregation tolerate intense public and media scrutiny?

If the congregation agrees to grant sanctuary, the following steps should be taken:

1. Inform the bishop to get consent for decision/action.
2. Consult people who have an expertise in refugee matters. Organizations such as the Canadian Council for Refugees (CCR), for example, (see Resources, page 19) can offer overall support and direct you to local support, including legal and media strategy expertise.
3. Outline the claimant's responsibilities before and after sanctuary. Remember also that he or she should be invited to join the church membership.
4. Set up a committee to look after continuing accommodation needs, food, security, schooling, counselling, communication and so on.

If the decision is not to grant sanctuary, the congregation is under no legal obligation to report the situation to the authorities.

RESOURCES

Amnesty International

312 Laurier Ave. East
Ottawa, ON K1N 1H9
Phone: (613) 744-7667
Toll-free: 1-800-AMNESTY
Fax: (613) 746-2411
www.amnesty.ca
info@amnesty.ca

United Nations High Commission for Refugees (Canada branch)

280 Albert St., Suite 401
Ottawa, ON K1P 5G8
Phone: (613) 232-0909
Fax: (613) 230-1855
www.unhcr.org

Human Rights Watch

www.hrw.org

Immigration and Refugee Board

(IRB documentation centres are located in Ottawa, Montreal, Toronto, Calgary and Vancouver)
www.irb.gc.ca

Refugee Lawyer's Association of Ontario

www3.sympatico.ca/martinj1/home.html

For information about conditions in the country of origin that Canada considers, contact:

The Ottawa Resource Centre Research Directorate

Minto Place, Canada Building
344 Slater St., 11th floor
Ottawa, ON K1A 0K1
Phone: (613) 996-0703

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For country reports, and more information on all aspects of refugee decision support go to:

The UN Refugee Agency (UNHCR) at Refworld

www.refworld.org

For UNHCR briefing notes, see
www.unhcr.org

Canadian Council for Refugees

www.ccrweb.ca
(See refugee appeal at www.ccrweb.ca/RADpage/RADpage.htm)
www.ccrweb.ca/whysanctuary.htm



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