Trends and Inconsistencies in Immigration and Refugee Board (IRB) Case Decisions

Julianna Beaudoin, Department of Anthropology, Migration and Ethnic Relations Program, The University of Western Ontario, London, ON, Canada

Abstract

The last fifteen years have included dramatic policy changes to the Canadian Immigration and Refugee Board (IRB). These changes are reflected through IRB year-end statistics/graphs and an anthropologically-focused discussion that illustrates the need for reform to correct current inconsistencies in the IRB decision-making process.

Institutional Background

The Canadian Immigration and Refugee Board is an independent tribunal that finalized over 30,000 in-land refugee claimant applications last year (2010). The IRB is one of three main agencies that is designated by the government of Canada to deal with immigration, the others being Canada Border Services Agency (CBSA) and Citizenship and Immigration Canada (CIC).

The IRB deals only with in-land immigration matters and refugee claims; government-sponsored refugee applications are CIC's jurisdiction. The IRB partly fulfills Canada's obligation (as signature to the UN Convention Relating to the Status of Refugees) to protect refugees on their territory.

The IRB is further divided into three divisions: Refugee Protection Division (RPD), Immigration Division (ID), and Immigration Appeal Division (IAD). These graphs are based on the statistics collected by the IRB from the RPD hearings and applications by all refugee claimants (i.e. the total numbers of claimants, not the number of hearings).

Policy Changes

1987-1989:Bill C-55 created and formalized the IRB, following the 1976 Immigration Act &1985 *Singh* decision

2001-2002: Immigration and Refugee Protection Act (IRPA)

2005 – 2006: IAD Innovation Plan, Chairperson's Action Plan

2010: Bill C-291 (asking for the already on-paper appeal process provision to be implemented) was defeated.

Acknowledgements

I would like to acknowledge the Department of Anthropology at the UWO for support and funding; Dr. Randa Farah for her advice and patience, as well as my other committee members, Dr. Andrew Walsh and Dr. Sherrie Larkin; IRB Documentation Centre staff; my husband Matthew Beaudoin for all his help; and the Graduate Collaborative Program in Migration and Ethnic Relations at Western.

Fig. 1 - National Finalized, Pending and Referred Claims

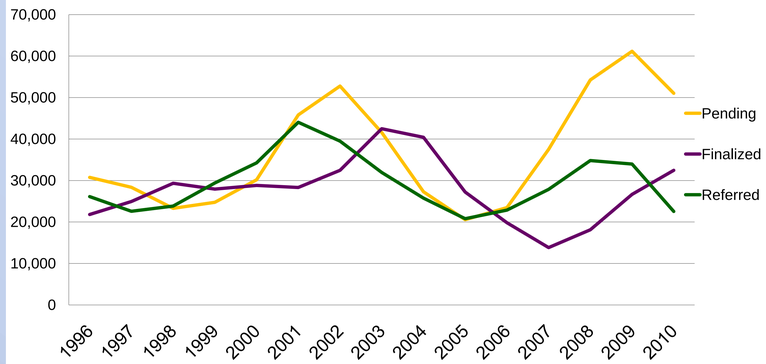


Fig. 2 - National Acceptance Rates

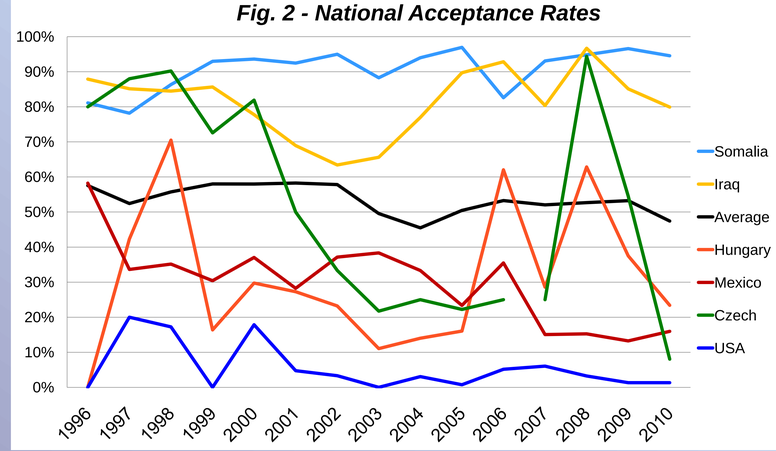
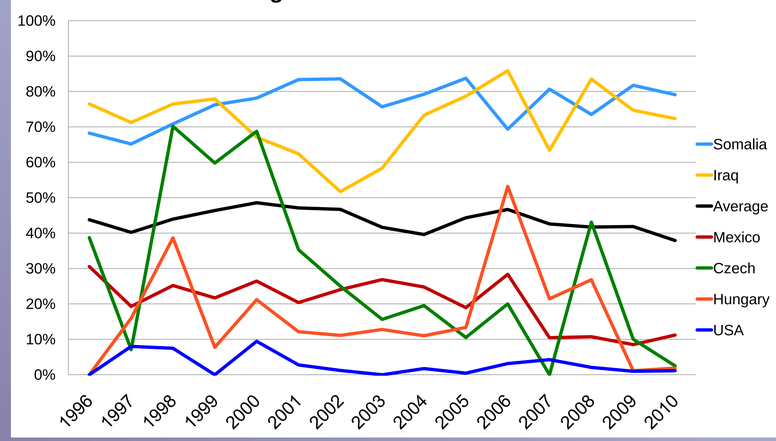


Fig. 3 - National Success Rates



IRB Terms and Categories

Referred Claims – the number of new refugee claim applications that are received in the designated time period.

Finalized Claims – the number of all refugee claim applications that are finalized or decided in the time period, including:

- *Accepted* – the refugee claim was successful
- *Rejected* – the refugee claimant decided, after a hearing, to not be considered a Convention refugee.
- *Abandoned* – applications that missed deadlines (for example) and deemed inactive and finalized by the IRB
- *Withdrawn* – applications cancelled by the claimant

Pending Claims – the number of claims/applications that were not finalized and thus carried over into the next time period.

Further Discussion

Objectivity - The IRB states that its process is unbiased and objective and that "every claim is determined on its own merits" (Van Dusen, IRB 2011); this proposition ignores the social dynamics that arise through the individuals involved, such as translators, Board Members and psychiatrists (Rousseau et al. 2002) as well as other political and economic influences.

2001/2002 Reform - Reduced two Board members to one and promised an appeal process that has not been implemented fully. The problem?: "Any court or tribunal with a single decision maker is more prone to mistakes" (Clark & Corrigan 2009). This has left no cost-effective or feasible way to appeal a negative refugee claim (some options include "leave cases", PRRA, humanitarian).

Pending Increases (Fig.1) – Even with reduced referred claims, the IRB is demonstrating it does not have the ability to effectively handle the number of cases it receives per year, which means some refugee claimants are left waiting for years, while others are the victims of hurried and short-staffed decisions. A consequence of this is illustrated in Fig.3: instead of the traditional acceptance/rejection ratio shown in Fig.2, Fig.3 includes *all* types of unsuccessful claims, including rejected, withdrawn, abandoned, and "other".

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