



**The Silent Plague: *Refoulement* in the Russian Federation**

Danielle J. Grigsby

*Oxford Monitor of Forced Migration* Volume 1, Number 2, 33-37.

The online version of this document can be found at: [www.oxmofm.com](http://www.oxmofm.com)

Copyright for articles published in OxMo rest with the author(s). Materials may be downloaded, reproduced and circulated in entirety provided that the title, author and source (OxMo) is acknowledged.

# The Silent Plague: *Refoulement* in the Russian Federation

By Danielle J. Grigsby

Receiving nations' efforts to limit the influx of refugees whom they would then be obligated to protect seriously challenges the guarantee to *non-refoulement* in the 1951 Refugee Convention. International advocacy efforts focus on curtailing incidences of dramatic interception of asylum seekers when attention should also be paid to other, silent incidences where receiving states' policies functionally provide no guarantee of *non-refoulement*. The Russian Federation's 1997 Law on Refugees exemplifies an overt disregard to protection from *refoulement*. Based on a study conducted by the author in Moscow from June to August 2010, this article presents an analysis of the pivotal divergences in Russia's asylum policy from the norms set forward in the 1951 Refugee Convention. It first examines the principles of *non-refoulement* and the debate surrounding its implementation, followed by an historical examination of Russia's post-Soviet refugee policy. Conclusively, by citing legal documents, this article demonstrates Russia's silent, yet calculated, disregard for the principle of *non-refoulement* evidenced by exceptions to the international standard codified in Russian Federal Law.

## Principles of *Non-refoulement*

*Non-refoulement* stipulates that refugees should not be returned (*refouled*) to any country where they are likely to face persecution or torture (UNHCR 2008). It constitutes the single, crucial guarantee of protection bestowed on refugees by states party to the 1951 Refugee Convention. Article 33(1) of the Convention establishes that 'No contracting state shall expel or return (*refoul*) a refugee in any manner whatsoever to the frontiers or territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion' (United Nations 2008).

However, migratory patterns can place cumbersome economic burdens on receiving states, due to geographic proximity to conflict areas or perceived economic and political stability (UNHCR 2008). Should states be mandated to guarantee protection in cases of status abuse, misrepresentation, or criminal activity (UNHCR 1997)? The framers of 1951 sought to ensure the rights of the sovereign by including the following exception to *refoulement*, Article 33(2): *Refoulement* 'could not be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.' Traditionally, States draw on Article 32 to determine crimes deemed 'particularly serious.' Article 32 stipulates that, 'Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order' having first been awarded due process of the law (UNHCR 1997).

There has been a sharp rise in receiving nations' efforts to curtail the influx of asylum seekers whom they would be obligated to protect as parties to the Convention. Receiving nations challenge the guarantee to *non-refoulement*: must a refugee be *inside* the receiving state before *non-refoulement* becomes a guarantee, and must refugees first meet the strict status determination requirements *before* they are guaranteed *non-refoulement* (UNHCR 1994)?

Focus has been on states found openly violating *non-refoulement*. The dramatic show of turning away 'boat people' or holding asylum seekers during refugee status determination (RSD) outside national boundaries overshadow other states' silent, yet calculated, abuse of Article 33(2) of the 1951 Convention (UNHCR 1997).

## **Refugees in the Russian Federation**

The collapse of the Soviet Union ushered in a complex period in Russia's experience with migration. The sudden restricting of borders necessitated a hastily constructed asylum system to manage the flow of people – whether economic migrants or refugees – from across the Commonwealth of Independent States (CIS) (Marks 2009).

Migration constituted one of the most dramatically contested policy issues of the mid-1990s in Russia. Due to the State's lackadaisical implementation of its migration policy, porous borders and thriving shadow economy, Russia experienced an unprecedented influx of undocumented migrants and asylum seekers which led to escalated tension between the migrants, refugees and their host communities (Afshar 2005).

Responding to a national outcry, the Russian Federation, already party to 1951 Convention and the 1967 Protocol, revised its refugee policy. In 1997, the State passed a version of the Law on Refugees, which set forward a series of requirements for Russia's unique asylum process (RFFL 1997).

### **Russian Policy on Refugees**

The 1997 Law on Refugees is largely punitive and is influenced by the sovereignty provision<sup>27</sup> of the 1951 Convention. Article 5.1(1) states that any individual applying for – or holding – refugee status may become subject to immediate expulsion from the country if they are found in violation of *any* law. This becomes problematic with Russia's reception and asylum policies; many fail reasonability tests and effectually guarantee a refugee's eminent violation of legal provisions – intentionally or otherwise.

Technical aspects of the 1997 Law include a 24-hour post-arrival time limit for registering an asylum claim. Article 5.1(7) states that a violation of this timeframe can be the basis for denial of an asylum claim: It constitutes a legal violation and thus leads to *refoulement*.

Article 4.6 asserts that upon the asylum application's receipt, authorities must provide an authorized certificate of asylum. This certificate serves as legal registration which authenticates the individual's presence within the Russian Federation, per *propiska*<sup>28</sup> standards, allowing refugees to enjoy certain freedoms in country and access to basic livelihoods or provisions while awaiting State-backed RSD. However, refugees report that these documents are rarely, if ever, given to asylum claimants at the time of filing (Wordofa 2011). Without these documents asylum seekers are not recognized as having any rights, whatsoever, which – if caught undocumented during the official RSD process – constitutes a legal violation and another opportunity for *refoulement* under Article 5.1(1).

The Law also states that at the point of registration, asylum seekers must agree to reside in a state-funded Temporary Accommodation Centre (TAC) to await their status determination. If the local TAC is full, or otherwise unavailable, asylum seekers must find, without assistance, an alternative housing solution. If asylum seekers have not received their registration, or if their case is significantly delayed, they cannot legally obtain an apartment (Yaftali 2010). Persons caught residing in the country without proper documentation are in violation of residence laws, which, again, provides grounds for *refoulement*.

Article 3.3 requires RSD to be actuated through an interview, completion of questionnaire and an examination of the credibility of the data provided. Federal Migration Service policy allows

---

<sup>27</sup> Article 33(2) of the 1951 Refugee Convention.

<sup>28</sup> *Propiska* is the system that governed migration within the USSR. While formally abolished in 1993, Russia's current registration policy greatly resembles its Soviet precedent. It requires a Russian citizen, or person legally in Russia, to live in an apartment, hotel, or place of domicile in any city across Russia. It is a registration stamp administered in a person's passport by the regional authority when new residence, or hotel presence, is taken up (Immigrant and Refugee Board of Canada 2003).

for a three-month timeframe to process the claim. The law denies access to procedure during RSD, which is problematic in the case of asylum claimants, albeit not technically illegal. During the three-month RSD period refugees can be stopped by suspecting police – notorious for racial profiling – and their documents may be checked. Often police do not recognize temporary status, or process determination papers, which places refugees at risk for being accused of illegal activities; thus they become, again, vulnerable to *refoulement* without legal recourse (Wordofa 2011).

Article 5.1(5) denies asylum claims from individuals who have traveled through a safe third country. The Russian Federation defines a safe third country as *any* nation that is signatory to the 1951 Convention, even if residing therein for less than a day (AI 2003b: 60; UNHCR 2002c: 290). Again, while not incompatible taken alone, the highly contested notion of safe third country is arguably too broadly defined by the Russian government as nations such as Afghanistan, Iran, Tajikistan and others are considered ‘safe’. However, in opposition to the broad Constitutional norms that define safe countries of return, individuals found in violation of Russia’s strict legal code have been forcibly returned to North Korea – a state *not* party to the 1951 Convention (Bassenko 2008). Such deportations demonstrate flagrant disregard of Russia’s legal standard.

Article 5.1(6) makes the illegal departure from the country of origin grounds for case dismissal and *refoulement*. Understandably problematic, this exclusion is impossible to either prove or sustain as a state from which individuals flee rarely, if ever, authorizes the refugee’s departure.

At the point of RSD a positive or negative admissibility ruling is issued to the asylum seeker. If the case is found credible, the status of refugee is granted and refugees are issued state-endorsed identification and travel documents granting them access to state-sponsored services<sup>29</sup>, the ability to move within Russian borders, obtain employment and, eventually, apply for citizenship.

If the status claim is denied, asylum seekers are allowed the right of appeal, but a claim must be filed at the moment a negative RSD decision is made. If immediate appeal is not filed the asylum seeker loses the right to remain in the Russian Federation and their case is transferred to the Ministry of Internal Affairs, which places the applicant under formal deportation proceedings. Fortunately or not, there exists little coordination between the two federal departments. Weak, non-enforced policies allow many migrants who have been denied asylum to bypass the system and remain in the country, without permission, though still quite vulnerable to *refoulement* (Shea 2005).

The official refugee status provided by a positive RSD has, of itself, several provisions that further deviate from traditionally accepted international norms. Article 7.9 states that asylum is ever only temporary, granted on first filing for a period of three-years. Individuals wishing, or requiring, to remain in Russia and extend their refugee status must reapply yearly after the initial three-year period. From 2000 onward the FMS granted an increasingly small number of status reauthorizations after the initial three-year period<sup>30</sup>. This system, aside from extending opportunities for extortion and discrimination, undermines the notion of refugee integration, since status is, simply, not a durable solution. Furthermore, it holds that refugee status may be revoked and the refugee deported if they are found – at any point – in violation of *any* law of the Russian Federation.

### Cases of Refoulement

Exact numbers of refugees or asylum seekers who have been deported from Russia as a result of these poorly executed policies do not exist, and estimates vary (UNHCR 2004). Moscow-based diaspora groups attempt to collect data and information about refugees and asylum seekers who

<sup>29</sup> These include access to hospitals and education for refugees or their offspring.

<sup>30</sup> As an example, in the year 2001, 40,000 refugees lost their status while only 15,000 had status extension reapproved (Afshar 2005).

are – or have been – placed in deportation proceedings (Yaftali 2010). Under increased government scrutiny these rights-based organizations seek to promote awareness and interest in Russia's ill-articulated and haphazardly actualized 'guarantee' of *non-refoulement*.

Danielle J. Grigsby is an United States citizen and an MSW student at Boston College's Graduate School of Social Work, Global Practice, Macro Intervention. Grigsby draws on nearly a decade of field experience providing direct services to refugees domestically and abroad, in both the public and private sectors. Aside from fieldwork, Grigsby's prior experience also includes U.S. Peace Corps service in South Africa, work with the Massachusetts Immigrant and Refugee Advocacy Coalition (MIRA), Refugee Resettlement Case Management at the International Rescue Committee, Program Development at Jewish Family & Children's Service Special Needs Center (Ukraine), and as a Forced Migration Researcher & Affiliate at the Feinstein International Centre. Grigsby holds a BS in Political Science, a BS in History, and attended the International Summer School on Forced Migration at the Refugee Studies Centre of Oxford University.

## References Cited

The views and facts presented here result from a study conducted in Moscow from June to August 2010. The English translation of Russian laws sourced herein can be found at [www.legislationline.org](http://www.legislationline.org).

**AFSHAR, A.** (2005) 'Refugees in Russia: The Law on Refugees and Its Implementation', *Journal of Refugee Studies*, **18**(4): 468-491.

**AMNESTY INTERNATIONAL** (2003). *Russian federation: Violent racism out of control*, No. 11, London.

**BASSENKO, E.** (2008). 'North Koreans Cross the River to be Jailed in Russian Prison'. *Rossiskaya Gazetta*, Moscow, 29 October. <http://www.rg.ru/2008/10/29/reg-priamurje/koreets-anons.html>

**IMMIGRATION AND REFUGEE BOARD OF CANADA.** (2003). 'Russia: Information on the *propiska* or *propiska*-like registration system in Russia; regions with *propiska*-like registration systems; governing authority; its application in practice; effect on individuals lacking registration; reports of corruption in registration. No. 1) Ottawa: Immigration and Refugee Board of Canada.

**MARKS, S., Kazmina, O., and Graney, K.** (2009). In Bressler M. L. (Ed.) 'Understanding contemporary Russia. London: Lynne Rienner Publishers.

**UNITED NATIONS.** (2008) *Convention and Protocol Relating to the Status of Refugees*. Geneva, Switzerland. Available from: <<http://www.unhcr.org/pages/49da0e466.html>>.

**FEDERAL LAW OF THE RUSSIAN FEDERATION.** (1997) *On Amendments and Additions to the Law of the Russian Federation 'on Refugees'*, 284 (3 July 1997). Available from: <[www.elgislationline.org](http://www.elgislationline.org)> (accessed: June 2011).

**SILVESTRIA, A., and TCHERNISHOVA, O.** (1998) 'The legal framework regulating asylum in the Russian Federation', *International Journal of Refugee Law*, **10**(1): 184-198.

**UNHCR.** (2002) *2002 global trends: Refugees, asylum-seekers, returnees, internally displaced and stateless persons*, Geneva.

**UNHCR.** (2004) *Russia Country Profile*, Geneva.

**UNHCR.** (1994) 'The Principle of *Non-Refoulement* as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal

Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93, 31 January 1994. Available from: <http://www.unhcr.org/refworld/docid/437b6db64.html>.

**UNHCR.** (1997) *'UNHCR Note on the Principle of Non-Refoulement,'* November 1997. Available from: <http://www.unhcr.org/refworld/docid/438c6d972.html>.

**Interviews, conducted by Danielle Grigsby in Moscow, Russia from 2005-2011:**

**SHEA, D.** (2005) Interview with author. (Moscow Times Reporter)

**YAFTALI, M.** (2010) Interview with author. (Director Afghan Diaspora Organization)

**WORDOFA, G.** (2011) Interview with author. (Former Director of Opora)