

National Consultation on Women's Issues in Immigration and Refugee Protection: Report of Agenda-Setting Meeting of June 28, 1993

James C. Hathaway

An agenda-setting meeting was convened at the Centre for Refugee Studies, York University, on June 28, 1993 to set in motion the consultation process announced by the Minister of Employment and Immigration on the protection of refugee women. The meeting was convened by Mr. André Juneau, Executive Director (Immigration Policy), Employment and Immigration Canada, and chaired by Professor James Hathaway of the Osgoode Hall Law School. In attendance were representatives of each of the non-governmental, institutional and responding agency sectors.

First, it was agreed that this Consultation process should address the concerns of refugee and other at-risk women. While recognizing the importance of a review of general immigration policy as it impacts on women, the participants determined that it would be preferable to establish a distinct process to assess these more general issues.

Second, the following set of governing principles was agreed to as the basis for the Consultation process.

1. **Human rights-driven commitment:** The policy response ought reasonably to respect and promote Canada's international and domestic human rights undertakings, including a fundamental commitment to holistic non-discrimination. What place do migration-based programs have in the broader commitment to end the systemic disfranchisement of women throughout the world? How might the domestic components of immigration programs more fully affirm the dignity and rights of women?

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2. **Gender inclusiveness:** How might we move from a policy of gender neutrality towards a commitment in all standards and procedures to meaningful gender inclusiveness?
3. **Affirmative outreach:** The implementation of policy through essentially responsive mechanisms is inappropriate in the context of the social and economic barriers to access with which women are disproportionately confronted. How might standards and procedures be reframed to achieve an affirmative outreach to women?

Third, the participants developed a list of policy concerns that the Consultation process should address. These concerns were divided into three groups: matters involving the inland Convention refugee determination process, issues arising in the inland discretionary admissions process and questions regarding overseas selection, admissions and integration. The list of policy concerns to be addressed by the Consultation process includes the following points.

I. Inland Convention Refugee Determination Process

1. **Convention refugee definition:** What substantive gaps, if any, remain in the refugee definition as interpreted by the Immigration and Refugee Board (IRB) guidelines, and what standard-setting process (directive, regulation, statute, international convention) is required to meet any perceived inadequacies?
2. **Making the claim:** What impediments exist to effective access by women to the Convention refugee determination process? In particular, are there aspects of the immigration interview and detention/release process which fail to address the particular concerns of women or

which discourage women from pursuing claims to refugee status?

3. **Eligibility criteria:** Ought the *Immigration Act's* eligibility criteria to be amended to ensure that women refugee claimants are not returned to countries in which no mechanism is in place to ensure comparable gender sensitivity in the substantive and procedural aspects of refugee status determination?
4. **Aids to decision makers:** What educational and other support mechanisms (substantive and attitudinal education, documentation, advisers) are required to maximize the gender sensitivity of decision makers? Is the Board's current Code of Conduct a sufficiently clear statement of expectations, or is a specific antisexism policy required?
5. **Compliance with guidelines:** Is the procedural mechanism to monitor compliance by IRB decision makers within the refugee definition and guidelines adequate? Is there a need for a comprehensive procedure to monitor and/or review negative decisions in cases that raise gender-related concerns at the eligibility/access and full determination stages?
6. **Determination setting:** How might the determination process itself (including issues of hearing-room design and atmosphere, support structures, translators, etc.) be improved to ensure a genuinely fair hearing for women refugee claimants? Is the stated commitment to a non-adversarial hearing capable of realization?
7. **Mandatory joinder:** Is the prevailing policy under which the claims of family members are heard and decided jointly (unless an application for severance is granted) conducive to allowing women to present their

independent grounds for refugee status?

8. Possible special procedure for gender-based claims: Might consideration be given to the assignment of specialized members, hearing officers and translators to determine claims in which special sensitivity to gender-related concerns is required? What procedural innovations might be appropriate to such a context?
9. Federal Court review: To what extent is the Federal Court likely to embrace the expansive definitional approach advocated by the IRB guidelines? Insofar as judicial review fails to affirm a gender inclusive optic on the Convention refugee definition, what educational and other steps might be considered to promote the full and fair consideration of claims by women?
10. Landing of Convention refugees: Are inappropriate considerations brought to bear in determining whether women recognized as Convention refugees are landed as permanent residents of Canada?

II. Inland Discretionary Admissions Process

1. Post Determination Refugee Claimants in Canada Class (PDRCC): Is the definition of this class adequate to encompass the needs of at-risk women found not to be Convention refugees by the Immigration and Refugee Board? How might the spirit of the IRB guidelines be operationalized, including by training, within the PDRCC process? Ought risk of sexual violence or inhumane treatment based on gender, including risk of spousal assault to which the state is unable or unwilling to offer an effective response, to be specifically included as a basis for relief from deportation? Is the requirement to show an element of individuated risk distinct from the risk affecting others in the country of origin an unreasonable criterion? Should length of time in Canada be a relevant consideration? Is a process for monitoring of decisions reached

on applications for PDRCC status warranted?

2. Ministerial discretion: Is the Minister's discretionary authority under S. 114 of the *Immigration Act* exercised so as to ensure that the broader humanitarian concerns of women in Canada are recognized? What steps might be adopted to ensure that a woman who is a sponsored spouse does not risk deportation by leaving an abusive husband? To what extent are the objectives of this procedure undercut by official concern that, in addition to showing humanitarian and compassionate grounds for avoiding deportation, applicants must also demonstrate the capability for successful establishment in Canada?
3. Access: What barriers, if any, exist to effectively accessing either the PDRCC or ss.114(2) discretionary admissions processes? In particular, should a substantial processing fee be assessed for s.114(2) review? How might both procedures be made more transparent and known to rejected refugee claimants?
4. Possible special-measures initiative: Ought consideration to be given to the formalization of a special measures program expeditiously to admit at-risk women in Canada who face deportation? Might this be a more comprehensive and cost-effective alternative to the present array of quasi-judicial, departmental and ministerial resources involved in the consideration of claims?

III. Overseas Selection, Admissions and Integration

1. Convention refugees: While administrative steps have been taken to bring the IRB guidelines to the attention of visa officers, ought the Minister further to require visa officers to substantiate non-compliance with the guidelines in line with the precedent of the Chairperson of the IRB? How could principled consistency in decision making best be ensured?
2. Designated classes: What amendments to the designated class regulations should be considered to

embrace the broader category of women in refugee-like circumstances, but who may not meet the technical requirements of the Convention refugee definition? To what extent should broader human rights-derived standards drive the revised class designations?

3. Access: What problems exist for refugee women in accessing Canadian visa officers? In particular, are settlement interviews conducted in all major refugee camps and temporary protection sites?
4. Agency relationships in the field: How might Canada better profit from the network of international and non-governmental agencies working in the field, including the United Nations High Commissioner for Refugees (UNHCR), to identify refugee women in need of protection by Canada?
5. Aids to decision makers: Do visa officers have adequate training on the interpretation of the Convention refugee and designated class definitions, in particular as they may apply to the situations of at-risk women? Are sufficient educational and other support mechanisms (substantive and attitudinal education, documentation, advisers) available to maximize the gender sensitivity of decision makers? Do senior officials set a sufficiently clear expectation of gender inclusiveness and antisexism for the selection process?
6. Selectivity: Does the "successful establishment" emphasis of the selection criteria applicable (albeit in less stringent terms) to both Convention refugees and the members of designated classes create an unwarranted disadvantage for women? Is the means by which "successful establishment" is interpreted fully responsive to the particular hardships and disadvantages faced by women? Does it adequately take account of survivorship skills demonstrated by refugee women?
7. Women at Risk program: Has the redefinition of the mandate to include both women in precarious situations and those living in perma-

nently unstable circumstances proved sufficient? How might the spirit of the IRB guidelines be incorporated in the program's ambit? Ought there to be consideration of suitability for successful establishment, even at the prescribed level of leniency? Have new procedures for application and sponsorship identification sufficiently reduced processing time? Is there a need for a more pro-active seeking out of candidates by contact with local non-governmental organizations (NGOs)? Why has the UNHCR referred so few women to the program? What enhancements to information and training for visa staff are needed? Is the prescribed array of post-arrival services sufficient?

8. Humanitarian admissions: Should the general discretion afforded visa officers to exempt applicants from normal regulations be tailored to meet the concerns of women in need of admission to Canada?
9. Settlement and integration: Have the 1992 language-training policy and implementing programs successfully responded to the needs of immigrant women? Have accessible training options and childcare been made available to promote labour-force participation? Has enough been done to involve non-governmental organizations, including immigrant women's groups, in the settlement and integration process? Is it appropriate to limit eligibility for settlement and integration services to women who have not become Canadian citizens? Are adequate protections in place to respond to privately imposed subjugation of immigrant women through traditional cultural practices? Has enough been done to confront the risks faced by immigrant women as a result of the racial and sexual discrimination in Canadian society?

Fourth, the participants divided into smaller discussion groups, each including representation from the non-governmental, institutional and responding

agency sectors to elaborate concerns within each of the policy concern areas. These discussions were later transcribed and made available to those participating in the Consultation process.

Fifth, the participants agreed that the Minister should give urgent consideration to the implementation of a process to guard against the deportation from Canada of at-risk women whose claims to Convention refugee status were heard prior to the issuance of the IRB guidelines. This interim procedure should remain in place pending the completion of a review of the adequacy of the inland discretionary admissions process as a means of protecting individuals who have advanced a need for protection based on gender-specific circumstances.

Sixth, it was agreed that the scheduled review of the Women at Risk program should proceed as an integrated part of the more general Consultation.

Seventh, it was determined that the Consultation process itself should be commenced not later than September 1993. To this end, it was agreed to establish a Coordinating Committee composed of two representatives from each of the non-governmental, institutional and responding agency sectors not later than July 9, 1993, which would take responsibility to establish a process within which the governing principles and policy concerns identified might be fully explored. André Juneau undertook to convene the Coordinating Committee and to provide secretariat and other support requisite to its functioning. The critical matters to be addressed by the Coordinating Committee were identified to include: whether the Consultation should proceed as a single, integrated process or by way of segregation of issues; who ought to be invited to participate in the Consultation; how regional input might be meaningfully achieved; the deliberative timeframe; a process for education and implementation; and the extent of resources to be made available for the Consultation process. ■

Participants

Non-Governmental Participants

Rivka Augenfeld, *Table de concertation des organismes de Montréal des réfugiés*

Janet Dench, *Canadian Council for Refugees*
 Caroline McChesney, *Refugee Lawyers' Association*
 Elsa Tesfay Musa, *Working Group on Refugee Women's Issues, Canadian Council for Refugees*

Institutional Participants

Ed Broadbent, *International Centre for Human Rights and Democratic Development*
 Diana Bronson, *International Centre for Human Rights and Democratic Development*
 Linda Gama-Pinto, *Status of Women Canada*
 Lois Adams, *United Nations High Commissioner for Refugees*
 Wendy Robbins, *Canadian Advisory Council on the Status of Women*

Responding Agency Participants

Nicole Brodeur, *Ministère des communautés culturelles et de l'immigration du Québec*
 Pamela Cullum, *Employment and Immigration Canada*
 Nurjehan Mawani, *Immigration and Refugee Board of Canada*
 William van Staaldunin, *Employment and Immigration Canada*

Invitees Unable to Attend

Laura Chapman, *Employment and Immigration Canada*
 Sebastien Gignac, *Office of the Minister of Employment and Immigration*
 Denise Laine, *Centre social des immigrants de Montréal*
 Sunera Thobani, *National Action Committee on the Status of Women*
 Penny Van Esterik, *York University Conference on Gender Issues and Refugees*

Organizers

André Juneau [Convenor]
Executive Director (Immigration Policy), Employment and Immigration Canada
 James Hathaway [Chair]
Associate Director (Law), Centre for Refugee Studies
 Leanne MacMillan [Consultation Coordinator]
Legal Programmes, Centre for Refugee Studies
 Elizabeth Adjin-Tettey [Asst. Consultation Coordinator]
Jacqueline Greatbatch Fellow in Law, Centre for Refugee Studies