

Reflections on *Gendering Canada's Refugee Process*

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Abstract

This article introduces the report entitled Gendering Canada's Refugee Process released by Status of Women Canada in June 2006. The research investigates how, when, and why gender matters in Canadian refugee determination. It sets this inquiry in the context of changes brought in by the Immigration and Refugee Protection Act, as well as changes that have occurred due to the post-September 11 security climate. The article reflects on the research methodology and highlights the key conclusions of the report. The report's seventy-nine recommendations are also presented here.

Résumé

L'article présente le rapport intitulé Gendering Canada's Refugee Process (Détermination du statut de réfugié au Canada selon le sexe), publié par Condition féminine Canada en juin 2006. Il explore de quelle manière, à quel moment et pour quelle raison le facteur sexe intervient dans la détermination du statut de réfugié au Canada. La recherche se situe dans le cadre des changements amenés par la Loi sur l'immigration et la protection des réfugiés, et par les dispositifs de sécurité mis en place après le 11 septembre. L'essai se penche sur la méthodologie de recherche du rapport, en fait ressortir les conclusions clés et présente les 79 recommandations qu'il contient.

Status of Women Canada is scheduled to release the report entitled *Gendering Canada's Refugee Process* in June 2006. I was the principal investigator for this project and the lead author of the report.¹ Our final draft was completed in April 2005 and in the time between then and April 2006 (quaintly known as "at time of writing"), the report has gone through the predictable refereeing, copy editing, page proofing, and translation stages. It would be reasonable enough to think that I had tired of a project that was launched in May 2003, but the opportunity to introduce this research to the *Refuge* community, and the associated occasion to reflect on its construction and aspire for its future, proves irresistible.

In this short article, I introduce the research by outlining why we undertook the project and how we conducted the work. This makes a place for reflection on our methodological choices, and charts a path for further work. I then consider our regrets, things we had aspired to but could not achieve and why this is so. Finally, I highlight some of our findings, and set out again here the seventy-nine recommendations of the report because of my belief that if even some of these were taken up by current policy makers, considerable improvements could be made. In the current political climate in Canada, advocates are forced to argue for the status quo as "best practice" against a host of forces that would prefer an erosion of the current refugee determination system. Writing *Gendering Canada's Refugee Process* offered a comparatively rare opportunity to imagine improvements, and to be supported by generous government funding in so doing.

Why We Did It

This research set out to investigate changes to Canada's refugee protection system which had been brought in by the 2002 *Immigration and Refugee Protection Act (IRPA)*,² and in particular to investigate how, when, and why gender matters in refugee determination. In addition to new legis-

lation for the first time in twenty-five years, two other factors contributed to making the research timely. The first was the shift in the politics of security following the terrorist attacks of September 11, 2001. The second was the innovative statement in the *IRPA* that the government would report annually on the gendered effects of the legislation.³ These three factors helped make a case for the grant application to the Research Directorate of Status of Women Canada program on human security.

The less official story of why is also important. In this instance, the research was spurred on by Leonora Angeles's pedagogic innovation. In the autumn of 2002 she required that graduate students in the Asian Public Policy Program write a grant application as an assignment for one of her courses. Chantal Proulx, Jenelyn Torres, Masako Tsusuki, and Anna Turinov undertook this project together. In searching out people at the University of British Columbia (UBC) who could assist them, they approached both me and Erin Baines. Erin, Nora, and I jointly decided that the students' original idea of twinning refugee matters with human security was important and that the timing was right to develop a fully articulated proposal from the original assignment. The three of us applied for the funding together, with the original students as researchers on the project.⁴

There has been a lot written about women in refugee law. Our work is different from the majority of other work in the area, and we hope this difference is complementary. This is also part of the "why" of this work. Academic research and analysis along with hands-on activism has been vital, since the mid 1980s, in putting gender on the refugee issues map.⁵ While there is still much to be concerned about in this area, it is undoubtedly the case that gender is now clearly identified as an issue to be reckoned with in refugee law. Following concerted work by feminist activists and scholars, the United Nations High Commissioner for Refugees (UNHCR) launched its first *Guidelines on the Protection of Refugee Women* in 1991.⁶ Led by Canada, many Western refugee-receiving countries now have policy guidelines on gender-related persecution.⁷ The UNHCR updated both its guidelines and its language with a statement on gender-related persecution in 2002, and since 2001 has been working to implement its gender equality mainstreaming program.⁸

Our work is complementary to much of the existing work in that it is not jurisprudential. That is, it is not primarily about gender-related persecution or the interpretive trends in refugee law. This is a significant thing to leave out, so it is vital to understand what we have done instead. In a sense our point of departure is this: let's assume the gender-related persecution guidelines are perfect and their

interpretation and application are seamless, would this solve all the dilemmas of gender in the refugee determination process? To answer this question, we have taken a long view of refugee determination in Canada, considering what happens to women and men from the moment they decide to make a refugee claim to the time when they are either permanent residents in Canada united with their close family members or when they have left the country. While the jurisprudential content of a given refugee decision is the centrepiece of this trajectory, it is also a discrete point in the process, neither the beginning nor the end.

In keeping with this non-jurisprudential perspective, our research focus was gender rather than gender-related persecution. We tried – with varying degrees of success – to investigate differences between the experiences of women and men in the refugee process, rather than to focus on gender-related persecution only. It stands to reason that many women, potentially the vast majority, will seek refugee status because of a risk of persecution which is not gender-related. Indeed, it might even be suggested that the more firmly established the jurisprudential thrust of the Canadian guidelines on gender-related persecution becomes, the more women will be seen as risking pure and simple persecution, rather than an exceptional adjectivally framed variety.

In this ambition, we were only partially successful. It proved extraordinarily difficult to understand and interpret the difference between refugee claims made by women and claims involving gender-related persecution. On the one hand, Immigration and Refugee Board (IRB) statistics suggest that in the decade following the introduction of the Canadian guidelines, only about three thousand decisions used them. This number must certainly be too low given that a rough figure for overall claims during that time frame would be three hundred thousand. On the other hand, our discussions with advocates, support workers, and decision makers indicated that gender-based persecution is immensely important to women's claims, some even saying that they used the guidelines in every single claim involving a woman. There are logical reasons for the IRB figures to underestimate use of the guidelines, and we certainly found that the guidelines, and the importance of gender issues generally, were a well-established part of the institutional ethos of the Board. On this point we were left with an understanding that there are some distinctions to be made between claims by women and claims involving gender-related persecution, but no satisfying way to describe these distinctions.

It is provocative to consider whether gender-related persecution has subsumed all women. It may be the case that jurisprudential attention to ways in which women are ex-

cluded from refugee law has left only one way for them to be meaningfully included. This important insight is not one we take up in *Gendering Canada's Refugee Process*, as it would certainly involve extensive jurisprudential work. But the terrain to be mapped is visible from the vantage point we establish.

The final reason we did this research at this point in time is generous funding provided by Status of Women Canada. Our grant proposal was accepted and funded over a two-year period. The project could not have been completed, or even started, without this commitment. Furthermore, the production costs often borne by researchers were in our case taken up by the funder, making the money go even farther.

What We Did

Our work on this project began in May 2003 and involved six principal activities: reviewing literature, policy mapping, searching for standards, interviewing, gathering numbers, analyzing, and reporting. Of these relatively predictable phases, the policy mapping, interviewing, and gathering of statistics proved especially challenging.

Assembling all the documents which govern the Canadian refugee determination process from start to finish is an immense task. In keeping with our commitment to look at the lived experience of a person's engagement with the Canadian government from arrival through to either settlement or departure, a preliminary methodological requirement is to simply identify the steps in that process. This involved taking into account the law, regulations, policy guidelines, rules, and other statements that control each aspect of the process. At first just as a ready reference, and later in partial disbelief, we represented all this material in the form of a chart, contrasting the *IRPA* and other recent documents with the previous regime. The chart is sixteen pages long (and is Appendix C to the report).⁹

This information required constant updating as new policies were introduced during our twenty-four month research time span. Changes made during our work included:

- temporary suspension of the Refugee Appeal Division has continued and now appears to be permanent;
- Canadian Border Services Agency (CBSA) was created in December 2003 with significant refugee determination related responsibilities;
- a new National Security Policy highlighting refugees as a potential security problem was introduced in April 2004;
- several policies and instructions relating to refugee hearings at the IRB were introduced by the Chairperson. These include guidelines about the order of pres-

entation (questioning), use of videoconferencing, and front-end screening;

- reduction in legal aid for refugee claimants in British Columbia from February 2004;
- the *Public Safety Act* became law in March 2004;
- new regulations governing immigration consultants came into force in April 2004;
- new guidelines for IRB appointments were introduced in March 2004;
- the "Safe Third Country" Agreement with the United States came into effect on December 29, 2004;
- Citizenship and Immigration Canada (CIC) published a "Strategic Framework on Gender Based Analysis for CIC (2005–2010)."

Since our report was submitted in April 2005, there are a number of items that could be added to this list, and a change in government means that more could be on the way.

One of the themes of our report became change, and we worked to analyze the implications of incessant incremental change in a major policy area. Even the *IRPA* itself leaves intact much of the previous refugee determination process. Thus on the one hand, the process is marked by all-change-all-the-time, meaning that repeat players in the process – advocates, decision makers, community workers – are constantly adjusting and working to absorb new information, as well as analyzing and advocating as new initiatives appear on the horizon. This effort consumes an enormous amount of energy amongst each of these groups of people. On the other hand, as major pieces of the puzzle are fixed, it is possible to say that the system is the same now as it was ten or fifteen years ago. This is misleading, however, because each incremental change has its particular impact. The cumulative effects are seen more clearly in a study like ours which examines the long view of the in-Canada refugee process.

Gathering statistics to gender the refugee determination process was particularly difficult. We gathered statistical information from three sources: (i) publicly available documents such as annual reports; (ii) information in response to direct questions we posed of CIC and IRB officials; (iii) requests made under the *Access to Information Act*.¹⁰ We are especially grateful to the CIC and IRB staff who assisted us in gathering this information and who spent time discussing key issues with us. It was a difficult decision to make the decision to pursue information using the access legislation when we had had such cheerful co-operation with individuals at key agencies. We made this choice in consultation with our analyst at Status of Women Canada, hoping that it would free individuals from vexing decisions about which information to release and when to release it. Our work did

not involve generating any new numbers ourselves, although we did sometimes calculate acceptance rates and comparison rates based on numbers provided by government agencies.

In some cases the numbers are revealing, in some they are predictable. In many cases the absence of sex-disaggregated data is the most significant finding. Our view is that these questions have simply not been previously asked. We do not believe there is any invidious motive in the unavailability of data. We are also convinced that everything that was available was released to us. While sex-disaggregated data are not the end point of an analysis of gender, they are an important starting point. We were surprised at the absence of this data in many areas. This was probably the most frequent reason for altering our research plans as we progressed. Information we had thought would be available simply was not, and some analysis was impossible because of this. Concomitantly, this provides even greater validity to our qualitative work, and frees us from crude numerical framing of results.

Interview data are a central aspect of the information we gathered. In total we interviewed 109 people between October 2003 and November 2004. Our interviews took place in Montreal, Ottawa, Toronto, and Vancouver. Some were conducted by telephone with interviewees in other locations. We interviewed two groups, key informants and people in the refugee determination process.

Our key informants included community activists in the refugee sector, refugee lawyers, refugee decision makers, and academic researchers. Refugee decision makers were recruited to participate in our study with the assistance of the IRB, Refugee Protection Division. The key informants included twenty-two refugee lawyers who have been practising between one and twenty-two years in Canada. On average and when combined, these lawyers assist 750 applicants annually, from all areas in the world. We also spoke with staff from refugee women's shelters, academics, refugee advocates volunteering in detention facilities, former Refugee Protection Officers, a former Immigration Officer, and international and national non-governmental groups. The eleven refugee decision makers we interviewed had been at the IRB for between two and fourteen years, with approximately seventy years aggregate experience. Given average rates of decision-making responsibility, these individuals would have participated in over twelve thousand refugee determinations.

Our interviews with people in the refugee determination process included interviews with some whose claims had been accepted, some whose claims had been rejected, and some who were still engaged in the process. These interviews were challenging on several levels. First, recruitment

among this population was difficult. Participating in our research did not offer any benefit to claimants. We asked claimants to retell stories that were often traumatic and we had no way to assist them with their claims. We were also aware that because many people involved in this process are very poor our modest financial recognition could act as an incentive to participate. We did not want those who would not otherwise consent to do so for the money. We addressed our recruitment concerns in part by recruiting participants through key informants. We guaranteed anonymity, and also offered interpreters of the interviewee's choice and to pay for child care if necessary. The recruitment challenge meant that we did fewer of these interviews than we had planned, with a final total of only thirty-one interviews.

A second challenge of these interviews was the emotional impact of the interview experience for the claimant and the interviewer. Most claimants, women and men, wept or had difficulty talking about their experiences at some point in the interview. We offered on many occasions to end the interview at a midpoint, but this offer was never taken. Our theoretical understanding of the interview relationship was fully tested in this setting. The stories we heard during these meetings provide a grounding for all aspects of the work.

All the interviews are a key source of qualitative data for our project. Given that more than thirty thousand refugee determinations have been made annually in Canada over the past decade, it is impossible to draw quantitative conclusions based on these interviews. Nonetheless, interviews provide information that statistics cannot. The interview data, particularly from those involved in the refugee determination process itself, provide an irreplaceable insight into the personal aspects of making a refugee claim. The interviews also serve to alert us to key areas for other types of inquiry.

We are aware that those key informants who agreed to speak with us are among the most dedicated and reflective members of the advocacy community. Similarly, we are aware that our conversations with refugee claimants reflect only those who are the most confident and resilient. Given these two facts, what our interviews show us is a best-case scenario. Our work presumes, therefore, ideal guidelines on gender-related persecution applied even-handedly to known facts by engaged and curious decision makers supported by the most dedicated community and legal workers in the cases of strong, resilient claimants. In sum, this is near utopian refugee decision making. In a true utopia, of course, there is no need of such a process.

Regrets

There is certainly a measure of regret in conducting research in such an idealized setting. We know that there are unscrupulous

pulous and lazy lawyers who sometimes take on refugee cases, and others as well who probably have no interest in how men and women might be treated differently in this process. This has an obvious effect on the process and we have no way to explore that fully. Similarly, some small number of decision makers are unprepared or ill-equipped for this demanding role. While the appointments process has improved markedly, the final decisions are still made solely by the Minister and reappointment decisions are not transparent and can be unreasonably delayed.¹¹ It is simply not possible that we would ever find ourselves speaking with weak or problematic Board members. Finally, some refugee claimants will tell lies, and a considerably smaller number will attempt to obtain refugee status when they know they are not eligible. For equally obvious reasons, such claimants do not volunteer to participate in research like ours, nor are they referred to us by community workers and advocates.

A considerable part of the public debate about refugee law and policy in Canada is driven by the assumptions that those taking sides make about these characters: the unscrupulous lawyer, the bad decision maker, the bogus refugee. My own view is that these are bit players. There is so little money in refugee law that the truly conniving are unlikely to stick it out long. The corrupt and incompetent are being weaned out. And among refugees, most of those who are not accepted are, despite their failure in this process, vulnerable women and men in search of a better life and not to be vilified for not understanding the intricacies of refugee law. We hope that, by giving a voice in our work to those who are living through this experience, others might be persuaded of this.

Beyond these methodological impossibilities, there are some things that I would reconsider for the future. Speaking with those living in the refugee determination process was invaluable and more of these interviews would have been better. This recruitment takes time, and could have been improved by scheduling longer stays away from Vancouver. It would also be beneficial to vary recruitment methods, and to consider direct recruitment and file sampling recruitment.

CBSA came into being at a midpoint in our research. The role of CBSA is increasingly vital for those in the refugee process, and it is evolving quickly. It would be useful to repeat and extend this work regarding CBSA, in ways that we were unable to achieve.

Our initial decision to stay away from jurisprudential research helped define the project and fit it within its budget and timeframe. In retrospect, however, it would be useful to know more about how decision making using the gender-related persecution guidelines is evolving. Many key informants reported to us that the guidelines are outdated.

Jurisprudential analysis would tell us how and why. We can recommend an update, but we cannot fully specify its contents. This is an important lacuna.

Finally, we had initially planned to have stakeholder workshops to discuss drafts of our report. This proved impossible for two reasons. The first is that workshops are costly and the second is that we could not release our results prior to publication. I believe this discussion could have enriched the report and recommendations immensely. Neither problem is insurmountable. The first could be accommodated partially through videoconferencing and conference calls. The second is to be negotiated more thoroughly with Status of Women Canada. An appeal to feminist methodology might carry the day here and we did not make this case as strongly as we should have because our coffers were bare and our timeline short in any case. I remain hopeful that workshops can still be organized and that the public release of the report will generate enough enthusiasm to justify this next step.

Findings and Recommendations

The themes of *Gendering Canada's Refugee Process* are complexity, vulnerability, and change. Complexity is highlighted because is central to taking a long view of a potential refugee's engagement with the Canadian state. Vulnerability is vital because current discourses of security and efficiency risk silencing the vulnerability of those involved in the refugee process, whether or not their claims are ultimately accepted. Change comes to the fore as we work to interpret the consequences of constant shifting in the policy climate.

While the starting point of our work was a question about gender, our findings and recommendations are not solely focused on women. The analytic tools of feminist methodology are attuned to overlapping and intersecting vulnerabilities. At some points in our work we have arrived at an analysis which focuses on "women" as a distinct group. However, we have equally found instances where "men" are vulnerable in particular ways. In addition, at many points in the refugee process, the intersecting vulnerabilities that come with racialization, poverty, cultural isolation, dominant language illiteracy, and personal trauma overwhelm any analysis that could focus on gender, or genders, alone. Many of our recommendations call for changes that will benefit all those involved in the process.

One of our principal findings is that the government agencies concerned are not yet in a position to meet the legislative commitment to report on "...a gender-based analysis of the impact..." of the *Immigration and Refugee Protection Act*. Our research concerned only a portion of the governmental action authorized by this legislation, and it may be that more work has been done in other areas. For

the areas we investigated, there are still far too many questions for which no sex-disaggregated data exists in response. The reporting requirement cannot be met without more resources for this work. In addition, given that key parts of the legislative mandate have been transferred to the CBSA, that agency must also comply with the *IRPA*'s reporting requirement. CBSA had less information available about its activities than either CIC or the IRB did. This is most likely because the agency was so new at the time we were gathering data. As plausible as this may be, it is inexcusable. The launch of a new agency with a legislative mandate attentive to gender is an ideal to time get it right.

It is well known that men make more refugee claims in Western states than women do. This marked difference is true in Canada as it is elsewhere. In contrast, however, women are more successful as claimants. Very few individuals are found to be ineligible to make a refugee claim and similarly small numbers are excluded during the claims process. Security exclusions affect more men than women, and high levels of secrecy mean it is not currently possible to investigate why. The sole exception in the security area is that the Safe Third Country Agreement with the United States affects proportionately more women than men.

The refugee determination process in Canada is difficult. There is probably no way around this basic fact here or anywhere else. But it is getting more so. This is fairly obvious in the case of claimants where surveillance and screening are increasing and community support is decreasing with funding cuts to support services and legal aid. What is less obvious is that working conditions for decision makers, advocates, and community workers are also declining. Decision makers are under increasing work stress, even as the legislation has changed to require perfection in their decisions. Their work is supported by lawyers with less time to prepare themselves and their clients, and less money and time to gather independent supporting documents. The increased stress of each of these levels falls on the shoulders of the community sector, even as their funding is cut.

All of our seventy-nine recommendations are set out here. We hope they will encourage readers to obtain the complete report from Status of Women Canada. We also hope they will encourage shifting in governmental priorities, policies, and legislation. We welcome feedback on this work. The public release of *Gendering Canada's Refugee Process* marks the launch of a new phase of work in this area.

I. Conducting Gender Based Analysis of Canada's Refugee Process

1. That the Minister of Public Safety and Emergency Preparedness Canada (PSEPC) fulfill her obligation under s. 94(2)(f) of *IRPA* and report to Parliament.
2. That CIC, PSEPC/CBSA and the IRB develop best practice standards for Gender Based Analysis (GBA).
3. That CBSA establish a GBA Unit to assist the agency in fulfilling its obligations under the Federal Plan of Action and *IRPA* s. 94(2).
4. That the IRB assign a senior staff member to oversee GBA in evaluating the areas under its jurisdiction and responsibility.
5. That CIC and CBSA develop an annual and on-going work plan for evaluating the gendered impact of *IRPA* and their policies and activities and report on the successes and shortfalls in meeting those targets.
6. That the GBA conducted by CIC, CBSA and the IRB recognize the multiple sites of oppression and marginalization often present in the lives and experiences of refugee claimants and refugees. These realities should inform the gender-based analysis conducted by the particular department/agency/tribunal.
7. That the Ministers responsible for CIC and of PSEPC state the priority areas of research and evaluation to be conducted by their respective GBA Units.

II. Gathering Data to Support Gender Sensitive Policies

Many of our recommendations relate to data collection because in many areas it was impossible to systematically evaluate gendered effects. We have resisted calls to replace these recommendations with a single call for additional sex-disaggregated data for two reasons. First, it is not simply a matter of sex disaggregation of existing data sets. Second, we find it more useful to demonstrate precisely the type of data required to answer our questions. Precise recommendations avoid the need to interpret what a general request might mean for a particular agency. They also demonstrate clearly the dearth of information we encountered. With this in mind, we recommended:

8. That CIC and CBSA commit resources to producing and analyzing data as the basis of their annual reporting commitment.
9. More specifically, that CIC commit additional resources to its GBA Unit to ensure that it can meet its mandate and goals in training and reporting.
10. That CIC make publicly available the results of the monitoring and statistics gathering related to the in-Canada refugee determination process it had committed to in its GBA Charts for Bill C-11 (later, *IRPA*) and for the first set of Regulations.
11. That surveying of interdicted individuals begin at once, and that data collected include sex disaggregated statistics.
12. That CBSA collect data regarding the direct back practice to accurately determine how often it is used

and who is affected by this, including sex disaggregated data and other important demographic indicators such as age and country of nationality.

13. That efforts be made to gather more detailed statistics about those making gender related persecution claims, their countries of origin and their success rates in Canada.
14. That detailed monitoring be conducted to assess the ongoing impact of the Safe Third Country Agreement on women and men.
15. That CIC and CBSA, as appropriate, immediately begin collecting and publishing sex disaggregated data showing reasons for detention.
16. That detention statistics track the reasons for refugee claimant detention, and that separate "average days in detention" be tracked for refugee claimants.
17. That data be gathered to test whether detention is ensuring attendance by monitoring rates of absconding.
18. That IRB and the CBSA track the bond amounts being imposed and whether the capacity to meet those requirements has a gender differential.
19. That CBSA gather data to demonstrate detention patterns when families are involved.
20. That statistical tracking of the time it takes for families to reunite include a break down by sex of the principal applicant, and of sponsors.
21. That the new "fast track" processing be monitored (including collected data regarding the sex of the principal applicant) and its results be publicized.
22. We recommend that more detailed statistical records be maintained and made public regarding removals, including sex disaggregated statistics.
23. That Pre-Removal Risk Assessment (PRRA) statistics be tracked on the basis of whether the individuals concerned are failed refugee claimants.
24. That humanitarian and compassionate applications be tracked on the basis of whether the applicants are failed refugee claimants. These statistics should be further sex disaggregated, and also cross referenced for success rates.
25. The security certificate process is highly gendered and therefore should be queried and monitored to ensure that pernicious stereotyping is not at the root of the pattern. Security decision-making should be undertaken with an understanding that men fit more easily into a "high risk" profile.

III. Legislative Change

Some of our recommendations under other headings could also be met by legislative change. In our view, however, the

recommendations under this heading could only be addressed through legislative changes.

26. That Canada withdraw from the Safe Third Country Agreement.
27. Until such time as Canada withdraws from the Safe Third Country Agreement, we recommend that women making gender related persecution claims be exempted from the Agreement.
28. That only people who have been a principal applicant in a refugee claim be ineligible to make future claims. We also recommend that when there is evidence of a change in country conditions, that the ineligibility bar be lifted for all nationals.
29. That the IRB return to the previous two member panel practice.
30. We recommend a "front end" humanitarian process, linked to port of entry screening, as a means of saving resources and improving genuine humanitarian effects of this law.

IV. Pre-Claim Recommendations

31. That appropriate accommodations for those held for a long time before their initial interview should be routinely provided, including food, water, diapers, et cetera.
32. That interview training for the border setting should take into account that people are sometimes unable to explain their journey, even if they are refugees.
33. That specific policies and procedures should be enacted and training of CBSA staff undertaken to ensure that immigration officers at ports of entry are sensitive to the needs and realities of women arriving in Canada. Also, at each port of entry, there should be a specialist trained in issues of gender related persecution available to assist women and children when necessary.
34. There should be an option of having childcare during eligibility interviews.
35. Women should be interviewed by female officers whenever possible. If a woman requests a female interviewer and one is not immediately available, the interview should be postponed.
36. Whenever possible, female interpreters should be selected to participate in interviews with women. If a woman requests a female interpreter and one is not immediately available, the interview should be postponed.
37. That immigration officers provide an up-to-date list of community resources for refugee claimants, including those that are specifically geared towards

women and children and those that can provide services in the language of the refugee claimant.

38. That guidelines on gender based persecution be adapted for use at the eligibility screening phase. We recommend that training gathering evidence from vulnerable individuals, including women, be extended to all officers involved in this process.
39. That claimants at the border have access to qualified refugee lawyers, perhaps by using a duty counsel roster system, or by having a dedicated telephone line. Interpretation services would be a necessary aspect of such support.

V. *Detention*

40. That the policy of fast-tracking refugee claims for those in detention to ensure that they are processed as quickly as possible be revisited to ensure it is working.
41. That a time limit for pre-hearing detention be legislated (i.e. 90 days), and that detention beyond this time limit only be permitted in enumerated circumstances, or if the claimant herself has requested additional time to prepare for a hearing.
42. That any refugee claimant who is detained be provided with a lawyer at state expense as a matter of course, regardless of any "merits tests" imposed by legal aid programs.
43. That CBSA ensure consistent rules and policies for the treatment of refugee claimants, whether they are detained in immigration detention or provincial jails.
44. That the Canadian government monitor its practice in detention decision-making and eligibility screening to see if there is evidence of practices which would be labeled racial profiling. This would involve tracking decisions by factors including age and country of origin, as well as gender. Data gathered should be publicized, and could form the basis of policy adjustments if racial profiling trends do emerge.

VI. *Hearings*

45. That decision makers have a capacity to question claimants separately during a joined hearing, with appropriate safeguards.
46. That all counsel and others advising refugees recommend separate counsel for male and female partners when gender related persecution is involved.
47. That cases involving gender related persecution be added to the list of claims not appropriate for video-conferencing.

48. That a sample of ministerial intervention cases be scrutinized in detail to understand the basis for intervention decisions.
49. That refugee protection officers not take the questioning lead in hearings.
50. That the IRB track requests for gender sensitive panels, and the responses to them.
51. That the guidelines on gender related persecution be reviewed immediately and at five year intervals.
52. That the guidelines include information on using medical and psychological reports.

VII. *Post-Claim Recommendations*

53. That permanent residency status be granted at the same time as refugee status is accorded, or within 60 days of a positive refugee determination that is not under appeal by the Minister.
54. That refugee claimants in financial need be exempted from application fees.
55. That parents of refugees who are minors or young adults also be included in the definition of "family members" for the purpose of sponsorship. We further recommend that, in such sponsorship applications, the application fees be waived and the process fast-tracked in order to facilitate timely reunification.
56. That processing delays not be used to exclude, as a "family member", children who pass the age 22 threshold (and who do not meet the exceptions in the Regulations) during processing.
57. That the impact of the deadlines for application be monitored to ensure they do not preclude/hinder a refugee from obtaining permanent residence status in Canada and from sponsoring her/his family members.
58. That additional funds be put towards processing of permanent residence applications and into overseas visa posts to facilitate family reunification.
59. That accountability measures be put in place to ensure that any delays in processing permanent residence and sponsorship applications for refugees are not a result of lack of action taken by government officials, with respect to security clearances or in communicating to applicants any gaps in their files.
60. That successful refugee claimants be permitted to apply for a permanent Social Insurance Number (SIN) and allowed to work without a work permit.
61. We support the recommendation made by the Canadian Council for Refugees in its report, *More than a Nightmare* that "spouses and children of people recognized as refugees in Canada be brought immediately to Canada, to be processed here."¹²

62. That the Refugee Appeal Division be implemented immediately.
63. That an assessment of the reasons for PRRA determinations be made.
64. That guidelines on gender related persecution be developed for PRRA.
65. That training in PRRA determinations draw on the experience and resources of the IRB.
66. That the standard of proof for PRRA be the same as for refugee decisions.
67. Humanitarian and compassionate policy guidelines should be rewritten to focus on genuine humanitarian criteria.

VIII. Community Support

68. That both CBSA and CIC continue efforts to work with the community sector to ensure accurate information about community services is made available at the earliest possible moment, with particular attention to information about services for women who have experienced sexual assault and domestic violence.
69. We recommend that funding for vital services be increased as these are the key supports to women and men making refugee claims in Canada.
70. That the federal government adequately fund shelters for refugee claimants in every city where refugee claims are heard by the IRB.
71. That the Canadian Bar Association and provincial continuing legal education programs continue and expand opportunities for specialized training in refugee law.
72. That similar training be mandatory for immigration consultants.
73. That full funding for psychological and medical reports be provided.
74. The full funding for legal representation for refugee claimants be available.

IX. Moving towards Equality

75. That the government ensure that women outnumber men in the government assisted refugee category.
76. That the government publicize to sponsors and potential sponsors the gender disparity in the government assisted category.
77. That the government investigate the gender disparity in the government assisted refugee program.
78. That gender-based analysis and gender mainstreaming exercises be incorporated in policies related to human security and national security, especially those concerning refugees.

79. That the Canadian government revisit its "Freedom from Fear" policy statement to incorporate a more holistic and comprehensive view, especially one that considers the human security of both international and in Canada refugees, and the "fear," "want," and "vulnerability" that they experience.

Notes

1. My co-authors are Leonora C. Angeles of Women's Studies and Community and Regional Planning at the University of British Columbia and Agnes Huang, presently clerking at the Federal Court of Canada. The responsibility for this short piece is mine alone.
2. S.C. 2001, c. 27.
3. Section 94 of the *IRPA* states:
 - (1) The Minister must, on or before November 1 of each year or, if a House of Parliament is not then sitting, within the next 30 days on which that House is sitting after that date, table in each House of Parliament a report on the operation of this Act in the preceding calendar year.
 - (2) The report shall include a description of...
 - (f) a gender-based analysis of the impact of this Act.
4. Erin Baines left the project team when she took up her position as Research Director of the Conflict and Development Program, Liu Institute for Global Issues at UBC.
5. A sample of important work in this area includes Audrey Macklin, "A Comparative Analysis of the Canadian, US, and Australian Directives on Gender Persecution and Refugee Status," in Doreen Indra, ed., *Engendering Forced Migration: Theory and Practice* (New York and Oxford: Berghahn Books, 1999); Audrey Macklin, "Refugee Women and the Imperative of Categories" (1995) 17 *Human Rights Quarterly* 213; Thomas Spijkerboer, *Gender and Refugee Status* (Aldershot, UK, and Burlington, VT: Ashgate, 2000); Heaven Crawley, *Refugees and Gender: Law and Process* (Bristol: Jordans, 2001).
6. *Guidelines on the Protection of Refugee Women* (Geneva: UNHCR, 1991).
7. Canada introduced its first guidelines in 1993. These were updated in 1996 and the 1996 version remains in place today. The guidelines are issued under the power of the Chairperson of the Immigration and Refugee Board Chair person to "... issue guidelines in writing to members of the Board and identify decisions of the Board as jurisprudential guides, after consulting with the Deputy Chairpersons and the Director General of the Immigration Division, to assist members in carrying out their duties." (s. 159(1)(h)). The United States, the United Kingdom, Australia, and Sweden all have parallel guidelines in place. Guidelines have also been developed by the European Council on Refugees, the UK Refugee Women's

legal group, and the South African National Consortium on Refugee Affairs.

8. *Guidelines on International Protection: Gender-related persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, UNHCR, UN Doc. HCR/GIP/02/01 (7 May 2002).
9. This information is also on our website. See “Legal Framework,” online: Gender in the New Refugee Process <<http://www.genderingasylum.org/legal.html>>, where the three-dimensional format makes the information easier to grapple with.
10. R.S.C. 1985, c. A-1.
11. The appointments process is described Online: <http://www.irb-cisr.gc.ca/en/about/employment/members/msp_e.htm>.
12. Canadian Council for Refugees, “More than a Nightmare: Delays in Refugee Family Reunification” (November 2004), online: Canadian Council for Refugees <www.web.ca/ccr/nightmare.pdf>.

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