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FOCUS ON GENDER ISSUES AND REFUGEE LAW

Reflections on the Gender Guidelines

It has now been several months since the Immigration and Refugee Board released its *Guidelines for Women Refugees Fearing Gender-Related Persecution*. They were released on March 9, 1993, coincidental with International Women's Day.

Canada has been lauded as making a massive leap forward with the introduction of the guidelines; we are much the envy of those lobbying for similar action in their respective jurisdictions. Nurjehan Mawani was given the American Immigration Lawyers Association (AILA) "Humanitarian Award" citing her ability to forge ahead with the gender agenda in times where the national mood of host states in the Western world is one typically characterized as increasingly restrictionist, not expansive. But all reaction has not been laudatory. Essentially, criticism of the potential effect or reach of the guidelines generally falls into three broad categories.

First, they are criticized as being a defective mechanism of change, given that they are in the form of guidelines and not regulations; that is, they are not law. Generally, this argument is met by reference to the difficulty in the legislative route required to put regulations in

place. Furthermore, goes the argument, while the guidelines may not have the force of law, they present the advantage of flexibility and can be monitored and changed more easily than legislation. They will be applied by decision makers who are being encouraged to provide

written reasons and initially will be subject to scrutiny by the Board and the advocacy community in keeping with the fundamental principle of administrative law of the independence of decision makers. In the meantime, the general mood is that we should feel quite

continued on page 3

Contents:

Reflections on the Gender Guidelines <i>Leanne MacMillan</i>	1
National Consultation on Women's Issues in Immigration and Refugee Protection <i>James C. Hathaway</i>	4
The Factual and Legal Legitimacy of Addressing Gender Issues <i>Nurjehan Mawani</i>	7
Gender Case Analysis: A Look at Recent IRB Decisions <i>Leanne MacMillan</i>	11
Violence Against Women as a Human Rights Issue <i>Diana Bronson</i>	14
A Step Forward in Protecting Human Rights: <i>Canada v. Ward</i> <i>Linda E. Tranter</i>	16
The New Public Security Portfolio <i>Honourable Douglas Lewis</i>	18
The New Refugee Advocacy Staff Office <i>Ontario Legal Aid Plan</i>	20
Empower the Most Vulnerable <i>Véronique Lassailly-Jacob</i>	21
"God Has Left Me." <i>Lloyd Jones</i>	22
Book review: <i>Storm and Sanctuary</i> / Helene Moussa Reviewed by <i>Yohannes Gebresellasia</i>	23

