

*THE IRB WORKING GROUP
ON WOMEN REFUGÉE CLAIMANTS*

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(Toronto/Front Street Office)*

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Thank you for your invitation to participate in this discussion on human rights and women refugee claimants in Canada. Since its inception in 1989, the Immigration and Refugee Board's caseload has consisted of approximately 30% women claimants. It soon became clear that women claimants face specific problems in the determination process which have to be addressed in an ongoing and systematic way. Discussion both inside and outside the Board led to the formation of the first IRB Working Group on Women Refugee Claimants, which I co-chair with Flora Liebich, at the Toronto/Front Street office.

Before I describe the role of the Working Group and the challenges of the past five years, I would like to comment briefly on the IRB for those of you who may not be familiar with its work. The IRB is mandated by Parliament to determine Convention refugee status in Canada. It applies the definition of who is a Convention refugee found in the 1951 United Nations Convention Relating to the Status of Refugees and now incorporated into Canadian law. This definition basically states that those who have a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group are refugees.

The IRB is the largest administrative tribunal in Canada and its Convention Refugee Determination Division (CRDD) has more than 200 independent decision-makers, or Members, throughout the country. The Toronto/Front

Street office has approximately 50 Members. Roughly 42% of IRB Members are women and a wide range of racial and ethno-cultural backgrounds are represented. Close to 30,000 decisions on refugee claimants are made each year and I would like to underscore the fact that the acceptance rate for women claimants has consistently been higher than the overall average. In 1992 the acceptance rate for women stood at 64% as compared to 60% overall.

As you are aware, IRB Chairperson, Nurjehan Mawani, issued Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution in March of this year. The purpose of the Guidelines is to provide substantive legal and procedural guidance in analyzing gender-related issues in refugee claims made by women to ensure consistency in decision-making. The legislative authority to issue guidelines was given to the IRB Chairperson when changes to the Immigration Act were enacted last February. Canada is the first refugee-receiving country to establish formal guidelines for the adjudication of refugee claims made by women. Internationally, they now serve as the model for countries considering similar initiatives, including the United States and Australia.

I think it will interest you to hear about the role of the Working Group on Women Refugee Claimants in the development of the IRB Guidelines. However, I would

first like to tell you about its composition, objectives, and methods of work over the past five years. I trust that our experience will be useful to Amnesty International as you support the development of your own Women's Action Network.

From its inception in January, 1990, the Working Group has stressed the need to be inclusive in its composition. Its membership has always consisted of women and men, as well as a combination of Members, Refugee Hearing Officers (RHO), Legal Advisors and representatives from the Documentation Centre and the UNHCR. Our goal has been to have all the players in the determination process, not just the decision-makers, be actively involved. Our members represent a variety of professional disciplines and ethno-cultural backgrounds. Our Assistant Deputy Chairperson (ADC), Dorothy Davey, has been an active member from the beginning, and her ongoing support has been invaluable. It was at her request that Flora Liebich, Chairperson of our Working Group, set in motion the process of convening the group.

A small core of Working Group members have provided continuity over time, while others, largely self-selected on the basis of interest and experience with gender issues, have joined as openings became available. Generally, the total membership has not exceeded 12 people, the majority of whom are IRB Members.

The Working Group meets on a bi-monthly basis during working hours, and more frequently when a specific project is underway. Many meetings are held after working hours and members carry out their activities in addition to their usual responsibilities at the Board.

The main objective of the Working Group is to provide training which encourages Members, Refugee Hearing Officers and Legal Advisors to develop the necessary tools for dealing with gender-based refugee claims. To that end, we organized a number of professional development workshops featuring a wide range of speakers, including UNHCR specialized staff, legal and human rights experts, medical practitioners assisting torture victims, and refugee women themselves.

The workshops addressed issues such as gender-based patterns of persecution experienced by women; the socialization process involving women from refugee-producing regions of the world; the impact of cross-cultural misunderstanding on the assessment of a claimant's credibility; how to use the Convention ground of 'membership in a particular social group' in gender-specific refugee claims; and the impact of the international human rights instruments on gender-based claims.

Although most of our workshops have been regional initiatives, last year we held a national workshop, co-

sponsored with UNHCR (Geneva), which examined European case law dealing with gender-related claims made by women; the need to understand the attitudes and behaviours in the hearing room; and the process of institutional change at UNHCR to mainstream refugee women's issues within its overall policies and programs. Our speakers included Ann Brazeau-Howarth, the High Commissioner's Senior Coordinator on Refugee Women, and Karola Paul, of UNHCR's International Protection Division.

The workshops, like other IRB professional development initiatives, are required attendance for Members to ensure that there is a common foundation on gender issues which promotes consistency in decision-making. All of our workshops have been video-taped and the papers presented at each workshop are printed and bound. Both the videos and the papers have been widely utilized as training tools inside and outside the Board.

Another Working Group objective involves working with the Documentation Centre which collects and circulates information on women in refugee-producing countries. The availability of such information in the hearing room plays a vital role in the determination process. The Working Group has encouraged greater research in this area and the Documentation Information and Research Branch (DIRB) in Ottawa is currently

developing a new Human Rights Series on the situation of women in selected countries, including Trinidad and Tobago, the People's Republic of China, Bangladesh, El Salvador, Iran, Sri Lanka and Pakistan.

As well, the Working Group has helped identify issues and trends in the hearing room arising from gender-related claims. For example, women claimants often experience difficulty in testifying before strangers, particularly about deeply personal matters such as sexual abuse. Our recommendations that the Board recruit more female interpreters and allow for the use of affidavits and videotaped testimony have been acted upon favourably. In its liaison with the legal community, the IRB has also stressed the need for counsel to be aware of sensitive issues which may arise at a hearing and alert the Board in advance. The IRB favours the use of expert evidence for torture victims and victims of sexual assault syndrome.

The Working Group has also served as a link to national and international bodies dealing with gender issues and refugees. We maintain regular contact with groups such as the Canadian Council for Refugees' Working Group on Refugee Women and the UNHCR. Earlier this year we participated in the international conference on Gender Issues and Refugees: Development Implications held at York University. Through these activities we take part

in ongoing debates regarding such issues as the recognition of women's rights as human rights, whether the 1951 Convention should be expanded to include gender as a separate ground, etc.

Gordon Fairweather, the first Chairperson of the IRB, supported the Working Group's activities from the outset. Our present Chairperson, Nurjehan Mawani, has provided strong leadership on gender issues and her efforts have been recognized internationally. There is no doubt that the process of raising institutional awareness of gender issues in any organization benefits greatly from the commitment of those in leadership positions. Without it, gender issues will suffer from low visibility and the individuals involved will often lose out in the competition for scarce resources. Moreover, policy-makers in the organization will view the issue as an optional one, relegating it to the margins.

It is also critical that any group promoting such individual and institutional change have a handful of members who persevere during the inevitable moments when progress seems too slow to make the effort worthwhile. It is important to remember that, even when gender issues are a clearly-articulated institutional priority, as they are now at the IRB, the desired shifts in attitude and practice within the organization do not fall into place overnight. In the past year, Working Groups on Women

Refugee Claimants have been organized in regional offices throughout the country. Toronto now has two groups that work in close collaboration, the second located at the University Avenue Office. Mrs. Mawani has just named a Special Advisor to co-ordinate all IRB initiatives on gender issues.

Returning to the Guidelines on Women Refugee Claimants Fearing Gender Related Persecution, I will outline briefly the role of our Working Group in their development. The first phase began in 1991 when we held discussion with IRB researchers at the Hearings Branch about the need for a "preferred position paper" on gender issues. In the months that followed, we responded to several early drafts. We then suggested that an initial consultation be held within the Board at an upcoming workshop on gender issues. We have found in the course of our work that insufficient consultation retards the development of a working consensus on emerging issues.

The second phase began when the Director of the Hearings Branch, which co-ordinated the research on the gender paper, presented the initial draft at the workshop we co-sponsored with UNHCR in March of 1992. Copies were included in the workshop kit to facilitate the response of Members, Refugee Hearing Officers and Legal Advisors, from both Toronto Offices. This was the beginning of an internal process of consultation which extended to IRB

Regional Offices across the country. Our Legal Services became actively involved in revising the paper and drafting successive versions.

The third phase consisted of external consultation with a wide range of organizations. Among those consulted were the Canadian Council on Refugees, UNHCR, the Canadian Advisory Council on the Status of Women, Status of Women Canada, the Canadian Council of Churches, and refugee law scholars James Hathaway and Guy Goodwin-Gill. From the numerous responses received by the Board, it was evident that our stakeholders viewed the Guidelines as an important initiative. The public debate on a number of IRB decisions relating to women gave added impetus both to our internal deliberations on gender issues and to the sustained process of external consultation.

Nurjehan Mawani assumed her position as IRB Chairperson in the fall of 1992 and her strong leadership helped finalize the Guidelines by early 1993. She formally introduced the Guidelines at our International Women's Day conference this year, held jointly by both Toronto Working Groups. The Guidelines were officially released by the IRB the following day. Shortly thereafter our Legal Services conducted workshops on how to use the Guidelines to assess gender-related claims in all IRB Regional Offices across Canada.

The Guidelines elaborate on many of the same themes discussed in the various workshops conducted by the Working Group from 1990-1992. They outline common forms of persecution directed against women, such as:

- persecution on the basis of kinship, where a political opinion is imputed to them due to the political views or activities of family members;
- severe discrimination based on the fact that they are women;
- persecution for transgressing religious precepts, social mores, and legal or cultural norms; and
- exposure to violence by the authorities or private actors, including domestic violence, from which the state is unable or unwilling to protect them.

The Framework of Analysis that accompanies the Guidelines is an important tool in analyzing the link between gender, the feared persecution, and one or more of the grounds in the definition of a Convention refugee. The Framework includes an assessment of the following factors:

- the particular circumstances that give rise to the claimant's fear of persecution;
- the general conditions in the claimant's country of origin, including the nature of oppressive laws imposed upon women;
- the seriousness of the treatment feared by the claimant;
- whether or not the claimant's fear of persecution is based on one or

more of the grounds in the Convention refugee definition;

- whether there is adequate state protection available to the claimant; and, finally,
- whether the claimant's fear of persecution is well-founded under all of these circumstances.

While the issues raised in the Guidelines are not new, it is a significant advance that the Guidelines codify in an authoritative form the key issues which underlie gender-related persecution. For the Working Group on Women Refugee Claimants they represent the culmination of several years' work helping to identify and focus those issues.

Because IRB Members are independent decision-makers, the Chairperson's Guidelines are non-binding in nature. However, Members are expected to carefully consider the Guidelines when deciding refugee claims, and when they depart from the Guidelines they are expected to provide written reasons explaining why.

A number of recent IRB decisions illustrate the application of the Guidelines to refugee claims made by women. A Vancouver panel found that two Mayan sisters from Guatemala were refugees. The teen-age girls were threatened with rape by soldiers because their father was involved with the guerilla movement. As young women, they were particularly vulnerable in their society and they were not protected by the state authorities. The

panel's written decision recognized that a fear of rape can constitute persecution.

In Toronto a battered wife from Ecuador was found to be a Convention refugee two days after the Guidelines were released. Her counsel presented evidence that in Ecuador "violence is prohibited by law but is common in practice." In their analysis, the panel found that the unwillingness of the state to protect "Ecuadorian women subject to wife abuse may amount to persecution depending on the gravity of such abuse."

In closing, I would like to emphasize the critical need for more documentation on the situation of women in refugee-producing countries. We cannot properly assess gender-based claims without it. Recently, Amnesty International has produced precedent-setting reports, such as "Women in the Front Line" which defines the rape of women prisoners as a form of torture. The 1991 report, "Rape and Sexual Abuse: Torture and Ill-treatment of Women in Detention," was an invaluable resource in one of our Workshops which looked at rape by state agents as a form of torture for which the state is accountable. Some argued that rape is a form of private violence, however reprehensible, and hence not within the ambit of the state's responsibility. Having that report on hand provided not only documentation of how widespread the sexual abuse of women in detention is, on a global

scale, but also how important it is to approach it from the standpoint of the international human rights instruments.

I would note, especially, the need for information on the availability of state protection for women fearing gender-based persecution. The recent Supreme Court of Canada decision in Canada v. Ward means that women claimants must rebut the presumption of state protection in their countries of origin. In its ground-breaking 1991 report, "Criminal Injustice: Violence Against Women in Brazil," Human Rights Watch recognizes domestic violence as a human rights issue. It documents the failure of the Brazilian authorities to investigate and prosecute domestic violence generally, and it demonstrates that this failure is directly related to the gender of the victims. The report denounces the Brazilian government for not guaranteeing women the fundamental right to equal protection before the law without regard to sex. More such studies are urgently needed.

In a recent address to a Match International Forum, in Toronto, Nurjehan Mawani commented on Canada's leadership role, internationally, in recognizing gender-related persecution:

I believe our progressive views put us in the forefront of this evolution and that we will remain there, making an important contribution to the solution of a world-wide problem. This

is in contrast with developments particularly in Europe where access to refugee protection systems is being curtailed in the name of social order ... The extent to which we improve our understanding of and sensitivity towards gender-related persecution is the extent to which we will be able to move forward ... I think we have established a solid beginning, and a strong framework within which we can move ahead with confidence.

Thank you.